

THE TOWN OF AUBURN

CHAPTER 46

NONMETALLIC MINE OPERATOR'S LICENSES

Section 46.01. Finding, Purpose and Authority

(1) Findings. Nonmetallic mining operations, while a vital component of our state and local economy, can have both direct and indirect adverse impacts. Studies have documented that, depending on the size of the mining operation, the type of geological deposit being mined and the manner and methods of mining and processing used, nonmetallic mining can have adverse impacts on property values, groundwater and surface water, and can generate harmful levels of dust and noise particularly if blasting and crushing operations, or washing and drying processes, are undertaken. Nonmetallic mining operations that generate more than 50,000 cubic yards of material in any calendar year can generate high volumes of truck traffic that can present safety issues and concerns for the proper and timely maintenance of Town roads, and exposure to nuisances of noise and dust. Multiple mines within the Town can have significant adverse cumulative impacts.

(2) Purpose. The purpose of this Chapter is to provide minimum standards for large nonmetallic mining operations including processing facilities in the Town, and to require licenses for nonmetallic mining operators and facility operators in order to protect public health and safety, to minimize or prevent adverse off-site direct or cumulative impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Auburn.

(3) Authority. This Chapter is adopted by the powers granted to the Town of Auburn by the Town's adoption of Village powers under Wis. Stat. §§ 60.10 and 61.34, its authority under § 66.0415, and other authority under the statutes. Any amendment, repeal or recreation of the statutes relating to this Chapter made after the effective date of this Chapter is incorporated into this Chapter by reference on the effective date of the amendment, repeal or recreation.

Section 46.02. Applicability and Scope

(1) This Chapter shall apply to all nonmetallic mining operations and mine sites including processing facilities within the Town of Auburn which extract or process more than 50,000 cubic yards of material in any calendar year from one or more mine sites.

(2) This Chapter does not apply to the following activities:

(a) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.

(b) Excavations or grading conducted for the construction reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the excavation or

grading is entirely within the property boundaries of the highway, railroad or other transportation facility.

(c) Grading conducted for preparing a construction-site or restoring land following a flood or natural disaster.

(d) Excavations for building construction purposes conducted on the building site.

(e) Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.

(f) Removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

Section 46.03. Definitions

(1) "Adjoining landowner" means any property within 1/2 mile of the proposed mine site regardless of whether there is a residence or structure on the property.

(1a) "Buffer" means an undisturbed vegetated area measured from the mine site border into the mine site, in which no nonmetallic mining activities, structures or roads can occur except for the construction and maintenance of a vegetated berm.

(2) "Heavy Vehicle" means a vehicle over 48,000 pounds.

(3) "Landowner" means the person or entity who has title to land in fee simple or who holds a land contract for the land.

(4) A "mine site" or "site" means land from which mineral aggregates or nonmetallic minerals will be extracted for sale or use by the Operator; all land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing, drying, processing or screening facilities, private roads or haulage ways associated with nonmetallic mining operation regardless of whether the materials come from on-site or off-site; and all contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or Operator.

(5) "Nonmetallic minerals" means a product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, non-renewable material. Nonmetallic minerals include but are not limited to stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat and talc.

(6) "Nonmetallic mining" means any or all of the following:

(a) Extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use or sale, including drilling and blasting as well as associated activities such as excavation, grading and dredging of such materials.

(b) Manufacturing or industrial processing operations that may involve the use of equipment for the crushing, screening, separation, washing, drying or blending of the

- mineral aggregates or nonmetallic minerals obtained by extraction from the mining site, or from materials transferred from off-site.
- (c) Manufacturing processes aimed at producing nonmetallic products for sale or use by the Operator.
 - (d) Stockpiling of nonmetallic products for sale or use off-site and stockpiling of waste materials.
 - (e) Transport of the extracted nonmetallic materials, finished products or waste materials to or from the extraction site and/or processing site(s).
 - (f) Disposal of nonmetallic mining waste materials.
 - (g) Reclamation of the extraction site.
 - (h) Stockpiling, storing or processing of nonmetallic products off of the mine site.
- (7) "Operator" means any person who is engaged in, or who has applied for a license to engage in nonmetallic mining whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.
- (8) "Operator's license" or "license" means the license required of mining operators in this Chapter to undertake nonmetallic mining in the Town of Auburn.
- (8a) "Retained expert" means professional consultants including but not limited to engineers, attorneys, planners, environmental specialists, and other consultants with skills relevant to reviewing, processing and acting upon applications for a Operator's License or Mining Agreement or to issues associated with the inspection, monitoring and enforcing of approvals arising under this Chapter.
- (9) "Town" means the Town of Auburn.
- (10) "Town Board" means the Town Board of the Town of Auburn.
- (11) "Waste Material" means the non-marketable by-product that results directly from or is displaced by extraction or that is a by-product of a manufacturing process that is scheduled for disposal at the extraction site or some other site as part of a reclamation plan.

Section 46.04. License Required

(1) License Requirement. Except as set forth in sub. (6), no person shall operate a nonmetallic mine or processing facility within the scope of this Chapter in the Town of Auburn without first obtaining an Operator's license from the Town Board.

(2) License Term.

(a) An Operator's license shall be granted for a period of one year commencing on January 1 and ending on December 31 of each calendar year. For the first year of operation under this Chapter, the Operator's license will extend from the date of issuance until the first December 31 of the first calendar year after operations have been started.

(b) An Operator's license may be renewed as set forth in Section 46.08.

(3) License Amendment. If the Town has issued an Operator's license, the Operator may request an amendment to that license during the license term, using the same process as the original license application.

(4) License Transfer. An Operator's license may not be assigned or transferred without the express written consent of the Town.

(5) License Revocation. An Operator's license may be revoked under the procedures in Section 46.09.

(6) Mining Agreement. In lieu of a license, a person may operate a nonmetallic mine or processing facility if the person has entered into a mining agreement approved in accordance with Section 46.13. (Am 7/30/12)

Section 46.05. Procedures For Applying For An Operator's License

(1) Application The applicant shall submit five (5) copies of an application that contains all required documentation required under Section 46.06 to the Town Clerk accompanied by the payment of the appropriate fees as set forth herein. The Application shall be signed by the Operator and by the landowner, provided the landowner is a person other than the Operator.

(2) Reimbursement Of Fees And Costs.

(a) Reimbursable Costs. The Town Clerk and other Town staff may expend time in the review and processing of the application. The Town may also retain the services of a Retained Expert for the purposes of reviewing, processing and acting upon Operator's License applications or Mining Agreements Any applicant for a Operator's License shall reimburse the Town for staff time expended, and shall reimburse the Town for the cost to the Town charged by any Retained Expert, in the administration, investigation, and processing of such Operator's License application.

(b) Ordinance Preparation Costs.

1. Following the initial adoption of this Ordinance, the Town Board shall determine the total Town Board, Town Plan Commission, professional and staff costs the Town incurred in the development of this Ordinance, including the stipends for Town Board and Plan Commission meeting time related to the ordinance preparation, the actual cost of legal and engineering services paid by the Town, and the cost to the Town of the Town Clerk's time spent in the development of this Ordinance.

2. Each applicant for an Operator's License shall pay its proportionate share of the cost of this Ordinance, as described in this section. The first applicant for an Operator's License under this Ordinance shall reimburse the Town for full cost of this Ordinance. The first applicant, and subsequent applicants, shall have the opportunity to be reimbursed for part of the cost from subsequent applicants, so

that at any given time, the total cost of this Ordinance will have been paid by all applicants.

3. By way of example only, at the time of the first application, the first applicant would pay the entire amount of the Ordinance to the Town. At the time of the second application, the total cost would be reallocated between the first and second applicants, so that half of the fee would be reimbursed to the first applicant.

4. Neither the Town nor any applicant shall recover interest in connection with any costs paid under this section. Payments made at the time of application shall be non-refundable, notwithstanding the disposition of the application.

(c) Preliminary Cost Reimbursement Agreement. At the time an application for an Operator's License is filed with the Town, the applicant shall execute for the benefit of the Town an agreement agreeing to pay and providing adequate security guaranteeing payment of the cost of the investigation, review and processing of the application, including any Retained Expert and staff administrative costs. The agreement and the security shall be in form and substance acceptable to the Town. The Town shall not begin processing the application until the preliminary cost reimbursement agreement is approved and signed and until the required security is provided to the Town. The Town may accept an initial deposit to begin license processing and to provide an estimate to the applicant of anticipated costs, but it shall not incur processing costs beyond that for which a deposit or other security has been approved.

(3) Initial Review by the Plan Commission.

(a) Preliminary Review. The Town Clerk shall forward the application to the Plan Commission for initial review to determine if additional information or expertise is necessary to properly evaluate the application. If no additional information or expertise is deemed necessary the Plan Commission proceed to schedule a final review at its next regularly scheduled meeting.

(b) Additional Information. The Plan Commission may request the applicant to submit additional information if the Plan Commission determines that the application is incomplete. The Plan Commission may also utilize a Retained Expert to review the application and report to the Plan Commission whether additional information is required for review of the application and to determine whether the application meets the standards of this Chapter.

(c) Retained Expert Report. Once the applicant has submitted any additional information and has paid the fee in the amount charged, the retained expert shall report to the Plan Commission on whether the application meets the requirements of this Chapter.

(d) Final Review. The Plan Commission shall schedule the application for final review at its next regularly scheduled meeting following its completion of review under par (a) or (c).

(e) Recommendation to the Town Board. Upon completion of its review, the Plan Commission shall make findings of fact and either recommend that the Town Board grant the applicant a permit to mine with or without restrictive conditions of use or recommend that the Town Board deny the application for a permit to mine. The Plan Commission will make every reasonable effort to expedite their review of the application

(4) Decision by the Town Board.

(a) Notice and Hearing. Town Clerk shall place the Plan Commission's recommendation on the agenda for the next regular meeting of the Town Board. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall set a date for a public hearing and give public notice at least fifteen (15) days prior to the date scheduled for the hearing, with the notice mailed to all adjoining landowners. At the public hearing, the Town Board shall take public comment on the proposed mine license.

(b) Town Board Decision. Following the public hearing, the Town Board may take immediate action or set a date for the meeting at which time they shall make a final decision on the Operator's license. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall review the retained expert's report as well as public comments made at the public hearing. The Town Board shall grant the license if it determines that the operation of the mine including any processing facility will be consistent with the minimum standards set forth in Section 46.07 and this Chapter and does not create adverse cumulative impacts on the Town's public health, safety and welfare. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section 46.09(3).

Section 46.06. License Application

All applicants for a nonmetallic mining Operator's license shall submit the information required in this section. The applicant may provide this information by reference to other documents submitted to other governmental agencies, but in such cases shall provide a copy of the referenced document and a specific cross reference identifying where the information required by this section is located in any referenced material.

(1) Ownership Information.

- (a) The name, address, phone numbers, and e-mail address of the Operator of the nonmetallic mining operation.
- (b) The name, address, phone numbers, and e-mail address of all owners or lessors of the land on which the nonmetallic mining operation will occur.
- (c) If the Operator does not own the proposed mine site, a copy of a fully executed lease and/or agreement between the landowner and the Operator who will engage in mining operations on the proposed site.
- (d) Proof that all property taxes on the proposed mine site are current.

(2) Site Information and Maps.

- (a) Parcel identification numbers of all contiguous parcels owned by the same landowner/lessor on which the nonmetallic mining operation will be located. Certified Survey Maps shall be provided of any of those parcels as may be available at the time of application.
- (b) An aerial photo of the proposed site at a scale of not less than 1 inch equals 660 feet signed by both the Operator and the landowner of the mine site.
- (c) A topographic map of the mine site extending 1/2 mile beyond the site boundaries at contour intervals no wider than 10 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within one mile of the site.
- (d) The location within the site of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.
- (e) A map on which the all residential, agricultural and municipal wells within 1/2 mile of the boundaries of the site in all directions are marked and given a numerical identification of the location.
- (f) The location and name of all surface waters, including lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the site and within 1/2 mile of the site. The base flow of the surface waters within 1/2 mile of the mine site as determined at the time of application.
- (g) The gradient and depth of the groundwater table shall be determined by existing wells within 1/2 mile of the mine site or other existing data.
- (h) A description of the distribution, depth and type of topsoil not only of the area of the site currently proposed for mining and for which an Operator's license application is being submitted, but also of the entire acreage of land contiguous with the proposed mine site that is owned by the same landowner/lessor, as well as the geological composition and depth and width of the nonmetallic deposit.
- (i) A map identifying the location of all other non-contiguous sites within the Town of Auburn and adjacent towns, if any, that will contribute extracted material to the same processing facility to which the site for which the applicant seeks a license will also contribute.
- (j) A letter from the Wisconsin Department of Natural Resources concerning any threatened or endangered species at the mine site.

(3) Operation Plan.

- (a) Dates of the planned commencement and cessation of the operation of the mine and the processing facilities, and a description of hours of operation, of the nonmetallic mine

site or processing facility including all times when vehicles will enter or leave the site or facility.

(b) Description of mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.

(c) Estimated volume of material to be extracted over the life of the mine and for the next calendar year. Estimated volume of material to be processed over the life of the processing facility and for the next calendar year.

(d) Location of road access points. The proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.

(e) Identification of all proposed off-site trucking routes, together with the frequency of traffic and the common schedule of travel to be used for transporting extracted materials or products to or from the site.

(f) A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water used or falling on the site, including methods used for infiltration and control of run-off.

(g) A listing of any hazardous materials, including fuel supplies that will be stored on-site and a description of measures to be used for securing and storing these materials. The operation plan shall include a written plan for responding to spills of these materials and fuels on the site and the frequency of regular drills for responding to spills on the site.

(h) A listing of all flocculants and other chemicals used in the manufacturing or processing operations or in controlling dust, and a detailed description of expected releases and final disposal of each.

(4) Information Demonstrating Compliance with Minimum Standards.

(a) The Operator shall provide such additional the information the Town deems necessary to determine whether the mining operation will comply with the minimum standards in Section 46.07.

(b) For mining operations commencing after the effective date of this Chapter, the Operator shall also provide information establishing baseline conditions at the site before operations commence, including the groundwater elevation across the site, groundwater quality at the site for lead, arsenic, turbidity, total suspended solids, chlorides, nitrates, specific conductivity and any chemical or residual of the chemical used as a flocculant and any other toxic substance that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made, and the base flow of surface waters within 1/2 mile of the site.

(c) For mining operations and processing facilities commencing after the effective date of this Chapter, the Operator shall also provide information establishing background conditions for air quality at the site before operations commence.

(5) Information Regarding Cumulative Impacts.

(a) The Operator shall provide information necessary to determine whether and to what extent the proposed the mining operation will create adverse cumulative impacts taking into account the direct impacts from the proposed mining operation together with the impacts associated with other approved nonmetallic mines in the Town and truck traffic from other existing nonmetallic mines outside of the Town that use public roads and highways within the Town.

(b) A cumulative impact analysis shall address the following topics and any additional information that the Town requests to assess cumulative impacts:

1. The cumulative amount of truck traffic on public roads and highways associated with the proposed mining operation together with the other nonmetallic mining operations within or outside of the Town. The analysis shall assess the physical cumulative impacts on the Town roads as well as the impact of traffic on the health, safety and welfare of the Town residents.

2. The cumulative impact of the proposed mining operation together with approved nonmetallic mines in the Town on the amount of ambient light and noise.

3. The cumulative impact of the proposed mining operation together with approved nonmetallic mines in the Town related to the total amount fugitive dust generated by nonmetallic mines in the Town.

4. The cumulative impact of the proposed mining operation together with approved nonmetallic mines in the Town related to the use of groundwater including the availability of groundwater for residences, agricultural operations, businesses and institutional uses as well as cumulative impacts of groundwater withdrawal on the base flow of surface water and wetlands.

5. The cumulative impact of the proposed mining operation together with approved nonmetallic mines in the Town related to groundwater contamination.

(6) Special Exceptions. The applicant may request a special exception from the application requirements of this section if it can demonstrate that the information required can be provided by alternative means or is not necessary for an evaluation of the particular mining operation, and that the public health, safety and welfare will not be adversely affected thereby.

Section 46.07. Minimum Standards of Operation

An applicant must demonstrate that the following minimum standards of operation will be met:

(1) General Standards.

- (a) The Operator shall stake or otherwise mark the borders of the entire site and shall secure the site by appropriate measures which can include fencing or other alternative measures consistent with mine safety and security.

- (b) The Operator shall demonstrate compliance with all of the other provisions of this Chapter and other applicable Town Ordinances.

(c) The Operator shall have obtained a blasting permit from the Town under Chapter 46 for any blasting operations.

(d) The Operator shall demonstrate that all other applicable federal, state and local permits and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation. The Operator shall demonstrate this by submitting a copy of all permits, approvals, or waivers of permits to the Town prior to commencing operations.

(e) The Operator shall provide notice to the Town of any notices of violation, citations, or other enforcement actions taken by any other governmental body against the mining operation within the Town within 15 days of receiving such notice from the governmental body.

(2) Buffer Areas

(a) Except as noted below, the Operator shall provide a buffer area of a minimum of 50 feet along bordering property lines and public roadways. The buffer area shall provide a setback of 500 feet to the location of any dwelling unless the landowner consents to a lesser distance but not less than 100 feet. For example, if a dwelling is located 100 feet from the mine site property boundary, the buffer area on the mine site would be 200 feet so that the distance to the dwelling would be 300 feet. If a berm is placed within the buffer area and it lies along a public roadway, bottom edge of the berm shall be a minimum of 10 feet from the edge of any road side ditch and shall be vegetated to minimize erosion entering the ditch.

(b) The Operator shall screen the mining operations from public view to the maximum extent practicable through the use of berms, additional setbacks or other measures.

(c) The Operator shall provide a buffer of 1200 feet from any navigable waters and ½ mile buffer from any trout streams.

(3) Hours of Operation

(a) The Operator shall limit normal hours of operations on-site to 12 hours a day Monday through Friday not earlier than 5:00 a.m. and not later than 11:00 p.m. to minimize off-site impacts to residents. Operations on-site shall not occur on Saturdays, Sundays or named holidays. The Operator may submit a plan for extended hours as a special exception, if it can demonstrate that additional hours are necessary for the mining operation and it would be consistent with public, health safety and welfare.

(b) Operation of Heavy Vehicles leaving the mining site shall be limited to 12 hours a day Monday through Friday not earlier than 6:00 a.m. and not later than 8:00 p.m. There shall be no operation of Heavy Vehicles leaving the mining site on Saturday, Sunday or named holidays.

(c) The Operator shall schedule Heavy Vehicles to and from the mining site in a manner to avoid interfering with the safety of children being taken or returned from school, the safety of slow-moving farm vehicle traffic, or the safety of residents and

commuters at times when traffic volume from commuters going to and from work is highest. (Am. 8/8/12)

(4) Use of Town Roads

- (a) The Operator and any Heavy Vehicles under contract, lease or license with the Operator shall comply with the weight limit provisions of Chapter 45 for town roads.
- (b) If the Operator needs a conditional use permit under Chapter 45 to use Heavy Vehicles on Town Roads in excess of the weight limits, then the Operator shall provide to the Town Board for review and approval, financial assurance to address any potential damage to Town Roads resulting from such use. Such financial assurance can include but is not limited to the following:
 - 1. An agreement to rebuild the Town Roads used as truck routes within six months of the commencement of mining operations on site to standards appropriate to the weight of the vehicles used by the Operator, subject to prior review and approval of the Town Board, and subject to the provision of a fund for maintenance and replacement of the road at the end of its useful life.
 - 2. An irrevocable letter of credit or escrow account in an amount sufficient to rebuild and maintain the Town Roads used as truck routes.
 - 3. Other financial assurance measures agreed upon by the Town Board.
- (c) Provision of financial assurance under this section and incorporation into an operator's license under this Chapter, shall constitute compliance with the conditional use permit provisions of Chapter 45.
- (d) If the Town Roads are being used by more than one Operator, the Operators may propose and the Town Board shall consider a joint agreement to satisfy the financial assurance obligations in this section.
- (e) The Operator shall identify the routes which it will use for trucks traveling to or from the Property; and shall use only the routes identified.
- (f) The Operator shall ensure that any trucks owned or operated by the Operator or any of its contract haulers comply with the requirements of this Ordinance. All trucks shall display a sign no smaller than 24 inches by 24 inches identifying the truck is hauling for the Operator.

(5) Control of Light and Noise

- (a) The Operator shall limit night lighting on-site, to that which is minimally necessary for security and worker safety. Every effort consistent with the legal requirements for safety shall be made to minimize illumination of the night sky and neighboring properties. At a minimum such measures shall include the following:
 - 1. The use of full cutoff shrouds on all lights.

2. Portable lighting shall be used only as necessary to illuminate temporary work areas.

3. The use of berms of sufficient height coupled with other methods of visual screening to block light from neighboring properties.

4. The design and location of access roads to minimize lights from traffic and operations to neighboring properties.

(b) The Operator shall control off-site noise levels to the maximum extent practicable to avoid adverse impacts to adjoining landowners. The noise levels at the boundaries of the mining or processing site shall not exceed 55dB.

(c) Noise levels shall be monitored at the nonmetallic mine site or processing facility property boundary by an independent testing company. The tests shall occur for a 10 day period at least once per quarter. The results shall be reported to the Town within 30 days of the last test result.

(d) The use and regulation of compression release engine brakes, commonly known as jake-brakes is prohibited except for emergencies. All trucks shall have proper mufflers.

(6) Control of Air Pollution

(a) Regardless of the actual monthly production of the nonmetallic mine, the Operator shall cover all trucks hauling sand with secured tarps, and utilize all relevant dust control measures specified in Wis. Admin. Code § NR 415.075 and any approved Fugitive Dust Control Plan. Additionally, the Operator shall have an established protocol for additional dust control measures when the National Weather Service has issued a high wind warning for the area.

(b) Air monitors.

1. The Operator shall install air monitors at all nonmetallic mining operations including the mine site and any processing facility in accordance with ambient air monitors required by DNR.

2. In addition to ambient monitoring required by the DNR, the the Operator shall be required to monitor the ambient level of Total Suspended Particulates (TSP) as measured by the method described in Appendix B of 40 C.F.R. part 50 (2013) or a method approved in writing by the Town. The Operator may monitor for PM₁₀ as a surrogate for monitoring for TSP if approved in writing by the Town. If PM₁₀ is used as a surrogate, it shall be measured by the method described in Appendix L of 40 CFR part 50 (2013).

3. The type and number of monitors needed, the location of the monitors, and frequency and duration of the monitoring program shall be determined by agreement of the Operator, the Town Board and its consultant, but all costs associated with monitoring shall be borne by the Operator. The monitoring shall

be conducted for the life of the mine. Monitoring frequency may be revised if no active mining is occurring for 6 months or more.

4. The Operator shall submit all monitoring results to the Town Clerk on a monthly basis. Results for each month shall be postmarked or received by the Town Clerk no later than the last day of the following month. The Town Board shall provide public access to all results. The Town Board may require additional or updated monitoring as part of licensing renewal if there have been complaints about dust and particulates from the mine site.

5. If the air monitors show an exceedance of 150 micrograms per cubic meter of TSP in any 24 hour period, the Operator shall evaluate and implement additional best management practices to minimize TSP. If there are repeated exceedances of these standards notwithstanding the implementation of best management practices, the Town may suspend or revoke the license.

(c) Notwithstanding any of the results of air monitoring, any resident of the Town may document a complaint about fugitive dust from the Mine Site by taking a photograph or video showing visible emissions from the mine site that includes the time, date and location at which the photograph or video was taken and sending a copy to the Town and the Operator. The Operator will have ten (10) days to respond to the complaint and indicate what if any additional operational practices, best management practices or control devices will be implemented. If there are more than three such documented complaints in a six (6) month period the Town shall evaluate appropriate enforcement responses.

(d) All trucks hauling materials to or from the site shall be in closed hopper trucks or tarped.

(7) Control of Waste Materials

The amount of waste material (non-marketable fines) returned to a mine site as part of the reclamation process shall not exceed the site specific ratio of waste to target material of the extracted raw material as determined prior to the processing of the raw material. A processing facility shall keep records of the tonnage of raw material drawn from each raw material source. The tonnage of waste byproduct that is returned to each mine reclamation site shall not exceed the tonnage of waste contained in the raw material received at the processing facility from that site.

(8) Standards Regarding Groundwater and Surface Water.

(a) Impacts to Groundwater Quality.

1. The mine shall have at least one sentinel well at the boundary of the mining site that is down gradient of the groundwater flow. The Operator shall take quarterly samples of the sentinel well for lead, arsenic, turbidity, total suspended solids, chlorides, nitrates, specific conductivity and any chemical or residual of the chemical used as a flocculent and any other toxic substance that may reasonably be believed to be present in the area or in the type of deposit from which the

extraction will be made during the first 2 years of operation and twice a year in subsequent years.

2. The mining company shall sample private wells within 1/2 mile of the mine site down gradient of the groundwater flow every 2 years and private wells on the perimeter of other sides of the mine site every 3 years. Monitoring shall continue 3 years after the closure of the mine. In addition, monitoring at the sentinel well shall determine changes in the level of the groundwater table.

3. Prior to the onset of mining operations, all private wells within 1/2 mile of the property on which the mine site is located shall be sampled for lead, arsenic, turbidity, total suspended solids, chlorides, nitrates, specific conductivity and any other toxic substance that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made.

4. Mining operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code Chapter NR 140.

5. All samples shall be analyzed by an independent laboratory.

6. All wash plant settling ponds shall be lined with at least 5 feet of clay meeting the technical standards contained in Wis. Admin Code §NR 504.06(2) for clay liners.

(b) Impacts to Groundwater Quantity.

1. At least 60 days prior to commencement of non-metallic mining operations, the Operator shall place sufficient test wells to verify the groundwater elevations on the mine site. Test wells located in the down-gradient direction of groundwater flow shall be located so that they can serve as permanent sentinel monitoring wells during the course of operations.

2. Mining operations shall not extract materials at a depth below the point that is 5 feet above the maximum established groundwater table.

3. Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within 1/2 miles of the mine site. A significant reduction includes a drop in the water table that results in a substantial adverse impact on a private well including but not limited to the inability of a well to provide water on a continuous basis.

(c) Impacts to Surface Water Base Flow. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within 1/4 mile of the mine site, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.

(d) Impacts to Surface Water Use. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters which serve as a critical source of water for agricultural, recreational or municipal functions such as fire

protection within 1/2 mile of the mine site. Adverse effects include but are not limited to a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operations.

(e) The Operator shall undertake all measures necessary for the control of surface water runoff from nonmetallic mining operations in order to prevent pollution and erosion of sediment onto neighboring properties, surface water and groundwater, and shall also comply with the standards for erosion control under Wis. Admin. Code Chapters NR 216 and NR 151, as applicable.

(f) In the event that the site contains areas adjacent to the nonmetallic mining operations that are being used for agricultural, commercial or residential purposes, the Operator shall undertake all measures necessary to control surface water runoff from those areas from entering mining operations or otherwise causing contamination of surface water and groundwater.

(9) Hazardous materials.

(a) All hazardous chemicals shall be stored, used and disposed of in accordance with applicable state and federal law.

(b) The Operator shall not use as landfill material or dispose of onsite, any waste material that contains a toxic amount of a hazardous chemical or a toxic residual.

(c) The Operator shall have a plan for responding to spills of any hazardous materials on the site.

(10) Special Exceptions.

(a) The Operator can request a special exception from the minimum standards of this section if it can demonstrate that the intent of this Chapter can be achieved through the use of alternative measures; and that the public health, safety and welfare will not be adversely affected thereby; and agrees to post a full coverage bond for any future damage caused as a result of any exceptions granted.

(b) The Town Board may, at any time, impose requirements in addition to or exceeding the minimum standards if it has evidence that the public health safety and welfare is not being or will not be adequately protected without the imposition of additional measures.

Section 46.08. Reporting, Annual Report and License Renewal

(1) On-going Reporting Requirements.

(a) The Operator shall provide notice to the Town of any notices of violations, citations, or other enforcement actions taken by any other governmental authority against the mining operation. The Operator shall provide notice to the Town of such actions within 10 days after receiving such notice from the governmental authority.

(b) All monitoring data, sampling results and any other test results required by this Ordinance shall be undertaken at the Operator's expense and provided to the Town Clerk.

Unless otherwise specified in this Ordinance, all monitoring data sampling results and any other test results shall be provided to the Town Clerk within 15 days of receipt of the results by the Operator.

(2) Annual Report.

(a) No later than October 1 of each calendar year, the Operator shall submit an annual report to the Town Board for all active and intermittent mining sites and processing facilities for which the Operator has a license in the Town of Auburn. The reporting period shall be from the date of the issuance of the first Operator's license to September 30, and thereafter from October 1 to September 30.

(b) The annual report shall include the following information:

1. An identification of the Operator and location of the mining site.
2. A map or drawing accurately showing the area of excavation, the unclaimed area and any reclaimed area including a calculation of the number of acres for each type.
3. A description of activities including sand extraction and waste material production and operations on the site for the previous calendar year, including the cubic yards each of material extracted, sand processed, and waste material produced.
4. A description of activities and operations on the site anticipated for the following calendar year including sand extraction and waste material production.
5. A written report demonstrating how the Operator has been in compliance with all terms and conditions of its license and this Chapter. The report shall include all groundwater, surface water and other monitoring results, as well as a copy of all annual reports submitted to all other agencies.
6. A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

(3) License Renewal.

(a) The Operator shall make written request to the Town Clerk for a renewal of the license to operate the mine no later than October 1 of the year in which the license will expire. The application shall be accompanied by the payment a fee in an amount in accordance with the reimbursement provisions set forth in Section 46.05(3) (a).

(b) The written request for renewal shall incorporate by reference the annual report from the previous calendar years in accordance with the provisions of sub. (1).

(c) The Town Clerk shall review the renewal application within 60 days of receipt to determine whether the application is complete and upon a determination that it is complete shall forward it to the Town Board.

(d) The Town Board shall review the application to determine if additional information or expertise is necessary to properly evaluate the application. The Town shall utilize a Retained Expert retain an engineer or other qualified person with appropriate expertise to inspect the mine site unless the site is reported as being inactive during the past year, in which case a member of the Town Board may be assigned to inspect the site. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for a decision under par. (g).

(e) If the Town Board determines that additional expertise is required, the Town Board shall authorize hiring a Retained Expert to advise the Town and shall give written notice to the applicant of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of additional review by the Retained Expert and any administrative staff. The additional fee shall be paid before additional review is undertaken.

(f) Once the applicant has submitted any additional information and has paid the fee in the amount charged, the Retained Expert shall report to the Town Board on whether the renewal application meets the requirements of this Chapter. The Town Clerk shall place the request on the agenda of the next regular meeting or a special meeting of the Town Board prior to the expiration of the license.

(g) The Town Board shall grant the request for renewal if it finds:

1. There have been no material violations of the Chapter or the license which have not been appropriately remedied, and
2. The Operator has not received multiple or recurring citations or orders for violations of the Operator's license or this Chapter.
3. All applicable fees have been paid and financial responsibility requirements have been met.

(h) If the Town Board denies the request for renewal, the Town Board shall notify the Operator and provide the Operator with an opportunity for a hearing under Section 46.09(3).

Section 46.09. Inspection, Enforcement, Procedures and Penalties

(1) Inspection.

(a) In addition to an annual inspection pursuant to Section 46.08 (2), the Town Board or other authorized representative of the Town, may make inspections to determine the condition of nonmetallic mining sites in the Town of Auburn in order to safeguard the health and safety of the public and determine compliance with the minimum standards under this Chapter upon showing proper identification, and upon reasonable notice. (b) If, as a result of any inspections or investigations the Town Board determines that a Retained Expert should undertake any further inspections or investigations, the Town may hire a Retained Expert which expense shall be paid by the Operator. If the Operator fails to provide access or provide payment of the Town's expenses, the town may take enforcement action under sub (2).

(2) Violations. The following are violations under this Chapter:

- (a) Engaging in nonmetallic mining without an Operator's license granted by the Town Board.
- (b) Failure to comply with the applicable minimum standards and other terms of this Chapter.
- (c) Making an incorrect or false statement in the information and documentation submitted during the licensing process or during inspection of the operation by the Town or its duly appointed representative.
- (d) Failure to timely file the annual operational report under Section 46.08.
- (e) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 46.10 or other order issued by the Town.
- (f) Failure to provide or maintain any financial assurance required as a condition of approving the application.

(3) Hearings.

- (a) Any person affected by a notice and order issued in connection with the enforcement of this Chapter under sub. (4), or upon denial of an application for a license or license renewal, may request and shall be granted a hearing on the matter before the Town Board, provided such person shall file with the Town Clerk, a written petition requesting the hearing and setting forth his name, address, telephone number and a brief statement of the grounds for the hearing or for the mitigation of the order. Such petition shall be filed within thirty days of the date the notice and order are served or upon 30 days upon denial of an application for a renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof.
- (b) After the hearing, the Town Board by a majority vote, shall sustain, modify or withdraw the notice under sub. (4), or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this Chapter have been complied with, and the petitioner shall be notified within ten days in writing of such findings.
- (c) The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.

(4) Remedies.

The Town Board may take any appropriate action or proceeding against any person in violation of this Chapter, including the following:

- (a) Issue a stop work order.

- (b) Issue a notice of violation and order that specifies the action to be taken to remedy a situation.
- (c) Issue a citation in accord with the Town of Auburn citation ordinance.
- (e) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub. (6) and injunctive relief.
- (f) Suspend or revoke the Operator's license under sub. (5).

(5) License Suspension or Revocation. After giving notice and a hearing, the Town Board may suspend or revoke an Operator's license for a violation under sub. (1).

(6) Penalties.

- (a) Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less than \$100 per violation nor more than \$5,000 per violation and/or be subject to injunctive relief each day a violation exists is a separate violation.
- (b) Any person or entity adjudicated for violation of this Chapter shall pay court costs and reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.

(7) Non-Waiver. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present violation(s).

Section 46.10. Financial Assurance

(1) Financial assurance shall be provided to the Town as a condition of license approval in the amount necessary for the following:

- (a) Road repair. An amount necessary for the repair and maintenance of Town Roads used for truck traffic transporting materials to or from the site in accordance with the provisions of Section 46.07.
- (b) Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within 1/2 mile of the site or such other area shown to be impacted by the Operator's operations.

(2) The form of financial assurance made to the Town of Auburn shall be that form agreed to by the Town Board and may include escrow accounts, irrevocable letters of credit or other measures agreed upon by the Town Board.

(3) In the event the Town determines that the amount of financial assurance must be increased to meet specific road repair or water supply needs, or the amount available has been utilized, the Town shall notify the Operator of the additional amount needed and the basis for the request. The Operator shall have 30 days to provide the increased amount.

(4) The Operator shall also provide to the Town proof that it has provided the financial assurance for reclamation required under Wisconsin law.

Section 46.11. Damages to Private Water Supplies

(1) A property owner within 1/2 mile of the mine site may seek remedies under subs. (2)-(5) for any of the following damages to private water supply:

(a) A maximum contaminant level, preventative action limit or enforcement standard is exceeded in a private water supply well on the owner's property.

(b) A substantial adverse impact on the quantity of water from a private well on the owner's property occurs, including but not limited to the inability of any such well to provide water on a continuous basis.

(c) A lowering of surface waters which serve as a source of water for personal, agricultural or municipal functions on the owner's property to levels below base flow levels for more than 5 days.

(2) Any property owner under sub. (1) seeking a remedy under this Section shall simultaneously file a notice with the Town and the mine Operator of the occurrence of the event under sub. (1) explaining the nature and extent of the problem.

(3) Within 24 hours of receipt of such notice under sub. (2), the Town may use funds provided under Section 46.10 to provide an adequate interim water supply. The Town shall also use funds under Section 46.10 to indemnify the Town for any claims filed under Wis. Stat. § 281.77(4). An interim water supply shall continue until the Town has approved the report or plan under sub. (4).

(4) Within 20 days of receipt of notice under sub. (2), the mine Operator shall provide to the property owner and to the Town a report that demonstrates that the impact to the property owner was not attributable to the mining operation or to present a plan for a permanent alternative water supply to be paid by the Operator.

(5) The Town shall in consultation with the property owner review the report or plan and approve or deny such plan. If the Town determines that the mine Operator was not the cause of damage to the private water supply, the Operator may elect to be reimbursed by the property owner for the costs of supplying water during a period not exceeding one year.

(6) A property owner beyond 1/2 mile of the mine site may apply to the Town for use of funds under Section 46.10 to remedy damages to a private water supply identified in sub. (1), provided that the property owner can demonstrate to the Town that the damage to the private water supply was caused by the mine. If the Town determines that the damage was caused by the mine, the property owner can utilize the remedies in subs. (2) to (4).

Section 46.12. Severability, Interpretation, and Abrogation**(1) Severability.**

(a) Should any section, clause, provision or portion of this Chapter be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction including all applicable appeals, the remainder of this Chapter shall remain in full force and effect.

(b) If any application of this Chapter to a particular parcel of land is adjudged unconstitutional or invalid by a final order or a court of competent jurisdiction including all applicable appeals, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment.

(2) The provisions of this Chapter shall be liberally construed in favor of the Town of Auburn and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town of Auburn.

(3) This Chapter is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Chapter.

Section 46.13. Mining Agreement

(1) Purpose. The purpose of this section is to provide a voluntary procedure for authorizing nonmetallic mining using legislatively developed regulations and standards that are unique to a particular proposed nonmetallic mining or processing operation.

(2) Authorization. This section provides an alternative to the otherwise applicable regulations set forth in this Ordinance provided that the Town Board determines that the intent of this Ordinance can be achieved through the use of alternative measures, and that the public health, safety and welfare will not be adversely affected thereby. In exchange for greater flexibility in developing regulations and standards that are unique to a proposed mining operation, a Mining Agreement approval may require additional or different standards, requirements, levels of review, monitoring and compliance mechanisms, and measures to mitigate or compensate for impacts, as determined in the sole discretion of the Town Board.

(3) Application for a Mining Agreement.

(a) The application requirements, approval requirements and procedures in Section 46.05 apply to an application for approval of a Mining Agreement, except that the standard for granting the application is set forth in (4).

(b) The application shall include all of the information and other materials required in Section 46.06.

(c) The application shall describe all ways in which the proposed Planned Mining Operation will deviate from the otherwise applicable regulations in this Ordinance, including but not limited to the term of the approval, the process for inspection and review of operations, and the minimum standards of operation.

(d) The application shall provide a written justification for any proposed deviations from the otherwise applicable regulations in this Ordinance which may include provisions to minimize, mitigate or compensate for potential impacts to public health, safety and welfare including impacts to property value.

(4) Decision by the Town Board.

(a) In making a decision under this Section, the Town Board shall be guided by the standards in this Ordinance. It shall determine whether the intent of this Ordinance can be achieved through the use of alternative measures, and that the public health, safety and welfare will not be adversely affected thereby. The Town Board may also review the application, any Retained Experts' reports, and public comments made and information provided at the public hearing, and any other information the Town Board deems appropriate. The Town Board may, in its sole discretion, approve the Mining Agreement in the exercise of its police powers to protect public health, safety and welfare.

(b) If the Mining Agreement is approved, all standards and regulations in this Ordinance that are not expressly modified in such approval shall apply to the Mining Agreement.

(c) The Town Board may condition its approval on the Operator entering into such agreements and providing such financial assurance as the Town Board deems appropriate to promote the public health, safety and general welfare.

Section 46.14. Effective Date

Following passage by the Town Board, this Chapter shall take effect the day after the date of publication or posting as provided by Wis. Stat. § 60.80.

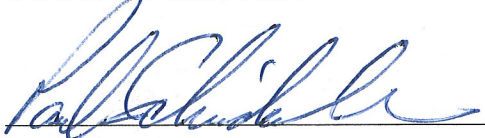
ADOPTED this 9th day of May, 2012.

Amended July 30, 2013

Amended August 8, 2013

Amended November 11, 2014

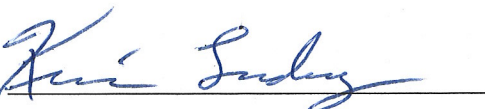
TOWN OF AUBURN



Paul Scheidecker, Town Board Chairperson

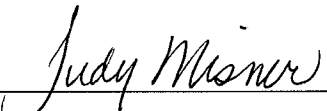


Albert Blaha, Supervisor



Kevin Ludwigson, Supervisor

Attested to as of November 11, 2014.



Judy Misner, Town Clerk