

TOWN OF DURAND NONMETALLIC MINING ORDINANCE

SECTION 1.01 PREAMBLE

The purpose of this subchapter is to promote the health, safety, prosperity, aesthetics, and general welfare of the people and communities within the Town of Durand (“Town”), Pepin County, Wisconsin, and set forth the rules and procedures for this municipality regarding nonmetallic mines within the Town. This ordinance is adopted pursuant to the Town’s village and police powers under Wis. Stat. §§ 60.10(2)(c) & 61.34. This ordinance is based on the Town of Cooks Valley Nonmetallic Mining Ordinance, which was upheld as a licensing ordinance by the Wisconsin Supreme Court, on February 8, 2012, in *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7.

SECTION 1.02 INTENT

The general intent of this subchapter is to regulate the location, construction, installation, alteration, design, operation and use of all nonmetallic mines so as to protect the health of residents and transients; secure safety from disease and pestilence; further the appropriate use and conservation of land and water resources; preserve and promote the administration and enforcement of this subchapter and provide penalties for its violations.

SECTION 1.03 INTERPRETATION

In their interpretation and application, the provisions of this subchapter shall be held to be minimum requirements and shall be liberally construed in favor of the Town and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

SECTION 1.04 DEFINITIONS

(1) *Metallic Mining* or *Mining* means operations or activities for the commercial extraction from the earth of merchantable metallic minerals or the exploration or prospecting for such minerals and includes operations, processes or activities related to that extraction.

(2) *Nonmetallic mining* and *mining* mean all of the following:

- a. Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging. Nonmetallic mining does not include 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.
- b. Processes carried out at a nonmetallic mining site that is related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. These processes include, but are not limited to, stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping and dewatering.

SECTION 1.05 NONMETALLIC MINING

- (1) Nonmetallic mining in the Town shall be allowed only as provided for in this ordinance.
- (2) The applicant shall apply for a Town permit for a nonmetallic mine prior to starting work on any mining structure or facility and prior to operating any nonmetallic mine in the Town. The application shall be submitted on a form provided to the applicant by the Town Clerk, a copy of which is attached hereto as Appendix A.
- (3) The Town Board shall be the sole determining body of whether to issue the permit, after review and recommendation by the Town Plan Commission, and after a public hearing has been held by the Town Board, with notice given by U.S. Mail to all adjoining landowners to the proposed nonmetallic mine. The Town board shall grant the permit, either with or without conditions, if it is determined that the development and operation of the nonmetallic mine is in the best interests of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare.
- (4) The Town permit shall be void if the permittee violates any conditions of the permit or any conditions of any required Federal, State or County permits.

SECTION 1.06 PROCEDURES

- (1) The applicant shall complete a Town of Durand Nonmetallic Mining Permit Application (Appendix A) and pay the required application fee of \$2500.00 to the Town, at the time the application is submitted to the Town Clerk. In addition to the required application fee, within thirty (30) days following submission of the application to the Town Clerk, but before the application is reviewed or otherwise considered by the Town, the applicant shall be required to enter into an agreement with the Town under which the applicant shall agree to compensate the Town for all legal services and expert consulting expenses which may be reasonably incurred by the Town as part of its review and processing of the application, regardless of whether or not the application for a permit to mine is subsequently approved by the Town.
- (2) After receiving the application and the application fee, the Town Clerk shall mail a copy of the application to all adjoining landowners to the proposed nonmetallic mining site with the date and time of the next Town Plan Commission Meeting.
- (3) The Clerk shall then place the application on the agenda for the next Town Plan Commission meeting.
- (4) The Plan Commission shall review and consider the application and make a recommendation to the Town board. After a decision has been rendered by the Plan Commission, the application shall be placed on the agenda of the Town board for a public hearing and decision.

(5) At the public hearing held by the Town board, the Town board shall consider the recommendation of the Plan Commission and take public comment on the proposed mine. Before making a decision on the application, the Town board shall determine whether the application is complete, and whether the applicant has applied for or received any required Federal, State, and County permits for the proposed mine.

(6) The Town board shall grant the permit, either with or without conditions, if it is determined that the development and operation of the nonmetallic mine is in the best interests of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare.

(7) The Town board may conditionally approve the permit and may attach conditions to protect public health and safety and promote the general welfare of the Town. Such conditions may include, but are not limited to, restrictive provisions and proof of financial security for reclamation, restrictive provisions and proof of financial security for town road maintenance and repair, restrictions on hours of operation, restrictions on truck and traffic volume into and out of the mine site, restrictions to protect groundwater quantity and quality, restrictions to safeguard public and private drinking and agricultural wells, restrictions to control air emissions and dust from the mine and its operations, and any other restrictions deemed necessary or appropriate by the Town board to protect public health and safety and promote the general welfare of the Town and its citizens.

SECTION 1.07 EFFECTIVE DATE

This ordinance shall take effect upon passage and publication.

SECTION 1.08 EXCEPTIONS FROM ORDINANCE

A nonmetallic mining permit is not required from the Town for nonmetallic mines in existence prior to the effective date of this ordinance or for the activities listed in Wis. Admin Code § NR 135.02(3). However, if a pre-existing nonmetallic mine is expanded after the effective date of this ordinance in a manner that requires a nonmetallic mining reclamation permit from Pepin County, the expansion shall be subject to the permitting requirements of this ordinance.

SECTION 1.09 SEVERABILITY

If any section, sentence, clause or phrase of this ordinance, or if any section, sentence, clause or phrase of any permit issued by the Town pursuant to this ordinance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance, or of any other section, sentence, clause or phrase of any permit issued by the Town pursuant to this ordinance.

SECTION 1.10 ENFORCEMENT AND PENALTIES

Any violation of this ordinance shall be punishable by a forfeiture of not less than \$100.00 or more than \$2,000.00 per day for every day in violation of this ordinance, plus the costs of

prosecution for each and every violation. The Town's attorney shall expeditiously prosecute all such violators. Each day of violation shall constitute a separate offense.

The Town Clerk shall properly post or publish this ordinance as required under Wis. Stat. § 60.80.

Adopted this _____ day of _____ 20____.

Signatures of Town Officials:

Town Chairman: _____

Town Supervisor: _____

Town Supervisor: _____

Town Clerk: _____

APPENDIX A

Town of Durand Nonmetallic Mining Application

Application Filing Fee \$2500.00

Date of Application _____

Applicant's Name: _____

Federal Employer ID # _____ State Employer ID # _____

Contact Person: _____

Address: _____

Phone: _____ Fax: _____ Cell phone: _____

Email: _____

Proof of Insurance (Please attach a copy of the insurance policy this to this application):

Legal Description of land for proposed mine development:

Tax parcel ID number(s): _____

Name and address of surface land owner(s):

Name and address of mineral owner(s):

1) Type of Mine:

_____ Construction fill (Sand, gravel, aggregate, or clay used in the construction trades).

_____ Industrial sand mine (used to produce glass, moldings for castings, manufacture of abrasives, or processed into proppant or other industrial uses).

2) Final destination and expected uses of mined materials:

3) Describe current land uses within and adjacent to the project area. Photos would be helpful in providing a view in all directions. Coordinate the photos with the description below.

4) Permits:

A) Does this mine have a current reclamation permit from the county to operate? _____

B) List other permits (county, state, federal, DNR, etc.) necessary for this project, indicate status and provide a copy (if available).

5) Size:

A) Expected maximum depth of mine? _____ feet. Depth is relative to what benchmark?

(Natural ground cover, mean sea level, road elevation, etc.)

B) Groundwater level in the project area? _____ feet. Confirmed or estimated? (circle one).
Depth is relative to what benchmark? _____

C) Will any part of the mine extend below the water table? Yes _____ No _____.
If yes, do you intend to dewater? Yes _____ No _____.
If yes, estimate the dewatering rates in gallons per day? _____. What impact, if any, will mine dewatering have on neighboring wells? Provide data to support any conclusions or statements made, including any monitoring well data, well construction data, and current water withdrawal rates.

D) Specify the total area _____ (in acres) that will be affected by this project. Include areas for future expansion, stockpiling, processing, haul roads, settling basins, buildings, parking facilities. Show all phases for the removal of material. Provide a complete description of the entire project on a map or diagram attached to this application. Note: Any area of extraction must be at least 50 feet from any line fence or property boundary.

6) Mining operations:

A) Describe the method that will be used to dispose of brush and other vegetative debris. Describe the process completely:

B) Describe the methods that will be used to retain topsoil and all other overburden. Describe how the topsoil, subsoil, and other materials will be stored until the reclamation process takes place.

C) Describe the processing methods that will be used at the site. (Processing methods may include stockpiling & storage, blending, grading, crushing, screening & cleaning, scalping, dewatering, and dust control). If there are none, please explain why they are not necessary.

D) Describe the method of extraction (shovel and truck, front-end loader and truck, hydraulic dredge, dragline and truck, self loading scraper, other):

E) Will explosives be used: Yes _____ No _____.

If yes, specify the types & methods of explosives used and describe what precautions will be used to prevent physical hazards to persons and neighboring property from flying debris, excessive air blasts, or ground vibrations. Depending on the mine's location to nearby structures, more detailed information may be required on the blasting program (such as a third party blasting study).

F) Will water be used at the site? Yes _____ No _____. (Water may be necessary for processing, dewatering, and to control dust at the mine site and on haul roads.) If yes, describe the volume of water that will be used in gallons per minute and gallons per day, the source of the water, and any treatment and water runoff control measures that will be used.

G) Describe the methods used to control dust at the site. This includes mining processes, on haul roads, and while transporting materials to and from the mining operation. Be as complete as possible.

H) Will fuel tanks, solvents, explosives, or other chemicals be stored on site? Yes _____ No _____. If yes, describe these materials in detail and explain how they will be secured and stored, and the method of containment. Indicate locations of storage facilities on a site map of the proposed mining operation, which should be attached to this application.

I) Will any structures need to be established on the site. Yes ____ No _____. This includes any storage shed, portable toilet, employee facility, etc. If yes, specify the number, type, and location:

J) How many employees are expected to work at the site and the associated facilities?

K) Hours / days of operation (including maintenance):

L) Length of time the mine is to remain operational? From _____ to _____.

7) Trucking operations:

A) Number of truck loads per day: _____.

B) Proposed hours trucks will operate: _____.

C) Maximum weight per truck load: _____.

D) Types of trucks that will be used: _____.

E) What town and county roads will be used to transport material? Please provide a complete description with a map showing all roads proposed to be used to transport materials and to return to the site. Performance bonds or other financial security may be required for the repair and/or maintenance of all Town roads that may be used or affected in any adverse ways. What specific actions are proposed to ensure that Town roads will be maintained to a safe and secure condition?

8) Environmental:

A) List resources that may be impacted by this project such as timber, agriculture, surface water, ground water, air quality, noise pollution, and plant, wildlife or fish habitat. Describe measures that will be taken to mitigate those impacts.

B) Are there any known endangered species on or near the mine site? Yes _____ No _____. If yes - Describe the species and whether an environmental impact statement will need to be prepared?

C) Are there any known acid producing minerals or soils present? Yes _____ No _____. If yes - how will acid water pollution from the excavation, stockpiling, and waste areas be controlled?

D) What is the schedule and method for well monitoring within a $\frac{1}{4}$ mile of the mine's boundaries before, during and after the mine is opened, worked, and reclaimed? (Monitoring distance may need to be increased if the mine depth is near the water table, dewatering is used, or explosives are used):

E) Describe erosion control practices that will be used during mining. If no measures will be used, explain why none are needed.

F) Describe measures that will be taken to screen the operation from view of surrounding land uses or an explanation of why such measures are not needed. If they are not needed, please include photos of the area (aerial or ground level) Please show the areas affected on a map.

9) Reclamation: The county reclamation plan for the proposed mining site shall be submitted to the Town with this application for review by the Town.

A) Describe progressive reclamation activities that will occur over the life of the operation. Be complete in the description. If necessary show the reclamation in the various phases. (Attach at the back if necessary).

B) Is an excavated / impounded body of water to be left as part of the reclamation? Yes ____ No _____. If yes, 1) Will it be secured to prevent unauthorized access by the public? Yes ____ No _____. If yes, 2) Will it be stocked with fish? Yes ____ No _____. If yes, what species? _____.

C) Describe the methods that will be used at the cessation of seasonal operations to stabilize slopes from erosion. This includes both wind and water erosion. A complete description is required.

D) Will the site will become inactive during current operations for an unspecified period of time? Yes _____ No _____. If yes, describe the interim reclamation methods that will be used:

E) Describe proposed reclamation including final slopes, high wall reduction, benching, terracing, and other structural slope stabilization measures. Will the reclamation practices being followed fully comply with the county's nonmetallic mining reclamation ordinance?

F) Describe anticipated topography, water impoundments, artificial lakes, and future land use of the site. This should be based upon the entire proposed site. It should include a detailed description of the process and how it will relate to the county's nonmetallic mining reclamation ordinance.

G) Describe plans for the disposition of surface structures, haul roads, and related facilities after completion of mining.

H) Describe the methods proposed for the disposal or reclamation of oversize and undersized materials. If returned to the site, how will they be incorporated into the reclamation process?

I) Describe or attach a copy of a seeding plan that includes methods of seed bed preparation, seed mixtures, seeding rates, mulching, and other techniques needed to accomplish site stabilization.

J) Describe long term maintenance needed to support reclamation:

K) Provide an estimate of the reclamation cost of each phase of the project or the entire site if phasing is not planned.

To the best of my knowledge, I certify that the information provided on this application and accompanying documents is true and accurate.

Property owner's signature: _____ Date _____

Please print or type the property owner's name: _____

Authorized mining company

Representative's signature: _____ Date _____

Please type or print authorized mining

Company Representative name: _____

Legal Name of Mining Company: _____

Mining Company's Legal Address: _____

Note: Signature of this application by the applicant(s) authorizes the Town and its designees to enter upon the property to perform needed inspections without prior notice to applicant(s).

Note: Applicant(s) are required to provide twenty-five (25) copies of their completed application to the Town Clerk upon submission, along with the application filing fee of \$2500.00. The additional copies are necessary for the Plan Commission, Town board, adjoining landowners, and the general public at the public hearings.