

**THE TOWN OF ALMA**  
**NONMETALLIC MINE OPERATOR'S LICENSES**  
**Chapter 17**

**Section 17.01. Finding, Purpose and Authority**

1. Findings. Nonmetallic Mining operations, while a vital component of our state and local economy, can have both direct and indirect adverse impacts. Studies have documented that Nonmetallic Mining operations can have adverse impacts on groundwater and surface water, and can generate harmful levels of dust and noise particularly if blasting and crushing operations are undertaken. Nonmetallic Mining sites can have impacts on the landscape and aesthetics if not properly screened, and can present safety concerns to members of the public if not properly secured. Truck traffic from such operations can also generate off-site impacts including safety concerns to area residents. While certain aspects of mining operations are subject to state or federal regulation, there is no comprehensive state or federal regulation of Nonmetallic Mining operations. Many aspects of Nonmetallic Mining operations are left unregulated with potential adverse impacts to the public health, safety and welfare of the residents of the Town.

2. Purpose. The purpose of this Chapter is to provide minimum standards for all Nonmetallic Mining operations in the Town, 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 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 Alma.

3. Authority. This Chapter is adopted by the powers granted to the Town of Alma 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; provided, however, that Nonmetallic Mining activities undertaken pursuant to any Operator's License issued prior to the date thereof, including renewals or amendments of such license after the date of such amendment, repeal or recreation, shall continue in effect without modification in accordance with the statutes as in effect on the date the original license was issued to the Operator(i.e. on a grandfathered Basis) notwithstanding the subsequent amendment, repeal or recreation of the statutes related to this Chapter.

**Section 17.02. Applicability and Scope**

1. This Chapter shall apply to all Nonmetallic Mining operations and Mine Sites within the Town of Alma except as set forth in sub. (2).

2. This Chapter shall not apply to the following Nonmetallic Mining operations:

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

b. Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility, where the excavation or grading is entirely within the right-of-way of the highway, railroad or other transportation facility. Exclusions would also be granted for Town of Alma, County and State road construction borrow pits and wastes sites.

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.

3. In the event that an Operator whose Nonmetallic Mining is exempt from the application of this Ordinance under subsection (2) above, changes to his or her operations to the extent of no longer qualifying for such an exemption, said Operator shall be required to apply for and obtain a license under this Chapter.

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

### **Section 17.03. Definitions**

1. "Nonmetallic Minerals" means a product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, non-renewable material. Nonmetallic minerals include but are not limited to stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat and talc.

2. "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. "Mine Processing" as defined in the sub (3) of this section.

c. Stockpiling of Nonmetallic Minerals for sale or use off-site and stockpiling of Waste Materials.

- d. Transport of the extracted Nonmetallic Minerals, finished products or Waste Minerals to or from the Mine Site.
  - e. Disposal of Waste Materials.
  - f. Reclamation of the Mine Site.
3. “Mine Processing” means any or all of the following:
- a. Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation or blending of mineral aggregates or Nonmetallic Minerals obtained through Nonmetallic Mining at the Mine Site, including activities involving materials transferred from off-site.
  - b. Manufacturing processes aimed at producing products from Nonmetallic Minerals for sale or use by the operator.
  - c. Conveyor systems, pipeline systems, haul routes, rail yards, and transload facilities.
4. Buffer means an undisturbed vegetated area measured from the Mine Site border into the Mine Site, in which no Nonmetallic Mining activities can occur or structures or roads can be constructed, except for the construction and maintenance of a vegetated berm.
5. Heavy Vehicle means a vehicle weighing more than 48,000 pounds.
6. "Waste Material" means the non-marketable by-product that results directly from or is displaced by Nonmetallic Mining or that is a by-product of Mine Processing that is scheduled for disposal as part of a Reclamation Plan.
7. A "Mine Site" or "site" means a separate, legal parcel of land from which mineral aggregates or Nonmetallic Minerals will be extracted for sale or use by the operator, including all land on which is or will be located any structures integral to the Operator’s Nonmetallic Mining or Mine Processing activities, equipment, storage facilities, stockpiles, Mine Processing facilities, private roads or haulage ways associated with Nonmetallic Mining operations. The “Mine Site” or “site” shall not be extended to include separate, legal parcels of land upon which are located fences, electrical, telephone and similar utility lines, water and sewer lines, and structures or improvements not integral to Nonmetallic Mining or Mine Processing activities, including berms, screens, tree lines, landscaping, and similar improvements constructed or installed by Operator on adjoining properties as accommodations to such adjoining property owners or occupants.
8. “Proposed Mine Site” means the entire area over which the Operator reasonably anticipates Nonmetallic Mining will occur over the entire life of the mine. Mining and reclamation will occur in managed phases as described in the reclamation plan.
9. “Active Mine Site” means the area where acreage is actively disturbed and unreclaimed for the purposes of mining, processing, stockpiling and load out of Nonmetallic

Minerals or Waste Material. The active mine site will be defined each year in the Annual Report submitted to both the Town and the County pursuant to Section 17.08(1)below.

10. "Landowner" means the person who has title to land in fee simple or who holds a land contract for the land.

11. "Adjoining landowner" means the owner of any property within 1/2 mile of the Proposed Mine Site regardless of whether there is a residence or structure on the property.

12. "Town" means the Town of Alma.

13. "Town Board", means the Town Board of the Town of Alma.

14. "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.

15. "Operator's License" or "license" means the license required of Operators in this Chapter to undertake Nonmetallic Mining in the Town of Alma.

16. "Setback" means the area on a Mine Site within which no Nonmetallic Mining activity is permitted.

17. "Financial assurance" and "Financial Security" means but is not limited to financial assurances, bonds, letters of credit and methods of insurance.

#### **Section 17.04. License Required**

1. License Requirement. No person shall operate a Nonmetallic mine within the scope of this Chapter in the Town of Alma without first obtaining an Operator's license from the Town Board.

#### 2. License Term

- a. Except for the initial period of operation under this Chapter, an operator's license shall be granted for a period of one year commencing on April 1 and ending on March 31st of the following calendar year. For the initial period of operation under this Chapter, the operator's license will extend from the date of issuance until the first March 31st after 12 months of operation have been completed. After the initial period subsequent renewals will be for a one year period, except as hereafter provided in sub (b).
- b. If the Town Board determines the Operator to be in good standing at the time of renewal the following renewal periods shall apply. Following the Initial Licensing Period, subsequent renewals of the License shall be for the following periods (each such period, the "Applicable Extension Period"): (i) for the first renewal period immediately following the Initial Licensing Period, the License shall be granted for a period of three years, commencing

on April 1, and expiring on the third March 31<sup>st</sup> occurring thereafter (such period, the “Second Licensing Period”); and (ii) for each renewal period occurring after the Second Licensing Period, the License shall be granted for a period of five years commencing on April 1, and expiring on the fifth March 31<sup>st</sup> occurring thereafter.

c. An Operator's license may be renewed as set forth in Section 17.08, except that a temporary Operator's License may not be renewed.

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

4. License Transfer. An Operator's license may not be assigned or transferred without the express written consent of the Town. A nonrefundable transfer fee of \$1,500.00 shall be imposed on the transferee. Said payment is due upon the request by the permit holder for said transfer.

5. License Revocation. An Operator's License may be revoked under the procedures in Section 17.09.

### **Section 17.05. Procedures For Applying For A License To Mine**

1. Application Form. The Application Form for a license to mine in the Town of Alma shall be available from the Town Clerk.

2. Application Submittal. The applicant shall submit five (5) copies of the Application Form (five (5) paper copies and five (5) electronic copies) and all required documentation required under Section 17.06 to the Town Clerk accompanied by the payment of the non-refundable, \$5000.00 application fee. The fees shall be made payable to "Treasurer, Town of Alma." The Application Form shall be signed by the Operator and by the landowner, provided the landowner is a person other than the operator.

3. Preliminary Review by the Town Board.

a. Preliminary Review. The Town Clerk shall forward the application to the Town Board for preliminary review to determine if additional information or expertise is necessary to properly evaluate the application. The Town Board shall determine if additional expertise is necessary within 45 days of the receipt of the application. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for a hearing under sub. (4).

b. Additional Information. The Town Board may request the applicant to submit additional information if the Town Board determines that application is

incomplete. The Town Board may also retain the services of an engineering firm or other qualified person with appropriate expertise ("retained expert") to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this Chapter. If an expert is required the Town will retain these services within 45 days of the preliminary review by the town board.

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

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

4. Decision by the Town Board.

a. Notice and Hearing. Once the application is complete and any report by a retained expert has been completed, the Town Clerk shall place the application on the agenda for the next regular meeting of the Town Board. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall set a date for a public hearing and give 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 as well as public comments made at the public hearing and any other information helpful in rendering a decision. 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 Chapter. The Town board approval may be subject to operator entering into a mining agreement with town to address any additional requirements imposed by the Town board as a condition for approval. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section 17.09(3).

**Section 17.06. License Application**

All applicants for a mining license shall submit at a minimum the following information, the Town may request additional information if the Town believes such information would be helpful in processing the application:

1. Ownership Information.

a. The name, addresses, 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. The name, address and parcel identification numbers of property owners within ½ mile of the proposed mine site.

d. Proof of insurance- Copy of Commercial General Liability insurance policy. If not available at the time of application, it must be provided prior to commencement of mining operations.

2. Site Information and Maps.

a. Parcel identification numbers of all contiguous parcels owned by the same landowner/lessor on which the non-metallic 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 1 inch equals 660 feet signed by both the operator and the landowner.

c. A topographic map of the mine site extending 1/2 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 or other structures, equipment, stockpiles, storage and parking areas.

e. A map on which the all residential, agricultural and municipal wells within 1/2 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.

g. A map identifying the location of all other non-contiguous sites within the Town of Alma and adjacent towns, if any, that will contribute extracted material to the same manufacturing facility to which the site for which the applicant seeks a license will also contribute.

h. A copy of the reclamation plan submitted to and approved by Jackson County and any other state and federal permits, approvals or waivers of permits that may be available at the time of application. All plans, permits, approvals or waivers of the same are required to be completed at the time of application.

3. Operation Plan

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

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. Location of road access points. The proposed location within the site of all buildings, other structures, equipment, stockpiles, storage and parking areas.

e. 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.

f. 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.

g. 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.

h. A listing of flocculants and all other chemicals used in the Nonmetallic Mining or Mine Processing operations, or in controlling dust. For purposes of this Subsection 3, the "Listing" will be comprised of the chemical listing that the Mine Safety and Health Administration ("MSHA") requires all Mine Operators to keep at the Mine Site, as such listing is more particularly described in 30 CFR Part 47, "Hazard Communication for the Mining Industry."

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 17.07.

b. For mining operations commencing after the effective date of this Chapter, the operator shall also provide information establishing baseline conditions at the site before mining 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.

5. Special Exceptions. The applicant can request a special exception 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 17.07. 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 active mining area and shall secure the site which can include fencing or other alternative measures consistent with mine safety and security.

b. The operator shall demonstrate compliance with all of the other provisions and purposes of this Chapter.

c. All blasting activities on a mine site shall be conducted by a Class 3 or Class 4 blaster licensed by the Wisconsin Department of Commerce and shall be in compliance with Chapter SPS 307 of the Wisconsin Admn. Code. Blasting activities are further restricted by the hours of operation established in 17.07sub (2) (e).

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. 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, 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 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.

c. 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 600 feet to the location of any dwelling unless the landowner consents to a lesser distance but not less than 50 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 500 feet so the distance to the dwelling would be 600 feet. If a berm is placed within the buffer area and it lies along a public roadway, the bottom edge of the berm shall be a minimum of 10 feet from the edge of any road right of way and shall be vegetated to minimize erosion entering the ditch.

d. The Operator shall pave any roadways in or on the mine site that touch, intersect, or which otherwise affect a public roadway(s), said paving shall be limited to include only any such area that is within 300 feet of any public roadway. The intent is to require 300 feet of paved private roadway within the mine site prior to the traffic entering onto any public roadway to lessen the amount of dirt and debris entering onto the public roadway.

e. 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.

f. The Operator shall limit normal hours of mining operations to 12 hours a day Monday through Friday, not earlier than 6:00 AM or later than 6:00 pm to minimize off-site impacts to residents. Saturday hours of operation will be limited to 6:00 AM until Noon. Also excluded would be Sundays and named holidays, (New Year's, Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas. Blasting hours are restricted to 10 AM to 3 PM Monday through Friday. 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.

g. Non-metallic mining operations that are properly screened by berms, trees or other suitable methods and located a minimum distance of 2000 feet from a dwelling will not be restricted as to hours of operation.

h. Operation of Heavy vehicles leaving the Mining Site shall be limited to Monday through Friday, not earlier than 6:00 AM or later than 6PM and on Saturday, not earlier than 6:00 AM or later than Noon. Except in case of an emergency, there shall be no operation of Heavy Vehicles leaving the Mining Site on Sunday or named holidays, (New Year's, Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas.

i. The operator shall schedule Heavy Vehicles traveling 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 residents and commuters within the Town during scheduled special events and at times when traffic volumes are highest. Funeral and military traffic as addressed by Wis. Stat. Section 346.20 will be followed.

j. Operator shall designate its primary haul route. The rerouting of haul trucks to an alternate route due to road construction, washouts, accidents or any other occurrences necessitating the need for secondary and/or alternate routes will require approval from the Town Chairman or a Town Supervisor if the Town Chairman is unavailable. The cost to repair any damages caused by haul trucks to an alternate route will be paid by Operator. The provisions of this paragraph will be incorporated into the highway use agreement described in Section 17.12.

k. 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 full use of cutoff shrouds on all lights.

(2) Portable lighting shall be used only as necessary to illuminate temporary 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 lights from traffic and operations to neighboring properties.

l. The Operator shall control off-site noise levels to the maximum extent practicable to avoid 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 in emergencies.

m. 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 a high wind warning for the area.

n. If an applicant is applying for an operator's license for a Nonmetallic Mining operation, the operator shall be required to monitor the ambient level of airborne particulate matter of 2.5 microns (PM 2.5) in size and total suspended particulate (TSP) by a method described in Appendices L and B, respectively of 40 CFR part 50 or a method approved in writing by the Town. Air monitoring will be done by a third party, accredited tester, selected by the Town. The monitoring will be done annually at random times during the three driest months of the year at the operator's expense.

(1) If the air monitors show an exceedance of 35 micrograms per cubic meter of PM2.5 in any 24 hour period, the operator shall evaluate and implement additional best management practices to minimize PM2.5 emissions.

(2) If air monitors show an exceedance of 150 micrograms per cubic meter of TSP in any 24 hour period, the operator shall evaluate and implement best management practices to minimize TSP.

o. Results of all air monitoring will be included in annual reports to the Town with notations made, when air quality monitoring indicated a change in practices to control ambient quality were made by the operator.

p. Operator shall provide financial security necessary for the protection of public health and safety and promote the general welfare of the Town and its citizens as outlined in Section 17.10(1)(a) and (b).

3. Standards Regarding Groundwater and Surface Water.

a. Impacts to Groundwater Quality.

(1) The Operator shall have at least three monitoring wells within the boundary of the Mine Site. Two of the monitoring wells shall be sentinel wells, which will be placed on-site at such locations as will allow groundwater flow conditions into and out of the Mine Site to be assessed, depending upon site and hydrology conditions. By way of example: one monitoring well should be placed in an up-gradient location (where groundwater is flowing into the Mine Site), and a second monitoring well should be placed in a down-gradient location (where groundwater is flowing out of the Mine Site). The third monitoring well shall be placed at the discretion of the Operator in a location within the Mine Site that adequately monitors activities that may impact groundwater. The location of third monitoring well is likely to change as mining phases progress (i.e. it may be co-located with the high capacity well). During the first two years of mining operations, the Operator shall take semi-annual samples of the monitoring wells, testing for lead, arsenic, turbidity, total suspended solids, chlorides, nitrates, specific conductivity, any chemical or residual of the chemical used as a flocculent in the mining activities, 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. After the initial two years of mining operations, sampling and testing of the monitoring wells shall occur on an annual basis.

(2) The Operator shall sample and test (a) private wells that are within  $\frac{1}{4}$  mile of the Mine Site and located down gradient of the groundwater flow every 2 years, and (b) private wells that are within  $\frac{1}{4}$  mile of the Mine Site and on the perimeter of other sides of the Mine Site (i.e., those not located down gradient) every 3 years.

(3) Prior to the onset of active mining operations, all private wells located within  $\frac{1}{2}$  mile of the Mine Site 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. The elevation of the ground water table in the wells shall also be determined.

(4) Mining operations shall not cause an exceedance of the groundwater quality standards set forth in Wis. Admin. Code Chapter NR 140.

b. Impacts to Groundwater Quantity.

(1) At least 60 days prior to commencement of active Nonmetallic Mining operations, the Operator shall place a reasonably sufficient number of 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 Nonmetallic Mining operations.

(2) Groundwater levels will be recorded monthly at monitoring wells throughout the life of the mine in order to identify any changes in elevation of the 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. For purposes of this subparagraph, 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.

c. The Operator shall undertake all measures reasonably necessary for the control of surface water runoff from Nonmetallic Mining operations in order to prevent or minimize pollution and erosion of sediment onto neighboring properties, surface water and groundwater. The Operator shall also comply with the standards for erosion control under Wis. Admin. Code Chapters NR 216 and NR 151, as applicable.

4. 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, unless in the manner described above in 4.a.

c. The operator shall have a plan for responding to spills of any hazardous materials on the site.

5. Special Exceptions.

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

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

c. Any provisions of this section may be modified by virtue of execution of a mining agreement between the Town and the Operator, provided the Town Board finds that the intent of this Chapter can be achieved through execution of such an agreement, and that the public health, safety and welfare will not be adversely affected thereby. The agreement shall recite the foregoing findings and that it supersedes the provisions of this section.

### **Section 17.08. Annual Report and License Renewal**

#### 1. Annual Report.

a. No later than February 1 of each calendar year, the 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 Alma. Three (3) hard copies and one (1) electronic copy shall be provided by the Operator.

b. The annual report and 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 the 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 written report demonstrating how the operator has been in compliance with all terms and conditions of its license and this Chapter. The report shall also include any groundwater, surface water and other monitoring results.

(6) A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

(7) Within forty-five (45) days of Operator's submission of the Annual Report, representatives of the Operator and the Town shall meet to discuss the information contained in the Annual Report, including any questions Town representatives may have based upon their review of the Annual Report.

2. License Renewal.

a. The operator shall make written request to the Town Clerk for a renewal of the license to operate the mine no later than February 1 of the year in which the license will expire. The application shall be accompanied by the payment of a nonrefundable, \$1500.00 renewal application fee.

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

c. The Town Clerk shall review the renewal application within 45 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 may 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 (g).

e. Additional fees. If the Town Board determines that additional expertise is required, 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 license renewal fee to cover the cost of the additional review by retained expert. The additional fee shall be paid before the additional review is undertaken.

f. Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount 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.

g. The Town Board shall not deny the request for renewal if it finds:

(1) There have been no material violations of this chapter or the license which have not been appropriately remedied or a remedial plan approved by the Town Board has been implemented.

(2) The operator has not received multiple or recurring citations or orders for violations of the Operator's license or this Chapter.

(3) All applicable fees have been paid, an annual report has been submitted and financial responsibility requirements have been met.

h. If the Town Board denies the request for renewal, the Town Board shall notify the operator in writing and shall provide the operator with an opportunity for a hearing of appeal under Section 17.09.3. If the Operator timely appeals the denial, the existing license shall remain in effect until such appeal processes are completed.

### **Section 17.09. Inspection, Enforcement, Procedures and Penalties**

1. Inspection. In addition to an annual inspection pursuant to Section 17.08(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 Alma in order to safeguard the health and safety of the public and determine compliance with the minimum standards under this Chapter upon showing proper identification, and upon reasonable notice.

2. Violations. The following are violations under this Chapter, but the following are not exclusive or exhaustive:

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

b. Failure to comply with the minimum standards, and/or any approved mining agreement between the Town and the Operator, and other terms of this Chapter.

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 17.08.

e. Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 17.10 or other order issued by the Town.

3. Hearings

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



Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof.

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

c. The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.

4. Enforcement/Remedies.

The Town Board may take any appropriate action or proceeding against any person in violation of this Chapter, 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.

c. Issue a citation in accord with the Town of Alma 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, the Town Board may be suspend or revoke an operator's license for a violation under sub (1).

6. Penalties.

a. Any person or entity that is adjudicated for a violation shall pay a forfeiture of not less than \$500 per violation nor more than \$10,000 per violation and/or be subject to injunctive relief.

b. Any person or entity adjudicated for violation of this Chapter shall pay court costs and reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.

7. 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 17.10. 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.

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 Alma shall be that form agreed to by the Town Board and may include performance bonds or irrevocable letters of credit 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 17.11. Damages to Private Water Supply**

1. Damages to Quality of Private Water Supply.

a. A property owner within 1/2 mile of the mine site may seek remedies under subs (b)-(e) of this Section 17.11 for the following damages to private water supply:

(1) A state recognized preventative action limit or enforcement standard, or the federally recognized maximum contaminant level (whichever standard defines the more stringent value of the three) is exceeded in a private supply well on the owner's property.

b. Any property owner under sub (1)(a)(1) seeking a remedy under this Section 17.11 shall simultaneously file a notice with the Wisconsin Department of Natural Resources ("WDNR"), the Town and the mine Operator of the occurrence of the event under sub (1)(a)(1) explaining the nature and extent of the problem.

c. Within 24 hours of receipt of such notice under sub (b), the Town may use funds provided under Section 17.10 to provide an adequate interim water supply. The Town shall also use funds under Section 17.10 to indemnify the Town for any claims filed under Wis. Stat. § 281.77(4). An interim water supply shall continue until notification by the WDNR under Wis. Stat. Section 281.77 (4).

- d. Within 45 days of receipt of notice under sub (b), the Operator shall provide to the property owner, the WDNR, and to the Town a report that either a) demonstrates the impact to the property owner was not attributable to the mining operation or b) presents a plan for a permanent alternative water supply, or correction of the existing condition, to be paid by the Operator.
- e. The WDNR shall, under Wis. Stat. Section 281.77(4), notify the Town of its determination of the cause of the damage to the private well located on the property of the property owner. The Town shall forward those findings to the Operator and the property owner. If the WDNR determines that the 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 total costs incurred in connection with supplying water to the property owner.

2. Damages to Quantity of Private Water Supply

- a. A property owner within 1/2 mile of the mine site may seek remedies under subs (b)-(e) for the following damages to private water supply:
  - (1) 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.
  - (2) 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.
- b. Any property owner under sub (2)(a) seeking a remedy under this Section 17.11 shall simultaneously file a notice with the Town and the Operator of the occurrence of the event under sub (2)(a) explaining the nature and extent of the problem.
- c. Within 24 hours of receipt of such notice under sub (b), the Town may use funds provided under Section 17.10 to provide an adequate interim water supply. An interim water supply shall continue until a resolution is determined under sub (d).
- d. Within 30 days of receipt of such notice, representatives of the Operator and the property owner shall meet and undertake efforts to determine the cause of the impact and the potential remedy of the problem. The Operator shall provide to the property owner a report that demonstrates either a) that the impact to the property owner was not attributable to the mining operation or b) presents a plan for a permanent alternative water supply to be paid by the operator. If the Operator and the property owner are unable to reach agreement regarding the cause of the impact and the remedy thereof, they shall submit the dispute to mediation with a mediator mutually agreed upon by

the parties. In the event the dispute is not resolved through mediation, or if the parties are unable to agree upon a mutually acceptable mediator, the parties shall consider binding arbitration. The parties shall have such further rights and remedies as are available under state law.

- e. A Property owner under sub (2)(a) seeking a remedy under this Section 17.11 may, in lieu of receiving an interim water supply under 17.10, choose to finance at his/her own expense an alternative water supply including, but not limited to, increasing the depth of their existing well or drilling a new well. If the Operator is found liable for damages under sub (2)(d) of this Section 17.11, the Operator shall reimburse the property owner for all expenses incurred under this paragraph.
3. Nothing under this section limits or prevents a property owner from seeking any other remedies, damages or causes of action available to the property owner in law or equity.
4. A property owner beyond 1/2 mile of the mine site with damages to a private water supply as indentified in sub (1) or sub (2) may seek remedies under the provisions of this section, provided the property owner is able to demonstrate to the Town, with a reasonable degree of certainty, that the mine is likely the cause of the damages. If the Town concurs with the property owner that the mine is likely the cause of the damages, the property owner will be able to pursue all applicable remedies provided for in this Section 17.11.

### **Section 17.12. Use of Town Roads/Highway Use Agreement Wis. Statutes 349.16**

1. Each Operator of a Nonmetallic Mine shall be required to enter into a highway use agreement with the Town of Alma if the operation plans to operate heavy vehicles on a haul route to and/or from the mine site using Town roads. This requirement applies to all heavy vehicles under contract, lease or license with the Operator.
2. Prior to entering into an agreement, the mine Operator shall provide the following information;
  - a. The proposed haul route(s) to be utilized by Operator on town roads.
  - b. Anticipated volume of heavy vehicle traffic by day/week/month/year.
  - c. Description by type, haul weight and axles of trucks proposed to be used in hauling on Town roads.
3. Prior to entering into an agreement for use of Town roads, a study will be conducted to determine the condition and age of the roads proposed for use as a Primary Haul

Route by a qualified engineering firm selected by the Town Board. All engineering costs shall be paid by Operator. Said study shall include the following:

- a. Length of Town road(s) proposed for use by operator.
- b. Estimated remaining life of road(s).
- c. Necessary upgrades of pavement and/or roadbeds to a design standard to withstand the weight and volume of proposed haul traffic by mine operation.
- d. Determination of any geometric design improvements necessary to accommodate anticipated traffic volume.
- e. Determination of any right-of-way acquisitions required to accommodate recommended upgrades.

4. In addition to requiring an operator to finance upgrades to Town roads as recommended by the Town's engineering firm to be advisable for haul routes, an agreement under this ordinance shall require the operator to agree to the following:

- a. Pay for all exceptional maintenance costs, including any necessary upgrades, during and immediately following the term of the agreement.
- b. Share in the cost of ordinary maintenance based on recommendations by the Town's engineering firm or any other method approved by Operator and Town Board. In any event, the Town shall not incur costs to exceed what they may have been if the haul route had not been established.
- c. Limit access to Town roads to access points approved by Town Board.
- d. Reroute haul trucks in the event of emergencies, repairs or natural disasters to temporary detour routes established by the Town Board or prohibit the travel of haul routes if conditions exist to protect the health, safety and welfare of the public.

5. If the Town roads are to be used by more than one Operator, the Operators may propose and the Town Board shall consider a joint agreement to satisfy the necessary financial assurance obligations.

6. The engineering study and any required upgrades to Town roads or use of Town roads will not commence until Operator(s) have provided the necessary financial assurance requested by the Town Board.

7. Each highway use agreement shall be subject to Town Board approval.

### **Section 17.13. Severability, Interpretation, and Abrogation**

1. Severability.

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

b. If any application of this Chapter to a particular parcel of land is adjudged unconstitutional or invalid by a final order or 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 Chapter shall be liberally construed in favor of the Town of Alma and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town of Alma.

3. This Chapter is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Chapter.

#### **Section 17.14. Mining Agreement**

Any of the provisions of this Chapter, including the license term, may be modified by a Mining Agreement between the Town and the Operator if the Town Board determines that the intent of this Chapter can be achieved through the use of alternative measures, and that the public health, safety and welfare will not be adversely affected thereby. The mining agreement may also include any additional requirements imposed by the town board including but not limited to such items as property value guaranty and other items per 17.07 (5) (b).

#### **Section 17.15. Effective Date**

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

AMENDED this 22nd day, November 2016 by a vote of 3(three) yes, 0(zero) no

Charles Smith

Town Board Chairperson

Attest: Don Forsting, Town Clerk

Posted this 23rd day of November, 2016, Publishing pending

