

CHAPTER 10

NONMETALLIC MINE OPERATOR'S LICENSES

Section 10.01 Finding Purpose and Authority

(1) Findings. While nonmetallic mining is a legitimate and permissible part of the state and local economy, the activities, processes and chemicals employed can have adverse effects on groundwater and surface water, including soil erosion when changed terrain is not managed in a way that mitigates soil damage from movement of surface water, and generate harmful levels of dust and noise. Nonmetallic mining operations can have negative impacts on the landscape and aesthetics members of the public when not properly secured. Truck traffic generated by nonmetallic mining operations can damage public roads and lead to off-site adverse effects on the safety and well-being of community residents and landowners. Property values may be adversely affected by nonmetallic mining operations. Other potential impacts from nonmetallic mining and processing include logging of bluffs and hilltops, excavation of sandstone ridges, loss of agricultural land, equipment noise, and exposure to silica dust, excessive groundwater use and additional potential sources of surface and ground water contamination.

Although selected aspects of nonmetallic mining operations are subject to state or federal regulation, there is no comprehensive state or federal system of regulations concerning nonmetallic mining operations. Regulated and unregulated aspects of nonmetallic mining operations create a risk of significant adverse effects on the health, safety and welfare of the public, local landowners and residents, especially those in close proximity to nonmetallic mining operations. The Town finds that regulating aspects of nonmetallic mining operations is needed to adequately protect the health, safety and welfare of town residents.

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

(3) Authority. This ordinance is adopted pursuant to Town authority under Wis. Stats. 60.10, 60.22, 61.34, 66.0415, and authority available under state statutes. The amendment, repeal or recreation of any statute affecting or related to this Ordinance and made after the effective date of this ordinance is incorporated herein by reference as of the effective date of the statutory amendment, repeal or recreation.

Section 10.02. Applicability and Scope

(1) This ordinance shall apply to all nonmetallic mining operations and mine sites in the Town of Bridge Creek except as set forth in sub. (2).

(2) This chapter shall not apply to the following nonmetallic mining operations:

(a) Excavations or grading by a person solely for domestic or farm use at that person’s residence or farm.

(b) Excavations or grading conducted for the construction. Reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the highway, railroad or other transportation facility.

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

(d) Excavations for building construction purposes conducted on the building site.

(e) Nonmetallic mining at nonmetallic mining sites where less than one acre of total acreage occurs over the life of the mine.

(f) Removal from the earth of products or commodities that contain only minor amounts or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees, or plant nursery stock.

(g) Nonmetallic sand and gravel mines in operation on and prior to the January 1, 2011 shall not be required to register or to apply for a license under this ordinance, as long as said mine operates under the original reclamation plan approved by Eau Claire County and the reclamation plan is not modified in any way. If the reclamation plan is modified, the mine is considered a new operation and is subject to the licensing requirements of this ordinance.

(h) Emergency mining or removals where to delay such activities may cause a danger to the public.

Section 10.03. Definitions

(1) “Nonmetallic minerals” means a product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, non-renewable material. Nonmetallic minerals include but are not limited to industrial silica used for hydraulic fracturing of gas or oil deposits (“frac sand”), stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat and talc.

(2) “Nonmetallic mining” means any of the following:

(a) Extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use or sale, including drilling and blasting as well as associated activities such as excavation, grading and dredging of such materials.

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

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

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

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

(f) Disposal of waste materials.

(g) Reclamation of any site related to or use in the mining, processing, washing, or transportation, of any nonmetallic mineral.

(3) “Waste Material” means the non-marketable by-product that results directly from or is displaced by extraction or that is a by-products of a manufacturing process that is scheduled for disposal at the extraction site or some other site as part of a reclamation plan.

(4) A “mine site” or “site” means land from which mineral aggregates or nonmetallic minerals will be extracted for sale or use by the operator, including all land which is or will be located any structures, equipment, storage facilities, stockpiles, washing or screening facilities, dry-processing facilities, facilities for the loading and unloading of sand to and from trucks, private roads or haulage ways associated with nonmetallic mining operation: and all contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or operator.

(5) “Landowner” means any person, corporation, trust, trustee, land contract vendor and vendee or any other entity holding any interest in title to land that is within a _____ mile radius of the proposed mining property boundary.

(6) “Proposed mining boundary” “site” or “mining property boundary” means the outer perimeter or any mining activity as delineated on any mining plans and maps and as provided on the reclamation permit.

(6) “Town” means the Town of Bridge Creek, or the Town Board, as the context requires.

(8) “Town Board” means the Town Board of the Town of Bridge Creek.

(9) “Operator” includes but is not limited to any person or duly constituted legal entity who has applied for a license or who is licensed by the Town to engage in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.

(10) “Operator’s license” or “license” means the license required of mining operators in this Chapter to undertake nonmetallic mining in the Town of Bridge Creek.

(11) “Mining Agreement” means an agreement entered into between an Operator and the Town for the purpose of delineating the rights and responsibilities of the Operator and the Town with regard to nonmetallic mining operations or mining within the Town of Bridge Creek.

Section 10.04. License Required

(1) License Requirement. Nonmetallic mining is allowed in the Town only as provided for in this ordinance. No person or entity shall start work on any nonmetallic mine site, mining structure or facility or operate a nonmetallic mine in the Town of Bridge Creek without first obtaining an operator’s license from the Town, or establishing qualification for exemption under the ordinance.

(2) License Term

(a) An initial operator’s license extends from the date of issuance until June 30 following the first twelve (12) months of nonmetallic mining. After the successful conclusion of the initial operator’s license term, a renewal operator’s license may be granted for up to a one (1) year period at the discretion of the Town.

(b) An operator’s license is renewable under the procedure in Section 8, except that a temporary operator’s license may not be renewed.

(3) License Amendment. If the Town has issued an operator’s license, the operator may request an amendment to that license during the license term, using the same process as the original license application.

(4) License Transfer. No operator’s license may be transferred to a new operator without the express written permission of the Town Board, in advance of any such transfer, and any such unauthorized transfer or assumption of the privileges granted there under is void, and shall be cause to revoke the operator’s license. The Town Board, may authorize the transfer of an operator’s license to a new operator, provided that the new operator provides all such financial assurances and other information as may be required by the town, county, or state, and

provided that the operations plan submitted at the time of granting the license being transferred remains unchanged. Any proposed transfer which seeks to modify the operational plan upon which the license was granted must be initiated as a new nonmetallic mining license application under Section 10.05 herein.

(5) License Revocation. An operator's license may be revoked under the procedures set forth in Section 10.09.

Section 10.05. Procedures for Applying for a License to Mine

(1) Application Form. The Application Form for a license to mine in the Town of Bridge Creek shall be available from the Town Clerk.

(2) Application Submittal. The applicant shall submit (25) copies of the Application Form and all required documentation required under Section 10.06 to the Town Clerk accompanied by the payment of both the application fee \$500.00 together with the base administrative fee of \$2000.00. The fees shall be made payable to "Treasurer, Town of Bridge Creek." The applicant shall also mail notice to all landowners that an application has been filed and said notice shall state that a copy of the application may be reviewed at the town office and that the landowner may request and obtain a complete copy of the application from the town within a reasonable time after such request is made. The cost of providing copies of the application shall be paid by the applicant. The Town may periodically review and revise the amounts required for the application fee and base administrative fee deposit. The Town's objective is that the application review and license administration shall be fully funded by license applicants and operators.

(3) Application Review.

(a) Preliminary Review. The Town Clerk shall forward the application to the Town Board for initial review to determine if additional information or expertise is necessary to properly evaluate the application. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for a hearing under sub. (4).

(b) Additional Information. The Town Board may request the applicant to submit additional information if the Town Board determines that application is incomplete. The Town Board may also retain the services of an engineering firm or other qualified person with appropriate expertise ("retained expert") to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this Chapter.

(c) Additional fees. If the Town Board determines that additional expertise is required, the Town Board shall authorize retaining the services of an engineering firm or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of the services of any such retained expert. The additional

fee shall be paid by the applicant or landowner before the additional review is undertaken. However, if the fee for such review cannot be determined in advance, the Town Board may require the applicant to enter into a reimbursement agreement with the Town under which the applicant shall agree to pay the additional review fees at a later date, regardless of whether a permit is issued by the Town.

(d) Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall report to the Town Board on whether the application meets the requirements of this Chapter.

(4) Decision by the Town Board.

(a) Notice and Hearing. Once the application is complete and all reports have been submitted to the Town Board, the Town Clerk shall place the application on the agenda for the next regular meeting of the Town Board. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall set a date for a public hearing and give a public notice at least thirty (30) days prior to the date scheduled for the hearing, with the notice mailed to all landowners and all landowners within 2 miles of the proposed mine site boundaries, at the applicant's expense. At the public hearing, the Town Board shall take public comment on the proposed mine license.

(b) Town Board Decision. Following the public hearing, the Town Board may take immediate action or set a date for the meeting at which time they shall make a final decision on the application for an operator's license. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall review all retained expert's reports as well as public comments made at the public hearing or submitted in writing prior to and at the hearing. The Town Board may grant the license if it determines that every facet of the operation of the mine will meet or exceed the standards and the purposes of this Chapter. If the Town Board finds that any aspect of the operations does not meet the standards set forth herein, or will adversely affect the health, safety or welfare of landowners and residents of the town, the Town Board shall deny the license, stating its reasons for the record in writing. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section 10.09(3).

Section 10.06. License Application

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

(1) Ownership Information.

(a) The name, address, phone number(s), and email address of all proposed operator(s) of the nonmetallic mining operations for which application is being made.

(b) The name, address, phone number(s), and email address of the owners of land in the nonmetallic mining site where the applicant will exercise the license for which application is being made.

(2) Site Information and Maps.

(a) A certified survey map(s) and parcel identification number(s) of the property on which the nonmetallic mining operation will be located.

(b) A full color aerial photo of the proposed mining property boundary site at a scale of 1 inch equals not more than 660 feet, signed by both the applicant and the land owner.

(c) A topographic map(s) of the mine site extending 2 miles beyond the site boundaries, at contour intervals no wider than 10 feet showing the mining property boundaries of the site, the location and full acreage of such site, the name of all roads within one mile of the site, the names and addresses of all landowners and the location of all residences in the full map area.

(d) The location within the actual mining property boundaries of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.

(e) A map on which all of the residential, agricultural and municipal wells within 2 miles of the mining property boundaries in all directions are marked, labeled regular or high capacity, and with each location given a numeric identifier.

(f) The location and names of all surface waters including lakes, private or public ponds and streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the site and in the area 2 miles beyond the mining property boundary.

(g) A description of the distribution, depth and type of topsoil on the site as well as the geological composition and depth and width of the nonmetallic deposit.

(h) A map identifying the location of all other non-contiguous sites within the Town of Bridge Creek and adjacent towns, if any, that will contribute material to the facility for which the applicant seeks a license.

(i) A copy of any Notice of Intent/Information Summary for Nonmetallic Mining Operations concerning any area of the nonmetallic mining site for which operator's license application is being made under this ordinance and that has been or will be submitted to the Wisconsin Department of Natural Resources (WI DNR) for any permits over which it has jurisdiction, the WI DNR response, and any permits issued.

(j) Baseline information concerning surface water base flows, well depth and casing condition, and concerning turbidity, total suspended solids, coliform bacteria

levels, lead, arsenic, chlorides, nitrates and acrylamides in private wells belonging to all property owners who consent and located within two (2) miles of the actual mining property boundary with documentation concerning the manner and identity of landowners who refuse consent.

(k) A complete report of soil borings, showing at a minimum the soil types found, depth and durations, to a depth twenty feet below the lowest depth for which excavation is proposed in the license application or as noted in the County reclamation permit or permit application materials. Sufficient soil borings shall be completed to adequately define the target deposit to be mined.

(l) Pre-blasting surveys to document the baseline condition of wells, well casings and buildings belonging to landowners within 2 miles of the actual mining property boundary who consent to the survey, with documentation of the manner and identity of any landowners who refuse consent.

(3) Operation Plan.

(a) Dates of the planned commencement and cessation of the operation.

(b) A detailed description of mining methods, machinery and equipment to be used for extraction and on-site processing of the extracted material, and the sequence of operations.

(c) Estimated volume of material, expressed both in cubic yards and in tons, to be extracted over the life of the mine and for each license year.

(d) The location of Town, County and State road access points and the proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.

(e) Identification of all proposed off-site trucking routes, together with the frequency of traffic, whether loaded or empty, and the common schedule of travel to be used for transporting extracted materials or products to or from the site.

(f) A water budget that describes all ways that water will be used in the nonmetallic mining operation including, but not limited to, sources of water and all processes in which the water will be used, projected volume of daily water use during the proposed licensing period and the anticipated life of the nonmetallic mining operation, and methods for treating, handling and disposing of water, including but not limited to methods and plans for infiltration and control of run-off and erosion from water used on site, from storm water and from dewatering.

(g) A listing of all chemicals and hazardous materials, together with the current Material Safety Data Sheet for each chemical or compound, including fuel supplies that will be stored on the site and a description of measures to be used for securing and storing these materials.

(h) A listing of all chemicals used in manufacturing or processing operations or in controlling dust. The operator shall select products that limit the potential for groundwater or surface water pollution, as may be identified on recognized product lists available from WI DNR, the U.S. EPA, or other agencies.

(4) Information Demonstrating Compliance with Minimum Standards.

(a) License applicants are responsible for providing all information necessary to demonstrate to the satisfaction of the Town Board that the nonmetallic mining operation for which application is being made will continuously meet or exceed all minimum operation standards in this ordinance or as required for registration licenses under Section 10.07.

(5) Special Exception. A license applicant can request a special exception from any application requirement of this ordinance when it can demonstrate to the satisfaction of the Town Board that the information being required can be provided by alternate means or is not necessary for deciding on its license application for a particular nonmetallic mining operation, and that the public health, safety and welfare will not be adversely affected thereby. The Town Board shall consider information and conclusions provided by the public, the applicant and the Town's retained experts in making this determination.

Section 10.07. Minimum Standards of Operation

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

(1) General Standards.

(a) No mining operation will be allowed within a one mile radius of any school (of any denomination) whether public or private.

(b) The borders of the entire nonmetallic mining site are visibly marked, the site secured by fencing or other secure appropriate measures as determined by the Town, and a plan is in place to ensure that by the time reclamation activity is complete, all remaining areas that have been mined and that have a sheer vertical drop of 36 inches or more are fenced in a manner that protects the safety of people, animals, and machines unless waived by the Town due to other site conditions or alternate measures taken that adequately serve the same purpose in the judgment of the Town.

(c) The operator and proposed nonmetallic operation will meet or exceed all requirements of this ordinance or has met or exceeded all requirements during any prior licensing term.

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

(e) The operator shall demonstrate that all other applicable federal, state and local permits and approvals required for the nonmetallic mining operation have been obtained prior to consideration of the application and shall verify that all such permits and approvals remain in effect prior to the commencement of operations.

(f) The operator shall provide written notice to the Town of Bridge Creek, within 48 hours, of any notices of violation, citations, or other enforcement actions, whether proposed or actually taken by any governmental body against the mining operations within the Town or at any other site owned or operated by the operator, or any principal of the operator, anywhere within the United States.

(g) The operator shall maintain a minimum setback of 880 feet, from the edge of the mining property boundary on which the mining operation or nonmetallic mining facility is located, to any residence. However, the setback shall not apply to:

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

(ii) a residence that is occupied by someone who has leased lands for a mining operation, though not covered by the license application under current review.

(2) Standards Regarding Off-Site Impacts.

(a) The operator shall take all measures necessary to control surface water runoff from nonmetallic mining operations in a manner that will prevent pollution, erosion or deposit of sediment from the nonmetallic mining site onto landowner's properties, in off-site surface water or in groundwater, and shall also comply with all applicable standards for erosion control under Wis. Admin. Code NR 216 and NR 251 as applicable.

(b) The operator shall take all measures necessary to prevent surface water runoff from adjoining property coming onto the nonmetallic mining site.

(c) The operator shall provide a 50 foot setback from the outside edge of any roadside ditch. This 50 foot area shall be vegetated to minimize sediment laden runoff

from entering the ditch or onto neighboring land. No part of any berm shall be located within this 50 foot area. The setback area may be used by equipment for repair or maintenance of the berm or to remove erosive soils deposited in the setback area. This 50 foot setback is in addition to whatever buffer is set by the County in its conditional use permit or reclamation plan. For all boundaries other than along established roadside, the operator shall provide a buffer area of not less than 500 feet from any boundary to prevent run-off and to attenuate dust, vibration, noise, and light pollution. Said buffer shall not be disturbed except as necessary to install security fencing at the exterior boundary of the site and to install run-off control measures. No berms shall be erected within the 500 foot buffer area without the express written approval of the Town. If berms are permitted by the Town within the 500 foot buffer area, the berms shall be constructed of topsoil scraped from the site and stabilized by suitable erosion control vegetation, in order to ensure that sufficient topsoil will be preserved on the site for use in reclamation of the site.

(d) The operator shall limit hauling routes used by truck hauling excavated nonmetallic minerals intended to be processed into industrial sand from the mine site and returning industrial sand nonmetallic mining waste material to the mine site when authorized to do so by its reclamation permit to specifically designated routes.

(e) The operator shall limit the hours of presence on public roads in the Town of trucks for hauling and related purposes to no more than ten (10) consecutive hours daily, Monday through Friday, beginning no earlier than 7:00 a.m. and ending no later than 5:00 p.m. No excavated nonmetallic minerals or nonmetallic mining waste shall be hauled by trucks from a nonmetallic mining site before or after these hours or on Saturdays, Sundays or legal federal holidays, to minimize off-site impacts on area residents. On-site operations not involving truck hauling may be conducted up to two (2) additional hours daily, after truck hauling hours have ended, at the discretion of the Town Board.

(f) The operator shall ensure that trucks from the mining site shall not interfere with the safety of children being taken or returned from school, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is highest. Trucks hauling nonmetallic minerals and/or nonmetallic mining waste material to and from a nonmetallic mine site shall have the loaded material completely covered, as by a mechanical tarp or covering device specific to the hauling truck, and maintained in good condition.

(g) Absent specific contractual arrangements to mitigate road impacts and adverse effects on affected residents, the Town has the right to limit the number of truck round trips per day, over specified haul route within the Town of Bridge Creek for trucks hauling excavated nonmetallic minerals and/or nonmetallic mining waste material to and from a nonmetallic mine site. A round trip is defined as one truck, traveling from the mine site to one off-site destination and returning to the mine site.

(h) The operator shall limit night lighting on the site to that which is minimally necessary for security. Every effort consistent with legal requirements for safety shall be made to minimize illumination of the night sky and of neighboring properties. At a minimum such measures shall include the following:

(i) The use of full cutoff shrouds on all lights.

(ii) Portable lighting shall be used only as necessary to illuminate temporary work areas and only upon written approval of the Town Board.

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

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

(i) The operator shall control off-site noise levels to the maximum extent possible. The noise levels at the boundaries of the mining or processing site shall not exceed 60dB. The use and regulation of compression engine brakes, commonly known as “jake brakes”, is at the discretion of the Town Board, where posted.

(j) Air Monitors.

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

(i) If an applicant is applying for an operator’s license for a mining operations that produces industrial silica, or, in operations designed to extract other materials, causes silica to be dislodged and or extracted, to include a frac-sand processing plant, the operator shall be required to monitor the ambient level of airborne particulate matter of all particles equal to or exceeding 2.5 microns in size (PM2.5) and Total Suspended Particulates (TSP) as measured by the method described in Appendices L and B, respectively, of 40 CFR part 50 (2011) or a method approved in writing by the Town. The type and number of monitors needed, the location of the monitors, and frequency and duration of the monitoring program shall be determined by a written agreement by and between the operator, the Town Board and its consultant, annexed to the operator’s license, but all costs associated with monitoring shall be borne by the operator. Whenever it shall appear to the Town that the monitoring program is ineffective, or that the operator is not complying with the same, the Town may revoke the operating license, or in the alternative, in its sole discretion, may mandate a change in the air quality monitoring program, at the operator’s sole expense.

(ii) If any air monitor shows a level of contamination exceeding 35 micrograms per cubic meter of PM 2.5 in any 24-hour period, the operator shall promptly (within 5 business days) report the same in writing to the Town and

immediately evaluate and implement additional best management practices to minimize PM 2.5 emissions. Any mitigation measures that do not reduce the contamination to the acceptable standard shall not be accepted by the Town as effective countermeasures.

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

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

(v) In order to minimize the emission of dust beyond the boundaries of the site, mining products and by products shall only be stockpiled within a full enclosed structure acceptable to the Town.

(3) Standards Regarding Groundwater and Surface Water.

(a) Impacts to Ground water Quality.

(i) Mining and processing operations shall have a groundwater monitoring network as required by the Town. An independent consultant shall take quarterly samples for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made. The Town may require more frequent samples if it believes such samples are necessary.

(ii) Mining operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code ch. NR 140.

(b) Impacts to Groundwater Quantity.

(i) Mining operations shall not extract materials at a depth below the permissible level of mining. The permissible level of mining shall be determined on a case by case basis with the ultimate mining level determined to adequately protect ground water, town road integrity and other health and safety concerns specific to each mining site.

(ii) Mining operations shall not cause a measurable reduction in the quantity of groundwater available for reasonable use by current users within the Town. A measurable reduction is a drop in the water table that results in an impact on a private well including but not limited to the inability of a well to provide water on a continuous basis at a flow rate experienced prior to mining.

(c) Impacts to Surface Water Flow. Nonmetallic mining operation shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within the Town. Adverse effects include but are not limited to a reduction of water in streams and tributaries to or below base flow levels at the beginning of nonmetallic mining operations.

(d) Impacts to Surface Water Use. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters which serve as a critical source of water for agricultural or municipal functions such as fire protection within the Town. 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.

(4) Hazardous Materials.

(a) All hazardous chemicals shall be contained, stored, used and disposed of in accordance with applicable state and federal laws.

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

(c) The operator shall publish a plan acceptable to the Chief of the local fire district having jurisdiction, and to the WI DNR, for responding to spills of any hazardous materials on the site.

(5) Control of Waste Material. The amount of waste material (non-marketable fines and other material native to the site) returned to a mine site as part of the approved reclamation process shall not exceed the site-specific ratio of waste to target material of the extracted raw material as determined prior to the processing of the raw material. A processing facility shall keep records of the tonnage of raw material drawn from each material source. The tonnage of waste byproduct that is returned to each mine reclamation site shall not exceed the tonnage of waste contained in the raw material received at the processing facility from that site.

(6) Special Exceptions.

(a) The operator may request a special exception from the minimum standards of this Section if it can demonstrate to the satisfaction of the Town that the intent of this Chapter can be achieved by the use of alternative measures and that the public health, safety and welfare will not be adversely affected thereby.

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

(c) The minimum standards of this section shall not apply in the event the Town and Operator have entered into a mining agreement which satisfies the Town that the intent of this Chapter has been achieved through the provisions of such agreement and which recites that such agreement supersedes the provisions of this section.

Section 10.08. Annual Report and License Renewal

(1) Annual Report.

(a) Not later than March 1 of each year, the operator shall submit a written annual report to the Town Board of all mining sites for which the operator has a license in the Town of Bridge Creek.

(b) The annual report shall include the following information:

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

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

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

(iv) A like description of activities and operations on the site anticipated for the following license year.

(v) A written report demonstrating how the operator has been in compliance with all terms and conditions of its license and this Chapter. The report shall also include a summary of all groundwater, surface water and air quality monitoring results.

(vi) A summary of all areas of non-compliance, and if not already remedied, a plan for bringing non-compliant areas in to compliance.

(vii) A listing of each violation or notice of violation received from any State, Federal or other governmental or municipal body or agency.

(viii) A summary of all verbal, phone, email, written or other complaints received from any person residing or visiting an area within 1/2 mile of the proposed mine site boundaries.

(vix) Any other information requested by the Town.

(2) License Renewal.

(a) An operator desiring to renew its license shall make written request to the Town Clerk for a renewal of the license to operate the mine no later than March 1 of the year in which the license will expire. The application shall be accompanied by the payment of both the renewal application fee of \$500.00 and the base administrative fee of \$ 2000.00.

(b) The written request for renewal shall include the annual report from the previous license year in accordance with the provision of subsection (1).

(c) The Town Clerk shall review the renewal application within 30 days of receipt to determine whether the application is complete and upon a determination that it is complete shall forward it to the Town Board.

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

(e) Additional Fees. If the Town Board determines that additional expertise is required, the Town Board may engage engineers or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of additional review by retained expert. The additional fee shall be paid before the additional review is undertaken.

(f) Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charge, 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 meeting or a special meeting of the Town Board prior to the expiration of the license.

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

(i) that there have been no material violations of this Chapter or of the license which have not been appropriately remedied to the satisfaction of the Town, and

(ii) that the operator has not received multiple recurring citations or stop-work orders for violations of the operator's license or this Chapter,

(iii) that all applicable fees have been paid and all financial responsibility requirements have been met.

(h) If the Town Board denies the request for renewal, the Town Board shall notify the operator in writing of the reasons for denial and provide the operator with an opportunity for a hearing.

(3) The provisions of this Section shall not apply in the event that the Operator and Town have entered into a mining agreement which addresses the issue of licensure and renewal thereof and which recites that said agreement supersedes this section.

Section 10.09. Access, Observation, Enforcement Procedures and Penalties

(1) Inspection. In addition to an annual inspection pursuant to Section 10.07(2) the Town Board or other authorized representative of the Town, may make inspections to determine the condition of nonmetallic mining sites in the Town of Bridge Creek in order to safeguard the health and safety of the public and determine. Compliance with the minimum standards under this Chapter upon showing proper identification, and upon reasonable notice.

(2) Violations. The following are violations of this ordinance:

(a) Engaging in nonmetallic mining in the Town without an operator's license granted by the Town.

(b) Noncompliance with the minimum operation standards and other requirements of this ordinance during the license term.

(c) Providing incorrect or false information or statements on documentation submitted during the Town licensing process or during Town inspection of the nonmetallic site or operation.

(d) Failure to timely file an annual report.

(e) Failure to take prompt and appropriate remedial or other action in response to a notice of water or air testing results in excess of allowable standards, notice of violation, citation, request for additional administrative fee deposit or financial assurance or other directive from the Town.

(f) Failure to comply with all federal, state, county and local laws and regulations that govern or affect the operator's nonmetallic mining operation.

(3) Remedies. The Town Board or Town Chair may take any appropriate action or proceeding against any operator or the landowner of any portion of a nonmetallic mining site when the operator is deemed by the Town Board to be in violation of this ordinance, including any one or more of the following actions:

(a) Issue a stop work order.

(b) Issue a notice of violation and order that specified the action to be taken to remedy the situation within the deadline set to do so in the notice and order.

(c) Take action to complete action specified in a notice of violation and order after notice deadline has expired, and recover the cost of doing so from the operator.

(d) Issue a citation.

(e) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub. (5) and injunctive relief.

(f) After notice and a hearing, suspend or revoke any operator's license for any violation of this Ordinance.

(4) Hearings.

(a) Any person affected by a notice and order issued in connection with the enforcement of this Chapter under sub. (4), or upon denial of an application for a license or license renewal, may request and shall be granted a hearing on the matter before the Town Board, provided such person shall file with the Town Clerk, a written petition requesting the hearing and setting forth his name, address, telephone number and a brief statement of the grounds for the hearing and the relief requested from the Town Board. Such petition shall be filed within thirty days of the date the notice and order are served, or within 30 days after denial of an application for a renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the person requesting the hearing written notice thereof.

(b) After the hearing, the Town Board by a majority vote, shall sustain, modify or withdraw the notice under sub, (4), or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this Chapter have been complied with, and the petitioner shall be notified within ten days in writing of such findings.

(c) The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of

every notice and order issued in connection with the case.

(5) License Suspension or Revocation. After giving notice and hearing, the Town Board may suspend or revoke an operator's license for a violation under sub. (1).

(a) An operator's license may be revoked, if the Town finds that mining operations have been abandoned.

(i) Prior to a finding of abandonment, the Town Board must provide notice to the operator of the pending revocation of the operator's license and offer the operator the opportunity to request a hearing on the matter before the Town. The operator shall have this opportunity only if, within 30 days of the Town Clerk's mailing of the registered notice of intent to revoke, the operator provides written request for the hearing and includes; 1) an explanation for the cessation of the mining operation, and 2) a plan and a date for 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 has been revoked.

(ii) Upon receipt of a request for a hearing with the requisite documents, a hearing shall be scheduled. After the hearing, the procedures stated in Section 10.09 (4) (a) and (b) shall apply.

(iii) A restart of the operation after a finding of abandonment is a violation of this Chapter and subject to the penalties as provided in this Chapter.

(iv) The Town shall inform the County Planning and Development Department of a finding of abandonment and request the County order reclamation to begin.

(6) Penalties

(a) An operator, landowner, person or entity adjudicated to have violated this ordinance shall pay a forfeiture of not less than \$100.00 per violation nor more than \$5,000.00 per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.

(b) An operator, landowner, person or entity adjudicated to have violated this ordinance shall pay court costs, to Town's actual attorney's fees and the actual costs of the Town's retained experts to the extent not paid from an administrative fee deposit, in addition to any forfeiture.

(7) The 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 or future violation(s).

Section 10.10. Financial Assurances

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

(a) Road Repair. An amount necessary for the repair and maintenance of Town roads used for traffic transporting materials to or from the site.

(b) Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within the Town.

(c) Financial assurance to the Town shall be in the form of a cash deposit, performance bond, or irrevocable letter of credit in favor of the Town from an accredited financial institution, in a form and for a term acceptable to the Town.

(d) In the event the Town determines that the amount of financial assurance must be replenished or increased to meet specific road repair or water supply needs, or the amount available has been utilized, the Town shall notify the operator of the additional amount needed and the basis for the request. The operator shall have 30 days to provide the increased amount.

(e) The operator shall also provide to the Town proof that it has provided the financial assurance for reclamation required under Wisconsin law and the County's reclamation permit.

Section 10.11. Damages to Private Water Supply

(1) A property owner within the Town may seek remedies under subs. (2)-(5) for any of the following damages to private water supply:

(a) A preventive action limit or enforcement standard is exceeded in a private water supply well on the owner's property.

(b) A substantial adverse impact on the quantity 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 basis.

(c) A lowering of surface waters which serve as a source of water for personal, agricultural or municipal functions on the owner's property to levels below base flow levels for more than 5 days.

(2) And property owner under sub (1) seeking a remedy under this Section shall simultaneously file a notice with the Town and the mine operator of the occurrence of the event under sub (1) explaining the nature and extent of the problem.

(3) Within 24 hours of receipt of such notice under sub (2), the Town may use funds provided under Section 10.10 to provide an adequate interim water supply. The Town shall also use funds under Section 10.10 to indemnify the Town for any claims filed under Wis. Stat.

281.77(4). An interim water supply shall continue until the Town has approved the report or plan under sub (4).

(4) Within 20 days of receipt of notice under sub (2), the mine operator shall provide to the property owner and to the Town a report that demonstrates that the impact to the property owner was not attributable to the mining operation or to present a plan for a permanent alternative water supply to be paid by the operator.

(5) The Town shall in consultation with the property owner review the report or plan and approve or deny such plan. If the Town determines that the mine operator was not the cause of damage to the private water supply, the operator may elect to be reimbursed by the property owner for the costs of supplying water during a period not exceeding one year.

(6) A property owner within the Town may apply to the Town for use of funds under Section 10.10 to remedy damages to a private water supply identified in sub (1), provided that the property owner can demonstrate to the Town that the damage to the private water supply was caused by the mine. If the Town determines that the damage was caused by the mine, the property owner can utilize the remedies in subs (2) to (4).

(7) Nothing under this section shall limit a property owner from seeking any other remedies or damages available under law.

Section 10.12. Severability, Interpretation, and Abrogation

(1) Severability.

(a) Should any section, clause, provision or portion of this Chapter be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction including all applicable appeals, the remainder of this Chapter shall remain in full force and effect.

(b) If any application of this Chapter to a particular parcel of land is adjudged unconstitutional or invalid by a final order or court of competent jurisdiction including all applicable appeals, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment.

(2) The provisions of this Chapter shall be liberally construed in favor of the Town of Bridge Creek and shall not be construed to be a limitation or repeal of any other power now possessed or granted to the Town of Bridge Creek.

(3) 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.

Section 10.13. Mining Agreement.

All provisions of this Chapter, including, without limitation, the license term,

renewal, application process, and minimum standards, may be modified by agreement between the Town and the Operator if the Town Board determines that the agreement provides for the protection of the public at least equal to those protections found under this Chapter.

Section 10.14. Effective Date.

Following passage by the Town Board, this Chapter shall take effect the day after the date of publication or posting as provided by Wis. Stat. 60.80.

ADOPTED this 16th day of April, 2015 by a vote of: _____ yes; _____ no

Town Board Chairperson

Town Clerk

Published on the _____ day of _____, 2015.

Posted on the _____ day of _____, 2015.

EFFECTIVE DATE.

This ordinance shall be in force and effect from and after its adoption and publication. The above and foregoing ordinance was duly adopted by the Town Board of the Town of Bridge Creek on the 19th day of January 2017.

Approved:

Chairman: *Jeffrey Guder*

Supervisor: *Stephen Weiss*

Supervisor: *Don Green*

Supervisor: *Len Holby*

Supervisor: *Sam Hoff*

Clerk: *Kathy Olson*

Adopted: January 19, 2017

Published: August 15, 2017

Posted: August 15, 2017