

TOWN OF MUKWA

ORDINANCE 1-09

NONMETALLIC MINING OPERATIONS REGULATIONS

ARTICLE I INTRODUCTION

0109.01 Authority.

This Ordinance was adopted under the statutory authority granted pursuant to the Village Powers of the Town of Mukwa, to §§. 60.10 (2) (c), 60.22 (3), and 61.34 (1), Wis. Stats.

0109.02 Adoption.

The Town Board, by this Ordinance, adopted on proper notice with a quorum and roll call vote by a majority of the Town Board present and voting, provides the authority for the Town Board to regulate nonmetallic mining operations within the Town of Mukwa.

0109.03 Title.

This Ordinance shall be known and cited as the "Nonmetallic Mining Operations Regulations, Town of Mukwa, Waupaca County, Wisconsin."

0109.04 Purpose and Intent.

The purpose and intent of this Ordinance is to establish nonmetallic mining operation regulations in order to promote the public health, safety, and general welfare of the Town of Mukwa, and to:

- (1) Provide for the safety of Town residents;
- (2) Supplement County, State, and Federal nonmetallic mining controls;
- (3) Minimize the impact to the public and to the environment resulting from nonmetallic mining operations in the Town;
- (4) Recognize the positive aspects of nonmetallic mining in the Town;
- (5) Provide the best possible environment for living in the Town;
- (6) Minimize the risk of environmental pollution resulting from nonmetallic mining operations; and,
- (7) Provide for administration and enforcement of this Ordinance by the Town Board.

0109.05 Severability.

If any section, subsection, sentence, clause, phrase, or portion thereof of this Ordinance is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause, phrase or portion thereof. The Town Board hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more section, subsection, sentence, clause, phrase, or portion thereof may be declared invalid or unconstitutional.

0109.06 Abrogation and Greater Restriction.

(A) It is not intended by this Ordinance to repeal, abrogate, annul, impair or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations or permits previously adopted or issued pursuant to law. However, whenever this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

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

0109.07 Repeal.

All other ordinances or parts of ordinances of the Town of Mukwa inconsistent or in conflict with this Ordinance, to the extent of inconsistency or conflict only, are hereby repealed.

0109.08 Effective Date.

This Ordinance shall be effective after a public hearing, adoption by the Town Board of Mukwa, and publication. The effective date for this ordinance is **March 1, 2009.**

ARTICLE II DEFINITIONS

0109.09 Definitions.

For the purpose of this Ordinance, certain words used therein are defined as follows:

Berm -A raised bank of soil and rock, topped by native plants, shrubs, and or trees constructed so as to provide a visually appealing barrier between nonmetallic mining operations and adjacent land uses.

Best Management Practices - Methods, measures, or practices designed to prevent or reduce ground and surface water pollution.

County-Refers to Waupaca County.

Enlargement-Any horizontal or vertical increase beyond dimensions of the original application for the project Site.

Environmental Pollution-The contaminating or rendering unclean or impure the air, land, or waters of the State or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.

Flyrock-Rock, gravel, soil, and other materials which may be ejected during blasting operations.

Modification-Any vertical or horizontal increase or decrease within the dimensions of the original application for the project Site.

Nonmetallic Mining or Nonmetallic Mining Operation-Operations or activities for the extraction from the earth for sale or use by the operator of mineral aggregates such as stone, sand, gravel and nonmetallic minerals such as asbestos, beryl, clay, feldspar, peat, talc; and topsoil-related operations or activities such as excavation, grading or dredging if the purpose of those operations or activities is the extraction of mineral aggregates and nonmetallic minerals; and related processes such as crushing, screening, scalping, dewatering and blending. Nonmetallic mining or nonmetallic mining operation does not include or allow the following activities or uses by way of illustration which include, but are not limited to: manufacture of concrete building blocks or other similar products, asphalt or hot blacktop mixing and production of ready mix concrete.

Nonmetallic Mining Refuse -Waste, soil, rock, mineral, liquid, vegetation, and other waste material resulting from nonmetallic mining operations. This term does not include merchantable byproducts resulting from or displaced by the nonmetallic mining operation.

Nonmetallic Mining Site or Project Site or Site -The location where a nonmetallic mining operation is proposed to be conducted or is conducted, including all surface areas from which minerals are removed, related storage and processing areas, areas where nonmetallic mining refuse is deposited, and areas disturbed by the nonmetallic mining operation by activities such as construction or improvement of roads, haulage-ways, berms, and setbacks.

Operator -Any person engaged in a nonmetallic mining operation or who applies for or holds a nonmetallic mining permit issued under a nonmetallic mining ordinance, whether individually, jointly, or through subsidiaries, agents, employees, contractors, or subcontractors.

Parties in Interest -The owner and operator of a proposed or existing nonmetallic mining Site and all owners of property located within 1,500 feet of the boundaries of the parcel that contains the proposed or existing nonmetallic mining Site. When this term is used in conjunction with an obligation of the owner and operator of a Site, it only refers to the adjacent property owners.

Permit -Any permit which may be required under this Section of an operator as condition precedent to commencing or continuing nonmetallic mining at a project Site.

Topsoil- That material, typically the "A" and "Upper B" of the soil horizon, which, based upon the official federal or county soil survey, is acceptable for respreading on the surface of regraded areas to provide a medium which sustains dense plant growth consistent with native species typical of adjoining areas capable of preventing wind and water erosion of the topsoil and materials below.

ARTICLE III GENERAL PROVISIONS

0109.10 Permit Required.

(A) All nonmetallic mining operations within the Town of Mukwa shall obtain a permit from the Town before commencing operations. This Ordinance does not apply to the following activities:

- (1) Excavations or grading by a person solely for domestic use at his or her residence.
- (2) Excavations or grading conducted for highway construction purposes within the highway right-of-way.
- (3) Grading conducted for farming, preparing a construction site, or restoring land following a flood or natural disaster.
- (4) Excavations for building construction purposes.
- (5) Any activities conducted at a soil or hazardous waste disposal site required to prepare, operate, or close a solid waste disposal facility under §§. 289.10 to 289.33 or a hazardous waste disposal facility under §§. 291.001 to 291.97, Wis. Stats., provided, however, that this ordinance applies to activities related to solid or hazardous waste disposal which are conducted at a nonmetallic mining site separate from the solid or hazardous waste disposal facility such as activities to obtain nonmetallic minerals to be used for lining, capping, covering, or constructing berms, dikes, or roads.
- (6) Any nonmetallic mining site or portion of a site which is subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources under §§. 30.19 (Enlargement and protection of waterways), 30.195 (Changing of stream courses), and 30.20 (Removal of material from beds of navigable waters), Wis. Stats.
- (7) The existing nonmetallic mining operations identified in Section (B)(1) below, except as otherwise set forth in Section B.

(B) Existing Nonmetallic Mining Operations.

- (1) This subsection applies to the following existing non-metallic mining operations:
 - (a) The Wood sandpit located on Larry Road in Section 8.
 - (b) The Dorschner sandpits located on Bean City Road and Mulroy Road in Section 24.
 - (c) The MCC sandpit located on Bean City Road in Section 24.
- (2) The above-identified nonmetallic mining operations shall, within 30 days of said effective date of this Ordinance, be provided with a copy of this Ordinance via US mail, return receipt requested.
- (3) Within 45 days of receipt of this Ordinance, operators of the above-identified nonmetallic mining operations shall register with the Town by providing the name, address and telephone number of the operator, the address and legal description of all locations where existing nonmetallic mining operations are maintained and a description of the nonmetallic mining operations (i.e., sandpit, gravel pit, etc.).
- (4) The above-identified nonmetallic mining operations may continue to operate subject to the following condition: If any such operations are discontinued for twelve (12) consecutive months or are changed to include nonmetallic mining operations other than those indicated in its registration, then the grandfathered status of the operations shall lapse and thereafter any operations shall strictly conform to all of the provisions of the Ordinance.

0109.11 Application for Permits.

(A) An operator shall obtain a nonmetallic mining permit prior to commencing nonmetallic mining of a Site. The application for a permit shall be submitted to the Town Clerk on forms provided by the Town. The application for a nonmetallic mining permit shall be signed by the applicant and shall be accompanied by information, which shall include, but not be limited to, the following:

(1) General Information. The name, address, and telephone number of the operator.

(2) Lease(s). A signed copy of the lease(s) (if applicable) which authorizes the operator to enter upon the lessor's land for the purpose of mining as defined in this Ordinance. The expiration date of the lease shall be clearly indicated therein.

(3) Legal Description. A legal description and survey map of the tracts of land to be involved and affected by the proposed nonmetallic mining operation and the approximate total number of acres involved.

(4) General Map. Ten copies of a general map which shall be drawn at a scale of no less than one (1) inch equals 400 feet and shall include, at a minimum, all of the following:

(a) Property boundaries of the operator's owned and/or leased land consistent with the legal description of the premises.

(b) Location and names (if applicable) of all known streams, wetlands, environmentally sensitive areas, roads, railroads, utility lines, easements, and restricted covenants on or immediately adjacent to the Site.

(c) Location of all structures owned by parties of interest within 1,500 feet of the property boundaries.

(d) Location of all private and/or public wells within 1,500 feet of the property boundaries.

(e) Names and addresses of all parties in interest.

(f) Boundaries for the Site.

(g) Location and description of mining site boundary stakes and permanent reference point.

(h) Current zoning classification of property.

(i) Current proposed land use of property as identified in the Town of Mukwa Comprehensive Plan.

(j) Existing and proposed drainage within and outside the site of operations to a distance of 1,000 feet reflecting the handling of all waters, natural and pumped.

(k) Location and description of all setbacks and berms.

(5) Operation Plan. Three copies of the Operation Plan shall be submitted and include information about the Site, a legal description of the proposed nonmetallic mining operation, and methods and procedures to be used in mining the Site including, but not necessarily limited to:

(a) Type of mining, processing, and transportation equipment to be used.

(b) Type of material(s) to be extracted.

(c) A description of the proposed horizontal and vertical dimensions.

(d) Limits of the proposed operation plan.

(e) Primary travel routes to be used to transport extracted material(s) to processing plants or markets.

(f) Measures to be taken to control noise, dust, and vibrations resulting from operations at the Site and/or a written explanation as to why such measures are not required.

(g) Vegetation or planting plan for berms.

(h) If explosives are to be used in the operations, a copy of the Blaster's Explosive Use Plan submitted to the Town, maintained on file during the duration of nonmetallic mining operations, and updated when necessary.

(i) A statement that the application has complied with all Wisconsin State Statutes, Administrative Code provisions, County nonmetallic mining reclamation plan requirements, and any Town or County ordinances regulating land use, storm water (drainage), erosion control, wetlands, floodplains, shorelands, navigable waters, zoning, emissions, and discharges from the Site of operation and that all required plans and permits have been submitted and/or obtained by the applicant.

(6) Certificate of Insurance. Each application for a permit herein or a renewal thereof shall be accompanied by a Certificate of Insurance for a commercial general liability policy, and said policy of insurance shall have limits of coverage not less than \$1,000,000 in the aggregate, and \$500,000 per occurrence and the **Town of Mukwa** shall be named as an additional insured on applicant's policy of liability insurance;

- (7) A copy of the County's Reclamation Permit;
- (8) A Refuse, Waste and Contamination Plan;
- (9) A Storm water Plan;
- (10) An Erosion Control Plan;
- (11) A hydro-geologic study to determine the potential zone of influence of the operations on groundwater supplies.
- (12) A Traffic Impact Analysis
- (13) Other Information. The Town Board may require the submission of such other information as may be necessary to determine the nature of the nonmetallic mining operation and the effect on the surrounding area.

(B) The Town Board may waive portions of the specified information if it is satisfied that, because of the nature or method of the operation, such information is not relevant or is unnecessary to a full and proper evaluation of the application. In determining what information shall be waived, the Town Board shall take into account, among other things, the nature of the applicant's operation and whether the operation is a legally pre-existing operation. It shall be the obligation of the applicant to request any such waiver. Such request shall set forth the justification for such waiver.

0109.12 Permit Approval, Renewal and Appeal Process.

(A) Standards for Evaluation and Approval. The Town Board in conjunction with the Town's consultants shall review:

- (1) The Site plan and proposed operation including all items required under §0109.11 (5).
- (2) Existing and proposed structures.
- (3) Architectural plans, if necessary.
- (4) Neighboring land and water uses.
- (5) Parking areas, if necessary.
- (6) Highway access, ingress and egress points.
- (7) Traffic impact analysis including traffic generation and circulation, if necessary.
- (8) Drainage.
- (9) Refuse, waste and contamination plan.
- (10) Certificate of insurance
- (11) Storm water drainage plan
- (12) Erosion control plan
- (13) Hydro-geologic study to determine the potential zone of influence of the operations on groundwater supplies.
- (14) The effects of the proposed use, structure, operation, and improvement upon the public health, safety and welfare, flood damage protection, water quality, shoreland cover, natural beauty, and wildlife habitat.
- (15) The effects of the proposed use on Parties in Interest, including structures, community and private wells, noise, air emissions (including dust), water pollution, and quality of life.
- (16) Any other information required by the Board under §0109.11 (13).
- (17) For legally pre-existing operations, consideration of the pre-existing nature and circumstances of the operation.

(B) Public Hearing.

(1) Upon receipt of a complete permit application, the application shall be forwarded to the Town of Mukwa Planning Commission for review and recommendation. After the Planning Commission has issued a recommendation, the Town Clerk shall schedule a public hearing on the application before the Town Board.

(2) Notice of the aforementioned public hearing shall be published as a Class 1 notice in a newspaper of general circulation within the Town of Mukwa. In addition, notice of said hearing shall be mailed to the last-known address of all parties of interest. Failure to receive notice shall not invalidate any action taken by the Town Board.

(3) At the hearing on an application for a nonmetallic mining operations permit, the Town Board shall hear and receive any evidence or sworn testimony presented by the applicant or any authorized agent. At the conclusion of the applicant's presentation, the Town Board shall hear first any public comments from those in

support of the application, then from those in opposition to the application, and finally, the recommendation of the Planning Commission and the Town's consultants. The applicant shall be given an opportunity to respond to any adverse comments, evidence, or recommendations.

(C) Approval, Approval with Conditions or Denial.

(1) Within 30 days after the hearing, the Town Board shall grant, deny, or grant with conditions the permit based upon specific findings and conclusions as to whether the applicant has met the standards set forth in this Ordinance. The Town Board may grant an application conditioned upon meeting certain operational provisions and standards, which shall not be less stringent than the minimum standards hereinafter set forth herein. The Town Board's determination shall be in writing and sent to the applicant and interested parties by US Mail, return receipt requested. The Town shall return one (1) copy of the Operation Plan, dated and signed by the Town Chairman and Town Clerk, with the issued permit.

(2) The following are the criteria the Town Board may consider for issuance, renewal or denial of a nonmetallic mining operations permit:

(a) Issuance of a Reclamation Permit from the County.

(b) The nonmetallic mining operations plan and compliance with the operation plan.

(c) Provision of Certificate of Insurance.

(d) Installation, provision, and maintenance of adequate and necessary physical structures, equipment, and operational controls determined by the Town Board to prevent public nuisances and to protect public health and safety near the nonmetallic mining operation or persons entering the nonmetallic mining operation, including public nuisances associated with noise, dust, odors, fires, explosions, water pollution, air pollution, and erosion.

(e) Blast logs; pre-blast notification logs; foundation inspections; well inspection and testing reports; ground water monitoring reports.

(f) Any other pertinent requirements deemed necessary by the Town Board so as to eliminate, alleviate, or control any unreasonable hazard, danger, harm, risk, or nuisance that exists or could develop as a result of the operation for which the application is made. In making such determinations, the Town Board shall consider whether or not the applicant is applying as a legal preexisting operation and use and the rights which may have accrued to such applicant as a result thereof.

(g) Attempts by the Permittee or Parties in Interest to comply with the provisions of this Ordinance.

(h) Consideration of extenuating circumstances and matters beyond the control of the Permittee or Parties in Interest.

(g) Operator's annual report (in reviewing renewals).

(D) Permit Period. Permits shall be granted for a one (1) year period of time and shall expire on December 31st. Permits shall be granted on a calendar year basis.

(E) Renewal of Permit.

(1) Applications for permit renewal must be submitted in writing to the Town Clerk at least 60 days prior to the expiration of the existing permit. Such applications shall comply with the provisions of this Ordinance but need not include any items previously submitted with a prior application if there are no changes in such items. Any previously submitted items which have been changed from the prior applications shall be resubmitted showing such changes.

(2) No renewal permit shall be granted unless the nonmetallic mining operation is in compliance with the terms of the existing permit.

(3) Additional or new conditions may be imposed upon renewal permits based upon the information received and reviewed by the Town Board as a result of the nonmetallic mining activities.

(4) No public hearing shall be required to be held with respect to a renewal application unless the application indicates an enlargement of the previously approved Site or alteration or change in the method of operations or reclamation previously approved.

(F) Appeal. Appeals from the decision of the Town Board in granting or denying a permit shall be to the Circuit Court. Appeals shall be filed within 45 days of receipt of the Board's written determination by the applicant or Parties in Interest.

(G) Issuance of a Permit by the Town does not relieve the operator of the responsibility to obtain any required County, State, or federal permits or approvals.

0109.13 Project Site Modification or Enlargement.

(A) Site Modification. An operator may apply for a modification or cancellation of a project permit. The application for the modification, cancellation, or change shall be submitted in writing by the operator and shall identify the Site to be removed or affected by the change in Operation Plans.

(B) Site Enlargement. Any proposed enlargement shall be processed as a new application pursuant to this Ordinance.

0109.14 Transfer of Permit.

When an operator succeeds the interest of another in an uncompleted Site, the Town Board shall release the first operator of the responsibilities imposed by the permit, but only if the new operator assumes the responsibility and Operation Plan of the former operator by a written, witnessed document and provides financial assurance thereof and by the issuance of a new permit by the Town Board.

0109.15 Fees.

All applications for nonmetallic mining permits shall be accompanied by a fee as set from time-to-time by resolution of the Town Board.

0109.16 Regulations for All Nonmetallic Mining Operations Subject to Ordinance

All nonmetallic mining operations, except those existing sites identified in Section 109.10(B)(1) above, shall be subject to the following requirements:

(A) Hours of Operation:

Crushing shall be limited to: Mon.-Fri., 6:00 a.m. to 6:00 p.m., Sat., 6:00 a.m. -12:00 p.m. (noon)

(B) Minimum Setbacks. The following minimum setbacks shall be enforced.

(1) Mining that includes Blasting Operations.

(a) Existing Residences: Nonmetallic mining operations shall not occur within 500 feet from existing residences on adjacent property. Existing residential landowners wishing to build a new structure or add to an existing structure that would be within 500 feet of nonmetallic mining operations may do so, but the nonmetallic mining operation shall not be required to move existing operations to retain the 500-foot buffer.

(b) Roads: Fifty (50) feet from nonmetallic mining operations or as close as allowable under State, County, or Town regulations.

(2) Mining without Blasting Operations.

(a) Existing Residences: Nonmetallic mining operations shall not occur within 250 feet from existing adjacent residences.

(b) Roads: Fifty (50) feet from nonmetallic mining operations or as close as allowable under State, County, or Town regulations.

(3) The Town Board may require more restrictive setbacks based on additional facts or circumstances provided during the permit review process or the public hearing.

(C) Right of Access. By filing a permit application the applicant grants the Town Board, Planning Commission, staff, and/or consultants the right of access onto the Site and contiguous lands owned or leased by the applicant for the purpose of inspecting the Site and adjacent lands for pre-permit issuance inspections. Issuance of a permit by the Town Board also provides right of access onto the Site and contiguous lands owned or leased by the Permit holder for the purpose of inspecting for compliance with the Permit and for any other purposes relative to this Ordinance. Except in emergencies, access shall be granted during normal business hours with reasonable notice to the operator. Inspectors shall report to the person in charge at the Site and comply with all established safety rules and regulations. There must also be an MSHAW certified employee present during any on-site inspection where there is mining activity. However, the Town Board or designee may make unannounced on-site visits to any nonmetallic mine for the purpose of verifying resolution of written complaints.

(D) Annual Reporting. The operator shall submit in writing a report to the Town Board on an annual basis with the renewal application, and appear before the Town Board if requested, providing a description of the activities that have occurred on Site since the previous annual report, including a discussion of actively mined areas, overburden removal activities, land restoration activities, and any significant changes in the nonmetallic mining operation. The report shall also include a summary of operating plans for the next twelve months, as well as the status and results of the well monitoring program, if applicable, complaints forwarded to the operator and how they were addressed, and any other matters of interest with respect to the nonmetallic mining operations, activities, and facilities.

(E) The operator shall comply with all Wisconsin State Statutes, Administrative Code provisions, and County/Town Ordinances regulating erosion control, wetlands, navigable streams, air quality, zoning, and water drainage and discharges from the Site and all permits required and issued by the County, State or Federal government.

(F) Boundary Staking. All excavation and phase boundaries, if any, shall be staked or otherwise marked per the survey by the operator and inspected by the Town and/or its consultants prior to commencing operations on a Site. Stakes shall be made of steel consisting of at a minimum a two (2) inch pipe. Stakes shall be placed on all corners of the Site and shall be set so they are at least five (5) feet above ground level and painted with a highly visible color.

(G) Plans on Site. A copy of the plans and specifications returned by the Town at the time of permit issuance shall be kept on the project Site throughout the entire excavation and reclamation period.

(H) Limits of Operation. Approved and permitted nonmetallic mining operations shall be limited to approved Site plans and dimensions.

(I) Compliance with Reclamation Permit issued by the County.

(J) Records of Operation. All records of the permittee regarding the conduct of the nonmetallic mining operation which are reasonably needed for the proper monitoring and evaluation of the operation or the enforcement of this Ordinance shall be subject to inspection by the Town and/or its consultants at all reasonable times, provided however, that Town personnel and/or consultants, to the extent provided by law, shall take reasonable steps to prevent disclosure of records which the operator advises in writing contain privileged trade secret information.

(K) Fencing. The Town Board may require the installation of a fence outside and generally at the base of the perimeter screening berms in any area of the Site wherein the Town Board believes such a fence would be necessary for the purposes of the operator's security and/or the protection of the public.

(L) Dust Control. Opacity limits for all fugitive emissions at the property line of the Site shall comply with Wisconsin Department of Natural Resources requirements. The operator shall maintain proper records of all dust control activities, including the time, location, method, and type and quantity of materials used.

(M) Noise Controls. The operator shall comply with all applicable noise regulations. In the event of noise problems, the operator shall utilize the latest cost-effective technology proven and demonstrated in the operator's industry, which shall not impose an unreasonable financial burden on the operator in its efforts to control and minimize noise impacts.

(N) The operator shall comply with its Refuse, Waste, and Contamination Prevention Plan.

(O) Any bridges, arches or culverts required at the permitted nonmetallic mining Site shall comply with the standards contained in Wisconsin Administrative Code Transportation 207 or in State of Wisconsin Department of Transportation Standards Specifications for Road and Bridge Construction.

(P) Operator shall comply with storm water plan and erosion control plans and permits, if any.

(Q) Other Conditions. The Town may require compliance with such other conditions or requirements as are necessary to ensure the proper operation in a manner consistent with this Ordinance to limit any adverse environmental impacts.

(R) The Town may waive compliance with these conditions upon the request for a waiver as part of the application process as provided for under §0109.11 (B).

0109.17 Blasting Operations

All nonmetallic mining operations which include the use of blasting shall be subject to the following requirements:

(A) Hours Limited, including drilling: Mon.-Fri., 8:00 a.m. to 4:00 p.m. In the event an emergency has delayed blasting beyond 4:00 p.m., loaded holes may be blasted within a reasonable time thereafter.

(B) Notification:

(1) The operator shall notify the Town Clerk at least 3 working days before each intended day of blasting.

(2) (a) The operator shall establish a call list for all parties in interest who request in writing to be on the list for the purposes of notification of imminent blasting activity. This list shall be maintained and utilized by the operator to provide pre-blast notification. A copy of the list shall be filed with the Town Clerk. Within 30 days of the operator's acceptance of the nonmetallic mining operations permit the operator will notify each party in interest in writing about the blast notification program and how to participate.

(b) The pre-blast notification requirement will be satisfied by a single telephone call whether or not the requester is reached in person. If no person is available to speak to, a message must be left, if possible. A pre-blast call notification log shall be maintained at the Site and shall include the date of the blast, date and time requester was contacted or attempted to be contacted, and any pertinent remarks. The operator will promptly submit a copy of the pre-blast notification log to the Town Board upon written request by the Town Clerk.

(C) All explosives stored on Site shall be stored in accordance with § COMM 7 of the Wisconsin Administrative Code. The operator shall submit a copy of the explosives storage permit to the local fire department annually when filing the renewal permit. (See attached Department of Commerce Regulations).

(D) Flyrock traveling in the air or along the ground shall remain within the controlled blasting site area.

(E) All blasting on the Site shall be performed by or under the direct supervision of a State-licensed blaster.

(1) (a) The operator shall utilize a moveable seismograph to monitor and record the levels of ground vibration and air blast for each blast, measured at or near the closest dwelling, public building, place of employment, school, church, or community or institutional building to the Site of the blast which is not owned or controlled by the operator.

(b) Upon written request to the operator, and a copy to the Town Clerk, any party in interest can request that the seismograph be utilized at their structure as listed above in subdivision (a) for the next blast.

(2) The operator shall maintain a blasting log of each blast and will keep the blasting logs for not less than three years. The operator shall, upon request, submit to the Town copies of the blasting logs, redacted to exclude sensitive or proprietary information, but including at least the date, time, and location of the blast and the recorded peak levels of ground vibration and air blast. Each blast log shall include, at a minimum, all of the following:

- (a) Name and license number of blaster in charge of blast.
- (b) Blast location identified on an aerial photograph of the Site map.
- (c) Date and time of blast.
- (d) Weather conditions at time of blast.
- (e) Diagram and cross-section of blast hole layout.
- (f) Number of blast holes.
- (g) Blast hole depth and diameter.
- (h) Spacing and burden of blast holes.

- (i) Maximum holes per delay.
- (j) Maximum pounds of explosives per delay.
- (k) Depth and type of stemming used.
- (l) Total pounds of explosives used, including primers and detonator cord.
- (m) Distance to nearest inhabited building not owned or controlled by operator.
- (n) Type of initiation system used
- (o) Seismographic and air blast information, which shall include:
 - (i) Type of instrument and last calibration date;
 - (ii) Exact location of instrument and date, time, and distance from the blast;
 - (iii) Name and company affiliation of person taking the reading;
 - (iv) Name of the person and firm analyzing the seismographic and air blast data when required;
 - (v) Vibrations and air blast levels recorded;
 - (vi) Copy of the seismographic printout.

(F) Structure and Foundation Inspections.

(1) All parties in interest shall have the option for a video inspection of the structure and foundation undertaken by, and at the expense of, the operator prior to commencement of nonmetallic mining operations. The purpose of such inspections shall be to provide a baseline of comparative data in the event of any future claims of damage resulting from nonmetallic mining operations. Such inspections shall be conducted by a qualified third-party consultant with substantial expertise and experience in conducting inspections related to alleged blasting damage. Selection of the consultant shall be by the operator, subject to Town Board approval, but such approval shall not be unreasonably withheld. Should any party in interest desire a second opinion inspection, such inspection shall be at the expense of the party in interest.

(2) The operator shall notify all parties in interest in writing, sent via certified mail or registered mail, with return receipt requested, of the details of the structure and foundation inspection program and the opportunity to participate. Parties in interest must respond to the notice within **thirty** (30) days of receipt, indicating their wish to participate or not. Copies of notifications, responses, and reports shall be maintained on site during nonmetallic mining operations. Copies of notices, responses and reports shall be submitted to the Town by the operator. The operator shall give a copy of the inspection report to each party in interest for their parcel. A copy of each second opinion inspection report shall be given to the operator and the Town by the party in interest who obtains such reports.

(3) Nonmetallic mining operations cannot commence operations until the operator-obtained structure and foundation inspections have been completed and copies of those reports or nonparticipation responses for each party in interest are filed with the Town.

(4) Any adverse effects to structures and foundations owned by parties in interest which can be attributed to the nonmetallic mining operation shall be the responsibility of the operator.

(G) Well Inspections.

(1) All community and private wells located on property of parties in interest shall be inspected and tested by the operator prior to commencement of nonmetallic mining operations. The purpose of such inspections shall be to provide baseline comparative data in the event of any future claims of damage resulting from nonmetallic mining operations. Such inspections shall be conducted by a qualified third-party consultant with substantial expertise and experience in conducting well testing and inspections. Selection of the consultant shall be by the operator, subject to Town Board approval, but such approval shall not be unreasonably withheld. Should any party in interest desire a second opinion inspection, such inspection shall be at the expense of the party of interest.

(2) The operator will notify all parties in interest in writing, sent via certified mail or registered mail, with return receipt requested, of the details of the well inspection and testing program. Copies of notifications and reports shall be maintained on site during nonmetallic mining operations. Copies of notices and reports shall be submitted to the Town by the operator. The operator shall give a copy of the inspection report to each party in interest for their parcel. A copy of each second opinion inspection report shall be given to the operator and the Town by the party in interest who obtains such report.

(3) Nonmetallic mining operations cannot commence operations until the operator obtained well inspections have been completed and copies of those reports are filed with the Town.

(4) After commencement of nonmetallic mining operations the operator shall test all community and private wells located on a party in interest's property at a minimum of once every 6 months for the first 2 years of operations, then once a year. Any adverse effects to community and private wells owned by parties in interest which can be attributed to the nonmetallic mining operation shall be the responsibility of the operator.

(H) Berms. The operator shall construct and landscape vegetated berms as stripped overburden and topsoil become available on the Site or from suitable outside sources. Berms must be constructed no closer than fifty (50) feet from the property line and shall have no steeper slope than a 3:1 or 4:1 ratio. Berms shall have an aesthetically pleasing appearance and shall be constructed of soil, rock, and/or other appropriate materials and shall be topped by native grasses, plants, and/or trees so as to provide a visually appealing barrier between nonmetallic mining operations and adjacent land uses. Operators may be required to undulate and meander the berms in order to increase their aesthetic appeal and to blend harmoniously with the surrounding landscape to the greatest extent feasible. Berms shall comply with the approved berm plan submitted with the application.

(I) Written results of the hydro-geologic study shall be maintained onsite for the duration of nonmetallic mining operations. After issuance of the permit but prior to commencing nonmetallic mining operations the operator shall install a network of monitoring wells to monitor the impact of the nonmetallic mining operation on the shallow bedrock aquifer system in the vicinity of the Site as determined by the Board in granting the permit. The precise positioning and depths of the monitoring wells shall be determined in consultation with the Town Board following the results of the well inspections. The Town Board may require additional monitoring wells at greater distances from the Site in the future if such wells are determined to be reasonably required in order to track and analyze the effect, if any, of the nonmetallic mining operations on wells within 1,500 feet of the Site. The operator shall inform the Town Board of the status and results of the monitoring program as part of its annual report.

0109.18 Enforcement and Penalties.

(A) Complaints.

(1)(a) All complaints shall be in writing and addressed to the Mukwa Town Board. The Town Clerk shall forward a copy of the complaint to the Operator by US Mail, return receipt requested, within 10 business days of receipt.

(b) The Operator shall respond to the Town in writing within 20 business days of receiving the forwarded complaint with a denial of the activity complained of; an explanation of the activity complained of; or a proposed plan to remedy the offending activity, including a time frame for completion of the remedy.

(c) If the Operator proposes a remedy, the Town shall inspect the Site at the end of the proposed time frame to determine if the problem has been corrected. Should the remedy not rectify the complaint or is not completed, the Town may proceed otherwise as set forth in this section.

(d) If the Operator denies the activity or submits an explanation the Town may:

1. make further investigation of the complaint;
2. recommend that the complainant file a verified complaint;
3. issue a citation;

4. determine that there is no violation and give written notice of such determination to the complainant and the operator.

(e) In the event the Operator fails to respond at all to a complaint forwarded by the Town and a hearing is held on a verified complaint which arises out of the same complaint, the Operator shall be liable for the reasonable costs of investigation of such complaint including the costs of any experts, if it is determined that there has been a violation of the Ordinance.

(2) The Town Board may proceed directly to the suspension or revocation procedure if the allegations of the complaint are of sufficient magnitude, importance, or otherwise of similar nature.

(B) Suspension/Revocation.

(1) Unless expressly provided herein or by other Town of Mukwa Ordinance provisions, the nonmetallic mining permit may be suspended or revoked for cause for noncompliance with the Ordinance after the proper

Town of Mukwa hearing noted below, unless in an emergency condition determined by the Town Board herein the permit can be suspended temporarily for a set time period.

(2) Prior to suspension or revocation, the Town Clerk must receive a verified complaint concerning the nonmetallic mining operations, except as noted in subsection (B)(1). The following persons may file a verified complaint with the Town Board: the Town Clerk; the Town Building Inspector; the Town Administrator (if applicable); any Town of Mukwa resident, any property owner or licensed business owner.

(3) The operator shall be provided a copy of the verified complaint and notice of hearing before the Town Board by US Mail, return receipt requested. The hearing shall be held not less than 10 days nor more than 30 days after receipt of notice, unless stipulated in writing by the Town Board and the operator.

(4) At the hearing the Town and the operator shall be entitled to the following:

(a) Representation by legal counsel

(b) Right to present and cross-examine witnesses

(c) Right to subpoena witnesses by the Town Board Chair issuing subpoenas to compel attendance of witnesses

(5) The Town Board may, after the hearing on the allegations of violations act as follows:

(a) Revoke the permit as a final decision

(b) Suspend the permit for a date certain as final decision

(c) Request additional information as an interim decision prior to taking future action

(d) Take no action on the permit as a final decision

(e) Issue a citation

(6) The final decision of the Town Board to revoke or suspend the nonmetallic mining operations permit shall be in writing and filed with the Town Clerk's office. An appeal of the Board's decision must be filed with the Circuit Court within 45 days from the date of filing in the Clerk's office.

(C) Penalty.

(1) In addition to the suspension, or revocation of a permit issued under this Ordinance, the Town Board or designee may issue a citation. Any operator who shall violate any provision of this Ordinance shall upon conviction of such violation, be subject to a penalty of a civil forfeiture of not less than \$10.00 dollars nor more than \$500.00 dollars, together with the costs of prosecution. Any default of such forfeiture determined by a court of competent jurisdiction shall be subject to any penalties as provided by §§. 66.0114, 66.0115, 66.0117, 66.0119, and 66.0121, Wis. Stats., as may be amended.

(2) Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Ordinance shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision of this Ordinance.

(D) Nonexclusive remedies. The penalties and enforcement methods set forth herein are not the exclusive methods of enforcing this ordinance and the Town reserves the right to pursue any other method or remedies available to it by law.

0109.19 Final Adoption/Board Signatures.

This ordinance shall take effect on **March 1, 2009** upon its passage and publication or posting as provided by law. The town clerk shall properly post or publish this ordinance as required under s. 60.80, Wis. stats.

The above and foregoing ordinance was adopted by the Town Board of the Town of Mukwa, Waupaca County, Wisconsin, at a meeting held on **February 16, 2009.**

Aye _____

No _____

Walter Heise, Town Chairman

Michael G. Wundrock, Supervisor #1

Neil Freeman, Supervisor #2

Filed this 16th, Day of February, 2009.
in the office of the Town Clerk.

Attest: Jeannette Zielinski, Municipal Clerk

Code of Ordinance Published: 1/29/09
Posted at:
Northport Convenience Center: 2/16/09
Bean City Bar & Grill: 2/17/09
Mukwa Town Hall: 2/16/09
Adoption of Ordinance Published: 2/19/09