

1 TOWN OF UNION

2  
3 ORDINANCE NO: 2014-2

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5 THE TOWN BOARD OF THE TOWN OF UNION DOES ORDAIN AS  
6 FOLLOWS:

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8 The following Article of the Municipal Code of the Town of Union is hereby  
9 created to read as follows:

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11 Title 3 – COMMUNITY ENVIRONMENT

12  
13 CHAPTER 1 - BUSINESS REGULATIONS

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15 ARTICLE 12 - NON-METALLIC MINING

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19 **3.1.1205 Finding, Purpose and Authority**

20 A. Findings. Nonmetallic mining operations, while a vital component of our  
21 state and local economy, can have both direct and indirect adverse results.  
22 Studies have documented that nonmetallic mining operations can have adverse  
23 impacts on groundwater and surface water, and can generate harmful levels of  
24 dust and noise particularly if blasting and crushing operations are undertaken.  
25 Nonmetallic mining sites can have negative impacts on the landscape and  
26 aesthetics if not properly screened, and can present safety concerns to  
27 members of the public if not properly secured. Truck traffic from such  
28 operations can also generate off-site impacts including safety concerns to  
29 children and other residents. While certain aspects of mining operations are  
30 subject to state or federal regulation, there is no comprehensive state or federal  
31 regulation of nonmetallic mining operations. Many aspects of nonmetallic  
32 mining operations are left unregulated with potential adverse impacts to the  
33 public health, safety and welfare of the residents of the Town.

34 B. Purpose. The purpose of this Article is to provide minimum standards  
35 for all nonmetallic mining operations in the Town, and to require licenses for  
36 nonmetallic mining operators in order to protect public health and safety, to  
37 preserve the scenic beauty of the Town's landscapes and environment, to  
38 protect the public from damage to both the quantity and quality of ground and  
39 surface waters, to minimize or prevent adverse impacts from on-site and  
40 off-site operations, and to promote the general welfare of the people and  
41 communities within the Town of Union.

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44 C. Authority. This Chapter is adopted by the powers granted to the Town

45 by the Town's adoption of Village powers under Wis. Stat. 60.10 and 61.34, its  
46 authority under 66.0415, and other authority under the statutes. Any  
47 amendment, repeal or recreation of the statutes relating to this Chapter made  
48 after the effective date of this Chapter is incorporated into this Chapter by  
49 reference on the effective date of the amendment, repeal or recreation.

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51 **3.1.1210 Applicability and Scope**

52 A. This Article shall apply to all nonmetallic mining operations and mine  
53 sites within the Town except as set forth in this Section

54 B. This Article shall not apply to the following nonmetallic mining  
55 operations:

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

58 (2). Excavations or grading conducted for the construction,  
59 reconstruction, maintenance or repair of a highway, railroad, or any other  
60 transportation facility where the excavation or grading is entirely within the  
61 property boundaries of the highway, railroad or other transportation facility.

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

64 (4). Excavations for building construction purposes conducted on the  
65 building site.

66 (5.) Nonmetallic mining at nonmetallic mining sites where less than  
67 ten acres of total affected acreage occurs over the life of the mine.

68 (6.) Removal from the earth of products or commodities that contain  
69 only minor or incidental amounts of nonmetallic minerals, such as commercial  
70 sod, agricultural crops, ornamental or garden plants, forest products,  
71 Christmas trees or plant nursery stock.

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73 **3.1.1215 Definitions**

74 A. "Clerk" means the Town Clerk of the Town of Union

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76 B. "Adjoining landowner" means any property within 2 mile of the proposed  
77 mine site regardless of whether there is a residence or structure on the  
78 property.

79 C. "Board" means the Town Board of the Town.

80 D. "Landowner" means every person who has title to land in fee simple or  
81 who is a purchaser in a land contract for the land.

82 E. A "mine site" or "site" means land from which mineral aggregates or  
83 nonmetallic minerals will be extracted for sale or use by the operator, including  
84 all land on which is or will be located any structures, equipment, storage  
85 facilities, stockpiles, washing, crushing, or screening facilities, private roads or  
86 haulage ways associated with nonmetallic mining operation; and all lands  
87 contiguous to the nonmetallic mining operation under common ownership or  
88 control of the owner or operator.

- 89 F. "Mining Operation" means operations or activities for the extraction from  
90 the earth of mineral aggregates and nonmetallic minerals and related  
91 operations or activities, including, but not limited to, excavation, grading, or  
92 dredging if the purpose of those operations or activities is the extraction of  
93 mineral aggregates and nonmetallic minerals and related processes including,  
94 but not limited to, stockpiling, crushing, screening, scalping, dewatering, and  
95 blending. It does not include removal from the earth of products or  
96 commodities that contain only minor or incidental amounts of nonmetallic  
97 mining minerals such as commercial sod, agricultural crops, ornamental or  
98 garden plants, forest products, Christmas trees or plant nursery stock.
- 99 G. "Nonmetallic minerals" means a product, commodity or material  
100 consisting principally of naturally occurring, organic, inorganic, nonmetallic,  
101 non-renewable material. Nonmetallic minerals include but are not limited to  
102 stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat  
103 and talc.
- 104
- 105 H. "Nonmetallic mining" means any or all of the following:
- 106 (1.) Extraction from the earth of mineral aggregates or nonmetallic  
107 minerals for off-site use or sale, including drilling and blasting as well as  
108 associated activities such as excavation, grading and dredging of such  
109 materials.
- 110 (2.) Manufacturing or processing operations that may involve the use  
111 of equipment for the crushing, screening, separation, washing, or blending of  
112 the mineral aggregates or nonmetallic minerals obtained by extraction from the  
113 mining site or with materials transferred from off-site.
- 114 (3.) Manufacturing processes aimed at producing nonmetallic products  
115 for sale or use by the operator.
- 116 (4.) Stockpiling of nonmetallic products for sale or use off-site and  
117 stockpiling of waste materials.
- 118 (5.) Transport of the extracted nonmetallic materials, finished products  
119 or waste materials to or from the extraction site.
- 120 (6.) Disposal of waste materials.
- 121 (7.) Reclamation of the extraction site.
- 122 I. "Operator" means any person who is engaged in, or who has applied for a  
123 license to engage in nonmetallic mining, whether individually, jointly or  
124 through subsidiaries, agents, employees, contractors, or subcontractors.
- 125
- 126 J. "Operator's license" or "license" means the license required of mining  
127 operators in this Article to undertake nonmetallic mining in the Town.
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- 129 K. A "Site" means all the land described in the application which will be subject to  
130 control by the operator while a license hereunder is issued.
- 131
- 132 L. "Town" means the Town of Union.

133 M. "Waste Material" means the non-marketable by-product that results  
134 directly from or is displaced by extraction or that is a by-product of a  
135 manufacturing process that is scheduled for disposal at the extraction site or  
136 some other site as part of a reclamation plan.  
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138 **3.1.1220 License Required**

139 A. License Requirement. No person shall operate a nonmetallic mine within  
140 the Town without first obtaining an operator's license from the Board.

141 B. License Term

142 (1.) Except for the first year of operation under this Article, an  
143 operator's license shall be granted for a period of one year commencing on July  
144 1 and ending on June 30 of the following calendar year. For the first year of  
145 operation under this Article, the operator's license will extend from the date of  
146 issuance until the second June 30th after issuance of the initial license.

147 (2.) An operator's license may be renewed as set forth in Section 4.8,  
148 except that a temporary operator's license may not be renewed.

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

152 (4.) License Transfer. An operator's license may not be transferred.  
153 Any proposed successor in interest to a licensee must apply for its own license.

154 (5.) License Revocation. An operator's license may be revoked under  
155 the procedures in Section 3.1.1245

156 C. Temporary Operator Licenses. The Board may grant a temporary non-  
157 renewable operator's license not to exceed six months, for mining operations  
158 within the scope of this Article that were in existence as of the effective date of  
159 this Article, provided that the operator certifies that its operation will comply  
160 with the minimum standards in Section 3.1.1235 and that the operator  
161 submits a complete application under Section 3.1.1225 within 60 days of  
162 issuance of the temporary license.  
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164 **3.1.1225 Procedures to Apply For a License to Mine**

165 A. Application Form. The Application Form for a license to mine in the Town  
166 shall be available from the Clerk. In lieu of submitting an application on the  
167 Town form, an applicant may initially submit a complete copy of any  
168 conditional use permit application submitted to Eau Claire County for the  
169 mine. If additional information required by this ordinance is necessary for  
170 processing, the Clerk shall so notify the applicant.

171 B. Application Submittal. The applicant shall submit six (6) copies on  
172 paper, and one copy in an electronic format identified by the Clerk, of  
173 the Application Form and all required documentation required under  
174 Section 3.1.1230 to the Clerk accompanied by the payment of both  
175 the application fee and the base administrative fee established for the  
176 administration of this Article in amounts set forth in the Town's

177 Schedule of fees and forfeitures, to be paid to "Treasurer, Town of  
178 Union." The Application Form shall be signed by both the operator  
179 and by the landowner.

180 C. At all times, the application, any additional or supplemental material,  
181 and any retained expert reports shall be public records as described  
182 in sections 19.35 (1) (a) and (am), Wisconsin Statutes.  
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186 D. Initial Review.

187 (1.) Preliminary Review. The Town Board shall conduct initial review  
188 to determine if additional information or expertise is necessary to properly  
189 evaluate the application. If no additional information or expertise is deemed  
190 necessary the Clerk shall schedule the application for a hearing under Sub  
191 Section 3.1.1225(E).

192 (2.) Additional Information. If the Town Board determines that  
193 application is incomplete, it may request the applicant to submit additional  
194 information.

195 (3.) Additional fees. If the Town Board determines that additional  
196 expertise is required, the Board shall authorize retaining the services of an  
197 engineering firm or other qualified person or persons with appropriate expertise  
198 to advise the Board. The Board may determine that some or all of the retained  
199 expert's fees shall be charged to the applicant as an administrative fee.  
200 Retained expert fees for general advice or for education of the Board cannot be  
201 part of the administrative fee, but any services specific to an application can be  
202 charged to that applicant. The Clerk shall give written notice to the applicant  
203 of the additional administrative fee to be charged to cover the cost of the  
204 services of any such retained expert. The additional fee shall be paid before  
205 review of the additional information is undertaken.

206 (4.) Once the applicant has submitted any additional information and  
207 has paid the additional administrative fee in the amount charged, the retained  
208 expert shall advise the Board whether the application meets the requirements  
209 of this Article.

210 E. Decision by the Board.

211 (1.) Notice and Hearing. Once the application is complete and any  
212 report by a retained expert has been completed and filed with the Clerk, the  
213 Clerk shall place a public hearing for the application for a license under this  
214 ordinance on the agenda for a regular meeting of the Board. If a special  
215 meeting is requested by the applicant, the applicant shall pay the costs  
216 incurred for the special meeting. The Clerk shall post public notice of the  
217 hearing, shall publish notice of the hearing in the Eau Claire Leader-Telegram,  
218 and shall mail notice of the hearing to all owners of land abutting the proposed  
219 site, as shown on the most recent tax roll, at least fifteen (15) days prior to the  
220 date scheduled for the hearing. At the public hearing, the Board shall take

221 information from the applicant and the retained expert and shall hear public  
222 comment on the proposed operator's license and conditional use permit.

223 (2.) Board Decision. Following the public hearing, the Board may take  
224 immediate action or set a date within 45 days for the meeting at which time  
225 they shall make a final decision on the operator's license. The Board shall  
226 review the complete application, the retained expert's report, and public  
227 comments made at the public hearing. The Board shall grant the license if it  
228 determines that the operation of the mine will be consistent with the Minimum  
229 Standards Sec. 3.1.1235 and the purposes of this Article. If the Board denies  
230 the license, the applicant may request a hearing under the provisions of Sub  
231 Section 3.1.1245(C).

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233 F. Special Exception Procedure.

234 (1.) Any special exception requested by the applicant in the initial  
235 application shall be processed with the application as set forth in this Section  
236 3.1.1225

237 (2.) If, at some later date, a licensed operator requests a special  
238 exception, it shall apply for the same in writing, with sufficient information  
239 concerning the reasons for the request and the anticipated effects of granting  
240 the special exception. The procedure set forth in Sub Section 3.1.1225(D) shall  
241 be followed to process the application.

242 G. Operator's Agreement. Either in conjunction with the application  
243 process or at some later time, the Town and an Operator may enter into an  
244 agreement which will permit operation of the mine in a manner which is  
245 consistent with all provisions of this ordinance. Before such an agreement can  
246 be executed, the procedure set forth in Section 3.1.1225 shall be followed and  
247 the Board must determine that the agreement would limit the effects of the  
248 operation on the Town, its residents, and neighbors of the site at least as much  
249 as strict enforcement of this ordinance would limit that impact.

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253 **3.1.1230 License Application.** Except as excused by Sub Section  
254 3.1.1225(A), all applicants for a mining license shall submit the following  
255 information:

256 A. Ownership Information:

257 (1.) The name, addresses, phone number(s), and e-mail address of the  
258 operator of the nonmetallic mining operation. If the applicant is a business  
259 organization, the requested information shall be provided about the home office  
260 of the organization, about a corporate officer responsible for oversight of the  
261 operation, and about a local responsible contact person.

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264 (2.) The name, addresses, phone number(s), and e-mail address of all

265 owners, vendors, or lessors of the land on which the mining operation is  
266 proposed.

267 (3.) If the operation is proposed to be on leased land, a copy of a fully  
268 executed lease between the landowner and the operator who will engage in  
269 mining operations on the proposed site.

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271 B. Site Information and Maps. Provided all legends on the map remain  
272 clear and visible, required mapping information may be combined on one or  
273 more maps.

274 (1.) A survey map of the site prepared and certified by a Registered  
275 Land Surveyor which also shows all parcel identification numbers of land  
276 within the site.

277 (2.) An aerial photo of the proposed site at a scale of 1 inch equals 660  
278 feet signed by both the operator and the landowner.

279 (3.) A topographic map of the site extending 1/2 mile beyond the site  
280 boundaries at contour intervals no greater than 10 feet showing the boundaries  
281 of the site, the location and total acreage of the site, and the name of all roads  
282 shown on the map.

283 (4.) A map showing the location within the site of all existing buildings  
284 and other structures, equipment, stockpiles, storage and parking areas.

285 (5.) A map on which the all residential, agricultural and municipal  
286 wells within 2 mile of the boundaries of the site in all directions are marked  
287 and given a numerical identification of the location.

288 (6.) A map showing the location and name of all surface waters,  
289 including lakes, private or public ponds, streams (including intermittent  
290 streams and headwaters), drainage ditches, wetlands, drainage patterns and  
291 other water features on the site and within 1/2 mile of the site.

292 (7.) A map showing the distribution, depth and type of topsoil on the  
293 site as well as the geological composition and the dimensions of the  
294 nonmetallic deposit to be extracted.

295 (8.) A map identifying the location of all other non-contiguous sites  
296 within the Town and adjacent towns, if any, that will contribute extracted  
297 material to the same manufacturing facility to which the site for which the  
298 applicant seeks a license will also contribute.

299 C. Operation Plan

300 (1.) Dates of the planned commencement and cessation of the  
301 operation.

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

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

307 (4.) A map showing the location of road access points and the proposed  
308 location within the site of all buildings and other structures, equipment,

309 stockpiles, storage and parking areas.

310 (5.) Identification of all proposed off-site trucking routes, together with  
311 the frequency of traffic and the common schedule of travel to be used for  
312 transporting extracted materials or products to or from the site.

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

316 (7.) A listing of any hazardous materials, including fuel supplies that  
317 will be stored on site and a description of measures to be used for securing and  
318 storing these materials.

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

321 D. Information Demonstrating Compliance with Minimum Standards.

322 (1.) The operator shall provide the information necessary to  
323 demonstrate that the mining operation will comply with the minimum  
324 standards in Section 3.1.1235.

325 (2.) For mining operations commencing after the effective date of this  
326 Article, the operator shall also provide information establishing baseline  
327 conditions at the site before mining operations commence, including the  
328 groundwater elevation across the site, groundwater quality at the site for lead,  
329 arsenic and any other toxic metal that may reasonably be believed to be  
330 present in the area or in the type of deposit from which the extraction will be  
331 made, and the base flow of surface water within 2 miles of the site.

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333 E. Special Exceptions. The applicant can request a special exception from  
334 the application requirements of this section if it can demonstrate that the  
335 information required can be provided by alternative means or is not necessary  
336 for an evaluation of the particular mining operation, and that the public health,  
337 safety and welfare will not be adversely affected thereby.

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339 **3.1.1235 Minimum Standards of Operation.** The Board may grant a  
340 license to mine if the applicant can demonstrate that the following minimum  
341 standards of operation will be met:

342 A. General Standards.

343 (1.) The operator shall stake or otherwise mark the borders of the  
344 entire site and shall secure the site by fencing or other equally effective  
345 measures.

346 (2.) The operator shall apply for and be granted such driveway permits  
347 as shall be used for access to the site.

348 (3.) The operator shall demonstrate compliance with all of the other  
349 provisions of this Article.

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351 (4.) The operator shall have obtained a blasting permit from the Town  
352 for any blasting operations.



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

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

360 B. Standards Regarding Off-Site Effects.

361 (1.) The operator shall undertake all measures necessary to control  
362 surface water runoff from nonmetallic mining operations in order to prevent  
363 pollution and erosion of sediment onto neighboring properties, surface water  
364 and groundwater, and shall also comply with the standards for erosion control  
365 under Wisconsin Administrative Code Articles NR 216 and NR 151 as  
366 applicable.

367 (2.) In the event that the mine site contains areas adjacent to the  
368 nonmetallic mining operations that are being used for agricultural, commercial  
369 or residential purposes, the operator shall undertake all measures necessary to  
370 control surface water runoff from those areas from entering mining operations  
371 or otherwise causing contamination of surface water and groundwater.

372 (3.) The operator shall provide a wooded or natural buffer area of a  
373 minimum of 75 feet wide along bordering property lines and public roadways.

374 (4.) The operator shall screen the mining operations from public view  
375 to the maximum extent practicable through the use of berms, vegetation,  
376 additional setbacks or other effective measures.

377 (5.) The operator shall limit normal hours of operations to 12 hours a  
378 day Monday through Friday during daylight hours and not later than 6:00 p.m.  
379 and on Saturdays to no more than 10 hours from 8:00 a.m. to 6:00 p.m. to  
380 minimize off-site impacts to residents. Equipment maintenance may take place  
381 Monday through Friday until 8:00 p.m. The operator may submit a plan for  
382 extended hours as a special exception, if it can demonstrate that additional  
383 hours are necessary for the mining operation and it would be consistent with  
384 public, health safety and welfare.

385 (6.) The operator shall ensure that trucks from the mining site shall  
386 not interfere with the safety of children being taken to or returned from school,  
387 or the safety of residents and commuters at times when traffic volume from  
388 commuters going to and from work is highest. In the event of conflicts between  
389 hauling operations and school bus operations, the Board may impose  
390 reasonable restrictions on the hauling operations to protect the operation of  
391 school busses and the children waiting for, entering, or disembarking from the  
392 busses. Such restrictions shall be effective immediately, but may be appealed  
393 to the Board.

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395 (7.) The operator shall limit night lighting on site to that which is  
396 minimally necessary for security and it shall be shielded from illuminating

397 off-site areas. There shall be no illumination of required buffer areas. Every  
398 effort consistent with legal requirements for aerial safety shall be made to  
399 minimize illumination of the night sky.

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402 (8.) The operator shall utilize all relevant dust control measures  
403 specified in Wis. Admin. Code NR 415.075.

404 (9.) The operator shall control off-site noise levels to the maximum  
405 extent practicable. Noise generated by mining operations shall not cause the  
406 average noise level for any one-half hour between the hours of 6 a.m. and 8  
407 p.m. to exceed 60 dbA or to exceed 50 dbA between 9 p.m. and 7 a.m. as  
408 measured within 100 feet of any residential dwelling nor shall it cause noise  
409 that exceeds 80 dbA at the site's property lines.

410 (10.) Intermittent or impact noise caused by operation of the  
411 mine, including blasting, that is deemed by the Health  
412 Department or Town Board to be creating  
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414 C. Standards Regarding Groundwater and Surface Water.

415 (1.) Effects on Groundwater Quality. Mining operations shall  
416 not cause groundwater quality to fall below the standards in  
417 Wis. Admin. Code ch. NR 140.  
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420 (2.) The operator shall install at least one monitoring well, as defined  
421 and in Wis. Admin. Code ch. NR 141.

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

424 (b.) Mining operations shall not cause a significant reduction in  
425 the quantity of groundwater available for reasonable use by current users  
426 within 2 mile of the mine site. A significant reduction is a drop in the water  
427 table that results in a substantial adverse impact on a private well including  
428 but not limited to the inability of a well to provide water on a continuous basis.

429 (3.) Effects on Surface Water. The operator shall comply with all  
430 requirements of Eau Claire County and the State of Wisconsin with respect to  
431 the effects of mining operations on surface waters.

432 D. Hazardous materials.

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

435 (2.) The operator shall not dispose of waste materials containing any  
436 hazardous chemicals on the site or elsewhere in the Town except at a facility  
437 licensed to store or dispose of said materials

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

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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 Article 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 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.

**3.1.1240 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 Board for all active and intermittent mining sites for which the operator has a license in the Town.

(2.) The annual report and shall include the following information:

(a.) An identification of the operator and location of the mining site.

(b.) A map or drawing accurately showing the area of excavation, the unclaimed area and any the reclaimed area noting the number of acres for each type.

(c.) A description of activities and operations on the site for the previous calendar year.

(d.) A description of activities and operations on the site anticipated for the following calendar year.

(e.) A written report demonstrating how the operator has been in compliance with all terms and conditions of its license and this Article. The report shall also include any groundwater, surface water and other monitoring results required by this Ordinance.

(f.) 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 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 Article in amounts set forth in Town's Municipal Code. If the Clerk has received no complaints concerning the mine operation during the preceding 12 months, and has no substantive information that the operator has, in the preceding twelve months, violated any Town or County ordinance in the process of miner operation, the Clerk may require an abbreviated renewal application and may refund the base administrative fee if no public hearing is held before the Board on the question of license renewal.

(2.) The written request for renewal shall include the annual report

485 from the previous calendar year in accordance with the provisions of Sub  
486 Section 3.1.1240(A).

487 (3.) The Town Board shall review the renewal application within 30  
488 days of receipt to determine whether the application is complete and upon a  
489 determination that it is complete shall forward it to the Board.

490 (4.) The Town Board shall review the application to determine if  
491 additional information or expertise is necessary to properly evaluate the  
492 application. The Town shall retain an engineer or other qualified person with  
493 appropriate expertise to inspect the mine site unless the site is reported as  
494 being inactive during the past year, in which case the Town Board may be  
495 assigned to inspect the site. If no additional information or expertise is deemed  
496 necessary the Board shall schedule the application for a decision under Sub  
497 section 3.1.1240(B)7.

498 (5.) Additional fees. If the Town Board determines that additional  
499 expertise is required, the Board shall authorize hiring an engineer or other  
500 qualified person with appropriate expertise to advise the Town and shall give  
501 written notice to the applicant of the additional administrative fee to be charged  
502 beyond the base administrative fee to cover the cost additional review by  
503 retained expert. The additional fee shall be paid before the additional review is  
504 undertaken.

505 (6.) Once the applicant has submitted any additional information and  
506 has paid the additional administrative fee in the amount charged, the retained  
507 expert shall report to the Board on whether the renewal application meets the  
508 requirements of this Article. The Town Chair shall place the request on the  
509 agenda of the next regular meeting or a special meeting of the Board prior to  
510 the expiration of the license.

511 (7.) The Board may grant the request for renewal if it finds:

512 (a.) there have been no material violations of the Article or the  
513 license which have not been appropriately remedied, and

514 (b.) The operator has not received multiple or recurring citations  
515 or orders for violations of the operator's license or this Article.

516 (c.) All applicable fees have been paid and financial  
517 responsibility requirements have been met.

518 (8.) If the Board denies the request for renewal, the Board shall notify  
519 the operator and provide the operator with an opportunity for a hearing.

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### 521 **3.1.1245 Inspection, Enforcement, Procedures and Penalties**

522 A. Inspection. The Board or other authorized representative of the Town,  
523 may make inspections to determine the condition of nonmetallic mining sites in  
524 the Town in order to safeguard the health and safety of the public and  
525 determine compliance with the minimum standards under this Article upon  
526 showing proper identification, and upon reasonable notice.

527 B. Violations. The following are violations under this Article:

528 (1.) Engaging in nonmetallic mining without an operator's license

529 granted by the Board.

530 (2.) Failure to comply with the minimum standards and other  
531 requirements of this Article.

532 (3.) Making an incorrect or false statement in the information and  
533 documentation submitted during the licensing process or during inspection of  
534 the operation by the Town or its duly appointed representative.

535 (4.) Failure to timely file the annual operational report under Section  
536 3.1.1240

537 (5.) Failure to take appropriate action in response to a notice of  
538 violation, citation, request for additional financial assurance under Section  
539 3.1.1250 or other order issued by the Town.

540 C. Hearings

541 (1.) Any person affected by a notice and order issued in connection  
542 with the enforcement of this Article under Sub section 3.1.1245(D) or upon  
543 denial of an application for a license or license renewal, may request and shall  
544 be granted a hearing on the matter before the Board, provided such person  
545 shall file with the Clerk, a written petition requesting the hearing and setting  
546 forth his name, address, telephone number and a brief statement of the  
547 grounds for the hearing or for the mitigation of the order. Such petition shall be  
548 filed within thirty days of the date the notice and order are served on the  
549 applicant or within 30 days of the denial of an application for a renewal. Upon  
550 receipt of the petition, the Clerk shall set a time and place for a hearing before  
551 the Board and shall give the petitioner written notice thereof.

552  
553  
554 (2.) After the hearing, the Board by a majority vote, shall make findings  
555 as to whether the provisions of this Article have been complied with, and shall  
556 sustain, modify or withdraw the notice under Sub section 3.1.1245(D) or grant  
557 or deny the license or license renewal, and the petitioner shall be notified  
558 within ten days in writing of such findings.

559 (3.) The proceedings of the hearing, including detailed findings of fact  
560 and conclusions of law, and the decision of the Board shall be in writing and  
561 entered as a matter of public record in the office of the Clerk. Such record shall  
562 also include a copy of every notice and order issued in connection with the  
563 case. In addition, the Board may employ a person capable of producing a  
564 verbatim transcript of the proceeding.

565 (4.) Appeal. A person aggrieved by any decision of the Board made  
566 under this Article, may, within 30 days after the filing of the decision in the  
567 office of the Clerk, commence an action seeking the remedy available by  
568 certiorari. The court shall not stay the decision appealed from, but may, with  
569 notice to the board, grant a restraining order. The Board shall not be required  
570 to return the original papers acted upon by it, but it shall be sufficient to  
571 return certified or sworn copies thereof. If necessary for the proper disposition  
572 of the matter, the court may take evidence, or appoint a referee to take

573 evidence and report findings of fact and conclusions of law as it directs, which  
574 shall constitute a part of the proceedings upon which the determination of the  
575 court shall be made. The court may reverse or affirm, wholly or partly, or may  
576 modify, the decision brought up for review.

577 D. Remedies. The Board may take any appropriate action or proceeding  
578 against any person in violation of this Article, including the following:

579 1. Issue a stop work order.

580 2. Issue a notice of violation and order that specifies the action to be  
581 taken to remedy a situation.

582 3. Issue a citation in accord with the Town's citation ordinance.

583 4. Refer the matter to legal counsel for consideration and  
584 commencement of legal action including the assessment of penalties under Sub  
585 Section 3.1.1245(F) and injunctive relief.

586 (5.) Suspend or revoke the operator's license under Sub Section  
587 3.1.1245(E).

588 E. License Suspension or Revocation. After giving notice and a hearing, the  
589 Town Board may be suspend or revoke an operator's license for a violation  
590 under Sub Section 3.1.1245(B).

591 F. Penalties.

592 (1.) Any person or entity who is adjudicated for a violation shall pay a  
593 forfeiture of not less that \$100 per violation nor more than \$5000 per violation  
594 and be subject to injunctive relief. Each day a violation exists is a separate  
595 violation.

596 (2.) Any person or entity adjudicated to be in violation of this Article  
597 shall pay court costs and reasonable attorney's fees. The remedies provided  
598 herein shall not be exclusive of other remedies.

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

602

### 603 **3.1.1250 Financial Assurance**

604 A. Financial assurance shall be provided to the Town as a condition of  
605 license approval in the amount necessary for the following:

606 (1.) Road repair: An amount necessary for the repair and maintenance  
607 of Town roads used for truck traffic transporting materials to or from the site.

608 (2.) Water Supply: An amount necessary to provide an alternative  
609 water supply to potentially affected residences or agricultural operations within  
610 two miles of the site or such other area shown to be affected by the operator's  
611 operations.

612 B. The form of financial assurance made to the Town shall be that form prescribed  
613 by the Board and may include performance bonds, irrevocable letters of credit or other  
614 measures.

615

616 C. In the event the Town determines that the amount of financial assurance

617 must be increased to meet specific road repair or water supply needs, or the  
618 amount available has been utilized, the Town shall notify the operator of the  
619 additional amount needed and the basis for the request. The operator shall  
620 have 30 days to provide the increased amount.

621 D. The operator shall also provide to the Town proof that it has provided the  
622 financial assurance for reclamation required under Wisconsin law.

623

### 624 **3.1.1255 Damages to Private Water Supply**

625 A. A property owner who owns a well within 2 miles of the mine site may  
626 seek remedies under Sub Sections 3.1.1255(B-E) for any of the following  
627 damages to private water supply:

628 (1.) A preventative action limit or enforcement standard is exceeded in  
629 a private water supply well on the owner's property.

630 (2.) A substantial adverse effect on the quantity or quality of water  
631 from a private well on the owner's property occurs, including but not limited to  
632 the inability of any such well to provide water on a continuous basis.

633 (3.) A lowering of surface waters which serve as a source of water for  
634 personal, agricultural or municipal functions on the owner's property to levels  
635 below base flow levels for more than 5 days.

636 B. Any property owner under Sub Section 3.1.1255 (A) seeking a remedy  
637 under this Section shall simultaneously file a notice with the Town and the  
638 mine operator of the occurrence of the event under Sub Section 3.1.1255 (A)  
639 explaining the nature and extent of the problem.

640 C. Within 24 hours of receipt of such notice under Sub Section 3.1.1255  
641 (B), the Town may use funds provided under Section 3.1.1250 to provide an  
642 adequate interim water supply. The Town shall also use funds under Section  
643 3.1.1250 to indemnify the Town for any claims filed under Wis. Stat. 281.77(4).  
644 An interim water supply shall continue until the Town has approved the report  
645 or plan under Sub Section 3.1.1255 (D).

646 D. Within 20 days of receipt of notice under Sub Section 3.1.1255 (B), the  
647 mine operator shall provide to the property owner and to the Town a report  
648 that demonstrates that the damage to the property owner was not attributable  
649 to the mining operation or to present a plan for a permanent alternative water  
650 supply to be paid by the operator.

651 E. The Town shall in consultation with the property owner review the report  
652 or plan and approve or deny such plan. If the Town determines that the mine  
653 operator was not the cause of damage to the private water supply, the operator  
654 may elect to be reimbursed by the property owner for the costs of supplying  
655 water during a period not exceeding one year.

656

657

658 F. A property owner who owns a well beyond 2 miles of the mine site may  
659 apply to the Town for use of funds under Sub Sections 3.1.1250(A-D) to  
660 remedy damages to a private water supply identified in Sub Section 3.1.1255

661 (A), provided that the property owner can demonstrate to the Town that the  
662 damage to the private water supply was caused by the mine. If the Town  
663 determines that the damage was caused by the mine, the property owner can  
664 utilize the remedies in Sub Sections 3.1.1255 (B-D).

665 G. Prior to commencing operations, the operator may test all wells within 2  
666 miles of the site to determine water quality and flow levels. All testing must be  
667 done by a laboratory approved by the State of Wisconsin or an organization  
668 selected by the applicant and acceptable to the owner or resident and the  
669 Town. Reasonable and reasonably related costs of such independent testing  
670 shall be the sole responsibility of the applicant. Failure to test a well  
671 constitutes a waiver of the right to assert in any proceeding before the Town  
672 Board that the water from an untested well was contaminated, unhealthy, or  
673 distasteful, or that flow rates were inadequate, prior to the commencement of  
674 operations. A landowner who does not permit the operator to test his or her  
675 well or wells has waived his or her right to receive funds or other assistance  
676 administered under this section. (The Town should not try to limit any party's  
677 rights in court.)

678  
679 **3.1.1260 PROPERTY VALUE GUARANTY.** The purpose of this section is to  
680 protect the defined property owners from loss in real estate value because the  
681 Town has issued a license under this ordinance.

682 A. Prior to the initial issuance of a license under this ordinance, the  
683 assessed value and fair market value as of January 1 of the year of the  
684 issuance of the license of every quarter-quarter or smaller parcel of land, any  
685 part of which is one mile or less from any part of the mine site shall be  
686 determined and recorded.

687 B. Determination of Fair Market Value.

688 (1.) An owner desiring to sell any such property shall notify the Town of that  
689 fact not later than the 20<sup>th</sup> anniversary of the initial grant of a permit under this ordinance  
690 by the Town Board for the mine closest to that property

691  
692 (2.) The owner and licensee shall then agree on an appraiser who is  
693 licensed as a real estate appraiser in Wisconsin.

694 (3.) In the event licensee and the owner cannot agree on an appraiser,  
695 the owner shall select a bank or credit union in Eau Claire County, with whom  
696 the owner does not do business, to provide the name of an appraiser it  
697 regularly employs to do appraisals.

698 (4.) The appraiser selected pursuant to 2. or 3. above shall provide  
699 applicant and the owner with an appraisal of the fair market value of the  
700 property assuming the non-metallic mine did not exist.

701 (5.) The licensee shall pay for the appraisal.

702 C. Sale of Property.

703 (1.) The owner shall then enter into a listing contract with a Wisconsin  
704 licensed real estate broker. The listing contract shall exclude licensee as a



705 potential buyer so that if licensee purchases the property, no commission shall  
706 be due.

707 (2.) Before accepting any offer of less than the Fair Market Value, the  
708 owner shall give three business days notice by personal delivery of a copy of the  
709 offer to licensee's agent named in the license application. If the licensee objects  
710 in writing within two (2) business days of receipt of the offer, the owner shall  
711 not accept such offer.

712 (3.) If the owner sells the property for less than the Fair Market Value,  
713 licensee shall pay the owner the difference between the selling price and the  
714 Fair Market Value less the realtor's commission that would have been payable  
715 on that difference. The licensee shall make the payment within 30 days of the  
716 recording of the conveyance of the property.

717 (4.) If the property is not sold within 180 days of the date of the listing  
718 contract, licensee shall immediately purchase the property for the Fair Market  
719 Value less the realtor's commission that would have been paid if sold under the  
720 listing contract.

721 D. Applicability.

722 (1.) The Guaranty shall apply only once for any property identified in  
723 Sub Section 3.1.1260 A, above.

724 (2.) Properties do not qualify for the Guaranty in the event the property  
725 owner wishes to sell or otherwise convey the property to a third party by a  
726 transaction which is not considered an arms length transaction (such as a sale  
727 or gift to a relative).

728

729 **3.1.1265 Severability, Interpretation, and Abrogation**

730 A. Severability.

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

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

740 B. The provisions of this Article shall be liberally construed in favor of the  
741 Town and shall not be construed to be a limitation or a repeal of any other  
742 power now possessed or granted to the Town.

743 C. This Article is not intended to repeal, annul or interfere with any  
744 easements, covenants, deed restrictions or agreements created prior to the  
745 effective date of this Article.

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**3.1.1270 Effective date.**

This ordinance shall take effect upon passage and publication by law.

Passed this <sup>th</sup> day of September, 2014.

Town Board, Town of Union

\_\_\_\_\_  
Fred Belay, Town Chairman

Attested \_\_\_\_\_  
Katie Garrett, Clerk

\_\_\_\_\_  
Gloria Bloom, Town Supervisor

\_\_\_\_\_  
Jeff Bechard, Town Supervisor

