

Town of Tainter
Dunn County, Wisconsin

ORDINANCE # 138.18

**Nonmetallic Mine Operator's
License Ordinance**

This ordinance shall take effect after its passage and posting as provided by law.

Adopted August 8, 2013 by the Town Board of the Town of Tainter, Dunn County, Wisconsin. Page II contains a complete adoption history.

signature on file
Randy Valaske, Chairman

_signature on file__
Jody Albricht, Supervisor

_signature on file____
Martin Guarneri, Supervisor

_signature on file__
Gerald Mrdutt, Supervisor

_signature on file__
Kathleen Schlough, Supervisor

_signature on file__
Judith Albricht, Clerk
Witness

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**Town of Tainter
Dunn County, Wisconsin
Nonmetallic Mine Operator's License Ordinance**

Section 1 - Introduction

1.1 Title/Purpose

This Ordinance is entitled the Town of Tainter Nonmetallic Mine Operator's License Ordinance. The purpose of this Ordinance is to supplement the Dunn County Comprehensive Zoning Ordinance requirements for nonmetallic mining operations with requirements that are specific to the Town of Tainter. These Town specific requirements provide minimum standards for all nonmetallic mining operations in the Town so as to protect public health and safety, preserve the scenic beauty of the Town's landscapes and environment, protect the public from damage to both the quantity and quality of ground and surface waters, minimize or prevent adverse impacts from on-site and off-site operations, and promote the general welfare of the people and communities within the Town of Tainter.

1.2 Authority

This Ordinance is adopted under the powers granted to the Town of Tainter by the Town's adoption of Village powers under Wis. Stat. ss. [60.10](#) and [60.22](#), its authority under [66.0415](#), and other authority under the statutes. Any amendment, repeal or recreation of the statutes relating to this Ordinance made after the effective date of this Ordinance is incorporated into this Ordinance by reference on the effective date of the amendment, repeal or recreation.

1.3 Adoption of Ordinance

The Town Board of the Town of Tainter, by this Ordinance, adopted on proper vote with a quorum and by a roll call vote by a majority of the Town Board present and voting provides the authority to regulate and license nonmetallic mines in the Town.

1.4 Policy

The Town Board recognizes that nonmetallic mining operations, while a vital component of our state and local economy, can have both direct and indirect adverse impacts. Studies have documented that nonmetallic mining operations can have adverse impacts on groundwater and surface water, and can generate harmful levels of dust and noise particularly if blasting and crushing operations are undertaken. Nonmetallic mining sites can have negative impacts on the landscape and aesthetics if not properly screened, and can present safety concerns to members of the public if not properly secured. Truck traffic from such operations can also generate off-site impacts including safety concerns and Town road damage. Therefore, it is in the best interest of the public to provide for the wise and proper regulation of mining operations in the Town of Tainter that will assure the safety and general welfare of residents and ensure the mining operation is conducted in a manner consistent with adopted Town plans.

1.5 Relationship to Other Laws

This ordinance supplements the Dunn County Comprehensive Zoning Ordinance, and other federal and state regulations covering nonmetallic mine operations and provides new or additional regulation to address Town concerns. The adoption of this ordinance does not preclude the Town Board from adopting any other ordinance, or providing for the enforcement of any other law or ordinance, or providing for the enforcement of any other law or ordinance relating to the same or any other matter. The issuance of a citation under this ordinance does not preclude proceeding under any other ordinance or law relating to the same or any other matter. Proceeding under any other ordinance or law relating to the same or any other matter does not preclude the issuance of a citation under this ordinance.

1.6 Interpretation

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

1.7 Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

1.8 Repeal

All other Town ordinances or parts of ordinances in effect when this ordinance is adopted which conflict or are inconsistent with this ordinance, to the extent of the inconsistency only, are hereby repealed.

1.9 Effective Date

This ordinance shall take effect upon passage and adoption by the Town Board and posting as provided by law. The Town Clerk shall properly post or publish this ordinance as required under s. [60.80](#), Wis. Stats.

Section 2 - General Provisions

2.1 Applicability

This Ordinance applies to any person, partnership, corporation, or other legal entity engaged in nonmetallic mining operations in the Town of Tainter. Anyone seeking a rezone or a special exception permit to conduct mining operations under the Dunn County Comprehensive Zoning Ordinance is also required to obtain a Nonmetallic Mining License from the Town.

Any of the provisions of this Ordinance, including the license term, may be modified by agreement between the Town and the Operator if the Town Board determines that the agreement provides protections for the public at least equal to those of this Ordinance.

2.2 Exemptions

This Ordinance shall not apply to the following nonmetallic mining operations in the Town when such operation also does not require a rezone nor a special exception permit to conduct mining operations under the Dunn County Comprehensive Zoning Ordinance:

- A. Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
- B. Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the highway, railroad or other transportation facility.
- C. Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
- D. Excavations for building construction purposes conducted on the building site.
- E. Nonmetallic mining sites where less than one acre of a parcel is being mined and the mine location does not relocate on the parcel.
- F. 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.
- G. Nonmetallic mine sites that possess a current and valid reclamation permit per Wis. Admin. Code Ch. NR135 prior to the effective date of this ordinance. However, mining operations in existence prior to the effective date of this Ordinance that change or expand in such a manner as to require a new or revised nonmetallic mining reclamation permit per Wis. Admin. Code Ch. NR 135 after the effective date of this Ordinance shall be subject to the license requirements of this ordinance.

2.3 Disclaimer

- A. **Multiple Jurisdictions.** All persons reviewing the provisions of this ordinance should be aware that the Town of Tainter is only one of a number of governmental bodies that may

have jurisdiction in the Town. The Town cannot make any representations on behalf of any other government body.

- B. **Binding Acts.** No statement or actions by any official, employee, agent or committee of the Town should be construed or taken as a binding act of the Town except a resolution, motion, or ordinance that has been adopted by the Town Board at a lawfully conducted Town Board meeting, or by the Town electorate at a duly constituted Annual or Special Town Meeting. This includes, but is not limited to, interpretation of this ordinance.

2.4 License Provisions

- A. No person shall operate a nonmetallic mine within the scope of this Ordinance in the Town of Tainter without first obtaining an operator's license from the Town Board.
- B. License Term. Except for the first year of operation under this Ordinance, an operator's license shall be granted for a period of one year commencing on July 1 and ending on June 30 of the following calendar year. For the first year of operation under this Ordinance, the operator's license will extend from the date of issuance until the first June 30th.
 - 1.
- C. License Amendment. If the Town has issued an operator's license, the operator may request an amendment to that license during the license term, using the same process as the original license application.
- D. License Transfer. An operator's license may be transferred to a new operator if the new operator provides financial assurances as may be required by the Town, County, or State and written approval is received from the Town Board.
- E. License Revocation. An operator's license may be revoked under the procedures in Section 4.5.
- F. Application for a license under this Ordinance (or a renewal thereof) shall be made to the Town Clerk on a form furnished by the Town. The application shall contain such information as may be required by the Town Board.
- G. All license and administrative fees imposed under this Ordinance shall be collected by the Town Clerk and paid into the Town treasury. If a license is denied after payment of a license and administrative fee, the unused portion of the administrative fee shall be returned to the applicant.
- H. A license under this Ordinance may be issued by the Town Clerk upon approval of the Town Board. If the Town Board, or its designee, has reason to believe that the applicant is not a fit person to be granted the license, that the conduct, use or activity is not in compliance with Federal or State law or regulations or any County, Extraterritorial or Town ordinance, or that the parcel for the conduct, use or activity is not suitable or does not comply with the Town Comprehensive Plan, the license may be denied. If the license is denied, an appeal may be made by the applicant in writing to the Town Clerk within 5 days after the date of the denial. Upon receipt of a written appeal, the Town Clerk shall set a public hearing before the Town Board not less than 10 days nor more than 60 days after receipt of the written appeal and provide written notice of the hearing to the appellant. The hearing shall require a Class I Notice under s. [985.07](#), Wis. stats., prior to hearing, with the costs for publication and public hearing paid by the applicant to the Town Clerk prior to publication. At the hearing, the appellant shall be entitled to be represented by counsel. After hearing the evidence, the

Town Board may confirm or reverse the denial. The determination of the Town Board shall be final.

- I. All licenses issued under this Ordinance shall display the expiration date.
- J. It shall be a condition of holding a license under this Ordinance that the licensee fully comply with all Federal or State law or regulations, County, Extraterritorial or Town ordinances. Failure to do so shall be cause for revocation of the license.
- K. A license may be revoked by the Town Board for non compliance with license terms. If the license is revoked, an appeal may be made by the applicant in writing to the Town Clerk within 5 days after the date of the revocation. Upon receipt of a written appeal, the Town Clerk shall set a public hearing before the Town Board not less than 10 days nor more than 60 days after receipt of the written appeal and provide written notice of the hearing to the appellant. The hearing shall require a Class I Notice under s. [985.07](#), Wis. stats., prior to hearing, with the costs for publication and public hearing paid by licensee to the Town Clerk prior to publication. At the hearing, the licensee shall be entitled to be represented by counsel. After hearing the evidence, the Town Board may confirm or reverse the revocation, or modify the revocation by imposing a limited period of suspension. The determination of the Town Board shall be in writing, shall state the reasons for the Board's action, and shall be final.

2.5 Penalty Provision

The Town of Tainter Citations, Fees and Forfeitures Ordinance lists violation costs, fees, assessments, and surcharges necessary to enforce this ordinance. Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this ordinance shall, upon conviction, forfeit the amount listed in the Town of Tainter Citation Ordinance. Each time a violation occurs or each day that a condition exists in violation of this ordinance shall be considered a separate offence. In addition, the Town Board may seek injunctive relief from a court of record to enjoin further violations. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present violation(s).

Section 3 - Definitions

3.1 Word Usage

For the purposes of this ordinance, words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. The word "shall" is mandatory and directs actions or provisions that must be followed.

3.2 Definitions

- A. For the purposes of this ordinance, the following definitions revise, supplement, or are in addition to definitions contained in the Wisconsin Statutes.
1. **Adjoining Landowner.** Means any property within 1/2 mile of the proposed mine site regardless of whether there is a residence or structure on the property.
 2. **Construction Aggregate.** Crushed and uncrushed particles of rock and/or predominantly non-metallic minerals, sand size and larger, that are produced for and used in the construction industry or for construction purposes at the site of production, including, for purposes of example, the following uses: as sub-base or base course for buildings, roadways or railroads; granular backfill adjacent to foundations, culverts or other structures; ingredients of mortar, Portland cement, concrete, asphalt; rip-rap, retaining walls, revetment stone and dimension stone; agricultural uses such as aglime, bedding or walkways for livestock; and for the specified miscellaneous uses of septic system filters, landscape stone, landfill leachate collection systems and for placing on roadways in freezing weather.
 3. **Hazardous Material.** Any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the Department of Natural Resources.
 4. **Industrial Sand Mining.** Means any of the following:
 - a. The operation of an establishment that is engaged in excavating or otherwise removing from the land any sand or sandstone by any means, including any associated stripping of overburden, removal of sand or sandstone washing, screening, sorting, beneficiation, drying, loading, stockpiling or other processing or preparation of sand or sandstone for any use other than construction aggregate. Industrial sand mining is a form of nonmetallic mining and as such must comply with any and all ordinance requirements applicable to nonmetallic mining, including, but not limited to the application, licensing, and reclamation plan requirements. Industrial sand mining includes mining sand or sandstone for any of the following purposes:

- 1) Abrasive sand.
 - 2) Blasting sand.
 - 3) Enamel sand.
 - 4) Filtration sand.
 - 5) Foundry sand.
 - 6) Moulding sand
 - 7) Frac sand including for use as proppant in hydraulic fracturing.
 - 8) Grinding sand.
 - 9) Industrial sand.
 - 10) Silica sand.
 - 11) Silica.
- b. Extraction from the earth of sand, sandstone bedrock, fluvial sands, alluvial sands or aggregates for offsite use or sale of industrial sand products including associated activities such as drilling, blasting, excavation, stripping, grading and dredging of such materials and removing, relocating or disposing of overburden and other wastes of the mining process.
 - c. Manufacturing or processing operations on the mining site that involve the use of equipment for crushing, screening, separation, beneficiation, classification, washing dewatering, drying coating, or blending of the industrial sand or products obtained by extraction from the mining site.
 - d. Stockpiling of industrial sand products, rail transloading of industrial sand products, nonmetallic mining waste materials, or topsoil intended for use in reclaiming a nonmetallic mine site.
 - e. Reclamation of the mine site.
5. **Landowner.** Means the person who has title to land in fee simple or who holds a land contract for the land.
 6. **Life of the Mine.** The time period beginning at mine license issuance and extending through the day on which the entire land area of the mine site is restored in accordance with the approved reclamation plan and all associated costs to be borne by the mine or mine operator have been paid in full.
 7. **Mine Operator or Operator.** Any person who is engaged in, or who has applied for a license to engage in mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.
 8. **Nonmetallic Mineral Processing.** To beneficiate, concentrate, screen, sort, clean, wash, dry, package, containerize or apply coating to a nonmetallic mineral or nonmetallic mineral aggregate, byproduct, co-product, waste or waste product.
 9. **Nonmetallic Mining.** Means any of the following:
 - a. Extraction from the earth of stone, nonmetallic mineral aggregates or nonmetallic minerals for off-site use or sale, associated activities such as drilling, blasting, excavation, grading and dredging of such aggregates and minerals.
 - b. Any manufacturing or processing operation that may involve the use of equipment for the crushing, screening, sorting, separation, blending, or coating of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with minerals transferred from off-site.

- c. Manufacturing processes aimed at producing nonmetallic products, except for construction aggregate, for sale or use by the operator.
 - d. Stockpiling or transloading of nonmetallic products for sale or use off-site and stockpiling of waste materials or materials intended for use in mine reclamation.
 - e. Transport of extracted nonmetallic materials, finished products or waste materials to or from the extraction, manufacturing or processing site located in the unincorporated areas of Dunn County.
 - f. Disposal of nonmetallic mining waste materials as defined in this ordinance.
 - g. Reclamation of lands and waters that have been impacted by nonmetallic mining.
10. ***Nonmetallic Mining Operation.*** The extraction from the earth of stone, nonmetallic mineral aggregates and/or nonmetallic minerals for sale, profit or export from the site of origin, and related operations, processes and activities, including but not limited to removing overburden, drilling, blasting, excavating, grading, dredging, stockpiling, crushing, screening, sorting, scalping, dewatering, drying, coating, blending, packaging, containerizing, storing of nonmetallic minerals, nonmetallic mineral aggregates, overburden, topsoil, waste rock, product ion byproducts or mining wastes. It includes activities and operations performed within the active mine boundary to construct, operate or maintain any machine, equipment, building, tank, pond, lagoon, structure or facility used in conjunction with any nonmetallic mining, nonmetallic mineral processing, handling or disposal at the mine site of any nonmetallic mining waste material and nonmetallic mining reclamation. It does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.
11. ***Nonmetallic Mining Reclamation or Reclamation.*** The rehabilitation of a nonmetallic mining site to achieve a topographic profile, vegetative character and land use specified in an approved nonmetallic mining reclamation plan, including removal or reuse of nonmetallic mining structures, facilities and refuse; rough and finish grading of the nonmetallic mining site, removal, storage and replacement of topsoil; stabilization of appropriate soil conditions; reestablishment of vegetative cover; control of surface water and groundwater; prevention of environmental pollution and the restoration of plant species and fish and wildlife habitat.
12. ***Nonmetallic Mining Site, Project Site, or Site.*** The location where a nonmetallic mining operation is conducted or licensed to occur including all lands within the active mine boundary, all related storage and processing areas, areas where nonmetallic mining refuse and materials intended for use in reclamation is deposited and areas disturbed by or to be disturbed in the future by the nonmetallic mining operation or by ancillary activities, including but not limited to, the private roads, haulage ways or transportation corridors that connect any outlying lands used in the nonmetallic mining operation that do not share a common property boundary with the primary location of the nonmetallic mining activities.

13. ***Nonmetallic Mining Structures.*** Any buildings, facilities, permanent equipment or framework that is located on the mine site. It includes, but is not limited to, mining and processing equipment, storage facilities and improvements, constructed ponds and lagoons, mechanical shops, paved parking surfaces and office space.
14. ***Nonmetallic Mining Waste Material.*** The non-marketable materials removed from the land prior to or during the nonmetallic mineral mining process or during the industrial sand mining process. It includes overburden, waste soil, rock, mineral, sand and other primarily natural materials, as well as natural materials that have been contaminated with any hazardous substance, that results directly from the operator's nonmetallic mining, and that is designated for disposal at the operator's designated nonmetallic mining site or elsewhere in as authorized by the operator's licenses, permits, approvals and reclamation plan.
15. ***Town.*** Means the Town of Tainter in Dunn County, Wisconsin.
16. ***Town Board.*** Means the board of supervisors for the Town of Tainter, Dunn County, Wisconsin and includes any designee of the board authorized to act for the board.
17. ***Town Clerk.*** Means the clerk of the Town of Tainter, Dunn County, Wisconsin.
18. ***Town Highway.*** Means any Highway other than a state or county highway in the Town of Tainter.
19. ***Wis. stats.*** Means the Wisconsin Statutes, including successor provisions to cited statutes.

Section 4 – Licensing Requirements

4.1 Nonmetallic Mine Application Procedures

All applicants for a mining license shall follow the procedures below. If the applicant feels any licensing requirement should not pertain to this particular mining application, the applicant may present arguments to demonstrate why the requirement should be waived. The Town Board is the sole authority to waive any requirements of this ordinance.

- A. Application Form. The Application Form for a license to mine in the Town of Tainter shall be available from the Town Clerk.
- B. Application Submittal. The applicant shall submit 13 copies of the Application Form and all required documentation required under Section 4.2 to the Town Clerk accompanied by the payment of both the application fee and the base administrative fee established for the administration of this Ordinance in amounts set forth in the Town of Tainter Citations, Fees and Forfeitures Ordinance. The fees shall be made payable to "Treasurer, Town of Tainter." The Application Form shall be signed by the operator and by the landowner, provided the landowner is a person other than the operator.
- C. Initial Review by the Town Board.
 1. Preliminary Review. The Town Clerk shall forward the application to the Town Board for initial review to determine if additional information or expertise is necessary to properly evaluate the application. At the direction of the Town Board, the Town Plan Commission shall review the application for compliance with the Town Comprehensive Plan and Town Ordinances and provide written documentation of their findings to the Town Board and Applicant. After gathering all information deemed necessary, the Town Board shall schedule the application for a hearing under Section 4.1D.
 2. Additional Information. The Town Board may request the applicant to submit additional information if the Town Board determines the application is incomplete. The Town Board may also retain the services of an engineering firm or other qualified person with appropriate expertise ("retained expert") to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this Ordinance.
 3. Additional fees. If the Town Board determines that additional expertise is required, the Town Board shall authorize retaining the services of an engineering firm or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of the services of any such retained expert. The additional fee shall be paid before the additional review is undertaken.
 4. Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall

report to the Town Board on whether the application meets the requirements of this Ordinance.

D. Decision by the Town Board.

1. Notice and Hearing. Once the application is complete and any report by a retained expert has been completed, the Town Clerk shall place the application on the agenda for the next regular meeting of the Town Board. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall set a date for a public hearing and give public notice at least fifteen (15) days prior to the date scheduled for the hearing, with the notice mailed to all adjoining landowners. At the public hearing, the Town Board shall take public comment on the proposed mine license.
2. Town Board Decision. Following the public hearing, the Town Board may take immediate action or set a date for the meeting at which time they shall make a final decision on the operator's license. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall review the retained expert's report as well as public comments made at the public hearing. The Town Board shall grant the license if it determines that the operation of the mine will be consistent with the minimum standards and the purposes of this Ordinance. If the Town Board denies the license; the applicant may request a hearing under the provisions of Section 4.5B.
3. The Town Board may require the applicant to secure a bond or letter of credit to cover costs to the Town in the event of non compliance with terms of the license.

4.2 License Application

All applicants for a mining license shall submit 13 copies of the complete special exception permit application submitted to Dunn Zoning Division and will provide the Town 13 copies of any additional documents, forms, maps, etc. that the special exception board may require. Simply stated, the Town wants copies of everything submitted to the special exception board. In addition, the following information will be submitted to the Town if the information cannot be found in the special exception permit application or when a special exception permit application is not required by Dunn County:

A. Ownership Information.

1. The name, address, phone number(s), and e-mail address of the operator of the nonmetallic mining operation.
2. The name, address, phone number(s), and e-mail address of all owners or lessors of the land on which the mining operation will occur.
3. If the operation is subject to a lease, a copy of a fully executed lease and/or agreement between the landowner and the operator who will engage in mining operations on the proposed site.

B. Site Information and Maps.

1. *A certified survey map(s) and parcel identification number(s) of the property on which the nonmetallic mining operation will be located.*
2. *An aerial photo of the proposed site at a scale of 1 inch equals 660 feet signed by both the operator and the landowner.*
3. A topographic map of the mine site extending 1/2 mile beyond the site boundaries at contour intervals no wider than 10 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within one mile of the site.
4. The location within the site of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.
5. A map on which all residential, agricultural and municipal wells within 1/2 mile of the boundaries of the site in all directions are marked and given a numerical identification of the location.
6. The location and name of all surface waters, including lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the site and within 1/2 mile of the site.
7. A description of the distribution, depth and type of topsoil on the site as well as the geological composition and depth and width of the nonmetallic deposit.
8. A map showing location of recharge areas to groundwater using the map "Location of Recharge Areas to the Sandstone Aquifer in Dunn County, Wisconsin" Koch, Neil C. 2005. The map can be reviewed at the Town of Tainter Town Hall, at the Dunn County Land Conservation Division in Menomonie, and on the County web site.
9. A map identifying the location of the mine site and all other non-contiguous mine sites within the Town of Tainter and adjacent towns, if any, and a traffic impact analysis resulting from operations at all sites.

C. Operation Plan

1. Dates of the planned commencement and cessation of the operation.
2. Description of mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.
3. Estimated volume of material to be extracted over the life of the mine and for the next calendar year.
4. Location of road access points. The proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.
5. Identification of all proposed off-site trucking routes, together with the frequency of traffic and the common schedule of travel to be used for transporting extracted materials or products to or from the site.
6. A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water including methods used for infiltration and control of run-off.

7. A listing of any hazardous materials, including fuel supplies that will be stored on site and a description of measures to be used for securing and storing these materials.
 8. A listing of all chemicals used in the manufacturing or processing operations or in controlling dust.
- D. Information Demonstrating Compliance with Minimum Standards.
1. The operator shall provide the information necessary to demonstrate that the mining operation will comply with the minimum standards in Section 4.3.
 2. For mining operations commencing after the effective date of this Ordinance, the operator shall also provide information establishing baseline conditions at the site before mining operations commence, including the groundwater elevation across the site, groundwater quality at the site for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made, and the base flow of surface water within 1/2 mile of the site.
- E. Mining Agreement and Impacts on Adjoining Landowner's Property Value. Before a mining license is issued, a Mining Agreement between the Operator and the Town of Tainter must be completed and signed by the Operator and Town Board. The Operator shall provide a proposed mining agreement between the Operator and the Town Of Tainter that provides site specific agreements for conducting the mining operations. The Town may reject the proposed mining agreement if the terms are deemed unacceptable to the Town. This proposed mining agreement may include the Operator providing some type of property value assurance for Adjoining Landowners.
- F. Special Exceptions. The applicant can request a special exception from the application requirements of this section if it can demonstrate that the information required can be provided by alternative means or is not necessary for an evaluation of the particular mining operation and that the public health, safety and welfare will not be adversely affected thereby.

4.3 Minimum Standards of Operation

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

- A. General Standards.
1. The operator shall stake or otherwise mark the borders of the entire site and shall secure the site by fencing or other appropriate measures.
 2. The operator shall demonstrate compliance with all of the other provisions of this Ordinance.
 3. The operator shall demonstrate that all applicable federal, state and local licenses, permits and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation.

4. The operator shall provide notice to the Town of any notices of violation, citations, or other enforcement actions taken by any other governmental body against the mining operation within the Town.
 5. Sand from other mines cannot be brought into the mine site for processing, storage, or reclamation unless allowed under the conditions of the license issued by the Town Board.
- B. Standards Regarding Off-Site Impacts.
1. The operator shall undertake all measures necessary for the control of surface water runoff from nonmetallic mining operations in order to prevent pollution and erosion of sediment onto neighboring properties, surface water and groundwater, and shall also comply with the standards for erosion control under NR 216 and NR 151 as applicable.
 2. In the event that the mine site contains areas adjacent to the nonmetallic mining operations that are being used for agricultural, commercial or residential purposes, the operator shall undertake all measures necessary to control surface water runoff from those areas from entering mining operations or otherwise causing contamination of surface water and groundwater.
 3. The operator shall screen the mining operations from public view to the maximum extent practicable through the use of berms, additional setbacks, evergreen trees, or other measures.
 4. The operator shall limit the hours of operations from 6:00am to 9:00pm Monday through Friday and shall limit hauling off-site hours from 7:00am to 8:00 pm Monday through Friday to minimize off-site impacts to residents. In addition the operator may conduct mining operations adhering to the Monday through Friday hour restrictions on six Saturdays in a calendar year. The operator may submit a plan for extended hours as a special exception, if it can demonstrate that additional hours are necessary for the mining operation and it would be consistent with public, health safety and welfare.
 5. The operator shall ensure that trucks from the mining site shall not interfere with the safety of children being taken or returned from school, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is highest.
 6. The operator shall limit night lighting on site, to that which is minimally necessary for security and, wherever possible, shall be shielded from illuminating off-site areas. Every effort consistent with legal requirements for aerial safety shall be made to minimize illumination of the night sky.
 7. The operator shall utilize all relevant dust control measures specified in Wis. Admin. Code § NR 415.075.
 8. The operator shall control off-site noise levels to the maximum extent practicable.
- C. Standards Regarding Groundwater and Surface Water.
1. Impacts to Groundwater Quality.
 - a. Mining operations shall have a minimum of three (3) monitoring wells and one (1) additional well for every twenty (20) acre mine site. The operator

shall take quarterly samples for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made. One well shall be used to measure static and pumping water levels on a monthly basis and the date shall be provided to the Town/County.

b. Mining operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code ch. NR 140.

2. Impacts to Groundwater Quantity.

a. Mining operations shall not extract materials at a depth below the point that is 5 feet above the groundwater table.

b. Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within ½ mile of the mine site. A significant reduction is a drop in the water table that results in a substantial adverse impact on a private well including but not limited to the inability of a well to provide water on a continuous basis.

3. Impacts to Surface Water Base Flow. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within 1/2 mile of the mine site, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.

4. Impacts to Surface Water Use. Mining operations shall not cause a lowering of the groundwater table that result in adverse effects on surface waters which serve as a critical source of water for agricultural or municipal functions such as fire protection within ½ mile of the mine site. Adverse effects include but are not limited to a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.

D. Hazardous materials.

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

2. The operator shall not dispose of any materials containing any hazardous chemicals in toxic amounts, or residuals declared to be hazardous by a government agency in toxic amounts.

3. The operator shall have a plan for responding to spills of any hazardous materials on the site.

E. Special Exceptions.

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

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

4.4 Annual Report and License Renewal

A. Annual Report.

1. No later than March 1 of each calendar year, the operator shall submit an annual report to the Town Board for all active and intermittent mining sites for which the operator has a license in the Town of Tainter.
2. The annual report shall include the following information:
 - (i) An identification of the operator and location of the mining site.
 - (ii) A map or drawing accurately showing the area of excavation, the unclaimed area, and any reclaimed area, including a calculation of the number of acres for each type.
 - (iii) A description of activities and operations on the site for the previous calendar year.
 - (iv) A description of activities and operations on the site anticipated for the following calendar year.
 - (v) A written report demonstrating how the operator has been in compliance with all terms and conditions of its license and this Ordinance. The report shall also include any groundwater, surface water and other monitoring results.
 - (vi) A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

B. License Renewal.

1. The operator shall make written request to the Town Clerk for a renewal of the license to operate the mine no later than March 1 of the year in which the license will expire. The application shall be accompanied by the payment of both the renewal application fee and the base administrative fee established for the administration of this Ordinance in amounts set forth in the Town of Tainter Citations, Fees and Forfeitures Ordinance.
2. The written request for renewal shall include the annual report from the previous calendar year in accordance with the provisions of Section 4.4A.
3. The Town Clerk shall review the renewal application within 30 days of receipt to determine whether the application is complete and upon a determination that it is complete shall forward it to the Town Board.
4. The Town Board shall review the application to determine if additional information or expertise is necessary to properly evaluate the application. The Town shall retain an engineer or other qualified person with appropriate expertise to inspect the mine site unless the site is reported as being inactive during the past year, in which case a member of the Town Board may be assigned to inspect the site. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for a decision under Section 4.4B.7.
5. Additional fees. If the Town Board determines that additional expertise is required, the Town Board shall authorize hiring an engineer or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the additional administrative fee to be charged beyond

the base administrative fee to cover the cost additional review by retained expert. The additional fee shall be paid before the additional review is undertaken.

6. Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall report to the Town Board on whether the renewal application meets the requirements of this Ordinance. The Town Clerk shall place the request on the agenda of the next regular meeting or a special meeting of the Town Board prior to the expiration of the license.
7. The Town Board may grant the request for renewal if it finds:
 - (i) There have been no material violations of the Ordinance or the license which have not been appropriately remedied.
 - (ii) The operator has not received multiple or recurring citations or orders for violations of the operator's license or this Ordinance.
 - (iii) All applicable fees have been paid and financial responsibility requirements have been met.
8. If the Town Board denies the request for renewal, the Town Board shall notify the operator and provide the operator with an opportunity for a hearing. If the mine has been inactive and no material has been taken from the mine during the previous year the request for license renewal may be denied.

4.5 Inspection, Enforcement, and Procedures

- A. Inspection. In addition to an annual inspection pursuant to Section 4.4B, the Town Board or other authorized representative of the Town, may make inspections to determine the condition of nonmetallic mining sites in the Town of Tainter in order to safeguard the health and safety of the public and determine compliance with the minimum standards under this Ordinance upon showing proper identification, and upon reasonable notice.
- B. Hearings
 1. Any person affected by a notice and order issued in connection with the enforcement of this Ordinance under Section 4.5C, or upon denial of an application for a license or license renewal, may request and shall be granted a hearing on the matter before the Town Board, provided such person shall file with the Town Clerk, a written petition requesting the hearing and setting forth his name, address, telephone number and a brief statement of the grounds for the hearing or for the mitigation of the order. Such petition shall be filed within thirty days of the date the notice and order are served or upon 30 days upon denial of an application for a renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof.
 2. After the hearing, the Town Board by a majority vote, shall sustain, modify or withdraw the notice under Section 4.5C, or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this Ordinance have been complied with, and the petitioner shall be notified within ten days in writing of such findings.

3. The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.
- C. Remedies. The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance, including the following:
1. Issue a stop work order.
 2. Issue a notice of violation and order that specifies the action to be taken to remedy a situation.
 3. Issue a citation in accord with the Town of Tainter citation ordinance.
 4. Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under Section 2.5 and injunctive relief.
 5. Suspend or revoke the operator's license under Section 4.5D.
- D. License Suspension or Revocation. After giving notice and a hearing, the Town Board may suspend or revoke an operator's license for a violation under Section 4.5A.

4.6 Financial Assurance

- A. Financial assurance shall be provided to the Town as a condition of license approval in the amount necessary for the following:
1. Road repair. An amount necessary for the repair and maintenance of Town roads used for all mine related truck traffic traveling to or from the site. The amount of financial assurance will be determined by a Town Board approved independent engineering firm and will include repair and maintenance estimates for both proposed and maximum capacity mine operations.
 2. Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within 1/2 mile of the site or such other area shown to be impacted by mine operations. The amount of financial assurance will be determined by a Town Board approved independent engineering firm evaluating factors such as the number of wells within 1/2 mile of the mine boundary, well distance from mine boundary, well depths, water table level, etc.
- B. The form of financial assurance made to the Town of Tainter shall be that form agreed to by the Town Board and may include performance bonds, irrevocable letters of credit or other measures agreed upon by the Town Board.
1. In the event the Town determines that the amount of financial assurance must be increased to meet specific road repair or water supply needs, or the amount available has been utilized, the Town shall notify the operator of the additional amount needed and the basis for the request. The operator shall have 30 days to provide the increased amount.
- C. The operator shall also provide to the Town proof that it has provided the financial assurance for reclamation required under Wisconsin law.

4.7 Damages to Private Water Supply

- A. A property owner within 1/2 mile of the mine site may seek remedies under Sections 4.7B thru 4.7E for any of the following damages to private water supply:
 - 1. A preventative action limit or enforcement standard is exceeded in a private water supply well on the owner's property.
 - 2. A substantial adverse impact on the quantity of water from a private well on the owner's property occurs, including but not limited to the inability of any such well to provide water on a continuous basis.
 - 3. A lowering of surface waters which serve as a source of water for personal, agricultural or municipal functions on the owner's property to levels below base flow levels for more than 5 days.
- B. Any property owner under Section 4.7A seeking a remedy under this Section shall simultaneously file a notice with the Town and the mine operator of the occurrence of the event under Section 4.7A explaining the nature and extent of the problem.
- C. Within 24 hours of receipt of such notice under Section 4.7B, the Town may use funds provided under Section 4.6A.2 to provide adequate interim water supply. The Town shall also use funds under Section 4.6A.2 to indemnify the Town for any claims filed under Wis. Stat. § 281.77(4). An interim water supply shall continue until the Town has approved the report or plan under Section 4.7D.
- D. Within 20 days of receipt of notice under Section 4.7B, the mine operator shall provide to the property owner and to the Town a report that demonstrates that the impact to the property owner was not attributable to the mining operation or to present a plan for a permanent alternative water supply to be paid by the operator.
- E. The Town shall in consultation with the property owner review the report or plan and approve or deny such plan. If the Town determines that the mine operator was not the cause of damage to the private water supply, the operator may elect to be reimbursed by the property owner for the costs of supplying water during a period not exceeding one year.
- F. A property owner beyond 1/2 mile of the mine site may apply to the Town for use of funds under Section 4.6 to remedy damages to a private water supply identified in Section 4.7A, provided that the property owner can demonstrate to the Town that the damage to the private water supply was caused by the mine. If the Town determines that the damage was caused by the mine, the property owner can utilize the remedies in Sections 4.7B thru 4.7D.

Section 5 – Application and License Forms

5.1 Application for Nonmetallic Mine License

I, _____, of _____, _____, [insert mailing address] apply for [a license or renewal of a license] to operate a nonmetallic mine located at _____ [legal description] in the Town of Tainter, Dunn County, Wisconsin. Attached hereto and incorporated herein by reference, are the complete application requirements.

Dated this _____ day of _____, 20__.

[Signature of applicant]

5.2 Nonmetallic Mine License

STATE OF WISCONSIN

Town of Tainter

Dunn County

Application having been properly filed by _____, of _____ [insert mailing address], for a license to operate a nonmetallic mine located at _____ [legal description] in the Town of Tainter, Dunn County, Wisconsin, and it appearing that the application documents provide for the minimum standards of operation to comply with all applicable Town ordinances, statutes, and rules of the State of Wisconsin, Department of Commerce and that the Town Board has approved the application, and the applicant having paid the required fee set forth in the Town of Tainter Citations, Fees and Forfeitures Ordinance, a nonmetallic mine license is issued to _____, of _____, to operate a nonmetallic mine at the place above described for the term of July 1, 20__ to June 30, 20__. Annual license renewal application and fee is due by May 15th of the year preceding the license effective date to allow license application approved at the June Town Board Meeting.

Dated this _____ day of _____, 20__.

[Signature of Town Clerk]