

OWN OF AUBURN

CHAPTER 14

NONMETALLIC MINE OPERATOR'S LICENSES

Section 14.01. 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. The nature of heavy vehicular traffic during non-metallic mining operations is anticipated to exceed the normal and anticipated use of the public roadways within the Town's corporate limits. The life expectancy of roadways within the Town's corporate limits decreases with heavy vehicular traffic traveling upon it, and heavy equipment loads produce greater amounts of road distress. Greater amounts of road distress from nonmetallic mining operations increases overall road maintenance, oversight, repair, and replacement costs to the Town. Use of Town roadways for nonmetallic mining operations causes distress to the roadways as a result of the frequency of their specific operations and such distress may be immediate or it may be gradual and delayed, and will also exceed the design criteria of such roadways, thus causing greater than ordinary wear and tear and damaging of the Town roadways. Heavy vehicular traffic from mining operations can generate other off-site impacts including safety concerns to children and other residents. While certain aspects of mining operations are subject to state or federal regulations, there is no comprehensive state or federal regulation of nonmetallic mining operations. Many aspects of nonmetallic mining operations are left unregulated with potential adverse impacts to the public health, safety and welfare of the residents of the Town.

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

(3) Authority. This Chapter is adopted by the powers granted to the Town of Auburn by the Town's adoption of Village powers under Sections 60.10 and 61.34 Wis. Stats., its authority under Section 66.0415 Wis. Stats., 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 14.02. Applicability and Scope

(1) This Chapter shall apply to all nonmetallic mining operations and mine sites within the Town of Auburn except as set forth in sub. (2).

(2) This Chapter shall not apply to the following nonmetallic mining operations:

(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 other 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 14.03. Definitions

(1) "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, any of the following minerals or any mixture of which the majority is any of the following minerals: crushed and broken stone, including limestone, dolomite, granite, traprock, sandstone, quartz, quartzite, marl, marble, slate, shale, oil shale, and shell; sand and gravel; clay including kaolin, fireclay, bentonite, fuller's earth, ball clay, and common clay; rock salt; gypsum (natural or synthetic); sodium compounds, including sodium carbonate, sodium chloride, and sodium sulfate; pumice; gilsonite; talc and pyrophyllite; boron, including borax, kernite, and colemanite; barite; fluorospar; feldspar; diatomite; perlite; vermiculite; mica; or kyanite, including andalusite, sillimanite, topaz; asbestos; coal; diamond; and dumortierite.

(2) "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 processing operations that may involve the use of equipment for the crushing, screening, separation, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with 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.

(f) Disposal of waste materials.

(g) Reclamation of the extraction site.

(3) "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.

(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, including all land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing or screening facilities, private roads or haulage ways associated with nonmetallic mining operation, and all contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or operator.

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

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

(7) "Town" means the Town of Auburn, Chippewa County, Wisconsin.

(8) "Town Board" means the Town Board of the Town of Auburn, Chippewa County,

Wisconsin.

(9) "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.

(10) "Operator's license" or "license" means the license required of mining operators in this Chapter to undertake nonmetallic mining in the Town.

Section 14.04. License Required

(1) License Requirement. No person shall operate a nonmetallic mine within the scope of this Chapter in the Town without first obtaining an Operator's License from the Town Board.

(2) License Term.

(a) Except for the first year of operation under this Chapter, an operator's license shall be granted for a period of one year commencing on July 1 and ending on June 30 of the following 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 June 30th after 12 months of operations have been completed.

(b) An operator's license may be renewed as set forth in Section 14.08, except that a temporary operator's license may not be renewed.

(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 be transferred to a new operator, if the new operator provides financial assurances as may be required by the Town, county, or state.

(5) License Revocation. An operator's license may be revoked under the procedures in Section 14.09.

Section 14.05. Procedures for Applying for a License to Mine

(1) Application Form. The Application Form for a license to mine in the Town shall be available from the Town Clerk.

(2) Application Submittal. The applicant shall submit five (5) copies of the Application Form and all required documentation required under Section 14.06 to the Town Board accompanied by the payment of both the application fee and the base administrative fee established for the administration of this Chapter in amounts set forth in the Town of Auburn Schedule of Fees and Forfeitures. The fees shall be made payable to "Treasurer, Town of Auburn." The Application Form shall be signed by the operator and by the landowner(s), provided the landowner(s) is/are a person other than the operator.

(3) Initial Review by the Town Board.

(a) Preliminary Review. Upon receipt of the application, the Town Board shall conduct an 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 Town Board shall schedule the application for a hearing under sub. (4).

(b) Additional Information. The Town Board may request the applicant to submit additional information if the Town Board determines that the application is incomplete. The Town Board may also retain the services of an engineering firm or other qualified person with appropriate expertise ("retained expert") to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this Chapter.

(c) Additional Fees. If the Town Board determines that additional expertise is required, the Town Board shall authorize retaining the services of an engineering firm or other qualified person with appropriate expertise 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 the services of any such retained expert. The additional fee shall be paid before the additional review is undertaken.

(d) Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall report to the Town Board on whether the application meets the

requirements of this Chapter.

(4) Decision by the Town Board.

(a) Notice and Hearing. Once the application is complete and any report by a retained expert has been completed, the Town Clerk shall place the application 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 will be consistent with the minimum standards and the purposes of this Chapter. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section 14.09(3).

Section 14.06. License Application

All applicants for a mining license shall submit the following information:

(1) Ownership Information.

(a) The name, address, phone number(s), and e-mail address(es) of the operator of the nonmetallic mining operation.

(b) The name, address, phone number(s), and e-mail address(es) of all owners or lessors of the land on which the mining operation will occur.

(c) If the operation is subject to a lease, 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.

(2) Site Information and Maps.

(a) A certified survey map(s) and parcel identification number(s) of the property on which the nonmetallic mining operation will be located.

(b) A topographic map of the mine site extending 1/2 mile beyond the site boundaries at contour intervals no wider than ten (10) feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within one (1) mile of the site.

(c) The location within the site of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.

(d) A map identifying the location of all other non-contiguous sites within the Town and any adjacent towns, if any, that will contribute extracted material to the same manufacturing facility to which the site for which the applicant seeks a license will contribute.

(3) Operation Plan.

(a) Dates of the planned commencement and cessation of the operation.

(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.

(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 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.

(h) A listing of all chemicals used in the manufacturing or processing operations or in controlling dust.

(4) Information Demonstrating Compliance with Minimum Standards. The operator shall provide the information necessary to demonstrate that the mining operation will comply with the minimum standards in Section 14.07.

Section 14.07. Minimum Standards of Operation

The Town Board may grant a license to mine if the applicant can 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 fencing or other appropriate measures.

(b) The operator shall demonstrate compliance with all of the other provisions of this Chapter.

(c) The operator shall have obtained a blasting permit from the Town 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.

(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.

(2) Standards Regarding Off-Site Impacts.

(a) In the event that the mine 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.

(b) 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.

(c) The operator shall provide a buffer area of a minimum of fifty (50) feet along bordering property lines and public highways.

(d) The operator shall limit its use of Town roads for transporting materials to the hours of 5:00 a.m. to 9:00 p.m. Monday through Saturday. Manufacturing and processing operations may be conducted at all times so long as the operations do not violate the minimum standards of operation, including those relating to regulation of noise and lighting, and the operator can demonstrate that the public health, safety, and welfare would not be negatively impacted. The operator may also 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.

(e) The operator shall ensure that trucks from the mining site shall not interfere with the safety of children being taken or returned from school, or the safety of residents and commuters.

(f) The operator shall limit night lighting on site to that which is minimally necessary for security and safety and, wherever possible, shall be shielded from illuminating off-site areas.

(g) The operator shall control off-site noise levels to the maximum extent practicable.

(3) Hazardous Materials.

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

(b) The operator shall not dispose of waste materials containing any hazardous chemicals in toxic amounts, or residuals declared to be hazardous by a governmental agency in toxic amounts.

(c) The operator shall have a plan for responding to spills of any hazardous materials on the site and shall provide a written copy of the plan to the Town Board upon its request.

(4) Special Exceptions.

(a) The operator may 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.

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

Section 14.08. Annual Report and License Renewal

(1) Annual Report.

(a) No later than March 1 of each calendar year, the operator shall submit an annual report to the Town Board for all active and intermittent mining sites for which the operator has a license in the Town.

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

(i) An identification of the operator and location of the mining site.

(ii) 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.

(iii) A description of activities and operations on the site during the previous calendar year.

(iv) A description of activities and operations on the site anticipated during the following calendar year.

(v) A written report demonstrating how the operator has been in compliance or noncompliance with any and all terms and conditions of its license and this Chapter. For areas of noncompliance, the operator shall provide a summary of all areas of noncompliance and a plan for bringing non-compliant areas into compliance.

(2) License Renewal.

(a) The operator shall make written request to the Town Board for a renewal of the license to operate the mine no later than March 1 of the year in which the license will expire. The application shall be accompanied by the payment of both the renewal application fee and the base administrative fee established for the administration of this Chapter in amounts set forth in the Town of Auburn Schedule of Fees and Forfeitures.

(b) The written request for renewal shall include the annual report from the previous calendar year in accordance with the provisions of sub. (1) of this Section.

(c) The Town Board shall review the renewal application within thirty (30) days of its 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 may 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 paragraph (g) hereof.

(e) If the Town Board determines that additional expertise is required, the Town Board shall authorize hiring an engineer or other qualified person with appropriate expertise 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. The additional fee shall be paid before the additional review is undertaken.

(f) Once the applicant has submitted any additional information and has paid

the additional administrative 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:

(i) there have been no material violations of the Chapter or the license which have not been appropriately remedied, and

(ii) the operator has not received multiple or recurring citations or orders for violations of the operator's license or this Chapter, and

(iii) 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.

Section 14.09. Inspection, Enforcement, Procedures, and Penalties

(1) Inspection. In addition to an annual inspection pursuant to Section 14.08(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 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.

(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 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 report under Section 14.08.

(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 the operator's 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 (30) days of the date on which the notice and order are served or within thirty (30) days after 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 (10) 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 or entity 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 the situation.

(c) Issue a citation in accordance with any Town ordinance.

(d) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub. (6) and injunctive relief.

(e) 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. (2).

(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 of Rights. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's rights to take action on any present violation(s).

Section 14.10. 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.

(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 shall be in that form agreed to by the Town Board and may include performance bonds, 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 thirty (30) days to provide the increased amount.

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

Section 14.11. 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 of 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) Interpretation. The provisions of this Chapter shall be liberally construed in favor of the Town and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town.

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

Section 14.12. 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 Section 60.80, Wis. Stats.

ADOPTED this ____ day of April, 2011 by a vote of ___ yes and ___ no.

Town Board Chairperson

Published / Posted this ____ day of _____, 2011.

Attest: _____, Town Clerk