

## **ORDINANCE**

–Nonmetallic Mining Permits;  
Nonmetallic Mine Operations  
in the Town of Dovre–

THE TOWN BOARD OF THE TOWN OF DOVRE, BARRON COUNTY, WISCONSIN, DOES  
HEREBY ORDAIN AS FOLLOWS:

Section One: That the following Ordinance be and is hereby adopted.

### **NONMETALLIC MINING PERMITS; REGULATION OF USE OF TOWN HIGHWAYS**

#### **SECTION 1. TITLE, FINDINGS, PURPOSE, AUTHORITY, SCOPE AND INTERPRETATION**

##### **1.1 FINDINGS**

Nonmetallic mining operations, while serving as a vital component of our state and local economy, can have both direct and indirect adverse impacts on the human and physical environments. Studies document that nonmetallic mining may generate harmful levels of dust and noise, particularly if blasting and crushing operations are undertaken. The manner in which nonmetallic mining is undertaken can negatively impact on the landscape and aesthetics if not properly regulated, and may present health and safety concerns to members of the public.

Although the State of Wisconsin regulates certain environmental aspects of nonmetallic mining operations, including but not limited to surface and groundwater contamination and withdrawal, and although the State has also established a system of regulating Nonmetallic Mine Operation reclamation efforts under Wis. Adm. Code Ch. NR 135, the Town finds that certain public health, welfare and safety concerns of a local nature have not been dealt with at all or are inadequately dealt with by the State, thus occasioning the adoption of this Ordinance.

The volume, frequency, and weight of Nonmetallic Mining Operations trucking use of highways for travel purposes can have both direct and indirect adverse impacts on the operation, maintenance, and repairs to and operational life of Town highways. In many cases, rural highways have not been designed or constructed to meet the potential volume of traffic generated in association with a Nonmetallic Mining Operation, not to speak of that traffic in conjunction with other public travel on those highways, nor constructed to standards consistent with the safety of the traveling public. In light of such use, the truck traffic associated with such operations has the potential to generate off-site impacts, including but not limited to increased wear and damage to highways and safety concerns to children and other residents.

## **1.2 PURPOSE**

In accord with its legislative authority under the police power, as defined generally at §61.34(1), Wis. Stats., and at Common Law, the Town Board makes this statement of purpose that the regulation of the manner in which Nonmetallic Mining Operations in the Town are conducted is in the health, general welfare, and safety interests of the residents and property owners in the Town. This determination is made consistent with the holdings in Ex Parte Hadacheck, 132 P. 584 (Cal., 1913), affirmed at J.C. Hadacheck v. C.E. Sebastian, 239 U.S. 394 (1915); La Crosse Rendering Works, Inc. v. City of La Crosse, 231 Wis. 438 (1939); State ex rel Saveland Park Holding Corp. v. Wieland, 269 Wis. 262 (1955), among others, upon the basis that vested interests must yield to the good of the community, and the Town Board is empowered to establish standards against which the conduct of human activity may be judged. This ordinance shall also be applied to the extent indicated herein to pre-existing Nonmetallic Mining Ordinances. To this effect, the Town Board concludes that engaging in this legislative effort and enforcing standards applicable to Nonmetallic Mining Ordinances will advance the public health, safety, and general welfare by: (1) having as their objective the preservation of property values in the Town; (2) assisting to preserve the rural character of the Town, composed as it has been of a mixture of farms, residences, woodlands, marshes, and small businesses; (3) limiting the interference of Nonmetallic Mining Operations with the use and enjoyment by adjoining owners and residents of their properties and homes.

The purpose of this Ordinance shall, therefore, be to establish minimum standards for nonmetallic mining operations and to require of their operators that each shall obtain licenses or enter into Operations Agreements with the Town in order to more fully protect public health, welfare and safety in the Town, as well as to preserve the scenic beauty of the Town and its environment; to protect property owners adjoining the sites of mining operations from property value losses, and to minimize or prevent adverse off site impacts from nonmetallic mining operations,

## **1.3 AUTHORITY**

This Ordinance is adopted pursuant to the grant of Village powers to the Town Board under §§60.10(2)(c), 60.22(3), 61.34(1) & (5), and 66.0415, Wis. Stats., and its authority under §349.16(1)(c), Wis. Stats.

## **1.4 SCOPE**

- A. This Ordinance applies to all persons who engage in Nonmetallic Mining Operations in the Town except as provided in accord with B. and C., below.
- B. This Ordinance shall not apply to persons engaging in the following types of Nonmetallic Mining Operations:
  - 1. Excavations or grading solely for domestic or farm use at that person's residence or farm.

2. 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.
  3. Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
  4. Excavations for residential building construction purposes conducted on a residential building site.
  5. The disturbance by any person of less than one acre of land for extraction of nonmetallic minerals.
  6. Removal of products or commodities from the earth 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.
- C. The standards of this Ordinance shall apply both to pre-existing Nonmetallic Mining Operations as of the date of its adoption as well as to Nonmetallic Mining Operations to be commenced thereafter, subject to the following limitations with respect to pre-existing operations.
1. Pre-existing operations shall automatically be granted a license upon submission of a completed application under Section 3.3 together with the required fee, if filed within ninety (90) days of the effective date of this Ordinance. The license that is granted shall be limited to operations conducted under the Operator's operation plan on the date the application is filed. The application shall fully set forth and describe all physical features and types of operation that are engaged in on the Mine Site in question. Pre-existing operations shall not be required to reconfigure existing physical components thereof in order to comply with Section 5.1, including, but not limited to, active extraction sites, structures, driveways, railroad spur lines, access points to public highways, parking lots, storage facilities, and any other manmade construction associated with the Nonmetallic Mining Operation as it then is conducted. Subject to this limitation, pre-existing operations together with nonmetallic operations commenced after the effective date of this Ordinance shall be subject to regulations hereinafter adopted enforcing reasonable limitations on the impacts on people and property in the Town of the means by which Nonmetallic Mining Operations are engaged in. However, as of the effective date of this Ordinance,

pre-existing operations shall only be subject to the standards governing noise, light dispersal, blasting time limitations and property value guarantees.

2. Notwithstanding 1., above, substantial reconstruction of structures, driveways, railroad spur lines, access points to public highways, parking lots, storage facilities and any other manmade construction associated with the Nonmetallic Mining Operation after the effective date, whether or not accompanied by demolition of pre-existing structures or partial reclamation of the Mine Site or amendment to the Operator's NR 135 Permit, shall be subject to this ordinance.
3. Pre-existing Nonmetallic Mine Operations, the use or conduct of which have ceased entirely for a period of in excess of two (2) years or such period as may be expressed in an Operator's NR 135 Permit as triggering reclamation, whichever is shorter, shall render the Mine Site to be subject to all requirements of this Ordinance.

The use of Town highways shall be subject to Section 5 of this Ordinance.

## **1.5 INTERPRETATION**

- A. **Abrogation and Greater Restrictions.** Except as is set forth expressly herein, it is not the intent of the Town Board to abrogate, annul or repeal any other ordinance of the Town or to alter the applicability of laws which are of statewide concern within the Town. To the extent that a conflict arises between this and any other ordinance, rule or regulation, the more restrictive of them shall control.
- B. **Liberal Construction.** In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare and shall be liberally construed in favor of the Town to promote the purposes for which they are adopted and shall not be construed to be a limitation or repeal of any other power now possessed or granted to the Town.
- C. **Grammatical Construction.** The use of capital letters and lower case letters in this Ordinance shall be considered to be interchangeable and rules of grammar and punctuation shall not be applied at the expense of a natural, reasonable reading of the Ordinance language
- D. **Town as Regulatory Body.** By the adoption and enforcement of this Ordinance, the Town is not to be deemed to be a partner or agent of any person to which a license is granted hereunder.

## **SECTION 2. DEFINITIONS**

The following definitions shall apply to and govern interpretation of the terms:

“Adjoining property” means all legally-described parcels of real estate that are situated within 1/2 mile of the border of a legally-described parcel on which a Nonmetallic Mine Site is located and upon which a single or multi-family residence is situated, and which residence exists as of the date of this Ordinance.

“D.O.T.” means the State of Wisconsin, Department of Transportation

“Exceptional Maintenance” means maintenance above and beyond Normal Maintenance which is occasioned by the use of Town highways by motor vehicles and heavy equipment by the Operator in conjunction with the construction, operation, maintenance, and reclamation of a Nonmetallic Mine Site. What constitutes Exceptional Maintenance shall be determined upon the basis of a study of the Town highways to be used for hauling at or immediately after the effective date of this Ordinance if such a study is performed or on a case-by-case basis in the future with respect to proposed highway use in association with specific Nonmetallic Mining Operations, whose purpose it shall be to determine the condition of the right-of-way and pavement, its remaining useful life and any immediate repairs or improvements required in order to facilitate the anticipated weight and volume of traffic to and from the Mine Site. Upon the basis of regular annual inspections or inspections on a periodic basis performed as a result of perceived damage to any given portion of the Town highways to be used for hauling, it is determined by the Town that maintenance or repairs beyond those included under the heading of Normal Maintenance are required as a result of the use by the Operator, such maintenance or repairs shall be characterized as Exceptional Maintenance and the costs thereof shall be borne by the Operator.

“Highway” is defined as having the meaning at §990.01(12), Wis. Stats.

“Nonmetallic Mine Site” or “Mine Site” means all contiguous areas of present or proposed mining including the following:

- A. The location where nonmetallic mining is proposed or conducted.
- B. Storage and processing areas whether contiguous or not to areas excavated for nonmetallic mining.
- C. Areas where nonmetallic mining refuse is deposited.
- D. Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.
- E. Areas where grading or regrading is necessary.

- F. Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.

“Nonmetallic Minerals” means a product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, nonrenewable materials. Nonmetallic minerals include but are not limited to stone, rock, gravel, sand, asbestos, beryl, diamond, clay, coal, feldspar, silica, peat and talc.

“Nonmetallic Mining Operations” means any or all of the activities, processes, methods of approach, applications and means utilized, both mechanically and otherwise, including but not limited to blasting, grading, crushing, screening and scalping to cause the occurrence of one or more of the following:

- A. Extraction or excavation from the earth of nonmetallic minerals for off-site use or sale;
- B. Manufacturing or processing operations that may involve the use of equipment for the washing, drying and loading of or the crushing, screening, separating or blending of or other related processing of nonmetallic minerals obtained in the extraction process from the earth or using nonmetallic materials or other materials transferred to the site at which the operations are taking place.
- C. Manufacturing processes whose aim or goal is the production of nonmetallic products for sale or use by the licensed Operator.
- D. Stockpiling of nonmetallic minerals for sale or use off-site and stockpiling of waste materials.
- E. Transportation of extracted nonmetallic materials, finished product or waste materials to or from a Mine Site, whether by means of trucking over County, or Town highways or by means of a conveyor belt system or any other means, whether or not the Nonmetallic Mine Site from which or to which said transportation is maintained is in or outside of the Town of Dovre.
- F. Disposal of waste materials.
- G. Reclamation of a Mine Site.

“Normal Maintenance” means such recurring or non-recurring maintenance of the right-of-way, roadbed, or pavement of any or all portions of the designated Town highways as are occasioned by normal wear and tear, weather conditions, both anticipated and unanticipated, and other factors taken into account in establishing both the remaining useful life of a highway in accord with

accepted highway maintenance practices utilized by the Town in accord with D.O.T. standards and to meet or exceed the remaining useful life of a highway.

“NR 135 Reclamation Permit Plan” or “NR 135 Permit Plan” shall mean the DNR or County-approved Nonmetallic Mining Operation Plan for each Nonmetallic Mining Site.

“Operator” means any person who engages in Nonmetallic Mining Operations in the Town.

“Town” means the Town of Dovre, Barron County.

“Town highway” means a highway, as that term is defined in Ch. 990, Wis. Stats., that is operated, maintained and repaired for purposes of facilitating public travel by the Town under Ch. 82, Wis. Stats., et al.

### **SECTION 3. APPLICATIONS AND LICENSES**

#### **3.1 LICENSE REQUIRED**

- A. With the exception of those operations exempted under § 1.4, above, no person shall engage in Nonmetallic Mining Operations in the Town without first obtaining an Operator’s license from the Town Board.
- B. An Operator’s license shall be granted for an indeterminate period of time, ending with reclamation of a Mine Site in accord with the Operator’s NR 135 permit. This notwithstanding, in the event that during the term of such a license, the Town Board adopts additional police power regulations controlling Nonmetallic Mine Operations, each license shall be subject to those added regulations from their effective date forward.
- C. If initially a license does not require entry into a highway agreement under § 5 but the operation changes so as to require such an agreement, the license shall be modified at such time as when a highway agreement is entered into to incorporate and require compliance with said agreement.
- D. Licenses may be transferred from person to person provided that the transferee agrees to be bound by and shall comply with all terms of the license. Transfer of Operations Agreements shall be subject to the approval by the Town. With respect to licenses, notice of transfer and a signed acknowledgment by the transferee to be bound by the license shall be provided to the Town and with respect to Operations Agreements, the Town Board shall grant approval upon the basis of a signed agreement by the transferee to be bound by its terms and conditions.

- E. If an Operator's license is revoked in accord with Section 13, all rights thereunder shall terminate. The only mining operations which may be engaged in on any given mining site after license revocation shall be reclamation pursuant to the requirements of the licensee's NR 135 permit.

### **3.2 APPLICATION PROCEDURE**

- A. The Town Clerk shall supply Application Forms.
- B. Each applicant shall submit four (4) copies of the Application Form and all documentation required under Section 3 to the Town Clerk accompanied by the payment of the application fee established for the administration of this Ordinance. The fee shall be made payable to "Treasurer, Town of Dovre." The Application Form shall be signed by the Operator. In the event that the land or lands on which a nonmetallic mining operation is proposed to take place is owned by someone other than the applicant, the owner shall join in and sign the application as evidence of the owner's willingness to allow nonmetallic mining operations to take place on his or her property. The owner shall agree to be jointly and severally liable with the Operator for compliance with the terms and conditions of this Ordinance together with fulfillment of the terms of an applicable Operations Agreement and completion of reclamation pursuant to the NR 135 reclamation permit regulating the mine operation in question.
- C. The application shall identify whether or not it is the intent of the Operator to make use of Town highways for hauling purposes. If Town highway use is required or otherwise proposed, § 5 shall control.
- D. The Town Clerk shall forward the application to the Town Board for review to initially determine if additional information or professional consultation is required for it to properly evaluate the application where the application proposes use of Town highways for hauling purposes.

If the Town Board determines that professional analysis is required, it shall retain expert assistance and it shall give written notice to the applicant that an additional administrative fee will be charged to cover the cost of the services of such expert. Failure of the applicant to pay the additional fee as directed by the Town shall constitute cause for refusing to process the application.

- E. Town Board Decision. The Town Board shall grant the license if it determines that the Operator will act in a manner consistent with the minimum standards of this ordinance. The Town Board shall issue its decision within sixty (60) days of the date of submission of a fully completed application to the Town Clerk, unless under C., in order to facilitate review of an application by experts additional time is required,

in which event the decision shall be issued within ninety (90) days of the date of application. Either of these limits may be extended upon mutual agreement of the Town Board and the applicant.

### **3.3 LICENSE APPLICATION**

Applicants for an Operator's license shall submit the following:

- A. Information pertaining to the site or sites upon which Nonmetallic Mining Operations will be engaged in by the Operator, including:
  - 1. The recorded legal description of all properties on which Nonmetallic Mining Operations are proposed to be located.
  - 2. An aerial photo of any proposed Mine Site at a scale of 1 inch equals 660 feet.
  - 3. A map of all proposed Mine Sites extending 1/2 mile beyond the site boundaries showing the boundaries of the site, the location and total acreage of the site, and the name of all Town, County, and State highways within one mile of the site.
  - 4. A map identifying all anticipated truck haul routes on all highways between the Mine Site and processing plants or to other destinations. In addition, should it be proposed that in addition to or in lieu of using highways in the Town for hauling associated with nonmetallic mining operations, some other form of transportation including, but not limited to, a conveyor belt system, be used, a map of said system identifying properties crossed and their owners shall be provided to the Town.
  - 5. If the Operator proposes to operate from two or more Mine Sites in the Town, he or she shall respond to the requests for information under 1. to 4. with respect to each site.
- B. An Operation Plan to Include:
  - 1. Proposed dates of the planned commencement and cessation of the Nonmetallic Mining Operation.
  - 2. Estimated volume of material to be extracted over the life of each Mine Site and during the next calendar year.

3. An identification of proposed driveways and access points to and from highways.
  4. A description of the frequency of traffic and anticipated schedule of travel to be used for transporting nonmetallic materials or products to or from the Mine Site on Town highways.
  5. A physical layout of the proposed sites of each Nonmetallic Mining Operation, including such features as road access points, structures, pit locations, stockpiles, storage, and parking areas, to the extent applicable.
  6. Any proposal to make use of surplus or ground water in the operation (except for sanitary use in association with drinking water and sanitary facilities for human use) including the source of such water and applicable State or Federal permits.
- C. Each applicant must submit a copy of its approved NR 135 reclamation permit plan to the Town before any license under this Ordinance or Operations Agreement takes effect. No Mine Site work or construction may take place before permission has been granted.
- D. Additional information may be required if, in the opinion of the Town Board, it is required to process a permit application. The Town Board shall identify the information required and request that it be supplied by the applicant.
- E. Before any license under this Ordinance takes effect, the applicant shall demonstrate that it is carrying insurance of such types and in such amounts as are approved of by the Town's insurer and shall name the Town as an additional insured. Continuous insurance coverage shall be a condition for each license and the failure to maintain the same shall cause the license to be automatically revoked.

## **SECTION 4 OPERATIONS AGREEMENT AND TERM**

### **4.1 OPERATIONS AGREEMENT**

- A. In addition to the requirement of entering into a §349.16, Wis. Stats., Highway Agreement under Section 5, the Town Board may negotiate the entry into an Operations Agreement with any Operator. Such an agreement shall be negotiated pursuant to the provisions of this Section. Except to the extent modified by the terms of an Operations Agreement, all requirements of this Ordinance shall continue in full force and effect with respect to a given Nonmetallic Mining Operation.

- B. Purposes Served by Operations Agreement. An Operations Agreement may be negotiated for one or more of the following reasons.
1. To create standards of operational performance tailored to an individual mine operator.
  2. To establish, by mutual agreement, terms and conditions of operation of a Nonmetallic Mine Site.
- C. An Operations Agreement shall be a complete substitute for a license granted under Section 3, above. Each such agreement shall take into consideration and shall promote the public health, safety, and welfare concerns that underlie this Ordinance but need not specifically enforce or apply the specific requirements applicable to licenses where alternatives thereto are deemed to be in the public interest.
- D. Requirements. An Operations Agreement shall be in writing and include:
1. A statement identifying the Operator.
  2. The legal description of the parcel(s) identified by the Operator as the location of his or her Nonmetallic Mining Operation.
  3. The effective date and term.
  4. Identification of the approval standards designed by the Town Board to promote the public interest.
- E. Negotiations. Upon engaging in negotiations toward entry into an Operations Agreement, both the applicant and the Town shall act in good faith but neither shall be required to enter into an agreement simply because they entered into negotiations toward that end.
- F. All expenses of the Town, including reasonable attorney's fees, shall be paid to the Town by the applicant as a condition of engaging in negotiations, whether an agreement is entered into or not.

**SECTION 5                    §349.16, WIS. STATS., HIGHWAY USE AGREEMENT**

- A. Impacts on Town Roads and Public Safety.
1. The Operator shall be responsible to conform its operations to the following requirements for all haul truck operations to and from the mining site. Said

responsibility shall extend both to haul trucks owned by the Operator, as well as to third party trucking services.

2. In the event that truck hauling to or from the Operator's mine site requires travel on Town highways, the Operator shall be required to enter into a §349.16, Wis. Stats., highway use agreement.
3. The Operator shall ensure that all nonmetallic mining trucking operations on Town highways comply with the Town's highway regulations.
4. Within the Town, trucks used in conjunction with a nonmetallic mining operation shall not, except in case of emergency, employ the use of compression release (Jake) brakes.
5. Loads carried in haul trucks on Town or County highways in the Town shall be covered to prevent escape of dust or debris onto the highways. In addition, all haul trucks used on Town or County highways shall be equipped with mud flaps.
6. The Operator shall take reasonable measures to ensure that trucks traveling to and from the mining site do not interfere with the safety of children being taken to or returned from school, the safety of vehicles displaying slow-moving vehicle signage, pedestrians, nonmotorized vehicles, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is the highest. The Town reserves the right to impose time-of-day use restrictions so as to avoid conflict of use for hauling by or for operators with other uses of the highway including, but not limited to, school buses.

B. §349.16, Highway Use Agreement.

1. Each Operator of a nonmetallic mining operation shall be required to enter into a Highway Use Agreement with the Town which shall be negotiated upon the basis of a review of such of the following factors and others as are determined by the Town Board to be of relevance to the proposed use of Town highways:
  - a. Town and County highways in the Town which are proposed to be utilized for hauling purposes.
  - b. The anticipated level of hauling truck traffic, per day/week/month/year.

- c. The types or kinds of material transported to or from a nonmetallic mine operation site including, but not limited to, nonmetallic minerals, overburden, waste material, and other material to be used in the course of reclamation, to be transferred to or from, deposited in, or removed from a Mine Site. This shall not include transportation of machinery, equipment, building supplies, or other personal property.
  - d. The tonnage or other measurement of material as described in C., above, proposed to be hauled by each fully loaded truck.
  - e. Whether the haul trucks will be owned and operated by the Operator or by third persons, and if the latter, upon what arrangements with the truck operator (agent or independent contractor).
  - f. If some or all of the hauling trucks are operated by persons other than the Operator, the nature and extent of contractor controls proposed to be exercised by the Operator over their use on highways in the Town.
  - g. Insurance, by type and amounts, proposed to be carried by the Operator or third party haulers for all haul trucks to be operated in the Town.
2. Prior to entering into an agreement for use of Town highways, a survey shall be made of the condition and age of the highways proposed for use through an engineer selected by the Town Board, with all costs to be paid for by the Operator. Said study shall include the following:
- a. Length of Town highways to be used.
  - b. Estimated remaining life of highways at the time.
  - c. Upgrades of pavement or roadbeds to a design standard approved of by the D.O.T. to withstand the weight and volume of proposed haul traffic.
  - d. Determination of upgrades, whichever are more restrictive, geometric designs of highways to Town or D.O.T.-approved standards to accommodate anticipated traffic volume; including, but not limited to, haul truck traffic.

- e. Preparation of inventory of affected Town highways and any necessary acquisition of rights-of-way required to accommodate recommended upgrades.
    - f. Description by type, haul weight, and axle of trucks proposed to be used for hauling on Town highways.
  - 3. In addition to requiring an Operator to finance upgrades to Town highways as recommended by the Town's engineer 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 during and immediately after the term of agreement.
    - b. Pay for Ordinary Maintenance at a rate to be determined upon the basis of the amount of use of Town highways by the Operator in comparison with other use of said highways.
    - c. Limit access to Town highways to access points designated by Town Board.
    - d. Reroute haul trucks in the event of emergencies, or repairs, or natural disasters to temporary detour routes established by the Town Board.
  - 4. Each Highway Use Agreement shall be subject to approval by the Town Board.
- C. In the event that an applicant proposes to use a conveyor belt system to transport nonmetallic minerals through the Town, it shall first obtain all necessary easements, licenses, or conveyances of property from private owners for this purpose and shall apply to and obtain from the Town, with respect to Town highway crossings, and from the County and State with respect to their highways, easements or other permission to cross over such highways in the air or to disturb the ground and pavement for burial of said line in and crossing the highway rights-of-way. The applicant shall be responsible for all costs associated with approval of its highway crossing plans including, but not limited to, Town engineering costs and all costs of opening or excavating the right-of-way together with restoration of the right-of-way including, but not limited to, the paved or traversed portion thereof to its condition immediately prior to such opening or excavating work taking place, as well as for further maintenance or repair costs occasioned from such crossing.

- D. A Highway Use Agreement entered into by the Operator of a Nonmetallic Mining Operation prior to the effective date of this Ordinance shall remain in full force and effect and such an Operator shall, for the term of such Agreement, be exempt from compliance with this Section.

## **SECTION 6                    STANDARDS REGARDING OFF-SITE IMPACTS**

Nonmetallic Mining Operations shall be conducted in such a manner as to meet or exceed the following minimum requirements:

- A. The Operator shall provide a buffer area around each Nonmetallic Mine Site of a minimum of fifty (50) feet along bordering property lines and public highways. If a berm is placed within this fifty (50) foot buffer area and it lies along a public highway, the bottom edge of the berm shall be a minimum of ten (10) feet from the edge of the right-of-way and shall be seeded down and covered with erosion matting.
- B. Berms, a minimum of 10 feet in height above grade and of a length to be determined on a case-by-case basis, shall be installed at locations as are determined by the Town Board at the time of initial licensing of a Nonmetallic Mining Site that are situated immediately adjoining and across from existing, occupied residences and surrounding yards. At the option of the operator, the height of the berm may be reduced subject to the operator planting and maintaining coniferous trees on top of a berm that is shorter than the height indicated above. In addition, the operator shall leave the existing perimeter tree canopy in place within the buffer zone referred to in A., above to keep the visual appearance and aesthetics and reduce particulate matter and noise dispersion from the Mine Site. Should a natural tree canopy exist on the Nonmetallic Mining Site opposite existing, occupied residences, in its discretion, the Town Board may dispense with the necessity of constructing a berm in that location if the trees are deemed by it to provide a sufficient visual barrier. No duty shall be imposed to erect a berm opposite houses constructed after the time of initial licensing of the Mine Site in question.
- C. The Operator shall minimize light pollution, glare, and light trespass from fixed light sources while maintaining night time safety, utility, security, and productivity in the course of its operations. To this effect, the following shall control Nonmetallic Mining Site lighting usage:
  - 1. All lighting must be fully shielded in a manner that light rays emitted by the fixture, either directly from a lamp or indirectly from a fixture, are projected below a horizontal plan running through the lowest point on the fixture where the light is emitted.

2. Lighting must be directed away from adjacent properties to prevent light from trespassing or spilling onto those properties.
  3. Except for lighting on vehicles or moving equipment, there shall be no flashing, revolving or intermittent lighting, which could be considered a nuisance or distraction to vehicular traffic.
  4. Search lights, laser source lights, or any similar high intensity light shall not be permitted, except in emergencies by police or fire personnel or at their discretion.
  5. All outdoor flood light projection above the horizontal is prohibited.
  6. Temporary lighting that does not conform with this Section may be allowed for a period of not longer than 30 total days within each year.
- D. The Operator shall use best management practices to keep noise from Nonmetallic Mining Operations at or below 80 dB at the Mine Site boundaries. Exceptions to this Section are blasting activities, haul trucks entering or leaving the Mine Site and work projects done on site preparation, the construction of site improvements or restoration or repair work.
- E. In order to be eligible for a license, proof must be submitted of a current air pollution permit issued to the applicant under Wis. Adm. Code Ch. NR 415, if such a permit is required for the type of operation in question. To the extent that such a permit is required, it shall be maintained in full force and effect at all times during the term of the license, barring which the license or agreement under this Ordinance will be suspended or terminated.
- F. Blasting shall be conducted strictly in accordance with Wis. Adm. Code Ch. SPS 307 and shall occur between the hours of ten o'clock (10:00) am and three o'clock (3:00) pm; except that blasting may occur after three o'clock (3:00) pm, but prior to sunset, if required for safety reasons beyond the reasonable control of the Operator. No less than twenty-four (24) hours' notice shall be provided to the Town and all owners of adjacent property lying within one-half (1/2) mile of the nonmetallic mine site on which blasting is to take place.
- G. Transportation of nonmetallic minerals by means of conveyor belt systems shall be subject to A., C., D., and E. of this Section. For purposes of designating the site boundary for compliance purposes under D., the outer perimeter of the legal description of each parcel of real estate through which the conveyor belt system is routed shall be utilized. If an adjoining property owner consents to the placement of a conveyor belt system within fifty (50) feet of his or her common boundary with the

property on which the conveyor belt is located, the provisions of A. shall not apply. For the purpose of this paragraph, "adjoining property owner" shall mean a property owner other than the owner from whom the easement or title to the right of way has been acquired. To the extent that a conveyor belt system is located on property on which other forms or types of Nonmetallic Mining Operations are located or take place, other than designated public highway haul routes only, all provisions of this Section shall apply.

## **SECTION 7 IMPACTS ON ADJOINING LANDOWNER'S PROPERTY VALUES**

- A. For a period five (5) years next following the approval of a Nonmetallic Mine Operation under Wis. Adm. Code Ch. NR 135 Reclamation Plan for the Mine Site against which a Property Value Guarantee is sought to be imposed, the Operator shall provide a Property Value Guarantee as follows. Each eligible adjoining property owner who wishes to participate shall sign up with the Town Clerk and provide written notice to the Operator of his or her election to participation in the Property Value Guarantee hereunder. Each such landowner shall have one (1) year to sign up from whichever of the following dates is applicable: (a) approval of the Wis. Adm. Code Ch. NR 135 plan; or (b) the effective date of this Ordinance in cases of pre-existing, nonmetallic Mine Operations; or (c) in the case of Nonmetallic Mine Operations that do not require an NR 135 permit, its commencement of operations. All others forfeit their rights to do so. This guarantee shall apply only to the owner of the property as of the date on which approval of the Reclamation Plan is received.
- B. An Adjoining Landowner (hereinafter "Owner" in this Section) desiring to sell his or her property and exercise the option provided in this Property Value Guaranty shall notify the Operator of their intent no later than the first to occur of the following events: (1) the fifth (5th) anniversary date of the approval of the NR 135 Reclamation Plan for the Mine Site in question; or (2) the cessation of mining activity under the License and any renewals.
- C. The Owner and the Operator shall agree on an appraiser who is licensed as a real estate appraiser in the State of Wisconsin who shall determine Fair Market Value of the property, further defined as being the full value thereof which could ordinarily be obtained therefor at private sale on an arm's length basis between a willing seller and a willing buyer. This term shall be further defined as being the Fair Market Value of the property assuming that the Operator's Nonmetallic Mining Operation did not exist but taking into account all other factors in valuing the property. The Operator shall pay for the appraisal.
- D. In the event that the Owner and Operator are unable to agree on an appraiser, the Owner shall select a financial institution in Barron County, Wisconsin, that makes residential real estate loans and with whom the Owner does not do business and

request that such institution provide to the Owner and Operator the name of an appraiser it regularly employs to conduct residential appraisals. The identified appraiser shall be retained to conduct the appraisal and shall determine the Fair Market Value of the property using the criteria set forth in C., above, and provide the Owner and Operator with the said appraisal of Fair Market Value.

- E. The Owner shall then enter into a listing contract with a duration of at least six (6) months and not more than one (1) year with a Wisconsin licensed real estate broker. The listing contract shall list the Operator as a potential buyer so that if the Operator purchases the property during the term of said contract no commission shall be due.
- F. Before accepting any offer of less than the Fair Market Value as determined in paragraphs C or D above, the Owner shall give the Operator five (5) business days' notice by fax, e-mail, or personal delivery with a copy of the offer to the Operator. If the notice is by fax or e-mail it shall also require confirmed receipt by the Operator. If the Operator objects in writing within two (2) business days, the Owner shall not accept the offer. Within two (2) business days of the Operator's receipt of the offer, the Operator may elect to purchase the property for its Fair Market Value, and if the Operator makes such an election, the Owner shall sell the property to the Operator at the Fair Market Value and upon the other terms contained within the offer (not including the purchase price, which shall be the Fair Market Value).
- G. Except as provided otherwise in this paragraph, if the Owner sells the property during the term of the listing contract for less than the Fair Market Value as determined in paragraphs C. or D. above, the Operator shall pay the Owner the difference between the selling price and the Fair Market Value, less the realtor's commission that would have been payable on that difference. The Operator shall make the payment within thirty (30) days of the recording of the conveyance of the property. In the event that the Operator reasonably believes that the Fair Market Value determined by the appraiser pursuant to paragraphs C. or D. above no longer represents the actual Fair Market Value of the property due to changes in the market, the Operator may have an updated Fair Market Value determined as of the date on which the closing on the property occurred using the same appraiser used to determine the Fair Market Value under paragraphs C. or D. The Operator shall pay all costs related to such updated appraisal. If such an updated Fair Market Value is determined to be different than the original Fair Market Value, then the Operator shall pay the Owner the difference between the selling price and the updated Fair Market Value, less the realtor's commission that would have been payable on that difference.
- H. If the property is not sold within six (6) months of the date of the listing contract, the Operator shall immediately purchase the property for the Fair Market Value as determined in paragraphs C. or D. above, or at such other appraised value as is agreed upon by and between the Operator and the Property Owner. At the option of the

Seller with the approval of the Operator, the listing contract may be extended for an additional six (6) months.

- I. The guaranty shall apply only once for any adjoining property and shall only be available to owners of record of adjoining properties as of and immediately after the date of commencement of Nonmetallic Mining Operations. In the event that a property constitutes an Adjoining Property of two or more Nonmetallic Mining Operations, any payments from the Operator called for by this Section shall be split equally among the Operators of such Nonmetallic Mining Operations. In such an event, paragraphs C. and D. shall apply, but where the term “Operator” is used in C. or D., for purposes of this paragraph it shall include each of the Operators of the two or more adjoining Nonmetallic Mining Operations, who shall share the power of nomination of an appraiser under C. and who shall equally split the cost of appraisal whether performed under paragraph C. or D.
- J. Adjoining Property which is for sale prior to the date of commencement of Nonmetallic Mining Operations shall not be eligible for the Property Value Guaranty provided in this Section.
- K. Properties shall not qualify for the Property Value Guaranty in the event the property owner sells or otherwise conveys the property to a third-party by a transaction which is not considered an arm's length transaction, such as a sale or gift to a relative. This limitation shall not apply with respect to transfers as a result of testate or intestate succession upon the death of the Owner.
- L. In the event that Nonmetallic Mining Operations at a Mine Site for which an NR 135 reclamation permit has been obtained do not commence within one (1) year after the date of the approved NR 135 permit, the five (5) year period expressed in A., above, shall commence on the date mining operations actually begin. For Mine Sites for which an NR 135 reclamation permit is not required, the five (5) year period expressed in A., above, shall commence on the date mining operations activity begin. For Mine Sites pe-existing the effective date of this Ordinance, the five (5) year period expressed in A., above, shall commence on the effective date.

## **SECTION 8 FINANCIAL ASSURANCE**

### **8.1 GENERAL REQUIREMENT**

Financial assurances may be required to be provided to the Town as a condition of the License approval in amounts determined necessary by the Town Board or its agents for impacts on Town highways as determined under Section 5, and may include an amount reasonably necessary for the engineering, building, or rebuilding and maintenance of Town highways and bridges, right-of-way acquisition, and stormwater drainage systems.

## **8.2 FORM OF ASSURANCE**

- A. The form of assurance made to the Town of Dovre shall be that form agreed to by the Town Board and may include performance bonds, irrevocable letters of credit, cash deposits or other measures agreed upon by the Town Board.
- B. In the event the Town reasonably determines that the amount of financial assurance must be increased to meet specific impacts on Town highways 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 thirty (30) days to provide the increased amount. If the Operator fails to provide the increased amount, the Operator shall be considered to be in violation of this Ordinance.

## **SECTION 9 RECLAMATION**

The Operator shall provide to the Town proof that it has provided the financial assurance required for reclamation pursuant to Wis. Adm. Code Ch. NR 135. In the event that a license is granted under this Ordinance prior to issuance of the Operator's NR 135 permit, it shall not take effect until the date of issuance of said NR 135 Reclamation Plan permit.

## **SECTION 10 INDEMNIFICATION**

The Operator shall indemnify the Town for any and all injuries or property damage caused by or as a result of its use of Town highways except those as are caused by the negligence of the Town in operation of its highways, subject to its statutory defenses and immunity.

## **SECTION 11 RESERVATION OF RIGHT TO EXERCISE FURTHER CONTROLS OVER NONMETALLIC MINING OPERATIONS**

The Town reserves the right, should it be required in its opinion to exercise further controls upon or exercise additional regulations over Nonmetallic Mining Operations, to amend this ordinance and subject both existing and future nonmetallic operators to such additional controls and regulations as a function of its police powers.

## **SECTION 12 LICENSE SUBJECT TO PROCUREMENT AND RETENTION OF ALL REQUIRED STATE AND FEDERAL PERMITS**

No license issued under this Ordinance shall be deemed to be in effect until the operator has identified and provided copies to the Town of all County, State, and Federal permits required to operate its Nonmetallic Mining Operation. Loss or failure to retain any of said permits shall constitute grounds for revocation of this license. The Operator shall be under the duty to self-report to the Town any pending actions, disputes, or litigation regarding its State or Federal permits as well as action taken to revoke or suspend the same. No ground water may be used without proper permits

from the State, subject to provision of copies of all such permits to the Town. With respect to high capacity wells, regulated under §§281.34 and 281.35, Wis. Stats., and Wis. Adm. Code Ch. NR 820, it shall be the responsibility of each nonmetallic mine operator to submit all reports required to be made by it to the Department of Natural Resources (“DNR”) to the Town at the same time as when they are submitted to the DNR.

## **SECTION 13. INSPECTION, ENFORCEMENT PROCEDURES, AND PENALTIES**

### **13.1 INSPECTION**

The Town Board, or other authorized representative of the Town, may make inspections to determine the compliance of operation of Nonmetallic Mining Sites in the Town with the standards of this Ordinance in order to safeguard the health and safety of the public upon showing proper identification and upon reasonable notice of not less than twenty-four (24) hours to the Operator for inspections during normal operating hours.

### **13.2 VIOLATIONS**

The following are violations of this Ordinance.

- A. For Mine Sites subject to this Ordinance, engaging in nonmetallic mining without a valid Operator’s license or Options Agreement granted by the Town Board.
- B. Failure to Comply with the minimum standards of this Ordinance.
- C. Failure to take appropriate action in response to a notice of violation, citation, or other lawful order issued by the Town.

### **13.3 PROCEDURES**

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

- A. Issue a notice of violation and order that specifies the action to be taken to remedy a situation. An Operator shall be granted fourteen (14) days in which to correct violations unless circumstances exist requiring an additional period of time to effect compliance therewith. In such event, upon receipt of notice from the Town, the Operator shall immediately provide the Town with a written explanation of the need for additional time and the amount of additional time required which, if reasonable under the circumstances, shall be granted to the Operator.
- B. Issue a citation in accord with the Town Citation Ordinance.

- C. Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under Section 13.4 and injunctive relief.
- D. License Suspension or Revocation. After giving notice and holding a hearing, the Town Board may suspend or revoke an Operator's license or agreement for a material violation of Section 13.2.

**13.4 PENALTIES**

- A. Any person who is adjudicated guilty of a violation shall pay a forfeiture of not less than \$100 per violation nor more than \$5,000 per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.
- B. Any person adjudicated guilty of a violation of this Ordinance shall pay court costs and reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.
- C. The failure of the Town to take action against past violation(s) shall not constitute a waiver of the Town's right to take action against any other or further violation(s).

**SECTION 14 REPORTS AND COPIES TO TOWN**

All reports required to be made and copies of documents to be submitted to the Town shall be directed to the Town Board Chairperson and Town Clerk.

**SECTION 15 WASTE SAND RESTRICTIONS**

Waste sand originating from Nonmetallic Mine Sites outside of the Town shall not be permanently disposed of or deposited at locations in the Town without express permission of the Town Board provided, however, that if a Reclamation Plan granted prior to the date of this Ordinance calls for the use of waste sand as fill material as part of the reclamation of the Nonmetallic Mining Operations, the Reclamation Plan shall supersede this Section and the use of waste sand under the Reclamation Plan shall be allowed.

**SECTION 16 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.

**SECTION 17            FEES**

An initial application shall be accompanied by a fee payment of \$2,500. Renewals shall be subject to a \$500 fee.

Section Two: Effective Date

This ordinance shall take effect on its adoption and publication as required by law.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2012.

**TOWN OF DOVRE**

By: \_\_\_\_\_  
Jim North, Chairperson

By: \_\_\_\_\_  
Allen Nyhagen, Supervisor

By: \_\_\_\_\_  
Benn Malmanger, Supervisor

By: \_\_\_\_\_  
James Plummer, Supervisor

By: \_\_\_\_\_  
Bruce Tegels, Supervisor