

CHAPTER 12

NONMETALLIC MINING

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12.01 PURPOSE. Nonmetallic mining is recognized as an important industry which contributes to the Town's economic and social well-being, but which risks damage to the long-term physical environment and the tax base of the Town. It is the purpose of this Chapter to establish regulations for nonmetallic mining and site reclamation that will protect the environment and the tax base both during and after the conduct of mining operations.

12.02 DEFINITIONS. In this Chapter, terms shall mean the following:

- (1) *"Abandonment of Operations"* means the cessation of nonmetallic mining operations for more than three hundred sixty (360) consecutive days where the cessation is not specifically set forth in an operator's application, operation or reclamation plan or permit, or by other written request deemed sufficient by the Town. Abandonment of operations does not include the cessation of activities due to labor strikes or natural disasters.
- (2) *"Town"* means the Town of Chase.
- (3) *"Enlargement"* means any horizontal or vertical increase beyond dimensions of the original application for the project site and shall be subject to the diminishing assets rule.
- (4) *"Environmental pollution"* means the contaminating or rendering unclean or impure the air, land or waters of the state or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.
- (5) *"Modification"* means any vertical or horizontal increase or decrease within the dimensions of the original application for the project site.

- (6) *“Nonmetallic Mining”* or *“Nonmetallic Mining Operation”* means operations or activities for the extraction from the earth for sale or use by the operator of mineral aggregates such as stone, sand, gravel and nonmetallic minerals such as asbestos, beryl, clay, feldspar, peat, talc and topsoil-related operations or activities such as excavation, grading or dredging if the purpose of those operations or activities is the extraction of mineral aggregates and nonmetallic minerals and related processes such as crushing, screening, scalping, dewatering and blending. Nonmetallic mining or nonmetallic mining operation does not include or allow the following activities or uses by way of illustration which include, but are not limited to, manufacture of concrete building blocks or other similar products, asphalt or hot blacktop mixing and production of ready-mix concrete – such uses to be allowed by separate conditional use permit.
- (7) *“Nonmetallic Mining Refuse”* means waste soil, mineral, liquid, vegetation and other waste material resulting from a nonmetallic mining operation. This term does not include merchantable byproducts resulting directly from or displaced by the nonmetallic mining operation.
- (8) *“Nonmetallic Mining Site”* or *“Project Site”* or *“Site”* means the location where a nonmetallic mining operation is proposed to be conducted or is conducted, including all surface areas from which minerals are removed, related storage and processing areas, areas which nonmetallic mining refuse is deposited, and areas disturbed by the nonmetallic mining operation by activities such as the construction or improvement of roads or haulage ways.
- (9) *“Operator”* means any person who is engaged in a nonmetallic mining operation or nonmetallic mining site reclamation or who applies for or holds a nonmetallic mining permit issued under a nonmetallic mining reclamation ordinance, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.
- (10) *“Parties in Interest”* means the owner and operator of a proposed or existing nonmetallic mining site and all owners of property located within one thousand (1,000) feet of the boundaries of a proposed or existing nonmetallic mining site.
- (11) *“Permit”* means any permit which may be required under this Section of an operator as a condition precedent to commencing or continuing nonmetallic mining at a project site.
- (12) *“Reclamation”* means the rehabilitation of a nonmetallic mining site, including, but not necessarily including, and not limited to, removal of nonmetallic mining refuse, grading of the site, replacement of topsoil, stabilization of soil conditions, establishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution, construction of fences and, if practical, restoration of plant, fish and wildlife habitat.
- (13) *“Replacement of Topsoil”* means the replacement of the topsoil which was removed and disturbed by a nonmetallic mining operation or the provision and placement of soil which is at least as adequate, in the opinion of the Town, as the topsoil which was removed or disturbed for the purposes of providing adequate vegetative cover and stabilization of soil conditions.

- (14) “*Riprap*” means a quantity of durable stones or concrete pieces of varying size and shape, placed as a protective layer over soil in such a manner that the smaller pieces fill the spaces between the larger pieces. Concrete pieces are less desirable than stones for this use, and those with exposed reinforcing rods shall not be used.
- (15) “*Topsoil*” means that material (normally the A and the upper part of the B horizon) which, based upon the official national cooperative soil survey, is acceptable for re-spreading on the surface of regarded areas to provide a medium which sustains a dense plant growth capable of preventing wind and water erosion of the topsoil and other materials beneath.
- (16) “*Town Quarry Advisory Committee*”, consisting of one (1) representative of the nonmetallic mining operations, one (1) representative for Blasting operators, one (1) resident, one (1) member of the Town Board and one (1) member of the Town Plan Commission, which will meet to discuss concerns and issues relating to nonmetallic mining operations and make advisory recommendations to the Town Board.

12.03 APPLICABILITY OF CHAPTER. This Chapter is applicable to all nonmetallic mining sites within the Town of Chase. This Chapter applies to any portion of a nonmetallic mining site, including unreclaimed portions of a site, which was mined prior to the effective date of this Chapter.

12.04 EXEMPT ACTIVITIES. This Chapter does not apply to the following activities:

- (1) Excavations or grading by a person solely for domestic use at his or her residence.
- (2) Excavations or grading conducted for highway construction purposes within the highway right-of-way.
- (3) Grading conducted for farming, preparing a construction site or restoring land following a flood or natural disaster.
- (4) Excavations for building construction purposes.
- (5) Any mining operation, the reclamation of which is required in a permit obtained under Section 293, Wis. Stats.
- (6) Any activities conducted at a soil or hazardous waste disposal site required to prepare, operate or close a solid waste disposal facility under Section 289, Wis. Stats., or a hazardous waste disposal facility under Section 291, Wis. Stats.; provided, however, that section applies to activities related to solid or hazardous waste disposal which are conducted at a nonmetallic mining site separate from the solid or hazardous waste disposal facility such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.
- (7) Any nonmetallic mining site or portion of a site which is subject to permit and reclamation requirements of the Department of Natural Resources under Sections 30.19, 30.195 and 30.20, Wis. Stats.

12.05 APPLICATIONS FOR PERMITS.

- (1) General Requirement. An operator shall obtain a nonmetallic mining permit prior to engaging in nonmetallic mining or the enlargement of a site. Such permit applications are subject to public hearing before the Town Board. Permits shall be

denied if the Town Board finds that the project does not conform with the minimum standards set forth in this Chapter or if the applicant has failed or continues to fail to comply with this Section.

- (2) Application. The application for a permit shall be submitted to the Town Clerk on forms provided by the Town. The application for a mining permit shall be signed by the applicant and shall be accompanied by information which shall include, but not be limited to, the following:
- (a) General Information – The name and address of the operator.
 - (b) Lease(s) – A signed copy of the lease(s) which authorizes the operator to enter upon the lessor’s land for the purpose of mining as defined in this Section. The expiration date of the lease shall clearly be indicated thereon.
 - (c) Legal Description – A legal description and survey map of the tracts of land to be involved and affected by the proposed operation and the approximate total number of acres involved.
 - (d) General Map – Five (5) copies of a general map which shall be drawn at a scale of no less than one (1) inch equals four hundred (400 feet and shall include the following:
 - 1. Property boundaries of the operator’s owned and/or leased land consistent with the legal description for the premises.
 - 2. Location and names of all known streams, roads, railroads, utility lines on or immediately adjacent to the site.
 - 3. Location of all structures owned by parties in interest within one thousand (1,000’) feet.
 - 4. Names and addresses of parties in interest.
 - 5. Boundaries for the site.
 - 6. Location and description of mining site boundary stakes and permanent reference point.
 - 7. Zoning of the site.
 - 8. Existing and proposed drainage within and without the site of operations to a distance of five hundred (500’) feet reflecting the handling of all waters, natural, pumped surface and identify wetlands thereon.
 - 9. Locate and identify setbacks.
 - (e) Operation Plan – The Operation Plan shall include information about the site, a legal description of the proposed nonmetallic mining operation, methods and procedures to be used in mining the site including the following:
 - 1. Type of mining, processing and transportation equipment to be used.
 - 2. Type of materials to be extracted.
 - 3. A description of the proposed horizontal and vertical limits of the proposed operation plan.
 - 4. Primary travel routes to be used to transport material to processing plants or markets.
 - 5. Measures to be taken to control noise, dust and vibrations from the operations and/or a written explanation of why such measures are not needed.

6. If explosives are to be used in the operation, a copy of the Blaster's Explosive Use Plan should be on file with the Town.
 7. A statement that the applicant has complied with all Wisconsin State Statutes, Administrative Code provisions and Town/County Ordinances regulating erosion control, wetlands, navigable streams, air quality, zoning, water drainage and discharge from the site of operation and that all required plans and permits have been submitted and/or obtained by the applicant.
- (f) Reclamation Plan – The permit shall be subject to the provisions and requirements of Section 295, Nonmetallic Mining Reclamation, Wis. Stats.
 - (g) Certificate of Insurance – Each application for a permit herein, or a renewal thereof, shall be accompanied by a Certificate of Insurance for a Commercial General Liability policy, and said policy of insurance shall have limits of coverage of not less than \$1,000,000 in the aggregate, and \$500,000 per occurrence, and the Town shall be named as an additional insured on applicant's policy of liability insurance.
 - (h) Other Information – The Town Board may require the submittal of such other information as may be necessary to determine the nature of the nonmetallic mining operation and proposed reclamation and the effect on the surrounding area. The Town Board may waive portions of the specified information if it is satisfied that, because of the nature or method of the operation, such information is not relevant or is unnecessary to a full and proper evaluation of the application. In determining what information shall be waived, the Town Board shall take into account, among other things, the nature of the applicant's operation and whether the operation is a legally pre-existing operation. It shall be the obligation of the applicant to request any such waiver. Such request shall set forth the justification for such waiver.

12.06 PERMIT APPROVAL AND APPEAL PROCESS.

- (1) Standards for Evaluation and Approval. The Town Board, in conjunction with the Town's consultants, shall review the site plan, existing and proposed structures, architectural plans, neighboring land and water uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, the proposed operating, the effects of the proposed use, structure, operation and improvement upon flood damage protection, water quality, shoreland cover, natural beauty and wildlife habitat, quality of life of the neighborhood and Town, and any other pertinent requirements deemed necessary by the Town Board so as to eliminate, alleviate or control any unreasonable hazard, danger, harm, risk or nuisance that exists or could develop as a result of the operation and reclamation for which the application is made. In making such determinations, the Town Board shall consider whether or not the applicant is applying as to a legal pre-existing operation and use and the rights which may have accrued to such applicant as a result thereof.
- (2) Public Hearing.
 - (a) Within thirty (30) days after receipt of a complete permit application and a recommendation from the Town Plan Commission, the Town Clerk shall

schedule a public hearing on the application before the Town Board; the application shall be submitted to the Planning Commission and the Town's consultants for its recommendation prior to Town Board action.

- (b) Notice of the aforementioned public hearing shall be published as a Class 2 Notice in a newspaper of general circulation within the Town of Chase. In addition, notice of said public hearing shall be mailed to the last-known address of all owners of property within five hundred (500') feet of the subject property. Failure to receive notice shall not invalidate any action taken by the Town Board.
- (c) At the hearing on an application for a nonmetallic mining permit, the Town Board shall hear and receive any evidence or sworn testimony presented by the applicant or an authorized agent. At the conclusion of the applicant's presentation, the Town Board shall hear first any public comments from those in support of the application, then from those in opposition to the application, and finally the recommendation of the Planning Commission and the Town's consultants. The applicant shall be given an opportunity to respond to any adverse comments, evidence or recommendation.
- (d) Approval or Denial. Within thirty (30) days after the hearing, The Town Board shall either grant, deny or grant with modification the application based upon specific findings and conclusions. The Town Board may grant an application conditions upon meeting certain operational and reclamation provisions and standards, which shall not be less stringent than the minimum standards hereinafter set forth. In deciding upon an application for a legally pre-existing operating, the Town Board shall take into account the pre-existing nature and circumstances of the operation.
- (e) Appeal. Appeals from the decision of the Town Board in granting or denying a license shall be to the Circuit Court.
- (f) All stone quarries as nonmetallic mining operations legally existing at the effective date of this ordinance shall not be subject to the public hearing requirements except for enlargement.

12.07 MINIMUM RECLAMATION STANDARDS. The permit shall be subject to the provisions and requirements of Chapter 295, Nonmetallic Mining Reclamation, Wis. Stats.

12.08 STANDARDS APPLIED TO ALL PERMITS.

- (1) Right of Access. The filing of an application shall grant the Town and its officers, consultants and agents the right of access onto the site and contiguous lands owned or leased by the applicant for the purpose of inspecting the site and adjacent lands for pre-permit issuance inspections, for compliance with the permit if issued and for any other purpose relative to this Section. Except in emergencies, access shall be granted during normal business hours with reasonable notice to the operator. Inspectors shall report to the person in charge of the site and comply with established safety rules and regulations.
- (2) After the issuance of a permit, all nonmetallic mining operations, as a condition of their permit, shall comply with all Wisconsin State Statutes, Administrative Code

provisions, and Town/County Ordinances regulating erosion control, wetlands, navigable streams, air quality, zoning, water drainage and discharge from the site of operation and that all required plans and permits have been submitted and/or obtained by the applicant.

- (3) Boundary Staking. All excavation and phase boundaries, if any, shall be staked or otherwise marked per the survey by the operator and inspected by the Town prior to commencing operations on a site. Stakes shall be made of steel consisting of, at a minimum, a two (2") inch pipe. Stakes shall be placed on all corners of the site and additional stakes shall be placed every three hundred (300') feet between corner stakes. Stakes shall be set so they are at least five (5') feet above ground level and painted so they are visible.
- (4) Plans on Site. A copy of the plans and specifications returned by the Town at the time of permit issuance shall be kept on the project site throughout the entire excavation and reclamation period.
- (5) Permit Period. Permits shall be granted for one (1) year period of time and shall expire on December 31st. Permits shall be on a calendar-year basis.
- (6) Limits of Operation. Projects shall be limited to approved dimensions.
- (7) Conflicts with Other Regulations. It is the responsibility of the operator to obtain any local, state or federal permits or approvals.
- (8) Compliance with Reclamation. The operator shall comply with progressive reclamation plans, if any, and final reclamation plans for the site.
- (9) Notification of Commencement and Cessation. The operator shall notify the Town, in writing, at least fifteen (15) days prior to initial nonmetallic mining operations and at least thirty (30) work days prior to final completion of project reclamation. All phases within a site shall also comply with the notification requirements above. When a phase is complete, the operator shall notify the Town Board for approval of the reclamation before entering the next phase.
- (10) Records of Operations. All records of the permittee regarding the conduct of the nonmetallic mining operation which are reasonably needed for the property monitoring and evaluation of the operation or the enforcement of this Chapter shall be subject to inspection by the Town officials at all reasonable times; provided, however, that Town personnel, to the extent provided by law, shall take reasonable steps to prevent disclosure of records which the operator advises in writing contain privileged trade secret information.
- (11) Complaints of Violations. In the event of a complaint of a violation of this Section, the plan of operation or the plan of reclamation, the permittee shall be notified thereof in writing by the Town and shall respond to the Town in writing within ten (10) working days of notification by the Town. In the event the permittee shall fail to respond or shall deny any violation without reasonable grounds, the permittee shall be liable for the reasonable costs of investigation of such complaint including the cost of any experts if, after hearing, it has been determined that there has been a violation of the ordinance.
- (12) Other Conditions. The Town may apply such other conditions or requirements as are necessary to ensure the proper operation and the progressive and final reclamation in a manner consistent with this Section and to limit any adverse environmental

impacts. Standards contained in Wisconsin Administrative Code Transportation 207 or in State of Wisconsin Department of Transportation Standards Specifications for Road and Bridge Construction may be applied to any appropriate aspect of this Chapter.

(a) **Hours of Operation:**

5:00 a.m. – 9:00 p.m., Monday – Friday, April 1 to September 30
5:00 a.m. – 11:00 p.m., Monday – Friday, October 1 to March 31
5:00 a.m. – 2:00 p.m., Saturday, all year

These parameters only restrict the operations for blasting purposes. Additional hours of operation will be subject to approval of the Town Board through the permit process.

- (b) **Setbacks.** The nonmetallic mining operation shall be set back a minimum of one hundred (100') feet from the center of all highways, streets or roads and fifty (50') feet from all exterior property lines and a minimum of five (500') feet to the nearest residence. Existing setbacks for those stone quarries in existence as of the effective date of this ordinance shall not be subject to this provision and shall be located and identified on the General Map of the site. The setback requirements will be applicable for any site enlargement unless adjoining property owners give permission.
- (c) **Dust Control.** Opacity limit for all fugitive emissions at the property line of the site shall comply with DNR requirements.
- (d) **Dumping Prohibited.** The owner and/or operator of a non-metallic mining operation shall not haul junk, rubbish, stumps, trees, salvage materials of any kind, including, but not limited to, concrete, fill, autos, trucks, or parts thereof, into or outside of the non-metallic mining site property contiguous thereto except for clean fill or fill approved by the Department of Natural Resources.
- (e) **Blasting Notification.** Before any blasting operation may be conducted within the Town of Chase, the Company or operator shall give notice thereof by the conspicuous display of a fluorescent flag and legible sign giving notice of the blasting operations. The flag and sign shall be displayed at least 24 hours prior to and during all blasting operations. This notice requirement is in addition to any other notices required by law or regulation.

12.09 RENEWAL OF PERMIT.

- (1) Applications for permit renewal must be submitted in writing to the Town Clerk at least sixty (60) days prior to the expiration date of the existing permit. Such applications shall comply with the provisions of this Section, but need not include any items previously submitted with a prior application for a permit for such site. Renewal applications may merely indicate no change in such items. Any previously submitted items, which have been changed from the prior applications, shall be resubmitted showing any such changes.

- (2) No permit renewal shall be granted unless the project is in reasonable compliance with the terms of the existing permit.
- (3) Permit renewals may be conditioned upon correction of any unanticipated environmental impacts occurring during the original or renewal permits.
- (4) No public hearing shall be required to be held with respect to a renewal application unless the application provides for an enlargement of the previously approved site or otherwise provides for an alteration or change in the method of operations or reclamation previously approved which might adversely affect the use or enjoyment of nearby properties. Site enlargement shall be subject to all the provisions and procedures set forth in Section 12.06 of this Ordinance.

12.10 EXISTING NONMETALLIC MINING OPERATIONS. All nonmetallic mining operations existing at the effective date of this Chapter (March 14, 2000) shall, within thirty (30) days of said effective date of this Chapter, be provided with a copy of this Section via certified mail. Within ninety (90) days of their receipt of this Section, operators of existing nonmetallic mining operations shall submit the necessary plans to bring said operation into conformity with this Chapter. Such period may be extended for an additional ninety (90) days upon review and approval by the Town Board of said written request for extension. Pending the receipt and review of a timely submitted application by the Town Board, the operation shall be permitted to continue the existing nonmetallic mining operation at the site for which an application was submitted. If a permit is denied, the applicant shall cease nonmetallic mining operations at such site; however, the applicant shall be given a reasonable period of time for the processing and removal of existing materials and/or stockpiles.

12.11 PROJECT SITE MODIFICATION OR ENLARGEMENT.

- (1) Site Modification. An operation may apply for a modification or cancellation of a project permit or for a change in the reclamation plan for a project site. The application for the modification, cancellation or change shall be submitted in writing by the operator and shall identify the site to be removed or affected by a change in the operation and reclamation plans.
- (2) Transfer of Permit. When one operator succeeds to the interest of another in an uncompleted site, the Town Board shall release the first operator of the responsibilities imposed by the permit, but only if:
 - (a) Both operators are in compliance with the requirements and standards of this Chapter.
 - (b) The new operator assumes the responsibility of the former operator to complete the reclamation of the entire project site by a written, witnessed document and provides financial assurance therefore.
- (3) Site Enlargement. Any proposed enlargement shall be processed as a new application pursuant to this Chapter. All provisions of this Section shall apply to the proposal.

12.12 FEES. The application for an initial permit or renewal permit requiring a public hearing under this Ordinance shall be accompanied by a fee of One Thousand

(\$1,000.00) Dollars. An application for a renewal permit under this Ordinance, for which no public hearing is required, shall be accompanied by a fee of One Hundred (\$100.00) Dollars. These fees may be changed from time to time by resolution of the Town Board.

12.13 INSPECTION. The Town Board or its designee may enter the premises of a nonmetallic mining site in the performance of its or their official duties, or pursuant to a special inspection warrant issued under §66.122, Wis. Stats., in order to inspect the premises to act on any application hereunder, to ascertain compliance with the nonmetallic mining reclamation ordinance and permit, or to investigate any alleged violation. It shall be a condition of a permit issued hereunder that, upon request, such person shall be granted access to the premises during hours of operation for purposes of any such inspection, provided that applicable safety laws, rules and regulations are adhered to.

12.14 ENFORCEMENT AND PENALTIES.

(1) Enforcement. The following are criteria that the Town Board may consider for issuance, re-issuance, suspension or revocation of a nonmetallic mining permit:

- (a) Compliance with the reclamation standards established by the State of Wisconsin.
- (b) Submittal to the Town Board of the Town of Chase a nonmetallic mining operation plan and compliance with the operation plan.
- (c) Submittal to the Town Board of the Town of Chase a nonmetallic mining reclamation plan and compliance with the operation plan as required by State law.
- (d) Maintaining the Certificate of Insurance required by the Town Board of the Town of Chase.
- (e) Compliance with the operational hours for operation of the nonmetallic mining operation.
- (f) Installation, provision and maintenance of adequate and necessary physical structures, equipment and operational controls as determined by the Town Board to prevent public nuisances and to protect the public health and safety to persons residing near the nonmetallic mining operation or person entering the nonmetallic mining operation, including public nuisances associated with noise, dust, odors, fires, explosions, water pollution, air pollution and erosion.
- (g) Attempts made by the permittee or party in interest to comply with the provisions of this Ordinance.
- (h) Consideration of extenuating circumstances and matters beyond the control of a permittee or party in interest.

(2) Suspension/Revocation. Unless expressly provided herein or by other Town of Chase Ordinance provisions, the nonmetallic mining permit may be suspended or revoked for cause for substantial noncompliance with the Ordinance after the proper Town of Chase hearing noted below, unless in an emergency condition determined by the Town Board of the Town of Chase wherein the license, registration or permit can be suspended temporarily for a set time period. Prior to any action for

suspension or revocation, the Town Board of the Town of Chase must, by the Town Clerk of the Town of Chase, receive a verified complaint concerning the permittee. The following persons may file a verified complaint with the Town Board of the Town of Chase:

- (a) The Town Chairman
- (b) The Town Clerk
- (c) The Town Supervisors
- (d) The Town Zoning Administrator/Building Inspector
- (e) Any Town of Chase Resident
- (f) A Landowner within one thousand (1,000') feet of the blasting site

The Town Board will make a determination if the allegations of the complaint are of sufficient magnitude, importance, or otherwise of such a nature as to require a formal evidentiary hearing.

The person subject to charges for violation of any Town of Chase Ordinance or any violation of a condition of the nonmetallic mining permit shall be provided a copy of the verified complaint and notice of hearing before the Town Board of the Town of Chase. The hearing shall be required to be not less than ten (10) days nor more than thirty (30) days after receipt of notice, unless stipulated in writing by the Town Board of the Town of Chase and the person subject to charges.

The person subject to charges for violation of any Town of Chase Ordinance or any violation of a condition of the nonmetallic mining permit shall be entitled to the following:

- (a) Representation by legal counsel
- (b) Right to present and cross-examine witnesses
- (c) Right to subpoena witnesses by the Town Chairman of the Town of Chase issuing subpoenas to compel attendance of witnesses

The Town Board of the Town of Chase may, after the hearing for any person previously issued a nonmetallic mining permit by the Town Board of the Town of Chase, act as follows:

- (a) Revoke the permit as a final decision
- (b) Suspend the permit for a date certain as a final decision
- (c) Request additional information as an interim decision prior to taking future action
- (d) Take no action on the permit as a final decision

The final decision of the Town Board of the Town of Chase to revoke or suspend the nonmetallic mining permit shall be subject to appeal to the Circuit Court, which appeal must be filed with the Circuit Court not later than forty-five (45) days from the mailing of the Town Board's Decision to the permit holder.