

State of Wisconsin
Monroe County
Town of Wellington
Ordinance Chapter 9 #16.05
Ordinance for the Licensing and Operation of Nonmetallic Mines in the Town of Wellington

SECTION I. TITLE, PURPOSE AND AUTHORITY

A) Title: Ordinance for the Licensing and Operation of Nonmetallic Mines in the Town of Wellington.

B) Purpose: The purpose of this Ordinance is to provide the minimum standards for all nonmetallic mining operations in the Town, and to require licenses for nonmetallic mining operators so that the Town can vigorously enforce those standards, in order to protect air quality, public health and safety, to preserve the scenic beauty of the Town's landscapes and environment, to protect the public from damage to both the quantity and quality of aquifer, ground and surface waters, to minimize or prevent adverse impacts from on-site and off-site operations, to preserve and protect the value of property within the Town, and to promote the general welfare of the residents of the Town of Wellington.

C) Authority: This Ordinance is adopted by the powers granted to the Town of Wellington by the Town's adoption of Village powers under 60.10, 61.34, and 66.0415 of Wis. Statutes.

SECTION II. APPLICABILITY AND SCOPE:

A) This Ordinance shall apply to all nonmetallic mining operations and mine sites within the Town of Wellington, except as set forth in subsection (B).

B) This Ordinance shall not apply to the following nonmetallic mining operations:

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

2) 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.

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

4) Excavations for building construction purposes conducted on the building site.

5) Nonmetallic mining at nonmetallic mining sites where less than 1 acre is mined

over the life of the mine.

6) 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.

7) Nonmetallic mines in operation on and prior to the adoption 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 Monroe 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 III. DEFINITIONS

A) "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 industrial silica used for hydraulic fracturing of gas or oil deposits ("frac sand"), stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat and talc.

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

1) 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.

2) Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, washing, separation, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with materials transferred from off-site.

3) Manufacturing processes aimed at producing nonmetallic products for sale or use by the operator.

4) Stockpiling of nonmetallic products for sale or use off-site and stockpiling of waste materials.

5) Transport of the extracted nonmetallic materials, finished products or waste materials, including water, slurry, or any other combination of water and dissolved or intact solids, to or from the extraction site.

6) Disposal of waste materials.

7) Reclamation of any site related to or used in the mining, processing, washing, or transportation, of any nonmetallic mineral.

C) "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.

D) 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, dry-processing facilities, facilities for the loading and unloading of sand to and from trucks, rail, 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.

E) "Landowner" means the person who has title to land or who holds a land contract for the land.

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

G) "Town" means the Town of Wellington, or the Town Board, as the context requires.

H) "Town Board" means the Town Board of the Town of Wellington.

I) "Operator" means any person or duly constituted legal entity who is licensed by the Town to engage in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.

J) "Operator's license" or "license" means the license required of mining operators in this Ordinance to undertake nonmetallic mining in the Town of Wellington.

K) "Mining agreement" means a written agreement entered into between an operator and the Town for the purpose of delineating the rights and responsibilities of the operator and the Town with regard to nonmetallic mining or related operations within the Town.

SECTION IV. LICENSE REQUIREMENT

A) No person shall operate a nonmetallic mine within the scope of this Ordinance in the Town of Wellington without first obtaining an operator's license from the Town Board.

B) License Term

1) Except for the first year of operation under this Ordinance, an operator's license shall be granted for a period of 1 year commencing on January 1 and ending on December 31 of the same calendar year. The initial one-year period shall begin on

the first Jan 1 following the date of the issuance of the operator's license.

2) An operator's license may be renewed annually as set forth in Section VIII of this Ordinance.

C) 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.

D) License Transfer. No operator's license may be transferred to a new operator without the express written permission of the Town Board, in advance of any such transfer, and any such unauthorized transfer or assumption of the privileges granted is void, and shall be cause to revoke the operator's license. The Town Board, in its sole discretion, may authorize the transfer of an operator's license to a new operator, provided that the new operator provides all such financial assurances and other information as may be required by the town, county, or state, and provided that the operational plan submitted at the time of granting the license being transferred remains unchanged. Any proposed transfer that seeks to modify the operational plan upon which the license was granted must be initiated as a new nonmetallic mining license application under Section V of this Ordinance.

E) License Revocation. An operator's license may be revoked under the procedures found in Section IX of this Ordinance.

SECTION V. PROCEDURES FOR APPLYING FOR A NONMETALLIC MINING LICENSE

A) Application Form (see Appendix A). The Application Form for a license to mine in the Town of Wellington shall be available from the Town Clerk.

B) Application Submittal. The applicant shall submit 5 copies of the Application Form and all required documentation required under Section VI to the Town Clerk accompanied by the payment of both the application fee of \$150 together with the base administrative fee of \$5,000. The fees shall be made payable to "Treasurer, Town of Wellington." The Application Form shall be signed by the owner or the owner's designee of the group or entity seeking to become a mine operator and by the landowner, provided the landowner is a person other than the applicant.

C) Initial Review by the Town Planning Commission and Town Board.

1) The Town Clerk shall forward the application to the Town of Wellington's Planning Commission for an initial review. Upon completion of the Commission's review, the application will be forwarded to the Town Board with the Commission's recommendations. The Town Board will then do its own initial review to determine whether 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 subsection (D).

2) Additional Information. The Town Planning Commission and/or Town Board may request the applicant to submit additional information if either body 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 Ordinance.

3) Additional fees. If the Town Board determines that additional expertise is required, the Town Board shall retain 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 estimated additional administrative fee to be charged beyond the base administrative fee to cover the cost(s) of the services of any such retained expert(s). The estimated additional fees shall be paid before the additional review is undertaken. If the amount of the final administrative fee exceeds the estimated fee, the applicant shall pay the additional costs. If the final administrative fee is less than the estimated amount, the overpayment shall be refunded to the applicant.

4) Once the applicant has submitted any additional information and has paid the additional administrative fees in the amount charged, the retained expert(s) shall report to the Town Board on whether the application meets the requirements of this Ordinance, and may offer advice as to any aspect of the proposed mining operation which is supported by their respective expertise.

D) Decision by the Town Board.

1) Notice and Hearing. Once the application is deemed complete and all reports by any retained expert(s) have been submitted to the Town, 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, in advance of any such meeting, 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 15 days prior to the date scheduled for the hearing, with the notice mailed to all adjoining landowners and all landowners within 2 miles of the proposed mine site boundaries, at the applicant's expense. At the public hearing, the Town Board shall take public comment on the proposed mine license.

2) 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 application for an 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 all retained experts' reports as well as public comments made at the public hearing or submitted in writing prior to the hearing. The Town Board may grant the license if it determines that the every facet of operation of the mine will meet or exceed the minimum standards and the purposes

of this Ordinance. If the Town Board finds that any aspect of the operation will not meet the minimum standards set forth herein, or will in any other way adversely affect the wellbeing of the property owners and residents of the town, the Town Board shall deny the license, stating its reasons for the record in writing. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section IX subsection (C).

SECTION VI. LICENSE APPLICATION

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

A) Ownership Information

- 1) Name of the business making application for a nonmetallic mining license.
- 2) Names, addresses, phone number(s), and e-mail addresses of the owner and chief executive officer of said business. Also include name, address, phone number(s), and e-mail address of the business's contact person for the proposed mining operation.
- 3) Name, address, phone number(s), and e-mail address of all owners or lessors of the land on which the mining operation will occur. Tax parcel numbers should be included. Include mineral rights owners if different from surface landowners.
- 4) If the operation is subject to a lease, include 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.
- 5) Legal description of land to be included in proposed mining operation.
- 6) Type of nonmetallic mine being proposed. List the products of the proposed mine and the expected uses of those products.
- 7) Dates of proposed commencement and cessation of the operation.
- 8) Provide proof of insurance. A copy of the insurance policy is to be included with application.

B) Site Information

- 1) Topographic map of the mine site extending 2 miles 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 5 miles of the site, and any processing or trans-shipment facilities within the town.
- 2) Full color aerial photo of the proposed site at a scale of 1 inch equals not more than 660 feet.

- 3) Recorded certified survey map(s) of the property on which the nonmetallic mining operation will be located. Owners' names and parcel numbers are to be labeled.
- 4) Detailed, labeled map of the proposed mine site indicating the sequence of excavation, storage for overburden, location of stockpiles for product and waste materials, location of structures, haul roads, parking areas, etc.
- 5) Provide professional engineer's statement describing 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 2 miles of the site.
- 6) Include a professional engineer's description of the distribution, depth and type of topsoil on the site as well as the geological composition and depth and width of the nonmetallic deposit.
- 7) Provide a map identifying the location of all other non-contiguous sites within the Town of Wellington and adjacent towns that will contribute any material to the facility for which the applicant seeks a license.
- 8) Describe baseline conditions at the site before mining operations commence, including the groundwater elevation across the site, groundwater quality at the site for turbidity, pH, microbiology, lead, arsenic and any other toxic metal or any other chemical that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made. Baseline information for surface waters within 2 miles of the site should also be established. The information collected for surface waters should include base flow rate, turbidity, pH, microbiology, lead, arsenic and any other toxic metal or any other chemical that may reasonably be believed to be present.
- 9) A map on which all of the residential, agricultural and municipal wells within 2 miles of the boundaries of the site in all directions are marked and given a numerical identification of the location.
- 10) List potential impact of the proposed mining operations on current land use practices (eg. agricultural, forest management, recreational activities, etc.) within 2 miles of the site's borders.
- 11) Identify any state or federally listed threatened or endangered species that have been found onsite or within 2 miles of the proposed site's borders. Include when and where such species have been seen or found.

C) Plan of Operation

- 1) List all required permits (federal, state, agency, county, local, etc.) and indicate if those permits have been sought and/or acquired.

- 2) Total area, in acres, of the proposed mine site and of the area to be excavated.
- 3) Maximum depth in feet of the proposed excavation. Provide the depth of the excavation relative to the height of the water table underlying the proposed mine site. Benchmarks should be provided i.e. height in feet above sea level.
- 4) Estimated volume of material, expressed both in cubic yards and in tons, to be extracted for each of the first five years of operation and over the life of the mine.
- 5) Number of employees working on site as well as the number of off-site employees whose work is directly related to the mining operation. Provide the number of full and part time employees.
- 6) Provide a detailed description of the mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.
- 7) Describe the process by which the proposed site will be prepared for mining.
- 8) Describe how the site will be prepared for seasonal closings and how the site will be maintained during seasonal closings.
- 9) Locate all private, town, county and/or state road access points. Include which road(s) would be primary or secondary roads to be used for hauling product and waste materials as well as for uses related to the proposed mining operation.
- 10) Provide the estimated number of truckloads per day when the mine is in operation.
- 11) Types of trucks to be used for hauling and the maximum load per truck.
- 12) Provide days and hours of hauling if different from the days and hours of the mine's operation.
- 13) Provide details regarding the use of explosives in the preparation for or during mining operations. Describe precautions to be taken to prevent any potential dangers to on-site and off-site persons and property. Describe how the operator will compensate for any off-site damage or injury should it occur.
- 14) Include a water budget, including an estimate of the amount and schedule of daily water use, water sources, and methods for disposing of water including methods used for infiltration and control of run-off. Describe the sources of water to be used on site and in mining operation.
- 15) List of all chemicals and hazardous materials to be used in producing product and maintaining the site, together with the current Material Safety Data Sheet for each chemical or compound, including fuel supplies that will be stored on the site

and a description of measures to be used for securing and storing these materials.

16) Describe how erosion will be managed at the site and contiguous areas during the preparation for mining phase, operational phase and at the termination of operations.

17) Describe how the mine will be reclaimed both over time and at the end of its operation.

18) Describe the resulting topography, land cover and anticipated use of the property after the end of operations. What will be the disposition of the property at the end of mining operations?

D) Compliance with Minimum Standards

The application must address how each of the Minimum Standards of Operations (see Section VII) will be met during the preparation of the mine site, during mining operations, and/or at the completion of the mine's operational life.

SECTION VII. MINIMUM STANDARDS OF OPERATION

The Town Board may grant a license to mine if the applicant can demonstrate that the health, safety, and welfare of the Town will not be adversely affected, and the following minimum standards of operation will be met:

A) General Standards.

1) The size of the site where mineral extraction is actually taking place shall not exceed 20 acres at any one time. This 20 acre restriction shall not include any acreage actively being reclaimed in accordance with the applicant's filed and approved Reclamation Plan.

2) The operator shall stake or otherwise mark the borders of the entire site and shall secure the site by fencing or other appropriate measures acceptable to the Town.

3) The operator shall demonstrate compliance with all of the other provisions of this Ordinance.

4) The operator shall have obtained a blasting permit for any blasting operations, and shall provide proof of the qualifications and licensure of any person associated with the operation who will procure, inspect, transport, store, emplace or detonate any blasting materials or devices used in the operation.

5) The operator shall demonstrate that all other applicable federal, state and local permits and approvals required for the nonmetallic mining operation have been obtained prior to consideration of the application and shall verify that all such

permits and approvals remain in effect prior to the commencement of operations.

6) The operator shall, within 5 business days of the operator's receipt of such action, provide written notice to the Town of any notices of violation, citations, or other enforcement actions, whether proposed or actually taken, by any other governmental body against the mining operation within the Town. Further, the operator shall, within 5 business days of the operator's receipt of such action, provide written notice to the Town of any notices of violation, citations, or other enforcement actions from the State of Wisconsin or federal government relating to environmental violations at any other site operated by the operator in the State of Wisconsin.

7) The operator shall maintain a minimum setback of 1500 feet between the property's boundary and any residence. However, the setback shall not apply to:

a) A residence that is occupied by a landowner who has sold or leased their land where the residence is located to the applicant upon which the mining facility will be located, nor

b) A residence that is occupied by someone who has leased the land where their residence is located for the applicant's mining operation, though not covered by the license application under current review.

B) Standards Regarding Off-Site Impacts.

1) The operator shall undertake all measures necessary for the control of surface water runoff from nonmetallic mining operations in order to prevent pollution, erosion, and deposit 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.

2) 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 prevent surface water runoff from those areas from entering mining operations.

3) The operator shall provide a 50 foot setback from the outside edge of any roadside ditch. This 50 foot area shall be vegetated to minimize sediment laden runoff from entering the ditch or onto neighboring land. No part of any berm shall be located within this 50 foot area. The setback area may be used by equipment for repair or maintenance of the berm or to remove erosive soils deposited in the setback area. This 50 foot setback is in addition to whatever buffer is set by the County in its conditional use permit or reclamation plan. For all boundaries other than along an established roadside, the operator shall provide a buffer area of not less than 100 feet from any boundary to prevent run-off and to attenuate dust, vibration, noise, and light pollution. This 100 foot buffer shall not be disturbed except as necessary to install security fencing at the exterior boundary of the site

and to install run-off control measures. No berms shall be erected within the 100 foot buffer area without the express written approval of the Town. If berms are permitted by the Town within the 100 foot buffer area, the berms shall be constructed of topsoil scraped from the site and stabilized by suitable erosion control vegetation, in order to ensure that sufficient topsoil will be preserved on the site for use in reclamation of the site.

4) The operator shall screen the mining operations from public view to the maximum extent practicable through the use of approved berms, additional setbacks or other measures acceptable to the Town.

5) The operator shall limit normal hours of operations to a maximum of 10 hours per day, from 8 am to 6 pm, Monday through Friday, except State or Federal Holidays, in order to minimize off-site impacts to residents.

6) The operator shall employ measures designed and implemented to ensure that trucks going to or from the mining site shall not create a safety hazard to local residents and/or vehicle traffic. Special consideration should be given to school bus routes or routes taken by children walking to and from school.

7) The operator shall limit night lighting on the 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 of neighboring properties. At a minimum such measures shall include the following:

a) The use of full cutoff shrouds on all lights.

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

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

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

8) 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 compression engine brakes (commonly known as "Jake-brakes") is at the discretion of the Town Board, where posted.

9) Residents living within 2 miles of the site will receive timely notification as to when blasting is to occur at the site. Notification procedures will be determined by agreement between the Town Board and the operator.

10) Air monitors.

a) The operator shall utilize all relevant dust control measures specified in Wis. Admin. Code NR 415.075.

b) If an applicant is applying for an operator's license for a mining operation that produces industrial silica, or, in operations designed to extract other materials, causes silica to be dislodged and or extracted, to include a frac-sand processing plant, the operator shall be required to monitor the ambient level of airborne particulate matter of all particles equal to or exceeding 2.5 microns in size (PM2.5) and Total Suspended Particulates (TSP) of 40 CFR part 50 utilizing measurement methods approved in writing by the Town or its consultants. The type and number of monitors needed, the location of the monitors, and frequency and duration of the monitoring program shall be determined by a written agreement by and between the operator, the Town Board and its consultant, annexed to the operator's license, but all costs associated with monitoring shall be borne by the operator.

c) If any air monitor shows a level of contamination exceeding 35 micrograms per cubic meter of PM2.5 in any 24-hour period, the operator shall promptly (within 5 business days) report the same in writing to the Town, and immediately evaluate and implement additional best management practices to minimize PM2.5 emissions. The Town shall not accept any mitigation measures that do not reduce the contamination to the acceptable standard as effective countermeasures.

d) If any air monitor shows a level of contamination exceeding 150 micrograms per cubic meter of TSP in any 24-hour period, the operator shall promptly (within 5 business days) report the same in writing to the Town, and evaluate and implement additional best management practices to minimize TSP. Any mitigation measures that do not reduce the contamination to the acceptable standard shall not be accepted by the Town as effective countermeasures.

e) The operator shall compile a monthly "Summary of Monitoring Results" report within 10 days of the end of each month, which shall then be promptly transmitted to the Town Board. All such reports shall also be preserved in a binder at the site and available during operational hours for any Town Board member and the Town Clerk to inspect. The Summary of Monitoring Results report shall contain all sampling data from each monitor, the date of each set of data points, and the highest levels actually recorded for each date by each monitor, and shall be certified as accurate and signed by a designee of the operator approved by the Town.

11) The operator shall take measures to minimize the emission of dust from mining products and by-products beyond the boundaries of the site. Such measures must be acceptable to the Town Board and its consultants.

C) Standards Regarding Groundwater and Surface Water.

1) Impacts to Groundwater Quality.

a) Statement of Assignment of Water Quality and Quantity Risk. The Town Board

intends to protect both the quality and quantity of groundwater and surface water in the Town, and therefore, shall hold the operator solely responsible for any and all damages and replacement of any wells which experience a reduction in the quality or quantity of their water, at operator's sole expense, unless operator can prove that another non-mining related event or condition is the cause of said reduction of the quality or quantity of water.

b) Sentinel wells (i.e. a groundwater monitoring network) on the extraction site shall be placed to monitor depth to groundwater table, groundwater gradient, and groundwater quality. Base-line data prior to the onset of mining must be included in the Application. The operator shall take monthly samples of water quality for chemicals used in on-site mining operations, as well as for lead, arsenic, iron, iron bacteria and turbidity, and for nitrates and any other chemicals or contaminants associated with any activity that continues to be conducted on the property on which the mine site is located or on lands adjacent to the mining operation. A monthly report of the analytical results shall be provided to the Town, and preserved in a binder at the site and available during operational hours for any Town Board member and the Town Clerk to inspect. All private wells within 2 miles of the mine shall be tested for these same contaminants every year of operation, with the sampling results furnished to the Town not later than 30 days prior to the annual renewal deadline, and with the results available upon request to each such landowner, all at the operator's sole expense. If a sentinel well shows any contamination of groundwater supply, such testing results shall be transmitted in writing, within 5 business days, to the Town and all landowners within 2 miles of the site, all at the operator's expense. A private well or wells up to 5 miles in any direction from the mine site shall be sampled at the operator's expense at any time the Town requests a sampling, with the results of the sampling provided to the Town and well-owner(s).

c) Sentinel streams will also be identified within 2 miles of the site. A minimum of two streams will be monitored on a monthly basis for pH, macroinvertebrates, lead, arsenic, iron, iron bacteria and turbidity, and for nitrates and any other chemicals or contaminants associated with any activity conducted at the site.

c) In no event shall mining operations cause any violation of the groundwater quality standards in Wis. Admin. Code Ch. NR 140.

2) Impacts to Groundwater Quantity.

a) Mining operators shall not blast or extract materials at a depth below the point that is 10 feet above the groundwater table at any point on the site. Any violation of this buffer, or any breakthrough to ground water, shall be reported promptly in writing to the Town.

b) Mining operations shall not cause a reduction, however slight, in the quantity of groundwater available for use by current users within 2 miles of the mine site.

Operators shall install meters on any well placed on the site, regardless of the capacity of the well(s), sealed to prevent tampering with the accumulated total of gallons pumped, so that the Town can monitor the total quantity of water pumped from the ground by the Operator.

3) Impacts to Surface Water Base Flow. Mining operations shall not cause a lowering of the groundwater table which results in a measurable decrease, however slight, in the surface water level or flows within 2 miles 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.

4) 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 or municipal functions, such as but not limited to fire protection, within 2 miles 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.

D) Hazardous materials.

1) During mining operations, the operator shall select products that limit the potential for groundwater or surface water pollution, as may be identified on recognized product lists available from Wisconsin DNR, the U.S. EPA, or other agencies.

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

3) The operator shall not dispose of waste materials containing any hazardous chemicals upon the site or in any other way detrimental to the environment.

4) The operator shall publish a plan acceptable to the Chief of the local fire district having jurisdiction, and to the Wis. DNR, for responding to spills of any hazardous materials on the site. The operator will be responsible for costs incurred by such fire district in preparation for and in response to the management and containment of hazardous materials.

E) Control of Waste Material. The amount of waste material (non-marketable fines and other materials native to the site) returned to a mine site as part of the approved 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.

F) Additional Fees. A schedule for the payment of fees by the operator to the Town

of Wellington in compensation for the Town's expenses, administrative costs and loss of tax revenue will be included in the mining agreement.

G) Special Exceptions.

1) The operator may request a special exception from the minimum standards of this Section if it can demonstrate to the satisfaction of the Town 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.

2) The Town Board can impose requirements in addition to or exceeding the minimum standards if it determines that the public health, safety, or welfare of the Town or any of its inhabitants will not be adequately protected without the imposition of such additional measures.

SECTION VIII. ANNUAL REPORT AND LICENSE RENEWAL

A) Annual Report.

1) Not later than September 1 of each year, the operator shall submit a written annual report to the Town Board for all mining sites for which the operator has a license in the Town of Wellington. The Town Board may ask the Planning Commission to review the report, and provide the members' input, before returning the annual report to the Town Board.

2) The annual report shall include the following information:

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

b) A map or drawing accurately showing for each such site the area of excavation, the unreclaimed area and any reclaimed area, including a calculation of the number of acres for each type.

c) A description of activities, operations and incidents on the site for the current license year, to include the total gallons of groundwater used, the total number of blasts conducted and the magnitudes (expressed in pounds of TNT or an industry equivalent) and dates blasts occurred, the total amount of materials removed from the site (expressed either in tons or cubic yards), the total number of truckloads of materials removed, and the total number of truckloads of materials brought onto the site for any purpose.

d) A similar description of activities and operations on the site anticipated for the following license year.

e) 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 a summary of all groundwater, surface water and air quality monitoring results.

f) A summary of all areas of non-compliance, and if not already remedied, a plan for bringing non-compliant areas into compliance.

B) License Renewal.

1) Initial License. The initial license will be in effect for a calendar year beginning on January 1.

2) Subsequent Licenses. The Town Board may renew the operator's license for a period of five years if the operator meets all terms of the initial license, terms of the initial agreement, and terms of the application for a license renewal. The Town Board may offer subsequent five-year license renewals based on the operator's successful compliance with all previous licenses and agreements.

3) An operator desiring to renew its license shall make written request to the Town Clerk for a renewal of the license to operate the mine no later than September 1 of the year in which the license will expire. The application shall be accompanied by the payment of both the renewal application fee of \$150 and the base administrative fee of \$2000.

4) The written request for renewal shall include the annual reports from the previous license years in accordance with the provisions of subsection (A).

5) The Town Clerk shall forward the renewal application to the Planning Commission within 7 days of receipt. Within 30 days of receiving the renewal application from the Town Clerk, the Planning Commission will forward it and the Planning Commission's recommendations to the Town Board. If the Town Clerk, Planning Commission or Town Board determines that the renewal application is incomplete, the Clerk shall return the same to the operator applying for renewal, identifying the deficiencies and the time frame for submitting a complete renewal application, which time frame shall be no less than fifteen (15) days. If the operator does not submit a complete application within the time frame specified by the Town Clerk, the operator may not continue its operations under its expired permit without written approval of the Town Board.

6) The Town Board shall review the application to determine, in its sole discretion, whether additional information or expertise is necessary to properly evaluate the application. The Town may retain engineers or other qualified persons with appropriate expertise, at the operator's expense, to inspect the mine site and review the renewal application. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for a decision under subsection (7).

7) Additional fees. If the Town Board determines that additional expertise is required, the Town Board may engage engineers or other qualified persons with appropriate expertise to advise the Town Board 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 additional review by retained expert. The additional fees shall be paid before the additional review is undertaken.

8) Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert(s) shall report to the Town Board on whether the renewal application meets the requirements of this Ordinance. The Town Clerk, at least fifteen (15) days prior to the meeting date, 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, and post the notice of the meeting as required under the Wisconsin Statutes.

9) The Town Board may grant the request for renewal if it finds:

a) That there have been no material violations of this Ordinance or of the license which have not been appropriately remedied to the satisfaction of the Town.

b) That the operator has not received multiple or recurring citations or stop-work orders for violations of the operator's license or this Ordinance.

c) That all applicable fees have been paid and all financial responsibility requirements have been met.

10) 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 IX. INSPECTION AND ENFORCEMENT PROCEDURES AND PENALTIES

A) Inspection. In addition to an annual inspection pursuant to Section VIII (B), the Town Board, or other authorized representatives of the Town, may make inspections to determine the condition of nonmetallic mining sites in the Town of Wellington, in order to safeguard the health and safety of the public and determine compliance with the minimum standards under this Ordinance upon showing a state-issued identification card and upon one hour's notice if the mine is in operation, or upon 3 business days' notice if operations are suspended either by order of the Town, or by decision of the operator.

B) Violations. The following are violations under this Ordinance that may constitute grounds for revocation of the operator's license, amendment of the condition of any such license, or denial of renewal of any license under this Ordinance. This list is intended to be illustrative rather than finite.

1) Engaging in nonmetallic mining or any mining-related operations under this Ordinance without a current operator's license granted by the Town Board.

2) Failure to comply with the minimum standards and other terms of this Ordinance or of any mining agreement entered into under this Ordinance.

- 3) 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.
- 4) Failure to submit in a timely manner the annual operational report under Section VIII.
- 5) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section X or any other order issued by the Town.
- 6) Failure or refusal to provide access by the Town or its authorized agents to any records of inspections, sampling, trucking schedules, incident reports, or any other documentary evidence pertaining to the operation of the mining operation as required under this Ordinance.
- 7) Failure to maintain continuous comprehensive liability insurance coverage for all aspects of the mining operation within the Town, in an amount acceptable to the Town.
- 8) Failure to pay in full or in accordance with a payment schedule, all taxes, fees, royalties or amounts owed to the Town, Monroe County, State of Wisconsin or any other governmental entity when due.
- 9) Failure to maintain continuous compliance with any and all permits or licenses issued to the operator by any other governmental body, including but not limited to blasting permit, high-capacity well permit, conditional use permit, DOT permit, commercial driver license approvals, EPA permits, and every other type of approval, license or permit required to operate a mine site.
- 10) Failure to maintain continuous compliance with the reclamation plan, including any bond premium schedule, submitted as part of the operator's license application or renewal.
- 11) Insolvency or filing of bankruptcy of the operator for protection from creditors under the provisions of the United States Bankruptcy Code.

C) Hearings

- 1) Any person affected by a notice and order issued in connection with the enforcement under subsection (D), 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 30 days of the date the notice and order are served upon the party requesting the hearing, or within 30 days of the denial of

an application for renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall post publicly and give the petitioner written notice thereof.

2) After the hearing, the Town Board by a majority vote, shall sustain, modify or withdraw the notice under subsection (D), 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 10 days in writing of such findings.

3) 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.

D) Remedies. The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance, including the following:

1) Issue a stop work order.

2) Issue a notice of violation and order that specifies the action to be taken to remedy a situation and specifies the date by which remediation must be completed.

3) Issue a citation in accordance with the Town of Wellington citation ordinance if enacted and in force at the time of the alleged violation.

4) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under subsection (F) and injunctive relief.

5) Suspend or revoke the operator's license under subsection (E).

E) License Suspension or Revocation. After giving written notice containing the facts giving rise to an alleged violation, the Town may suspend the operator's license until such time as a Town Board hearing can be held to examine the situation and determine a response in keeping with the Town Board's obligation to protect the health, safety and welfare of the Town. After written notice and a hearing, the Town Board may revoke an operators' license if it finds that such action is warranted by the nature of the violations established by the evidence. An operator's license may also be revoked and the reclamation plan pursued if the Town finds that mining operations have been abandoned.

1) An operation may be considered "abandoned" if no significant mining operation has occurred for more than 60 consecutive work days in a license year, unless a seasonal shut-down was included in the proposed schedule of operations.

2) Prior to a finding of abandonment, the Town board must provide notice to the

operator of the pending revocation of the operator's license and offer the operator the opportunity to request a hearing on the matter before the Town. The operator shall have this opportunity only if, within 30 days of the Town Clerk's mailing of the registered notice of intent to revoke, the operator provides a written request for the hearing and includes 1) an explanation for the cessation of the mining operation; and 2) a plan and a date for resumption of the operation during the current license year. If the Town receives no such request within the 30 day period, the Town shall notify the operator that the operator's license has been revoked.

3) Upon receipt of a request for a hearing with the requisite documents, a hearing shall be scheduled. After the hearing, the procedures stated in Section IX (C) (2) and (3) shall apply.

4) Any resumption of the operation after a finding of abandonment is a violation of this Ordinance and shall subject the operator to the penalties as provided in this Ordinance.

5) The Town shall inform the Monroe County Conservation Department of a finding of abandonment and request that the County order reclamation to begin forthwith.

F) Penalties.

1) Any person or entity found to be liable 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.

2) Any person or entity found to be liable for a violation of this Ordinance shall pay court costs and the Town's reasonable attorney's fees, if awarded by the Court. The remedies provided herein shall not be exclusive of other remedies available at law.

G) A failure or intentional forbearance 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 X. FINANCIAL ASSURANCE

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

1) Road repair. An amount necessary for the repair and maintenance of Town roads used for truck traffic transporting materials to or from the site. This provision may be satisfied by a royalties provision contained in a mining agreement entered into under this Ordinance (e.g. "\$1.00 per ton of materials taken from or brought to the mining site"), or by deposit by the operator of a sum reasonably calculated to represent the actual cost of road repair during a license year, in an account maintained by the Town, with a reconciliation to the operator at the end of the license year showing the costs allocated to the operator and the application of the

deposit to those costs.

2) Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within 2 miles of the site or such other area presumed to be affected by the operator's mining and or processing operations.

B) The form of financial assurance made to the Town of Wellington shall be that form agreed to by the Town Board and may include deposit or escrow accounts, performance bonds, irrevocable letters of credit or other measures agreed upon by the Town Board.

C) 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. Any failure to comply with this provision shall be cause to revoke the operator's license, or suspend the same until the operator complies, in the Town's discretion.

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

SECTION XI. DAMAGES TO PRIVATE WATER SUPPLY

A) Any property owner within 2 miles of the mine site, who suffers any reduction, however slight, of the quality or quantity of their private water supply shall notify the Town and the Operator in writing, setting forth the particulars, and stating those dates and times when the landowner will be available to be present for testing of their well(s). Within 24 hours of receiving any such report, the Town may use the water supply assurance fund established by the Town with the funds of the operator to provide an interim water supply, pending testing and confirmation of the cause of the reduction.

B) Where the reduction in either the quality or quantity of water available to the affected landowner cannot be remedied without the provision of a permanent alternative water supply, the operator shall be liable for the full cost of the same, and any unexcused failure to promptly provide the same within thirty (30) days of receipt of the tests set forth in subsection (A) above, in a manner acceptable to the Town, shall be cause to revoke the operator's license and pursue the reclamation bond and any other financial assurances provided by the operator in order to remedy the situation. Further, the operator shall deposit sufficient sums to fully indemnify the town against any claims made under Section § 281.77(4) Wis. Statutes. This paragraph shall be construed liberally in favor of the Town and its landowners in order to protect the quality and quantity of the water supply, and to ensure that operators take full account of the financial and operational risks they bear if their operations damage or reduce the water supply.

SECTION XII. MINING AGREEMENT

A) Purpose. This section provides a procedure for modifying provisions of this Ordinance in a voluntary agreement between the Town and the mining operator where that may be necessary to adapt some provision to the special circumstances of the mining operation for which a license application is being made, provided that this agreement provides protections for the public at least equal to the protections of this Ordinance.

B) In exchange for the greater flexibility provided by adapting the regulations and standards of this Ordinance to circumstances that are unique to the proposed mining operation, a mining agreement 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.

C) Application for a Mining Agreement

1) The application requirements, approval requirements and procedures in Section V apply to an application for approval of a mining agreement, except that the standard for granting the application is set forth in (D).

2) The application shall include all of the information and other materials required in Section VI.

3) The application shall describe all ways in which the proposed mining agreement 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.

4) 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.

D) Decision by the Town Board.

1) The Town Board shall review the application in accordance with the procedures for review of a mining operator's license application.

2) The Town Board may 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.

3) 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.

4) The Town Board may condition its approval on the operator entering into such agreements and providing such financial assurances as the Town Board deems appropriate to promote the public health, safety, value of real and personal property, and the general welfare.

SECTION XIII. SEVERABILITY, INTERPRETATION AND ABROGATION

A) Severability.

1) 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.

2) 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.

B) The provisions of this Ordinance shall be liberally construed in favor of the Town of Wellington and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town of Wellington.

C) 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.

D) 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 ____ day of _____, 2016.

Signatures of Town Board

Town Chairman

Town Supervisor

Town Supervisor

Attest:

By _____
Town Clerk

APPENDIX A

Nonmetallic Mining License Application

Town of Wellington, Monroe County, Wisconsin

Date of Application

A) Ownership Information

- 1) Name of the business making application for a nonmetallic mining license.
- 2) Names, addresses, phone number(s), and e-mail addresses of the owner and chief executive officer of said business. Also include name, address, phone number(s), and e-mail address of the business's contact person for the proposed mining operation.
- 3) Name, address, phone number(s), and e-mail address of all owners or lessors of the land on which the mining operation will occur. Tax parcel numbers should be included. Include mineral rights owners if different from surface landowners.
- 4) If the operation is subject to a lease, include 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.
- 5) Legal description of land to be included in proposed mining operation.
- 6) Type of nonmetallic mine being proposed. List the products of the proposed mine and the expected uses of those products.
- 7) Dates of proposed commencement and cessation of the operation.
- 8) Provide proof of insurance. A copy of the insurance policy is to be included with application.

B) Site Information

- 1) Topographic map of the mine site extending 2 miles 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 5 miles of the site, and any processing or trans-shipment facilities within the town.
- 2) Full color aerial photo of the proposed site at a scale of 1 inch equals not more than 660 feet.
- 3) Recorded certified survey map(s) of the property on which the nonmetallic mining operation will be located. Owners' names and parcel numbers are to be labeled.

4) Detailed, labeled map of the proposed mine site indicating the sequence of excavation, storage for overburden, location of stockpiles for product and waste materials, location of structures, haul roads, parking areas, etc.

5) Provide professional engineer's statement describing 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 2 miles of the site.

6) Include a professional engineer's description of the distribution, depth and type of topsoil on the site as well as the geological composition and depth and width of the nonmetallic deposit.

7) Provide a map identifying the location of all other non-contiguous sites within the Town of Wellington and adjacent towns that will contribute any material to the facility for which the applicant seeks a license.

8) Describe baseline conditions at the site before mining operations commence, including the groundwater elevation across the site, groundwater quality at the site for turbidity, pH, microbiology, lead, arsenic and any other toxic metal or any other chemical that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made. Baseline information for surface waters within 2 miles of the site should also be established. The information collected for surface waters should include base flow rate, turbidity, pH, microbiology, lead, arsenic and any other toxic metal or any other chemical that may reasonably be believed to be present.

9) A map on which all of the residential, agricultural and municipal wells within 2 miles of the boundaries of the site in all directions are marked and given a numerical identification of the location.

10) List potential impact of the proposed mining operations on current land use practices (eg. agricultural, forest management, recreational activities, etc.) within 2 miles of the site's borders.

11) Identify any state or federally listed threatened or endangered species that have been found onsite or within 2 miles of the proposed site's borders. Include when and where such species have been seen or found.

C) Plan of Operation

1) List all required permits (federal, state, agency, county, local, etc.) and indicate if those permits have been sought and/or acquired.

- 2) Total area, in acres, of the proposed mine site and of the area to be excavated.
- 3) Maximum depth in feet of the proposed excavation. Provide the depth of the excavation relative to the height of the water table underlying the proposed mine site. Benchmarks should be provided i.e. height in feet above sea level.
- 4) Estimated volume of material, expressed both in cubic yards and in tons, to be extracted for each of the first five years of operation and over the life of the mine.
- 5) Number of employees working on site as well as the number of off-site employees whose work is directly related to the mining operation. Provide the number of full and part time employees.
- 6) Provide a detailed description of the mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.
- 7) Describe the process by which the proposed site will be prepared for mining.
- 8) Describe how the site will be prepared for seasonal closings and how the site will be maintained during seasonal closings.
- 9) Locate all private, town, county and/or state road access points. Include which road(s) would be primary or secondary roads to be used for hauling product and waste materials as well as for uses related to the proposed mining operation.
- 10) Provide the estimated number of truckloads per day when the mine is in operation.
- 11) Types of trucks to be used for hauling and the maximum load per truck.
- 12) Provide days and hours of hauling if different from the days and hours of the mine's operation.
- 13) Provide details regarding the use of explosives in the preparation for or during mining operations. Describe precautions to be taken to prevent any potential dangers to on-site and off-site persons and property. Describe how the operator will compensate for any off-site damage or injury should it occur.
- 14) Include a water budget, including an estimate of the amount and schedule of daily water use, water sources, and methods for disposing of water including methods used for infiltration and control of run-off. Describe the sources of water to be used on site and in mining operation.
- 15) List of all chemicals and hazardous materials to be used in producing product and maintaining the site, together with the current Material Safety Data Sheet for each chemical or compound, including fuel supplies that will be stored on the site

and a description of measures to be used for securing and storing these materials.

16) Describe how erosion will be managed at the site and contiguous areas during the preparation for mining phase, operational phase and at the termination of operations.

17) Describe how the mine will be reclaimed both over time and at the end of its operation.

18) Describe the resulting topography, land cover and anticipated use of the property after the end of operations. What will be the disposition of the property at the end of mining operations?

D) Compliance with Minimum Standards

The application must also address how each of the Minimum Standards of Operations (see Section VII of the Ordinance) will be met during the preparation of the mine site, during mining operations, and/or at the completion of the mine's operational life.