

THE TOWN OF RED CEDAR NONMETALLIC MINING ORDINANCE
ORDINANCE NUMBER: 2013 - 1

The Town Board of the Town of Red Cedar, Dunn County, Wisconsin, does hereby ordain as follows:

Section 1. Finding, Purpose and Authority

- (1) Findings. Nonmetallic mining operations, while a component of our state and local economy, can have both direct and indirect adverse impacts. Studies have documented that, depending on the size of the mining operation, the type of geological deposit being mined and the manner and methods of mining and processing used, nonmetallic mining can have adverse impacts on groundwater and surface water, and can generate harmful levels of dust and noise particularly if blasting and crushing operations, or washing and drying processes, are undertaken. Nonmetallic mining operations that generate more than 5,000 cubic yards of material in any calendar year can generate high volumes of truck traffic that can present safety issues and concerns for the proper and timely maintenance of Town roads, and exposure to nuisances of noise and dust.
- (2) Purpose. The purpose of this Chapter is to provide minimum standards for large nonmetallic mining operations including processing and bulk material transportation loading facilities and related rail spurs in the Town, and to require licenses for nonmetallic mining operators and facility operators in order to protect public health and safety, to minimize or prevent adverse off-site impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Red Cedar.
- (3) Authority. This Chapter is adopted by the powers granted to the Town of Red Cedar by the Town's adoption of Village powers under Wis. Stat. §§ 60.10 and 61.34, its authority under § 66.0415, and other authority under the statutes. Any amendment, repeal or recreation of the statutes relating to this Chapter made after the effective date of this Chapter is incorporated into this Chapter by reference on the effective date of the amendment, repeal or recreation.

Section 2. Applicability and Scope

- (1) This Chapter shall apply to all nonmetallic mining operations and mine sites including processing and bulk material transportation loading facilities and related rail spurs within the Town of Red Cedar which extract or process more than 5,000 cubic yards of material in any calendar year, and does not apply to activities set forth in (a) through (h) below.
 - (a) Excavations or grading when its use is exclusively for municipal, county, or state highway construction.
 - (b) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
 - (c) 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.

- (d) Grading conducted for preparing a construction-site or restoring land following a flood or natural disaster.
- (e) Excavations for building construction purposes conducted on the building site.
- (f) Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.
- (g) Removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.
- (h) Asphalt and Concrete (Ready-Mix) production facilities which do no onsite excavation of nonmetallic minerals, and which were in operation prior to the enactment of this Ordinance shall not be required to register or apply for a license under this Ordinance, as long as said facility does not enlarge its operations or begin any new operations or processes which would fall under the provisions of this Ordinance. Onsite storage of materials used in the making of asphalt and concrete is permitted, however storage of nonmetallic minerals for any other purpose will require compliance with the provisions of this Ordinance.

Section 3. Definitions

- (1) "Adjoining landowner" means any property within 1 mile of the proposed mine site regardless of whether there is a residence or structure on the property.
- (2) "Buffer" means an undisturbed vegetated area measured from the mine site property boundary into the mine site, in which no nonmetallic mining activities, structures or roads can occur except for the construction and maintenance of a vegetated berm.
- (3) "Heavy Vehicle" means a vehicle over 48,000 pounds gross vehicle weight.
- (4) "Landowner" means the person or entity who has title to land in fee simple or who holds a land contract for the land.
- (5) A "mine site" or "site" means land from which mineral aggregates or nonmetallic minerals will be extracted for sale or use by the Operator; all land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing, drying, processing or screening facilities, private roads or haulage ways associated with nonmetallic mining operation regardless of whether the materials come from on-site or off-site; any facility designed or constructed to stockpile and load industrial sands onto trucks, rail cars, barge, etc., and all contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or Operator.
- (6) "Nonmetallic minerals" means a product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, non-renewable material. Nonmetallic minerals include but are not limited to stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat and talc.
- (7) "Nonmetallic mining" means any or all 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 industrial processing operations that may involve the use of equipment for the crushing, screening, separation, washing, drying or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site, or from materials transferred from off-site. This includes, but is not limited to concrete and asphalt production facilities and gravel and sand operations.
 - (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 or stockpiling of the extracted nonmetallic materials, finished products or waste materials to or from the extraction site and/or processing site(s), including truck transfer, transloading or rail loading facilities.
 - (f) Disposal of waste materials.
 - (g) Reclamation of the extraction site.
- (8) "Operator" means any person who is engaged in, or who has applied for a license to engage in nonmetallic mining whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.
 - (9) "Operator's license" or "license" means the license required of mining operators in this Ordinance to undertake nonmetallic mining in the Town of Red Cedar.
 - (10) "Town" means the Town of Red Cedar.
 - (11) "Town Board" means the Town Board of the Town of Red Cedar.
 - (12) "Waste Material" means the non-marketable by-product that results directly from or is displaced by extraction or that is a by-product of a manufacturing process that is scheduled for disposal at the extraction site or some other site as part of reclamation plan.

Section 4. License Required

- (1) License Requirement. Except as set forth in sub.(6), no person shall operate a nonmetallic mine or processing facility within the scope of this Ordinance in the Town of Red Cedar without first obtaining an Operator's license from the Town Board.
 - (a) Upon adoption of this Ordinance, a nonmetallic mine, processing facility, or transloading/rail loading facility, in existence prior to the adoption of this Ordinance shall be given an exemption for a six-month period. This exemption period is intended to give the operator time to comply with the License Requirement. During

the exemption period, no operator or operation shall modify or substantially change their operations, or the products produced.

(b) Temporary License. Operators engaged in nonmetallic mining on the effective date of this Ordinance shall have a temporary, initial operator's license for the size and extent of the nonmetallic mining operation on that date, once the operator certifies that its nonmetallic mining operation will comply with the minimum standards in Section 7 of this Ordinance during the term of the temporary license and submits a complete license application to the Town within six months of the effective date of this Ordinance. Operators engaged in nonmetallic mining before this O goes into effect and that are actively engaged in negotiations with the town intended to produce a Mining Agreement authorized by Section 13 on the effective date of this Ordinance shall have a grace period of 30 days after the Ordinance's effective date to complete and enter into a Mining Agreement with the Town before being required to comply with this section of the Ordinance. An operator that is unable to enter into a Mining Agreement with the Town during the grace period shall present an action plan for bringing itself into compliance with the Ordinance with its license application. Alternatively, the grace period may be extended by permission of the Town Board if the Town Board finds, in its sole discretion, that the operator is acting promptly and in good faith to complete and enter into a Mining Agreement.

(2) License Term.

(a) An Operator's license shall be granted for a period of one year commencing on January 1 and ending on December 31 of each calendar year. For the first year of operation under this Ordinance, the Operator's license will extend from the date of issuance until the first December 31 of the first calendar year after operations have been started.

(b) An Operator's license may be renewed as set forth in Section 8.

(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. An Operator's license may not be assigned or transferred without the express written consent of the Town Board, And only if the new Operator provides all financial assurances as may be required by the Town.

(5) License Revocation. An Operator's license may be revoked under the procedures in Section 9.

(6) Registration License. Nonmetallic mining operations that meet all of the following criteria may apply for a registration license under Section 4 in lieu of an operator's license:

(a) The nonmetallic mining operation where less than 10 acres of total affected acreage occurs over the life of the mine or the processing facility, or which meets all of the following: produces less than 15,000 tons per year, and generates less than one haul truck per hour over an eight hour period, and where no washing or processing of nonmetallic minerals occurs.

- (b) The nonmetallic mining operation does not involve blasting.
- (c) The nonmetallic mining operation does not involve processing of materials from off-site.
- (d) The nonmetallic mining operation does not involve mining at a depth below a point that is 5 feet above the groundwater table.
- (e) For nonmetallic operations that qualify for a registration license under Section 4.(6), the Town Board shall grant a registration license if the operator submits the following information to the Town Board:
 - 1) A certification from the operator that it meets the requirements in Section 4.(6)
 - 2) Ownership information under Section 6.(1)
 - 3) A copy of any reclamation plans filed with the County and any permits issued by other federal, state or local agencies for the nonmetallic mining operation.
 - 4) A certification that it will use best management practices to control noise, dust, light, surface water runoff other off-site impacts from the operations.

Registration licenses shall be subject to renewal every five years as set forth in Section 8.(2) and subject to the inspection, enforcement and provisions of Section 9.

Unless specifically enumerated above, operators seeking registration licenses shall not be required to comply with the provisions in Sections 5 - 8, or the provisions in 10 and 11.

An exemption from any of the provisions of this Ordinance shall not prevent the Town from requiring entry into a development or highway use agreement under 349.16 Wis. Stats., or in accordance with other authority of the Town.

Section 5. Procedures for Applying for an Operator's License

- (1) Application Form. The Application Form for a license to mine in the Town of Red Cedar shall be available from the Town Clerk.
- (2) Application Submittal. The applicant shall submit five (5) paper copies and one electronic copy of the Application Form and all documentation required under Section 6 to the Town Clerk accompanied by the payment of the appropriate fees as set forth herein. The Application Form shall be signed by the Operator and by the landowner, provided the landowner is a person other than the Operator. Submittal of an application does not guarantee the approval of the proposed operation.
- (3) Reimbursement of Fees and Costs.

- (a) **Reimbursable Costs.** The Town Clerk and other Town staff may expend time in the review and processing of Operator's Licenses. The Town may also retain the services of professional consultants in reviewing, processing and acting upon Operator's License applications, including but not limited to engineers, attorneys, planners, environmental specialists, and other consultants with skills relevant to Operator Licensing issues arising under this Ordinance. Any applicant for an Operator's License shall reimburse the Town for staff time expended, and shall reimburse the Town for the cost to the Town charged by any consultant retained by the Town, in the administration, investigation, and processing of such Operator's License application.
 - (b) **Preliminary Cost Reimbursement Agreement.** At the time an application for an Operator's License is filed with the Town, the applicant shall execute for the benefit of the Town an agreement agreeing to pay and providing adequate security guaranteeing payment of the cost of the investigation, review and processing of the application, including without limitation by way of enumeration, legal, engineering, acoustical, planning, environmental, and staff administrative costs. The agreement and the security shall be in form and substance acceptable to the Town. The Town shall not begin processing the application until the preliminary cost reimbursement agreement is approved and signed and until the required security is provided to the Town.
 - (c) The Town requires a permit fee of \$250.00 and an initial deposit of \$2,500.00 to begin processing the permit, and the Town shall not incur processing costs beyond that for which a deposit or other security has been approved. Where costs exceed the initial and subsequent deposits, the applicant will provide additional deposits in \$2,500.00 increments to facilitate the review process.
- (4) **Initial Review by the Review Committee.**
- (a) The Town Board shall designate a Review Committee of the size and membership as it deems appropriate. It shall have at least two residents of the Town who may but are not required to be Town Board members.
 - (b) **Preliminary Review.** The Town Clerk shall forward the application to the Review Committee 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 Review Committee shall proceed to schedule a final review at its next regularly scheduled meeting.
 - (c) **Additional Information.** The Review Committee may request the applicant to submit additional information if the Review Committee determines that the application is incomplete. The Review Committee 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 Review Committee whether additional information is required for review of the application and to determine whether the application meets the standards of this Ordinance.
 - (d) **Retained Expert Report.** Once the applicant has submitted any additional information and has paid the fee in the amount charged, the retained expert shall

report to the Review Committee on whether the application meets the requirements of this Ordinance.

- (e) Final Review. The Review Committee shall schedule the application for final review at its next regularly scheduled meeting following its completion of review under par (b) or (d).
 - (f) Recommendation to the Town Board. Upon completion of its review, the Review Committee shall make findings of fact and either recommend that the Town Board grant the applicant a permit to mine with or without restrictive conditions of use or recommend that the Town Board deny the application for a permit to mine.
- (5) Decision by the Town Board.
- (a) Notice and Hearing. Town Clerk shall place the Review Committee's recommendation 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 public notice at least fifteen (15) days prior to the date scheduled for the hearing, with the notice mailed to all adjoining landowners. 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 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 the retained expert's report, if one has been required, as well as public comments made at the public hearing in its review prior to taking action. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section 9(3).

Section 6. License Application

All applicants for a nonmetallic mining Operator's license shall submit the following information. Where such information is available from other documents related to the proposed operation, these documents may be submitted to provide the required information. All requested information must be submitted.

- (1) Ownership Information.
 - (a) The names, addresses, phone numbers, and e-mail addresses of the Operator(s) of the nonmetallic mining operation.
 - (b) The name, address, phone number, and e-mail address of all owners or lessors of the land on which the nonmetallic mining operation will occur.
 - (c) If the nonmetallic mining operation is subject to a lease, a copy of a fully executed lease and/or agreement between the landowner and the Operator who will engage in mining operations on the proposed site.
- (d) Proof that all property taxes owed on the proposed mine site are paid as required by law.

(2) Site Information and Maps.

- (a) Parcel identification numbers of all contiguous parcels owned by the same landowner/lessor on which the nonmetallic mining operation will be located. Certified Survey Maps shall be provided of any of those parcels as may be available at the time of application.
- (b) An aerial photo of the proposed site at a scale of not less than 1 inch equals 660 feet and signed by both the operator and the landowner(s).
- (c) A topographic map of the mine site extending 1 mile beyond the site boundaries at contour intervals no wider than 10 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within one mile of the site.
- (d) The location within the site of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.
- (e) A map on which all residential, agricultural and municipal wells within 1 mile of the boundaries of the site in all directions are marked and given a numerical identification of the location.
- (f) The location and name of all surface waters, including lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the site and within 1/2 mile of the site. The base flow of the surface waters within 1/2 mile of the mine site as determined at the time of application.
- (g) The gradient and depth of the groundwater table shall be determined by existing wells within 1/2 mile of the mine site or other existing data.
- (h) A description of the distribution, depth and type of topsoil not only of the area of the site currently proposed for mining and for which an Operator's license application is being submitted, but also of the entire acreage of land contiguous with the proposed mine site that is owned by the same landowner/lessor, as well as the geological composition and depth and width of the nonmetallic deposit.
- (i) A map identifying the location of all other non-contiguous sites within the Town of Red Cedar and adjacent towns, if any, that will contribute extracted material to the same processing facility to which the site for which the applicant seeks a license will also contribute.
- (j) The Applicant will provide such articles of financial due diligence as required to establish the financial credibility of the applicant to undertake and complete the proposed project. A disclosure of the corporate structure of Ownership of the applicant including partners, joint ventures, etc. will be made part of the application.

(3) Operation Plan.

- (a) Dates of the planned commencement and cessation of the operation of the mine and the processing facilities.
 - (b) Description of mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.
 - (c) Estimated volume of material to be extracted over the life of the mine and for the next calendar year.
 - (d) Estimated volume of material to be processed over the life of the processing facility and for the next calendar year.
 - (e) Location of road access points.
 - (f) The proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.
 - (g) Identification of all proposed off-site trucking routes, together with the frequency of traffic and the common schedule of travel to be used for transporting extracted materials or products to or from the site.
 - (h) A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water used or falling on the site, including methods used for infiltration and control of run-off.
 - (i) A listing of any hazardous materials, including fuel supplies that will be stored on-site and a description of measures to be used for securing and storing these materials.
 - (j) A listing of all flocculants and other chemicals used in the manufacturing or processing operations or in controlling dust, and a detailed description of expected releases and final disposal of each.
- (4) Information Demonstrating Compliance with Minimum Standards.
- (a) The Operator shall provide the information necessary to demonstrate that the mining operation will comply with the minimum standards in Section 7.
 - (b) For mining operations commencing after the effective date of this Ordinance, the Operator shall also provide information establishing baseline conditions at the site before operations commence, including the groundwater elevation across the site, groundwater quality at the site for lead, arsenic, turbidity, total suspended solids, chlorides, nitrates, specific conductivity and any chemical or residual of the chemical used as a flocculent and any other toxic substance that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made, and the base flow of surface waters within 1/2 mile of the site.
 - (c) For mining operations and processing facilities commencing after the effective date of this Ordinance, the Operator shall also provide information establishing background conditions for air quality at the site before operations commence.

- (5) Exceptions. The applicant may request exceptions from the application requirements of this section if it can demonstrate that the information required can be provided by alternative means or is not necessary for an evaluation of the particular mining operation, and that the public health, safety and welfare will not be adversely affected thereby.

Section 7. Minimum Standards of Operation

The Town Board may grant a license to mine if the applicant can demonstrate that the following minimum standards of operation will be met:

- (1) General Standards.
- (a) The Operator shall stake or otherwise mark the borders of the entire site and shall secure the site by fencing or other alternative measures consistent with mine safety and security.
 - (b) The Operator shall demonstrate compliance with all of the other provisions of this Ordinance and other applicable Town Ordinances.
 - (c) The Operator shall have obtained a blasting permit from the Town for any blasting operations if a blasting Ordinance is in effect.
 - (d) The Operator shall demonstrate that all other applicable federal, state and local permits and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation. The Operator shall demonstrate this by submitting a copy of all permits, approvals, or waivers of permits to the Town prior to commencing operations.
 - (e) The Operator shall provide notice to the Town of any notices of violation, citations, or other enforcement actions taken by any other governmental body against the mining operation within the Town within 15 days of receiving such notice from the governmental body.
- (2) Buffer Areas
- (a) Except as noted below, the Operator shall provide a buffer area of a minimum of 100 feet along bordering property lines and public roadways. The buffer area shall provide a setback of 500 feet to the location of any existing dwelling unless the landowner consents to a lesser distance but not less than 200 feet. For example, if a dwelling is located 100 feet from the mine site property boundary, the buffer area on the mine site would be 400 feet so that the distance to the dwelling would be 500 feet. If a berm is placed within the buffer area and it lies along a public roadway, bottom edge of the berm shall be a minimum of 50 feet from the edge of any road side ditch and shall be vegetated to minimize erosion entering the ditch.
 - (b) Unless the homeowner consents, an offer to purchase at fair market value is not an acceptable alternative to the minimum 500 foot setback, Section 7.2(a).
 - (c) The Operator shall screen the mining operations from public view to the maximum extent practicable through the use of berms, additional setbacks or other measures.

(3) Hours of Operation

Each operation will be considered on a site by site basis. These hours of operation are considered the maximum allowable and may be altered to be more restrictive dependent on the site of operation.

- (a) The Operator shall limit normal hours of operations Monday through Friday not earlier than 5:00 a.m. and not later than 7:00 p.m. Central Daylight Time and not earlier than 6:00 a.m. and not later than 6:00 p.m. Central Standard Time and on Saturday not earlier than 7:00 a.m. and not later than 3:00 p.m. to minimize off-site impacts to residents. Operations on-site shall not occur on Sundays or state or federal holidays. The Operator may submit a plan for extended hours as an exception, if it can demonstrate that additional hours are necessary for the mining operation and it would be consistent with public health, safety, and welfare.
- (b) Operation of Heavy Vehicles leaving the mining site shall be limited to the normal hours of Operation as cited in 7(3)(a). There shall be no operation of Heavy Vehicles leaving the mining site on Sunday or holidays.
- (c) The Operator shall schedule Heavy Vehicles to and from the mining site in a manner to avoid interfering with the safety of children being taken or returned from school, the safety of slow-moving farm vehicle traffic, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is highest.

(4) Use of Town Roads

- (a) The Operator and any Heavy Vehicles under contract, lease or license with the Operator shall comply with the weight limit provisions for town roads.
- (b) If the Operator needs a permit to use Heavy Vehicles on Town Roads in excess of the weight limits, then the Operator shall provide to the Town Board for review and approval, financial assurance to address any potential damage to Town Roads resulting from such use. Such financial assurance can include but is not limited to the following:
 - 1) An agreement to rebuild the Town Roads used as truck routes within six months of the commencement of mining operations on site to standards appropriate to the weight of the vehicles used by the Operator, subject to prior review and approval of the Town Board, and subject to the provision of fund for maintenance and replacement of the road at the end of its useful life.
 - 2) An irrevocable letter of credit or bond in an amount sufficient to rebuild and maintain the Town Roads used as truck routes.
 - 3) Other financial assurance measures agreed upon by the Town Board.
- (c) Provision of financial assurance under this section and incorporation into an operator's license under this Ordinance, shall constitute compliance with the permit provisions meeting weight limits as defined by the Town.

- (d) If the Town Roads are being used by more than one Operator, the Operators may propose and the Town Board shall consider a joint agreement to satisfy the financial assurance obligations in this section.

(5) Control of Light and Noise

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

- 1) The use of full cutoff shrouds on all lights.
- 2) Portable lighting shall be used only as necessary to illuminate temporary work areas.
- 3) The use of berms of sufficient height coupled with other methods of visual screening to block light from neighboring properties.
- 4) The design and location of access roads to minimize traffic and operations lighting of neighboring properties.
- 5) Lighting shall be placed so as to avoid creating a hazard to traffic on public roads.

- (b) The Operator shall control off-site noise levels to the maximum extent practicable to avoid adverse impacts to adjoining landowners. The noise levels at the boundaries of the mining or processing site shall not exceed 60dB. The use and regulation of compression release engine brakes, commonly known as jake-brakes is prohibited except for emergencies. Back-up alarms on heavy equipment will meet MSHA and OSHA requirements, but will be of the white or broad band noise type. Operator shall inform all truck drivers and any independent contractors that they must comply with the no jake braking rule and all other applicable traffic codes. If a trucker disregards this notice, Operator shall take steps to correct the action or stop using any such trucking company that refuses to comply.

(6) Control of Air Pollution

- (a) Regardless of the actual monthly production of the nonmetallic mine, the Operator shall cover all trucks hauling sand with secured tarps, and utilize all relevant dust control measures specified in Wis. Admin. Code § NR 415.075. Additionally, the Operator shall have an established protocol for additional dust control measures when the National Weather Service has issued notice that the wind will be above 13 mph.
- (b) Air monitors.
 - 1) If an applicant is applying for an Operator's license for a mining, processing, and/or bulk material transfer operation, the Operator shall be required to monitor the ambient level of airborne particulate matter down to 2.5 microns in size (PM_{2.5}) and Total Suspended Particulates (TSP) as measured by the

method described in NIOSH 7501 or OSHA ID-142, 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 agreement of the Operator, the Town Board and its consultant, but all costs associated with monitoring shall be borne by the Operator.

- 2) If the air monitors show an exceedance of 35 micrograms per cubic meter of PM_{2.5} in any 24 hour period, the Operator shall evaluate and implement additional best available control technologies to minimize PM_{2.5} emissions.
- 3) If the air monitors show an exceedance of 150 micrograms per cubic meter of TSP in any 24 hour period, the Operator shall evaluate and implement additional best available control technologies to minimize TSP emissions.
- 4) The Operator shall compile a monthly summary of monitoring results and report such results within 10 days of the end of each month to the Town Board.

(c) The operator shall submit and is required to follow an in-depth fugitive dust prevention plan.

(7) Control of Waste Materials

The amount of waste material (non-marketable fines) returned to a mine site as part of the 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 raw 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.

(8) Standards Regarding Groundwater and Surface Water.

(a) Impacts to Groundwater Quality.

- 1) The mine shall have at least one sentinel well at the boundary of the mining site that is down gradient of the groundwater flow that travels under the mining reclamation area(s). The Operator shall take quarterly samples of the sentinel well for lead, arsenic, turbidity, total suspended solids, chlorides, nitrates, specific conductivity and any chemical or residual of the chemical used as a flocculent and any other toxic substance that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made during the first 2 years of operation and twice a year in subsequent years.
- 2) The use of flocculants and coagulants shall be limited to those that are acceptable for use in municipal drinking water systems (meeting NSF 60 standards).

- 3) The mining company shall sample private wells within 1/2 mile of the mine site down gradient of the groundwater flow every 2 years and private wells on the perimeter of other sides of the mine site every 3 years. In addition, monitoring at the sentinel well shall determine changes in the level of the groundwater table.
 - 4) Prior to the onset of mining operations, all private wells within 1/2 mile of the property on which the mine site is located shall be sampled for lead, arsenic, turbidity, total suspended solids, chlorides, nitrates, specific conductivity and any other toxic substance that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made.
 - 5) Mining operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code (currently Chapter NR 140).
- (b) Impacts to Groundwater Quantity.
- 1) At least 60 days prior to commencement of non-metallic mining operations, the Operator shall place sufficient test wells to verify the groundwater elevations on the mine site. Test wells located in the down-gradient direction of groundwater flow shall be located so that they can serve as permanent sentinel monitoring wells during the course of operations.
 - 2) Mining operations shall not extract materials at a depth below the point that is 10 feet above the maximum established groundwater table.
 - 3) Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within 1/2 mile of the mine site. A significant reduction includes a drop in the water table that results in a substantial adverse impact on a private well including but not limited to the inability of a well to provide water on a continuous basis.
- (c) Impacts to Surface Water Base Flow. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within 1/2 mile of the mine site, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.
- (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, recreational or municipal functions such as fire protection within 1/2 mile of the mine site. Adverse effects include but are not limited to a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operations.
- (e) The Operator shall undertake all measures necessary for the control of surface water runoff from nonmetallic mining operations in order to prevent pollution and erosion of sediment onto neighboring properties, surface water and groundwater, and shall also comply with the standards for erosion control under Wisconsin Administrative Codes as applicable (currently Chapters NR 216 and NR 151).

- (f) In the event that the site contains areas adjacent to the nonmetallic mining operations that are being used for agricultural, commercial or residential purposes, the Operator shall undertake all measures necessary to control surface water runoff from those areas from entering mining operations or otherwise causing contamination of surface water and groundwater.
- (9) Hazardous materials.
- (a) All hazardous chemicals shall be stored, used and disposed of in accordance with applicable state and federal law.
 - (b) The Operator shall not use as landfill material or dispose of onsite, any waste material that contains a toxic amount of a hazardous chemical or a toxic residual.
 - (c) The Operator shall have a plan for responding to spills of any hazardous materials on the site.
- (10) Exceptions.
- (a) The Operator can request exceptions from the minimum standards of this section if it can demonstrate that the intent of this Section can be achieved through the use of alternative measures if the public health, safety and welfare will not be adversely affected thereby, and the Operator may be required to post a full coverage bond with the Town for any future damage caused as a result of any exceptions granted.
 - (b) The Town Board may, at any time, impose requirements in addition to or exceeding the minimum standards of this Section if it has evidence that the public health safety and welfare is not being or will not be adequately protected without the imposition of additional measures.

Section 8. Annual Report and License Renewal

- (1) Annual Report.
- (a) No later than October 31 of each calendar year, the Operator shall submit an annual report to the Town Board for all active and intermittent mining sites and processing facilities for which the Operator has a license in the Town of Red Cedar. The reporting period shall be from the date of the issuance of the first Operator's license to September 30, and thereafter from October 1 to September 30.
 - (b) A written report demonstrating how the Operator has been in compliance with all terms and conditions of its license and this Ordinance. The report shall include all groundwater, surface water and other monitoring results, as well as a copy of all annual reports submitted to all other agencies. The annual report shall include the following information:
 - 1) An identification of the Operator and location of the mining site.
 - 2) A map or drawing accurately showing the area of excavation, the unclaimed area and any reclaimed area including a calculation of the number of acres for each type.

- 3) A description of activities and operations on the site for the previous calendar year.
- 4) A description of activities and operations on the site anticipated for the following calendar year.
- 5) A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

(2) License Renewal.

- (a) The Operator shall make a written request to the Town Clerk for a renewal of the license to operate the mine no later than October 1 of the year in which the license will expire. The application shall be accompanied by the payment of a fee in an amount in accordance with the reimbursement provisions set forth in Section 5(3)(a).
- (b) The written request for renewal shall incorporate by reference the annual report from the previous calendar years in accordance with the provisions of sub. (1).
- (c) The Town Clerk shall review the renewal application within 60 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 if additional information or expertise is necessary to properly evaluate the application. The Town shall have the option to retain an engineer or other qualified person with appropriate expertise to inspect the mine site unless the site is reported as being inactive during the past year, in which case a member of the Town Board may be assigned to inspect the site. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for a decision under par. (e).
- (e) Once the applicant has submitted any additional information and has paid the fee in the amount charged, any retained expert shall report to the Town Board on whether the renewal application meets the requirements of this Ordinance. 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.
- (f) The Town Board shall grant the request for renewal if it finds:
 - 1) There have been no material violations of the Ordinance or the license which have not been appropriately remedied, and
 - 2) The Operator has not received multiple or recurring citations or orders to remedy violations of the Operator's license or this Ordinance. Multiple or recurring shall mean at least 10 in the course of a year, or 2 in the course of one month, or 3 consecutive citations or remediation orders for the same violation within a two month period.

- 3) All applicable fees have been paid and financial responsibility requirements have been met.
- (g) If the Town Board denies the request for renewal, the Town Board shall notify the Operator and provide the Operator with an opportunity for a hearing under Section 9(3).

Section 9. Inspection, Enforcement, Procedures and Penalties

- (1) **Inspection.** In addition to an annual inspection pursuant to Section 8 (2), the Town Board or other authorized representative of the Town, may make inspections to determine the condition of nonmetallic mining sites in the Town of Red Cedar in order to safeguard the health and safety of the public and determine compliance with the minimum standards under this Ordinance upon showing proper identification, and upon reasonable notice.
- (2) **Violations.** The following are violations under this Ordinance:
 - (a) Engaging in nonmetallic mining without an Operator's license granted by the Town Board.
 - (b) Failure to comply with the applicable minimum standards and other terms of this Ordinance.
 - (c) Making an incorrect or false statement in the information and documentation submitted during the licensing process or during inspection of the operation by the Town or its duly appointed representative.
 - (d) Failure to timely file the annual operational report under Section 8.
 - (e) Failure to take appropriate action in response to a notice of violation or remediation order, citation, request for additional financial assurance under Section 10 or other order issued by the Town.
- (3) **Hearings.**
 - (a) Any person affected by a stop work order or remediation notice and order, or a suspension or revocation of an operator's license which has been issued in connection with the enforcement of this Ordinance 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 or for the mitigation of the order. Such petition shall be filed within thirty days of the date the notice of the action is served, or within 30 days of the board action to deny an application for a renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner at least 10 days written notice thereof. Service or orders and notices may be by personal service on the person who appears to be in charge of the mine site from time to time during regular hours of operation and may be made by any Town official, or may be made by registered or certified mail to the address contained in the operator's

application. If service is made by registered or certified mail it shall be deemed received 3 days after mailing.

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

(4) Remedies.

The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance, including the following:

- (a) Issue a stop work order.
 - (b) Issue a notice of violation and remediation order that specifies the action to be taken to remedy a situation.
 - (c) Issue a citation in accord with the Town of Red Cedar citation ordinance.
 - (d) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub. (6) and injunctive relief.
 - (e) Suspend or revoke the Operator's license under sub. (5).
- (5) License Suspension or Revocation. After giving notice and a hearing pursuant to sub. (3), the Town Board may suspend or revoke an Operator's license for a violation under sub. (2).
- (6) Penalties.
- (a) Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less than \$100 per violation nor more than \$5,000 per violation and/or be subject to injunctive relief each day a violation exists is a separate violation.
 - (b) Any person or entity adjudicated for violation of this Ordinance shall pay court costs and reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.
- (7) Non-Waiver. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present violation(s).

Section 10. Financial Assurance

- (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 truck traffic transporting materials to or from the site in accordance with the provisions of Section 7.
 - (b) Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within 1/2 mile of the site or such other area shown to be impacted by the Operator's operations.
- (2) The form of financial assurance made to the Town of Red Cedar shall be that form agreed to by the Town Board and may include escrow accounts, irrevocable letters of credit or other measures agreed upon by the Town Board.
 - (3) In the event the Town determines that the amount of financial assurance must be increased to meet specific road repair or water supply needs, or the amount available has been 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.
 - (4) The Operator shall also provide to the Town proof that it has provided the financial assurance for reclamation required under Wisconsin law.

Section 11. Damages to Private Water Supplies

- (1) A property owner within 1/2 mile of the mine site may seek remedies under subs. (2)-(5) for any of the following damages to private water supply:
 - (a) A maximum contaminant level 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) Any 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 46.10 to provide an adequate interim water supply. The Town shall also use funds under Section 46.10 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 beyond 1/2 mile of the mine site may apply to the Town for use of funds under Section 46.10 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).

Section 12. Severability, Interpretation, and Abrogation

- (1) Severability.
 - (a) Should any section, clause, provision or portion of this Ordinance be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction including all applicable appeals, the remainder of this Ordinance shall remain in full force and effect.
 - (b) If any application of this Ordinance to a particular parcel of land is adjudged unconstitutional or invalid by a final order or a court of competent jurisdiction including all applicable appeals, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment.
- (2) The provisions of this Ordinance shall be liberally construed in favor of the Town of Red Cedar and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town of Red Cedar.
- (3) This Ordinance is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Ordinance.

Section 13. Mining Agreement

Any of the provisions of this Ordinance, including the license term, may be modified by the development of a Mining Agreement between the Town and the Operator if the Town Board determines that the intent of this Ordinance can be achieved through the use of alternative measures, and that the public health, safety and welfare will not be adversely affected thereby.

Section 14. Effective Date

Following passage by the Town Board, this Ordinance shall take effect as provided by Wis. Stat. § 60.80.

ADOPTED by a vote of four yes, one abstain, on March 11, 2013.

Signatures on following page.

TOWN OF RED CEDAR

Ron Robelia

Ron Robelia, Town Board Chairperson

Deb Gotlibson

Deb Gotlibson, Supervisor 1

abstained

Andrew Gansberg, Supervisor 2

Dave Leach

Dave Leach, Supervisor 3

Doug Miller

Doug Miller, Supervisor 4

Attested to as of March 4, 2013.

C. Miller

Cheryl Miller, Town Clerk