

THE TOWN OF HOWARD
CHAPTER 2
NONMETALLIC MINING ORDINANCE

The Town Board of the Town of Howard, Chippewa County, Wisconsin, does ordain as follows:

Section 2.01. Title

This ordinance shall be cited as the "Town of Howard Nonmetallic Mining Ordinance" and hereinafter referred to as "this ordinance."

Section 2.02. Authority

This ordinance is adopted by the powers granted to the Town of Howard by the Town's adoption of Village powers under Wis. Stat. § 60.10 and § 61.34. Any amendment, repeal or recreation of the 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 2.03. Purpose and Intent

The purpose of this ordinance is to regulate nonmetallic mining operations 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 Howard. In addition, the intent of this ordinance is to ensure the fair and clear administration and enforcement of this ordinance, to provide penalties for the violations of the provisions of this ordinance, and to ensure remedies for damages that result from mining operations that are in violation of this ordinance or any conditions set forth in permits granted under this ordinance.

Section 2.04. Applicability and Scope

(1) This ordinance shall apply to all nonmetallic mining operations and mine sites of one acre or more within the Town of Howard that commenced operations after the effective date of this ordinance except as provided herein.

(2) This ordinance shall not apply to mine sites that have been in operation prior to the effective date of this ordinance, except that:

(a) If the operator of a pre-existing mine site located in the Town seeks to expand the area to be mined by more than one acre or to conduct operations aimed at producing a product for sale or use different in kind from that produced by its past operations, then the permitting requirements and other provisions set forth in this ordinance shall apply.

(b) If the operator of a pre-existing mine that is unpermitted under this ordinance and is operating under a reclamation permit that is up for renewal, then the operator must apply for a permit to mine under this ordinance at the time of the renewal of the reclamation permit.

(c) If the operator of a pre-existing mine seeks to make any changes to existing mining operations including, but not limited to, the addition of a processing or manufacturing plant, or excavating below bedrock or the water-table, or using blasting materials then the permitting requirements and other provisions set forth in this ordinance shall apply.

(3) This ordinance shall not apply to activities listed in Wis. Admin. Code § NR 135.02.

(4) Mining does not include 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.

Section 2.05. 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) Constructing any buildings or storage sheds for the purposes of mining operations.

(b) Extraction from the earth of mineral aggregates or nonmetallic minerals, 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.

(3) A "manufacturing process" means all operations on and with extracted material at a manufacturing facility, including but not limited to crushing, separating, washing, screening, dewatering, blending, stockpiling, together with the conveyance of materials to a manufacturing facility on or off-site.

(4) A "manufacturing facility" is the place on or off the extraction site where the manufacturing process takes place. It is intended to include all equipment used to produce the end-product(s) and all buildings, sheds, or other related structures.

(5) "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.

(6) A "mine site" or "site" means an acre or more 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, equipment, storage facilities, stockpiles, washing or screening facilities, private roads or haulage ways associated with nonmetallic mining operation; and all contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or operator.

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

(8) "Adjoining landowner" means a landowner within 1/2 mile of the proposed mine site.

(9) "Town" means the Town of Howard and is used to refer to both the Town Plan Commission and the Town Board, except when those official bodies are specifically referred to by name.

(10) "Operator" means any person who is engaged in, or who has applied for a permit to engage in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.

Section 2.06. Procedures For Applying For A Permit To Mine.

(1) Application Form. The Application Form for a permit to mine in the Town of Howard, as well as a copy of this ordinance and other relevant documents, shall be available from the Town Clerk. The applicant should consult with the Town Plan Commission Chair regarding the application process, required documentation, or other matters regarding this ordinance about which the applicant may have questions.

(2) Application Submittal. The applicant shall submit eight (8) copies of the Application Form and all required supporting evidence and documentation required under Section 2.07 to the Town Clerk accompanied by the payment of both the application fee and the base administrative fee established for the administration of this ordinance in amounts set forth in the Town of Howard Schedule of Fees and Forfeitures. The fees shall be made payable to "Treasurer, Town of Howard." The Application Form shall be signed by the operator and by the landowner, provided the landowner is a person other than the operator.

(3) Distribution of Application. Upon receipt of all of the items in sub (2), the Town Clerk shall provide each Plan Commission member with a copy of the Application Form together with all the documentation required in Section 2.07 of this ordinance and shall place the application on the agenda for its next scheduled meeting. The Town Clerk shall mail a copy of the Application Form to all landowners adjoining the proposed mine site and also shall place a copy on the Town of Howard website. The Town Clerk shall retain one (1) copy for the public record. Copies of documents submitted by the applicant shall be made available to the public for a modest copying fee.

(4) Review by the Plan Commission.

(a) Preliminary Review. The Plan Commission shall review the application to determine if additional information or documentation is necessary to properly evaluate the application in light of Town's purpose and intent as stated in Section 2.03 of this ordinance. If no additional information or documentation is deemed necessary by the Plan Commission, the Plan Commission shall proceed to schedule a final review at its next regularly scheduled meeting.

(b) Circumstances Requiring Additional Information or Documentation. The Plan Commission may require the submittal of additional information in its discretion if it determines that it is necessary for a full evaluation of the impacts of the proposed operations given the nature of the proposed operations and the characteristics of the proposed nonmetallic mine site. Information or documentation in addition to that required in Section 2.07 of this ordinance shall normally be required in any of the following circumstances:

1. The mining operation will employ a manufacturing operation that uses 100,000 gallons of water per day in the production of a merchantable product or products including, but not limited to, washing materials, and the control of dust originating from on-site traffic or from stockpiled materials.

2. The mining operation will extract material below 5 feet above the groundwater table or below bedrock or result in pumping more than 100,000 gallons for dewatering purposes.

3. The mining operation will involve blasting.

4. The manufacturing process shall produce waste material that shall be deposited into the mine pit as part of the reclamation process.

5. The mining operation anticipates the use of more than 50 loaded trucks per day in removing materials from the site during normal operation.

(c) Review of Additional Information or Documentation.

1. The Plan Commission shall specify any additional information and documentation from Section 2.08 that it deems necessary to evaluate the permit application and shall so inform the applicant. The Plan Commission and the applicant shall agree upon a date for the submission of the additional information and documentation.

2. The Plan Commission shall also determine the need and the cost of acquiring its own experts to evaluate the additional materials and the applicant's proposed mining operation. The Plan Commission shall give written notice to the applicant of any additional administrative fee to be charged beyond the base administrative fee the applicant has already paid for the purpose of the additional review.

3. Once the applicant has submitted the required additional evidence and documentation and has paid the additional administrative fee in the amount charged, the Plan Commission shall continue the review of the application. The Plan Commission may receive additional comments from the applicant or members of the public as part of its review.

(d) Final Review. The Plan Commission shall schedule the application for final review within 60 days following its completion of review under paragraphs (a) or (c). The Plan Commission shall provide an opportunity for the public to be heard prior to its final review.

(e) Recommendation to the Town Board. Upon completion of its review, the Plan Commission shall make findings of fact and either recommend that the Town Board grant the applicant a permit to mine with or without restrictive conditions of use or recommend that the Town Board deny the application for a permit to mine. The Plan Commission will make every reasonable effort to expedite their review of the application.

(5) Review by the Town Board.

(a) Notice and Hearing. The Town Clerk shall place the Plan Commission's recommendation on the agenda for its next meeting of the Town Board. 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.

(b) Town Board Decision. Following the public hearing, the Town Board shall set a date for their next meeting at which time they shall make a final decision on the mining permit. The Town Board shall review the Plan Commission's recommendation and findings of fact as well as consider public comments made at the public hearing. The Town Board shall grant the permit, either with or without restrictive conditions, only if it determines that the operation of the mine will be consistent with the purposes of this ordinance as set forth in Section 2.03 above and with other provisions of this ordinance including but not limited to conditions in Section 2.09.

(6) Permit Amendment. If the Town has issued a mining permit, the operator may request an amendment to that permit during the permit term using the same process as the original permit application.

Section 2.07. Application Forms and Attachments.

All applicants for a permit to mine in the Town of Howard 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) 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.

(2) Site Information and Maps.

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

(b) 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 map drawn to a scale of 1 inch equals 200 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) A topographic map of the mine site extending 1320 feet beyond the site boundaries at contour intervals no wider than 10 feet.

(e) The proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas. If applicant is applying for a permit for an existing mine site, show the boundaries of the existing excavation, stockpiles, and wash or settling ponds.

(f) 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.

(g) 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.

(h) The horizontal and vertical measurements on all maps shall be referenced to a permanent reference point of the Chippewa County coordinate system.

(i) 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.

(j) A map identifying the location of all other non-contiguous sites within the Town of Howard 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 permit will also contribute.

(k) A map identifying the location of the nonmetallic mineral deposit on the mine site within the Town of Howard.

(l) The dimensions of the excavation and the elevation of observed or estimated groundwater within the site and within 1320 feet on all sides adjacent to the site. If hydrogeologic information regarding the elevation of the groundwater is unavailable, the applicant shall hire the services of a licensed hydrologist or geologist to acquire this information.

(3) An operational plan for the site to include the following:

(a) The name of the operator and location of the site.

(b) Dates of the commencement and cessation of the operation.

(c) Description of mining methods to be used for extraction and to process the extracted material and the sequence of operations.

- (d) Description of types of machinery and equipment to be used.
- (e) Estimated volume of material to be extracted on an annual basis.
- (f) Estimated total volume of material to be extract through the life of the site.
- (g) Location of road access points together with copies of access permit(s) that have been granted.
- (h) 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.
- (i) A water budget, including the amount of daily water use, water sources, and methods for disposing of water including methods used for infiltration and control of run-off.
- (j) Measures to be taken to screen the operation from public view.
- (k) Measures to be taken to minimize noise, dust, vibrations, and light pollution.
- (l) Security measures to be employed on site.
- (m) 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.
- (n) A plan for responding to spills of any hazardous materials on the site.

Section 2.08. Additional Information and Documentation.

Additional information and documentation may be requested as set forth herein including but not limited to the following:

(1) Impacts on Groundwater Quantity. If the proposed mining operation will extract material below 5 feet above the groundwater table, or below bedrock, or will result in pumping more than 100,000 gallons per day from the mine site for dewatering or manufacturing purposes, or has the potential for adverse impacts on existing groundwater users in the Town, then the following information in addition to that required in Section 2.07 may be required.

(a) Additional hydrogeologic information including but not limited to the following:

1. A list of all numerically identified wells within 1320 feet of the site and, based on well construction reports, information for each well regarding well depth, depth of casing, and depth to water table.

2. An identification of all known contaminated groundwater resources within 1/2 mile of the site.

3. An identification of the elevation of the groundwater table, and the directions and rate of groundwater flow within 1/2 mile on all sides of the site.

4. An identification of the elevation for all streams and tributaries, including headwaters within 1 mile of the site. Elevations shall include the current water level, as well as the ordinary high water marks and baseline flows. If DNR has not established a base flow for streams tributaries and headwaters within 1 mile of the site, the applicant may be required to retain a licensed hydro geologist to establish a base flow using standard scientific methods.

5. A delineation, using a licensed wetland scientist, the location of any wetlands on the site based on an on-site investigation, and within 1/2 mile of the site, using available maps, photos and other resources.

6. When appropriate for the information being provided by a map, maps should be in the form of contour maps and multiple geological cross-sections passing through the proposed site and all other areas of concern. Horizontal and vertical measurements shall be referenced to a permanent reference point of the Chippewa County coordinate system.

(b) Additional information on water usage and water management methods to be used on the site including but not limited to:

1. A map or hand drawing of the site, including contiguous acreage slated for possible expansion. Provide the location of existing and proposed wells, including well depth, depth of casing, depth to water, and pumping capacity for each well.

2. An identification of the location of all wash ponds and settling ponds and their distance from bedrock and the groundwater table; a description of how these ponds will be maintained for their optimal functioning and a description of how overflows from wash ponds or settling ponds will be managed on site.

3. A description of the various uses to which water will be put on the site including dewatering which may include for each such use, the frequency and rate of withdrawal and the maximum average daily amount of withdrawal in a one week period under conditions of full mining operations.

(c) Additional information regarding the operations at the site including, but not limited to, the following:

1. Where dewatering is proposed, an identification of the pumping rates and times, elevation of groundwater drawdown level, and the location and amounts of discharge.

2. Indicated elevation at the lowest point below groundwater at which excavation and dewatering activity will occur.

3. A description of methods to be used for prevention of surface water running into the excavation.

4. A groundwater monitoring program to include the installation of monitoring wells near the excavation site boundaries to measure groundwater elevations, quality, and flow rate and direction.

5. If groundwater modeling is required, all necessary means to ensure the reliability of the modeling shall be used, including justification of input data, calibration and sensitivity analysis of groundwater models, etc.

6. A reliable estimate, to the extent possible, of the depth and width of the cone of depression together with groundwater flow rates and direction, during a period of maximum operations.

7. An identification to the possible existence of fractures, crevices, and cavities in the deposit.

(2) Groundwater Quality.

If the proposed mining operation will extract material below 5 feet above the groundwater table, or below bedrock, or if production of the final product(s) will involve crushing of stone and that will create waste material stockpiled or disposed of on this site as part of the reclamation of the site or otherwise has the potential for adverse impacts on groundwater quality, then the following information in addition to that required in Section 2.07 may be required.

(a) Information regarding core samples which may include but is not limited to the following:

1. Core samples to the depth of the proposed excavation taken from every 2-acre sector of the proposed site if the site is 4 or more acres, or from each acre of the site if it less that 4 acres. Any core samples shall be taken by a licensed geologist. The initial core sample shall be taken at 10-foot intervals. but if the initial core sample reveals a rather homogenous deposit, subsequent intervals may be taken at 20-foot intervals.

2. Analysis of such samples for lead, arsenic and any other toxic metal or mineral that may reasonably be believed to be present in the area or generally in the type of soils and deposit from which the extraction will be made. Tests shall be conducted by a certified lab.

3. As an option, but only if toxic metals or minerals are generally known not to be normally present in the area or associated with the types of soils in the deposit from which the extraction will take place, the operator may take core sample of waste material stockpiled on site or off site. These core samples shall be taken prior to disposal on site or transporting to the site for the purpose of disposal. A core sample at a depth of 10 feet shall be taken from every 2,000 tons of stockpiled waste material. This option is not available if the stockpile will contain waste material produced from material extracted from any site other than the site for which the application for a permit to mine is being made.

(b) Baseline groundwater quality.

1. Information regarding baseline groundwater quality at the mine site prior to the commencement of nonmetallic mining in accordance with Wis. Admin. Code § NR 140.20. In such a case, wells shall be located every 2-acre sector of the proposed site if the site is 4 or more acres, or from each acre of the site if it less that 4 acres.

2. Information regarding baseline groundwater quality in any private water supply within 1/2 mile of the property boundaries of the mining site, provided access to such wells is provided by the property owner.

(3) Off-Site Impacts.

If the proposed mining operation is for a permit to operate an industrial mine, or the mining operation will employ a manufacturing operation that uses 100,000 gallons of water per day in the production of a merchantable product or products or otherwise has the potential for adverse off-site impacts on the Town, then the following information in addition to that required in Section 2.07 may be required.

(a) Information Regarding Traffic Impacts. Information regarding traffic impacts may include the following: (i) an estimate of the number of trucks per day entering and leaving the site and the weight limits applicable to such trucks; (ii) a map showings the location of any off-site manufacturing facility, routes taken to transport material to that facility, the location of all residences, schools, or places of commerce that access the route and their distance from the roadway, location of livestock and farm equipment accesses and crossings and (iii) a description of issues associated with the selected routes which may affect scheduling of traffic on these routes such as school bus use and marked or unmarked line of sight issues.

(b) Information Regarding Control of Surface Water Impacts. Information demonstrating compliance with the provisions of Wis. Admin. Code § NR 216 for site erosion control and storm water management and any other applicable state or federal regulations regarding runoff and storm water management.

(c) Information Regarding the Control of Dust and Other Fugitive Air Emissions. Information demonstrating compliance with the provisions in Wis. Admin. Code § NR 415.075 including but not limited to a fugitive dust control plan and an ambient air monitoring plan.

(d) Information Regarding Sensitive Resources. Identification, after consultation with the Wisconsin Department of Natural Resources and the United States Fish and Wildlife Service, any threatened or endangered species or species of concern on the Natural Heritage Inventory within the mine site, and any trout habitat within 1/2 mile of the mine site.

(4) Blasting.

If the proposed mining operation involves blasting then the following information in addition to that required in Section 2.07 may be required.

(a) Demonstration that the applicant has applied for and obtained a blasting permit from the Town of Howard.

(b) Demonstration that the operator is in compliance with all procedures and standards for blasting set forth in Wis. Admin. Code ch. Comm 7.

(c) Demonstration that all blasting materials kept on the site shall be stored in accordance with standards set forth in Wis. Admin. Code Comm. chs. 7 and 14 and the NFPA 495, Explosive Materials Code.

(d) Demonstration of compliance with the Town of Howard Ordinance 15 “Blasting Ordinance”.

(e) In the event of a conflict among the requirements set forth above, the strictest requirements shall control.

Section 2.09. Conditions of Use.

The Town Plan Commission may recommend and the Town Board may grant a permit to mine, may deny the permit or may grant the permit with conditions. The conditions that shall be placed on mining operations to meet the purposes of Section 2.03 include, but are not limited to, the following:

(1) General Conditions.

(a) The operator and landowner shall allow the Town Constable, any member of the Town Board, the Chair of the Plan Commission or any agent or employee of the Town, to inspect the operations and operational records upon reasonable notice.

(b) The borders of the entire site shall be staked or otherwise marked. Existing fence lines shall be maintained, or if removed shall be replaced by other markings.

(c) The Town shall require financial assurance in accordance with the provisions of Section 2.11.

(d) The Town shall require proof that the operator has all other applicable federal, state and local permits and approvals required for the nonmetallic mining operation prior to commencement of operation.

(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.

(2) Conditions Related to Off-Site Impacts.

(a) All measures necessary for the control of runoff shall be taken in order to prevent pollution and erosion of sediment onto neighboring properties.

(b) A buffer area of a minimum of 50 feet shall be established along bordering property lines and public roadways. Topsoil removed in preparation of the site shall be used to create a berm sufficiently high to screen the mining operations from public view. Berms shall be seeded and mulched to prevent erosion of bermed soil on to adjoining properties or into ditches or on to roadways. Buffer areas may not include wetlands or highway rights-of-way.

(c) A berm of a height sufficient to screen the mining operation from public view shall be created by using the topsoil from the site during the preparation the site. If an insufficient amount of topsoil is available, then insofar as it is practical, other means of screening shall be used and put in place prior to the onset of the extraction and other mining operations.

(d) Hours of operations shall be limited to 10 hours a day, unless otherwise noted on the permit. Mining operations shall be prohibited during night-time hours, unless the operator petitions the Town to allow night-time operations for an emergency need but exceedence shall be allowed only for a period not to exceed 30 days.

(e) Limitations shall be placed on the number and scheduling of trucks entering or leaving the site, or traveling along specific transport routes, if the Town determines that such limitations would be a necessary and effective way to protect the safety of children being taken or returned from school, or to protect the safety of residents or to protect the safety of commuters at times when traffic volume from commuters going to and from

work is highest. The Town may also impose truck weight limits necessary to maintain Town roads.

(f) Jake braking by trucks shall not be used except in the case of emergency when transporting materials from or to the site. The operator shall use all means necessary to reduce, to the lowest technologically possible level, noise caused by trucks operating on or off site as well as from on-site manufacturing equipment.

(g) Night lighting on site shall be limited to that which is minimally necessary for security and, wherever possible, shall be shielded from illuminating areas off-site areas. Every effort consistent with legal requirements for aerial safety shall be made to minimize illumination of the night sky.

(h) The Town shall require the use of all relevant dust control measures specified in Wis. Admin. Code § NR 415.075.

(3) Conditions Regarding Groundwater and Surface Water.

(a) Impacts to Groundwater Quality. Mining operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code ch. NR 140 at any well identified on the documentation supporting the Application Form. In the event that a "preventative action limit" or "enforcement standard" under Wis. Admin. Code § NR 140 is exceeded in a private water supply well within 1/2 mile of the site, any affected property owner may utilize the remedies under Section 2.15.

(b) Impacts to Groundwater Quantity. 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. In the event that a significant reduction in groundwater occurs within 1/2 mile of the site, any affected property owner may utilize the remedies under Section 2.15.

(c) Impacts to Surface Water Base Flow. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within 1/2 mile of the mine site, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation. If the stream flow of surface waters falls below base flows for more than 5 days, then the Town shall notify the operator and the operator shall have 20 days from such notice to submit a report that demonstrates that the reduction in stream flow was not attributable to the mining operation or to present a plan to return flows to base flow levels. If such a report or plan is not presented to the Town or is deemed inadequate, mining operation shall cease until these flows have returned to base flow levels and are no longer in danger of being lowered below base flow standards by continued operation of the mine.

(d) Impacts to Surface Water Use. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters which serve as a critical source of water for agricultural or municipal functions such as fire protection within 1/2 mile of the mine site. Adverse effects include but are not limited to a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation. If the stream flow of surface waters falls below base flows for more than 5 days within 1/2 mile of the site, the Town or any affected property owner may utilize the remedies under Section 2.15.

Section 2.10. Permit Duration, Renewal and Transfer.

(1) Permit Term.

(a) A permit shall be granted for a period of no more than three years, but may be renewed as set forth herein. If an operator is not the landowner, the term of the nonmetallic mining permit shall not exceed the term of the lease and/or agreement between the operator and the lessor.

(b) permit shall be terminated when the site for which the permit has been granted has been completely reclaimed.

(2) Permit Renewal.

(a) The operator shall make written request to the Town Clerk for a renewal of the permit to operate the mine no later than 120 days prior to end of Permit Term together with the renewal fee.

(b) The written request for renewal shall include an operational record in accordance with the provisions of Section 2.14. The Town Clerk shall place the request on the agenda of the next regular or special meeting of the Plan Commission. The Plan Commission shall consider the renewal request and shall make a recommendation to the Town Board after a consideration of the record of the operation of the mine, of any complaints by the public regarding the operation, and the operator's compliance with the conditions of the permit. The Plan Commission may require the operator to submit additional information prior to its recommendation to the Town Board.

(c) The Town Board may grant the request for renewal for a period of three years if it finds: (i) the operator is in compliance with the provisions of its permit, (ii) there have been no material violations of the ordinance, which have not been appropriately remedied, (iii) there have been no violations of the provisions of the mining permit remaining uncured and (iv) the operator has not received multiple or recurring citations or orders for violations of the mining permit or this ordinance. The Town may modify terms and conditions of the Permit as are reasonable and necessary for the protection of the public health, safety and welfare.

(d) If the Town Board denies the request for renewal, the Town Board shall notify the operator and provide the operator with an opportunity for a hearing.

(3) Permit Transfer. A permit may be transferred to a new operator if the new operator provides financial assurances as may be required by the Town, county, or state.

(4) Intermittent Term Permits. Intermittent mining may be permitted provided that intermittent cessation of the operation is addressed in the nonmetallic mining permit and the conditions of the permit continue to be met during cessation of the operation. If the period of cessation is more than 120 days, the operator shall submit a plan for the stabilization and securement of the site as a permit amendment if it is not part of the approved plan of operation.

Section 2.11. Financial Assurance.

(1) Financial assurance shall be provided to the Town as a condition of permit 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 Howard shall be that form agreed to by the Town Board including performance bonds or irrevocable letters of credit.

(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 have been utilized, the Town shall notify the operator of the additional amount needed and the basis for the request. The operator shall have 5 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 2.12. Fees.

(1) Application Fees. Payment of the application fee and the minimum administration fee in the amounts set forth in the Town of Howard Schedule of Fees and Forfeitures shall be made at the time the operator submits a completed Application Form to the Town Clerk. An additional administration fee may be charged if, upon reading the application, the Plan Commission determines the minimum administration fee will not be sufficient to cover the cost of the consulting expertise necessary for an adequate review of the application. The Town Clerk shall give written notice to the applicant of the additional charge. Plan Commission review of the application shall not continue until the applicant has paid the additional administrative fee to the Town Clerk. The application fee is nonrefundable.

(2)Administrative Fee and Escrow Account. The Town of Howard shall establish an Administrative Escrow Account into which the Town Clerk shall deposit the administrative fees paid by the applicant at the time the applicant submits the completed Application Form to the Town Clerk, together with any additional administrative fee charged when the Plan Commission determines its need for consultant expertise. This escrow account shall be used to pay the costs of expert scientific or engineering consultants the Town may need to review the application as well as for legal services needed by the Town to administer this ordinance. All fees and forfeitures shall be those assigned for this ordinance on the Schedule of Fees and Forfeitures.

(3)Annual Fees

(a)The operator shall pay an annual fee for each mining site in which a mining operation has occurred during the calendar year for which the fee is being paid. The Town Board may waive the annual fee for a mining operation that was inactive in the previous calendar year.

(b)The operator shall pay a renewal fee for each renewal of a mining permit.

(c)The amount of the annual fee shall be based on the costs of administrating the operator's mining permit during the previous calendar year and shall be determined by the Town Board at its January meeting. The annual fee shall be paid by the operator exclusively to the Town of Howard and submitted to the Town Clerk no later than February 28.

Section 2.13. Enforcement, Procedures and Penalties.

(1)Violations.

(a)Engaging in nonmetallic mining without a permit granted by the Town Board.

(b) Failure to comply with the terms of this ordinance or the terms of the conditions set forth in a permit.

(c)Making an incorrect or false statement in the information and documentation submitted during the permitting process or renewal 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 2.14.

(e)Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 2.11 or other order issued by the Town.

(2)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.

(c) Issue a citation in accord with the Town of Howard citation ordinance.

(d) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub (4) and injunctive relief.

(e) Suspend or revoke the mining permit under sub (3).

(3) Permit Suspension or Revocation. After giving notice and a hearing, the Town Board may be suspend or revoke a permit for a violation under sub (1).

(4) Penalties.

(a) Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less that \$100 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.

(5) 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 2.14. Annual Operational Reports.

No later than December 1 of each calendar year, the operator shall submit an annual report for all active and intermittent mining sites for which the operator has a permit in the Town of Howard. The operation report shall be submitted to Town Plan Commission Chair that shall include the following information:

(1) Name and mailing address of the operator.

(2) Location of the mining site, including legal description, parcel identification number.

(3) A map or drawing accurately showing the area of excavation, the unclaimed area and any the reclaimed area. Give numerical description of the number of acres for each type.

(4) A description of activities and operations on the site for the previous calendar year.

(5)A written report demonstrating how the operator has been in compliance with all terms and conditions of its permit; a summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

(6)A description of deviations from the operational plan for the site.

If mining into groundwater, provide actual pumping rates and times, actual groundwater discharge locations and quantities, and groundwater monitoring results from all wells and locations

Section 2.15. Damages to Private Water Supply.

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

(a)A 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 2.11 to provide an adequate interim water supply. The Town shall also use funds under Section 2.11 to indemnify the Town for any claims filed under Wis. Stat. § 281.77(4). An interim water supply shall continue until the Town has approved the report or plan under sub (4).

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

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

supplying water during a period not exceeding one year from the property owner to whom such water was supplied.

(6) A property owner beyond 1/2 mile of the mine site may apply to the Town for use of funds under Section 2.11 to remedy damages to a private water supply identified in sub (1), provided that the property owner can demonstrate to the Town that the damage to the private water supply was caused by the mine. If the Town determines that the damage was caused by the mine, the property owner can utilize the remedies in subs (2) to (4).

Section 2.16. Severability, Interpretation, and Abrogation.

(1) Severability.

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

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

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

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

Section 2.17. 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 _____ day of _____, 20____.

Town Board Chairperson

Published / Posted this ____ day of _____, 2008.

Attest: _____ Town Clerk

Amended/added section 2.08 (4)(d) (4)(e) on March 3, 2009