

**THE TOWN OF ROUND LAKE
SAWYER COUNTY, WISCONSIN**

ORDINANCE NO. 2022-04

NONMETALLIC MINING LICENSING ORDINANCE

Section 1. Authority

This Ordinance is adopted pursuant to the powers granted to the Town of Round Lake under Wis. Stat. § 60.22 and Wis. Stat. § 61.34 by the Town's adoption of village powers pursuant to Wis. Stat. § 60.10, its authority under Wis. Stat. § 66.0415, and other authority under the Wisconsin Statutes. Any amendment, repeal, or recreation of the Wisconsin Statutes relating to this Ordinance made after the effective date of this Ordinance is incorporated into this Ordinance by reference on the effective date of the amendment, repeal, or recreation.

Section 2. Purpose

The purpose of this Ordinance is to provide minimum standards of operation for all nonmetallic mining operations in the Town of Round Lake, and to require licenses for nonmetallic mining operators in order to protect public health and safety, to preserve the scenic beauty of the Town's landscapes and environment, to preserve the rural character of the Town, to protect the public from damage to both the quantity and quality of ground and surface waters, to minimize or prevent adverse impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Round Lake.

Section 3. Applicability and Scope

(1) This Ordinance shall apply to all nonmetallic mining operations and mine sites within the Town of Round Lake except as set forth in sub. (2).

(2) This Ordinance 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, unless the highway, railroad or any other transportation facility is a part of or directly services a nonmetallic mining operation.

- (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 affected acreage occurs over the life of the mine.
- (f) 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.
- (g) Nonmetallic mines lawfully operating on and before the effective date of this Ordinance shall not be required to apply for and obtain a license under this Ordinance for that mine, provided such a mine operates under a reclamation plan lawfully approved by Sawyer County and the reclamation is not modified in any way after the effective date of this Ordinance. If the reclamation plan is modified, then the mine is considered a new operation and is subject to the licensing requirements of this ordinance. If an Operator seeks to transfer operation of the nonmetallic mine to a new Operator after the effective of this Ordinance, the nonmetallic mine shall apply for and obtain a license under this Ordinance.

Section 4. Interpretation

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

Section 5. Definitions

- (1) "Adjoining landowner" means the person who owns any property within 3 miles 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 nonmetallic mine site or processing facility border into the nonmetallic mine site or processing facility, in which no nonmetallic mining activities or structures, other than vegetated berms or roads, can occur.
- (3) "Dwelling" means a structure or part of a structure that is used or intended to be used and occupied for human habitation as a home or residence by one or more persons.
- (4) "Heavy vehicle" means any vehicle over 48,000 pounds.

(5) “Landowner” means the person who has title to the property in fee simple or who holds a land contract for the property.

(6) A “mine site” or “site” means property from which mineral aggregates or nonmetallic minerals will be extracted and/or processed for sale or use by the operator, including all contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or operator and land on which any of the following is or will be located:

- (a) Structures.
- (b) Equipment.
- (c) Storage facilities.
- (d) Stockpiles.
- (e) Washing or screening facilities.
- (f) Dry-processing facilities.
- (g) Facilities for the loading and unloading of sand to and from trucks.
- (h) Private roads or haulage ways associated with a nonmetallic mining operation.

(7) “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.

(8) “Nonmetallic mining” means any or all of the following:

- (a) Any site preparation activities conducted on a proposed mining site by the landowner, mine operator, or any other person associated with the mining operation. Preparation activities include, but are not limited to, grading, boring, and exploratory boring.
- (b) 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.
- (c) Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with materials transferred from off-site.

- (d) Manufacturing processes aimed at producing nonmetallic products for sale or use by the operator.
 - (e) Stockpiling of nonmetallic products for sale or use off-site and stockpiling of waste materials.
 - (f) Transport of the extracted nonmetallic materials, finished products, or waste materials to or from the extraction site.
 - (g) Disposal of waste materials.
 - (h) Reclamation of the extraction site.
- (9) “Operation” means the temporary, active, or suspended use, management, or control of land, property, personnel, or equipment for the purposes of nonmetallic mining as defined under Section 5(8).
- (10) “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.
- (11) “Operator’s license” or “license” means the license required of mining operators in this Ordinance to undertake nonmetallic mining in the Town of Round Lake.
- (12) “Town” means the Town of Round Lake.
- (13) “Town Board” means the Town Board of Supervisors of the Town of Round Lake.
- (14) “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 a reclamation plan.

Section 6. Operator’s License Required

- (1) Operator’s License Requirement. No person shall operate a nonmetallic mining operation within the scope of this Ordinance in the Town of Round Lake without first obtaining an operator’s license from the Town Board.
- (2) Required Zoning. If town or county zoning regulations have been enacted, the property shall be appropriately zoned to allow for the proposed nonmetallic mining operation(s) and any conditional use permit approvals shall be obtained before the submission of a license application or mining agreement under this Ordinance.
- (3) Operator’s License Term.

- (a) An operator's license shall be granted for a period of no more than 5 years.
- (b) An operator's license may be renewed as set forth in Section 10, except that a temporary operator's license may not be renewed.

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

(5) Operator's License Transfer. An operator's license may be transferred to a new operator with the permission of the Town Board, provided that the new operator provides financial assurances and other information as may be required by the Town, county, or state, and provided that the operational plan as submitted at the time of granting the license being transferred remains unchanged.

(6) Operator's License Revocation. An operator's license may be revoked under the procedures in Section 11.

Section 7. Operator's License Application Process

(1) Application Form. The application form for a license to mine in the Town of Round Lake shall be available from the Town Clerk.

(2) Application Submittal. The applicant shall submit 6 copies of the application and all required documentation required under Section 8 to the Town Clerk, as well as an electronic version of the application, accompanied by the required application fee of \$500 and the base administrative fee of \$3000 established for the administration of this Ordinance. The base administrative fee shall include necessary compensation to the Town for all legal services and expert consulting expenses, which may be reasonably incurred by the Town as part of its review and processing of the application, regardless of whether or not the application for a license to mine is subsequently approved by the Town. The fees shall be made payable to "Treasurer, Town of Round Lake." If the operator is the landowner, the application shall be signed by the operator. If the operator is not the landowner, the application shall be signed by the operator and the landowner.

(3) Completeness Determination by the Town Clerk. Within 30 days after receiving an application, the documentation required under Section 8, and the application fee, the Town Clerk shall make a preliminary determination as to whether the application form has been completed and all the required documentation has been submitted. Within 10 days of determining that an application form is incomplete or that the required documentation has not been submitted, the Town Clerk shall notify the applicant in writing and state the reasons for the determination. Within 30 days of receiving a revised application form or additional information or documentation, the Town Clerk shall make a preliminary determination as to whether the application form has been completed and all the required documentation has been submitted. Within 20 days of determining that the application form has been completed and that all required documentation has been

submitted, the Town Clerk shall forward the application to the Town Board, shall give public notice that a nonmetallic mining operator's license application has been received, and shall mail a copy of the public notice to all adjoining landowners to the proposed nonmetallic mining site. The public notice shall identify where the public may inspect and copy a physical version of the application, shall identify where the public may obtain an electronic version of the application, and shall include the date and time of the next regular meeting of the Town Board occurring at least 15 days after the Town Clerk gives public notice that a nonmetallic mining operator's license application has been received.

(4) Initial Review by the Town Board.

- (a) *Initial Review.* The Town Clerk shall forward the completed application and required documentation to the Town Board and place the application on the agenda for the next regular meeting of the Town Board occurring at least 15 days after the Town Clerk gives public notice that a nonmetallic mining operator's license application has been received. The Town Board shall review the application 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 subsection (5).
- (b) *Additional Information.* The Town Board may request the applicant to submit additional information if the Town Board determines that the 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 Ordinance.
- (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 estimated additional administrative fee to be charged beyond the base administrative fee to cover the cost of the services of any such retained expert. The estimated additional fee shall be paid before the additional review is undertaken. If the amount of the final administrative fee exceeds the estimated fee, then the applicant shall pay the amount before review is undertaken; if the final administrative fee is less than the estimated amount, the overpayment shall be refunded to the applicant.
- (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 Ordinance.

(5) Public Hearing, Final Review, and Final Decision by the Town Board.

- (a) *Notice and Hearing.* Once the application is complete and any report by a retained expert has been received, the Town Clerk shall place the application on the agenda for the next regular meeting of the Town Board occurring at least 15 days thereafter. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. At the Town Board meeting, the Town Board shall set a date for a public hearing to occur within 45 days and the Town Clerk shall give public notice of that public hearing at least 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 license. Public comments may be restricted to three minutes if, in the judgment of hearing officer, such a restriction is necessary to maximize public participation, but every person who wishes to comment shall have the opportunity to do so, either by submitting verbal or written comments.
- (b) *Final Review by Town Board.* After the public hearing, the Town Board shall review the retained expert's report as well as the public comments made at the public hearing and then shall prepare a "Town Board Memorandum", which shall include the following:
- I. A written response to all public comments received during the public hearing.
 - II. A written explanation of how the proposed mining operation is, or is not, consistent with the purposes of this Ordinance, which include: protecting public health and safety, preserving the scenic beauty of the Town's landscapes and environment, preserving the rural character of the town, protecting the public from damage to both the quantity and quality of ground and surface waters, minimizing or preventing adverse impacts from on-site and off-site operations, and promoting the general welfare of the people and communities within the Town of Round Lake.
- (c) *Town Board Decision.* Following the public hearing and the preparation of the Town Board Memorandum, the Town Board shall 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 grant the license if it determines that the operation of the mine will be consistent with the minimum standards and the purposes of this Ordinance. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section 11(3). The Town Board's final decision, which shall include a written statement on the reasoning for its decision, and the Town Board

Memorandum, shall be made available to the public immediately after the meeting at which the final decision is made.

Section 8. Operator's License Application

No application shall be deemed complete or available for review until each item of information listed below is submitted. Applicant is expected to prepare their own application document, which shall include all of the information required by this Section. All applicants for a nonmetallic mining license shall submit the following information:

(1) Ownership Information.

- (a) The name, address, phone number(s), and e-mail address of the operator of the nonmetallic mining operation.
- (b) The name, address, phone number(s), and e-mail address of all owners or lessors of the land on which the mining operation will occur.
- (c) If the operation is subject to a lease, a copy of a fully executed lease and/or agreement between the landowner and the operator who will engage in mining operations on the proposed site.
- (d) Information regarding any and all past or present notices of violation, citations, or other enforcement action taken against the operator of, or any individual affiliated with, the nonmetallic mining operation by any governmental body in any jurisdiction.

(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, including all other properties owned or leased by the mine operator within the Town of Round Lake or adjacent municipalities that may serve as potential areas for future expansion.
- (b) An aerial photo of the proposed site at a scale of 1 inch equals 660 feet signed by both the operator and the landowner.
- (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 1 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 the residential, agricultural, and municipal water wells within two miles of the boundaries of the site in all directions are marked and given a numerical identification of the location.
- (f) A map on which all community-oriented establishments, including but not limited to schools, hospitals, libraries, recreation centers, parks, and senior centers, within three miles of the boundaries of the site in all directions, or along a trucking route, are marked and given a numerical identification of the location.
- (g) A map on which all Tribal burial grounds and sacred sites that will be disturbed by mining activity are marked and given a numerical identification of the location. Tribal burial grounds and sacred sites shall be identified through an archeological survey, consultation with the Wisconsin State Historic Preservation Officer, consultation with any Tribal Historic Preservation Officer from all existing Tribes in the region, and through requested formal comment from existing Tribes in the region.
- (h) 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 2 miles of the site. If the gradient of the groundwater flow is in the direction of a stream, then the applicant must supply data establishing the base-line flow of the stream at the time of license application.
- (i) A description of the current distribution of any and all wildlife and wildlife habitats on the site and within 1 mile of the site, including an assessment of any and all short-term or long-term impacts to said wildlife that may be caused by the mining operation and/or reclamation process.
- (j) A description of the current distribution of any endangered or threatened species under state or federal law on the mine site and within 1 mile of the site, including an assessment of impacts to said endangered or threatened species and/or their habitat.
- (k) 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.
- (l) A map identifying the location of all other non-contiguous sites within the Town of Round Lake and adjacent areas, if any, which will contribute material to the facility for which the applicant seeks a license.

(3) Operation Plan.

- (a) Dates of the planned commencement and cessation of the operation, including whether or not intermittent periods of inactivity are expected.

- (b) Description of topsoil removal methods, including methods for storage and/or disposal of topsoil, subsoil, and other materials.
- (c) Description of mining methods, machinery, and equipment to be used for extraction and processing of the extracted material, and the sequence of operations, including whether or not blasting will be necessary. The county-approved Nonmetallic Mining Reclamation Permit for the proposed mine site shall be included with this information.
- (d) Expected maximum depth of the mine, including whether or not the operator expects to mine below the water table, and if so, any dewatering plans for the site.
- (e) Estimated volume of material to be extracted over the life of the mine and for the next calendar year.
- (f) The proposed location within the site of all buildings and other structures, equipment, stockpiles, storage, and parking areas.
- (g) Location of road access points. 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 including methods used for infiltration and control of run-off.
- (i) Either a description of the methods that will be used to control fugitive dust at the site or submittal of the Wisconsin Department of Natural Resources-approved Fugitive Dust Plan.
- (j) 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.
- (k) A listing of all chemicals used in the 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 the Wisconsin Department of Natural Resources, the United States Environmental Protection Agency, or other agencies.

(4) Additional Information.

- (a) An estimate of the net profits, based on sales of material to be extracted, for the first five years of operation.
- (b) An estimate of what the total cost of reclamation for the proposed mine site will be.
- (c) An estimate of the percentage of profits that will remain in/benefit the Town of Round Lake compared to the percentage of profits that will flow out of the Town to the city/State where the parent company is located.
- (d) An assessment of how the proposed mining operation is in accordance with the values and goals outlined in the Town's Comprehensive Plan.
- (e) An assessment of the impact of transportation to and from the proposed mine site along the proposed hauling routes, including the identification of any schools, hospitals, community centers, and busy intersections that are located along the hauling route.
- (f) An estimate of the number of jobs that will be created by the proposed operation and an estimate of the percentage/number of those jobs that will go to citizens of the Town of Round Lake.
- (g) An assessment of potential impacts (negative or positive) on other industries that exist in the Town of Round Lake, such as tourism, agriculture, etc.
- (h) A listing of all other licenses (county, state, federal, etc.) necessary for this project, including the status of each and a copy (if available).

(5) Information Required to Demonstrate Compliance with Minimum Standards.

For mining operations commencing after the effective date of this Ordinance, the operator shall provide the information necessary to demonstrate that the mining operation will comply with the minimum standards in Section 9, including, but not limited to:

- (a) A description of surface water runoff and erosion control practices that will be implemented at the mine site (including Wisconsin Pollutant Discharge Elimination System permits, if available).
- (b) A description of all processes occurring at the mine site that will cause emissions of particulate matter into the ambient air, including the best management practices (if any) that will be used to minimize emissions of particulate matter.
- (c) Information establishing site-specific baseline conditions as well as baseline conditions for ecological features within 1 miles of the site before mining operations commence. Ecological data required at the time of application

includes, but is not limited to, the following: stream temperature and chemistry; stream and spring base flow; existing surface water runoff conditions during precipitation events; surface and ground water quality for lead, arsenic, iron, nitrates, petroleum hydrocarbons, 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; and groundwater elevation across the site.

Section 9. 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 demonstrate compliance with all of the other provisions of this Ordinance.
- (b) The operator shall have obtained a blasting license from the Town for any blasting operations, if required to do so.
- (c) The operator shall demonstrate that all other applicable federal, state, and local licenses and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation.

(2) On-Site Standards.

- (a) The operator shall stake or otherwise mark the borders of the entire site and shall secure the site by fencing or other appropriate measures.
- (b) A minimum setback of 2000 feet from the edge of the property boundary on which the mining operation is located to a residence is required. However, the setback does not apply (i) to a residence that is occupied by someone who has sold or leased their land to the applicant on which the mining facility will be located nor (ii) to 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.

(3) Standards Regarding Off-Site Impacts.

- (a) 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, or surface water and groundwater, and shall also comply with the standards for erosion control under NR 216 and NR 151 as applicable.

- (b) In the event that the mine site contains areas adjacent to the nonmetallic mining operation that are being used for agriculture, commercial, or residential purposes, the operator shall undertake all measures necessary to prevent surface water runoff from those areas from entering mining operations.
- (c) The operator shall provide a 15-foot setback from the outside edge of a roadside ditch and, where necessary, along the property lines of adjoining landowners. This 15-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 15-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 15-foot setback is in addition to any buffer that is set by Sawyer County in its regulation of the operation.
- (d) 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.
- (e) The operator shall limit normal hours of operation to weekdays and to 10 hours a day or during daylight hours, whichever is shorter, and not before 7:00 am or after 6:00 pm to minimize off-site impacts to residents. Additionally, the operator shall limit normal hours of operation to 1250 hours per year. The operator may submit a plan for extended hours as a special 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.
- (f) Operation of heavy vehicles entering or leaving the nonmetallic mining site or processing facility shall be limited to the normal hours of operation in par. (e).
- (g) In accordance with designated transportation periods and routes established by the Town Board, the operator shall ensure that trucks from the mining site shall not interfere with the safety of children being taken to or returned from school, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is highest.
- (h) 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.
- (i) The operator shall limit night lighting on site, to that which is minimally necessary for security. 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; and (4) The design and location of access roads to minimize lights from traffic and operations to neighboring properties.

- (j) The operator shall control off-site noise levels to the maximum extent practicable to avoid adverse impacts to neighboring landowners. The noise levels at the boundaries of the mining or processing site shall not exceed 60 db. The noise levels at the boundaries of any school or medical facility shall not exceed 50 db. Decibels shall be based on dbA, which is the unit of sound level expressed in decibels (db) and A-weighted as described in ANSI s. 1.4, 1983, and shall be measured in accordance with accepted protocols. The use and regulation of compression release engine brakes, commonly known as jake-brakes, is prohibited within the Township except for emergencies.

- I. At the operator's expense, noise levels shall be monitored at the nonmetallic mine site or processing facility property boundary by an independent testing company approved by the Town Board. The tests shall occur for a 10-day period at least once per quarter for the first year of operation. If noise complaints are received or decibel levels exceeded, then monitoring will be extended beyond the first year. The monitoring results shall be reported to the Town Board within 30 days of the last test result.

(k) *Ambient Air Monitoring.*

- I. The operator shall utilize all relevant dust control measures specified in Wis. Admin. Code § NR 415.075
- II. If an applicant is applying for an operator's license for a mining operation or a processing plant, the operator shall be required to monitor the ambient level of airborne particulate matter of 2.5 microns in size (PM2.5), 10 microns in size (PM10) and Total Suspended Particulates (TSP) as measured by the method described in Appendices L and B, respectively, of 40 CFR part 50 or a method approved in writing by the Town. The monitoring program will be implemented and carried out by an independent expert chosen by the Town Board. 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. At a minimum monitoring must be sufficient in number, location, and frequency (at least every 1-3 days) to measure: (1) emissions flowing in the four most dominant wind directions; (2) emissions that are representative of the mine operating at full capacity; and (3) emissions that occur during a variety of weather patterns (i.e.

low/high winds, precipitation, etc.). All costs associated with monitoring shall be borne by the operator.

III. The monitoring shall be conducted for the first three years of operation under a new operator's license and for the first three years following the expansion of any nonmetallic mining operation licensed under this Ordinance. Monitoring shall be conducted during the first year of an operator's license renewal.

IV. If at any point the daily averages measured by the ambient air monitors show an exceedance of the 24-hour National Ambient Air Quality Standards for PM2.5, PM10, or TSP, then the operator shall report the exceedance(s) to the Town Boards and consider additional best management practices to minimize PM2.5, PM10, or TSP emissions.

V. If after three years the ambient air quality data shows an exceedance of the annual National Ambient Air Quality Standards for PM2.5, PM10, or TSP, then the operator shall implement additional best management practices to minimize PM2.5, PM10, or TSP emissions in order to be in compliance with EPA and WDNR air quality regulations and the operator shall continue the ambient air quality monitoring program until compliance is achieved.

VI. If after three years the ambient air quality data from the mining operation shows no exceedances of the 24-hour or annual National Ambient Air Quality Standards, then the mining operation may end its ambient air quality monitoring program.

VII. The independent expert in charge of the monitoring program shall compile a summary of monitoring results reports within 10 days of the end of each month that shall be available to the Town Board.

(l) In order to minimize the emission of dust at an off-site facility, stockpiling of product shall be fully enclosed in a structure.

(4) Standards Regarding Groundwater and Surface Water.

(a) *Impacts to Groundwater Quality.*

I. Sentinel wells (i.e. a groundwater monitoring network) on the extraction site shall be placed to monitor depth to groundwater table, groundwater gradient, and groundwater quality. Base-line data, established in Section 8(5)(c), shall be collected prior to the onset of mining must be included in the application materials. Quarterly samples shall be taken of water quality for chemicals used in on-site mining operations, as well as for lead, arsenic, iron, iron bacteria, and

turbidity, and for nitrates and other contaminants associated with any activity other than mining that continues to be conducted on the property on which the mine site is located or on lands adjacent to the mining operation. An annual report of the analytical results shall be provided to the Town. All private wells within 1/2 mile of the mine in the down-gradient direction of the groundwater flow shall be tested for these same contaminants every three years of operation. If a sentinel well shows some contamination of groundwater supply that may be due to the mining operation, and no private wells exist within 1/2 mile down gradient of the sentinel well, then private wells shall be sampled within 1 mile down gradient of the sentinel well. A private well or wells up to 1 mile in any direction from the mine site shall be sampled at any time the Town requests a sampling, with the results of the sampling provided to the Town and well-owner(s). All costs associated with groundwater monitoring and private well testing shall be borne by the operator of the mine.

II. Mining operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code Ch. NR 140.

III. All wash plant settling ponds shall be lined with at least 5 feet of clay meeting the technical standards contained in Wis. Admin. Code § NR 504.06(2) for clay liners.

(b) *Impacts to Groundwater Quantity.*

I. Mining operations shall not extract materials at a depth below the point that is 10 feet above the groundwater table.

II. 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 is 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.

III. Mining operations shall not cause changes to subsurface hydrological connectivity, which affect groundwater movement and discharge patterns.

(c) *Impacts to Surface Water Quality.* Mining operations shall not cause degradation of the quality of surface waters within 2 miles of the site. Prohibited degradation is any degradation resulting in harmful effects to surface waters, which include, but are not limited to, fluctuations in stream temperatures, increased volumes of suspended and dissolved solids, damage to aquatic and riparian habitat quality, and negative impacts on tourism and

recreation that is dependent on the current quality of the surface waters of concern.

- (d) *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 mile of the mine site, including, but not limited to, a reduction of water in springs, streams and tributaries to or below base flows established prior to the beginning of mining operation.
- (e) *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 1 mile of the mine site. Adverse effects include but are not limited to a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.

(5) 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 dispose of waste materials containing any hazardous chemicals in toxic amounts, or residuals declared to be hazardous by a government agency in toxic amounts.
- (c) The operator shall have a plan for responding to spills of any hazardous materials on the site.

(6) Control of Waste Material. 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.

(7) Special Conditions. The Town Board can impose requirements in addition to or exceeding the minimum standards if it has evidence that the public health, safety, and welfare will not be adequately protected without the imposition of additional measures.

Section 10. Annual Report and Operator's License Renewal

(1) Annual Report.

- (a) No later than March 1 of each calendar year, an operator shall submit an annual report to the Town Board for all active and intermittent mining sites for which the operator has a license in the Town of Round Lake.
- (b) The annual report shall include the following information:
 - I. An identification of the operator and location of the mining site;
 - II. A map or drawing accurately showing the area of excavation, the un-reclaimed area and any reclaimed area including a calculation of the number of acres for each type;
 - III. A description of activities and operations on the site for the previous calendar year;
 - IV. A description of activities and operations on the site anticipated for the following calendar year;
 - V. A written report demonstrating how the operator has been in compliance with all terms and conditions of its license and this Ordinance. The report shall also include any groundwater, surface water, and other monitoring results; and
 - VI. A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

(2) Operator's 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 three months before the license will expire. The application shall be accompanied by the payment of both the renewal application fee of \$125 and the base administrative fee of \$750.
- (b) The Town Clerk shall review the renewal application within 30 days of receipt to make a preliminary determination as to whether the application is complete and upon a determination that it is complete shall forward it to the Town Board.
- (c) The Town Board shall review the application to determine if additional information or expertise is necessary to properly evaluate the application. The Town shall retain an engineer or other qualified person with appropriate expertise to inspect the mine site 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, then the Town Board shall schedule the application for a decision under pars. (f)-(g).

- (d) *Additional fees.* If the Town Board determines that additional expertise is required, then the Town Board shall authorize hiring an engineer 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.
- (e) Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall report to the Town Board on whether the renewal application meets the requirements of this Chapter. The Town 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 may grant the request for renewal if it finds:
 - I. There have been no material violations of the Ordinance or the operator's license, which have not been appropriately remedied; and
 - II. The operator has not received multiple or recurring citations or orders for violations of the operator's license or this Ordinance; and
 - III. All applicable fees have been paid and financial responsibility requirements have been met.
- (g) If the Town Board denies the request for renewal, then the Town Board shall notify the operator in writing, which shall state the reasons for the denial, and provide the operator with an opportunity for a hearing.

Section 11. Inspection, Enforcement, Procedures and Penalties

(1) Inspection. The Town Board, or other authorized representative of the Town, shall perform an annual inspection in order to inspect all operations to ensure compliance with the minimum standards under this Ordinance upon showing proper identification and upon providing notice at least 24 hours in advance.

- (a) If upon inspection of the mine site, or upon notification from a citizen of the Town, or at any other time, a member of the Town Board has concerns about the condition of the mine and/or the mining operation's compliance with this Ordinance, then a designated representative of the mining operation must be available at all times to answer questions and/or address concerns and complaints.

- (b) In addition to an annual inspection pursuant to Section 11(1), the Town Board or other authorized representative of the Town, may make inspections or undertake other investigations to determine the condition of a nonmetallic mine site or processing facility in the Town of Round Lake 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 providing notice at least 24 hours in advance.

(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 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 file in a timely manner the annual operational report under Section 10(1).
- (e) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 12 or other order issued by the Town.
- (f) Repeated failure to respond in a timely manner to questions, concerns, or comments brought to the attention of the operator or its representative by a member of the Town Board relating to the mining operation's compliance with this Ordinance.

(3) Hearings.

- (a) Any person affected by a notice and order 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 the person's 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 30 days of the date the notice and order are served or within 30 days upon denial of an application for a license or license 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 and adjacent landowners

written notice thereof at least 15 days before the hearing. The hearing shall be scheduled to occur within 60 days of the Town Clerk receiving the petition.

- (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 Ordinance have been complied with, and the petitioner shall be notified within 10 days in writing of such findings.
- (c) The proceedings of the hearing, including the findings and decision of the Town Board and the reason(s) 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 order that specifies the action to be taken to remedy a situation and specifies the date on which remediation must be completed.
- (c) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub. (6) and injunctive relief.
- (d) Suspend or revoke the operator's license under sub. (5).

(5) Operator's License Suspension or Revocation.

- (a) After giving notice and a hearing, the Town Board may suspend or revoke an operator's license for a violation under sub. (2).
- (b) An operator's license may be revoked, if the Town finds that mining operations have been abandoned.
 - I. An operation may be considered "abandoned" if no significant mining operation has occurred for more than 365 consecutive calendar days.
 - II. 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 Board. 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 a written request for the hearing and includes an explanation for the cessation of the mining operation and a plan and a date for restarting of the operation. If the Town receives no such request within the 30-day period, then the Town shall notify the applicant that the operator's license has been revoked.

- III. Upon receipt of a request for a hearing with the requisite documents, the Town Clerk shall set a time and place for the hearing before the Town Board and shall give the petitioner and adjacent landowners written notice thereof at least 15 days before the hearing. The hearing shall be scheduled to occur within 60 days of the Town Clerk receiving the request. After the hearing, the procedures stated in Section 11(3)(b) and (c) shall apply.
- IV. A restart of the operation after a finding of abandonment is a violation of this Ordinance and subject to the penalties as provided in this Ordinance.
- V. The Town shall inform the County Land Conservation Department of a finding of abandonment and request that the County order reclamation to begin.

(6) Penalties.

- (a) Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less than \$500 per violation nor more than \$5000 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 12. 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 the Town roads used for truck traffic transporting materials to or from the mining site.

- (b) Water supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within 1 mile of the mining site or such other area shown to be impacted by the operator's operations.
 - (c) Property value. An amount necessary to guarantee fair-market value for nearby properties if sold during the operational lifetime of the mine.
- (2) The form of financial assurance made to the Town of Round Lake shall be in the form of cash, insurance, or bond.
- (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) Prior to the commencement of operation, the operator shall also provide to the Town proof that it has provided the financial assurance for reclamation required under Wisconsin law.

Section 13. Damages to Private Water Supply

- (1) A property owner within 1 mile of the mine site may seek remedies under subs. (2) – (5) for any of the following damages to private water supply:
- (a) A preventative 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) 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 12 to provide an adequate interim water supply. The Town shall also use funds under Section 12 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 presents a plan for a permanent alternative water supply to be paid for 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 the damage to the private water supply, then the operator may elect to be reimbursed by the property owners for the costs of supplying water during a period not exceeding one year.

(6) A property owner beyond 1 mile of the mine site may apply to the Town for use of funds under Section 12 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 mining operation. If the Town determines that the damage was caused by the mining operation, then the property owner can utilize the remedies in subs. (2) – (4).

Section 14. Severability 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 of 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) Abrogation. 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 15. Developer's Agreement

(1) Purpose. This section provides a procedure for modifying provisions of this Ordinance in voluntary agreement between the Town and the mining operator where that may be necessary to adapt some provisions to the special circumstances of the mining operation for which a license application is being made, provided that this agreement provides protections for the public that are at least as protective as the minimum standards of this Ordinance.

(2) In exchange for greater flexibility that adapt the regulations and standards of this Ordinance to circumstance that are unique to the proposed mining operation, a Developer's Agreement may require additional or different standards, requirements, levels of review, monitoring and compliance mechanisms and measures to mitigate or compensate for impacts as determined in the sole discretion of the Town Board.

(3) Application for a Developer's Agreement.

- (a) The application requirements, approval requirements and procedures in Section 7 apply to an application for approval of a Developer's Agreement, except that the standard for granting the application is set forth in sub. (4).
- (b) The application shall include all of the information and other materials required in Section 8.
- (c) The application shall describe all ways in which the proposed Developer's Agreement will deviate from the otherwise applicable regulations in this Ordinance, including, but not limited to, the term of the approval, the process for inspection and review of operations, and the minimum standards of operation.
- (d) The application shall provide a written justification for any proposed deviations from the otherwise applicable regulations in this Ordinance which may include provisions to minimize, mitigate or compensate for potential impacts to public health, safety, and welfare including impacts to property value.

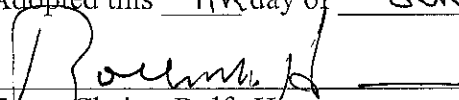
(4) Decision by the Town Board.

- (a) The Town Board shall review the application in accordance with the procedures for review of a mining operator's license application.
- (b) The Town Board may review the application, any retained experts' reports, and public comments made and information provided at the public hearing, and any other information the Town Board deems appropriate. The Town Board may, in its sole discretion, approve the Developer's Agreement in the exercise of its police powers.
- (c) If the Developer's Agreement is approved, then all standards in this Ordinance that are not expressly modified in such approval shall apply to said Developer's Agreement.
- (d) The Town Board may condition its approval on the operator entering into such agreements and providing such financial assurance as the Town Board deems appropriate to promote the public health, safety and general welfare.


Section 17. Effective Date

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

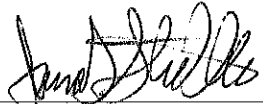
Adopted this 9th day of June, 2022 by the Town Board of Supervisors.



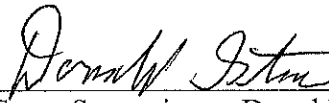
Town Chair – Rolfe Hanson



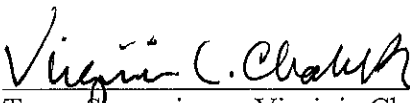
Town Supervisor – Kay Wilson



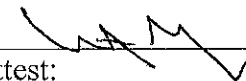
Town Supervisor – James Strandlund



Town Supervisor – Donald Stover



Town Supervisor – Virginia Chabek



Attest:
Town Clerk – Kathy McCoy