

## **CHAPTER 14 - NONMETALLIC MINING**

### **SECTION 14.00 NONMETALLIC MINING**

#### **Section 14.01 Preamble**

The purpose of this Chapter is to promote the health, safety, prosperity, aesthetics and general welfare of the people and communities within the Town of West Point and set forth the rules and procedures for this municipality regarding nonmetallic mines within the Town. This ordinance is adopted pursuant to the Town's village and police powers under Wis. Stat. §§ 60.10(2)(c) & 61.34.

#### **Section 14.02 Intent**

The general intent of this Chapter is to regulate the location, construction, installation, alteration, design, operation and use of all nonmetallic mines so as to:

1. Protect the health of residents and transients;
2. Secure safety from disease and pestilence;
3. Further the appropriate use and conservation of land and water resources;
4. Preserve and promote the administration and enforcement of this Chapter and provide penalties for its violations.

This Chapter is not intended to regulate the reclamation of nonmetallic mines as controlled by Chapter 295 of the Wisconsin Statutes.

#### **Section 14.03 Interpretation**

In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Town and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

#### **Section 14.04 Definitions**

As used in this Chapter:

(A) "Landowner" or "Owner" means the person who has title to land in fee simple or who holds a land contract for the land. A landowner is not a person who owns nonmetallic mineral rights to land, if a different person possesses title to that land in fee simple or holds a land contract for that land.

(B) "Nonmetallic mining" and "Mining" means all of the following:

1. Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or

use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit including drilling and blasting, as well as associated activities such as excavation, grading and dredging. Nonmetallic mining does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

2. Processes carried out at a nonmetallic mining site that is related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. These processes include, but are not limited to, stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping and dewatering.

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

(D) "Town" means the Town of West Point, Columbia County, Wisconsin.

#### **Section 14.05 Nonmetallic Mining Permit Required**

(A) Permit Required. Nonmetallic mining in the Town of West Point shall be allowed only as provided for in this ordinance.

(B) Exempt Activities. A nonmetallic mining permit is not required from the Town of West Point for the following activities: excavation or grading for domestic or farm use at that person's residence or farm; excavation for preparing a construction site or restoring land following a flood or natural disaster; excavations for building construction purposes conducted on the building site; nonmetallic mining where less than one (1) acre will be affected during the life of the mine and the Town Board has granted a site specific exemption; dredging for navigational purposes or to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of soils from these activities.

(C) Application for Permit. The applicant shall apply for and obtain a Town permit for a nonmetallic mine prior to starting work on any mining structure or facility and prior to operating any nonmetallic mine in the Town. The application shall be submitted on a form provided to the applicant by the Town Clerk, as revised and approved from time to time by the Town Board upon recommendation of the Plan Commission. In addition, the applicant shall apply for and obtain a county

conditional use permit and a county reclamation permit for a nonmetallic mine as required by Chapter 7 of Title 16 of the Columbia County Code of Ordinances.

(D) Issuance of Permit. The Town Board shall be the sole determining body of whether to issue the permit, after review and recommendation by the Town Plan Commission. The Town Board may grant the permit with specific conditions if it is determined that the development and operation of the nonmetallic mine is in the best interests of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare.

(E) Other applicable laws. The persons subject to this ordinance shall comply with all applicable federal standards, state statutes, administrative regulations, county ordinances and this ordinance.

(F) Compliance with Conditions. The Town permit shall be void if the permittee violates any conditions of the permit or any conditions of any required Federal, State, or County permits

#### **Section 14.06 Standards of Operation**

The Town Board may grant a permit to mine if the applicant can demonstrate that the following standards of operation will be met as applicable and determined by the particular nature of the proposed operation:

(A) General Standards.

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

(2) The Operator shall demonstrate compliance with all of the other provisions of this Ordinance.

(3) Blasting shall be done in accordance with the Town permit and the applicable laws of the State of Wisconsin. All blasting shall be carried out by persons certified, knowledgeable and competent in the sizing and placing of the explosives. Such blasting shall conform to the applicable provisions of Chapter SPS 307 of the Wisconsin Administrative Code and any amendments or substitutions thereto.

(4) 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.

(5) The Operator shall minimize backup alarm sounds and jake braking to the extent possible. Operator shall inform all truck drivers and any

independent contractors of this requirement and all other applicable traffic codes or Town requirements, including weight limitations. If a trucker disregards this notice, Operator shall take steps to correct the action or stop using any such trucking company that refuses to comply.

(6) The Operator shall meet at least annually with the Town at a regular Town Board meeting (or a special Town Board meeting at the Town Board's discretion) regarding operations, permit compliance and possible corrective actions, if any.

(7) The Operator shall provide notice to the Town of any notices of violation, citations, or other enforcement actions taken by any other governmental body against the mining operation within the Town which are directly related to the conditions imposed by the Town permit.

**(B) Standards Regarding Off-Site Impacts.**

(1) The Operator shall undertake all measures necessary to control surface water runoff from nonmetallic mining operations as required under Chapter 7, Erosion Control and Stormwater Runoff, of the Town's Code of Ordinances, any other applicable laws or ordinances, and to otherwise prevent damage to neighboring properties or surface water or ground water.

(2) The Operator shall provide a suitable buffer area along bordering property lines and public roadways and shall screen the mining operations from public view to the maximum extent practicable through the use of berms, additional setbacks or other measures. Prior to construction, the Town shall be consulted on the analysis and configuration of berm construction and placement and other buffering measures.

(3) The Planning Commission shall recommend and the Town Board shall determine the hours of operation to minimize offsite impacts to residents. Once determined, the hours of operation may be amended on a temporary or permanent basis with the approval of the Town.

(4) 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.

(5) Trucks carrying material to or from the mine site shall travel on roads other than Town roads. In the event that the Operator believes that any Town road will regularly be used to haul materials to or from the mine site, suitable financial surety as determined by the Town shall be provided. In addition, the Operator will comply, and cause its contractors and

employees to comply, with any seasonal spring special weight restriction imposed upon Town roads by the Town in its sole discretion.

(C) Standards Regarding Groundwater and Surface Water.

(1) Depending on the nature of the mining operation, the Town may require the Operator to provide a suitable number of monitoring wells around the mine site and the Operator shall, as determined in the Town permit, take samples for substances that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made.

(2) Depending on the nature of the mining operation, the Operator shall establish that the mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users in the vicinity of the mine and that the mining operations shall not cause a lowering of the groundwater table resulting in adverse effects on surface waters.

(3) Depending on the nature of the mining operation, the Operator shall establish that the mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters including for recreational purposes. 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) The Operator shall repair any damage to, and remove sediment from any private property, or town roads, ditches and other drainage ways when Operator is found responsible by the Town for such sediment or damage caused by runoff from the mine site for any reason, including but not limited to heavy rains and/or snowmelt runoff.

(D) Hazardous materials.

(1) All hazardous chemicals shall be stored, used and disposed of in accordance with applicable state and federal law.

(2) The Operator shall not dispose of waste materials containing any hazardous chemicals in toxic amounts, or residuals declared to be hazardous by a government agency in toxic amounts on site or in the Town of West Point, except in accordance with applicable state and federal law and regulations and with prior approval of the Town Board.

(3) The Operator shall have a plan for responding to spills of any hazardous materials on the site. Said plan shall be given to the Town prior

to commencing operations, and shall be updated any time any change or addition is made to any hazardous materials used on the site.

(E) Special Exceptions.

(1) In the initial permit application or a subsequent renewal request, the Operator can request a special exception from the Town Board from the standards of this Section if it can demonstrate that the nature of the permit does not require those standards and the intent of this Ordinance can be achieved by the use of alternative measures and that the public health, safety and welfare will not be adversely affected thereby.

(2) The Town Board can impose requirements in addition to or exceeding the standards of this Section if it has evidence that the public health safety and welfare will not be adequately protected without the imposition of additional measures.

**Section 14.07 Procedures**

(A) Application. The applicant shall complete a Town of West Point Nonmetallic Mining Permit Application as approved by the Town Board and provided by the Town Clerk and pay the required application fee and any administrative escrow fee required as established by the Town Board from time to time.

(B) Plan Commission Review. After receiving the application and the application and administrative escrow fees, the Clerk shall within 30 days place the application on the agenda for the next Town Plan Commission meeting.

(C) Determination of Completion. The Plan Commission shall review and consider the application and shall determine whether the application is complete. If the application is deemed completed, the Plan Commission shall authorize and schedule a public hearing. If the application is not complete, the Plan Commission shall notify the applicant of the deficiencies and take no further action until the application has been completed.

(D) Public hearing. Prior to making a recommendation to the Town Board, the Plan Commission shall schedule, notice and conduct a public hearing on the proposal with notice given by publication of a Class 1 notice under Chapter 985, Wis. Stats. At least five (5) days prior to the hearing, written notice thereof shall be given by the Town Clerk or the recording secretary of the Plan Commission by US Mail to all landowners within 1,000 feet of the proposed nonmetallic mine.

(E) Recommendation to Town Board. The Plan Commissioner shall make a recommendation to the Town Board to grant the permit with specific recommended conditions or deny the permit. If the application meets the operating standards, the Plan Commission shall recommend that the proposed

permit be granted with specified conditions unless the Plan Commission determines that development and operation of the nonmetallic mine would not be in the best interests of the citizens of the Town, and with public health, safety and general welfare. After a recommendation has been rendered by the Plan Commission, the application shall be placed on the Town Board Agenda for a public hearing if requested by the Town Board and a decision. If the recommendation is to deny the permit, the Plan Commission shall cite in writing the reasons for its recommendation to the Town Board.

(F) Application and Permit Review. Before making a decision on the application, the Town board shall determine whether the application is complete, and whether the applicant has applied for, or received, any required Federal, State, and County permits for the proposed mine.

(G) Town Board Determination. The Town Board shall consider the recommendation of the Plan Commission and shall grant the permit with conditions, if it is determined that the development and operation of the nonmetallic mine is in the best interests of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare.

(H) Conditions. The Town Board may conditionally approve a permit and may attach additional conditions or restrictions to protect public health and safety and promote the general welfare of the Town. Conditions and restrictions may address: proof of financial security for town road maintenance, repair, or full replacement; hours of operation; truck routes on town roads; truck trips; protection of groundwater quantity and quality including private drinking and agricultural wells; air emissions and dust from the mine and its operations; any other issues deemed necessary or appropriate by the Town to protect public health and safety and promote the general welfare of the Town and its citizens.

(I) Duration and Renewal. The Town Planning Commission shall recommend and the Town Board shall specify, as part of the permit, the length of time for which the initial permit will be granted. The Town Board shall also determine the term for which a renewal permit shall be granted as determined by the nature of the permit. A permit shall be renewed so long as the operator does not change the scope of operation as specified in the permit and so long as the operator has complied with any conditions of the permit as well as all applicable federal standards, state statutes, administrative regulations, county ordinances and any other provisions of this ordinance.

#### **Section 14.08 Effective Date**

This ordinance shall take effect upon passage and publication.

## **Section 14.09 Pre-existing Mines Excepted From Ordinance**

An existing nonmetallic mining site in active operation on the effective date of this ordinance which has an executed written agreement with the Town in connection with the issuance of the conditional use and reclamation permit by the County, may continue to operate under that agreement without completing an application and shall be issued a permit. Moreover, if a pre-existing nonmetallic mine is expanded or the use altered after the effective date of this ordinance in a manner that requires modification of the mine's conditional use or reclamation permit from Columbia County, the expansion may, in the sole discretion of the Town, be subject to the application and permitting requirements of this ordinance. In the event that an existing agreement expires, the Town shall have the discretion to extend the agreement with the operator without requiring a complete application and review under this Ordinance. In the event that an existing agreement is terminated by the Town, no further operations shall be allowed at the mining site until a new application is submitted and a full permit is obtained.

## **Section 14.10 Fees**

Any person applying for a nonmetallic mining permit shall pay fees to the Town for costs related to administering this Ordinance, including the permit application fee and reimbursement fees for inspections, legal review, engineering review, administrative costs, consulting fees, and any other costs incurred by the Town in processing an application under this Ordinance which shall be determined by a pre-application agreement between the applicant and the Town which shall include a deposit amount that shall be placed in escrow and used to pay those costs. The initial permit application fee and subsequent renewal fees shall be established by resolution of the Town Board as amended from time to time.

## **Section 14.11 Enforcement and Penalties**

Any violation of this ordinance shall be punishable by a forfeiture of not less than \$500.00 or more than \$2,000 per day in violation of this ordinance, plus the costs of prosecution for each and every violation. Each day of violation shall constitute a separate offense. The town board, or its designee, may inspect the mine site at any time for purposes of monitoring or enforcement of this ordinance.

**A.** Chapter 4, Ordinance Violations, of the Town of West Point's Code of Ordinances, is amended as follows:

1. Section 4.03 is hereby amended by adding to the schedule of deposits, at the end of the schedule, the following:

“Sec. 14.00 Violation of Nonmetallic Mining Regulations \$750.00/\$1,500.00.”

History Note: Adopted 3/14/13