

**TOWN OF OSCEOLA
POLK COUNTY WISCONSIN**

**CODE OF ORDINANCES
ORDINANCE 15-03-01**

Amending previous Ordinance 13-03-01

**Adopted March 9, 2009 Amended May 10, 2010 Amended May 7, 2013
Amended April 14, 2015**

**CHAPTER 14
NONMETALLIC MINERAL EXTRACTION PERMIT AND REGULATION**

**NONMETALLIC MINERAL EXTRACTION REGULATION AND CONTROL
OF THE TOWN OF OSCEOLA GENERAL ORDINANCES**

Pursuant to its authority to exercise village powers under Section 60.10 (2) (c) Wis. Stats. and the town meeting resolution adopted at the annual town meeting on April 2, 1974, the Nonmetallic Mineral Extraction Permit and Regulation Ordinance and does ordain as follows:

(1) AUTHORITY

The Town of Osceola adopted Village Powers at an annual meeting on April 2, 1974. Under this authority, subject to applicable limitations, the Town Board may exercise various powers, including “police powers” to regulate for the public health, safety and welfare. This Ordinance is an exercise of the police power by the Town of Osceola, not the zoning power.

(2) LEGISLATIVE PURPOSE

(a) **PURPOSE:** The purpose of this ordinance is to regulate and control the operation of nonmetallic mineral extraction and processing operations in the Town of Osceola so as to assure such operations are conducted in such a manner that promotes successful operation consistent with the standards established in this Chapter, to monitor ongoing operation and development of nonmetallic mineral extraction and processing operations in the Town of Osceola as a prelude to adequate reclamation requirements being instituted at the conclusion of mining activities, pursuant to Chapter NR 135 of the Wisconsin Administrative Code, the Polk County Non-Metallic Mining Ordinance, and local regulations adopted in this Chapter, to protect the environment surrounding such deposits, including air and water quality as well as the preservation and access to mineral deposits, and to address the health, safety, and welfare concerns of the Town of Osceola community, especially residents living in close proximity to any such present or future nonmetallic mineral extraction or processing operations.

- (b) SEVERABILITY: If any provision of this Chapter, or the application thereof to any person, company or other party, is held by a court of law to be invalid, such invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.
- (c) EXCEPTIONS: This Chapter shall not apply to the following nonmetallic mining operations:
 - 1. Excavations or grading by a property owner solely for use on land owned by that property owner, provided that no additional processing of the excavated or graded material occurs.
 - 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 property boundaries 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 building construction purposes conducted on the building site.
 - 5. Nonmetallic mining at nonmetallic mining sites where less than five acres of total affected acreage occurs over the life of the mine.
 - 6. 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.
- (3) DEFINITIONS: The following definitions are applicable to interpretation and enforcement of this Chapter.
 - (a) AMBIENT NOISE. Ambient noise encompasses all sound present in a given environment at a certain time of day or during a certain period of the year, being usually a composite of sounds from many sources near and far.
 - (b) ANEMOMETER. A device for measuring the speed and direction of the wind.
 - (c) APPLICANT. The individual or business entity that seeks to secure a permit under this chapter.
 - (d) ASPHALT BATCH PLANT. The term “asphalt batch plant” shall mean any operation or activity involving the extraction of nonmetallic mineral deposits and production of asphalt, at the same location, in any quantity.
 - (e) A-WEIGHTED SOUND LEVEL (dBA). A measure of over-all sound pressure level designed to reflect the response of the human ear, which does not respond equally to all frequencies. It is used to describe sound in a manner representative of the human ear’s response. It reduces the effects of the low with respect to the frequencies centered around 1000 Hz. The resultant sound level is said to be “A-weighted” and the units are “dBA.” Sound level meters have an A-weighting network for

measuring A-weighted sound levels (dBA) meeting the characteristics and weighting specified in ANSI Specifications for Integrating Averaging Sound Level Meters, S1.43-1997 for Type 1 instruments and be capable of accurate readings (corrections for internal noise and microphone response permitted) at 20 dBA or lower. In this document dBA means L_{eqA} unless specified otherwise.

- (f) **BACKGROUND NOISE.** Background noise means the summation all noise measured in the absence of the proposed operation by the applicant..
- (g) **BACKGROUND SOUND (L_{90A}).** The sound level present at least 90% of the time. Background sounds are those heard during lulls in the ambient sound environment. Background sound levels vary during different times of the day and night. The background sound levels of interest are those during the quieter periods which are often the evening and night. Background sound level (L_{90A}) is the sound level present 90% of the time during a period of observation that is representative of the quiet time for the soundscape under evaluation and with duration of ten (10) continuous minutes. Several contiguous ten (10) minute tests may be performed in one hour to determine the statistical stability of the sound environment. Longer term sound level averaging tests, such as 24 hours or multiple days are not at all appropriate since the purpose is to define the quiet time background sound level. It is defined by the L_{90A} descriptor. It may be considered as the quietest one (1) minute during a ten (10) minute test. L_{90A} results are valid only when L_{10A} results are no more than 10 dBA above L_{90A} for the same period. Background L_{90A} sound levels documenting the pre-construction baseline conditions should be determined when the ten (10) minute average wind speed is less than 2 m/s (4.5 mph) at the ground level/microphone location.
- (h) **BLASTING.** The term “blasting” shall denote a method of loosening, moving or shattering masses of solid matter by use of explosive compounds to prepare stone for crushing, building stone or other purposes.
- (i) **COMPANY.** The term “company” shall mean a sole proprietor, a partnership, a limited liability company or a corporation doing business under the laws of the State of Wisconsin.
- (j) **CONCRETE BATCH PLANT.** The term “concrete batch plant” shall mean any operation or activity involving the extraction of non metallic mineral deposits and the production of concrete, at the same location, in any quantity.
- (k) **CONSTRUCTION.** The term “construction” shall mean any nonmetallic mining related construction activity involving the construction of buildings, structures or underground utilities both public and private.
- (l) **DECIBEL (dB).** A unit of measure, on a logarithmic scale to the base 10, of the ratio of the magnitude of a particular sound pressure to a

standard reference pressure, which shall be 20 micronewtons per square meter ($\mu\text{N}/\text{m}^2$) or 20 micropascals (Pa).

- (m) DESIGNATED AREA. The properties comprising the area in which the operator, prior to commencing work on the extraction site, shall offer owners of said property the opportunity to have an outside agency perform testing of the condition of foundations/structures and wells, including the quality and quantity of water in said wells. It shall include all properties within two thousand six hundred and forty (2640) feet of the nonmetallic mineral extraction or processing boundary, or further away if engineering reviews (s) indicate a need.
- (n) DRAINAGE BASIN. The hydrologic watershed that at a minimum encompasses the first stream, wetland, lake or other significant water body downstream from the nonmetallic mineral extraction and processing locations as described in Section 5(a)(2) of this Chapter.
- (o) FREQUENCY. The number of oscillations or cycles per unit of time. Acoustical frequency is usually expressed in units of Hertz (Hz) where one Hz is equal to one cycle per second.
- (p) GRAVEL PIT. The term “gravel pit” shall mean any activity or enterprise, the purpose of which is to remove naturally occurring deposits of sand and gravel from the earth by excavating including topsoil and overburden removal.
- (q) HERTZ (Hz). Units of frequency expressed in cycles per second.
- (r) IMPULSIVE SOUND. Either a single pressure peak or a single burst (multiple pressure peaks) for short duration usually in order of 1 to 10 seconds. Example of a highly impulsive sound source is explosive blasting.
- (s) Leq. Equivalent continuous sound pressure level in decibels.
- (t) MINE. The term “mine” shall mean an activity or enterprise, the purpose of which is to remove rock material from the earth by nonmetallic mineral extraction processing operations, including topsoil and overburden removal.
- (u) NOISE. Any unwanted sound.
- (v) NONMETALLIC MINERAL EXTRACTION AND PROCESSING. Nonmetallic mineral extraction and processing includes all aspects of operations including the removal of rock slate, sand, gravel or stone from a quarry, gravel pit, stone quarry, or any other minerals from the earth by means of excavating, stripping, leveling or washing, blasting, or rock crushing; the erection of buildings, scales or structures or the installations of necessary machinery used in said extraction or processing; or the preparation of hot-mix asphalt or ready mix concrete on the same site.
- (w) OPERATOR. The term “operator” means the person or company, which maintains direct supervision and financial control over the day-to-day conduct or business of a nonmetallic mineral extraction operation operating within the Town. Such person or company may also include the property owner of the land, if such entity is a separate person or

company. All the terms and conditions of this Chapter apply with equal force and effect to the operator or operators as defined.

- (x) PARTICIPATING PROPERTY OWNER. A property owner that has a financial interest in the proposed nonmetallic mineral extraction and processing operation.
- (y) PERSON. The word “person” shall mean any individual, partner, corporation, company, trustee or association, together with the respective servants, agents and employees thereof.
- (z) PROPERTY LINE. The recognized and mapped property parcel boundary line.
- (aa) PURE TONE. A sound for which the sound pressure is a simple sinusoidal function of time, and characterized by its singleness of pitch. Pure tones can be part of a more complex sound wave that has other characteristics.
- (bb) QUALIFIED INDEPENDENT ACOUSTICAL CONSULTANT. Qualifications for persons conducting baseline and other measurements and reviews related to the application for a quarry operation or for enforcement actions against an operating quarry include, at a minimum, demonstration of competence in the specialty of community noise testing. The Qualified Independent Acoustical Consultant can have no financial or other connection to a quarry developer or related company.
- (cc) QUARRY. The term “quarry” shall mean an activity or enterprise, the purpose of which is to remove rock material from the earth by nonmetallic mineral extraction processing operations, including topsoil and overburden removal.
- (dd) ROCK-CRUSHER. The term “rock crusher” shall mean any device, machine, apparatus or equipment used either individually or in conjunction with any other device, machine, apparatus or equipment for the purpose of crushing, grinding, breaking or pulverizing rock or stone to a size of ¼ inch or larger. Not included are secondary operations, which produce pulverized stone or products such as agricultural lime.
- (ee) ROCK CRUSHING. The term “rock crushing” shall mean the physical operation of a rock crusher.
- (ff) SITE. The term “site” shall mean any separately described parcel of land with an individual tax key parcel number or a separately identified project in a public road right-of-way.
- (gg) SOUND EXPOSURE LEVEL (SEL). For a given measurement time period of T seconds, the sound exposure level (LeT) is related to the time-average sound level (LpT) as follows: $LeT = LpT + \log(T/T_0)$ where T_0 is the reference duration of 1 second. The time period of integration (T) must be specified. The SEL weighting used must be A, which is abbreviated as ASEL.
- (hh) SOUND PRESSURE LEVEL (SPL). 20 times the logarithm, to the base 10, of the ratio of the particular sound pressure to the reference sound pressure of 20 micropascals.

- (ii) TOWN. The term “town” shall mean the Town of Osceola, Polk County, Wisconsin, and its elected supervisors of the Town Board. If any person or company is required to provide notification, application, filling or other actions with the Town, this term used in that context shall mean the Town Clerk/Treasurer of the Town of Osceola.

(4) PERMIT REQUIRED

- (a) No person or company shall conduct nonmetallic mineral extraction and processing, operate a quarry, a gravel pit, a rock crusher, an asphalt batch plant, a concrete batch plant or perform any blasting at any site, or any construction related to these activities within the Town except in compliance with this Chapter, and all other applicable Town, Polk County, State of Wisconsin, or Federal Ordinances, Statutes, Codes, Regulations and lawful orders. A permit shall be required for any such operation. The Town may amend an existing permit to include temporary asphalt or concrete batch plants if the following conditions are met:
 - 1. The plant is temporary in nature, generally 60 consecutive days or less, and
 - 2. Is operated for the purpose of supporting local road construction, and
 - 3. The applicant complies with conditions imposed by the Town relating to public health, safety, and welfare, and
 - 4. The applicant supplies financial assurance for the Town's infrastructure if deemed necessary by the Town.
- (b) The initial term of such permit shall be for a period of not to exceed five (5) years. An existing permit, for additional five (5) year intervals may be renewed by the operator by providing written notice to the Town at least 60 days and no more than 120 days prior to expiration of the original or any renewal permit. Any application or notification after such date shall be treated as an original application.
- (c) The renewal of an existing permit shall not be unreasonably withheld by the Town as long as
 - 1. The nonmetallic mineral extraction and processing operation was operated prior to March 9, 2009 and the operation holds a ‘conditional permit’.
 - 2. The operator is not engaged in a pattern of flagrant and repeated violations of the terms of the permit during the prior term. Repeated violations shall mean five (5) or more separate violations of this Chapter, which are identified by written notice from the Town. Any permit issued under this Chapter may be revoked and rescinded after a public hearing before the Town Board. A new permit shall be required for the operator to resume nonmetallic mineral extraction, processing, or running machines at the site.

- (d) Any alleged violation of the permit shall be identified to the operator or to the operator and property owner if they are separate persons or companies, in writing, stating with particularity the nature of the alleged violation. The operator shall have thirty (30) days to cure such violation unless the violation results or will result in imminent and immediate harm to the health and safety of the residents of the Town, especially the residents immediately adjacent to the nonmetallic mineral extraction and processing operation, in which case the operator shall take prompt and immediate actions to cure such violation within five (5) days after receipt of notice thereof.
- (e) The permit may be transferred to a new operator, provided the new operator provides financial assurances as may be required by the Town, county, or state. In order for the permit to be transferred, the new operator shall notify the Town to request that the permit be transferred, prior to the new operator beginning or continuing the operation.

(5) PROCEDURE FOR APPLICATION AND APPROVAL OF PERMIT

- (a) **APPLICATION PROCESS:** Application for the permit shall be made on forms supplied by the Town Clerk/Treasurer and shall be accompanied by the current prevailing fee. Such fee shall be paid by cash, check or money order to the Town. If the Town determines that additional expertise is required, the Town shall authorize retaining the services of engineering firms or other qualified persons with appropriate expertise to advise the Town and shall give written notice to the applicant of the additional administrative fees to be charged beyond the base administrative fee to cover the full costs of the services of any such retained expert. The additional fees shall be paid before the additional review is undertaken. At a minimum the application shall include the following:
 - 1. A full and adequate description of all phases of the contemplated operation and the specific mention of type of machinery and equipment, which will be or might be necessary to carry on the operation. Where the operation is to include the washing of material being processed, the estimated daily quantity of water required, its source and its disposition shall be made part of the operational description.
 - 2. A Certified Survey Map(s) (CSM) and parcel identification number(s) of the property on which the nonmetallic mining operation is being proposed. The CSM shall also include the legal description of the proposed site, indications of private access roads, existing or proposed public highways adjacent to the site which will be affected by the operation, all buildings and other structures to be constructed on the proposed site.
 - 3. The names and addresses of all owners of property within two thousand six hundred forty (2,640) feet of the proposed site boundaries.

4. A shaded relief topographic map based on a minimum contour interval of two (2) feet that encompasses a two thousand six hundred forty (2,640) foot radius from the proposed site boundary and the drainage basin defined in Section 3(o) of this Chapter. The Town Board reserves the right to modify, but not eliminate this requirement based on site-specific or other reasonable factors.
 5. An operations plan for the site outlining how the site is going to be developed. The operations plan shall include such details as property boundaries, extraction setbacks, phasing and duration of extraction, depth of all existing and proposed excavations, location of proposed extraction area, staging area and equipment storage, location of proposed temporary and permanent structures including scales and offices, proposed fencing and gates, and the proposed location and type of screening, including berms and landscaping.
 6. A reclamation plan that meets the requirements of the Polk County Nonmetallic Mining Ordinance, as from time to time amended, and Chapter NR-135 of the Wisconsin Administrative Code.
 7. Engineering studies as listed in 6(c) of this chapter. The Town Board reserves the right to waive any of the reviews listed in 6(c) due to inapplicability to the proposed site.
 8. Copies of all permits, with approvals, as may be required by Polk County or the State of Wisconsin prior to beginning operations.
 9. If the operation is subject to a lease, contract, and/or any other legally binding agreement between the landowner(s) and the operator(s), a copy of a fully executed lease, contract and/or any other legally binding agreement shall be submitted with the application.
- (b) **TOWN BOARD APPROVAL:** The application and all data and information pertaining thereto shall be referred to the Town Board for public hearing. The Town Board shall within forty-five (45) days after the public hearing take action. Applicant must also comply with all Polk County Zoning Ordinances and procedures separate from this permit.
- (c) **PUBLIC HEARING:** Within ninety (90) days after filing and receipt of a properly completed application, the Town Board shall schedule a public hearing at which all interested parties may be heard. Publication of a Class 2 Notice, under Chapter 985 of the Wisconsin Statutes of the date of the public hearing must be made once during each of the two weeks prior to such hearing. Substantial compliance with the notice requirements of this section shall be deemed sufficient. Owners of property within the designated area shall be notified of the scheduled hearing a minimum of two weeks prior to the hearing date. Following the public hearing, the Town board shall schedule the matter for its consideration and review at a meeting separate from the meeting at which the public hearing was held.
- (d) **ACTION BY TOWN BOARD:** The Town Board shall within forty-five (45) days after the public hearing take action by a simple majority vote to approve or disapprove the application for the proposed nonmetallic

mineral extraction and processing site. The Town Board shall be guided by consideration of the public health, safety, and welfare of the residents of the Town and shall give particular consideration to the following factors in making their decision:

1. The recommendations, information and reports elicited at the public hearing.
 2. The effect of the proposed mineral extraction operation on existing roads and traffic movement in terms of adequacy, safety, wear and efficiency.
 3. The effect of the proposed mineral extraction operation on drainage, water supply/wells and sanitary septic systems on the adjacent lands and on the land contained in the proposed mineral extraction operation.
 4. The possibility of soil erosion as a result of the proposed mineral extraction operation on the adjacent lands and on the land contained in the proposed mineral extraction operation.
 5. The degree and effect of dust and noise as a result of the proposed mineral extraction operation.
 6. The effect of the proposed mineral extraction operation on the natural beauty, community character, tax base, property resale values and land uses in the area.
 7. The concerns of owners of property within the designated area to the extent that they are demonstrable and to the extent they negatively impact said property owners.
 8. The assurances, contractual agreements or written warranties undertaken by the Applicant to adequately address the concerns of the impacted owners of property within the designated area.
 9. The overall positive or negative economic impact to the area.
- (e) MINING AGREEMENT: The Operator shall enter into a Mining Agreement with the Town. The Mining Agreement may include, but is not limited to, the following: finding of fact, grant of permit and permit terms, operational requirements and conditions, storm water management, property value assurance, laws to be observed, reimbursement and enforcement, or other miscellaneous provisions. Provisions and conditions of a permit, if granted by the Town, shall comply with this ordinance unless the Town determines that modifications provide protections for the public at least equal to those of this ordinance.
- (f) RENEWALS: The procedure as designated in Sub-Paragraphs 5(b) through 5(e) above, shall apply to applications for renewal of a permit under this Chapter.

(6) REQUIREMENTS OF PERMIT ISSUED

(a) OPERATIONAL REQUIREMENTS:

1. Fencing, berms, landscaping or other suitable barrier shall be erected and maintained around portions of the site where in the determination of the Town Board such fencing, berms or barrier is necessary for the protection of the public, and shall be a type approved by the Town Board.
2. All machinery and equipment used in the mineral extraction operation (such as crushing, processing, loading and hauling) shall be constructed, maintained and operated in such a manner as to comply with the provisions of sections 6(f), 6(g), and 6(h) of this Chapter at all times. Access and haulage on the site shall be maintained in a dust-free condition by surfacing or treatment as directed by the Town.
3. Blasting on the site of a non metallic mineral extraction or processing operation shall comply with the provisions of sections 6(f), 6(g), and 6(h) of this Chapter at all times.
4. The washing, refining or other processing other than the initial removal of mineral material or overburden may be permitted as an accessory use only as specifically authorized under the terms of the grant of permit.
5. In quarries the production or manufacturing of veneer stone sills, lintels, cut flagstone, hearthstones, paving stone and similar architectural or structural stone and the storing or stock-piling of such products on the site shall be considered a permissible part of the operation.
6. The manufacture of concrete building blocks or other similar blocks, the production or manufacture of lime products, the production of ready-mix concrete or hot-mix concrete or hot-mix asphalt and any similar production or manufacturing process which might be related to the extraction operation shall not be permitted except as allowed explicitly in the grant of the permit.
7. The washing of sand and gravel, or any other material or equipment, shall be prohibited in any operation where the source of water is of doubtful capacity or where the quantity of water required will seriously affect the water supply for other users in the area.
8. The planting of trees and shrubs and other appropriate landscaping shall be provided by the applicant where deemed necessary by the Town Board to screen the operation so far as practical from normal view, and to minimize the effect of the operation on the scenic beauty and the character of the surrounding country side. Such planting shall be started as soon as practical, but no later than one (1) year after mineral extraction and processing operations commence, and shall be done according to the Town recommendations. Landscaping plants deemed invasive or nuisance by the Wisconsin Department of Natural Resources shall not be used.

9. The Town Board shall set the allowable extraction hours at the time of permit issuance. Hours of operation will reflect the location of the site in relationship to the surrounding properties and the impact they may have on “quiet enjoyment”. Typically hours would be from 7:00 a.m. and shall not continue past 6:00 p.m.; and no operation shall take place past 12:00 noon on Saturdays or anytime on Sundays or legal holidays. During periods of a declared emergency by national, state or local emergency government authorities, time and hours may be altered at the discretion of the Town board and through the issuance of a special permit which shall be renewable at thirty-day intervals.
 10. Rock crushing is permitted but must comply with the provisions of sections 6(f), 6(g), and 6(h) of this Chapter.
 11. The depth of nonmetallic mining operation shall terminate at a depth that is five feet above the groundwater table.
- (b) **HAUL ROAD MAINTENANCE:** If material removed from the site is hauled over Town roads to a county or state trunk highway, the operator shall make the necessary improvements to the Town roads, as required by the Town Board and as stated in the grant of the permit, prior to the start of the mineral extraction operation. Any improvements to the site entrance and the Town road from the site entrance to the nearest county or state trunk highway shall be improved at the operator’s expense in accordance with the submitted operations plan and standards set by the Town Board to allow for safe truck movements in and out of the site. Examples of considerations to be taken into account by the Town are the width of the access Town road, the weight-bearing classification of the Town road and the current maintenance condition of the Town road.
- (c) **ENGINEERING REVIEW:** The applicant shall submit documentation addressing the following study elements to support its application. The report elements shall be submitted by the applicant to the Town as part of the permit application. The Town board retains the right to waive some or all of the following engineering studies. The Town may have the study elements reviewed and verified by an independent qualified expert at the applicant’s sole expense as described in section 5(a) of this ordinance:
1. **Hydrologic:** To verify that the mineral extraction operation will not affect the quantity or quality of water in nearby wells, lakes, streams or wetlands
 2. **Blasting/Ground Vibration:** To verify operation will not create excessive noise, dust or ground vibration that would have potential adverse health effects on the residents of the Town or potential adverse effects on the buildings.
 3. **Traffic Study:** To verify safe access points and an adequate existing and future road network for the transport of material for the site.

4. Environmental Survey: To verify wetland and surface waters will not be contaminated as a result of the mining operation. In addition, a review of the endangered or threatened species will be performed and mitigation plan developed.
5. Historic/Cultural: To verify the proposed site does not have any areas of historic or cultural significance.
6. Noise: An environmental noise impact analysis which shall include
 - a. A baseline description of the existing noise environment determined by on the ground noise measurements. Said measurements shall be conducted, at the operator's expense, according to Appendix A and it shall be demonstrated that the proposed nonmetallic mineral extraction and processing will not exceed the limits specified in Table 1, found in section 6(g)(1). of this Chapter.
 - b. The expected level of noise from the proposed nonmetallic mineral extraction and processing and the expected effects on the study locations as described in Appendix A.

(d) GROUND WATER, FOUNDATION, STRUCTURAL, AND WELL PROTECTION:

1. PROTECTION: Before work on the extraction site is initiated, the operator shall offer owners of property within the designated area the opportunity for independent foundation/structure and well testing as described in section 3(n). The offer must be made in the form of written notices (certified mail, return receipt requested) to each property owner in the designated area with an existing foundation/structure or well. Operator must submit to the Town a list of the property owners to whom the notices were sent and a second list which enumerates those property owners who have requested the baseline test(s). The purpose of such inspections shall be to provide baseline comparative data in the event of any future claims of foundation/structural or well problems allegedly resulting from extraction operations. Operator shall be responsible for the costs of conducting such inspections. Selection of the consultant shall be by the operator, subject to Town approval.
2. GUARANTEE: Operator shall be responsible for any damage associated with area foundations, structures, or wells within the designated area resulting from its extraction operations. Any property owner in the designated area experiencing foundation, structure, or well problems, which may be caused by extraction operations, shall immediately notify the operator and the Town representative verbally and in writing. If there is a problem with any such tested foundation, structure or well after extraction

operations have begun, a disinterested third party will be contracted by the Town, at operator's expense, to investigate the situation.

- a. Well Problems: Within 24 hours of receipt of such notice under 6(d)(2), the Town may use funds provided under 6(p)(1) to provide an adequate interim water supply. The Town may also use funds under 6(p)(1) to indemnify the Town for any claims filed under Wis. Stat. 281.77(4). If it is determined that the well problem resulted from the extraction operations and if it is determined that measures to correct the well problem require increased depth, casing or lowering of pumps, or other measures in the property owner's well; to the extent that this well problem is caused by the extraction operations, any work to correct the well problem as recommended by the third-party investigator, shall be done at the operator's sole expense, to include if necessary, total replacement to bring such wells up to code. If the situation is urgent, (i.e. loss of use of affected well) the operator shall immediately provide the property owner with adequate potable water to sustain previously existing conditions on the property owner's land.
- b. Foundation/Structural Problems: If it determined that the foundation or structural problem resulted from the extraction operations and if it is determined that measures to correct the foundation/structural problems require repair, replacing, demolition and reconstruction to the property owner's dwelling; to the extent that this problem is caused by the extraction operations, any work to correct the problem, as recommended by the third-party investigator, shall be done at the operator's sole expense, to include if necessary, total replacement to bring the foundation or structure up to code.

(e) CLAIMS PROCEDURES: The operator, in accordance with the following procedures, shall compensate any foundation, structural, or well problems caused by nonmetallic mineral extraction operations.

1. Any claim for damage shall be presented to operator in written form, with a sworn certification, estimate of damage, and request for payment.
2. Operator shall have the right to inspect the property or well to determine in its own good faith judgment that the damage was caused by its mineral extraction operations.
3. In the event of a good faith dispute, operator shall post as a surety bond 125% of the amount of the claimed damage as an escrow account in a bank of record in an interest-bearing account and the matter shall be referred to a qualified, neutral consultant for determination of the cause of the damage claimed by the

property owner. Such consultant shall promptly render his or her determination to both the property owner and the operator. If the operator is found at fault, the claim shall be paid within five (5) business days from the escrow account. If the property owner or some third party is found at fault, the bond shall be terminated and returned to operator within five (5) business days.

- (f) **DUST CONTROL:** Operator shall meet all applicable requirements of Chapter NR-415 of the Wisconsin Administrative Code. In addition, dust shall be controlled so that there are not visible Immissions (0% opacity) or fine particulates at the boundaries of non participating property owners. The Town may require the operator to monitor the ambient level of airborne particulate matter. The type and number of monitors needed, the location of the monitors, and the frequency and duration of the monitoring program shall be determined by agreement of the operator, the Town and the Town’s consultant, but all costs associated with monitoring shall be borne by the operator. A fugitive dust control plan for the extraction site shall be submitted to the Town prior to issuance of permit.
- (g) **NOISE:**
 1. Operator must demonstrate their ability to comply with the noise immission limits described in Table 1.

Table 1. Property Line Noise Immission Limits ¹		
Criteria		dB(A)
A	Immission above pre-construction/permit background:	$L_{Aeq} = L_{A90} + 5$
B	Maximum Immission:	$L_{Aeq} = 35$
C	Immission spectral imbalance	$L_{eq} \text{ (Immission)} - L_{A90} + 5 \text{ (background)} \leq 20 \text{ dB}$
D	Immission from Impulse/Blasting Noise ²	SEL < 115 dB(A)
Notes		
1	Each Test is independent and exceedance of any test establishes non-compliance.	
2	Sound Exposure Level (SEL).	

2. Processing and stockpiling operations shall be located in an area to minimize noise. Operator shall require all trucks entering and

leaving the site to have proper muffler systems and controls, which meet or exceed the most current Industry standard for noise abatement. The use of Jake (engine) brakes on trucks entering or leaving the site shall not be allowed except in an emergency.

3. The Operator shall submit a list of all noise emitting equipment that will be used in the operation.
- (h) **VIBRATIONS:** At no time shall blast or machinery produced ground vibrations exceed peak particle velocities (PPV) of 0.5 inches per second on property owned by a non-participating property owner or on public property; and it must not create any measurable vibration or rattling in residential or public structures or building. Furthermore, the baseline Vibration Class (VC as defined by ISO) of a building within the vicinity of the proposed operation should not be changed to a higher class due to the proposed operations. In particular, the proposed operation should not generate vibrations that exceed the levels expressed by VC for residential buildings in the ISO standards as described in Appendix B.
 - (i) **SAFETY:** Operator shall abide by all safety rules and regulations as enforced by the Mine Safety and Health Administration. In addition there shall be a safety fence around the entire active extraction area at all times. The safety fence shall be a minimum height of eight (8) feet in height with a single strand of barbed wire on the top. A locking gate shall be installed at all entrances to the mineral extraction site. Signs warning the mineral extraction operation shall be installed every 300 feet around the perimeter of the active mineral extraction area.
 - (j) **LIABILITY:** The operator shall submit to the Town Board proof of sufficient liability insurance coverage and maintain said policy in full force and effect during the term of the original permit and any renewal periods. Public liability insurance in the amount of \$1,000,000 for sites of less than ten acres and \$5,000,000 for all other sites in excess of ten acres shall be the minimum required.
 - (k) **EXTRACTION PERMIT FEE:** Operator shall be required to pay an application/renewal fee to the Town. The fee shall be \$500 per site.
 - (l) **STORM, WATER AND EROSION CONTROL:** Operator shall secure and maintain in full force and effect during the term of the permit an NR-216 Storm Water Permit for the extraction site from the Wisconsin Department of Natural Resources.
 - (m) **PERMITS AND ENVIRONMENTAL COMPLIANCE:** Operator shall secure and maintain in full force and effect during the term of the permit all permits required from local, state, and federal authorities to open and operate a mineral extraction operation on the site.
 - (n) **SCREENING REGULATIONS:** Extraction operations shall be contained within an opaque fence or wall with a minimum height of eight (8) feet, or a visual screen consisting of evergreen or evergreen-type hedges or shrubs with spacing not more than six (6) feet on center, located and maintained

in good condition erected within fifteen (15) feet of the property line, so as to shield out the view of the mineral extraction operation from the public.

(o) RECLAMATION REQUIREMENTS: The owner or operator shall obtain prior to beginning extraction activities a reclamation permit from Polk County and post the appropriate financial assurance pursuant to Chapter NR 135, Wisconsin Administrative Code.

(p) FINANCIAL ASSURANCES:

1. OPERATIONAL STANDARDS: Following approval of a permit for nonmetallic mining the operator shall file a financial guarantee with the Town. The financial assurance shall provide that the operator will faithfully comply with all applicable operational standards, such as road maintenance and well guarantees, contained in this Chapter or the associated permit. The Town may draw on the financial assurance in order to cover the costs associated with retaining the services of engineering firms or other qualified persons for any purpose relating to the monitoring as described in section 8(e) of this Chapter or enforcement of operational standards contained in this Chapter or the associated permit. The financial assurance shall be sufficient to cover the costs of implementing the standards in its entirety. In no case, shall the financial assurance be less than \$15,000.00 or \$100.00 per site acre, whichever is greater. The Town shall notify the operator in writing when drawing on any financial assurance and the operator shall have 30 business days from the date the written notice is received to submit to the Town the amount drawn in order to bring the financial assurance to its original amount.

2. FORM AND MANAGEMENT: Financial assurance shall be provided by the operator and shall consist of a bond or an alternate financial assurance. Financial assurance shall be payable to the Town of Osceola and released upon termination of operations. Alternate financial assurances may include, but are not limited to cash, certificates of deposit, irrevocable letters of credit, irrevocable trusts, established escrow accounts, or government securities. Any interest from the financial assurance arrangements taken may include, at the discretion of the Town Board, a blend of different options for financial assurance including a lien on the property on which the nonmetallic mining site is situated or a combination of other financial assurance methods.

(q) The Town can impose requirements in addition to or exceeding the minimum standards of this Chapter if it has evidence that the public health, safety, or welfare will not be adequately protected without the imposition of additional measures. In addition, the Town may relax some of the requirements as long as there is tangible evidence 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.

(r) The operator shall grant property owners a Property Value Guaranty according to the process set forth in Appendix C of this ordinance which guarantees fair market value to property owners. The Town shall determine which properties will qualify for the Property Value Guaranty based on the operational plan and operational timeline. The Town will also consider the proposed operational timeline when determining the expiration of the Property Value Guaranty. The Town may retain the services of engineering firms or other qualified persons with appropriate expertise to advise the Town on which properties to include in the guaranty and the expiration of the guaranty, at the sole expense of the operator. A Property Value Guaranty shall be included in a Mining Agreement between the Town and the Operator. Such agreement shall apply to the owners of property at the time of the permit issuance, or the property owner's estate or heirs. The Property Value Guaranty is not required for operations that existed prior to March 9, 2009.

(7) APPLICATION TO EXISTING OPERATIONS

- (a) PERMIT: Within one (1) year after the adoption of this Chapter by the Town board, all existing mineral extraction operations shall be required to register with the Town Clerk/Treasurer by submitting pertinent data relative to the present nonmetallic mineral extraction and processing operation, including the boundaries of the actual operation and of the ownership in a form substantially compatible with section 5(a) of this Chapter. A "conditional permit" shall be granted and is applicable to such existing operations, subject to compliance with the terms and conditions of this Chapter where they can be reasonably applied under existing circumstances. The applicant for a "conditional permit" shall not be subject to Sections (5) (b) through (5) (f). An application permit fee is not required for a "conditional permit".
- (b) RENEWAL PERMIT: Within five (5) years after the date of the grant of the "conditional permit" any such existing operations shall be required to make application for a renewal permit in order to continue their operations, and shall be treated the same as for a new application under this Chapter.

(8) PENALTIES AND ENFORCEMENT

- (a) ORDERS AND CITATIONS: Failure to comply with the regulations and standards stated in this Chapter may result in the issuance of citation(s), order revocation of the permit, injunctive relief or any other applicable remedy required by law. In the event the operator fails to comply with the provisions of this Chapter, the Town may issue a compliance order directing cure of the default, or a suspension order directing the immediate cessation of an activity regulated under this Chapter until the operator

complies with the provisions hereof, pursuant to alleged violations as enumerated in section 4(d) of this Chapter.

- i. Citations may be issued for each violation. Each day a violation continues or occurs unabated shall be considered a separate offense subject to a separate citation.
 - ii. A suspension order may only be issued by the Town Board for a violation of the permit and its applicable regulations, which may result in imminent harm to the health, safety, and welfare of the Town of Osceola residents adjacent to the mineral extraction operation. Such order shall be promptly complied with and appropriate measures taken to correct the violation. Nonmetallic mineral extraction and processing may resume once the violation has been corrected.
- (b) REVIEW OF ORDERS AND CITATIONS: An operator holding a permit issued under this Chapter who is subject to a citation or an order issued under Sub-Paragraph (a) above shall have the right to review the order in a contested case hearing as allowed by state law, under Section 68.11 of the Wisconsin Statutes. The operator under a permit consents to jurisdiction in the Circuit Courts of Polk County, Wisconsin for resolution of all disputes under this Chapter.
- (c) CITATIONS: The Town of Osceola may issue a citation under Section 66.0113 of the Wisconsin Statutes to collect forfeitures or take any other required action needed to enforce this Chapter. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this subsection.
- (d) PENALTIES: Any violation of this Chapter or a permit issued under this Chapter may result in forfeitures as allowed by state law, which penalties are adopted herein by reference. Where a specific penalty is not provided in any other law, any person or company found guilty of violating a provision of this Chapter or of a permit issued hereunder shall be subject to a forfeiture of not less than \$100.00 nor more than \$1,000.00 upon a conviction for a first offense within the current term of the permit, or subject to a forfeiture of not less than \$200.00 nor more than \$2,000.00 upon a conviction for a second and each subsequent offense within the current term of the permit, together with the costs of prosecution, including court costs, and costs incurred by the Town in determining the existence and extent of the violation(s).
- (e) INSPECTION: The Town Board members, or the Town's representative(s), may inspect the premises at any reasonable time in order to ascertain compliance with this Chapter. The Town shall provide the Operator reasonable notice of said inspections. The Operator and its employees, agents and assigns shall grant permission to inspect to such duly identified Town representatives or advisory group, subject only to such limited delays as may be reasonably necessary for the protection of person and property to conform to applicable safety regulations at the site. A representative of the operator must be present during any such

inspection. The Town shall furnish the operator any report prepared by the Town or its representatives regarding the inspection. The operator shall reimburse the Town for inspections involving engineering firms or other qualified experts hired by the Town.

9) EFFECTIVE DATE

This ordinance shall take effect upon its passage and publication or posting as required by law.

Amended this 14th Day of April 2015

By the Town Board of the Town of Osceola

Doug Schmidt, Chairman

Mike Wallis, Supervisor

Dan Burch, Supervisor

ATTEST: _____
Lorraine Rugroden, Clerk-Treasurer

____Voice Vote
____Roll Call Vote
____Yeas;____Nays;____Absent/Abstain
____Posted
____Published

Posted at the following locations
First National Community Bank
Dresser Post Office
Town of Osceola Town Hall

Summary published in The Osceola Sun

Appendix A.

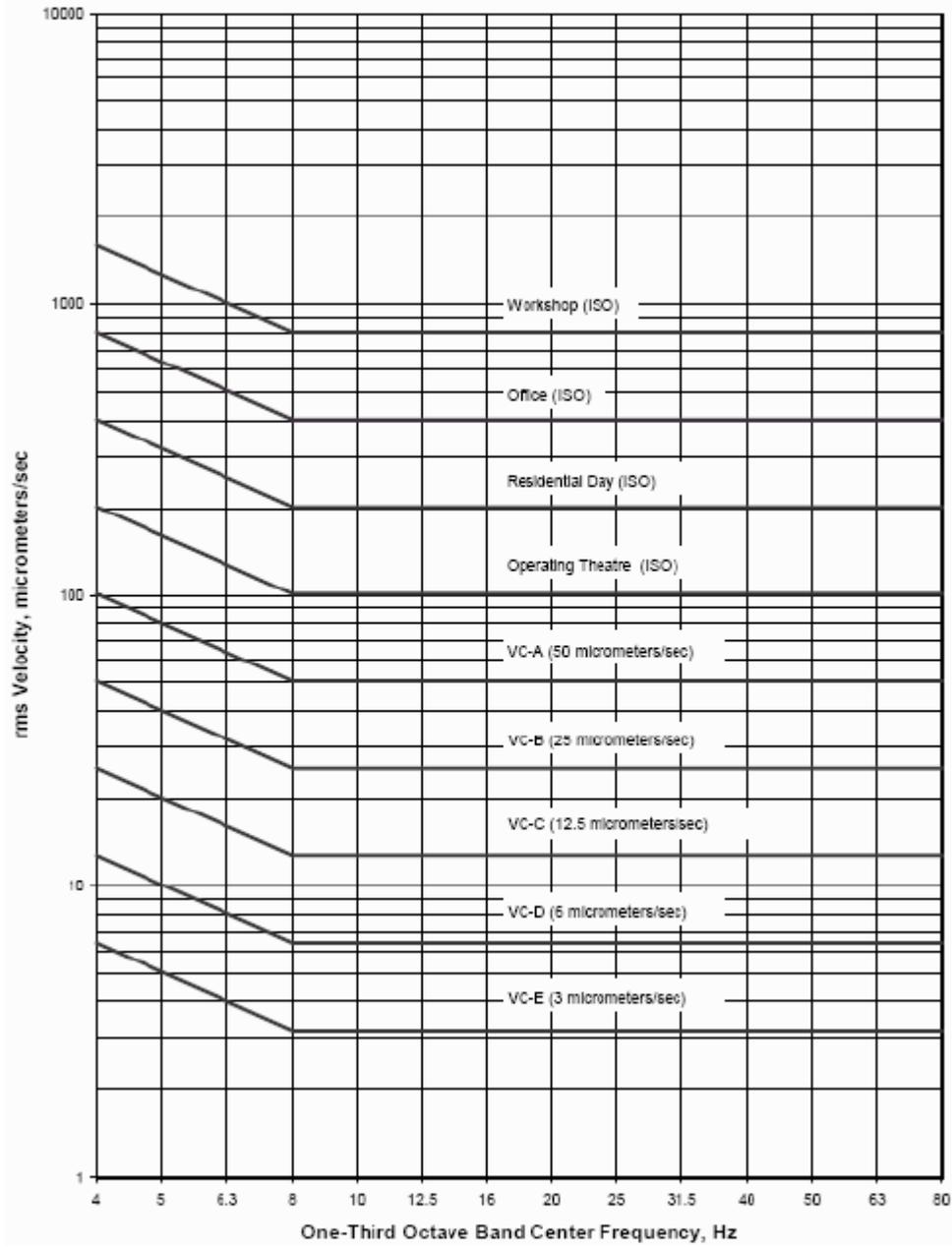
Establishing Background Noise Level

1. Instrumentation: ANSI or IEC Type 1 Precision Integrating Sound Level Meter plus meteorological instruments to measure wind velocity, temperature and humidity near the sound measuring microphone. Standardized acoustical instrumentation and sound measurement protocol shall meet all the requirements of the following ANSI Standards:
 - ANSI S1.43 Integrating Averaging Sound Level Meters: Type-1 (or IEC 61672-1)
 - ANSI S12.9 Part 3 Procedures for Measurement of Environmental Sound
 - ANSI S12.18 Measurement of Outdoor Sound Pressure Level
2. Measurement location(s): At all non-participating properties within two thousand six hundred forty (2,640) feet of the boundaries, as described in section 5(a)(2), of the nonmetallic mineral extraction and processing plant or operation. Measurements shall be recorded on said non-participating properties at a location nearest the proposed nonmetallic mineral extraction and processing plant or operation. Representative noise sampling may be used in areas with high population densities, however that method is subject to Town approval.
3. Time of measurements and prevailing weather: The atmosphere must be classified as stable with no vertical heat flow to cause air mixing. Stable conditions occur in the evening and middle of the night with a clear sky and very little wind near the surface. Sound measurements are only valid when the measured wind speed at the microphone does not exceed 2 m/s (4.5 mph).
4. Background sound measurements: All data recording shall be a series of contiguous ten (10) minute measurements. The measurement objective is to determine the quietest ten minute period at each location of interest. Test periods shall coincide with the expected hours and seasons (if seasonal operation is expected) of operation. The following data shall be recorded simultaneously for each ten (10) minute measurement period: dBA data includes L_{A90} , L_{A10} , L_{Aeq} , plus maximum wind speed at the microphone during the ten minutes and a single measurement of temperature and humidity at the microphone for each new location or each hour whichever is oftener. A ten minute measurement contains valid data provided: The measurement L_{A10} minus L_{A90} is not greater than 10 dB and the maximum wind speed at the microphone did not exceed 2 m/s during the same ten minute period as the acoustic data. Wind speed shall be measured with an anemometer.
5. For measurements conducted to establish the background sound pressure levels (L_{A90} $_{10 \text{ min}}$) the wind speed, sampled within 5 meters of the microphone and at its height, shall not exceed 2 m/s (4.5 mph) for valid dBA background measurements. For valid nonmetallic mineral extraction and processing noise measurements conducted to establish the normal operating sound level the wind speed, sampled within 5m of the microphone and at its height, shall not exceed 4 meters per second (9 mph). For purposes of enforcement, the wind speed and direction at the nonmetallic mineral extraction and processing site shall be selected to reproduce the conditions leading to the enforcement action while also restricting wind speeds at the microphone to 4 meters per second (9 mph).

6. Compliance Testing: All of the measurements outlined above must be repeated to determine compliance with the limits in Table 1. Property Line Noise Immission Limits. The compliance test location is to be the pre-nonmetallic mineral extraction and processing background noise measurement location nearest to the home of the complainant and nearer to the nonmetallic mineral extraction and processing operation. The time of day for the testing and the nonmetallic mineral extraction and processing operating conditions plus wind speed and direction must replicate the conditions that generated the complaint. Procedures of ANSI S12.9- Part 3 apply. The effect of instrumentation limits for wind and other factors must be recognized and followed.

7. All noise measurements, including the initial background study and noise compliance testing shall be performed by a qualified independent acoustical consultant retained by the Town and costs shall be reimbursed by the applicant.

Appendix B. ISO-Defined Vibration Class Standards for Buildings



Appendix C

Property Value Guarantee Process

The definition of “Operator” is located in the “Definitions” section found in this ordinance. For the purposes of this Appendix, the term “property owner” is defined as the owner(s), including their estates or heirs, of any privately owned property (including improvements) that the Town has designated for a property value guaranty in the Mining Agreement.

A. Determination of Fair Market Value

1. A property owner desiring to sell property shall notify the Operator of that fact.
2. The property owner and Operator shall then agree on an appraiser to hire who is licensed as a real estate appraiser in Wisconsin.
3. In the event the property owner and Operator cannot agree on an appraiser, the property owner shall select a bank or credit union in Polk County, with whom the property owner does not do business, to provide the name of an appraiser it regularly employs to do appraisals.
4. The appraiser selected pursuant to 2) or 3) above shall provide the Operator and the owner with an appraisal of the fair market value of the property, assuming the non-metallic mine site did not exist (“Fair Market Value”).
5. The Operator shall pay for the appraisal.

B. Sale of Property

1. The property owner may then enter into a listing contract with a Wisconsin licensed real estate broker. The listing contract shall exclude the Operator as a potential buyer so that if the Operator purchases the property, no commission shall be due.
2. Before accepting any offer of less than the Fair Market Value, the property owner shall give two (2) business days’ notice by fax, e-mail or personal delivery with a copy of the offer to the Operator’s agent as designated on the non-metallic mining permit. If notice is by fax or e-mail, it shall also require confirmed receipt by the Operator’s agent that the notice has been received within two (2) business days.
3. If the owner sells the property for less than the Fair Market Value, 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 30 days of the recording of the conveyance of the property.

C. Applicability

1. The Guaranty shall apply only once for any property within the Designated Area and shall only be available to the property owner(s) (their estates or heirs) as of the effective date.
2. Properties do not qualify for the Guaranty in the event the property owner wishes to sell or otherwise convey the property to a third-party by a

transaction which is not considered an arm's-length transaction (e.g. a sale or gift to a relative).