

Town of Garfield, Jackson County, Wisconsin : Ordinances

May 14, 2012 Ordinance No. 2012-001 Nonmetallic Mine Operators Licenses

THE TOWN OF GARFIELD

ORDINANCE No. 1-2012

CHAPTER 10

NONMETALLIC MINE OPERATOR'S LICENSES

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Section 10.01. Finding, Purpose And Authority

(1) Findings. Nonmetallic mining operations, while a vital component of our state and local economy, can have both direct and indirect adverse impacts. Nonmetallic mining operations can have adverse impacts on groundwater and surface water. Nonmetallic mining sites can have negative impacts on the landscape and aesthetics if not properly screened, and can present safety concerns to members of the public if not properly secured. Truck traffic from such operations can also generate off-site impacts including safety concerns to children and other residents. While certain aspects of mining operations are subject to state or federal regulation, 2

there is no comprehensive state or federal regulation of nonmetallic mining operations. Some aspects of nonmetallic mining operations are left unregulated with potential adverse impacts to the public health, safety and welfare of the residents of the Town.

(2) Purpose. The purpose of this Chapter is to provide minimum standards for all nonmetallic mining operations in the Town, and to require licenses and if requested by the Town mining agreements for nonmetallic mining operators in order to protect public health and safety, to preserve the scenic beauty of the Town's landscapes and environment, to protect the public from damage to both the quantity and quality of ground and surface waters, to minimize or prevent adverse impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Garfield.

(3) Authority. This Chapter is adopted by the powers granted to the Town of Garfield by the Town's adoption of Village powers under Wis. Stat. §§ 60.10, 60.22(3) and 61.34, its authority under § 66.0415, and other authority under the statutes. Any amendment, repeal or recreation of the statutes relating to this Chapter made after the effective date of this Chapter is incorporated into this Chapter by reference on the effective date of the amendment, repeal or recreation.

Section 10.02. Applicability And Scope

(1) This Ordinance applies to all persons who engage in nonmetallic

mining operations in the Town except as provided in (2), (3), and (4) below.

(2) This Ordinance shall apply only to nonmetallic mine operations that meet or exceed the following minimum levels of operation:

(a) Production of 25,000 tons of nonmetallic minerals monthly or at least 200,000 tons on average in a calendar year; or

(b) For purposes of application of Section 10.07(2)(f) only, nonmetallic mineral operation hauling truck travel on Town roads which exceeds an average of 2 trucks per hour, over the course of a five (5) day week for a 12 hour day.

(3) This Ordinance shall not apply to persons engaging in the following types of nonmetallic mining operations:

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

(b) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the excavation or grading is entirely within the right-of-way of the highway, railroad or other transportation facility. 3

(c) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.

(d) Excavations for building construction purposes conducted on a building site.

(e) The disturbance by any person of less than one acre of land for extraction of nonmetallic minerals.

(f) 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.

(g) Active mining operations in existence prior to the effective date of this Ordinance shall be exempt from its requirements. However, if a mining operation in existence prior to the effective date of this Ordinance is expanded after the effective date of this Ordinance in a manner which requires a new or revised nonmetallic mining reclamation permit per Wis. Admin. Code Ch. NR 135, the expansion shall be subject to the licensing requirements of this Ordinance.

(4) At the option of the Town Board, nonmetallic mining operations in the Town may be exempted in whole or in part from operation of this Ordinance because of either or both of the following:

(a) Regardless of the size in total acreage of the area of extraction, a nonmetallic mining operation which involves active mining operations that are anticipated to occur in less than four (4) months out of each calendar year.

(b) Where a mining operation, although engaged in for a period of in excess of four (4) months out of each calendar year, is so sporadic in nature as to not justify the expenditure of time and effort by either the applicant or Town under this Ordinance to process an application for a license.

(c) In the process of invoking the powers under (a) and (b), the Town Board shall take into consideration the health, welfare, and safety of the citizens of the Town.

(5) In the event that an operator whose nonmetallic mining operations are exempt from the application of this Ordinance under (2) or (3), above, or has been exempted upon action of the Town Board under (4), above, changes his or her operations to the extent of no longer qualifying for such an exemption, said operator shall be required to apply for and obtain a license under this Ordinance. 4

(6) An exemption from the provisions of this Ordinance shall not prevent the Town from requiring entry into a development or highway use agreement under 349.16, Wis. Stats., or in accord with other authority of the Town.

Section 10.03 Definitions

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

(2) "Nonmetallic mining" means any or all of the following:

(a) Extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use or sale, including drilling and blasting as well as associated activities such as excavation, grading and dredging of such materials.

(b) 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.

(c) Manufacturing processes aimed at producing nonmetallic products or by products of such manufacturing processes for sale or use by the operator.

(d) Stockpiling of nonmetallic products for sale or use off-site and stockpiling of waste materials.

(e) Transport of the extracted nonmetallic materials, finished products or waste materials to or from the extraction site.

(f) Disposal of waste materials.

(g) Reclamation of the extraction site.

(3) "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.

(4) A "mine site" or "site" means 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. 5

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

(6) "Adjoining landowner" means any property within 1/2 mile of the proposed mine site boundaries regardless of whether there is a residence or structure on the property.

(7) "Town" means the Town of Garfield.

(8) "Town Board", means the Town Board of the Town of Garfield.

(9) "Operator" includes but is not limited to any person who is engaged in, or who has applied for a license to engage in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.

(10) "Operator's license" or "license" means the license required of mining operators in this Chapter to undertake nonmetallic mining in the Town of Garfield.

(11) "Mining Agreement" means an agreement entered into between an Operator and the Town for the purpose of delineating the rights and responsibilities of the Operator and the Town with regard to nonmetallic mining operations or mining within the Town.

Section 10.04 License Required

(1) License Requirement. Except as otherwise provided herein no person shall operate a nonmetallic mine within the scope of this Chapter in the Town of Garfield without first obtaining an operator's license from the Town Board.

(2) License Term.

(a) Except for the first year of operation under this Chapter, an operator's license shall be granted for a period of one year commencing on July 1 and ending on June 30 of the following calendar year. For the first year of operation under this Chapter, the operator's license will extend from the date of issuance until the first June 30th after 12 months of operations have been completed.

(b) An Operator's license shall be renewed automatically unless the operation changes to such an extent as to require entry into or modification of an existing highway agreement under Section 10.11, below; or the Operator fails to comply with this ordinance; or the Operator fails to satisfactorily correct all outstanding violations of local, state or federal laws or regulations.

(3) License Amendment. If the Town has issued an operator's license, the operator may request an amendment to that license during the license term, using the same process as the original license application. 6

(4) License Transfer. An operator's license may be transferred to a new operator, if the new operator provides financial assurances as may be required by the Town, County, or State.

(5) License Revocation. An operator's license may be revoked under the procedures in Section 10.08.

(6) Temporary Operator Licenses. The Town Board may grant a temporary nonrenewable operator's license not to exceed six months, for mining operations within the scope of this Chapter that were in existence as of the effective date of this Chapter, provided that the operator certifies that its operation will comply with the minimum standards in Section 10.07 and that the operator submits a complete application under Section 10.05 within 60 days of issuance of the temporary license.

Section 10.05 Procedures For Applying For A License to Mine

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

(2) Application Submittal. The applicant shall submit five (5) copies of the Application Form and all required documentation required under Section 10.06 to the Town Clerk accompanied by the payment of both the application fee of \$150.00 and the base administrative fee of \$2,000.00. The fees shall be made payable to "Treasurer, Town of Garfield." The Application Form shall be signed by the operator and by the landowner, provided the landowner is a person other than the operator.

(3) Initial Review by the Town Board.

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

(b) Additional Information. The Town Board may request the applicant to submit additional information if the Town Board determines that application is incomplete. The Town Board may also retain the services of an engineering firm or other qualified person with appropriate expertise ("retained expert") to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this Chapter.

(c) Additional fees. If the Town Board determines that additional expertise is required, the Town Board shall authorize retaining the services of an engineering firm or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of the services of any such retained expert. 7

The additional fee shall be paid by the applicant or landowner before the additional review is undertaken.

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

(4) Decision by the Town Board.

(a) Notice and Hearing. Once the application is complete and any report by a retained expert has been completed, the Town Clerk shall place the application on the agenda for the next regular meeting of the Town Board. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall set a date for a public hearing and give public notice at least fifteen (15) days prior to the date scheduled for the hearing, with the notice mailed to all adjoining landowners and all landowners within 1/2 mile of the proposed mine site boundaries. At the public hearing, the Town Board shall take orderly and reasonable public comment on the proposed mine license.

(b) Town Board Decision. Following the public hearing, the Town Board may take immediate action or set a date for the meeting at which time they shall make a final decision on the operator's license. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall consider the retained expert's report, public comments made at the public hearing and any other information that the Town Board deems relevant and helpful in rendering a decision. The Town Board shall grant the license if it determines that the operation of the mine will be consistent with the minimum standards and the purposes of this Chapter. If the Town Board denies the license the reasons for denial shall be provided to the applicant in writing. If the application is denied the applicant may request a hearing under the provisions of Section 10.08(3)

Section 10.06 License Application

All applicants for a mining license shall submit the following information:

(1) Ownership Information

(a) The name, addresses, phone number(s), and e-mail address of each operator of the nonmetallic mining operation.

(b) The name, address, phone number(s), and e-mail address of all owners or lessors of the land on which the mining operation will occur.

(c) If the operation is subject to a lease, a copy of a fully executed lease and/or agreement between the landowner and the operator who will engage in mining operations on the proposed site. 8

(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 topographic map of the mine site extending 1/2 mile beyond the site boundaries at contour intervals no greater than 10 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within one mile of the site.

(d) The location within the site of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.

(e) A map on which the all residential, agricultural and municipal wells within 1/2 mile of the proposed mine site boundaries are marked and given a numerical identification of the location.

(f) The location and name of all surface waters, including lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the site and within 1/2 mile of the proposed mine site boundaries.

(g) 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.

(h) A map identifying the location of all other non-contiguous sites within the Town of Garfield and adjacent towns, if any, that will

contribute extracted material to the same site for which the applicant seeks a license.

(3) Operation Plan

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

(b) Description of mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.

(c) Estimated volume of material to be extracted over the life of the mine and for the next calendar year.

(d) A map showing location of road access points. 9

(e) A map showing the proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.

(f) 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.

(g) A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water including methods used for infiltration and control of run-off.

(h) 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.

(i) A listing of all chemicals used in the manufacturing or processing operations or in controlling dust.

(4) Information Demonstrating Compliance with Minimum Standards.

(a) The operator shall provide the information necessary to demonstrate that the mining operation will comply with the minimum standards in Section 10.07

(b) For mining operations commencing after the effective date of this Chapter, the operator shall also provide information establishing baseline conditions at the site before mining operations commence, including the groundwater elevation across the site, groundwater quality at the site for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made, and the base flow of surface water with 1/2 mile of the proposed mine site boundaries.

(5) Any other information requested by the Town Board.

(6) Special Exceptions. The applicant can request a special exception from the application requirements of this section if it can demonstrate that the information required can be provided by alternative means or is not necessary for an evaluation of the particular mining operation, and that the public health, safety and welfare will not be adversely affected thereby or in the event a Mining Agreement has been entered into by the applicant and the Town which by its terms supersedes this Section.

Section 10.07. Minimum Standards Of Operation

The Town Board may grant a license to mine if the applicant can demonstrate that the following minimum standards of operation will be met:

(1) General Standards. 10

(a) The operator shall stake or otherwise mark the borders of the entire site and shall secure the site by fencing or other appropriate measures.

(b) The operator shall demonstrate compliance with all of the other provisions of this Chapter.

(c) The operator shall demonstrate that all other applicable federal, state and local permits and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation.

(d) The operator shall provide notice to the Town of any notices of violation, citations, or other enforcement actions taken by any other governmental, municipal or other public body against the mining operation within the Town.

(2) Standards Regarding Off-Site Impacts.

(a) The operator shall provide a buffer area of a minimum of 50 feet along bordering property lines and public roadways.

(b) The operator shall screen the mining operations from public view through the use of berms, trees, additional setbacks or other measures.

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

(3) Standards Regarding Groundwater and Surface Water.

(a) Impacts to Groundwater Quality.

(i) Mining and processing operations shall have active monitoring wells as recommended by the Town. The operator shall take quarterly samples for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made. The Town may request more frequent samples if it believes such samples are necessary.

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

(b) Impacts to Groundwater Quantity.

(i) Mining operations shall not extract materials at a depth below the permissible level of mining. The permissible level of mining shall be determined 11

on a case by case basis with the ultimate mining level determined to adequately protect ground water, town road integrity and other health and safety concerns specific to each mining site.

(ii) Mining operations shall not cause a measurable reduction in the quantity of groundwater available for reasonable use by current users within 1/2 mile of the proposed mine site boundaries. A measurable reduction is a drop in the water table that results in an impact on a private well including but not limited to the inability of a well to provide water on a continuous basis at a flow rate experienced prior to mining.

(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 radius 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.

(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 radius 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.

(4) Special Exceptions.

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

(b) The Town Board can impose requirements in addition to or exceeding the minimum standards provided herein if the public health, safety and welfare require the imposition of additional measures.

(c) The minimum standards of this exception shall not apply in the event the Town and Operator have entered into a mining agreement which satisfies the Town that the intent of this Chapter has been achieved through the provisions of such agreement and which recites that such agreement supersedes the provisions of this section.

Section 10.08 Inspection, Enforcement, Procedures And Penalties

(1) Inspection. The Town Board or its authorized representative has authority to inspect all operations to ensure compliance with the minimum standards under this Chapter are being met upon showing proper identification, and upon reasonable notice. 12

(2) Violations. The following are violations under this Chapter:

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

(b) Failure to comply with the minimum standards and other terms of this Chapter and local, state and federal laws and regulations.

(c) Making an incorrect or false statement in the information and documentation submitted during the licensing process, reports or during inspection of the operation by the Town or its duly appointed representative.

(d) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 10.09 or other order issued by the Town.

(3) Hearings

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

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

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

(4) Remedies.

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

(a) Issue a stop work order. 13

(b) Issue a notice of violation and order that specifies the action to be taken to remedy a situation.

(c) Issue a citation in accordance with the Town of Garfield citation ordinance or any other applicable enforcement policy in effect.

(d) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub (6) and injunctive relief.

(e) Suspend or revoke the operator's license under sub (5).

(f) For such other relief and action to protect the health, safety and welfare of the residents.

(5) License Suspension or Revocation. After giving notice and a hearing, the Town Board may suspend or revoke an operator's license for a violation under sub (1).

(6) Penalties.

(a) Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less than \$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 Chapter shall pay court costs and reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.

(7) A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present violation(s).

Section 10.09. Financial Assurance

(1) Financial assurance shall be provided to the Town as a condition of license approval in the amount necessary for the following:

(a) Road repair. An amount necessary for the repair and maintenance of Town roads used for truck traffic transporting materials to or from the site as detailed in Section 10.11.

(b) Water Supply. An amount necessary to provide for alternative water supply(s) to potentially affected residences or agricultural operations within 1/2 mile of the proposed mine site boundaries of the site or such other area shown to be impacted by the operator's operations as detailed in Section 10.10. 14

(2) The form of financial assurance made to the Town of Garfield shall be in an amount and form agreed to by the Town Board and may include performance bonds, irrevocable letters of credit or other measures required by the Town Board to adequately protect town roads and sufficient water supply to the Town residences and agricultural operations.

(3) In the event the Town determines that the amount of financial assurance must be increased to meet specific road repair or water supply needs, or the amount available has been utilized, the Town shall notify the operator of the additional amount needed and the basis for the request. The operator shall have 30 days to provide the increased amount.

Section 10.10. Damages To Private Water Supply

(1) A property owner within 1/2 mile of the proposed mine site boundaries in addition to any other private remedies available to the property owner, 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 10.09 to provide an adequate interim water supply. The Town shall also use funds under Section 10.09 to indemnify the Town for any claims filed under Wis. Stat. Â§ 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 by the property

owner for the costs of supplying water during a period not exceeding one year. 15

(6) A property owner beyond 1/2 mile of the proposed mine site boundaries may apply to the Town for use of funds under Section 10.09 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).

(7) Nothing under this section shall limit a property owner from seeking any other remedies or damages available under law.
Section 10.11. 349.16, Wis. Stats., Highway Use Agreement

(1) Impacts on Town Roads and Public Safety.

(a) 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.

(b) 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.

(c) The Operator shall ensure that all nonmetallic mining trucking operations on Town highways comply with the Town's highway regulations.

(d) 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.

(e) 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.

(f) All trucks transporting material shall be covered to prevent the escape of any dust, sand or any other material that is being transported.

(2) §349.16, Highway Use Agreement.

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(a) 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:

(i) Town, County and State highways in the Town which are proposed to be utilized for hauling purposes.

(ii) The anticipated level of hauling truck traffic, per day/week/month/year.

(iii) The tonnage or other measurement of nonmetallic mining proposed to be hauled by each fully loaded truck.

(iv) 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).

(v) 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.

(vi) 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.

(b) 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:

(i) Length of Town highways to be used.

(ii) Estimated remaining life of highways at the time.

(iii) 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.

(iv) Determination of upgrades of geometric designs of highways to D.O.T.-approved standards to accommodate anticipated traffic volume; including, but not limited to, haul truck traffic.

(v) Preparation of inventory of affected Town highways and any necessary acquisition of rights-of-way required to accommodate recommended upgrades. 17

(vi) Description by type, haul weight, and axle of trucks proposed to be used for hauling on Town highways.

(c) 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:

- (i) Pay for all Exceptional Maintenance costs during and immediately after the term of agreement.
 - (ii) 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.
 - (iii) Limit access to Town highways to access points designated by Town Board.
 - (iv) Reroute haul trucks in the event of emergencies, or repairs, or natural disasters to temporary detour routes established by the Town Board.
- (d) Each highway agreement shall be subject to approval by the Town Board.

Section 10.12. Severability, Interpretation And Abrogation

(1) Severability.

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

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

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

(3) This Chapter is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Chapter. 18

Section 10.13. Mining Agreement

All provisions of this Chapter, including without limitation the license term, renewal, application process, and minimum standards, may be modified by agreement between the Town and the Operator if the Town Board determines that the agreement provides for the protection of the public at least equal to those protections found under this Chapter.

Section 10.14. Effective Date

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

ADOPTED this 14th day of May, 2012.

/s/ Steve Dickinsen, Town Chairman

/s/ Ardy Robertson, Town Clerk