

TOWN OF COLFAX

LICENSING OF NONMETALLIC MINING SITES AND OPERATIONS ORDINANCE

ORDINANCE NO. 015

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Sec. 1.01 Findings, Purpose, Authority.

- (a) **Statutory Authority.** This Chapter is adopted pursuant to powers granted the Town of Colfax, Dunn County, Wisconsin by the Town's adoption of village powers under Sections 60.10 and 61.34, Wis. Stats., the Town's legal ability to require a highway use agreement under Section 349.16, Wis. Stats., the Town's authority under Section 66.0415, Wis. Stats., to regulate offensive industry, and any other authority, without limitation, under the Wisconsin Statutes and/or Wisconsin Administrative Code. Any amendment, repeal or re-creation of the Wisconsin Statutes and/or Wisconsin Administrative Code relating to this Chapter made after the effective date of this Chapter is incorporated herein into this Chapter by reference on the effective date of the amendment, repeal or recreation.
- (b) **Findings.**
- (1) Nonmetallic mining operations and associated activities can have both direct and indirect adverse impacts on the Town.
 - (2) Nonmetallic mining operations can have adverse impacts on surface water and groundwater and, particularly if blasting and crushing/processing operations are undertaken on the site, can generate harmful levels of noise and dust and other potentially harmful materials. While nonmetallic mining operations can make contributions to the economy, there is substantial potential that nonmetallic mining activities may cause short-term and long-term damage to the physical environment adverse to the Town's commitment to production farmland and open space preservation.
 - (3) Nonmetallic mining sites can have negative impacts on area property values, tourism, school funding and farmland preservation efforts, and on landscape and aesthetics.
 - (4) Nonmetallic mining sites can have detrimental impacts if not properly screened or planned for proper reclamation. Nonmetallic mining operations can be a source of light pollution.
 - (5) Nonmetallic mining sites and associated operations can present safety concerns to livestock, wildlife, and the public if not properly secured and may constitute an attractive nuisance.
 - (6) Nonmetallic mining sites and associated operations can present public health concerns; respirable crystalline silica has been identified as a health-threatening substance, with increased toxicity occurring with freshly-fractured silica.
 - (7) Truck traffic from operations can cause extraordinary wear on highways, roads and streets, and generate off-site impacts including, but not limited to, safety concerns for children and other members of the public who also rely on local transportation assets.
 - (8) The Town of Colfax recognizes that while certain aspects of mining operations are subject to federal, state and/or county regulations, there are no comprehensive federal, state and/or county regulations addressing all aspects of nonmetallic mining operations; many aspects of nonmetallic mining have thus been left unregulated, with potential adverse impacts to the public health, safety and general welfare of the residents of the Town of Colfax.
- (c) **Purpose.** The purpose of this Chapter, without limitation, is to:
- (1) Provide reasonable minimum and uniform standards for all nonmetallic mining operations and associated operations in the Town of Colfax;
 - (2) Implement and facilitate the planning objectives of the Town of Colfax Comprehensive Plan adopted pursuant to Sec. 66.1001, Wis. Stats., as a statement on community goals and values and as a means to meeting the consistency requirement prescribed by the State's comprehensive planning law;
 - (3) Establish a fair and efficient process for the review and approval of applications, and

assure an integrated, comprehensive review of environmental impacts of nonmetallic mining and related facilities and operations;

- (4) Provide licensing procedures for adherence to standards for nonmetallic mining operators in order to protect public health and safety, and be consistent with the Town's planning commitment to safeguarding production agriculture resources and the preservation of the scenic beauty and community aesthetics of the Town's environment and landscapes;
- (5) Protect the habitat of federal and state identified endangered species if present;
- (6) Protect the public from damage to both the quality and quantity of surface and ground waters and wetlands;
- (7) Require construction and operating compliance with all other applicable federal, state, county and town regulations;
- (8) Protect the transportation resources of the Town;
- (9) Prevent or minimize adverse impacts from both on-site and off-site operations associated with nonmetallic mining, including a significant loss of property values; and
- (10) Establish, through licensing, a consistent means of administrative accountability to minimize potentially hazardous or dangerous impacts, when possible, to the community from nonmetallic mining and associated operations.

Sec 1.02 Applicability, Scope, Interpretation.

- (a) **General Scope and Applicability.** This Chapter shall apply to all nonmetallic mining sites, operations and associated activities within the Town of Colfax except as provided in Subsections (b) and (c) below.
- (b) **Exempt Activities and Operations.** This Chapter shall not apply to the following excavation activities and nonmetallic mining operations:
 - (1) Excavations for building construction purposes conducted on the building site.
 - (2) Grading work conducted for preparing a construction site other than a nonmetallic mining site, or restoration work to land following a natural disaster or flood.
 - (3) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
 - (4) Excavations or grading conducted for the maintenance, repair, construction or reconstruction of a highway, railroad or other transportation facility where the excavation or grading is entirely within the property boundaries of the highway, railroad or other transportation facility.
 - (5) Borrow pits and disposal sites for transportation-only projects as defined in Wis. Stats. 85.193.
 - (6) Nonmetallic mining at nonmetallic mining sites where less than one (1) acre of total affected acreage will occur over the entire life of the mine.
 - (7) Removal from the earth of commodities or products that contain only incidental amounts of nonmetallic minerals/soils, such as forest products, Christmas trees or plant nursery stock, ornamental or garden plants, or agricultural crops.
 - (8) Any activities required to prepare, operate or close a solid waste disposal under Subchs. II to IV of Chapter 289, Wis. Stats. or a hazardous waste disposal facility under Chapter 291, Wis. Stats., that are conducted on the property on which the facility is located; however, a nonmetallic mining reclamation ordinance and the standards established under Sec. 295.12(1)(a), Wis. Stats., shall apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property on which the solid waste or hazardous waste disposal facility is located such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms,

dikes or roads.

- (9) Nonmetallic mining with a limited purpose and duration through a contract with the Wisconsin Department of Transportation (WisDOT) that imposes reclamation requirements. The duration of the exemption shall be specific to the length of the WisDOT contract for construction of a specific transportation project.
- (10) Dredging for navigational purposes, to construct or maintain farm drainage ditches and for environmental contamination remediation and disposal of such dredging spoils.

(c) **Existing Nonmetallic Mining Operations**

- (1) Nonmetallic construction-grade sand and gravel mining operations in existence and regularly in use prior to the enactment of this Chapter shall not be required to be licensed under this Chapter, provided said mine operates under its original reclamation plan approved by the County, and the reclamation plan and operations at the site are not modified or expanded in any way subsequent to the adoption of this Chapter.
- (2) If the mining operations and/or area covered by the original county-approved reclamation plan are modified and/or the operations at the site are expanded or modified in any manner from their original means of operation and/or purpose, the mine and associated operations shall be considered a new operation subject to the licensing requirements, and full compliance with the standards, of this Chapter.
- (3) Such licensing exemption under this Chapter does not create a complete site exemption from compliance with other applicable federal, state, county and local regulatory requirements, standards and ordinances separate from this Chapter, nor does such exemption prohibit enforcement of other nuisance-type regulations necessary to protect the public welfare.
- (4) Such nonmetallic construction-grade sand and gravel mining operations in existence at the time of enactment of this Chapter and meeting the criteria of this Subsection shall be required to provide the following information within sixty (60) days to the Town Clerk:
 - a. Ownership information as prescribed in Sec. 1.06(b);
 - b. An accurate map of the site;
 - c. A listing of any hazardous materials or hazardous and toxic substances, including fuel supplies, that will be stored, used or produced on-site and a description of the measures to be used for securing and storing these materials; and
 - d. A copy of the county-approved site reclamation plan and documentation that the site is in compliance with such requirements.

(d) **Metallic Mining.** No extraction of metals shall be permitted on a nonmetallic mine site.

(e) **Liberal Interpretation of Chapter.** The provisions of this Chapter shall be interpreted to be the minimum requirements for the promotion of the public health, safety and general welfare and shall be liberally construed in favor of the Town of Colfax. This Chapter shall not be construed to be a limitation or a repeal of any other power or authority now granted to or possessed by the Town of Colfax.

(f) **Abrogation.**

- (1) It is not intended that this Chapter repeal, abrogate, annul, impair or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Chapter.
- (2) Except as is set forth expressly herein, it is not the intent of the Town Board to abrogate, annul or repeal any other ordinance of the Town of Colfax or to alter the applicability of laws which are of statewide concern within the Town of Colfax. To the extent that a conflict arises between this and any other ordinance, rule or regulation, the more restrictive provision shall control.

(g) **Town as Regulatory Body.** By adoption and enforcement of this Chapter, the Town of Colfax

shall not be deemed to be a partner or agent of any person or party to which a license or permit is granted hereunder.

Sec. 1.03 Definitions.

- (1) **Best Management Practice.** A method or technique that has been consistently shown as producing results superior to others than those achieved with other means, and that is viewed as a performance benchmark within that professional field.
- (2) **Borrow Site.** An area outside of a transportation project site from which stone, soil, sand, or gravel is temporarily excavated for use at the project site, except the term does not include commercial sources.
- (3) **Buffer.** An undisturbed vegetated area measured from the mine site border into the mine site, in which no nonmetallic mining activities, structures or roads can occur except for the construction and maintenance of a vegetated berm.
- (4) **Commercial Use.** A use that involves the exchange of cash, goods or services, barter, forgiveness of indebtedness, or any other enumeration in exchange for goods, services, entertainment, or the right to occupy space over any period of time.
- (5) **Complete Application.** An application that contains all information, reports, verifications, fees and/or data necessary to enable an informed decision to be made with respect to an application as determined by Town reviewing authorities under the requirements of this Chapter.
- (6) **Computation of Time.** In computing any period of time prescribed or allowed in this Chapter, the day of the act or event from which the period of time begins shall not be included, but the last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday. If the period of time prescribed or allowed is less than seven (7) days, Saturdays, Sundays and legal holidays shall be excluded from the computation.
- (7) **Construction-Grade Sand and Gravel Mining.**
 - a. This industry and use is generally defined in NAICS Code 212321 and specifically comprises establishments primarily engaged in operating construction-grade sand and gravel pits, dredging for construction-grade sand and gravel, and/or washing, screening, or otherwise preparing construction-grade aggregate that is predominantly produced and used for local construction purposes. Specifically excluded are industrial sand mining and related uses generally defined in NAICS Code 212322 and in Subsection (8) below.
 - b. Examples of such construction-grade aggregate uses are: concrete; asphalt; concrete or asphalt road construction; building or dimension stone; decorative stone; retaining walls or revetment rock; roofing granules; railroad ballast; agriculture-related uses such as field lime and bedding sand for livestock; small quantities of sand and/or gravel used for other purposes such as sand for icy roads, water filtration systems in septic systems, and landfills.
- (8) **Hazardous Waste.** Any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the Department of Natural Resources.
- (9) **Industrial Sand Mining.** This industry and use is generally defined in NAICS Code 212322 and specifically comprises establishments primarily engaged in operating industrial-grade sand pits/mines, dredging for industrial-grade sand, and washing,

screening or otherwise preparing industrial-grade sand for sand used for industrial abrasive, blasting, filtration, foundries, enamel, glass, molding and grinding uses. Specifically included in this definition are silica sand mining, quarrying and/or beneficiating. Specifically excluded are construction-grade sand and gravel mining as defined in NAICS Code 212321 and Subsection (6) above.

- (10) **Landowner.** The person or entity who has title to land in fee simple or who holds a land contract for the land. A landowner is not a person who owns nonmetallic mineral rights to land, if a different person possesses title to that land in fee simple or holds a land contract for that land.
- (11) **Life of the Mine.** The time period beginning at mine permit issuance and extending through the day on which the entire land area of the mine site is restored in accordance with the approved reclamation plan and all associated costs to be borne by the mine or mine operator have been paid in full.
- (12) **Mine Site (Nonmetallic Mine Site).** Includes the following:
 - a. Land from which mineral aggregates or nonmetallic minerals will be, or are proposed to be, regularly or intermittently extracted for sale or use by the operator and/or any land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing, drying, dewatering, transfer, transload, processing or screening facilities, private roads, rail spurs, conveyors or haulage ways associated with nonmetallic mining operations;
 - b. All storage and processing areas whether contiguous or not to areas actually excavated for nonmetallic mining;
 - c. Areas where grading or regrading is necessary;
 - d. Areas affected by nonmetallic mining activities, such as the construction, improvement, operation and maintenance of private roads, conveyor systems, or haulage ways;
 - e. Areas where nonmetallic mining refuse is deposited;
 - f. All contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or operator;
 - g. Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels or ponds for surface water diversion, are located.
- (13) **Mining Operation.** Operations or activities for the extraction from the earth of mineral aggregates and nonmetallic minerals and related operations or activities, including, but not limited to, excavation, grading, or dredging if the purpose of those operations or activities is the extraction of mineral aggregates and nonmetallic minerals and related processes including, but not limited to, stockpiling, crushing, washing, screening, other processing, scalping, dewatering, blending or transloading. It includes activities and operations performed within the active mine boundary to construct, operate or maintain any machine, equipment, building, tank, pond, lagoon, structure or facility used in conjunction with any nonmetallic mining, nonmetallic mineral processing, handling or disposal at the mine site of any nonmetallic mining waste material and nonmetallic mining reclamation. It does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic mining minerals such as agricultural crops, commercial sod, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.
- (14) **Modification.** The addition, removal, or change of any of a site's boundaries or physical or visually discernable components, facilities or aspects of a nonmetallic mining site and/or associated operations, such as processing facilities and equipment, screening or transload facilities, rail spurs or haulage ways, lighting, scales, equipment sheds and

- shelters, fuel storage, telecommunications antennas, landscaping, fencing, changing the materials of any visually discernable components, vehicular access, parking, and/or upgrade or replacement of equipment for different or more modern equipment. A modification shall not include the replacement of equipment components where the replacement is identical to the component being replaced or for any matters that involve normal repair and maintenance without making significant (as determined by the Town) additions, removals, or changes.
- (15) **Neighboring (Adjacent) Landowner or Property.** Any property within two (2) miles of a proposed nonmetallic mine site perimeter regardless of whether there is a shared property boundary or a residence or structure on the property.
- (16) **North American Industry Classification System (NAICS).** The standard definitions used by federal agencies in classifying business establishments.
- (17) **Nonmetallic Minerals.** 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, silica, beryl, diamonds, clay, coal, shale, feldspar, peat and talc.
- (19) **Nonmetallic Mining.** Means all or any of the processes, methods of approach, applications and means utilized, both mechanically and otherwise, including, but not limited to, crushing, screening, blasting, grading and scalping to cause the occurrence of one (1) or more of the following:
- a. Industrial sand mining;
 - b. Construction-grade sand and gravel mining;
 - c. Extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use, sale or exchange, including drilling and blasting as well as associated activities such as excavating, dredging and/or grading of such materials.
 - d. Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation, drying, pressing, dewatering, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with materials transferred from off-site.
 - e. Manufacturing processes aimed at producing nonmetallic products for sale or use by the operator.
 - f. Stockpiling of nonmetallic minerals or finished products for sale or use off-site, and the stockpiling of waste materials.
 - g. Transporting, transferring or transloading of the extracted nonmetallic minerals, finished products or waste materials to/from the extraction, processing and/or storage site; included within this definition is transportation of extracted materials to or from an extraction site, whether by trucking over state, county or Town roads or highways, by means of a conveyor belt system, or by any other means, whether or not the nonmetallic mine site from which or to which said transportation is maintained is within or outside of the Town of Colfax.
 - h. Disposal of waste materials.
 - i. Reclamation of the extraction site.
- (20) **Nonmetallic Mining Refuse.** Waste soil, rock, vegetation and other waste material resulting from a nonmetallic mining operation. This term does not include merchantable by-products resulting directly from or displaced by the nonmetallic mining operation.
- (21) **Officials.** All Town officers, employees, agents, representatives retained experts hired by the Town.
- (22) **Operator.** Any person who is engaged in, or who has applied for or holds a license to engage in nonmetallic mining operations, whether individually, jointly or through

subsidiaries, agents, employees, contractors, or subcontractors. For purposes of this Chapter, the operator shall also be considered the applicant for required licenses and permits, unless otherwise specified in a specific application.

- (23) **Operations License (License).** The license required of nonmetallic mining operators in this Chapter to conduct nonmetallic mining and associated operations in the Town.
- (24) **Persons.** Any of the following entities: natural persons; corporations; partnerships; associations; limited liability companies; firms; bodies politic; joint stock company, or public or private corporation; any federal, state, county, municipal, town, municipal utility, municipal power district or other governmental entity; cooperative; estate; trust; receiver; executor; administrator or any other fiduciary; any representative appointed by order of any court or otherwise acting on behalf of others; or any other entity of any kind which is capable of being sued.
- (25) **Reclamation.** The rehabilitation of an extraction site including, but not limited to, removal of nonmetallic mining refuse, grading of the site, replacement of topsoil, stabilization of soil conditions, establishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution, and restoration of plant, fish and wildlife habitat.
- (26) **Retained Expert.** Professional expert such as an engineer, planner, industrial hygienist, geologist, soils scientist, hydrologist, attorney, acoustical expert or other person or entity who has accepted proficiency or knowledge in a special area. All references to engineers shall be Wisconsin-licensed.
- (27) **Town.** The Town of Colfax, Dunn County, Wisconsin, and its officials.
- (28) **Town Board.** The Town of Colfax Board of Supervisors (Chairperson included).
- (29) **Town Road Exceptional Maintenance.** Maintenance above and beyond "normal maintenance" which is caused by Town road use by motor vehicles and heavy equipment by the operator in conjunction with the construction, operation, maintenance, and/or reclamation of a nonmetallic mining site. What constitutes exceptional maintenance shall be determined upon the basis of a study of the Town roads, at the applicant's expense, to be used for hauling at or immediately after the effective date of this Chapter, the purpose which shall be to determine the baseline condition of the right-of-way and pavement, its remaining useful life and any repairs or improvements required in order to facilitate the anticipated weight and volume of traffic to and from the nonmetallic mining site. Upon the basis of regular annual inspections by the Town or inspections on a periodic basis performed as a result of perceived damage to any given portion of Town roads to be used for hauling, if it is determined by the Town that maintenance or repairs are necessary beyond those included under the classification of "normal maintenance" and the costs thereof shall be borne by the operator.
- (30) **Town Road Normal Maintenance.** Such recurring or non-recurring maintenance of the right-of-way, roadbed, or pavement of any or all portions of the designated Town roads as are occasioned by normal wear and tear, weather conditions (both anticipated and unanticipated), and other factors taken into account in establishing both the remaining useful life of a Town road in accord with accepted highway maintenance practices used by the Town in accord with Wisconsin Department of Transportation standards and to meet or exceed the remaining useful life of a highway.
- (31) **Town Roads.** Roads maintained by the Town of Colfax for public travel under Chapter 82, Wis. Stats., and includes the meaning of "town highway" as that term is defined in Ch. 990, Wis. Stats.
- (32) **Waste Material.** 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.

Sec. 1.04 Operations License.

- (a) **License Requirement.** No person shall operate a nonmetallic mining site and/or associated facilities in the Town of Colfax without first obtaining an Operations License from the Town Board.
- (b) **License Term.**
 - (1) **Term.** An Operator's license shall be granted for a period of one year commencing on January 1 and ending on December 31 of each calendar year. For the first year of operation under this Chapter, the Operator's license will extend from the date of issuance until the first December 31 of the first calendar year after operations have been started.
 - (2) **Renewals.** An Operations License may be renewed pursuant to Sec. 1.16 below.
- (c) **License Amendment.** If the Town Board has authorized and issued an Operations License, the operator may request an amendment to that license during the license term. License amendment requests shall be reviewed under the same procedures as the original license application.
- (d) **License Revocation.** An Operations License may be revoked pursuant to the procedures in Sec. 1.17.
- (e) **License Transfer.**
 - (1) **Transfer Criteria; Compliance with Conditions.** An Operations License shall not be transferred to a new operator unless prior written permission has been given by the Town Board, and shall be granted by the Town Board only if the new operator agrees to comply with all conditions in place with the current operator and if the new operator provides all financial assurances as may be required by the state, county or Town of Colfax.
 - (2) **Assumption of Mining Agreement Requirements.** If the current operator has entered into a Mining Agreement pursuant to Sec. 1.14, the current license shall not be transferred unless the new operator agrees in writing with the Town to assume all of the obligations, without exception, under said Mining Agreement and to abide by and comply with all of the terms and conditions set forth in said Mining Agreement.

Sec. 1.05 Operations License Application Procedures.

- (a) **Application Submittal; Application Fee; Summary Statement.** An applicant for an Operations License shall submit ten (10) paper copies and one (1) digital copy of required application materials, including all required documentation under Sec. 1.06, to the Town Clerk, accompanied by the payment of the application fee of Two Thousand Dollars (\$2,000.00) and the required deposit for the Base Administrative Escrow Account per Subsection (b)(3) below. Such fees shall be payable to the Town of Colfax. The application shall include a summary statement of the proposed operation, signed by the operator and the landowner, provided the landowner is a person other than the operator.
- (b) **Preliminary Review.**
 - (1) **Preliminary Review.** The Town Clerk shall forward the application to the Town Board and Planning Commission. The Planning Commission shall have up to forty-five (45) days to review the application and make a recommendation as to what additional information or professional assistance, if any, are necessary to properly evaluate the application. Following submittal of the Planning Commission's

recommendation(s) to the Town Board, the Town Board shall determine what additional information or professional assistance/recommendations are necessary to evaluate the application. If the Town Board concludes that no additional application information or professional expertise is necessary at that time to properly evaluate the application, the Town Board shall proceed with the application review process under this Section.

(2) **Consulting Professionals; Additional Information.**

- a. The Town Board shall, at the applicant's expense, employ or retain the services of retained experts, to review and evaluate the application and report to the Town Board, in writing, whether additional information is required for review of the application and to determine whether the application meets the standards of this chapter.
- b. The Town Board or its retained experts may request that the applicant submit additional information if the Town Board or its retained experts determine that an application is incomplete or inadequate.
- c. Once the applicant has submitted all required information, or any additional requested application information, the retained expert(s) shall report to the Town Board, in writing, on whether the application meets the requirements of this Chapter. The Town retains the right to request additional application information throughout the review process.
- d. The application shall be considered as being officially submitted when all of the application information requirements, including the payment in full of all required fees, are complied with.

(3) **Base Administrative Escrow Account.**

- a. At the time an application is to be filed with the Town, the applicant shall execute for the benefit of the Town an agreement agreeing to pay and provide adequate financial security as required herein.
- b. The applicant operator shall deposit Twenty-Five Thousand Dollars (\$25,000.00) with the Town Clerk within five (5) days of filing an application for an Operations License. The Town shall maintain a separate Base Administrative Escrow Account for all such funds.
- c. The funds may be used for all reasonable costs of consultation and expert evaluation (retained experts) and designated Town employees, to review the application, and plans, as well as inspection and modification of the site once permitted. The escrow account funds may also be used by the Town to cover copying and reproduction costs of documents and public records requests related to the application and/or license. Such deposit to the Base Administrative Escrow Account shall be in addition to any other application and compliance fees required by the Town or other regulatory authority.
- d. The Town's consultants/experts, or designated Town employee(s), shall invoice the Town for services provided in reviewing the application, including costs associated with construction or an approved modification and/or inspections and monitoring, and such invoices shall be provided to the operator.
- e. If at any time in the process this escrow account has a balance of less than Ten Thousand Dollars (\$10,000.00), the operator/applicant shall immediately upon notification from the Town replenish said escrow account so that it has a balance restored to a minimum of Twenty Five Thousand Dollars (\$25,000.00). Such additional escrow funds shall be deposited with the Town before any further review or

consideration is taken on the application.

- f. Should the permit be approved, the account shall remain funded until the applicant receives a certificate of compliance from the Environmental Services Department in accordance with the nonmetallic mining reclamation standards and County reclamation standards and any other applicable County and Town ordinance provisions.
- g. Should a permit be denied, the account shall remain funded until all of the applicant's appeals have been exhausted. Should the appeals uphold the Town's decision, the exhaustion of appeals results in a final decision and the account shall be settled by returning any remaining funds in the account to the applicant within 14 days of the exhaustion of the appeals.
- h. The total amount of escrow funds needed as set forth in this Subsection may vary with the scope and complexity of the project, the completeness of the application, and other information as may be needed to complete the necessary review, analysis and inspection of any construction for compliance with the conditions of license.

(c) **Public Hearing.**

(1) **Hearing Requirement.** A public hearing shall be scheduled and conducted on the license application if the preliminary application requirements of this Chapter have been satisfied.

(2) **Publication of Hearing Notice; Notification of Nearby Property Owners.**

- a. Notice of the time, place and purpose of such hearing before the Town Board shall be given by publication of a Class 2 Notice as prescribed by the Wisconsin Statutes a minimum of twenty-one (21) days prior to the public hearing in the official Town newspaper and by legal posting.
- b. Notice of the time, place and purpose of such public hearing shall also be mailed by certified mail, return receipt requested, to the applicant, members of the Town Board, and the last known owners of record as listed in the office of the Town Assessor who are owners of property in whole or in part situated within two miles of the boundaries of the applicant's parcel, said notice to be sent at least twenty-one (21) days prior to the date of such public hearing.
- c. After publication and notice, the applicant may request, in writing submitted a minimum of five (5) days prior to the noticed hearing date, a one (1) month postponement of the public hearing before the Town Board for good cause, provided, however, that the notice of the rescheduled hearing shall again be provided pursuant to this Subsection.
- d. All estimated costs associated with noticing public hearings shall be paid by the applicant to the Town Clerk at the time of making application.
- e. At the Town Board's discretion, the Board shall have the option to set and hold an additional public hearing(s) at a subsequent regular or special Town Board meeting(s); such optional additional public hearing(s) may be necessary if significant new facts have been made available. Such hearing(s) shall be noticed and conducted as prescribed in this Subsection.

(3) **Additional Notice Requirements for Floodplain/ Shoreland or Exclusive Agricultural Zoned Parcels.**

- a. In the event the subject property lies within a floodplain zoning district, notice of the public hearing and a copy of the application under this Chapter shall also be mailed to the District Office of the Wisconsin Department of Natural Resources, at least ten (10) days before the hearing, in accordance with NR 116.20(2)(c), Wis. Adm. Code. This shall be done whether or not the applicant is also required to seek a rezoning or conditional use permit for the parcel separate from the application for an Operations License from the Town of Colfax.

- b. In the event the subject property lies within a shoreland zoning jurisdiction, notice of the public hearing and a copy of the application under this Chapter shall also be mailed to the District Office of the Wisconsin Department of Natural Resources, at least ten (10) days before the hearing, in accordance with NR 115.05(6)(h), Wis. Adm. Code. This shall be done whether or not the applicant is also required to seek a rezoning or conditional use permit for the parcel separate from the application for an Operations License from the Town of Colfax.
 - c. In the event the subject property is currently zoned in an exclusive agricultural zoning classification, notice of the public hearing and a copy of the application shall also be given to the Wisconsin Department of Agriculture, Trade and Consumer Protection, in accordance with Section 91.75, Wis. Stats. This shall be done whether or not the applicant is also required to seek a rezoning or conditional use permit for the parcel separate from the application for an Operations License from the Town of Colfax.
- (d) **Town Board Determination.**
- (1) **Plan Commission Review and Recommendation.** Once the application is complete, any report(s) from the retained expert(s) has been completed and submitted, all required fees have been paid, and the public hearing under Subsection (c) above has been held, the Town Clerk shall place the application on the agenda for the next regular or special meeting of the Planning Commission. The Planning Commission shall have up to sixty (60) days to review the application and forward its written recommendations to the Town Board. If a special meeting of the Planning Commission is warranted, the applicant shall pay the additional costs incurred for the special meeting.
 - (2) **Town Board Meeting Agenda Notice.** Once the recommendation from the Planning Commission has been received, the Town Clerk shall place the application on the agenda for the next regular or special meeting of the Town Board. If a special meeting is warranted, the applicant shall pay the additional costs incurred for the special meeting. The Town Board reserves the right to make a final determination on the sufficiency of the application materials received.
 - (3) **Town Board Evaluation.** The Town Board shall evaluate the application for license issuance, re-issuance or denial of the license and for any conditions to be attached to the license. Included in such evaluation shall be review and consideration of the application materials and information received by the Town from the operator, additional information required of the applicant by the Town, the public hearing testimony, and any other pertinent information received from the applicant, any federal, state or county regulatory body or from any other interested persons. Additionally, it is required that specific consideration by the Town Board be given to the following reports and considerations in its evaluation for licensure, in its determination against licensure, and its evaluation regarding placing any conditions to be attached to the license including, but not limited to, the following, with the Town Board's finding reflected in the official record:
 - a. Any relevant written reports, recommendations and/or verifications received by the Town from the Wisconsin Department of Natural Resources or any other federal, state, county or local authority.
 - b. Any relevant written reports and recommendations received by the Town from any engineers, attorneys or other experts retained by the Town.
 - c. Any relevant written reports and recommendations received by the Town from the applicant.
 - d. The potential short-term and long-term adverse or positive effects and impacts of the proposed nonmetallic mining site and associated operations based on the

proposed location, including, but not limited to, its effects or impacts on the following:

1. Existing roads, bridges, culverts, traffic flow, intersection safety, traffic patterns, and designated access routes and Haul Routes.
 2. Surface water quality, quantity and drainage.
 3. Groundwater quality and quantity.
 4. Air quality and dust issues.
 5. Adjacent wetlands, floodplains, forests, agricultural and unique lands.
 6. Current and future property values, for the site and for adjacent landowners.
 7. Soil erosion.
 8. Stormwater management and erosion control.
 9. Applicable zoning regulation(s) compliance.
 10. Consistency with the planning goals and objectives of the Town Comprehensive Plan.
 11. Public health, safety and welfare of Town residents.
 12. Noise and light pollution generated from the site.
 13. Landscaping and aesthetics.
 14. Existing area topography and existing vegetation, including, but not limited to, blufflands and production agriculture areas.
 15. Existing wildlife habitat, including any presence of any endangered or protected species.
 16. Sufficiency of required monitoring.
 17. Long-term farmland preservation and protection of productive agricultural lands.
 18. Rural character of the Town.
 19. Town appropriations and revenues.
- e. The past license compliance record of the operator at other similar sites and facilities in the State of Wisconsin and other states.
- f. Consideration whether the uses, land values and enjoyment of property of adjacent landowners will in any significant and foreseeable manner be substantially impaired or diminished by the establishment, maintenance or operation of the proposed nonmetallic mining operation.
- g. The potential for the applicant, based on the application materials submitted and other information received by the Town to fully comply with the standards enumerated in this Chapter and with any conditions appropriate and necessary for inclusion in the license.
- (4) **Town Board Decision; Approval Condition.**
- a. The Town Board may grant the Operations License if it determines that the operation of the nonmetallic mine and associated activities will be consistent with the minimum standards and public purposes of this Chapter and the Comprehensive Plan, and with any conditions the Town Board may attach to the license. If the Town Board denies the license application, the applicant may request an appeals hearing under the provisions of Section 1.17(b).
 - b. The Town Board shall make, and record in the minutes of the Town Board or in a separate written report or resolution, findings of fact and may impose and require any conditions the Town Board finds necessary to protect the public health, safety and welfare when approving and issuing an Operations License.
 - c. If an application is denied, the reasons shall be stated in the minutes of the Town Board or in a separate written report or resolution. A copy shall be provided to

the applicant.

- (e) **Reapplication.** No application for an Operations License which has been denied in whole or in part by the Town Board shall be resubmitted for a period of one (1) year from the date of such denial, except on the grounds that substantial new information or proof of changes that would result in compliance with applicable standards and conditions are included in the resubmitted application.

Sec. 1.06. License Application.

All applicants for a nonmetallic mining Operations License shall submit a complete application. Incomplete applications will be returned to the applicant and a valid application shall not be considered to have been submitted until all required application materials have been received by the Town and required fees paid. Failure or refusal of the applicant to provide any required information or failure or refusal to appear or be represented at any public hearings or Town Board or Plan Commission meetings at which the application is a noticed topic shall be grounds for denial thereof. In addition to any other information requested by the Town, applicants shall submit, at a minimum, all of the following information in order to facilitate a proper review of the application; all such information provided shall be a public record under the laws of the State of Wisconsin:

- (a) **Project Summary.** A complete signed summary description of the proposed nonmetallic mine and associated operations, including a comprehensive explanation of activities that would take place on the site. An explanation shall be provided whether the proposed operation will primarily be a construction-grade sand and gravel mining operation or an industrial sand mining operation.
- (b) **Ownership and Applicant Information.**
- (1) **Operator Information.**
- a. The name, address, landline and cellphone telephone number(s), fax number and e-mail address of the operator of the proposed nonmetallic mining operation.
 - b. If the applicant is a type of corporate entity, such information shall be included for all partners or limited partners of a partnership applicant; all officers and directors of a corporate applicant; all members of any limited liability company applicant.
 - c. If the applicant is a corporation, the date and state of incorporation and the name and address of any registered agent(s), and the name and address of any major shareholders.
 - d. If the applicant is a partnership, joint venture or any other type of organization where two (2) or more persons have a financial interest, the application shall specify the name of the entity and the above required name, address and contact information of any general partner(s).
 - e. The original signature of the applicant operator.
- (2) **Property Owner/Lessor Information.**
- a. The name, address, landline and cellphone telephone number(s), fax number and e-mail address for all owners or lessors of the land on which the proposed mining operation would occur, consistent with records maintained by the Town Assessor.
 - b. If the owner/lessor is a type of corporate entity, such information shall be included for all partners or limited partners of a partnership owner/lessor; all officers and directors of a corporate owner/lessor; all members of any limited liability company owner/lessor.
 - c. If the owner/lessor is a partnership, joint venture or any other type of organization where two (2) or more persons have a financial interest, the application shall specify the name of the entity and the above required name, address and contact

- information of any general partner(s).
- d. Proof that all property taxes on the property are current.
 - e. Proof of property ownership including mineral rights or extraction rights.
 - f. The original signature of the property owner(s).
- (3) **Agent and Consultant(s) Information.** The name, address, landline and cellphone telephone number(s), fax number and e-mail address of any authorized agent for the project and all consultants whose services are being used with the application and post-approval construction (engineer, attorney, contractor, surveyor, soil scientist, geologist, hydrologist, land use planner, landscaper, etc.).
 - (4) **Lease Information.** If the proposed operation is subject to a lease, a copy of a fully executed lease and/or similar agreement or option between the landowner and the operator who will engage in mining operations on the proposed site.
 - (5) **Local Contact Representative.** The operator shall designate, and provide information for, a local contact representative who will be available either on-site or with an office in Dunn, St. Croix, Polk, Chippewa, Barron or Eau Claire County. Said contact representative shall be available by telephone or in person during the hours the mine is in operation. Correspondence, communications or verbal directives from Town representatives to facilitate compliance with license terms to the local contact representative shall have the same authority as with the licensed operator.
 - (6) **Business Record Information.**
 - a. Complete information on whether the applicant/operator has previously operated a nonmetallic mining or processing operation in the State of Wisconsin or any other state, and, if so, the location of such mines or operations. Included shall be information on the prior experiences, if any, of the applicant/operator in the ownership, lease, operation, maintenance and closure/reclamation of any nonmetallic mining sites elsewhere, citing specific dates of ownership/operation and closure.
 - b. Included with such information shall be a statement on whether the operator has ever had a permit, license or zoning permit for a nonmetallic mining or processing operation revoked or suspended, or been subject to any type of enforcement action, corrective order or penalty from a federal, state, county or local regulatory body. Such information shall include rulings or adjudications against an operator or the operator's agent, principal or predecessor in administrative or judicial proceedings. If so, the reason(s) for such actions, and their status or resolution, shall be explained in writing, along with the business entity or trade name under which the applicant operated that was subject to the suspension, revocation or enforcement action.
- (c) **Site Information and Maps.**
- (1) **Site Map.**
 - a. A certified survey map (CSM), plat of survey, or other reasonably accurate and complete map of the proposed site, with parcel identification numbers, drawn to scale (drawn to a scale of not smaller than 200 feet to the inch) and prepared by a land surveyor registered by the State of Wisconsin.
 - b. The certified survey map or other reasonably accurate and complete map shall also show the entire area adjacent to the proposed mine site owned or controlled by the operator even though only a portion of said area is included in this application.
 - c. Property boundary lines, roads, streams and water courses, drainageways, marshes, rock outcroppings, wooded areas, blufflands, railroad tracks, utility lines and other significant features on or within 2 miles of the proposed site shall be accurately depicted.

- d. A supplemental site map depicting the type, location, and dimensions of all proposed landscaping, ponds, berms, vegetation and fencing. If the Visual Impact Statement required in Subsection (c)(4)b below reveals there is vegetation on or adjacent to the project site that must be retained for screening of the site, the applicant operator shall document how such vegetation will be protected throughout the operational life of the site.
- (2) **Aerial Photograph.** An aerial photograph of the proposed site at a scale of one (1) inch equals six hundred and sixty (660) feet (1:660), signed by both the operator and the landowner.
- (3) **Location of Existing Buildings and Structures.** The location, elevation, dimensions and use within the proposed site of all existing buildings and other structures, equipment, stockpiles, storage, existing culverts and drainpipes, natural gas lines, parking areas, and electric and communications infrastructure, whether overhead or underground.
- (4) **Location of Proposed Buildings, Facilities and Structures; Visual Impact Assessment.**
- a. For all proposed buildings, other appurtenant structures, facilities, ponds, berms, stormwater and erosion control structures, equipment, stockpiles, storage and parking areas within the site proposed for licensing, the following information shall be provided, as applicable: location, height above pre-existing grade, dimensions as constructed, and intended uses of such structures and facilities.
- b. The applicant operator shall provide a Visual Impact Assessment, which shall include:
1. A zone of visibility map which indicates locations or a radius from which the operating site may be seen.
 2. A pictorial representation of "before and after" view from key viewpoints in the Town as may be appropriate, including, but not limited to, state and county highways and parks; other public lands or designated historic sites; and any other location where the site is visible to a large number of visitors or residents.
- (6) **Location of Nearby Buildings and Structures.** The location and use of existing structures within 1320 feet of the outer perimeter of the proposed site.
- (7) **Topographic Map.** A topographic map of the property to be affected by the mine operation at contour intervals no greater than two (2) feet and extending one mile beyond the proposed mine boundary at a scale not smaller than 660 feet to the inch, with the mine site boundaries clearly shown, the location and total acreage of the site, and the name of all roads and waterways within two (2) miles of the site.
- (8) **Well Location Map.** A map on which all residential, agricultural, commercial and municipal wells within two (2) miles of the boundaries of the site in all directions are marked and assigned a numerical identification of the location.
- (9) **Exploratory Boring Map and Log.** A map showing the location of the exploratory borings at a scale of not less than 1 inch equals 660 feet. A geologic log of each exploratory boring including the GPS location, collar elevation and diameter of each exploratory boring, depth to groundwater observed, geologic description of the materials encountered, specifically including the soil and bedrock types, the applicant's interpretation of the geologic formations encountered and identification of the top and bottom elevations of any nonmetallic mineral deposit intersected by the exploratory borehole. Evidence that all test or exploratory bore holes have been filled and appropriately sealed in accordance with WI NR 812.26 (7) and appropriately reported to Wisconsin Department of Natural Resources per WI NR 812.26 (8).

- (10) **Zoning Compliance Statement; Consistency with Town Comprehensive Plan.**
- a. Information regarding the current zoning of the proposed mine site and on adjacent properties, and a statement addressing any rezoning, conditional use permit or variance that will be necessary from the appropriate zoning authorities for the use contemplated.
 - b. A statement addressing how the proposed nonmetallic mining operations and site will be consistent and compatible with the goals, objectives and community values identified in the Town of Colfax Comprehensive Plan, and whether any rezonings, conditional use/special exception permits, variances or land divisions required by appropriate zoning authorities can be obtained and whether the consistency standard of Sec. 66.1001, Wis. Stats., can be met. If there are issues of incompatibility, an explanation shall be provided.
- (11) **Floodplain, Shore/and or Wetland Zoning Information.** If applicable, information regarding the current floodplain, shoreland and/or wetland zoning of the proposed mine site or the existence of such zoning within $\frac{1}{4}$ mile of the site. If such zoning conditions exist, the Town will require a statement from the governing zoning authority addressing whether the proposed development will hamper flood flows, impair floodplain storage capacity, cause a need for wetlands remediation, or cause danger to human, animal or aquatic life. If applicable, information or a map showing the floodland and shoreland boundaries and the contour line lying a vertical distance of two (2) feet above the elevation of the one hundred (100) year recurrence flood interval, or where such data is not available, two (2) feet above the elevation of the maximum flood of record within the exterior boundaries of the proposed site and within $\frac{1}{4}$ mile therefrom.
- (12) **Surface Waters and Drainage Information; High Water Elevations.**
- a. The location and name of all surface waters, including lakes, private and/or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns, springs, and other water features on the site and within two (2) miles of the site.
 - b. High water elevation of all ponds, streams, lakes, flowages and wetlands within the boundaries of the proposed site and within five hundred (500) feet therefrom shall be shown.
- (13) **Proposed Lake and Stream Improvements or Relocation.** Information on any proposed lake and stream improvement or relocation, and notice of application for approval by the Division of Environmental Protection, Wisconsin Department of Natural Resources, if applicable.
- (14) **Soil Tests; Erosion Control; Stormwater Management.**
- a. A description of the distribution, depth and type of topsoil not only of the area of the site proposed for mining and for which an application is being submitted, but also of the entire acreage of land contiguous with the proposed mine site that is owned or controlled by the same landowner/lessor, as well as the geological composition and depth and width of the nonmetallic deposit.
 - b. Soil tests and reports, of a type as required by the Town, for the design of roadways, haulways, stormwater detention/retention and drainage facilities, on-site septic disposal systems, and erosion control facilities. Included shall be complete description of the depth, distribution and type of topsoil on the proposed site as well as the geological composition and depth and width of the nonmetallic deposit.
 - c. Complete plans on proper erosion control and stormwater management measures to be utilized at the site, with verification that such plans meet the standards of the

Wisconsin Statutes, Wisconsin Administrative Code and applicable county and local regulations.

- (15) **Transfer, Drying, Pressing, Manufacturing, Transload and Processing Facilities.** For drying, pressing, manufacturing, transfer, transload and processing facilities within the Town of Colfax, a map identifying the location, with accompanying report, of all other non-contiguous sites within the Town of Colfax and any other municipality or town, if any, that will contribute extracted material to the same transfer, drying, pressing, manufacturing, transloading, or processing facility to which the site for which the operator seeks a license.
 - (16) **Site Reclamation Plan.** Copies of all submitted applicable non metallic mining reclamation plan applications for the proposed site. The license application will not be considered complete until all county or state reclamation plans are approved and the Town Board has received a copy of the plan as approved by the County.
 - (17) **Project/ Site Name.** The common usage name for the proposed nonmetallic mining site and associated operations.
 - (18) **Non-Contiguous Contributing Sites.** A map identifying the location of all non-contiguous sites within the Town and nearby communities, if any, that will contribute extracted material to the same processing facility to which the site for which the applicant seeks a license under this Chapter will also contribute.
 - (19) **Threatened or Endangered Species Assessment.** With an application, verification shall be provided to the Town from the Wisconsin Department of Natural Resources that the proposed site is not the habitat of a Federal or State endangered species, specifically, but not limited to, the Karner blue butterfly (*Lycaeides melissa samuelis Nabakov*), the presence of which will require a survey to be conducted by qualified individuals to determine if wild lupine plants that support the species are present on the parcel. The presence of the Karner blue butterfly may require special permits and remediation plans approved by the Wisconsin Department of Natural Resources.
- (d) **Operations Plan.**
- (1) **Operations Timeline.** Dates of the:
 - a. Planned start of site preparation;
 - b. Planned commencement of mining and/or processing operations at the site;
 - c. Phasing of mining and reclamation activities at the site; and
 - d. Anticipated date of cessation of operations at the site.
 - (2) **Mining, Machinery and Processing Information.** Description of mining methods, machinery and equipment to be used for extraction, processing, drying and transportation of the extracted material, and the sequence of operations.
 - (3) **Volume of Material Estimates.**
 - a. Estimated volume of material to be extracted from the proposed site over the life of the mine.
 - b. Estimated volume of material to be extracted from the proposed site during the next calendar year, and over five (5) years .
 - c. If the proposed site is intended to be used solely as a drying, pressing, processing, transload or transfer facility, the amount of product, and its sources, that will be processed or pass through the site over the life of the site and for the next calendar year.
 - (4) **Locations of Structures, Stockpile Areas, and Road Access Points.** The proposed locations within the site of all future buildings and other structures (both temporary and permanent), equipment, stockpiles, storage, setbacks, berms, ponds, road access points, on-site haul roads, and parking areas.

- (5) **Transportation Report; Off-Site Trucking and Rail Routes.**
- a. Operators of industrial grade silica sand mining or processing operations shall only be permitted to sell or give away sand or waste sand from their site to secondary local users located on a designated Town Haul Route in order to preserve the integrity of designated Haul routes (examples: fill material, livestock bedding sand, etc.).
 - b. A detailed transportation report addressing the issues identified in Section 1.08(d) and also presenting plans on the number of projected truck trips per day, per week and per month and truck weight/loads that will be generated by the nonmetallic mining site. Each segment of an ingress/egress trip shall be counted as separate trips for purposes of this report.
 - c. The names, addresses and contact information of any transporters who will be authorized by the operator or be independent contractors for the operator to transport materials and product to and from the proposed site. Included shall be full disclosure of any prior record of violations, citations or forfeitures involving such transporters and drivers. Information shall also be provided regarding truck ownership, license numbers, haul weights, type and axle configuration of trucks to be used for hauling on Town Roads.
 - d. Identification of all proposed off-site trucking and railroad 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. The Town shall be informed at the time of license application of any intended proposals by the applicant to have a railroad spur extended to the proposed site. Complete information on the nature of service, anticipated number of railroad cars to be used to serve the site, railroad car storage arrangements, and regarding the railroad company proposed to serve the site shall be submitted by the applicant/licensee to the Town for review and approval.
- (6) **Estimated Water Use; Recycling.**
- a. Estimated water use (water budget), including an estimate of the amount of daily water use, anticipated water sources, measuring methods, and methods for disposing of water, including methods used for on-site retention/infiltration, control of run-off meeting 100-year flood standards, and recycling. Specific data shall be provided regarding the amount of water to be recycled on-site and the method of recycling.
 - b. A detailed plan shall be provided for the use of any high-capacity wells at the site, including copies of the required permit applications from the Wisconsin Department of Natural Resources and the full application submittal to the Wisconsin DNR. The license application will not be considered complete until all high capacity well permits have been approved and copies of the approval have been received by the Town Board.
- (7) **Hazardous Materials and Fuel Storage and Use.** A listing of any hazardous materials or hazardous, corrosive, toxic, or toxic residual substances, including fuel supplies and petroleum products, that will be stored, used or produced on-site and a description of the measures to be used for securing and storing these materials. [Cross-Reference: Section 1.08(i)].
- (8) **Chemicals; Flocculents.** A listing of all chemicals, their intended use, and approximate quantities to be stored on-site and to be used in the manufacturing or processing operations or in controlling dust, and their proposed method of storage. If the operator seeks to change or add chemicals after the issuance of a license, the Town shall be notified in writing by the operator a minimum of thirty (30) days prior to any such change or addition. Specifically, a list of any flocculent/polyacrylamides to be stored or used at the site shall be provided with the application, along with detailed information on the quantities to be used and the manner in which such flocculents would be utilized and disposed.

- (9) **Security.** Plans explaining security measures at the proposed site, including, but not limited to, security cameras and alarms, fencing, warning signage, access control, etc.
- (10) **Landscaping Plan.** A landscaping plan addressing how the requirements of Section 1.08(b) will be met.
- (11) **Lighting Plan.** A lighting plan addressing how the standards of Section 1.08(e) will be met. The plan shall include the location and limits of outdoor lights and a photometric diagram showing predicted maintained lighting levels of proposed lighting fixtures.
- (e) **Documentation Demonstrating Compliance with Minimum Standards.**
- (1) **Compliance with Minimum Standards of Operation.** The operator shall provide the documentation necessary, as determined by the Town, to demonstrate that the nonmetallic mining site and its associated operations can fully comply with the minimum operating standards prescribed in Sec. 1.08 and any other requirements imposed by the Town as a condition of licensing or separately by other regulatory authorities. Included with the application shall be full reports and approvals information from other regulatory authorities necessary for a nonmetallic mining site and for license issuance under this Chapter.
- (2) **Baseline Conditions and Proposed Operations Information.**
- a. With the application for an Operations License, the operator shall submit a report on how federal, state, county and local water quality-related standards and regulations will be met, including, but not limited to, addressing the specific operations issues in Sec. 1.08(h). The operator shall also provide information establishing water baseline conditions at the site before mining operations commence, including:
- The groundwater elevation across the site;
 - The groundwater quality at the site for lead, arsenic, turbidity, total suspended solids, pH, chlorides, nitrates, sulfides, specific conductivity and any chemical or residual of the chemical used as a flocculent and any other toxic substance that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made; and
 - The base flow of surface water within two (2) miles of the site.
- b. The operator shall submit a report on how federal, state, county and local air quality-related standards and regulations will be met with the proposed application, including, but not limited to, addressing the relevant dust control measures specified in Wis. Admin. Code NR 415.075 and the specific operations issues in Sec. 1.08(g). Additionally, the Operator shall submit a description of additional dust control measures to be used when the National Weather Service has issued a high wind warning for the area. The operator shall also provide information establishing background conditions for air quality at the site before operations commence.
- (f) **Cumulative Impact Information**
- (1) The Operator shall provide information necessary to determine whether and to what extent the proposed mining operation will create adverse cumulative impacts taking into account the direct impacts from the proposed mining operation together with the impacts associated with other approved nonmetallic mines and industries and truck traffic from other existing nonmetallic mines and industries that use public roads and highways within the Town.
- (2) A cumulative impact analysis shall address the following topics and any additional information that the Town requests to assess cumulative impacts:
- a. The cumulative amount of truck traffic on public roads and highways associated with the proposed mining operation together with other industries within or outside of the Town. The analysis shall assess the physical cumulative impacts on the Town roads as well as the impact of traffic on the health, safety and welfare of the Town residents.

- b. The cumulative impact of the proposed mining operation together with other industrial sites on the amount of ambient light and noise.
 - c. The cumulative impact of the proposed mining operation together with other industries related to the total amount of fugitive dust generated by these industries in or near the Town.
 - d. The cumulative impact of the proposed mining operation together with other industries related to the use of groundwater including the availability of groundwater for residences, agricultural operations, businesses and institutional uses as well as cumulative impacts of groundwater withdrawal on the base flow of surface water and wetlands.
 - e. The cumulative impact of the proposed mining operation together with approved nonmetallic mines related to groundwater and surface water contamination.
- (f) **Additional Information.**
- (1) The operator shall provide copies of all other local, state, and federal permits required to operate the nonmetallic mining operation. The application will not be considered complete until all required permits are granted and copies of approvals are submitted to the Town.
 - (2) The operator shall provide such additional information the Town deems necessary to evaluate the proposed mining operation.

Sec. 1.07 Small Site License.

- (a) **Purpose.** As an alternative to an Operations License under this Chapter for limited sites, a Small Site License may be utilized for nonmetallic construction-grade sand and gravel mining operations, such as typically exist with construction-grade sand and gravel pits in the Town of Colfax used, for example, as a source for road and driveway gravel. A Small Site License provides for a system of licensing and compliance with best management practices without the need to satisfy all steps necessary for an Operations License due to the small scale and limited impact on the community, property values, Town infrastructure, and the environment of such operations.
- (b) **Eligibility.** Nonmetallic construction-grade sand and gravel mining operations that meet the following criteria may be eligible to apply for a Small Site License in lieu of an Operations License, provided the following criteria can be satisfied:
 - (1) The nonmetallic mining operation consists of less than twenty-five (25) acres of total affected acreage over the life of the mine, pit or processing facility on the site.
 - (2) The nonmetallic mining operation does not employ blasting or use of explosives.
 - (3) The nonmetallic mining operation does not involve nighttime operations.
 - (4) The nonmetallic mining operation does not involve processing of materials from off-site.
 - (5) The nonmetallic mining operation produces only construction-grade sand and gravel.
 - (6) The nonmetallic mining operation does not involve mining at a depth below the point that is ten (10) feet above the groundwater table.
- (c) **Term.** Small Site Licenses shall be subject to renewal every five (5) years pursuant to the procedures in Sec. 1.16, and subject to the inspection, financial assurance and enforcement provisions of Sections 1.11, 1.12 and 1.17.
- (d) **Operations Standards.**
 - (1) For nonmetallic mining operations that qualify for a Small Site License, the Town Board may grant a Small Site License if the operator submits information and certifications showing compliance with the following:

- a. Payment of an application fee of Fifty Dollars (\$50.00).
 - b. Ownership and applicant information required by Sec. 1.06(b).
 - c. A reasonably accurate map of the site and areas of mining or excavation.
 - d. Information on the current zoning status of the site, including, if applicable, shoreland, wetland and floodplain zoning information.
 - e. Operations information as prescribed in Sec. 1.06(d)(1)-(4).
 - f. A statement agreeing to comply with the restrictions on compression brake use as found in Sec. 1.08(f)(6).
 - g. Agreement to notify the Town of regulatory violations per Sec. 1.08(a)(7).
 - h. Copies are filed with the Town of reclamation plans approved by the County and all other regulatory permits required by other federal, state or county agencies for the nonmetallic mining operation.
 - i. A certification that the operator will use best management practices to control dust, noise, light, surface water runoff and other off-site impacts from the operation.
- (2) Except as required in Subsection (d)(1) above, operators seeking a Small Site License shall not be required to comply with other application, licensing and operations requirements of this Chapter pertaining to sites for which an Operations License is required.

Sec. 1.08 Minimum Standards of Operation.

The Town Board may grant a license for nonmetallic mining and associated operations if the applicant can demonstrate compliance with the requirements of this Chapter and that the following minimum standards of operation can be completely and consistently met. Compliance with such requirements and standards are conditions of license issuance and licensure continuance:

(a) General Compliance Standards.

- (1) **Site Boundary Identification.** The operator shall clearly mark the boundaries of the entire licensed site, with appropriate safety notices and warnings against trespassing. The "no trespassing" signs shall be posted around the entire site perimeter at an appropriate distance for posting but no less than two (2) conspicuous places for every forty (40) acres within the site. Signs shall be sized at a minimum to meet the provisions of Section 943.013(2), Wis. Stats. [Cross-Reference: Subsection (b)(2) below].
- (2) **Local Compliance Verification.** The operator shall file with the Town Clerk (as required by this Chapter, separate agreement or at the Town's request) appropriate verification of compliance with all requirements and standards of this Chapter, and with any additional requirements made a condition of the Operations License.
- (3) **Blasting Activities; Use of Explosives.** No blasting or bumping shall be permitted unless all other non percussive methods have been shown unusable for the proposed site. If blasting is proposed by the operator, the operator shall show that the resulting percussive activity will not damage neighboring properties and that all other minimum standards under 1.08 will be met. The operator shall comply with any state statute and local blasting ordinance(s). If blasting is used, any damage to livestock, buildings, infrastructure and wells found to result from the blast shall be the financial responsibility of the operator to repair or replace. The Town Board shall, at the applicant's expense, employ or retain the services of independent experts to determine the cause and amount of damage.
- (4) No processed or unprocessed sand shall be imported from other mines for processing, storage, or transloading at a town-licensed site/facility without complying with the applicable requirements of this ordinance.
- (5) **Compliance With Other Federal, State, County and Local Permit Requirements.** Full compliance with such requirements from other regulatory bodies shall be a condition

of license under this Ordinance. In the event of a conflict between the requirements of this Ordinance and those of pertinent federal, state, and local standards, the more restrictive provision shall apply. The applicant/operator shall provide to the Town written verification that all applicable federal, state, county, and local permits, licenses and approvals required for the nonmetallic mining operation have been obtained as a condition of Operations License issuance prior to the commencement of operations. Copies of all such permits, licenses and approvals shall be filed with the Town Clerk as part of the application. Any anticipated conflicts with pertinent federal, state, county or Town laws, ordinances codes, rules and/or regulatory requirements shall be explained, with particular attention to safety and environmental-related areas of potential noncompliance. Examples of possible required permits, licenses and approvals applicable to nonmetallic mining sites and facilities (typically from the Wisconsin Department of Natural Resources or county zoning authorities) are, but not limited to, Air Permits, Stormwater Permits, High Capacity Well Permits, Cultural Resources Assessments, Zoning-related Permits, and, if the site is near surface water, Shoreland, Wetland or Floodplain controls, including Dredging Permits, Pond Permits, and Grading Permits [pursuant to Chapters 30 & 31, Wis. Stats., and NR103, NR 113, NR116, NR117, NR135, NR 216, NR340, NR400 and NR440, Wis. Adm. Code].

- (6) **Semi-Annual and Annual Meetings with Town Board.** During the first two (2) years of a licensing period, the operator shall, at a minimum, meet with the Town Board every six (6) months, in open session, at a properly noticed regular or special Town Board meeting to discuss and review operations at the site, possible issues and any necessary corrective actions. Thereafter, such meetings shall be held annually. Such semi-annual meetings shall occur annually in April/May and October/November and annual meetings in April/May. It shall be the sole responsibility of the operator to contact the Town Clerk and request placement of such appearance on a Town Board meeting agenda.
 - (7) **Notice of Regulatory Violations or Changes to Approved Plans.** The operator shall notify and file with the Town Clerk any modifications or amendments to approved plans, suspensions, revocations, notices of violation, citations, or other enforcement actions taken by any other governmental and/or regulatory body against the nonmetallic mining operation within the Town of Colfax. This information shall be submitted to the Town within seven (7) days of occurrence. Such violations, if confirmed, shall constitute a violation of this Chapter.
 - (8) **Active Mining Area.** The active mine site shall not exceed 20 (twenty) acres at any time. Any portion of the mine site exceeding 20 (twenty) acres shall be undergoing reclamation following the approved reclamation plan.
- (b) **Buffer Areas and Berms.**
- (1) The operator shall provide and maintain a buffer area a minimum of two hundred (200) feet in depth along all bordering property lines and public roadways. Mining activity, parking, stockpiling, or storage is not permitted in such buffer areas.
 - (2) The operator shall screen the mining, storage, processing and parking operations on the licensed site from public view by constructing a twenty-five (25) foot high or higher berm within the two hundred (200) foot buffer along the perimeter of the mine site. The berm shall protect neighboring properties from noise, dust, lighting, odors, and other adverse impacts of the operation. Prior to construction, the Town shall be consulted with on the design and configuration of berm construction and placement, which shall require Town Board approval prior to construction. Included in the berming and screening design shall be the planting of shrubs, small trees and other vegetation (excluding the use of invasive species) along the berm to reduce noise levels

and aesthetically improve the site. Gaps will be permitted in the berm, with gates, to provide for proper ingress/egress to the site.

- (3) The existing perimeter tree canopy at the highest points of elevation shall be retained to reduce the amount of dust leaving the proposed mine site and maintain the visual appearance and aesthetics of the site. Plantings on berms shall be properly maintained and dead plantings shall be promptly replaced.
- (4) Noxious weeds shall be controlled on the site, with particular attention directed to buffer areas.
- (5) There shall be a setback of one-half ($\frac{1}{2}$) mile from the mine site to the location of any dwelling unless the landowner consents to a lesser distance but not less than two hundred (200) feet. There shall be a setback of one (1) mile setback from the mine site to the location of any school or medical facility including nursing home facilities.
- (6) There shall be a setback of two (2) miles from any processing facility to any school or medical facility including nursing home facilities.
- (7) There shall be a buffer of $\frac{1}{4}$ mile from any navigable waters and $\frac{1}{2}$ mile buffer from any trout streams.
- (8) If a berm is placed within the buffer area and it lies along a public roadway, the bottom edge of the berm shall be a minimum of twenty (20) feet from the edge of any road side ditch and shall be vegetated to eliminate erosion entering the ditch.
- (9) The borders of the entire nonmetallic mine site or stand alone processing facility will be appropriately staked or marked, and the site will be secured by appropriate measures which may include fencing, gating, or other alternative measures consistent with mine safety and security.

(c) Hours of Operation.

- 1) The nonmetallic mining site shall only operate and remove materials from 7:00 a.m. to 7:00 p.m. during Daylight Savings Time and 7:00 a.m. to 5:00 p.m. during Standard Time. Operations shall not be conducted at any time on state-recognized holidays, Saturdays or Sundays. During such hours prohibited for mining or processing activities, other light- or noise-producing activities on the site, such as equipment repairs, also are prohibited.
- 2) The operator may submit a plan for extended hours as part of a Mining Agreement for Town Board approval, if the operator can demonstrate that additional hours for a limited term are necessary due to extraordinary or emergency circumstances and would be consistent with the objectives of protecting the public health, safety and welfare and quality of living objectives of this Chapter.
- 3) In the event of a natural disaster necessitating the need for emergency repair work, the owner/operator of a nonmetallic mining site shall notify the Town Board within 48 hours of its operation outside of stated hours of operation.

(d) Use of Town Roads.

- 1) The operator shall obtain a current bus schedule from all school districts which operate scheduled bus services on any roads used by trucks servicing the nonmetallic mining site. The operator shall ensure that trucks from the mining site shall not interfere with the safety of children being taken to or returning from school, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is the highest.
- 2) Trucks serving the site shall at all times operate with load covers or be of enclosed tanker design. All trucks shall display a sign no smaller than 24 inches by 24 inches identifying the truck is hauling for the Operator.
- 3) Trucks servicing the site shall not pass tractors and other agricultural implements or low- speed vehicles [as defined in Sec. 340.01(27h), Wis. Stats.] traveling on town roads. Nothing contained in this Chapter shall limit the authority of the Town Board to reduce speed or weight limits on

- Town roads in accordance with the Wisconsin Statutes.
- 4) To the greatest extent reasonably possible, the operator shall require trucks carrying material to or from the licensed nonmetallic mining site to travel on roads other than Town roads (i.e., federal highways, state highways, and county trunk highways) which have higher weight carrying design capacity. If roads maintained by the Town of Colfax are necessary for transport materials to or from the licensed site or otherwise in connection with the property, including with empty vehicles, a town road haul route shall be agreed upon and approved by the Town Board.
 - 5) The operator shall require any employees or independent contractors providing services to the operator to comply with all transportation requirements.
 - 6) The site shall be served by sufficient and safe access points. The access points shall have the approval of the Town Board, and, if applicable due to the location, the County Highway Department and/or the Wisconsin Department of Transportation. Access points shall be designed and placed so that the lights of vehicles entering and exiting the site are directed away from residential, commercial and agricultural buildings on adjacent lands.
 - 7) The Town Board may require the operator to construct, at the operator's expense, an acceleration lane to serve the site if a Town road is being utilized.
 - 8) The deposit or spilling of materials on roads is prohibited.
 - 9) In the event that the operator believes that any Town road will regularly be used to transport materials, permanently or temporarily, to or from the nonmetallic mine site, the operator shall immediately notify the Town. Upon such a notification and a clear necessity for use of Town roads is presented, the Town will designate haul routes to be used that will have the least impact on the Town and its residents (Haul Route). The operator shall cause its employees and independent contractors to use such designated haul route(s).
 - 10) Prior to a haul route being designated, a public hearing on the proposed haul route shall be conducted pursuant to the procedures in Sec. 1.05(c).
 - 11) The operator shall maintain clean streets on Town roads used to transport products associated with the nonmetallic mining site, keeping such roads free of dirt, mud, soil and other debris. Adverse weather conditions may compel temporary suspension of hauling activities from the site on Town roads in order to comply with these requirements.
 - 12) As authorized by Section 349.16, Wis. Stats., each operator of a nonmetallic mining operation shall be required to enter into a Town Road Use Agreement with the Town of Colfax addressing the issues herein regarding use of Town roads if such will be used as haul routes. The Town Road Use Agreement shall be negotiated upon the basis of a review of the factors in this Subsection and the following factors and such others as are determined by the Town Board to be of relevance to the proposed use of Town roads:
 - a) The State, County and Town highways and roads in the Town of Colfax which are proposed to be utilized for hauling purposes.
 - b) The anticipated level of hauling truck traffic per day, week, month and year.
 - c) The tonnage or other measurement of nonmetallic mining proposed to be hauled by each fully loaded truck.
 - d) If some or all of the hauling trucks are owned or operated by persons other than the operator, the nature and extent of contractor controls proposed to be exercised by the operator over its use of Town roads shall be disclosed to the Town.
 - e) Insurance, by type and amounts, proposed to be carried by the operator or other companies/independent contractors for all haul trucks to be operated in the Town of Colfax.
 - 13) If such a Town road haul route is agreed upon, a form of maintenance funding by the operator and adequate funding for a Road Maintenance Escrow Account shall be agreed upon as a condition of license. [Cross-Reference: Sections 1.12 and 1.14]. Prior to utilizing a designated haul route and annually thereafter, the operator and Town shall mutually agree

to select an independent third party who will conduct an initial pre-operations Road Assessment and subsequent annual Road Assessments of the haul routes in cooperation with and including input from the parties. Such Road Assessment shall set forth in a report projected repairs needed due to haul route use by the operator and its employees and contractors, and such Road Assessment shall contain a reasonable estimate of costs of such repairs. As part of such Road Assessment, the Town shall have a videotape prepared at the operator's expense documenting the condition of all haul roads prior to commencement of work at the licensed site.

14) The Road Assessment shall include, but not be limited to:

- a) Name and length of Town roads to be used.
- b) A general survey of the present condition of the pavement, roadbeds, shoulders, culverts, and the right-of-way.
- c) Estimated remaining life of roads at the time.
- d) Upgrades of pavement, roadbeds, shoulders, culverts, and rights-of-way needed to a design standard meeting or exceeding Wisconsin Department of Transportation standards to withstand the weight and volume of proposed haul traffic.
- e) A determination of upgrades of geometric designs of highways to Wisconsin Department of Transportation standards to accommodate anticipated traffic volume; including, but not limited to, haul truck traffic.
- f) Preparation of an inventory of affected Town highways and any necessary acquisition of rights-of-way required to accommodate recommended upgrades.

15) The Town shall ensure that any third-party engaged for the Road Assessment services, use sound professionally-accepted planning practices for haul route maintenance activities and work, and the Town shall make reasonable efforts to mitigate the costs of repairs to the haul routes. Such efforts may include, but not be limited to, reasonable preventive maintenance intended at overall cost reduction of haul route repairs while maintaining appropriate road conditions that protects public safety and recognizes the shared use of such roads with the general public. The operator shall have an opportunity to review the Road Assessment(s) and meet with appropriate Town representatives to discuss the Road Assessment. The parties shall have the right to modify the recommendations put forth in the Road Assessment by mutual written agreement in the Mining Agreement.

16) The operator shall comply, and cause its contractors and employees to comply, with weight restrictions imposed on Town roads, truck operator permits, and other town ordinances.

17) It is noted that Section 86.02, Wis. Stats, provides for triple damages to be paid by parties injuring a town road or highway.

(e) **Control of Light.**

1) The Operator shall limit night lighting on nonmetallic mine site or processing facility to that which is minimally necessary for security and worker safety. Every effort consistent with the legal requirements for safety shall be made to eliminate illumination of the night sky and neighboring properties. At a minimum such measures shall include the following:

- a. The use of full cutoff shrouds on all lights. There shall be no upright into the night sky (zero % above 90 degrees) permitted between dusk and dawn or horizontal light into neighboring residences (zero % property line backlight emissions).
- b. Outdoor lighting fixtures shall be aimed, located, and maintained to prevent glare.
- c. Adaptive lighting controls to dim or extinguish lighting when not needed in order to reduce wasted light.
- d. Portable lighting shall only be used temporarily as necessary to illuminate work areas.

- e. The use of berms of sufficient height coupled with other methods of visual screening to block light from neighboring properties.
 - f. The design and location of access roads to minimize lights from traffic and operations to neighboring properties.
- 2) Upon written complaint of light pollution made to the Town Board, the Town shall notify the operator, who shall take the necessary steps to mitigate the light pollution by redirecting the lighting and taking other reasonable steps to address the complaint within 1 week.
- (f) **Control of Noise.**
- 1) The operator shall control off-site noise levels to the maximum extent practicable to avoid adverse impacts to neighboring landowners by the construction of 25 foot or higher berms along all mining site boundaries.
 - 2) The noise levels at the boundaries of the mining or stand-alone processing site shall not exceed 50 decibels. The noise levels at the boundaries of any school or medical facility shall not exceed 40 decibels.
 - 3) The Town may, at its discretion and at the operator's cost, order readings or samplings by retained experts to protect the public health and safety.
 - 4) Backup generators shall be operated only during power outages and for testing and maintenance purposes.
 - 5) The operator shall use "white noise" or low tone backup alarms to the extent permitted under federal and state regulations.
 - 6) The use of engine compression brakes (commonly known as "jake brakes") by trucks is prohibited on all Town roads and shall also be applicable as a condition of an Operations License to all trucks entering or leaving the nonmetallic mining site, except in extreme emergency situations. The operator shall take appropriate steps to inform all truck drivers and independent contractors providing services at the site of the required compliance with this Subsection. If a truck driver and/or his/her employer disregards this regulation, the operator shall take proper steps to correct the practice or cease using the services of any such truck driver, his/her employer or trucking company that refuses to comply.
 - 7) Proper maintenance of required berming and mufflers on mining equipment/trucks shall be conducted immediately to resolve problems.
 - 8) Excluded from this noise standard are temporary projects being done at the site on drainage ditches, screening berms, or road ditches.
 - 9) Any exceedance of noise standards in this section shall be corrected within 48 hours of notification by the Town Board.
- (g) **Control of Air.**
- 1) Operators of industrial sand mining operations and stand alone frac sand processing plants shall be responsible for conducting and funding post-licensing ambient levels of airborne particulate respirable matter up to and including PM_{4.0}, respirable crystalline silica and Total Suspended Particulates (TSP).
 - 2) The type and number of monitors needed, the location of the monitors, and frequency and duration of the monitoring program shall be determined by the Town, after consultation with an independent industrial hygienist and/or other Town retained experts and the operator. At a minimum, monitors shall be installed and maintained at the operator's expense, and the site shall have a minimum of four (4) automatic and continuous and four (4) laser respirable particulate monitors, kept properly maintained and functioning; appropriately located on the borders of the mine site and a web-linked weather station that provides real-time measurements of wind speed and direction, precipitation, and temperature at the mining site.

- 3) Data analysis shall be designed to exclude background sources of dust by linking the on-site weather station wind direction measurements to perimeter real-time dust monitors required by this Subsection.
- 4) The air monitoring shall be conducted by an independent laboratory selected and contracted for by the Town, and certified for these measurements with results reported directly to the responsible local entity and an independent expert designated by the Town Board and made available to the public.
- 5) Monitoring shall utilize as a minimum, web-linked, real-time laser dust and respirable particulates monitors equipped with a respirable dust cyclone and 5.0 μm PVC gravimetric filters and by the standards contained in 40 CFR part 50 (2011), Appendix B, at the boundary line of the licensed site or an alternative "federal reference method (FRM)" approved by an industrial hygienist and/or other Town Board retained expert.
- 6) Monthly readings and data from the Total Suspended Particulates (TSP) monitors shall be provided to the Town within ten (10) days of the end of the month and also be posted on a website (or at a location) designated by the Town. The real-time laser respirable particulate monitors and weather station shall be web-linked to permit continuous public access to the data. The gravimetric filters shall be collected daily for mass and crystalline silica analysis and the monitors' logged particulate concentrations, recorded not less than every ten (10) seconds, shall be posted every day on a website designated by the Town. The results of the laboratory analyses shall be provided to the Town within ten (10) days of the end of the month and also be posted on a website designated by the Town.
- 7) If the real-time laser respirable particulate monitors show an exceedance of 35 micrograms per cubic meter of $\text{PM}_{4.0}$ in any thirty (30) minute period, the operator shall immediately implement additional best management practices, including shutting down operations if necessary, to reduce $\text{PM}_{4.0}$ emissions below thirty-five (35) micrograms per cubic meter.
- 8) Air monitoring results indicating in excess of three (3) micrograms per cubic meter of respirable crystalline silica [fifteen (15) minute average concentration - downwind perimeter minus upwind perimeter] shall require an alert to the Town and require immediate implementation of additional effective best management practices, including shutting down operations if necessary, in order to provide acceptable air concentrations.
- 9) If the air monitors show an exceedance of 150 micrograms per cubic meter of TSP in any twenty-four (24) hour period, the operator shall immediately implement additional best management practices, including shutting down operations if necessary, to minimize TSP to an acceptable level as defined above.
- 10) The operator shall utilize all relevant dust control measures specified in Wis. Admin. Code NR 415.075.
- 11) The operator shall have and submit to the Town an established protocol for additional dust control measures when the National Weather Service has issued a high wind warning for the area.
- 12) If there are repeated exceedances of these standards notwithstanding the implementation of best management practices, the Town may suspend or revoke the license.
- 13) The operator shall completely enclose any dry processing and conveyance facilities and shall enclose to the extent practicable any loading and unloading or stockpiling facilities.
- 14) The Town may, at its discretion and at the operator's cost, order additional readings or samplings by a Town-designated independent testing service at any time deemed

necessary to protect the public health and safety.

- (h) **Standards Regarding Groundwater and Surface Water.** The requirements in this subsection apply to any nonmetallic mining site and any processing facility involving a wash plant or other water intensive process.

1) Impacts to Groundwater Quality.

- a. Nonmetallic mining operations and reclamation shall be conducted in a manner that does not result in: groundwater becoming unfit for human consumption; significant changes from baseline conditions outside the mine site boundary, exceedance of any groundwater quality standard in Wisconsin Administrative Code Chapters NR 140 and NR 809; exceedance of any state or federal health advisory limits.
- b. No nonmetallic mining shall be permitted in Recharge zones labeled excellent, very good or good as delineated on the *Town of Colfax Location of Recharge Areas to the Sandstone Aquifer in Dunn County, Wisconsin* map as verified by the exploratory boring soil type. Excellent, very good and good recharges are defined as 2 inches recharge per hour or faster.
- c. 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 prior to nonmetallic mining operation. Base-line data prior to the onset of mining must be included in the application material.
- d. Mining operations shall have at least two (2) monitoring wells with additional monitoring wells required as determined by the Town Board and its retained experts. The number and location of additional wells will be based upon recharge, size of operation, specific mining operations, and unique qualities of the mining site. At least one (1) such well shall be a sentinel well at the boundary of the mining site that is down gradient of the groundwater flow and one (1) such well at the boundary of the mining site that is up gradient of the groundwater flow.
- e. Prior to the onset of nonmetallic mining operations, all monitoring and private wells within one (1) mile of the property on which the nonmetallic mine site or processing facility is located shall be sampled and tested for the following: lead, arsenic, iron, iron bacteria, total coliform bacteria, turbidity, total suspended solids, chlorides, nitrates, sulfides, specific conductivity, pH, manganese, and VOC's (Volatile Organic Compounds), chemicals or residuals of chemicals to be used on the mine site including flocculents, and any other toxic substance that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made.
- f. Quarterly monitoring well samples shall be taken at the operator's cost by a Town approved qualified independent sample collector and tested by an independent lab approved by the Town Board.
- g. The testing shall include the following: lead, arsenic, iron, iron bacteria, total coliform bacteria, turbidity, total suspended solids, chlorides, nitrates, sulfides, specific conductivity, pH, manganese, and VOC's (Volatile Organic Compounds), chemicals or residuals of chemicals to be used on the mine site including flocculents, and any other toxic substance that may reasonably be believed to be present in the area or in the type of deposit from which the extraction is made.
- h. The Town Board reserves the right to reasonably require sampling for other metals, minerals or toxic substances as a condition of licensing, at the operator's expense. This monitoring well requirement may not be applicable to sites that are used exclusively for drying (without chemicals), transfer or transloading at the nonmetallic mining site; such a determination shall be made by the Town Board if so requested by the operator in writing.
- i. All private wells within one (1) mile of the mine in the down-gradient direction of the

groundwater flow shall be tested for contaminants listed in Section 1.08 (h)(1) (g) annually. If a well shows some contamination of groundwater supply that may be due to the mining operation, all wells within two (2) miles of the mine site boundary shall be sampled and tested for these same contaminants. Any well or wells up to two (2) miles in any direction from the mine site shall be sampled at any time the Town requests a sampling.

- j. The mine operator will arrange for copies of all the water sample results from the independent lab to be forwarded to the Town Board and well-owner(s) within 5 days of the results.
 - k. Water monitoring shall continue ten (10) years after reclamation is complete.
 - l. Any wash ponds and settling ponds shall have ten (10) feet of separation distance to bedrock and to the highest groundwater elevation, and shall have an impervious liner meeting the technical standards contained in Wis. Admin Code NR504.06(2). The operator is responsible for maintaining all aspects of the wash and settling ponds, including impervious liners and ensuring that releases from the ponds to the groundwater shall not occur. Any portion of any pond to which chemicals were introduced that exists at an elevation below the projected post-reclamation water table, shall be fully excavated and removed during the reclamation.
 - m. Any wash ponds and settling ponds that have flocculents introduced to them shall not use poly-diallyldimethylammonium chloride (p-DADMAC) or any other chemical until it has been found not to be a contaminant or testing measures and standards are developed.
 - n. Mining operations shall not extract materials at a depth below 10 feet above the highest measured groundwater level in the mine.
 - o. Those portions of mining extraction sites exceeding 20 (twenty) acres shall be covered with a filtering layer meeting the requirements of Chapter SPS Table 383.44-3 as listed under its lower fecal coliform (equal or less than 10,000 cfu per 100 mL) section (a minimum of 24 inches). At the conclusion of operations within a mine site all excavated areas of sandstone bedrock shall be filtered/covered at a minimum as required above.
 - p. Operator shall test sediments accumulated in process and storm water retention ponds prior to reclamation for all substances listed in 1.08 (h)(1)(f). These sediments/slurries shall not be discharged or used in reclamation until they meet federal, state, and local health based standards for above substances.
 - q. Contemporaneous reclamation activities shall be conducted to prevent erosion, pollution, and change of pH of surface and ground water and temperature of waterways.
 - r. Further Monitoring may be required at the Town Board's direction based on a review of any monitoring compiled.
- 2) Impacts to Groundwater Quantity.
- a. One of the monitoring wells located in the active mining site shall be used to measure static and pumping water levels on a monthly basis and the data shall be provided to the Town of Colfax.
 - b. Any mine site high-capacity well will be metered with the meter(s) available to Town Board approved independent inspectors.
 - c. Water from any high-capacity well shall not be transferred or sold out of the mine site without Town Board Approval.
 - d. Nonmetallic mining operations and reclamation shall be conducted in a manner that does not cause a lowering of the groundwater table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater available for reasonable use to current and future users. Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within two (2) miles of the nonmetallic mining site. A "significant

reduction" is a lowering of the water table that results in a substantial adverse impact on a private well including, but not limited to, the inability of a well to provide water on-demand and on a continuous and/or uncontaminated basis. [Cross-Reference: Section 1.13]. The Town Board reserves the right to reasonably require verification testing as a condition of licensing, at the operator's expense.

3) Impacts to Surface Water Base Flow and Use

- a. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within two (2) miles of the nonmetallic mining site, including, but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the commencement of mining activities. The Town Board reserves the right to reasonably require verification testing as a condition of licensing, at the operator's expense.
- b. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters which serve as a critical source of water for agricultural, recreational or municipal functions such as fire protection. 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 operations. The Town Board reserves the right to reasonably require verification testing as a condition of licensing, at the operator's expense.

4) Stormwater/Wastewater Management.

- a. The operator shall repair any damage to, and remove sediment from, any private property, or town roads, ditches and other drainageways when the operator is determined by the Town to be primarily responsible for such sediment or damage caused by runoff from the nonmetallic mining site for any reason, including, but not limited to, heavy rains and/or snowmelt runoff.
- b. The operator shall provide a qualified individual to conduct inspections for all storm water and wastewater management practices. Inspections shall occur at least once a week and after each rain event of .5 inches or more. The inspection log shall include the name of the inspector, the date and time of inspection, a description of the present phase of construction, the findings of the inspection including an assessment of the condition of erosion and sediment control measures and the installation of storm water management BMPs and any action needed to comply with this ordinance. The inspection log also shall include a record of BMPs maintenance and repairs. The log shall be maintained on site and available to a Town Board representative at any time during normal business hours. A copy of the log will be submitted with the annual report.
- c. Water runoff that does not flow through any exposed or disturbed area of the mine site and only flows through vegetated areas shall be treated as surface water runoff. The operator shall undertake all measures necessary for the control of surface water runoff from the nonmetallic mining site and operations in order to prevent pollution and erosion of sediment onto neighboring properties and/or into surface water and groundwater. All measures taken shall be in compliance with all state, county and town erosion control standards pursuant to NR 216 and NR 151, Wisconsin Administrative Code. A copy of the compliance plan shall be filed with the Town Clerk with the application for an Operations License. Inspectors of the state, county and town may enter the licensed site at any time during daylight hours to inspect for proper compliance with these standards.
- d. Water that comes in contact with overburden, raw material, intermediate product, finished product, or waste material will be treated as wastewater when discharged

off the mine site and shall not exceed the EPA standards such as of 40mg/l maximum concentration of Total Suspended Solids (TSS).

- e. If the nonmetallic mine site has areas adjacent to the site that are being used for residential, commercial or agricultural purposes, the operator shall take all measures necessary to prevent surface water runoff from entering or leaving the licensed site or otherwise causing contamination of surface waters and ground water.
- f. The site shall be internally drained to a standard approved by the Town Board; the Town Board may authorize a temporary modification of the internal drainage requirement during the initial construction phase of the mining site. Runoff generated from the mining operation shall be contained in sediment or infiltration ponds of a type and design approved by the Town Board. Any wash or settling ponds that have chemicals introduced into them, including but not limited to flocculents, shall have ten (10) feet of separation distance to bedrock and to the groundwater elevation, and shall have an impervious liner.

(i) **Hazardous Materials.**

- 1) All hazardous materials, chemicals and petroleum products shall be stored, used and disposed of in accordance with applicable state, federal, county, and local laws and regulations.
- 2) All such storage of liquid hazardous materials, chemicals and petroleum products shall provide leak-proof containment not less than 125% of the tank volume. Plans for such containment facilities shall be submitted to the Town for Town Board approval as part of the application process.
- 3) When fueling trucks or mobile tank trailers are used to refuel equipment on-site, all fueling shall occur on a fueling absorption pad to minimize any leakage.
- 4) The operator shall have a plan for responding to spills of any hazardous materials on the site. Said emergency spillage plan shall be filed with the Town Clerk prior to commencing operations, and also with any fire and emergency medical services department serving all or parts of the Town of Colfax, the County Sheriff's Department, and the County Emergency Management office.
- 5) The operator shall provide, and pay any costs involved with, an initial training and site visit of emergency responders for site-specific dangers, chemicals and hazardous materials that may require special or additional precautions during an emergency response situation.
- 6) In addition to contacting all other appropriate regulatory officials/agencies, the operator shall contact the Town Chairperson and/or Town Clerk as soon as possible, but not later than two (2) hours, after the occurrence of a hazardous waste or chemical spill, leak or contamination incident of any kind, or in the event of an improper release of any chemical, dust or particles above levels permitted by applicable federal, state, county or local regulations.
- 7) The operator shall accept responsibility for remediation of any spill, release, accidental discharge, waste accumulation, or similar concern, of a hazardous chemical, or otherwise actionable nature caused or exacerbated by the mining operation.
- 8) The operator shall not dispose of waste materials containing any hazardous chemicals or residuals declared to be hazardous by a government regulatory authority in toxic amounts, on the site or in the Town of Colfax, except in accordance with applicable state and federal law and with prior approval of the Town Board.

(j) **Waste Materials**

- 1) The operator shall be responsible for contracting, at the operator's cost, for regular removal of non-toxic refuse and waste from the nonmetallic mining site. Between collections, such refuse shall be stored in covered refuse disposal dumpsters.
- 2) The amount of waste material (non-marketable fines) returned to a mine site as part of the contemporaneous 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. The 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 site shall not exceed the tonnage of waste contained in the raw material received at the processing facility from that site.

- (k) **Reclamation Standards.** Reclamation of non metallic mining sites shall be performed pursuant to the county-approved reclamation plan, as required by NR 135, Wis. Adm. Code. Reclamation shall comply with all applicable federal, state and county laws, ordinances and regulations related to reclamation, environmental protection, zoning, and other land use controls.

- (l) **Site Abandonment.** An operation mine site may be considered “abandoned” if no mining operation has occurred for a period of twelve (12) consecutive months or at the end of the license term if no renewal request has been made. Prior to a finding of abandonment, the Town board must provide notice to the operator of the pending expiration of the operator’s license. The operator may provide a written request for an extension of the renewal deadline within 30 days of the Town Clerk’s mailing of the registered notice of impending expiration. The request shall include 1) an explanation for the cessation of the mining operation and 2) a plan and a date for restarting of the operation. If the Town receives no such request within the 30 day period, the Town shall notify the applicant that the operator’s license will expire and shall inform the County Land Conservation Department of license expiration or abandonment and request that the County order final reclamation to begin. Upon a declaration of abandonment by the county, reclamation will commence in any area of the mine site that has not been reclaimed. All reclaimed land shall be monitored for a period of ten (10) years post reclamation to ensure that all reclamation standards have been met and are sustainable.

- (m) **Additional Standards.** The Town Board may, at any time, impose requirements in addition to or exceeding the minimum standards of this Section if the Town Board has a rational basis to conclude that the intent of this Chapter, the objectives of the Town of Colfax Comprehensive Plan, and the public health, safety and welfare will not be adequately protected without the imposition of additional measures.

Sec. 1.09 Citizen Complaint.

- (a) Notwithstanding the results of any monitoring, citizens may document a complaint about nuisances such as but not limited to air emissions, noise, light, water quality/quantity/discharge from the Mine Site by presenting evidence such as a photograph or video with documentation including time, date and location of the concern. Documentation is to be presented to the Town Board and the Operator. The Operator will have one week to respond to the citizen complaint and indicate what if any additional operational practices, best management practices or control devices will be implemented.
- (b) If there are three or more such documented complaints in a six (6) month period the Town shall hold a public hearing pursuant to Sec. 1.05 (c) to establish the magnitude of the problems and to evaluate the operator’s efforts to resolve them.

Sec. 1.10 Annual Report.

- (a) **Annual Report Requirement.** The Annual Report shall be submitted four (4) months prior to the expiration date of the license and be accompanied by any renewal application to the Town Board for all active and intermittent mining sites for which the operator has an operations license from the Town of Colfax. The annual report shall be in addition to the requirement for annual and semi-annual meetings between the operator and Town Board required in Section 1.08(a)(6) and other verification reporting required by this Chapter.
- (b) **Annual Report Contents.** The annual report shall include the following information:
 - (1) Operator information and description of the nonmetallic mining site and associated operations. Included shall be information on any changes in the ownership of the parcel or the operating entity.
 - (2) A map accurately depicting:
 - a. The area of excavation to date;
 - b. Areas reclaimed and unreclaimed, including a calculation of the number of acres in each category (Note: This requirement is not applicable if the operator has only conducted drying operations without chemicals, transfers and transloading on the site);
 - (3) A description of activities and operations on the site for the previous calendar year;
 - (4) A description of activities and operations on the site anticipated for the following calendar year;
 - (5) A written report demonstrating how the operator has complied with all terms and conditions of its license and this Chapter. The report shall also include any surface water, groundwater and all other monitoring results, as applicable;
 - (6) A summary of all areas of non-compliance, and what was, is, or is planned to be done to bring non-compliant areas into compliance;
 - (7) Copies of all reports submitted to other agencies.
 - (8) Signed certification that required reclamation has been carried out in accordance with the approved reclamation plan.
- (c) **Annual Report Availability.** The Annual Report shall be made available to the public online or upon request within two (2) weeks upon receipt by Town Board.

Sec. 1.11 Inspections.

- (a) **Inspection Authority.** The Town Board, or its authorized representative, are authorized to enter upon lands affected by this Chapter to make inspections to determine the condition of nonmetallic mining sites in the Town of Colfax in order to safeguard the public health, safety and general welfare and determine compliance with the minimum standards of this Chapter and any conditions of license. Inspections of the site under this Chapter may occur prior to or after license issuance to determine compliance with this Chapter.
- (b) **Inspection Protocols.** The Town Board, or its authorized representative, may enter the nonmetallic mining site during regular hours of operation for inspection(s) and, if necessary, to investigate any complaints or concerns identified by the Town Board. The Town's representative(s) shall notify the operator's designated contact person by telephone or e-mail prior to entering the site, and will report his/her presence to the on-site supervisor upon entering the site upon showing proper identification.
- (c) **Inspection Warrants.** If permission to inspect the subject property is denied by the operator or owner, an inspection warrant may be sought pursuant to Sec. 66.0119, Wis. Stats.

Sec. 1.12 Financial Security.

- (a) **Financial Assurance.** Financial assurance shall be provided to the Town of Colfax by an Operations License licensee as a condition of license approval in the amount necessary for the following:
- (1) **Road Repairs; Road Maintenance Escrow Account.**
 - a. An amount necessary for the repair and maintenance of Town roads used for truck traffic transporting materials to or from the nonmetallic mining site and/or stand alone processing plant shall be mutually agreed upon as part of a Town Road Use Agreement. Upon approval of an agreement by the Town Board, the financial assurance shall be in the form of a Road Maintenance Escrow Account. Both the Road Maintenance Escrow Account and Town Road Use Agreement shall contain provisions under which the operator agrees to pay for all exceptional maintenance costs during and immediately after the term of the Agreements, and pay for ordinary maintenance at a rate to be determined upon the basis of the amount of use of Town roads by the operator in comparison with other use of said roads.
 - b. The Town will provide a detailed written statement and accounting to the operator for maintenance costs incurred as the work contained in the Assessment is completed, together with any supporting documentation reasonably requested by the operator. [Cross-Reference: Section 1.08(d)]. Such statement shall be provided to the operator no less than fifteen (15) days prior to a withdrawal from the escrow account by the Town; the operator shall have the right to review the documentation and identify alleged errors and omissions. An exception to the provisions of this Subsection is that in the event an emergency or hazardous road condition exists that has not been immediately corrected by the operator, the Town Chairperson may order that emergency road repairs be performed by a qualified contractor, and the licensed operator shall promptly reimburse the Town for reasonable emergency road repair costs.
 - c. The Town shall only receive reimbursement from the escrow account for maintenance to the Haul Route necessitated by use of the Haul Route, or other Town roads improperly used by the operator in violation of this Chapter, or other Town roads, by the operator and its employees or independent contractors. Such maintenance costs must be primarily attributable to damage to the Town roads caused by the operator or its employees or independent contractors hauling products, supplies and equipment related to the nonmetallic mining site, and may include the cost of professional consultants working with the Town in addition to actual construction costs.
 - d. If the Road Maintenance Escrow Account becomes insufficient to properly fund repairs and maintenance to a Haul Route(s), or any other Town road used by the operator or its employees or independent contractors, the operator shall immediately deposit an amount as directed by the Town into the escrow account sufficient to meet such obligations.
 - (2) **Alternative Water Supply; Water Supply Escrow Account.** An amount necessary to provide an alternative water supply for 40 days and/or new water supply to potentially affected residences or agricultural operations within two (2) miles of the nonmetallic mining site or such other larger area shown to be impacted by the operator's nonmetallic

mining operations.

- (3) **Mitigation Escrow Account.** An amount of at least \$18,000 per acre of disturbed mine site land plus any area affected by nonmetallic mining operations in the next calendar year will be set up as an escrow account to be used to mitigate such damages that may occur in the ten (10) year monitoring period post-reclamation. This assurance will be used to seek remedies such as, but not limited to, pollution of ground or surface water due to leaching of contaminants; failure of sustainable growth of vegetation; failure of safe and healthy occupation of mine site area by human, livestock, or wildlife due to a change in air quality or water pH or temperature; insufficient erosion control.
 - a. Monies from this account will not be used to meet other financial obligations under the Ordinance without the express authorization of both the licensee/operator and the Town.
 - b. Withdrawals from this account will include the cost of independent professional consultants hired as well as for the actual actions taken to restore the damage to a safe level.
 - c. Upon certification by an independent expert hired by the Town that all standards have been met 10 (ten) years post-reclamation, any unused portions of escrow amounts will be returned to the Operator.
 - d. In the event of violations or noncompliance, the Town may seek additional remedies.
- (4) **Property Value Assurance.** By separate Mining Agreement, the Town and operator, as a condition of license, shall enter into a Property Value Guarantee Agreement with identified private property owners near the nonmetallic mining site. The actual terms and parties affected by an Agreement/Ordinance shall be addressed in such Agreement(s)/Ordinance.
- (5) **Other Areas of Financial Security.** In addition to the above, financial assurance and escrow accounts may be required by the Town Board to address other identified issues such as, but not limited to, damages done to personal property, health, animal health, environment, and/or other unforeseen damages shown to be resulting from nonmetallic mining operations.

- (b) **Form of Financial Assurance.** The form of financial assurance made to the Town of Colfax shall be that form approved by the Town Board, following review by the Town legal counsel, and may include utilization of escrow agreements/funds, irrevocable letters of credit, performance bonds (only if there is a written agreement that the bond insurer will notify the Town Board of any pending cancellation), or other measures agreed upon by the Town Board.
- (c) **Changes in Amounts of Financial Assurance.** If at any time after an Operations License has been issued by the Town of Colfax the Town Board determines that the amount of financial assurance must be increased to meet specific road repair, water supply needs, or other areas identified by the Town Board as requiring a financial assurance mechanism, or the amount previously provided has been utilized, the Town shall notify in writing the operator of the additional amount(s) required and the basis for the request. The operator shall have thirty (30) days to provide, to the Town Board's satisfaction, the increased amount(s).
- (d) **Failure to Maintain Financial Assurances.** Failure by the operator to properly maintain the financial assurances and security required by this Chapter, and particularly this Section, shall automatically terminate any license issued under this Chapter.

Sec. 1.13 Damage to Private Water Supplies.

- (a) **Damage to Private Water Supply Claims.** A property owner within two (2) miles of a nonmetallic mining site may seek remedies under this Section for any of the following damages to a private water

supply caused by the operator or its employees and/or contractors:

- (1) An enforcement standard or preventative action limit is exceeded in a private water supply well on the property owner's land.
 - (2) A substantial adverse impact on the quantity or quality of water from a private well on the owner's property occurs, including, but not limited to, the inability of any such well to provide water on a continuous or uncontaminated basis.
 - (3) A lowering of surface waters which serve as a source of water for personal, business, agricultural or municipal functions on the owner's property to levels below base flow levels for more than five (5) days.
- (b) **Notice Requirements.** Any property owner under Subsection (a) above seeking a remedy under this Section shall simultaneously file a notice with the Town Clerk and the operator of the nonmetallic mining site of the occurrence of the event(s) under Subsection (a) describing the nature and extent of the problem.
- (c) **Use of Financial Assurance.**
- (1) Within twenty-four (24) hours of receipt of such notice under Subsection (b), the Town Chairperson is authorized to expend funds provided for in Sec. 1.12, if deemed applicable and appropriate, to provide an interim water supply.
 - (2) If applicable, the Town shall also use funds under Sec. 1.12 to indemnify the Town of Colfax for any claims filed under Section 281.77(4), Wis. Stats.
 - (3) An interim water supply shall continue to be provided until the Town Board has approved the report or plan under Subsection (d) below.
- (d) **Plan Requirement.** Within twenty (20) days of receipt of a notice pursuant to Subsection (b) above, the nonmetallic mine operator shall provide to the property owner and to the Town Clerk:
- (1) A report that demonstrates that the impact to the property owner's water supply was not attributable to the mining operation, with technical data supporting such position; or
 - (2) A plan for a permanent alternative water supply to the affected property owner, to be paid for by the operator.
- (e) **Town Determination.**
- (1) The Town Board, following consultation with experts and with the operator and property owner, shall review the report or plan and approve or deny such report or plan.
 - (2) If the Town Board determines that the operator's report is incorrect or insufficient, the Town may continue to provide an interim water supply under the fund provided for in Sec. 1.12 (a)(2) during any subsequent negotiations, mediation, or litigation.
 - (3) If the Town Board determines that the nonmetallic mine operator was not the cause of the damage to or failure of the private water supply, the operator may elect to seek reimbursement by the property owner for the costs of supplying interim water during a period not exceeding one (1) year. The costs to the Town for expert consultants to review the matter shall not be subject to this reimbursement provision.
- (f) **Other Claims.** A property owner beyond two (2) miles of the nonmetallic mining operation may apply to the Town for use of funds under Sec. 1.12 to remedy damages to a private water supply, provided that the property owner can demonstrate that the damage to the private water supply was caused by the nonmetallic mining operation. If the Town Board determines that sufficient cause exists that the damage may have been caused by the nonmetallic mining operation, the property can utilize the procedures and remedies of this Section.

Sec. 1.14 Mining Agreement.

- (a) The Town and operator shall enter into a Mining Agreement supplementary to the nonmetallic mining license, such agreement to provide additional site-specific provisions governing

operations and indemnification. Any of the provisions of this Chapter may be modified by agreement between the Town and the operator, but only if the Town Board and its retained experts determine that the agreement provides protections for the public, at a minimum, at least equal to those of this Chapter and is consistent with the goals and objectives of the Comprehensive Plan.

- (b) The Town and operator shall enter into a Property Value Guarantee Agreement with identified private property owners near the nonmetallic mining site. The actual terms and parties affected by an Agreement shall be addressed in such Agreement(s).
- (c) As part of the development of any Mining Agreement(s) a Public Hearing(s) shall be held pursuant to procedures in Sec. 1.05 (c).
- (d) All mining Agreements shall include as a condition of license and agreement approval a clause prohibiting the owner of the parcel in question from seeking or consenting to annexation to a municipality.

Sec. 1.15 Insurance and Indemnification.

- (a) **Insurance Requirements.** All operators licensed under this Chapter shall maintain the following insurance coverages commencing upon construction of the facility:
 - (1) **Liability Insurance Coverage.**
 - a. The licensed operator shall, at its expense, at all times maintain a broad form comprehensive coverage policy of public liability insurance insuring the licensed operator and property owner (if different) against loss or liability caused by the operator's occupation and use of the nonmetallic mining site in an amount not less than Five Million Dollars (\$5,000,000.00) of combined single limit liability coverage per occurrence, accident or incident, which may have a commercially reasonable deductible. The Town of Colfax shall be listed as an additional named insured on the policy.
 - b. As a condition of license, the operator shall also be responsible for ensuring that sufficient vehicle insurance coverage [One Million Dollars (\$1,000,000.00) per occurrence] is in effect for any trucks used to service the site by its employees or independent contractors.
 - (2) **Worker's Compensation Insurance.** Worker's compensation insurance coverage in an amount required by Wisconsin law shall be provided by the operator.
 - (3) **Independent Contractors.** The operator shall require subcontractors and independent contractors and others not protected under the operator's worker's compensation insurance to obtain and maintain worker's compensation and employers' liability insurance.
 - (4) **Proof of Insurance.** Certificates of insurance evidencing compliance with the insurance requirements of this Subsection shall be provided to the Town. The operator shall provide written notice to the Town in the event there is a lapse in coverage exceeding thirty (30) days. All policies, other than worker's compensation policies, shall be written on an occurrence and not on a claims made basis.
- (b) **Defense of Licensing Decision(s) and Indemnity.**
 - (1) **Defense of Licensing Decision.**
 - a. In addition to the indemnification described below, the licensed operator shall reimburse the Town its reasonable attorney's fees incurred in defending any legal actions brought by third parties challenging the legality or enforceability of this Chapter or any portion thereof, or the issuance of a license by the Town pursuant to this Chapter.
 - b. If the Town seeks reimbursement, it shall notify the licensed operator in writing promptly upon discovering any claim entitling the Town to a licensing defense

- reimbursement, but in no event more than ninety (90) days after receiving written notice of any action, lawsuit, proceeding, investigation or other claim against the Town which may give rise to a claim for a licensing defense reimbursement.
- c. The licensed operator shall not be obligated to reimburse the Town with respect to any such liability, action or claim if the Town fails to notify the operator in accordance with the provisions of this Subsection in sufficient time, including, without limitation, any responsive motion or answer to a complaint, petition, notice, or other legal, equitable action or claim, but only insofar as such knowing failure to notify the licensed operator has resulted in prejudice or damage to the operator.
 - d. With respect to any third-party action, lawsuit, proceeding, investigation, or other claim which is subject to reimbursement under this Subsection, the licensed operator shall be entitled to assume, with counsel of its choice, the defense of such action, lawsuit, proceeding, investigation or other claim at the licensed operator's expense; provided, however, that the Town shall be entitled to participate, at its option, in the defense of such claim and to employ counsel of its own choice for such purpose (the fees and expenses of such separate counsel to be borne by the Town) and to assert against any third-party any and all cross claims and counterclaims the Town may have, subject to the operator's consent, which consent shall not be unreasonably withheld. If the licensed operator elects to assume the defense of any such claim, it may settle such claim in its sole discretion so long as either:
 - 1. Such settlement provides an unconditional release of the Town; or
 - 2. The licensed operator shall obtain the prior written consent of the Town (which consent shall not be unreasonably withheld).
 - e. If the licensed operator elects to assume the defense of any claim, the Town shall cooperate with the licensed operator and its counsel in such defense.
- (2) **Indemnification.** The licensed operator shall defend, indemnify and hold harmless the Town and its officials, employees and agents from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees (such liabilities together known as "liability") arising out of the operator's selection, construction, operation, reclamation, and/or removal of the nonmetallic mining site and affiliate equipment, including, without limitation, liability for property or personal injury (including death) whether such liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification, however, shall not be construed as limiting or qualifying the Town's other indemnification rights available under law.

Sec. 1.16 Renewal of Operations Licenses.

- (a) **Renewal Request.** The operator shall make a written request to the Town Clerk for a renewal of its Operations License to operate its nonmetallic mining site no less than four (4) months prior to the date on which the license will expire. The application shall be accompanied by the payment of both the renewal application fee of Two Thousand Dollars (\$2,000.00) and the base administrative escrow account fee of Twenty-Five Thousand Dollars (\$25,000.00) established for the administration of the Chapter. [Cross-Reference: Section 1.05].
- (b) **Report Submittal.** The request for license renewal shall include the annual report from the previous calendar year in accordance with the provisions of Section 1.10.
- (c) **Preliminary Renewal Application Review by Staff.** The Town Clerk shall make a preliminary review of the renewal application within thirty (30) days of receipt to determine whether the application is complete, and, upon a determination that the application is complete, shall forward it to the Town Board.

- (d) **Preliminary Renewal Application Review by Town Board.**
 - (1) The Town Board shall review the renewal application to determine if additional information or expertise is necessary to properly evaluate the application. The Town shall retain an engineer and/or other qualified person with appropriate expertise to inspect the nonmetallic mining site. If the site has been reported as being inactive for the past year, a member of the Town Board or its designee may be assigned to inspect the site. If no additional information or professional assistance is deemed necessary, the Town Board shall schedule the renewal application for a determination under Subsection (f) below.
 - (2) If the Town Board determines that additional professional assistance is required to properly review the renewal application, the Town Board shall authorize hiring an engineer, attorney, land use planner, geologist, soils scientist, hydrologist, acoustical expert, or other qualified person with appropriate expertise to advise the Town and give written notice to the applicant.
- (e) **Consultant Reports.** Once the applicant has submitted additional requested information and has paid the additional administrative fee in the required amount, the retained expert(s) shall report to the Town Board on whether the renewal application meets the requirements of this Chapter. The Town Clerk shall place the request on the agenda of the next regular or special meeting of the Town Board prior to the expiration of the license.
- (f) **Renewal Determination.** The Town Board may grant the request for renewal if it finds:
 - (1) There have been no material violations of this Chapter, the Operations License or other Town regulations which have not been appropriately remedied.
 - (2) The operator has not received recurring or multiple citations, notices of violations or corrective orders from regulatory authorities and/or the Town, or otherwise exhibited a recurring pattern of noncompliance.
 - (3) All applicable fees have been paid in full and financial responsibility requirements have been met.
 - (4) All required reclamation to this point has been completed and verified by a Town board approved independent expert.
- (g) **Renewal Denial; Public Hearing.** If the Town Board denies the request for renewal, the Town Board shall notify the operator and provide written reasons for its determination. Following the determination, the operator shall be provided with an opportunity for a public hearing on the non-renewal and possible reconsideration.

Sec. 1.17 Violations, Enforcement Procedures and Penalties.

- (a) **Violations.** Each of the following occurrences shall constitute a violation of the terms and conditions of the licensing requirements of this Chapter and licenses issued hereunder, and any such violation shall be grounds for license revocation or suspension, issuance of a citation, injunctive relief or other remedies available to the Town after the expiration of the notice and any cure period (for whatever reason for such a default and whether it shall be voluntary or involuntary or be affected by operation of law or pursuant to any judgment, order or regulation). The following are violations under this Chapter:
 - (1) **Operating Without a License.** Engaging in nonmetallic mining and/or associated activities without an Operations License or Small Site License granted by the Town Board.
 - (2) **Noncompliance with Ordinance Requirements and/ or Conditions of License.** Failure to comply with the minimum standards and other terms of this Chapter, other Town regulations, and/or other conditions imposed as a condition of license, including related contracts, financial assurances and agreements. There is a violation if there is a material failure by the licensed operator to comply with any requirements of this Chapter and/or conditions of license directly related to the operation and conditions of approval for the nonmetallic mining site and associated operations, and if the operator

fails to cure the material failure in order to come into compliance within a period of thirty (30) days after the date of such notice. A mitigating factor may be if the operator commences performance to correct such violation within such compliance period and is diligently proceeding to complete such performance, to the Town Board's satisfaction.

- (3) **Providing False or Misleading Information.** Making an incorrect, misleading or false statement in the information and documentation submitted during the licensing application and review process, during inspection of licensed operations by Town representatives, or with required monitoring, sampling and/or reporting.
 - (4) **Failure to Provide Annual Report.** Failure to timely file the annual operations report required under Sec. 1.09 or to appear before the Town Board under Sec. 1.08(a)(6).
 - (5) **Failure to Take Appropriate Action in Response to Violations.** Failure to take appropriate action in response to a notice of violation or noncompliance, citation, request for additional financial assurance, or other order issued by the Town Board or its authorized representative, or any other regulatory authority. There is a violation if there is a material failure by the licensed operator to comply with any statute, regulation, rule, contract or license administered by any federal, state or county regulatory authority or the Town directly related to the operation of and conditions of approval for the nonmetallic mining site and associated operations, and if the operator fails to cure the material failure in order to come into compliance within a period of thirty (30) days after the date of such notice (unless the regulatory authority has specified a shorter time for compliance). A mitigating factor may be if the operator commences performance to correct such violation within such compliance period and is diligently proceeding to complete such performance, to the Town Board's satisfaction.
- (b) **Public Hearings on Violations; Denial of a License Application or Renewal.** In the event of alleged violations, or the denial of a license application or renewal request, the following procedures shall be followed:
- (1) **Request for Public Hearing.**
 - a. Any person affected by a notice of violation or noncompliance, request for additional financial assurance or other order issued by the Town Board in connection with the enforcement of this Chapter, or upon denial of an application for a license or license renewal, may request and shall be granted a public hearing on the matter before the Town Board.
 - b. Such party shall file with the Town Clerk a written request for a public hearing, and shall set forth his/her name, address, e-mail address, telephone number(s), fax number, and a brief statement of the grounds upon which the hearing is requested and/or why the mitigation of the order(s) is warranted.
 - c. The written request for a public hearing shall be filed with the Town Clerk within thirty (30) days upon receipt of a notice of violation or noncompliance, or upon denial of an application or renewal application. Upon receipt of the written request for a hearing, the Town Clerk shall set a time and place for a public hearing before the Town Board and shall give the petitioner written notice thereof.
 - d. Following the public hearing, the Town Board, by majority vote, shall sustain, modify or withdraw the notice described in Subsection (b)(1)a above, or grant, deny, or grant with conditions the license or renewal license, depending on the Town Board's findings as to whether the provisions of this Chapter have been sufficiently complied with. The hearing petitioner shall be notified in writing within ten (10) days of such determination.
 - e. The proceedings of the public 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 record in the minutes of the Town Board or in a separate report or resolution, which shall be on file with the Town Clerk as a public record. Such record shall also include a copy of every notice and order issued in connection with the case.

- (c) **Remedies.** The Town Board may take any appropriate action or proceeding against any operator, landowner or other appropriate person in violation of this Chapter, including, but not limited to, the following, or any combination of the following:
- (1) **Stop Work Order.** Issue a stop work order, as follows:
 - a. Representatives of the Town administering this Chapter are authorized to post an order stopping work upon land which has had a license revoked or on land currently undergoing activity in violation of this Chapter. Notice is given by both posting upon the land where the violation occurs one (1) or more copies of a notice poster stating the violation, and by mailing a copy of the stop work order by certified mail to the party whose activity is in violation of this Chapter. The stop work order shall specify that the activity on the site must cease or the site be brought into compliance within five (5) days.
 - b. Any stop work order shall remain in effect unless retracted by the Town Board, the Town's authorized administrative representative, or by a court of general jurisdiction or until the activity is brought into compliance with this Chapter. Continued violation(s) of a stop work order may be referred for legal action.
 - (2) **Notice of Violation.** Issue a notice of violation and order that specifies the remedial action(s) to be taken to remedy a violation or other situation.
 - (3) **Citation Issuance.** Issue a citation in accord with the Town of Colfax Code of Ordinances.
 - (4) **Action by Town Legal Counsel.** Refer the matter to Town legal counsel for consideration and commencement of legal action, including, but not limited to, the assessment of penalties and injunctive relief.
 - (5) **License Suspension or Revocation.** Suspend or revoke an Operations License pursuant to Subsection (d) below.
 - (6) **Request Compliance Review by Other Agencies.** Request review of the operations in question by federal, state and/or county regulatory bodies for compliance with their standards.
- (d) **Suspension or Revocation of Operations License.** After giving notice and providing for the option of a public hearing, the Town Board may suspend or revoke an Operations License for a violation(s) pursuant to Subsections (a) and (b) above.
- (e) **Penalties.**
- (1) **Forfeiture and Other Penalties.** Any person or entity that is found to have violated a provision of this Chapter shall pay a forfeiture of not less than five hundred dollars (\$500) per violation nor more than five thousand dollars (\$5000) per violation. Issuance of a citation does not preclude the use of other remedies, such as, but not limited to, injunctive relief, or prosecution for violating other Town ordinances. The penalties and remedies in this Section are nonexclusive and shall not be interpreted as a limitation or prohibition against non-Town parties commencing private legal actions or requesting review by federal, state or county regulatory authorities. Each day that a violation exists constitutes a separate offense.
 - (2) **Court and Legal Costs.** Any person or entity adjudicated for a violation of this Chapter shall pay all court costs and reasonable attorney's fees.
 - (3) **Forfeitures Not to Offset Other Penalties or Financial Obligations.** Notwithstanding anything in this Section, a violator may not use the payment of fines, forfeitures, liquidated damages, required financial obligations, payment of mandatory fees or other

- penalties or obligations to evade or avoid compliance with this Section.
- (4) **Contamination Cleanup Costs.** In contamination situations, and in addition to any other action, the Town may commence legal action against both the party who releases or causes the contaminants and the owner of the licensed site whereupon the contaminants were released to recover the costs, together with the costs of prosecution. The party who releases or causes such contaminants to be released and the owner of the land where upon the contaminants have been released or caused shall be jointly and severally responsible for the costs of cleanup, consultant or contractor fees, including all administrative costs for the oversight, review and documentation, including that of Town employees/agents, equipment and mileage.
 - (f) **Prior Infractions.** A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present violation(s).
 - (g) **Judicial Review.** Parties shall have the right to appeal actions under this Section to circuit court within thirty (30) days of the date of the Town determination.

Sec. 1.18 Severability and Abrogation.

- (a) If any provision of this Ordinance is adjudged invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.
- (b) If the application of this Ordinance to a particular parcel of land, building, structure, water or air is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not be applicable to any other land, building, structure, water or air not specifically included in said judgment.
- (c) This Chapter is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Chapter.

Sec. 1.19 Effective Date.

This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 25 day of March, 2015

TOWN OF COLFAX, WISCONSIN

Dany Klukas
Chairperson

Rebecca Kiesow
Town Clerk

INTRODUCED: 3-25-2015

PUBLISHED/POSTED: _____

PASSED: 3-25-2015

State of Wisconsin
County of Dunn

I hereby certify that the foregoing ordinance is a true, correct, and complete copy of an ordinance duly and regularly passed by the Town of Colfax Board of Supervisors on the 25 day of March, 2015 and that said ordinance has not been repealed or amended and is now in full force and effect.

Dated this 25 day of March, 2015

Rebecca Kiesow
Town Clerk

