

# TOWN OF NEW HAVEN, DUNN COUNTY

## NON-METALLIC MINE OPERATOR'S LICENSE ORDINANCE

### ORDINANCE NO: 2012-01

#### Section 1. Finding, Purpose and Authority

(1) Findings. Non-metallic 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 type of geological deposit being mined and the manner and methods of mining and processing used, non-metallic mining can have adverse impacts on 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. Truck traffic from such operations can present safety issues and concerns for the proper and timely maintenance of town roads, and exposure to nuisances of noise and dust.

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

(3) Authority. This Ordinance is adopted by the powers granted to the Town of New Haven by the Town's adoption of Village powers under Wis. Stats. §§ 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 Ordinance made after the effective date of this Ordinance is incorporated into this Ordinance by reference on the effective date of the amendment, repeal or recreation.

#### Section 2. Applicability and Scope

(1) This Ordinance shall apply to all non-metallic mining operations and mine sites within the Town of New Haven except as set forth in (a) through (f) below.

(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 (except a non-metallic mining site) or restoring land following a flood or natural disaster.

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

(e) Non-metallic mining at non-metallic 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 non-metallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

(g) Non-metallic sand and gravel mines in operation prior to the enactment of this Ordinance shall not be required to register or to apply for a license under this Ordinance, as long as said mine operates under the original reclamation plan approved by the County, and the reclamation plan is not modified in any way. If the reclamation plan is modified, the mine is considered a new operation and is subject to the licensing requirements of this ordinance.

### **Section 3. Definitions**

(1) "Adjoining landowner" means any property within ½ mile of the proposed mine site regardless of whether there is a residence or structure on the property.

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

(3) A "mine site" or "site" means land from which mineral aggregates or non-metallic 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 non-metallic mining operation regardless of whether the materials come from on-site or off-site; and all contiguous lands to the non-metallic mining operation under common ownership or control of the owner or Operator.

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

(5) "Non-metallic mining" means any or all of the following:

(a) Extraction from the earth of mineral aggregates or non-metallic 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, drying, dewatering, or blending of the mineral aggregates or non-metallic minerals obtained by extraction from the mining site or with materials transferred from off-site.

(c) Manufacturing processes aimed at producing non-metallic products for sale or use by the Operator.

(d) Stockpiling of non-metallic minerals or finished products for sale or use off-site and stockpiling of waste materials.

(e) Transport of the extracted non-metallic minerals, finished products or waste materials to or from the extraction site and/or processing site(s).

(f) Disposal of waste materials.

(g) Reclamation of the extraction site.

(6) "Operator" means any person who is engaged in, or who has applied for a license to engage in non-metallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.

(7) "Operator's license" or "license" means the license required of mining Operators in this Ordinance to undertake non-metallic mining in the Town of New Haven.

(8) "Town" means the Town of New Haven in Dunn County, Wisconsin.

(9) "Town Board", means the Town Board of the Town of New Haven, in Dunn County, Wisconsin.

(10) "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 4. License Required**

(1) License Requirement. Except as set forth in sub. (6), no person shall operate a non-metallic mine or processing facility within the scope of this Ordinance in the Town of New Haven 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 five years commencing on January 1 and ending on December 31 of the fifth calendar year. For the first year of the operation under this Ordinance, 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 8.

(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 9.

(6) Registration License. Non-metallic mining operations that meet the following criteria may apply for a registration license under §14 in lieu of an operator's license:

(a) The non-metallic mining operation extracts or processes less than 50,000 cubic yards of material in any one calendar year.

(b) The non-metallic mining operation does not involve blasting.

(c) The non-metallic mining operation does not involve processing of materials from offsite.

(d) The non-metallic mining operation does not involve mining at a depth below the point that is 5 feet above the groundwater table.

### **Section 5. Procedures For Applying For A License To Mine**

(1) Application Form. The Application Form for a license to mine in the Town of New Haven 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 6 to the Town Clerk accompanied by the payment of both the application fee and the base administrative fee established for the administration of this Ordinance in amounts set forth in the Town of New Haven Schedule of Fees and Forfeitures. The fees shall be made payable to "Treasurer, Town of New Haven." The Application Form shall be signed by the Operator and by the landowner, provided the landowner is a person other than the Operator.

(3) Initial Review by the Town Board.

(a) Preliminary Review. The Town Clerk shall forward the application to the Town Board 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 Town Board shall schedule the application for consideration under sub. (4).

(b) **Additional Information.** The Town Board may request the applicant to submit additional information if the Town Board determines that 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 Ordinance.

(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) **Retained Expert Report.** 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 Ordinance.

(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 including any processing facility will be consistent with the minimum standards and the purposes of this Ordinance. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section 9(3).

## **Section 6. License Application**

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

(1) Ownership Information.

(a) The name, address, phone number(s), and e-mail address of the Operator of the non-metallic mining operation.

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

(c) If the non-metallic mining 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.

(d) Only landowners who are current on their property taxes are eligible to apply.

(2) Site Information and Maps.

(a) Parcel identification numbers of all contiguous parcels owned by the same landowner/lessor on which the non-metallic 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 1 inch equals 660 feet signed by both the Operator and the landowner.

(c) A topographic map or maps 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 determine at the time of the application.

(g) The gradient and depth of the groundwater table shall be determined by on site boring or test wells. Data shall be gathered and analyzed by a qualified hydro geologist hired either by the applicant or retained by the Town Board at the applicant's expense. Test wells located in the down-gradient direct of groundwater flow shall be located so that they can serve as permanent sentinel monitoring wells during the course of operations.

(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 non-metallic deposit.

(i) A map identifying the location of all other non-contiguous sites within the Town of New Haven 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.

(3) Operation Plan

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

(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.

(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 the information necessary to demonstrate that the mining operation will comply with the minimum standards in Section 7.

(b) For mining operations commencing after the effective date of this Ordinance, 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 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, and the base flow of surface waters within ½ mile of the site.

(5) Special Exceptions. The applicant can 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 7. 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 Ordinance.

(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 non-metallic 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) Standards Regarding Off-Site Impacts.

(a) The Operator shall undertake all measures necessary for the control of surface water runoff from non-metallic 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 NR 216 and NR 151 as applicable.

(b) In the event that the mine site contains areas adjacent to the non-metallic 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.

(c) The Operator shall provide a buffer area of a minimum of 50 feet along bordering property lines and public roadways. If a berm is placed within this 50 foot 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.

(d) 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.

(e) The Operator shall limit normal hours of operations to 12 hours a day Monday through Friday during daylight hours and not earlier than 5:00 am and not later than 7:00 pm to minimize off-site impacts to residents. The Operator may submit a plan for extended hours as a special exception or as part of a Mining Agreement, if it can demonstrate that additional hours are reasonably necessary for the mining operation and it would be consistent with public, health safety and welfare.

(f) The operator shall ensure that trucks from the mining site shall not interfere 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 volumes from commuters going to and from work is highest.

(g) The operator shall limit night lighting on site, to that which is minimally necessary for security. 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:

(i) The use of full cutoff shrouds on all lights.

(ii) Portable lighting shall be used only as necessary to illuminate temporary work areas.

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

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

(h) The operator shall control off-site noise levels to the maximum extent practicable. The noise levels at the boundaries of the mining or processing site shall not exceed 60dB. The use and regulation of commission release engine brakes, commonly known as jake-brakes is at the discretion of the Town Board, where posted.

(i) Regardless of the actual monthly production of the non-metallic mine, the operator shall cover all trucks hauling with secured tarps, and utilize all relevant dust control measures specified in Wis. Admin. Code § NR 415.075. 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.

(j) Air Monitors.

(i) If an applicant is applying for an operator's license for a mining operation that includes a frac-sand processing plant, the operator shall be required to monitor the ambient level of airborne particulate matter of 2.5 microns in size (PM2.5) and Total Suspended Particulates (TSP) as measured by the method described in Appendices L and B, respectively, of 40 CFR part 50 (2011) or a method approved in writing by the Town. 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.

(ii) If the air monitors show an exceedance of 35 micrograms per cubic meter of PM2.5 in any 24 hour period, the operator shall evaluate and implement additional best management practices to minimize PM2.5 emissions.

(iii) 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.

(iv) The operator shall compile a quarterly summary of monitoring results report within 10 days of the end of each month that shall be available to the Town Board.

(k) 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.

(3) Standards Regarding Groundwater and Surface Water.

(a) Impacts to Groundwater Quality.

(i) The mine shall have at least one sentinel 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.

(ii) The mining company shall sample private wells with  $\frac{1}{4}$  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. In addition, monitoring at the sentinel well shall determine changes in the level of the groundwater table.

(iii) Prior to the onset of mining operations, all private wells with  $\frac{1}{2}$  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.

(iv) Mining operations shall not cause and exceedance of groundwater quality standards in Wis. Admin. Code ch. NR 140.

(b) Impacts to Groundwater Quantity.

(i) Mining operations shall not extract materials at a depth below the point that is 5 feet above the groundwater table.

(ii) Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within  $\frac{1}{2}$  mile of the mine site. A significant reduction is 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 ½ 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 ½ 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 operation.

(4) 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. Said plan shall be given to the Town prior to commencing operations, and shall be updated any time any change or addition is made to any hazardous materials used on the site.

(5) Special Exceptions.

(a) The Operator can request a special exception from the Town Board from the minimum standards of this Section if it can demonstrate that the intent of this Ordinance can be achieved by 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 can 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 measure.

## **Section 8. Annual Report and License Renewal**

### (1) Annual Report.

(a) No later than November 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 New Haven.

(b) The annual report and 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 the reclaimed area including a calculation of the number of acres for each type.

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

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

(v) A written report demonstrating how the Operator has been in compliance with all terms and conditions of its license and this Ordinance. The report shall also include any groundwater, surface water and other monitoring results, as well as a copy of all annual reports submitted to all other agencies.

(vi) A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

### (2) 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 November 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 Ordinance in amounts set forth in the Town of New Haven 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 subsection (1).

(c) The Town Clerk shall review the renewal application within 30 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 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 or their designated person 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) Additional Fees. 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 o additional review by 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 Ordinance. 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 may grant the request for renewal if it finds:

(i) There have been no material violations of the Ordinance 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 Ordinance.

(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 9(3) of this Ordinance.

## **Section 9. Inspection, Enforcement, Procedures and Penalties**

(1) Inspection. In addition to an annual inspection pursuant to Section 8(2), the Town Board or other authorized representative of the Town, may make inspections to determine the condition of non-metallic 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 Ordinance upon showing of proper identification, and upon reasonable notice.

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

(a) Engaging in non-metallic mining without an Operator's license granted by the Town Board.

(b) Failure to comply with the minimum standards and other terms of this Ordinance.

(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 8.

(e) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 10 or other order issued by the Town.

(3) Hearings

(a) Any person affected by a notice and order issued in connection with the enforcement of this Ordinance 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 (30) days of the date the notice and order are served or upon thirty (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 Ordinance 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 Ordinance, 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 New Haven citation 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 (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 Ordinance shall pay court costs and reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.

(7) 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 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 of New Haven shall be that form agreed to by the Town Board and may include performance bonds, escrow agreements, irrevocable letters of credit or other measures agreed upon by the Town Board.

(3) If at any time after a license is issued, 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, if applicable.

### **Section 11. Damages to Private Water Supply**

(1) A property owner within ½ 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 or quality 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 10 to provide an adequate interim water supply. The Town shall also use funds under Section 10 to indemnify the Town for any claims filed under Wis. Stats. § 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 may 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 report or 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 seek reimbursement by the property owner for the costs of supplying interim 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 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 12. Severability, Interpretation, and Abrogation**

(1) Severability.

(a) Should any section, clause, provision or portion of this Ordinance 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 Ordinance shall remain in full force and effect.

(b) If any application of this Ordinance 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 Ordinance shall be liberally construed in favor of the Town of New Haven and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town of New Haven.

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

## **Section 13. Mining Agreement**

Any of the provisions of this Ordinance, including the license term, may be modified by agreement between the Town and the Operator if the Town Board determines that the agreement provides protections for the public that are the substantial equivalent of those of this Ordinance.

## **Section 14 Registration License.**

(1) For non-metallic operations that qualify for a registration license under Section 4(6), the Town Board shall grant a registration license if the operator submits the following information to the Town Board:

(a) A certification from the operator that meets the requirements in Section 4(6).

(b) Ownership information under Section 6(1).

(c) A copy of any reclamation plans filed with the County and any permits issued by other federal, state or local agencies for the non-metallic mining operation.

(d) A certification that it will use best management practices to control noise, dust, light, surface water runoff and other off-site impacts from the operations.

(2) Registration licenses shall be subject to renewal every five years as set forth in Section 8(2) and subject to the inspection, enforcement and provisions from Section 9.

(3) Unless specifically enumerated above, operators seeking registration licenses shall not be required to comply with the provisions in Sections 5 to 8, or the provisions in 10 and 11.

**Section 15. Effective Date**

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

ADOPTED this 10<sup>th</sup> day of July, 2012  
by a vote of 2 yes, 0 no, 1 abstain.

Roger Hanson  
/s/ Roger Hanson  
Town Board Chairperson

Attest: Diane Duerst  
/s/ Diane Duerst  
Town Clerk