

**TOWN OF CUTLER
NONMETALLIC MINING ORDINANCE**

No. 2018-4

The Town Board of the Town of Cutler ("Town") hereby ordains as follows:

SECTION ONE: PREAMBLE

The purpose of this Ordinance is to promote the health, safety and general welfare of the people and communities within the Town and set forth the rules and procedures for this municipality regarding nonmetallic mining operations within the Town. This Ordinance shall serve to establish a local permit process to regulate non-metallic mining sites in the Town of Cutler after the effective date of this Ordinance. This Ordinance is adopted pursuant to the Town's village and police powers under Wisconsin law.

SECTION TWO: INTENT

The general intent of this Ordinance is to regulate the location, construction, installation, alteration, design, operation and use of all nonmetallic mines so as to protect the health of the Town residents, to secure safety of the Town residents and to promote the administration and enforcement of this Ordinance and provide penalties for its violations.

SECTION THREE: 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 the Wisconsin Statutes.

SECTION FOUR: DEFINITIONS

Nonmetallic mining means all of the following:

- a. Operations or activities at a nonmetallic mining site for the extraction from the earth of non-metallic aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging.
- b. Processes carried out at a nonmetallic mining site that is related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. These processes include, but are not limited to, stockpiling of materials, blending material aggregates or nonmetallic materials with other material

aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping and dewatering.

Nonmetallic mining shall not include the following activities:

- a. Excavations or grading by a person solely for domestic use at his or her residence.
- b. Grading conducted for farming, preparing a construction site or restoring land following a flood or natural disaster.
- c. Excavations for building construction purposes.
- d. Any activities conducted at a solid or hazardous waste disposal facility site required to prepare, operate or close a solid waste disposal facility, under applicable state statutes.
- e. Nonmetallic mining does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic materials, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

SECTION FIVE: COVERAGE

- (1) Nonmetallic mining in the Town shall be allowed only as provided for in this Ordinance.
- (2) The applicant shall apply for a Town permit for a nonmetallic mine prior to starting work on any mining structure or facility and prior to operating any nonmetallic mine in the Town. The application shall be submitted on a form provided to the applicant by the Town Clerk, a copy of which is attached hereto.
- (3) The Town Board shall be the sole determining body of whether to issue the permit, and after a public hearing has been held by the Town Board. Notice shall be given by US Mail to all adjoining landowners to the proposed nonmetallic mine.
- (4) The fee for such permit shall be established annually by the Town Board. The permit shall be issued from January 1st to December 31st.
- (5) The Town permit shall be void if the permittee violates any conditions of the permit or any conditions of any required Federal, State, County, or other Town of Cutler (ie Driveway, Fire Number, Building, etc) permits.

SECTION SIX: PROCEDURES

- (1) The applicant shall complete a Town of Cutler Nonmetallic Mining Permit Application, include items; in the order of the list required, per ordinance, and pay the required application fee.
- (2) After receiving the application and the application fee, the Town Clerk shall mail a copy of the application to all adjoining landowners to the proposed nonmetallic mining site with the date and time of the next Town Board Meeting.
- (3) The Clerk shall then place the application on the agenda for the next Town Board Meeting.
- (4) At the public hearing by the Town Board, the Town Board shall take public comment on the proposed mine. Before making a decision on the application, the Town Board shall

- determine whether the application is complete, and whether the applicant has applied for or received any required Federal, State and County permits for the proposed mine.
- (5) The Town Board shall grant the permit, either with or without conditions, if it is determined that the development and operation of the nonmetallic mine is in the best interest of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare.
 - (6) The Town Board may conditionally approve the permit and may attach conditions to protect public health and safety and promote the general welfare of the Town. Such conditions may include, but are not limited to the following:
 - a. Restrictive provisions and proof of financial security for reclamation;
 - b. Restrictive provisions and proof of financial security for Town road maintenance and repair;
 - c. Restrictions on hours of operation, restrictions on truck routes on Town roads;
 - d. Restrictions on truck and traffic volume into and out of the mine site;
 - e. Restrictions to protect groundwater quantity and quality;
 - f. Restrictions to safeguard public and private drinking and agricultural wells;
 - g. Restrictions to control air emissions and dust from the mine and its operations; and
 - h. Any other restrictions deemed necessary or appropriate by the Town Board to protect public health and safety and promote the general welfare of the Town and its citizens.
 - (7) Non-metallic Operations Plan Narrative. The applicant shall submit a mining operations plan narrative, including:
 - a. A description of the type of product to be mined;
 - b. A description of the method of mining from the site;
 - c. A description of the method of moving material mined from the site for processing;
 - d. A description of the method of processing material mined from the site;
 - e. A description of the method of loading material mined from the site for transporting;
 - f. A description of the method of transporting material mined from the site to its destinations;
 - g. A description of any other equipment, structures or land improvements at the mining site;
 - h. The estimated quantities of material to be mined from the site, from the current year to completion of mining;
 - i. The measures to be taken to control noise;
 - j. The measures to be taken to control wind-blown sand;
 - k. The measures to be taken to control access to the site;
 - l. The measures to be taken to control glare;
 - m. The measures to be taken to prevent trespassing;
 - n. The measures to be taken to prevent waste accumulation;
 - o. The measures to be taken to prevent erosion;
 - p. The measures to be taken to prevent stagnant water;
 - q. The measures to be taken to preserve existing vegetation;
 - r. A description of the hours of operations: mining, moving, processing, loading and transporting;

- s. If mined material will be shipped off-site by truck, a description of the type of trucks used, the weight of loaded trucks, the number of trucks leaving the site per day and the route through the Town to be used by trucks leaving the site; and
 - t. A description of any other significant aspect of proposed mining operations.
- (8) Hydrogeological Report. The applicant shall submit a current hydrogeological report prepared by a qualified engineer, explaining the impact of the proposed mining operations upon the groundwater under the mining site and under adjacent property within ½ mile of the mining site.
- (9) Non-metallic Mining Site Plan. The applicant shall submit a mining site plan (drawing) including the lot or lots on any portion of which mining, moving, processing, loading and transportation is to occur, and including adjacent property within 200 feet of the lot boundaries, which has been prepared by a registered engineer or land surveyor, is dated, sealed and signed and is on a scale of 1 inch = 100 feet, and which includes the following:
- a. A North point, scale, date and revision block;
 - b. Adjacent public streets which provide access to the site;
 - c. The location of all existing structures and land improvements;
 - d. Delineation of the 100-year flood plain boundaries;
 - e. Existing elevations at 5-foot contours;
 - f. Existing driveways and on-site service roads;
 - g. Bench mark references;
 - h. The location of any recorded easements or rights-of-way;
 - i. The location of any fences, gates, signs and parking areas;
 - j. The location of any fixed mining equipment or structures;
 - k. The location of any fixed moving equipment or structures;
 - l. The location of any fixed processing equipment or structures;
 - m. The location of any fixed loading equipment or structures;
 - n. The location of any fixed transportation equipment or structures;
 - o. The boundaries of the lot or lots for which a permit is sought;
 - p. The boundaries of adjacent properties within 200 feet of the lot boundaries;
 - q. The boundaries of the area proposed to be mined, with boundaries indicated and acreage indicated;
 - r. The location of any exterior lighting fixtures; and
 - s. The boundaries of any man-made lakes and an indication of the existing acreage of surface area.
- (10) Fees. The applicant shall submit a permit application and review fee to be remitted to the Town in such amounts and at such times as follows:
- a. \$1,500.00 to be remitted simultaneously with the submission of the other submittals required by this section;
 - b. The Town's actual costs for review of a permit application, including the fees of a planning consultant retained specifically to review an application, the costs of Town employees to review an application, and the Town's costs for giving notice of the public hearing on the application.

(11) **PERFORMANCE GUARANTEE.**

- a. Performance Guarantee Required; Contents. Each applicant for a mining permit for whom a permit has been authorized by the Town Board shall submit to the Town a performance guarantee in the form of a cash deposit, certified check, irrevocable bank letter of credit, surety bond, or other type of security acceptable to the Town Board. The performance guarantee shall name the Town as the beneficiary. The performance guarantee shall be conditioned upon the prompt and complete compliance by the applicant with all terms of this Ordinance and with the terms and conditions of a mining permit issued in accordance with this Ordinance.
- b. Amount.
- (i) The amount of the required performance guarantee shall be established by the Town Board. In establishing the amount, the Town Board shall consider the prevailing cost to complete restoration of the Town roads and to complete removal of all mining, moving, processing and loading equipment and any other equipment if the permittee terminates the operations, court costs and other reasonable expenses.
 - (ii) In establishing the amount, the Town Board shall also consider the amount of any performance guarantees which an applicant may have provided to Juneau County which guarantee completion of any of the reclamation work.
 - (iii) Issuance of Permit Conditioned on Receipt of Performance Guarantee. The Town Clerk shall not issue a mining permit authorized by the Town Board until he or she has received the required performance guarantee as described in this section and in the amount as established by the Town Board when it authorized the permit.
 - (iv) Special Assessment in Case of Insufficient Performance Guarantee. If the performance guarantee submitted in accordance with this section is insufficient to pay for the costs for restoration of the Town Roads, or to pay for the costs for removal of all mining, moving, processing, loading and transportation equipment, or to pay for the Town's court costs and other reasonable expenses, or to pay for any or all of the above, then any of said costs not covered by the performance guarantee may be reported to the Town Assessor to be levied by him or her as a special assessment upon the premises owned by the permittee. Such special assessment shall be subject to review after proper notice is given as in all other cases of special assessments prescribed by Wisconsin law, and such special assessment when confirmed shall be a lien upon the premises and shall be collected in the same manner as other taxes.

(12) **TERM OF PERMIT.**

Each permit issued by the Town in accordance with this Chapter shall be valid for a period of one (1) year from the date of authorization by the Town Board.

(13) **TRANSFERABILITY.**

A permit issued pursuant to this Chapter may be transferred, provided a written request for transfer is submitted to the Town and provided that the Town Board approves the transfer. The transfer of an existing permit shall not be unreasonably refused by the Town Board.

SECTION SEVEN: OTHER PROVISIONS

Any permit granted hereunder shall be subject to the following conditions:

- (a) No vehicle entering or leaving the nonmetallic mining site shall violate any road weight limits set by the Town of Cutler as per Wisconsin State Statutes 349.16. A bond of \$2,000,000.00 per mile of Town road utilized by nonmetallic mining site traffic must be submitted to the Town Clerk before any permit is granted to ensure the quality of the road is maintained. An agreement must be reached with the Town of Cutler regarding the maintenance and repair of Town roads used as a haul route. Such agreement shall pertain to improvements, repairs and maintenance of any Town roads before, during or after project completion to be used for a haul route. Such agreement shall take into account the dust from additional truck traffic, road design as specified in Wisconsin Department of Transportation Chapter 204 Existing Town Road Improvement Standards, existing usage of the Town road, location and number of residents along the haul route.
- (b) No vehicles or equipment utilized for nonmetallic mining shall be operated by the permittee or the permittee's agents or employees in or adjacent to the nonmetallic mining site during the following times: between 10:00 P.M. and 6:00 A.M. Monday through Friday and all hours during Saturday and Sunday. Any exceptions in hours will be reviewed case by case.
- (c) No person shall be issued or re-issued a non-metallic permit in the Town until the appropriate fee has been paid to the Town Clerk and all, if any, delinquent taxes or special assessments owed by the perspective permittee or affecting the mining site have been paid to the Town.
- (d) No person shall be issued or re-issued a non-metallic mining permit in the Town who has failed to properly and fully complete and submit to the Town Clerk the application form as developed and provided by the Town.
- (e) No person shall be issued or re-issued a non-metallic mining permit in the Town if the applicant for the non-metallic mining permit:
 - (i) Fails to develop and submit to the Town Board of the Town a non-metallic mining operation plan and fails upon operation to comply with the plan;
 - (ii) Fails to meet federal, state and/or county regulations governing operations at their non-metallic mining site in the Town;
 - (iii) Fails to comply with the operational hours for operation of the non-metallic mining site;
 - (iv) Fails to install and maintain a gate at each entrance and exit of the non-metallic mining site accessing town roads or county or state highways to prevent trespassing;

- (v) Fails to provide adequate sanitary facilities at the non-metallic mining site, at a minimum portable toilets, and fails to keep the non-metallic mining site free of trash, standing water, noxious weeds and other debris during and after daily operations at the non-metallic mining site; and
- (vi) Fails to respond to specific questions by the Town Board based on concerns of possible Ordinance violations.

SECTION EIGHT: EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication.

SECTION NINE: EXCEPTIONS FROM ORDINANCE

A nonmetallic mining permit is not required from the Town of Cutler for nonmetallic mines in existence prior to the effective date of this Ordinance or for the activities listed in Wis. Admin Code § NR 135.02(3), or excavations or grading for use at that person's existing cranberry operation.

SECTION TEN: ENFORCEMENT AND PENALTIES

- a. Any violation of this Ordinance shall be punishable by a forfeiture of not less than \$100.00 nor more than \$2,000.00 per day for every day in violation of this Ordinance, plus the costs of prosecution for each and every violation. The Town's Attorney shall expeditiously prosecute all such violators. Each day of violation shall constitute a separate offense. The Town Board or its designee may inspect the mine site at any time for purposes of monitoring or enforcement of this Ordinance.
- b. In addition, in the event of a violation of this Ordinance, the Town Board may take appropriate action to enforce this Ordinance, including action to terminate or modify licensed, application for injunctive relief, action to compel performance or other court action to prevent, restrain, correct or abate such violations(s). To the extent legally permissible, the Court may award costs, disbursements and reasonable attorneys' fees required in enforcing this Ordinance.

The Town of Cutler shall properly post or publish this Ordinance as required under Wis. Stat. § 60.80.

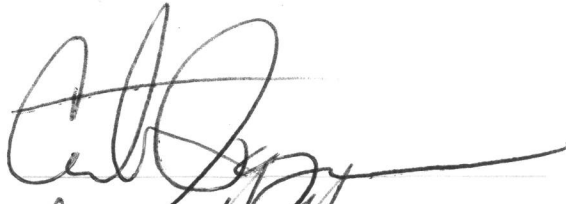
Adopted this 9th day of July, 2018

Signatures for the Town Board.

Chairman

Martin P. [Signature]

Supervisor



Supervisor

Jamie A. Hayward S.E.

Attest:

Town Clerk:

Bonnie H. Bergeson