

# Ordinance 2013-01

## Town of River Falls Pierce County, Wisconsin

### 12.08 Nonmetallic Mine Operator's Licenses

#### SECTION 1. Findings, Purpose and Authority

##### A. Findings.

1. Nonmetallic mining operations, while a vital component of our state and local economy, can have both direct and indirect adverse impacts.
2. Studies have documented that nonmetallic mining operations can have adverse impacts on groundwater and surface water, and can generate harmful levels of dust, noise and flyrock particularly if blasting and crushing operations are undertaken.
3. Nonmetallic mining sites can have negative impacts on the landscape and aesthetics if not properly screened, and can present safety concerns to members of the public if not properly secured.
4. Truck traffic from such operations can also generate off-site impacts including infrastructure damage, safety concerns for children and other residents.
5. While certain aspects of mining operations are subject to state or federal regulation, there is no comprehensive state or federal regulation of nonmetallic mining operations.
6. Many aspects of nonmetallic mining operations are left unregulated with potential adverse impacts to the public health, safety and welfare of the residents of the Town.

##### B. Purpose. The purpose of this Ordinance is to require licenses for nonmetallic mining operators in order to:

1. Supplement federal, state, and county regulations
2. Provide minimum standards to protect the health, safety, and welfare of the public.
3. Preserve the scenic beauty of the Town's landscapes and environment.
4. Protect the public from damage to both the quantity and quality of ground and surface waters.
5. Minimize or prevent adverse impacts from on-site and off-site operations.
6. Promote the general welfare of the people within the Town.

##### C. Authority.

1. This Ordinance is adopted by the powers granted to the Town of River Falls by the Town's adoption of Village powers under Wis. Stat. §§ 60.10 and 61.34, its authority under § 66.0415, and other authority under the statutes.
2. 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

- A. This Ordinance shall apply to all nonmetallic mining operations and mine sites within the Town of River Falls except as set forth in sub. (2).
- B. This Ordinance shall not apply to the following nonmetallic mining operations:
  1. Excavations or grading by a person solely for domestic 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 ten (10) acres of total affected acreage occur 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.

### SECTION 3. 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 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, separation, washing, drying 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 to or from the extraction site.
  6. Disposal of waste materials.
  7. Reclamation of the extraction site.
- C. "Waste Material" means the non-marketable natural by-products (overburden or interburden) that results directly from or is displaced by extraction or that is a by-product (tailings) 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:
  1. All land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing or screening facilities, private roads or haulage ways associated with nonmetallic mining operation.
  2. All contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or operator.

3. Where any distance from the mine site is made reference to herein, the distance shall be measured from the point of the nearest exterior boundary of the mine site to the point at which measurement is taken.
- E. "Landowner" means the person or entity who has title to land in fee simple or who holds a vendee's interest in a land contract for the sale of the land.
- F. "Adjoining landowner" means any property within 1 mile of the proposed mine site regardless of whether there is a residence or structure on the property.
- G. "Affected landowner" means any property within 3-1/2 miles of the proposed mine site regardless of whether there is a residence or structure on the property.
- H. "Town" means the Town of River Falls.
- I. "Town Board", means the Town Board of the Town of River Falls.
- J. "Operator" means any person or entity who is engaged in, or who has applied for a license to engage in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.
- K. "Operator's license" or "license" means the license required of mining operators in this Chapter to undertake nonmetallic mining in the Town of River Falls.
- L. "Application fee" is the fee established from time to time by resolution of the Town Board for original application or renewal application, as the case may be.
- M. "Haul Route" means any public road, street or highway used for transport by company employees and/or independent truckers conveying non-metallic material or heavy loads on a regular basis as a course of operation.
- N. "Affected person or entity" means any person, resident, lessee or land owner whose domicile or land lies within 1/2 mile of the Haul Route.
- O. Berm. An earthen wall used to control surface runoff, conceal the mining operation from view, or act as an obstacle to entry.

#### SECTION 4. License Requirement

- A. License Requirement. No person shall operate a nonmetallic mine within the scope of this Chapter in the Town without first obtaining an operator's license from the Town Board.
- B. License Term.
  1. Except as noted in subsection B.2 below, all licenses shall be issued for one year or less and shall commence on July 1st. For those whose license was issued after July 1st of the license year, the license fee will be prorated for the number of weeks the license is in force prior to the July 1 renewal.
  2. In the case where the license is issued during the 90 days prior to July 1st renewal date, reapplication will not be required though the additional prorated fee still must be paid.
  3. An operator's license may be renewed as set forth in Section 8.
- 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. The remaining portion of a current operator's license may be transferred to a new operator, after a public hearing and notice to surrounding landowners, if the new operator provides identity information and financial assurances to the Town, as may be required by the Town, County or State
  1. This information and financial assurances shall be completed, in writing, no later than 30 days prior to the date of change of operator.

2. If not supplied within the prior 30 days period, license will be revoked as of 1st day following 30 day period, as per Section 9.B.4 and 5.
  3. If above transfer information is not completed in the above timeframe, a new and complete application will be required.
  4. All unpaid fines and other judgments shall be paid prior to approval of Transfer of License.
  5. The new operator assumes full financial assurances as listed in Section 10 of this Ordinance.
  6. The new operator is authorized to do business in Wisconsin.
  7. A written statement is presented that acknowledges any existing obligations of the licensed operator and requires the new operator to assume all obligations of the licensed operator.
  8. The new operator is of comparable credit worthiness as the licensed operator.
  9. The new operator has obtained the transfer of any reclamation permit.
  10. The new operator assumes every responsibility under Town, County or State agreements related to nonmetallic mining.
- E. License Revocation. An operator's license may be revoked under the procedures in Section 9.
- F. Temporary Operator Licenses. The Town Board will not grant a temporary operator's license.

#### SECTION 5. Procedures For Applying For A License To Mine

- A. Application Form. The Application Form for a license to mine in the Town shall be available from the Town Clerk.
- B. Application Submittal.
1. The applicant shall submit fifteen (15) copies of the Application Form and all required documentation required under Section 6 to the Town Clerk.
  2. The application shall be 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 River Falls Schedule of Fees and Forfeitures.
  3. The fees shall be made payable to "Treasurer, Town of River Falls."
  4. The Application Form shall be signed by the operator and by the landowner, provided the landowner is a person other than the operator.
- C. Application Review.
1. 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 refer the application to the Plan Commission for review.
    - i. Additional Information. The Town Board may request the applicant to submit additional information if the Town Board determines that the application is incomplete.
    - ii. 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.

- iii. Additional fees. If the Town Board determines that additional expertise is required to evaluate and review the application, the Town Board may authorize and retain the services of an engineering firm or other qualified person with appropriate expertise to review the application, recommend supplementation and addenda as necessary, and otherwise advise the Town. The Town Clerk shall give written notice to the applicant of the additional administrative fee to be charged the applicant, in addition to the license application or renewal application fee, to cover the cost of the services of any such retained expert of the Town's choice.
  - iv. All engineering, legal and other review expenses, charges and fees incurred by the Town in reviewing the application shall be paid by the applicant. The Town Board shall determine the estimated amount of such costs and give notice thereof to the applicant. The applicant shall pay the costs to the Town Clerk/Treasurer prior to further review of the application.
  - v. In the event the Town Board determines such costs shall be greater, or likely to be greater, than previously anticipated, the applicant shall be so notified of the additional review cost advance necessary before review continues.
  - vi. In the event any review cost advance made by the applicant is not used for engineering, legal or other review expenses by the Town, such advance review costs shall be refunded to the applicant.
2. Where the services of an expert are retained by the Town the expert may require that the applicant furnish additional information. After any such additional information has been obtained, and the expert has completed their review and report, the report shall be submitted to the Town Board, with a copy to the applicant. The report shall advise the Town Board whether the application meets the requirements of the Ordinance or whether the application should be modified to comply with the minimum standards of operation and other requirements established in this Ordinance.
- A. Decision by the Town Board.
- 1. Notice and Hearing.
    - i. After the application is submitted to the Town Board, and modified following recommendation of any expert retained by the Town, and any report by a retained expert has been completed, the Plan Commission shall review the application, and if found complete, recommend that the Town Board place the application on the agenda for a public hearing at a regular meeting of the Town Board.
    - ii. If a special meeting is requested by the applicant or deemed necessary by the Town Board (because of time constraints or otherwise), the applicant shall pay the additional fees incurred for the special meeting.
    - iii. The Town Clerk shall post notice of the meeting at which the public hearing shall be held at least fourteen (14) days prior to the date scheduled for the hearing, with a copy of the notice mailed to all affected landowners together with a notice where a copy of the application may be reviewed.
    - iv. At the public hearing the Town Board shall take public comment on the proposed mine license.
  - 2. Town Board Decision.
    - ii. At the public hearing, following public comment, the Town Board may

- approve or deny the application, or table the application pending receipt of additional requested information, or set a date for the Town Board meeting at which time the Board shall make a final decision on the application.
- iii. If a special meeting is requested by the applicant or deemed necessary by the Town Board (because of time constraints or otherwise), the applicant shall pay the additional fees incurred for the special meeting.
  - iv. The Town Board shall review the retained expert's report as well as public comments made at the public hearing.
  - v. The Town Board shall issue the license if it determines the application (as amended or supplemented) meets the requirements of this Ordinance and that the operation of the mine will be consistent with the minimum standards and the purposes of this Ordinance.
  - vi. The Town Board may issue the license subject to restrictions and conditions.
  - vii. If the Town Board denies the license, the applicant shall be notified in writing. The applicant then may request a hearing under the provisions of Section 9.C.

SECTION 6. License Application. All applicants for a nonmetallic mining license shall submit the following information:

A. Ownership Information.

- 1. The name, address, phone number(s), and e-mail address of the operator of the nonmetallic mining operation.
- 2. The name, address, phone number(s), and e-mail address of all owners or lessors of the land on which the nonmetallic mining operation will occur.
- 3. The names of all previous owners and names of Doing Business As (DBA).
- 4. If the operation is subject to a lease, a copy of a fully executed lease and/or agreement between the landowner and the operator who will engage in nonmetallic mining operations on the proposed site.
- 5. Proof of current Tax status, Lien Status, previous locations of nonmetallic mines or processing plants.
- 6. Any other information deemed necessary by the Town Board.

B. Site Information and Maps.

- 1. A certified survey map(s) and parcel identification number(s) of the property on which the nonmetallic mining operation will be located.
- 2. An Environmental Impact Statement and a search for any endangered species and the number contained on the site during the months of April, May and June, as inventoried by an expert chosen by the Town and paid for by the applicant.
- 3. An aerial photo of the proposed site at a scale of 1 inch equals 660 feet signed by both the operator and the landowner.
- 4. A topographic map of the mine site extending 1 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.
- 5. The location within the site of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.

6. A map on which all residential, agricultural and municipal wells within 1 mile of the boundaries of the site in all directions are marked and given a numerical identification of the location.
    - i. Prior to commencement of the nonmetallic mining operation all wells within 1 mile of the site shall be tested for water quality and condition.
    - ii. The cost of such testing shall be paid for by the applicant.
    - iii. Results of all tests shall be submitted to the Town Board prior to commencement of the nonmetallic mining operation.
    - iv. The nonmetallic mining operation may not commence until the Town Clerk has issued to the applicant (licensee) a written statement confirming receipt of all such well water quality and condition reports and instructs the applicant (licensee) in writing that nonmetallic mining may commence.
  7. The location including present levels and names 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 mile of the site.
  8. A 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.
  9. A map identifying the location of all other non-contiguous sites within the Town of River Falls and adjacent towns, if any, that will contribute extracted material to the same manufacturing facility to which the site for which the applicant seeks a license will also contribute.
    - i. In addition, the applicant shall identify the roads traveled, and frequency of transport on said roads, so that the Town has information available to determine how such travel may affect Town roads.
  10. A copy of the soil borings report or any documentation and analysis containing a 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.
  11. An outdoor lighting plan shall be submitted that shows the location, mounting height, types of luminaries, accessory equipment such as shades and deflectors, beam direction, and manufacturer's photometric data.
- C. Operation Plan.
1. Dates of the planned commencement and cessation of the operation.
  2. Description of mining methods, chemicals, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.
  3. Estimated volume of material to be extracted over the life of the mine and for the next calendar year.
  4. Location of road access points.
  5. The proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.
  6. 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.
  7. A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water including methods used for infiltration and control of run-off.

8. A listing of any hazardous materials, all chemicals (including Material Safety Data Sheets which must be kept current) including fuel supplies that will be stored on site and a description of measures to be used for securing and storing these materials.
  9. A listing of all chemicals (including **Material Safety Data Sheets** which must be kept current) used in the manufacturing or processing operations or in controlling dust.
  10. A listing of all chemical and materials used in the maintenance of equipment or facility, including Material Safety Data Sheets, which must be kept current. Any mishap or spill that releases a chemical or material to the ground must be cleaned up immediately and procedures established to control any pollution. These mishaps include, but are not limited to, blown hydraulic hose, gasoline or diesel fuel, battery acid and Aluminum sulphate spills, etc. Operating procedures will require that such a mishap be reported to the Town within 12 hours followed by a written report detailing the nature of the mishap, action taken, and the extent of possible contamination. Failure to comply could result in immediate revocation of the Operators License.
  11. Measures to be taken to screen the mining site from public view.
  12. Measures to be taken to minimize noise, fugitive dust, vibrations, and light pollution.
  13. Security measures to be employed on the mining site.
  14. A plan to control flooding on the mining site.
- D. Information Demonstrating Compliance with Minimum Standards.
1. The operator shall provide the information necessary to demonstrate that the mining operation will comply with the minimum standards in Section 7.
  2. For mining operations commencing after the effective date of this Ordinance, the operator shall also provide information establishing baseline conditions at the site before mining operations commence, including:
    - i. Groundwater elevation across the site,
    - ii. Groundwater quality at the site showing levels of lead, arsenic and any other toxic metals or chemicals the Town Board, based on advice of its retained expert or otherwise, reasonably believes may be present in the area or in the type of deposit from which the extraction will be made,
    - iii. The base flow of surface water within one (1) mile of the site.
- E. Special Exceptions. The applicant may request a special exception from the application requirements of this Section.
1. The applicant shall bear the burden of demonstrating to the satisfaction of the Town Board that the conditions, minimum standards and information required can and will be provided or assured by alternative means, or is not necessary for an evaluation of the particular mining operation, and that the alternative means provide protection for public health, safety and welfare and be at least equal to the provisions contained in this Ordinance.
  2. All expense incurred by the Town in connection with the evaluation of a special exception request shall be at the applicant's expense.
- F. Additional Requirements. The Town Board may impose requirements in addition to or exceeding the minimum standards of this section when it is determined that public health, safety and welfare will not be adequately protected without the imposition of additional measures.



SECTION 7. Minimum Standards of Operation. The Town Board shall grant a license to mine if the application is complete and the applicant can demonstrate that the following minimum standards of operation will be met:

A. General Standards.

1. The operator shall stake or otherwise mark the borders of the entire site and shall secure the site by fencing or other appropriate measures, as deemed satisfactory to the Town Board.
2. The operator shall demonstrate compliance with all of the other provisions of this Ordinance.
3. The operator shall have obtained a blasting permit from the Town for any blasting operations. Setbacks for blasting shall be included in the Blasting Permit.
4. 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 commencement of operation.
5. The operator shall provide notice to the Town of any notices of violation, citations, or other enforcement actions taken or issued within the past six (6) years prior to the date of the application by any other governmental body against the mining operation proposed to be undertaken within the Town, or with respect to any other mining operation of the applicant or its principles doing business under any name.
6. The operator and landowner shall allow any member of the Town Board, or any agent or employee of the Town, to access and inspect the mine site and operational records upon reasonable notice.
7. The operator shall keep the mine site in a neat and orderly condition. Equipment and buildings at the site shall be maintained in good appearance and working order.

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 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 or other standards as defined by the Town Engineering consultant.
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 control surface water runoff from those areas from entering mining operations or otherwise causing contamination of surface water and groundwater.
3. The operator shall provide a natural, at grade, buffer area of a minimum of 50 feet along bordering property lines and public roadways.
4. The operator shall screen the mining operations from public view to the maximum standards as defined by the Town Engineering Consultant through the use of berms, additional setbacks or other measures.
5. The operator shall limit normal hours of operations to 10 hours a day
6. Monday through Friday during daylight hours and not earlier than 6:00 am or later than 6:00 pm to minimize off-site impacts to residents. The operator may request extended hours as a special exception to the restrictions imposed by this Ordinance. In order to obtain such special exception the operator shall submit a plan for extended hours as a special exception. The operator shall demonstrate to the

satisfaction of the Town Board that additional hours are necessary for the mining operation and the plan and extended hours are consistent with public, health safety and welfare concerns and requirements as determined by the Town Board. The request for additional operating hours or days will require a Public Hearing prior to any decision being made. All expenses for the Public Hearing will be at the operator's expense.

7. The operator shall ensure that vehicular traffic to and from the mining site shall not and does not interfere with the safety of children being taken to or returned from school, or the safety of residents and commuters at times when traffic volume is higher from commuters going to and from work.
  8. The operator shall limit night lighting on site, to that which is minimally necessary for security and, wherever possible, shall be shielded from illuminating off-site areas. Such shield shall include appropriate non-transparent shields which direct lighting earthward, limited as reasonably as possible to the mining site, and do not cause light pollution. Every effort, consistent with legal requirements for aerial safety, shall be made to minimize illumination of the night sky.
  9. The operator shall utilize all relevant dust control measures specified in Wis. Admin. Code § NR 415.075 and the standards as defined by the Town Engineering Consultant.
  10. The Operator shall use best management practices to keep noise from nonmetallic mining activity at or below 60 (sixty) decibels (dBA) at the property boundary. Exceptions to this section are blasting activities permitted by the Town Blasting Ordinance, haul trucks entering and leaving the site, and work projects done on the screening berms and drainage ditches.
  11. The Operator shall use back-up signals creating the least offensive noise audible to persons residing near the property consistent with legal requirements.
  12. The nonmetallic mining operation, including accessory buildings and uses, shall have the following minimum setbacks.
    - ii. Blasting operations: Public roadways – 100 feet to right of way, Property boundaries – 100 feet, Existing Residences – 1500 feet.
    - iii. Non Blasting Operations: Public Roadways and property boundaries – 100 feet, Existing Residences – 1000 feet.
- C. Standards Regarding Groundwater and Surface Water.
1. Impact on Groundwater Quality.
    - i. Mining operations shall have at least one monitoring well for every 5-acre sector of the mine site, and the operator shall take quarterly samples on a schedule approved by the Town Board for lead, arsenic and any other toxic metals or materials that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made. Results of tests will be promptly submitted to the Town Board for review.
    - ii. The minimum groundwater quality standards established under Wis. Admin. Code ch. NR 140: shall not be compromised or violated by the mining operation on the mining site or within one mile from the nearest boundary of the site.
  2. Impacts to Groundwater Quantity.
    - i. Mining operations shall not extract materials at a depth below that point which is 5 feet above the highest recorded groundwater table.
    - ii. Mining operations shall not cause a significant reduction in the quantity of

groundwater available for reasonable use by current users within one (1) mile of the mine site.

- iii. A “significant reduction” shall be deemed to have occurred where the volume, flow or quality of the groundwater is reduced such as to appreciably affect residential, agricultural or other groundwater usage by land owners within one (1) mile of the mine site.
  3. 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 one (1) 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.
  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 fire protection within one (1) 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.
- D. Hazardous materials.
1. All hazardous chemicals shall be stored, used and disposed of in accordance with applicable state and federal law.
  2. The operator shall not dispose of waste materials containing any hazardous chemicals at the mining site, or residuals declared to be hazardous by a government agency. All such materials shall be disposed of at a licensed facility approved for the disposal of such materials.
  3. 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 the hazardous materials used on the site. The Town Chair must be notified immediately of any hazardous material spills. Notification should be by phone followed by written documentation within 48 hours detailing corrective action taken.
  4. The cost of hazardous waste cleanup shall be the responsibility of the operator and done to the satisfaction of the Town designated consultant.
  5. A plan that shows that teams have been trained on how to respond to hazardous material emergencies.
- E. Special Exceptions.
1. The applicant can request a special exception from the minimum standards of this Section. The applicant shall bear the burden of demonstrating to the satisfaction of the Town Board that the conditions, minimum standards or information required can and will be provided or assured by alternative means, or is not necessary for an evaluation of the particular mining operation, and that the alternative means provides protection for public health, safety and welfare and be at least equal to the provisions contained in this Ordinance. All expense incurred by the Town in connection with the evaluation of a special exception request shall be at the applicant’s expense. The Town may require the applicant to post additional full coverage bond for any future damage caused as a result of any exceptions granted.
  2. The Town Board may impose conditions or requirements in addition to or exceeding these minimum standards where the Town Board determines that the public health safety and welfare will not be adequately protected without the

imposition of such additional conditions or requirements.

## SECTION 8. Annual Report and License Renewal

### A. Annual Report.

1. No later than February 1 of each calendar year, the operator shall submit an annual report to the Town Board for all active and intermittent mining sites for which the operator has a license in the Town of River Falls.
2. The annual report shall include the following information:
  - i. An identification of the operator (per Section 3.J) and location of the mining site.
  - ii. A map or drawing accurately showing the area of excavation, the unclaimed area and any reclaimed area including a calculation of the number of acres for each type.
  - iii. A description of activities and operations on the site for the previous calendar year including the estimated volume of material to be extracted in the ensuing calendar year and any modifications to Ownership or Operation Plan. .
  - iv. A description of activities and operations on the site anticipated for the following calendar year including the estimated volume of material to be extracted in the ensuing calendar year, and any modifications to Ownership or the Operation Plan.
  - 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.
  - vii. A copy of all blasting records to be included in the annual report.

### B. License Renewal.

1. The operator shall make written request to the Town Clerk for a renewal of the license to operate the mine no later than March 1 of the year in which the license will expire. The application shall be accompanied by the payment of both the renewal application fee and the base administrative fee established for the administration of this Ordinance in such amount as is established, from time to time, by resolution of the Town Board.
2. The written request for renewal shall include the annual report from the previous calendar year in accordance with the provisions of subsection A.1.
3. 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.
4. 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 and issue a report to the Town Board unless the applicant certifies the site has been entirely inactive during the preceding calendar year, in which case a member of the Town Board may be assigned to inspect the site. If no additional information or expertise is deemed necessary the Town Board shall

- schedule the application for review.
5. Additional fees. If the Town Board determines that additional expertise is required to evaluate and review the application, the Town Board may authorize and retain the services of an engineering firm or other qualified person with appropriate expertise to review the application, recommend supplementation and addenda as necessary, and otherwise advise the Town. The Town Clerk shall give written notice to the applicant of the additional administrative fee to be charged the applicant, in addition to the license application or renewal application fee, to cover the cost of the services of any such retained expert. All engineering, legal and other review expenses, charges and fees incurred by the Town in reviewing the application shall be paid by the applicant. The Town Board shall determine the estimated amount of such costs and give notice thereof to the applicant. The applicant shall pay the costs to the Town Clerk/Treasurer prior to further review of the application. In the event the Town Board determines such costs shall be greater, or likely to be greater, than previously anticipated, the applicant shall be so notified of the additional review cost advance necessary before review continues. In the event any review cost advance made by the applicant is not used for engineering, legal or other review expenses, such advanced review costs shall be refunded to the applicant.
  6. Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall report to the Town Board on whether the renewal application meets the requirements of this Chapter. The Town Chair 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.
  7. The Town Board shall 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, and
    - iii. All applicable fees have been paid and financial responsibility requirements have been met, and
    - iv. All ownership changes and modifications to the operation plan have been approved by the Town Board.
  8. If the Town Board denies the request for renewal, the Town Board shall notify the applicant in writing and provide the applicant with an opportunity for a hearing.

**SECTION 9. Inspection, Enforcement. Procedures and Penalties**

- A. 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 nonmetallic mining sites in the Town of River Falls in order to safeguard the health and safety of the public and determine compliance with the minimum standards under this Ordinance upon showing proper identification, and upon reasonable notice. When the mine is ready to start operations and every three (3) months thereafter during the first year, the Town authorized representative shall inspect the mine at the operator's expense.
- B. Violations. The following are violations under this Ordinance:
  1. Engaging in nonmetallic mining without an operator's license granted by the Town

Board.

2. Failure to comply with the minimum standards and other terms of 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 timely file the reports required under Section 7.
5. Failure to timely file the annual operational report and other reports under Section 8.
6. 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.
7. Failure to comply with all State, County and Town regulations that govern or affect the operators nonmetallic operation.

C. Hearings.

1. Any person or entity affected by a notice and order issued in connection with the enforcement of this Ordinance under Section 9.D (Remedies), or upon denial of an application for a license or license renewal, may request and shall be granted a hearing on the matter before the Town Board, provided such person shall file with the Town Clerk a written petition requesting the hearing and setting forth his name, address, telephone number and a brief statement of the grounds for the hearing or for the mitigation of the order. Such petition shall be filed within thirty days of the date the notice and order are served or upon 30 days upon denial of an application for a renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof.
2. After the hearing, the Town Board by a majority vote, shall sustain, modify or withdraw the notice under Section 9.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 ten 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 filed in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the hearing.
4. Any cost incurred by the Town for the hearing and evaluation (consultants, engineers, attorneys, etc.) shall be at the petitioner's expense. Prior to the hearing the Petitioner shall submit to the Town Clerk such amount as the Town Board reasonably deems necessary to pay for the cost of such consultants, engineers, attorneys or other experts as the Town Board deems reasonably necessary to prepare for and conduct the hearing and evaluation.

D. Remedies. The Town Board may take any appropriate action or proceeding against any person or entity 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.
3. Issue a citation in accord with the Town of River Falls citation ordinance. The citation may be issued by the Town Chair or Town Attorney.

4. Refer the matter to legal counsel for consideration and commencement of legal action under Section 9.F to obtain injunctive relief and/or to advise the Town considering the issuance of a citation under Section 9.D.3 above.
  5. Suspend or revoke the operator's license under Section 9.E.
- E. License Suspension or Revocation. After giving written notice and providing the licensee with an opportunity for a hearing, the Town Board may suspend or revoke an operator's license for a violation of this Ordinance or any conditions or requirements imposed as a license condition.
- F. Penalties.
1. Any person or entity adjudicated guilty of a violation of this Ordinance shall pay a forfeiture of not less than \$250 per violation nor more than \$10,000 per violation, and/or be subject to injunctive relief. Each day a violation exists is a separate violation.
  2. Any person or entity adjudicated guilty of a violation of this Ordinance shall pay court costs and reasonable attorney's fees and any other associated fees and costs.
  3. The remedies provided herein shall not be exclusive of other remedies.
  4. A failure by the Town to take action with respect to 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

- A. Financial assurance shall be provided to the Town as a condition of license approval or renewal in the amount determined by the Town's consultants to be one hundred and fifty percent (150%) of all amounts retained necessary for the following:
1. Road repair. An amount deemed necessary by the Town Board for the repair and maintenance of Town roads used for vehicular traffic transporting materials to or from the site.
  2. Water Supply. An amount deemed necessary by the Town Board to provide an alternative water supply to residences or agricultural operations within 1 mile of the site, or such other area shown to have been adversely affected by the mining operations, where the quantity or quality of water to such residences or agricultural operations has been adversely affected by the mining operation.
- B. The form of financial assurance furnished the Town of River Falls shall be in such form as required by the Town Board and may include, but is not limited to, performance bonds, irrevocable letters of credit or other measures or assurances as determined by the Town Board.
- C. In the event the Town Board 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 substantially reduced or otherwise dedicated to specific needs, the Town Board shall notify the operator of the additional amount required and the basis for the request. The operator shall thereafter have a period of 30 days to provide the additional financial assurance.
- D. The operator shall provide the Town proof that it has provided the financial assurance for reclamation required under Wisconsin law. It shall maintain such financial assurance for reclamation throughout the license period.

#### SECTION 11. Damages to Private Water Supply

- A. A property owner within 1 mile of the mine site may seek remedies from the licensee under Section 11.B-E for any of the following damages to private water supply caused

by the mining operation:

1. A preventative action limit or enforcement standard is exceeded in a private water supply well on the owner's property.
  2. There is a substantial adverse impact on the quantity of water from a private well on the owner's property, including but not limited to the inability of any such well to provide water on a continuous basis.
  3. There is a lowering of surface waters which serve as a source of water for personal, residential, agricultural or municipal functions on the owner's property to levels below base flow levels for more than 5 days.
- B. Any property owner 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 Section 11.A explaining the nature and extent of the problem.
- C. Within 24 hours of receipt of such notice under Section 11-B, 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. Stat. § 281.77(4). Any interim water supply shall continue until the Town has approved the report or plan under Section 11-D.
- D. Within 20 days of receipt of notice under Section 11-B, the mine operator shall provide to the property owner and to the Town a report which demonstrates that the impact to the property owner was not attributable to the mining operation or shall present a plan for a permanent alternative water supply which shall be paid by the operator.
- E. In consultation with the property owner the Town shall review the report or plan and approve or deny such plan. If the Town determines that the mine operator was not the cause of damage to the private water supply, the operator may elect to be reimbursed by the property owner for the costs of supplying water during the preceding period not exceeding one year.
- F. A property owner beyond one (1) 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 Section 11-A, 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 operation, the property owner can utilize the remedies in Section 11.B-D.

## SECTION 12. Mining Agreement

- A. 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 at least equal to those of this Ordinance.
- B. No such modification shall be made without first referring the matter to the Town Plan Commission for recommendation following a public hearing to be conducted by the Plan Commission.
- C. All land owners within one (1) mile of the exterior boundary of the mine site shall receive notification of the public hearing at least 14 days prior thereto.

## SECTION 13. 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 River Falls and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town of River Falls.
  - 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.

SECTION 14. 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. Stat. § 60.80.

ADOPTED this 1<sup>st</sup> day of July, 2013.