

**TOWN OF OSCEOLA  
POLK COUNTY WISCONSIN**

**CODE OF ORDINANCES  
ORDINANCE #09-03-01**

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

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

(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.

(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, being usually a composite of sounds from many sources near and far. It includes intermittent noise events, such as, from aircraft flying over, dogs barking, wind gusts, mobile farm or construction machinery, and the occasional vehicle traveling along a nearby road. The ambient also includes insect and other nearby sounds from birds and animals or people. The near-by and transient events are all part of the ambient sound environment but are not to be considered part of the background sound. If present, a different time or location should be selected for determining the  $L_{90}$  background sound levels.
- (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 of distant noise sources without the nonmetallic mineral extraction and processing operations.
- (g) BACKGROUND SOUND ( $L_{90}$ ). The sound level present at least 90% of the time. Background sounds are those heard during lulls in the ambient sound environment. That is, when transient sounds from flora, fauna, and wind are not present. Background sound levels vary during different times of the day and night. Because quarries operate 24/7 the background sound levels of interest are those during the quieter periods which are often the evening and night. Sounds from near-by birds and animals or people must be excluded from the background sound test data. Nearby electrical noise from street lights, transformers and cycling

AC units and pumps etc must also be excluded from the background sound test data. Background sound level (dBA and dBC (as  $L_{90}$ )) 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. Measurement periods such as at dusk when bird and insect activity is high or the early morning hours when the ‘dawn chorus’ is present are not acceptable measurement times. 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  $L_{90A}$  and  $L_{90C}$  descriptors. 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 dB above  $L_{90A}$  for the same period.  $L_{10C}$  less  $L_{90C}$  are not to exceed 10 dB to be valid. The background noise environment consists of a multitude of distant sources of sound. When a new nearby source is introduced the new background noise level would be increased. The addition of a new source with a noise level 10 below the existing background would increase the new background 0.4 dB. If the new source has the same noise level as the existing background then the new background is increased 3.0 dB. Lastly, if the new source is 3.3 dB above the existing background then the new background would have increased 5 dB. For example, to meet the requirement of  $L_{90A} + 5 \text{ dB} = 31 \text{ dBA}$  if the existing quiet nighttime background sound level is 26 dBA, the maximum quarry noise immission contribution independent of the background cannot exceed 29.3 dBA  $L_{eq}$  at a dwelling. When adding decibels, a 26 dBA background combined with 29.3 dBA from the quarry (without background) results in 31 dBA. Further, 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) C-WEIGHTED SOUND LEVEL (dBC). Similar in concept to the A-Weighted sound Level (dBA) but C-weighting does not de-emphasize the frequencies below 1k Hz as A-weighting does. It is used for measurements that must include the contribution of low frequencies in a single number representing the entire frequency spectrum. Sound level meters have a C-weighting network for measuring C-weighted sound levels (dBC) meeting the characteristics and weighting specified in ANSI S1.43-1997 Specifications for Integrating Averaging Sound Level Meters for Type 1 instruments. In this document dBC means  $L_{eqC}$  unless specified otherwise. Further, background  $L_{90C}$  sound levels documenting the pre-construction baseline conditions should be determined when the ten (10) minute average wind speed is less than 0.5 m/s (1.1 mph) at the ground level/microphone location.
- (m) 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, for purposes of this Chapter, shall be 20 micronewtons per square meter ( $\mu\text{N}/\text{m}^2$ ) or 20 micropascals (Pa).
- (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). Frequency of sound expressed by cycles per second.
- (r) IMMISSION SPECTRA IMBALANCE. The spectra are not in balance when the C-weighted sound level is more than 20 dB greater than the A-weighted sound level. For the purposes of this requirement, the A-weighted sound level is defined as the long-term background sound level,  $L_{A90}$ , determined according to ANSI S12.9, Part 3 and the procedures provided in this document. The C-weighted sound level is defined as the  $L_{Ceq}$  measured during the quarry operations so as to result in its highest sound output. The Complaint test provided later in this document is based on the immission spectra imbalance criteria.
- (s) IMPULSIVE SOUND. Either a single pressure peak or a single burst (multiple pressure peaks) for a duration usually less than one second. Example of a highly impulsive sound source is explosive blasting.
- (t) Leq. Equivalent continuous sound pressure level in decibels: 10 times the logarithm to the base 10 of the ratio of a time mean square sound pressure, during the specified time period, to the square of reference

sound pressure. The reference sound pressure is 20 micronewtons per square meter or equivalent continuous frequency-weighted sound pressure.

- (u) 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.
- (v) NOISE. Any unwanted sound. Not all noise needs to be excessively loud to represent an annoyance or interference.
- (w) NOISE EMISSION. Sound energy that is emitted by a nonmetallic mineral extraction and processing operation and is transmitted to a receiver (dwelling) where it is immitted (see “noise immission”).
- (x) NOISE IMMISSION. Noise immitted at a receiver (dwelling) that is transmitted (emitted) from the nonmetallic mineral extraction and processing operation.
- (y) 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, 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.
- (z) 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.
- (aa) PARTICIPATING PROPERTY OWNER. A property owner that has a financial interest in the proposed nonmetallic mineral extraction and processing operation.
- (bb) PERSON. The word “person” shall mean any individual, partner, corporation, company, trustee or association, together with the respective servants, agents and employees thereof.
- (cc) PROPERTY LINE. The recognized and mapped property parcel boundary line.
- (dd) 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.
- (ee) 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. An example is a person with Full Membership in the Institute of Noise Control Engineers (INCE). Certifications such as Professional Engineer (P.E.) do not test for competence in acoustical principles and measurement and are thus not, without further qualification, appropriate for work under this document. The Independent Qualified Acoustical Consultant can have no financial or other connection to a quarry developer or related company.

- (ff) 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.
- (gg) 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.
- (hh) ROCK CRUSHING. The term “rock crushing” shall mean the physical operation of a rock crusher.
- (ii) 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.
- (jj) SOUND EXPOSURE LEVEL (SEL). 10 times the logarithm to the base 10 of the ratio of sound exposure to the reference sound exposure ( $E_0$ ) of 400 micropascalsquared seconds ( $\mu\text{Pa}^2\text{-s}$ ). 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 intergration ( $T$ ) must be specified. The frequency weighting used must be specified explicitly (e.g., A or C). The A-weighted SEL and C-weighted SEL are abbreviated ASEL and CSEL respectively.
- (kk) 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.
- (ll) 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.

- (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 18, 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 and processing 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, starting 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.

## (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 and shall be accompanied by the current prevailing fee. Such fee shall be paid by cash, check or money order to the Town. The applicant shall also pay all costs associated with the application process including, but not limited to engineering, surveying, hydrologic review, attorney's fees, or similar expenses incurred by the Town in evaluating and issuing the permit. 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 nonmetallic minerals, the estimated daily quantity of water required, its source and its disposition should be made part of the operational description.
  2. A legal description of the proposed site with a map showing its location with indications of private access roads, existing or proposed public highways adjacent to the site which will be effected by the operation. All buildings and other structures to be constructed on the proposed site and the names and addresses of all property owners who reside within a radius of two thousand six hundred forty (2,640) feet of the proposed site boundaries.
  3. A shaded relief topographic map based 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(n) of this Chapter. The Town Board reserves the right to modify, but not eliminate this requirement based on site-specific or other reasonable factors.
  4. 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.
  5. 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.
  6. 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.
  7. Copies of all permits, with approvals, as may be required by Polk County prior to beginning operations.
- (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 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. Town residents living within 2,640 feet of the proposed site boundary 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 adjacent property owners who reside within a radius of two thousand six hundred forty (2,640) feet to the extent that they are demonstrable and to the extent they negatively impact said adjacent property owners.
  8. The assurances, contractual agreements or written warranties undertaken by the Applicant to adequately address the concerns of the impacted, adjacent property owners within a radius of two thousand six hundred forty (2,640) feet,
  9. The overall positive or negative economic impact to the area.
- (e) **ADDITIONAL CONDITIONS:** Any additional conditions to the granting of a permit shall be in writing and copies made a part of the records of the determination by the Town Board.
- (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, 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 side 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 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 p.m. 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.
- (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 by an independent consultant(s), at the applicant’s sole expense, for verification:
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.
  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 property owners within a radius of two thousand six hundred forty (2640) feet of the nonmetallic mineral extraction and processing boundaries, or further away if engineering review(s) indicate a need, an opportunity to have an outside agency perform testing to establish a baseline for the foundation/structures, water quality, and quantity of water in said wells. All properties comprising the area tested will be herein after referred to as the designated area. 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 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 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 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: 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) at the boundaries of non participating property owners. 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.

Criteria		dBA		dBC
A	Immission above pre-construction/permit background:	$L_{Aeq} = L_{A90} + 5$		$L_{Ceq} = L_{C90} + 5$
B	Maximum Immission:	$35 L_{Aeq}$		55 $L_{Ceq}$ for quiet <sup>2</sup> rural environment 60 $L_{Ceq}$ for rural-suburban environment
C	Immission spectra imbalance	$L_{Ceq}$ (Immission) minus $L_{A90} + 5$ (background) $\leq$ 20 dB		
D	Immission from Impulse/Blasting Noise <sup>3</sup>	SEL < 115 dB		SEL < 90 dB
<b>Notes</b>				
1	Each Test is independent and exceedance of any test establishes non-compliance.			
2	A "Quiet rural environment" is a location 2 miles from a state road or other major transportation artery without high traffic volume during otherwise quiet periods of the day or night.			
3	Sound Exposure Level (SEL). C-weighting measured with sound level meter set to C-weighting and slow meter response.			

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.

- (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 \$2,500 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 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 and 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 \$100.00 per site acre.

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 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.

#### (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 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.
- (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, 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.

(9) EFFECTIVE DATE OF ORDINANCE

Passed this 9th Day of March, 2009

By the Town Board of the Town of Osceola

---

Steven M. Stroshane, Chairman

---

Robert G. Wright, Supervisor

---

Michael R Wallis, Supervisor

ATTEST:

I hereby certify that the Ordinance, of which the above is a copy, was duly passed by the Town Board of Supervisors of the Town of Osceola, Polk County, State of Wisconsin, on the 9<sup>th</sup> day of March, 2009, at a meeting duly called and held and at which a quorum was present and acted throughout.

---

Lorraine Rugroden Clerk/Treasurer

## 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 operation. Measurements shall be recorded on said non-participating properties at a location nearest the proposed nonmetallic mineral extraction and processing 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  $L_{A90}$ ,  $L_{A10}$ ,  $L_{Aeq}$  and dBC data includes  $L_{C90}$ ,  $L_{C10}$ ,  $L_{Ceq}$ , 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: Both  $L_{A10}$  minus  $L_{A90}$  and  $L_{C10}$  minus  $L_{C90}$  are 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. For dBC measurements, wind speed must not exceed 0.6 m/sec. at the microphone. Wind speed shall be measured with an anemometer.
5. For measurements conducted to establish the background sound pressure levels ( $L_{A90}$  10 min,  $L_{C90}$  10 min, and etc.) 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 and shall not exceed 0.5 m/s (1.1 mph) for valid dBC 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 or County and costs shall be reimbursed by the applicant.