

ORDINANCE NO. 2013-4

**AN ORDINANCE REGARDING LICENSING OF
NONMETALLIC MINING SITES AND OPERATIONS**

✓ Final Adoption Version

The Town Board of Supervisors of the Town of Cady, St. Croix County, Wisconsin, do ordain as follows:

SECTION I. CREATION OF PROVISIONS.

Title 7, Chapter 3 of the Town of Cady Code of Ordinances is created to read as follows:

Title 7 ► Chapter 3

Nonmetallic Mining Sites and Operations

7-3-1	Authority; Findings; Purpose
7-3-2	Applicability and Scope; Interpretation
7-3-3	Definitions
7-3-4	Operations License
7-3-5	Operations License Application Requirements
7-3-6	License Application Required Information
7-3-7	Small Site License
7-3-8	Minimum Standards of Operation
7-3-9	Annual Report
7-3-10	Inspections
7-3-11	Financial Security
7-3-12	Damage to Private Water Supplies
7-3-13	Mining Agreement
7-3-14	Insurance and Indemnification
7-3-15	Renewal of Operations Licenses
7-3-16	Violations, Enforcement Procedures and Penalties

Sec. 7-3-1 Authority; Findings; Purpose.

- (a) **Statutory Authority.** This Chapter is adopted pursuant to powers granted the Town of Cady, St. Croix County, Wisconsin by the Town's adoption of village powers under Sections 60.10 and 61.34, Wis. Stats., the Town's legal ability to require a highway use agreement under Section 349.16, Wis. Stats., the Town's authority under Section 66.0415, Wis. Stats., to regulate offensive industry, and any other authority, without limitation, under the Wisconsin Statutes and/or Wisconsin Administrative Code. Any amendment, repeal or re-creation of the Wisconsin Statutes and/or Wisconsin Administrative Code relating to this Chapter made after the effective date of this Chapter is incorporated herein into this Chapter by reference on the effective date of the amendment, repeal or re-creation.
- (b) **Findings.**
- (1) Nonmetallic mining operations and associated activities can have both direct and indirect adverse impacts on the Town.
 - (2) While nonmetallic mining operations can make important contributions to the state and local economy, there is a substantial likelihood that nonmetallic mining activities will cause short-term and long-term damage to the physical environment. Nonmetallic mining operations can have adverse impacts on surface water and groundwater and, particularly if blasting and crushing/processing operations are undertaken on the site, can generate harmful levels of noise and dust and other potentially harmful materials.
 - (3) Nonmetallic mining sites can have negative impacts on area property values and farmland preservation efforts, and on landscape and aesthetics.
 - (4) Nonmetallic mining sites can have detrimental impacts if not properly screened or planned for proper reclamation. Nonmetallic mining operations can be a source of light pollution.
 - (5) Nonmetallic mining sites and associated operations can present safety concerns to the public if not properly secured and may constitute an attractive nuisance.
 - (6) Nonmetallic mining sites and associated operations can present public health concerns; respirable crystalline silica has been identified as a possible health-threatening substance, with increased toxicity occurring with freshly-fractured silica.
 - (7) Truck traffic from operations can cause extraordinary wear on highways, roads and streets, and generate off-site impacts including, but not limited to, safety concerns for children and other members of the public who also rely on local transportation assets.
 - (8) The Town of Cady recognizes that while certain aspects of mining operations are subject to federal, state and/or county regulations, there

are no comprehensive federal, state and/or county regulations addressing all aspects of nonmetallic mining operations; many aspects of nonmetallic mining have thus been left unregulated, with potential adverse impacts to the public health, safety and general welfare of the residents of the Town of Cady.

- (c) **Purpose.** The purpose of this Chapter, without limitation, is to:
- (1) Provide reasonable minimum and uniform standards for all nonmetallic mining operations and associated operations in the Town of Cady;
 - (2) Require licenses and adherence to standards for nonmetallic mining operators in order to protect public health and safety, and preserve the scenic beauty and community aesthetics of the Town's environment and landscapes;
 - (3) Implement and facilitate the planning objectives of the Town of Cady Comprehensive Plan adopted pursuant to Sec. 66.1001, Wis. Stats., as a statement on community goals and values and as a means to meeting the consistency requirement prescribed by the State's comprehensive planning law;
 - (4) Establish a fair and efficient process for the review and approval of applications, and assure an integrated, comprehensive review of environmental impacts of nonmetallic mining and related facilities and operations;
 - (5) Provide, through licensing, a legitimate and reasonable means of accountability to minimize potentially hazardous or dangerous impacts, when possible, on the community from nonmetallic mining and associated operations;
 - (6) Protect the habitat of federal and state identified endangered species if present;
 - (7) Safeguard Town policies in regard to farmland, blufflands, and open space protection;
 - (8) Protect the public from damage to both the quality and quantity of surface and ground waters and wetlands;
 - (9) Require construction and operating compliance with all other applicable federal, state, county and town regulations;
 - (10) Protect the transportation resources of the Town;
 - (11) Prevent or minimize adverse impacts from both on-site and off-site operations associated with nonmetallic mining, including a significant loss of property values; and
 - (12) Promote the general welfare of the people of the Town of Cady.

Sec. 7-3-2 Applicability and Scope; Interpretation.

- (a) **General Scope and Applicability.** This Chapter shall apply to all nonmetallic mining sites, operations and associated activities within the Town of Cady except as provided in Subsections (b) and (c) below.

- (b) **Exempt Activities and Operations.** This Chapter shall not apply to the following excavation activities and nonmetallic mining operations:
- (1) Excavations for building construction purposes conducted on the building site.
 - (2) Grading work conducted for preparing a construction site other than a nonmetallic mining site, or restoration work to land following a natural disaster or flood.
 - (3) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
 - (4) Excavations or grading conducted for the maintenance, repair, construction or reconstruction of a highway, railroad or other transportation facility where the excavation or grading is entirely within the property boundaries of the highway, railroad or other transportation facility.
 - (5) Borrow pits and disposal sites for transportation-only projects as defined in Section 7-3-3(b)(4).
 - (6) Nonmetallic mining at nonmetallic mining sites where less than one (1) acre of total affected acreage will occur over the entire life of the mine.
 - (7) Removal from the earth of commodities or products that contain only incidental amounts of nonmetallic minerals/soils, such as forest products, Christmas trees or plant nursery stock, ornamental or garden plants, or agricultural crops.
 - (8) Any activities required to prepare, operate or close a solid waste disposal under Subchs. II to IV of Chapter 289, Wis. Stats. or a hazardous waste disposal facility under Chapter 291, Wis. Stats., that are conducted on the property on which the facility is located; however, a nonmetallic mining reclamation ordinance and the standards established under Sec. 295.12(1)(a), Wis. Stats., shall apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property on which the solid waste or hazardous waste disposal facility is located such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.
 - (9) Nonmetallic mining with a limited purpose and duration through a contract with the Wisconsin Department of Transportation (WisDOT) that imposes reclamation requirements. The duration of the exemption shall be specific to the length of the WisDOT contract for construction of a specific transportation project.
 - (10) Dredging for navigational purposes, to construct or maintain farm drainage ditches and for environmental contamination remediation and disposal of such dredging spoils.

- (c) **Existing Nonmetallic Mining Operations; Registration.**
- (1) Nonmetallic construction-grade sand and gravel mining operations in existence and regularly in use prior to the enactment of this Chapter shall not be required to be licensed under this Chapter, provided said mine operates under its original reclamation plan approved by the County, and the reclamation plan and operations at the site are not modified or expanded in any way subsequent to the adoption of this Chapter. Within sixty (60) days of the effective date of this Chapter, the owner or operator of the existing nonmetallic construction-grade sand and gravel mining site shall register the site with the Town Clerk pursuant to this Subsection.
 - (2) If the mining operations and/or area covered by the original county-approved reclamation plan are modified and/or the operations at the site are expanded or modified in any manner from their original means of operation and/or purpose, the mine and associated operations shall be considered a new operation subject to the licensing requirements, and full compliance with the standards, of this Chapter.
 - (3) Such licensing exemption under this Chapter does not create a complete site exemption from compliance with other applicable federal, state, county and local regulatory requirements, standards and ordinances separate from this Chapter, nor does such exemption prohibit enforcement of other nuisance-type regulations necessary to protect the public welfare.
 - (4) Such nonmetallic construction-grade sand and gravel mining operations in existence at the time of enactment of this Chapter and meeting the criteria of this Subsection shall be required to be registered with the Town Clerk. In registering the site, the owner or operator of such site shall provide the following information:
 - a. Ownership information as prescribed in Sec. 7-3-6(b);
 - b. An accurate map of the site;
 - c. A listing of any hazardous materials or hazardous and toxic substances, including fuel supplies, that will be stored, used or produced on-site and a description of the measures to be used for securing and storing these materials; and
 - d. A copy of the county-approved site reclamation plan and documentation that the site is in compliance with such requirements.
- (d) **Liberal Interpretation of Chapter.** The provisions of this Chapter shall be interpreted to be the minimum requirements for the promotion of the public health, safety and general welfare and shall be liberally construed in favor of the Town of Cady. This Chapter shall not be construed to be a limitation or a repeal of any other power or authority now granted to or possessed by the Town of Cady.

- (e) **Abrogation.**
 - (1) It is not intended that this Chapter repeal, abrogate, annul, impair or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Chapter.
 - (2) Except as is set forth expressly herein, it is not the intent of the Town Board to abrogate, annual or repeal any other ordinance of the Town of Cady or to alter the applicability of laws which are of statewide concern within the Town of Cady. To the extent that a conflict arises between this and any other ordinance, rule or regulation, the more restrictive provision shall control.
- (f) **Town as Regulatory Body.** By adoption and enforcement of this Chapter, the Town of Cady shall not be deemed to be a partner or agent of any person or party to which a license or permit is granted hereunder.

Sec. 7-3-3 Definitions.

- (a) **Interpretation of Definitions.** For the purposes of this Chapter and any license or permit issued in accordance herewith, the following terms, phrases, words and their derivations in this Section shall have the meaning given herein unless otherwise specifically provided for in this Chapter or unless the context clearly indicates otherwise or unless such meaning would be inconsistent with the manifest intent of the Town of Cady. When not inconsistent with the context, words in the present tense include the future tense, words in plural number include words in the singular number, and words in the singular number include the plural number. The word "shall" is mandatory, and not merely directory.
- (b) **Chapter Definitions.** The following definitions shall apply in this Chapter:
 - (1) **Adjacent Landowner/Property.** Any property within one (1) mile [five thousand two hundred and eighty (5,280) linear feet] of a proposed nonmetallic mine site regardless of whether there is a shared property boundary or a residence or structure on the property.
 - (2) **Application.** All necessary and appropriate documentation that an applicant must submit in order to receive a license or permit under this Chapter.
 - (3) **Best Management Practice.** A method or technique that has been consistently shown as producing results superior to others than those achieved with other means, and that is viewed as a performance benchmark within that professional field.
 - (4) **Borrow Site.** An area outside of a transportation project site from which stone, soil, sand, or gravel is temporarily excavated for use at the project site, except the term does not include commercial sources.

- (5) **Buffer.** An undisturbed vegetated area measured from the mine site border into the mine site, in which no nonmetallic mining activities, structures or roads can occur except for the construction and maintenance of a vegetated berm.
- (6) **Commercial Use.** A use that involves the exchange of cash, goods or services, barter, forgiveness of indebtedness, or any other enumeration in exchange for goods, services, entertainment, or the right to occupy space over any period of time.
- (7) **Complete Application.** An application that contains all information, reports, verifications, fees and/or data necessary to enable an informed decision to be made with respect to an application as determined by Town reviewing authorities under the requirements of this Chapter.
- (8) **Computation of Time.** In computing any period of time prescribed or allowed in this Chapter, the day of the act or event from which the period of time begins shall not be included, but the last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday. If the period of time prescribed or allowed is less than seven (7) days, Saturdays, Sundays and legal holidays shall be excluded from the computation.
- (9) **Construction-Grade Sand and Gravel Mining.**
 - a. This industry and use is generally defined in NAICS Code 212321 and specifically comprises establishments primarily engaged in operating construction-grade sand and gravel pits, dredging for construction-grade sand and gravel, and/or washing, screening, or otherwise preparing construction-grade aggregate that is predominantly produced and used for local construction purposes. Specifically excluded are industrial sand mining and related uses generally defined in NAICS Code 212322 and in Subsection (b)(14) below.
 - b. Examples of such construction-grade aggregate uses are:
 - 1. Concrete.
 - 2. Asphalt.
 - 3. Concrete or asphalt road construction.
 - 4. Building or dimension stone.
 - 5. Decorative stone.
 - 6. Retaining walls or revetment rock.
 - 7. Roofing granules.
 - 8. Railroad ballast.
 - 9. Agriculture-related uses such a field lime and bedding sand for livestock.
 - 10. Small quantities of sand and/or gravel used for other purposes such as sand for icy roads, water filtration systems in septic systems, and landfills.

- (10) **Engineer, Registered Professional.** A person who is registered as a professional engineer pursuant to Sections 443.04 and 443.09, Wis. Stats.
- (11) **Entity.** Any individual, corporation, partnership, association, governmental unit or other legal entity which seeks a license or permit under this Chapter.
- (12) **Geologist, Registered.** A person who is registered as a professional geologist pursuant to Sections 443.037 and 443.09, Wis. Stats.
- (13) **Hazardous Waste.** Any solid waste as defined by the Wisconsin Department of Natural Resources in Section 291.01, Wis. Stats., identified as hazardous under Section 291.05(1), (2), (4) or (5), Wis. Stats., and/or is listed as a hazardous waste or a hazardous/toxic substance in NR 661.03 and/or NR 661.24, Wis. Adm. Code.
- (14) **Industrial Sand Mining.** This industry and use is generally defined in NAICS Code 212322 and specifically comprises establishments primarily engaged in operating industrial-grade sand pits/mines, dredging for industrial-grade sand, and washing, screening or otherwise preparing industrial-grade sand for sand used for industrial abrasive, blasting, filtration, foundries, glass, molding and grinding uses. Specifically included in this definition are silica sand mining, quarrying and/or beneficiating. Specifically excluded are construction-grade sand and gravel mining as defined in NAICS Code 212321 and Subsection (b)(9) above.
- (15) **Landowner.** The person who has title to land in fee simple or who holds a land contract for the land. A landowner is not a person who owns nonmetallic mineral rights to land, if a different person possesses title to that land in fee simple or holds a land contract for that land.
- (16) **Legal Holiday.** Any statewide legal holiday specified by state law and other holiday recognized by the Town Board.
- (17) **Mine Site (Nonmetallic Mine Site).** Includes the following:
 - a. Land from which mineral aggregates or nonmetallic minerals will be, or are proposed to be, regularly or intermittently extracted for sale or use by the operator and/or any land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing, drying, dewatering, transfer, transload or screening facilities, private roads, rail spurs, conveyors or haulage ways associated with nonmetallic mining operations;
 - b. All storage and processing areas whether contiguous or not to areas actually excavated for nonmetallic mining;
 - c. Areas where grading or regrading is necessary;
 - d. Areas affected by nonmetallic mining activities, such as the construction, improvement, operation and maintenance of private roads, conveyor systems, or haulage ways;

- e. Areas where nonmetallic mining refuse is deposited;
 - f. All contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or operator;
 - g. Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels or ponds for surface water diversion are located.
- (18) **Mining Operation.** Operations or activities for the extraction from the earth of mineral aggregates and nonmetallic minerals and related operations or activities, including, but not limited to, excavation, grading, or dredging if the purpose of those operations or activities is the extraction of mineral aggregates and nonmetallic minerals and related processes including, but not limited to, stockpiling, crushing, screening, scalping, dewatering, blending or transloading. It does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic mining minerals such as agricultural crops, commercial sod, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.
- (19) **Modification.** The addition, removal, or change of any of a site's boundaries or physical or visually discernable components, facilities or aspects of a nonmetallic mining site and/or associated operations, such as processing facilities and equipment, screening or transload facilities, rail spurs or haulage ways, lighting, scales, equipment sheds and shelters, fuel storage, telecommunications antennas, landscaping, fencing, changing the color or materials of any visually discernable components, vehicular access, parking, and/or upgrade or replacement of equipment for different or more modern equipment. A modification shall not include the replacement of equipment components where the replacement is identical to the component being replaced or for any matters that involve normal repair and maintenance without making significant (as determined by the Town) additions, removals, or changes.
- (20) **North American Industry Classification System (NAICS).** The standard definitions used by federal agencies in classifying business establishments. NAICS was developed by the federal Office of Management and Budget (OMB) to supplant the prior Standard Industrial Classification (SIC) system. NAICS is also used by the U.S. Census Bureau.
- (21) **Nonmetallic Minerals.** A product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, non-renewable material. Nonmetallic minerals include, but are not limited to, stone, rock, sand, gravel, asbestos, silica, beryl, diamonds, clay, coal, shale, feldspar, peat and talc.

- (22) **Nonmetallic Mining.** Means all or any of the processes, methods of approach, applications and means utilized, both mechanically and otherwise, including, but not limited to, crushing, screening, blasting, grading and scalping to cause the occurrence of one (1) or more of the following:
- a. Industrial sand mining;
 - b. Construction-grade sand and gravel mining;
 - c. Extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use, sale or exchange, including drilling and blasting as well as associated activities such as excavating, dredging and/or grading of such materials.
 - d. Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation, drying, pressing, dewatering, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with materials transferred from off-site.
 - e. Manufacturing processes aimed at producing nonmetallic products for sale or use by the operator.
 - f. Stockpiling of nonmetallic minerals or finished products for sale or use off-site, and the stockpiling of waste materials.
 - g. Transporting, transferring or transloading of the extracted nonmetallic minerals, finished products or waste materials to/from the extraction, processing and/or storage site; included within this definition is transportation of extracted materials to or from an extraction site, whether by trucking over state, county or Town roads or highways, by means of a conveyor belt system, or by any other means, whether or not the nonmetallic mine site from which or to which said transportation is maintained is within or outside of the Town of Cady.
 - h. Disposal of waste materials.
 - i. Reclamation of the extraction site.
- (23) **Nonmetallic Mining Refuse.** Waste soil, rock, vegetation and other waste material resulting from a nonmetallic mining operation. This term does not include merchantable by-products resulting directly from or displaced by the nonmetallic mining operation.
- (24) **Officials.** All Town officers, employees, agents, representatives and private consultants hired by the Town.
- (25) **Operator.** Any person who is engaged in, or who has applied for or holds a license to engage in nonmetallic mining operations, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors. For purposes of this Chapter, the operator shall also be considered the applicant for required licenses and permits, unless otherwise specified in a specific application.

- (26) **Operations License (License).** The license required of nonmetallic mining operators in this Chapter to conduct nonmetallic mining and associated operations in the Town.
- (27) **Persons.** Any of the following entities: natural persons; corporations; partnerships; associations; limited liability companies; firms; bodies politic; joint stock company, association, public or private corporation; any federal, state, county, municipal, town, municipal utility, municipal power district or other governmental entity; cooperative; estate; trust; receiver; executor; administrator or any other fiduciary; any representative appointed by order of any court or otherwise acting on behalf of others; or any other entity of any kind which is capable of being sued.
- (28) **Reclamation.** The rehabilitation of an extraction site including, but not limited to, removal of nonmetallic mining refuse, grading of the site, replacement of topsoil, stabilization of soil conditions, establishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution, and, if practical, restoration of plant, fish and wildlife habitat.
- (29) **Town.** The Town of Cady, St. Croix County, Wisconsin, and its officials.
- (30) **Town Board.** The Town of Cady Board of Supervisors (Chairperson included).
- (31) **Town Roads.** Roads dedicated to the public, owned and maintained by the Town of Cady for the purpose of facilitating public travel under Chapter 82, Wis. Stats., and includes the meaning of "town highway" as that term is defined in Ch. 990, Wis. Stats.
- (32) **Town Road Exceptional Maintenance.** Maintenance above and beyond "normal maintenance" which is caused by Town road use by motor vehicles and heavy equipment by the operator in conjunction with the construction, operation, maintenance, and/or reclamation of a nonmetallic mining site. What constitutes exceptional maintenance shall be determined upon the basis of a study of the Town roads, at the applicant's expense, to be used for hauling at or immediately after the effective date of this Chapter, the purpose which shall be to determine the baseline condition of the right-of-way and pavement, its remaining useful life and any repairs or improvements required in order to facilitate the anticipated weight and volume of traffic to and from the nonmetallic mining site. Upon the basis of regular annual inspections by the Town or inspections on a periodic basis performed as a result of perceived damage to any given portion of Town roads to be used for hauling, if it is determined by the Town that maintenance or repairs are necessary beyond those included under the classification of "normal maintenance" and the costs thereof shall be borne by the operator.
- (33) **Town Road Normal Maintenance.** Such recurring or non-recurring maintenance of the right-of-way, roadbed, or pavement of any or all

portions of the designated Town roads as are occasioned by normal wear and tear, weather conditions (both anticipated and unanticipated), and other factors taken into account in establishing both the remaining useful life of a Town road in accord with accepted highway maintenance practices used by the Town in accord with Wisconsin Department of Transportation standards and to meet or exceed the remaining useful life of a highway.

- (34) **Waste Material.** The non-marketable by-product that results directly from or is displaced by extraction or that is a by-product of a manufacturing process that is scheduled for disposal at the extraction site or some other site as part of a reclamation plan.

Sec. 7-3-4 Operations License.

- (a) **License Requirement.** No person shall operate a nonmetallic mining site and/or associated facilities in the Town of Cady without first obtaining an Operations License from the Town Board.
- (b) **License Term.**
- (1) **Term.** An Operations License shall be valid for a two (2) year period, commencing on the date the license is issued by the Town and ending on the second anniversary of the issuance of the license.
- (2) **Renewals.** An Operations License may be renewed pursuant to Sec. 7-3-15 below.
- (c) **License Amendment.** If the Town Board has authorized and issued an Operations License, the operator may request an amendment to that license during the license term. License amendment requests shall be reviewed under the same procedures as the original license application.
- (d) **License Revocation.** An Operations License may be revoked pursuant to the procedures in Sec. 7-3-16.
- (e) **License Transfer.**
- (1) **Transfer Criteria; Compliance with Conditions.** An Operations License shall not be transferred to a new operator unless prior written permission has been given by the Town Board, which shall be granted by the Town Board if the new operator agrees to comply with all conditions in place with the current operator and if the new operator provides all financial assurances as may be required by the state, county or Town of Cady.
- (2) **Assumption of Mining Agreement Requirements.** If the current operator has entered into a Mining Agreement pursuant to Sec. 7-3-13, the current license shall not be transferred unless the new operator agrees in writing with the Town to assume all of the obligations, without exception, under said Mining Agreement and to abide by and

comply with all of the terms and conditions set forth in said Mining Agreement.

Sec. 7-3-5 Operations License Application Requirements.

- (a) **Application Submittal; Application Fee; Summary Statement.** An applicant for an Operations License shall submit fifteen (15) copies of required application materials, including all required documentation under Sec. 7-3-6, to the Town Clerk, accompanied by the payment of the application fee of Two Thousand Dollars (\$2,000.00) and the required deposit for the Base Administrative Escrow Account per Subsection (b)(3) below. Such fees shall be payable to the Town of Cady. The application shall include a summary statement of the proposed operation, signed by the operator and the landowner, provided the landowner is a person other than the operator.
- (b) **Preliminary Review by the Town.**
- (1) **Preliminary Review.** The Town Clerk shall forward the application to the Town Board for review to determine if additional information or professional recommendations are necessary to properly evaluate the application. If no additional information or expertise is deemed necessary to properly evaluate the application, the Town Board shall schedule the application for consideration under Subsection (d) below.
- (2) **Consulting Professionals; Additional Information.**
- a. The Town Board may, at the applicant's expense, employ or retain the services of an engineer, planner, geologist, soils scientist, hydrologist, attorney, accoustical expert or other professional experts ("retained experts"), or designated Town employee, necessary to review and evaluate the application and report to the Town Board, in writing, whether additional information is required for review of the application and to determine whether the application meets the standards of this Chapter.
- b. The Town Board or its retained experts may request that the applicant submit additional information if the Town Board or its retained experts determine that an application is incomplete or inadequate.
- c. Once the applicant has submitted all required information, or any additional requested application information, the retained expert(s) shall report to the Town Board, in writing, on whether the application meets the requirements of this Chapter. The Town retains the right to request additional application information throughout the review process.

- d. The application shall be considered as being officially submitted when all of the application information requirements, including the payment in full of all required fees, are complied with.

(3) **Base Administrative Escrow Account.**

- a. At the time an application is to be filed with the Town, the applicant shall execute for the benefit of the Town an agreement agreeing to pay and provide adequate financial security as required herein.
- b. The applicant operator shall deposit with the Town Clerk funds necessary to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation (retained experts), or a designated Town employee, to the Town in connection with the review of the application, and including the construction, inspection and modification of the site once permitted. The escrow account funds may also be used by the Town to cover copying and reproduction costs of documents and public records requests related to the application and/or license. Such deposit to the Base Administrative Escrow Account shall be in addition to any other application and compliance fees required by the Town or other regulatory authority.
- c. The initial deposit amount shall be Five Thousand Dollars (\$5,000.00), to be deposited with the Town Clerk within five (5) days of filing an application for an Operations License.
- d. The Town shall maintain a separate Base Administrative Escrow Account for all such funds. The Town's consultants/experts, or designated Town employee, shall invoice the Town for services provided in reviewing the application, including costs associated with construction or an approved modification and/or inspections and monitoring, and such invoices shall be provided to the operator.
- e. If at any time in the process this escrow account has a balance of less than One Thousand Dollars (\$1,000.00), the operator/applicant shall immediately upon notification from the Town replenish said escrow account so that it has a balance restored to a minimum of Five Thousand Dollars (\$5,000.00). Such additional escrow funds shall be deposited with the Town before any further review or consideration is taken on the application.
- f. In the event that the remaining amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the process, the remaining balance shall be promptly refunded to the operator.
- g. The total amount of escrow funds needed as set forth in this Subsection may vary with the scope and complexity of the project.

the completeness of the application, and other information as may be needed to complete the necessary review, analysis and inspection of any construction for compliance with the conditions of license.

(c) **Public Hearing.**

(1) **Hearing Requirement.** A public hearing shall be scheduled and conducted on the license application if the preliminary application requirements of this Chapter have been satisfied.

(2) **Publication of Hearing Notice; Notification of Nearby Property Owners.**

- a. Notice of the time, place and purpose of such hearing before the Town Board shall be given by publication of a Class 2 Notice as prescribed by the Wisconsin Statutes a minimum of ten (10) days prior to the public hearing in the official Town newspaper and by legal posting.
- b. Notice of the time, place and purpose of such public hearing shall also be mailed by certified mail, return receipt requested, to the applicant, members of the Town Board, and the last known owners of record as listed in the office of the Town Assessor who are owners of property in whole or in part situated within one-half mile (2,640) feet of the boundaries of the applicant's parcel, said notice to be sent at least ten (10) days prior to the date of such public hearing.
- c. After publication and notice, the applicant may request, in writing submitted a minimum of five (5) business days prior to the noticed hearing date, a one (1) month postponement of the public hearing before the Town Board for good cause, provided, however, that the notice of the rescheduled hearing shall again be provided pursuant to this Subsection.
- d. All estimated costs associated with noticing public hearings shall be paid by the applicant to the Town Clerk at the time of making application.
- e. At the Town Board's discretion, the Board shall have the option to set and hold an additional public hearing(s) at a subsequent regular or special Town Board meeting(s); such optional additional public hearing(s) may be necessary if significant new facts have now been made available. Such hearing(s) shall be noticed and conducted as prescribed in this Subsection.
- f. Failure to fully comply with the notice to adjacent property owners shall not, however, invalidate any previous or subsequent action on the application.

- (3) **Additional Notice Requirements for Floodplain/Shoreland or Exclusive Agricultural Zoned Parcels.**
- a. In the event the subject property lies within a floodplain zoning district, notice of the public hearing and a copy of the application under this Chapter shall also be mailed to the District Office of the Wisconsin Department of Natural Resources, at least ten (10) days before the hearing, in accordance with NR 116.20(2)(c), Wis. Adm. Code. This shall be done whether or not the applicant is also required to seek a rezoning or conditional use permit for the parcel separate from the application for an Operations License from the Town of Cady.
 - b. In the event the subject property lies within a shoreland zoning jurisdiction, notice of the public hearing and a copy of the application under this Chapter shall also be mailed to the District Office of the Wisconsin Department of Natural Resources, at least ten (10) days before the hearing, in accordance with NR 115.05(6)(h), Wis. Adm. Code. This shall be done whether or not the applicant is also required to seek a rezoning or conditional use permit for the parcel separate from the application for an Operations License from the Town of Cady.
 - c. In the event the subject property is currently zoned in an exclusive agricultural zoning classification, notice of the public hearing and a copy of the application shall also be given to the Wisconsin Department of Agriculture, Trade and Consumer Protection, in accordance with Section 91.75, Wis. Stats. This shall be done whether or not the applicant is also required to seek a rezoning or conditional use permit for the parcel separate from the application for an Operations License from the Town of Cady.
- (4) **Public Hearing Procedures.** The public hearing shall be conducted pursuant to the hearing guidelines found in Sec. 2-3-14 of the Town of Cady Code of Ordinances. A written record of the public hearing shall be made by the Town Clerk.
- (d) **Town Board Determination.**
- (1) **Town Board Meeting Agenda Notice.** Once the application is complete, any report(s) from a retained expert(s) has been completed and submitted, all required fees have been paid, and the public hearing under Subsection (c) above has been held, 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 costs incurred for the special meeting.
 - (2) **Town Board Evaluation.** The Town Board shall evaluate the application for license issuance, re-issuance or denial of the license and for any conditions to be attached to the license. Included in such

evaluation shall be review and consideration of the application materials and information received by the Town from the operator, additional information required of the applicant by the Town, the general public hearing testimony, and any other pertinent information received from the applicant, any federal, state or county regulatory body or from any other interested persons. Additionally, it is required that specific consideration by the Town Board be given to the following reports and considerations in its evaluation for licensure, in its determination against licensure, and its evaluation regarding placing any conditions to be attached to the license including, but are not limited to, the following, with the Town Board's finding reflected in the official record:

- a. Any relevant written reports, recommendations and/or verifications received by the Town from the Wisconsin Department of Natural Resources or any other federal, state, county or local authority.
- b. Any relevant written reports and recommendations received by the Town from any engineers, attorneys or other experts retained by the Town.
- c. Any relevant written reports and recommendations received by the Town from the applicant.
- d. The potential short-term and long-term adverse or positive effects and impacts of the proposed nonmetallic mining site and associated operations based on the proposed location, including, but not limited to, its effects or impacts on the following:
 1. Existing roads, bridges, culverts, traffic flow, intersection safety, traffic patterns, and designated access routes and Haul Routes.
 2. Surface water quality and drainage.
 3. Groundwater quality and drinking water quality.
 4. Air quality and dust issues.
 5. Adjacent wetlands, floodplains, forests, agricultural and unique lands.
 6. Current and future land uses and neighborhood land use compatibility, for the site and for adjacent landowners.
 7. Current and future property values, for the site and for adjacent landowners.
 8. Long-term farmland preservation and protection of productive agricultural lands.
 9. Soil erosion.
 10. Stormwater management and erosion control.
 11. Applicable zoning regulation(s) compliance.
 12. Consistency with the planning goals and objectives of the Town Comprehensive Plan.

- 13. Town appropriations and revenues.
 - 14. Public health, safety and welfare of Town residents.
 - 15. Noise and light pollution generated from the site.
 - 16. Landscaping and aesthetics.
 - 17. Existing area topography and existing vegetation, including, but not limited to, blufflands and production agriculture areas.
 - 18. Existing wildlife habitat, including any presence of any endangered or protected species.
 - 19. Sufficiency of required monitoring.
 - e. The past license compliance record of the operator at other similar sites and facilities in the State of Wisconsin and other states.
 - f. Consideration whether the uses, land values and enjoyment of property of adjacent landowners will in any significant and foreseeable manner be substantially impaired or diminished by the establishment, maintenance or operation of the proposed nonmetallic mining operation.
 - g. The potential for the applicant, based on the application materials submitted and other information received by the Town to fully comply with the standards enumerated in this Chapter, with any conditions appropriate and necessary for inclusion in the license, and with the goals and objectives of the Comprehensive Plan.
- (3) ***Town Board Decision; Approval Conditions.***
- a. The Town Board may grant the Operations License if it determines that the operation of the nonmetallic mining mine and associated activities will be consistent with the minimum standards and public purposes of this Chapter and the Comprehensive Plan, and with any conditions the Town Board may attach to the license. If the Town Board denies the license application, the applicant may request an appeals hearing under the provisions of Section 7-3-16.
 - b. The Town Board shall make, and record in the minutes of the Town Board or in a separate written report or resolution, findings of fact and may impose and require any conditions the Town Board finds necessary to protect the public health, safety and welfare when approving and issuing an Operations License.
 - c. If an application is denied, the reasons shall be stated in the minutes of the Town Board or in a separate written report or resolution. A copy shall be provided to the applicant.
- (e) **Reapplication.** No application for an Operations License which has been denied in whole or in part by the Town Board shall be resubmitted for a period of one (1) year from the date of such denial, except on the grounds that substantial new information or proof of changes that would result in compliance with applicable standards and conditions are included in the resubmitted application.

Sec. 7-3-6 License Application Required Information.

All applicants for a nonmetallic mining Operations License shall submit a complete application. Incomplete applications will be returned to the applicant and a valid application shall not be considered to have been submitted until all required application materials have been received by the Town and required fees paid. Failure or refusal of the applicant to provide any required information or failure or refusal to appear or be represented at any public hearings or Town Board or Plan Commission meetings at which the application is a noticed topic shall be grounds for denial thereof. In addition to any other information requested by the Town, applicants shall submit, at a minimum, all of the following information in order to facilitate a proper review of the application; all such information provided shall be a public record under the laws of the State of Wisconsin:

- (a) **Project Summary.** A complete signed summary description of the proposed nonmetallic mine and associated operations, including a comprehensive explanation of activities that would take place on the site. An explanation shall be provided whether the proposed operation will primarily be a construction-grade sand and gravel mining operation or an industrial sand mining operation.
- (b) **Ownership and Applicant Information.**
 - (1) **Operator Information.**
 - a. The name, address, landline and cellphone telephone number(s), fax number and e-mail address of the operator of the proposed nonmetallic mining operation.
 - b. If the applicant is a type of corporate entity, such information shall be included for all partners or limited partners of a partnership applicant; all officers and directors of a corporate applicant; all members of any limited liability company applicant.
 - c. If the applicant is a corporation, the date and state of incorporation, the name and address of any registered agent(s), and the name and address of any shareholder(s) who individually or jointly owns or controls more than ten percent (10%) of the stock in said corporation.
 - d. If the applicant is a partnership, joint venture or any other type of organization where two (2) or more persons have a financial interest, the application shall specify the name of the entity and the above required name, address and contact information of any general partner(s).
 - e. The original signature of the applicant operator.
 - (2) **Property Owner/Lessor Information.**
 - a. The name, address, landline and cellphone telephone number(s), fax number and e-mail address for all owners or lessors of the

land on which the proposed mining operation would occur, consistent with records maintained by the Town Assessor.

- b. If the owner/lessor is a type of corporate entity, such information shall be included for all partners or limited partners of a partnership owner/lessor; all officers and directors of a corporate owner/lessor; all members of any limited liability company owner/lessor.
 - c. If the owner/lessor is a corporation, the date and state of incorporation, the name and address of any registered agent(s), and the name and address of any shareholder(s) who individually or jointly owns or controls more than ten percent (10%) of the stock in said corporation.
 - d. If owner/lessor is a partnership, joint venture or any other type of organization where two (2) or more persons have a financial interest, the application shall specify the name of the entity and the above required name, address and contact information of any general partner(s).
 - e. Proof that all property taxes on the property are current.
 - f. The original signature of the property owner(s).
- (3) **Agent and Consultant(s) Information.** The name, address, landline and cellphone telephone number(s), fax number and e-mail address of any authorized agent for the project and all consultants whose services are being used with the application and post-approval construction (engineer, attorney, contractor, surveyor, soil scientist, geologist, hydrologist, land use planner, landscaper, etc.).
- (4) **Lease Information.** If the proposed operation is subject to a lease, a copy of a fully executed lease and/or similar agreement or option between the landowner and the operator who will engage in mining operations on the proposed site.
- (5) **Local Contact Representative.** The operator shall designate, and provide information for, a local contact representative who will be available either on-site or with an office in Dunn, St. Croix, Polk, Chippewa, Barron or Eau Claire County. Said contact representative shall be available by telephone or in person during the hours the mine is in operation. Correspondence, communications or verbal directives from Town representatives to facilitate compliance with license terms to the local contact representative shall have the same authority as with the licensed operator.
- (6) **Business Record Information.**
- a. Complete information on whether the applicant/operator has previously operated a nonmetallic mining or processing operation in the State of Wisconsin or any other state, and, if so, the location of such mines or operations. Included shall be information on the prior experiences, if any, of the applicant/operator in

the ownership, lease, operation, maintenance and closure/ reclamation of any nonmetallic mining sites elsewhere, citing specific dates of ownership/operation and closure.

- b. Included with such information shall be a statement on whether the operator has ever had a permit, license or zoning permit for a nonmetallic mining or processing operation revoked or suspended, or been subject to any type of enforcement action, corrective order or penalty from a federal, state, county or local regulatory body. Such information shall include rulings or adjudications against an operator or the operator's agent, principal or predecessor in administrative or judicial proceedings. If so, the reason(s) for such actions, and their status or resolution, shall be explained in writing, along with the business entity or trade name under which the applicant operated that was subject to the suspension, revocation or enforcement action.

(c) **Site Information and Maps.**

(1) **Site Map.**

- a. A certified survey map (CSM), plat of survey, or other reasonably accurate and complete map of the proposed site, with parcel identification numbers, drawn to scale and prepared by a land surveyor registered by the State of Wisconsin.
- b. The certified survey map or other reasonably accurate and complete map shall also show the entire area contiguous to the proposed mine site owned or controlled by the operator even though only a portion of said area is included in this application.
- c. Property boundary lines, roads, streams and water courses, drainageways, marshes, rock outcroppings, wooded areas, blufflands, railroad tracks, utility lines and other significant features on or adjacent to the proposed site shall be accurately depicted.
- d. A supplemental site map depicting the type, location, and dimensions of all proposed landscaping, ponds, berms, vegetation and fencing. If the Visual Impact Statement required in Subsection (c)(4)b below reveals there is vegetation on or adjacent to the project site that must be retained for screening of the site, the applicant operator shall document how such vegetation will be protected throughout the operational life of the site.

(2) **Aerial Photograph.** An aerial photograph of the proposed site at a scale of one (1) inch equals six hundred and sixty (660) feet (1:660), signed by both the operator and the landowner.

(3) **Location of Existing Buildings and Structures.** The location, elevation, dimensions and use within the proposed site of all existing

buildings and other structures, equipment, stockpiles, storage, existing culverts and drainpipes, natural gas lines, parking areas, and electric and communications infrastructure, whether overhead or underground.

- (4) **Location of Proposed Buildings, Facilities and Structures; Visual Impact Assessment.**
 - a. For all proposed buildings, other appurtenant structures, facilities, ponds, berms, stormwater and erosion control structures, equipment, stockpiles, storage and parking areas within the site proposed for licensing, the following information shall be provided, as applicable:
 1. Location;
 2. Height above pre-existing grade;
 3. Dimensions as constructed;
 4. Color; and
 5. Intended uses of such structures and facilities.
 - b. The applicant operator shall provide a Visual Impact Assessment, which shall include:
 1. A Zone of Visibility Map which indicates locations or a radius from which the operating site may be seen;
 2. A pictorial representation of "before and after" view from key viewpoints in the Town as may be appropriate, including, but not limited to, state and county highways and parks; other public lands or designated historic sites; and any other location where the site is visible to a large number of visitors or residents.
- (5) **Location of Nearby Buildings and Structures.** The location and use of existing structures within five hundred (500) feet of the boundaries of the proposed site.
- (6) **Topographic Map.** A topographic map or maps of the mine site extending two (2) miles beyond the site boundaries at contour intervals no wider than ten (10) feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within two (2) miles of the site.
- (7) **Well Location Map.** A map on which all residential, agricultural, commercial and municipal wells within two (2) miles of the boundaries of the site in all directions are marked and assigned a numerical identification of the location.
- (8) **Zoning Compliance Statement; Consistency with Town Comprehensive Plan.**
 - a. Information regarding the current zoning of the proposed mine site and on adjacent properties, and a statement addressing any rezoning, conditional use permit or variance that will be necessary from the appropriate zoning authorities for the use contemplated.

- b. A statement addressing how the proposed nonmetallic mining operations and site will be consistent and compatible with the goals, objectives and community values identified in the Town of Cady Comprehensive Plan, and whether any rezonings, conditional use/special exception permits, variances or land divisions required by appropriate zoning authorities can be obtained and whether the consistency standard of Sec. 66.1001, Wis. Stats., can be met. If there are issues of incompatibility, an explanation shall be provided.
- (9) **Floodplain, Shoreland or Wetland Zoning Information.** If applicable, information regarding the current floodplain, shoreland and/or wetland zoning of the proposed mine site or the existence of such zoning within five hundred (500) feet of the site. If such zoning conditions exist, the Town will require a statement from the governing zoning authority addressing whether the proposed development will hamper flood flows, impair floodplain storage capacity, cause a need for wetlands remediation, or cause danger to human, animal or aquatic life. If applicable, information or a map showing the floodland and shoreland boundaries and the contour line lying a vertical distance of two (2) feet above the elevation of the one hundred (100) year recurrence flood interval, or where such data is not available, two (2) feet above the elevation of the maximum flood of record within the exterior boundaries of the proposed site and within five hundred (500) feet therefrom.
- (10) **Surface Waters and Drainage Information; High Water Elevations.**
- a. The location and name of all surface waters, including lakes, private and/or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns, and other water features on the site and within two (2) miles of the site.
 - b. High water elevation of all ponds, streams, lakes, flowages and wetlands within the boundaries of the proposed site and within five hundred (500) feet therefrom shall be shown.
- (11) **Proposed Lake and Stream Improvements or Relocation.** Information on any proposed lake and stream improvement or relocation, and notice of application for approval by the Division of Environmental Protection, Wisconsin Department of Natural Resources, if applicable.
- (12) **Soil Tests; Erosion Control; Stormwater Management.**
- a. A description of the distribution, depth and type of topsoil not only of the area of the site proposed for mining and for which an application is being submitted, but also of the entire acreage of land contiguous with the proposed mine site that is owned or

- leased by the same landowner/lessor, as well as the geological composition and depth and width of the nonmetallic deposit.
- b. Soil tests and reports, of a type as required by the Town Engineer, for the design of roadways, haulways, stormwater detention/-retention and drainage facilities, on-site septic disposal systems, and erosion control facilities. Included shall be complete description of the depth, distribution and type of topsoil on the proposed site as well as the geological composition and depth and width of the nonmetallic deposit.
 - c. Complete plans on proper erosion control and stormwater management measures to be utilized at the site, with verification that such plans meet the standards of the Wisconsin Statutes, Wisconsin Administrative Code and applicable county and local regulations. [Cross-Reference: Sec. 7-3-8(b)(1)].
- (13) **Transfer, Drying, Pressing, Manufacturing, Transload and Processing Facilities.** For drying, pressing, manufacturing, transfer, transload and processing facilities within the Town of Cady, a map identifying the location, with accompanying report, of all other non-contiguous sites within the Town of Cady and any other municipality or town, if any, that will contribute extracted material to the same transfer, drying, pressing, manufacturing, transloading, or processing facility to which the site for which the operator seeks a license.
 - (14) **Site Reclamation Plan.** A copy of the approved or conditionally approved applicable County or Town nonmetallic mining reclamation plan for the proposed site that complies with or exceeds the requirements of Chapter 295, Wis. Stats., and NR 135, Wis. Adm. Code.
 - (15) **Project/Site Name.** The common usage name for the proposed nonmetallic mining site and associated operations.
 - (16) **Non-Contiguous Contributing Sites.** A map identifying the location of all non-contiguous sites within the Town and nearby communities, if any, that will contribute extracted material to the same processing facility to which the site for which the applicant seeks a license under this Chapter will also contribute.
 - (17) **Threatened or Endangered Species Assessment.** With an application, verification shall be provided to the Town from the Wisconsin Department of Natural Resources that the proposed site is not the habitat of a Federal or State endangered species, specifically, but not limited to, the Karner blue butterfly (*Lycaeides melissa samuelis Nabakov*), the presence of which will require a survey to be conducted by qualified individuals to determine if wild lupine plants that support the species are present on the parcel. The presence of the Karner blue butterfly may require special permits and remediation plans approved by the Wisconsin Department of Natural Resources.

(d) **Operations Plan.**

- (1) **Operations Timeline.** Dates of the:
 - a. Planned start of site preparation;
 - b. Planned commencement of mining and/or processing operations at the site;
 - c. Phasing of mining and reclamation activities at the site; and
 - d. Anticipated date of cessation of operations at the site.
- (2) **Mining, Machinery and Processing Information.** Description of mining methods, machinery and equipment to be used for extraction, processing, drying and transportation of the extracted material, and the sequence of operations.
- (3) **Volume of Material Estimates.**
 - a. Estimated volume of material to be extracted from the proposed site over the life of the mine.
 - b. Estimated volume of material to be extracted from the proposed site during the next calendar year, and over five (5) years..
 - c. If the proposed site is intended to be used solely as a drying, pressing, processing, transload or transfer facility, the amount of product, and its sources, that will be processed or pass through the site over the life of the site and for the next calendar year.
- (4) **Locations of Structures, Stockpile Areas, and Road Access Points.** The proposed locations within the site of all future buildings and other structures, equipment, stockpiles, storage, berms, ponds, road access points, and parking areas.
- (5) **Transportation Report; Off-Site Trucking and Rail Routes.**
 - a. A detailed transportation report addressing the issues identified in Section 7-3-8(b)(10) and also presenting plans on the number of projected truck trips per day, per week and per month and truck weight/loads that will be generated by the nonmetallic mining site. Each segment of an ingress/egress trip shall be counted as separate trips for purposes of this report.
 - b. The names, addresses and contact information of any transporters who will be authorized by the operator or be independent contractors for the operator to transport materials and product to and from the proposed site. Included shall be full disclosure of any prior record of violations, citations or forfeitures involving such transporters and drivers.
 - c. Identification of all proposed off-site trucking and railroad 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. The Town shall be informed at the time of license application of any intended proposals by the applicant to

have a railroad spur extended to the proposed site. [Cross-Reference: Section 7-3-8(b)(10)].

- (6) **Estimated Water Use; Recycling.**
 - a. Estimated water use (water budget), including an estimate of the amount of daily water use, anticipated water sources, and methods for disposing of water, including methods used for on-site retention/infiltration, control of run-off meeting ten-year flood standards, and recycling. Specific data shall be provided regarding the amount of water to be recycled on-site, method of recycling, and estimated water loss due to evaporation.
 - b. A detailed plan shall be provided for the use of any high-capacity wells at the site, including copies of the required permits from the Wisconsin Department of Natural Resources and the full application submittal to the WisDNR.
- (7) **Hazardous Materials and Fuel Storage and Use.** A listing of any hazardous materials or hazardous, toxic substances, including fuel supplies and petroleum products, that will be stored, used or produced on-site and a description of the measures to be used for securing and storing these materials. [Cross-Reference: Section 7-3-8(a)(8)].
- (8) **Chemicals; Flocculents.** A listing of all chemicals, their intended use, and approximate quantities to be stored on-site and to be used in the manufacturing or processing operations or in controlling dust, and their proposed method of storage and use. If the operator seeks to change or add chemicals after the issuance of a license, the Town shall be notified in writing by the operator a minimum of seven (7) days prior to any such change or addition. Specifically, a list of any flocculent/polyacrylamides to be stored or used at the site shall be provided with the application, along with detailed information on the quantities to be used and the manner in which such flocculents would be utilized.
- (9) **Security.** Plans explaining security measures at the proposed site, including, but not limited to, security cameras and alarms, fencing, warning signage, access control, etc.
- (10) **Landscaping Plan.** A landscaping plan addressing how the requirements of Section 7-3-8(b)(3) will be met.
- (11) **Lighting Plan.** A lighting plan addressing how the standards of Section 7-3-8(b)(6) will be met.
- (e) **Documentation Demonstrating Compliance with Minimum Standards.**
 - (1) **Compliance with Minimum Standards of Operation.** The operator shall provide the documentation necessary, as determined by the Town, to demonstrate that the nonmetallic mining site and its associated operations can fully comply with the minimum operating standards prescribed in Sec. 7-9-8 and any other requirements imposed by the

Town as a condition of licensing or separately by other regulatory authorities. Included with the initial application shall be full reports and approvals information from other regulatory authorities necessary for a nonmetallic mining site and for license issuance under this Chapter.

(2) **Water Baseline Conditions and Proposed Operations Information.**

With the application for an Operations License, the operator shall submit a report on how federal, state, county and local water quality-related standards and regulations will be met with the proposed application, including, but not limited to, addressing the specific operations issues in Sec. 7-3-8(c). For mining operations commencing after the effective date of this Chapter, the operator shall also provide information establishing baseline conditions at the site before mining operations commence, including:

- a. The groundwater elevation across the site;
- b. The 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
- c. The base flow of surface water within two (2) miles of the site.

- (f) **Special Exceptions to Application Requirements.** The operator may request a special exception from the application information requirements of this Section if the applicant can demonstrate that the information required can be provided by alternative means or is not necessary or pertinent for an evaluation of the particular mining operations and associated activities contemplated, and that the public health, safety and welfare will not be adversely affected thereby.

Sec. 7-3-7 Small Site License.

- (a) **Purpose.** As an alternative to an Operations License under this Chapter for limited sites, a Small Site License may be utilized for nonmetallic construction-grade sand and gravel mining operations, such as typically exist with construction-grade sand and gravel pits in the Town of Cady used, for example, as a source for road and driveway gravel. A Small Site License provides for a system of licensing and compliance with best management practices without the need to satisfy all steps necessary for an Operations License due to the small scale and limited impact on the community, property values, Town infrastructure, and the environment of such operations.
- (b) **Eligibility.** Nonmetallic construction-grade sand and gravel mining operations that meet the following criteria may be eligible to apply for a

Small Site License in lieu of an Operations License, provided the following criteria can be satisfied:

- (1) The nonmetallic mining operation consists of less than ten (10) acres of total affected acreage over the life of the mine, pit or processing facility on the site.
 - (2) The nonmetallic mining operation does not employ blasting or use of explosives more than three (3) times per year.
 - (3) The nonmetallic mining operation does not involve nighttime operations or the processing of materials from off-site.
 - (4) The nonmetallic mining operation produces only construction-grade sand and gravel.
 - (5) The nonmetallic mining operation does not involve mining at a depth below the point that is ten (10) feet above the groundwater table.
- (c) **Term.** Small Site Licenses shall be subject to renewal every five (5) years pursuant to the procedures in Sec. 7-3-15, and subject to the inspection, financial assurance, and enforcement provisions of Sections 7-3-10, 7-3-11 and 7-3-16.
- (d) **Operations Standards.**
- (1) For nonmetallic mining operations that qualify for a Small Site License, the Town Board may grant a Small Site License if the operator submits information and certifications showing compliance with the following:
 - a. Payment of a registration fee of Fifty Dollars (\$50.00).
 - b. Ownership and applicant information required by Sec. 7-3-6(b).
 - c. A reasonably accurate map of the site and areas of mining or excavation.
 - d. Information on the current zoning status of the site, including, if applicable, shoreland, wetland and floodplain zoning information.
 - e. Operations information as prescribed in Sec. 7-3-6(d)(1)-(3).
 - f. Compliance with Town blasting ordinances. [Cross-Reference: Title 7, Chapter 4 of the Town of Cady Code of Ordinances].
 - g. A statement agreeing to comply with the restrictions on compression brake use as found in Sec. 7-3-8(a)(6).
 - h. Agreement to notify the Town of regulatory violations per Sec. 7-3-8(a)(9).
 - i. Copies are filed with the Town of reclamation plans approved by the County and all other regulatory permits required by other federal, state or county agencies for the nonmetallic mining operation.
 - j. A certification that the operator will use best management practices to control dust, noise, light, surface water runoff and other off-site impacts from the operation.
 - (2) Except as required in Subsection (d)(1) above, operators seeking a Small Site License shall not be required to comply with other

application, licensing and operations requirements of this Chapter pertaining to sites for which an Operations License is require.

Sec. 7-3-8 Minimum Standards of Operation.

The Town Board may grant a license for nonmetallic mining and associated operations if the applicant can demonstrate compliance with the requirements of this Chapter and that the following minimum standards of operation can be completely and consistently met. Compliance with such requirements and standards are conditions of license issuance and licensure continuance:

(a) **General Compliance Standards.**

- (1) **Site Boundary Identification.** The operator shall clearly mark the boundaries of the entire licensed site, with appropriate safety notices and warnings against trespassing. The "no trespassing" signs shall be posted around the entire site perimeter at an appropriate distance for posting but no less than two (2) conspicuous places for every forty (40) acres within the site. Signs shall be sized at a minimum to meet the provisions of Section 943.013(2), Wis. Stats. [Cross-Reference: Subsection (b)(2) below].
- (2) **Local Compliance Verification.** The operator shall file with the Town Clerk (as required by this Chapter, separate agreement or at the Town's request) appropriate verification of compliance with all requirements and standards of this Chapter, and with any additional requirements made a condition of the Operations License.
- (3) **Blasting Activities; Use of Explosives.** No blasting or bumping shall occur without specific written authorization from the Town and the operator shall have first obtained a blasting permit from the Town pursuant to applicable Town ordinances. [Cross-Reference: Title 7, Chapter 4 of the Town of Cady Code of Ordinances].
- (4) **Compliance with Other Federal, State, County and Local Permit Requirements.**
 - a. The operator shall provide written verification that all other applicable federal, state, county and local permits, licenses and approvals required for the nonmetallic mining operation have been or, only with the consent of the Town Board, will be obtained in a timely manner as a condition of Operations License issuance prior to the commencement of operations. Copies of all such permits, licenses and approvals shall be filed with the Town Clerk as part of the application review process. Any anticipated conflicts with applicable federal, state, county or Town laws, ordinances, codes, rules and regulatory requirements shall be explained, with particular attention to safety and environmental-

related areas of potential noncompliance. Examples of possible required permits, licenses and approvals applicable to nonmetallic mining sites (usually from the Wisconsin Department of Natural Resources, county or zoning authorities) are, but not limited to: Air Permits, Stormwater Permits, High Capacity Well Permits, Cultural Resources Assessments, Zoning-Related Permits, and, if near surface water, Shoreland, Floodplain or Wetland controls, including Dredging Permits, Pond Permits and Grade Permits [pursuant to Chapters 30 and 31, Wis. Stats., and NR 103, NR 115, NR 116, NR 117, NR 135, NR 216, NR 340, NR 400 and NR 440, Wis. Adm. Code].

- b. Full compliance with such requirements from other regulatory bodies shall be a condition of license under this Chapter.
- (5) **Equipment Backup Alarms.** The operator shall minimize the use of backup alarms on trucks and heavy equipment as much as possible, and use "white noise" or low tone backup alarms to the extent permitted under federal and state regulations.
- (6) **Use of Engine Compression Brakes (Jake Brakes).**
- a. The use of engine compression brakes (commonly known as "jake brakes") by trucks is prohibited on all Town roads pursuant to Sec. 10-1-41 of the Town of Cady Code of Ordinances (when adopted) and shall also be applicable as a condition of an Operations License to all trucks entering or leaving the nonmetallic mining site, except in extreme emergency situations. The operator shall take appropriate steps to inform all truck drivers and independent contractors providing services at the site of the required compliance with this Subsection, Sec. 10-1-41 of the Town of Cady Code of Ordinances (when adopted) and all other applicable traffic codes. If a truck driver and/or his/her employer disregards this regulation, the operator shall take proper steps to correct the practice or cease using the services of any such truck driver, his/her employer or trucking company that refuses to comply.
 - b. In addition, violators shall also be subject to forfeitures pursuant to Sections 10-1-41 and 10-1-50 of the Town of Cady Code of Ordinances (when adopted).
- (7) **Semi-Annual and Annual Meetings With Town Board.** During the first two (2) years of a licensing period, the operator shall, at a minimum, meet with the Town Board every six (6) months, in open session, at a properly noticed regular or special Town Board meeting to discuss and review operations at the site, possible issues and any necessary corrective actions. Thereafter, such meetings shall be held annually. Such semi-annual meetings shall occur annually in May/June and November/December and annual meetings in May/June. It shall be the sole responsibility of the operator to contact the Town Clerk and

request placement of such appearance on a Town Board meeting agenda.

(8) ***Storage of Hazardous Materials, Chemicals and Fuels; Contaminating Spills; Emergency Responder Training.***

- a. All hazardous materials, chemicals and petroleum products maintained on-site shall be stored in state-approved fuel storage containers and shall be in accordance with federal standards for storage and fueling areas. All such storage of liquid hazardous materials, chemicals and petroleum products shall provide leak-proof containment not less than 125% of the tank volume. Plans for such containment facilities shall be submitted to the Town for Town Board approval as part of the application process.
- b. When fueling trucks or mobile tank trailers are used to refuel equipment on-site, all fueling shall occur on a fueling absorption pad to minimize any leakage.
- c. In addition to contacting all other appropriate regulatory officials/agencies, the operator shall contact the Town Chairperson and/or Town Clerk as soon as possible, but not later than two (2) hours, after the occurrence of a hazardous waste or chemical spill, leak or contamination incident of any kind, or in the event of an improper release of any chemical, dust or particles above levels permitted by applicable federal, state, county or local regulations.
- d. The operator shall provide, and pay any costs therefor, an initial training and site visit of emergency responders for site-specific dangers, chemicals and hazardous materials that may require special or additional precautions during an emergency response situation.

(9) ***Notice of Regulatory Violations or Changes to Approved Plans.*** The operator shall notify and file with the Town Clerk any modifications or amendments to approved plans, suspensions, revocations, notices of violation, citations, or other enforcement actions taken by any other governmental and/or regulatory body against the nonmetallic mining operation within the Town of Cady. This information shall be submitted to the Town within seven (7) days of occurrence. Such violations, if confirmed, shall constitute a violation of this Chapter.

(b) ***Off-Site Impacts Standards.***

(1) ***Erosion and Stormwater Control Measures; Sediment or Wash Ponds.***

- a. The operator shall undertake all measures necessary for the control of surface water runoff from the nonmetallic mining site and operations in order to prevent pollution and erosion of sediment onto neighboring properties and/or into surface water and groundwater. [Cross-Reference: Sec. 7-9-6(c)(12)].

- b. Included in this requirement is compliance with all state, county and town erosion control standards pursuant to NR 216 and NR 151, Wis. Adm. Code. A copy of the compliance plan shall be filed with the Town Clerk with the application for an Operations License. Inspectors of the state, county and town may enter the licensed site at any time during daylight hours to inspect for proper compliance with these standards.
 - c. If the nonmetallic mine site has areas adjacent to the site that are being used for residential, commercial or agricultural purposes, the operator shall construct all measures necessary to control surface water runoff from entering or leaving the licensed site or otherwise causing contamination of surface water and groundwater.
 - d. The site shall be internally drained to a standard approved by the Town Engineer; the Town Board may authorize a temporary modification of the internal drainage requirement during the initial construction phase of the mining site. Runoff generated from the mining operation shall be contained in sediment or infiltration ponds of a type and design approved by the Town Board. Any wash or settling ponds that have chemicals introduced into them, including but not limited to flocculents, shall have ten (10) feet of separation distance to bedrock and to the groundwater elevation, and shall have an impervious liner. Unless engineering studies are presented for Town Board approval for an acceptable design alternative, such ponds shall have, at a minimum an impervious liner consisting of a concrete bottom lining and clay side lining.
- (2) **Required Fencing.** The operator shall fence the entire outer boundary of the licensed site to prevent unauthorized access to the site. [Cross-Reference: Subsections (a)(1) above and (b)(4)e below].
- (3) **Required Landscaping, Buffer Area(s), Berming and Screening.** Pursuant to the required landscaping plan under Sec. 7-3-6(d)(10):
- a. The operator shall provide and maintain a buffer area a minimum of two hundred (200) feet in depth along all bordering property lines and public roadways. Mining activity, parking, stockpiling, or storage is not permitted in such bufferyards.
 - b. The operator shall screen the mining, storage, processing and parking operations on the licensed site from public view to the maximum extent practicable through the use of berms, additional setbacks or other measures. Prior to construction, the Town shall be consulted with on the design and configuration of berm construction and placement, which shall require Town Board approval prior to construction. Earthen berms shall be constructed in a manner to provide for a substantial reduction in sound at the property boundary. Included in the berming and screening design

should be the planting of shrubs, small trees and other vegetation (excluding the use of non-native or invasive species) along the berm to reduce noise levels and aesthetically improve the site. Gaps will be permitted in the berm, with gates, to provide for proper ingress/egress to the site.

- c. The existing perimeter tree canopy at the highest points of elevation shall be retained to reduce the amount of dust leaving the proposed mine site and maintain the visual appearance and aesthetics of the site. Plantings on berms shall be properly maintained and dead plantings shall be promptly replaced.
- d. Noxious weeds shall be controlled on the site, with particular attention directed to buffer areas.
- e. In addition to, or with the prior approval of the Town Board as an alternative to the above fencing requirement, the Town Board, upon request, may determine that the berming and screening plan is sufficient and that the fencing requirement be inapplicable.

(4) ***Hours of Operation.***

- a. The operator shall limit normal hours of mining site operations to a maximum of eleven (11) hours per day, Monday through Friday, during daylight hours and not earlier than 7:00 a.m. or later than 6:00 p.m., whichever is more restrictive, to minimize off-site impacts to area residents. Operations shall not be conducted at any time on state-recognized holidays, Saturdays or Sundays. During such hours prohibited for mining or processing activities, other noise-producing activities on the site, such as equipment repairs, are also prohibited.
- b. The operator may submit a plan for extended hours as part of a Mining Agreement for Town Board approval, if the operator can demonstrate that additional hours for a limited term are necessary due to extraordinary or emergency circumstances and would be consistent with the objectives of protecting the public health, safety and welfare and quality of living objectives of this Chapter and the Comprehensive Plan.

(5) ***Coordination with Local School Bus Schedules; Traffic Conditions; Speed/Weight Limits.***

- a. The operator shall obtain a current bus schedule from all school districts which operate scheduled bus services for students residing in the Town of Cady on any roads used by trucks servicing the nonmetallic mining site. The operator shall ensure that trucks from the mining site shall not interfere with the safety of children being taken to or returning from school, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is the highest.

- b. Trucks servicing the site shall not pass tractors and other agricultural implements or low speed vehicles [as defined in Sec. 340.01(27h), Wis. Stats.] traveling on town roads. Nothing contained in this Chapter shall limit the authority of the Town Board to reduce speed or weight limits on Town roads in accordance with the Wisconsin Statutes.
- (6) **Lighting; Lighting Plan.**
- a. The operator shall limit night lighting on the licensed site to that which is minimally necessary for security and shall, wherever possible, be shielded from illuminating off-site areas, including the use of full light cutoff shrouds so that no light is directed upwards or at other adjacent properties.
 - b. If night operations are authorized by a Mining Agreement, the operator shall comply with the standards prescribed in Town ordinances establishing outdoor lighting standards. A lighting plan shall be submitted to the Town for review as part of the application process. Every effort consistent with legal requirements for aerial safety shall be made to minimize illumination of the night sky.
 - c. Portable lighting units shall only be used temporarily as necessary to illuminate work areas.
 - d. Upon written complaint of light pollution made to the Town Board, the Town shall notify the operator, who shall take necessary steps to mitigate the light pollution by redirecting the lighting and taking other reasonable steps to address the complaint.
- (7) **Dust Control Measures.** The operator shall utilize all necessary dust control measures specified in NR 415.075, Wis. Adm. Code. Additionally, the operator shall have and submit to the Town an established protocol for additional dust control measures when the National Weather Service has issued a high wind warning for the area.
- (8) **Air Quality Standards; Air Monitors.**
- a. Operators of nonmetallic mining operations that process silica sand for industrial use shall be responsible for conducting and funding monitoring of respirable crystalline silica by a third-party selected and contracted for by the Town. Monitoring shall utilize web-linked, real-time laser dust measurement, data collection, calibration, and daily filter analysis for respirable crystalline silica.
 - b. If an applicant is applying for an Operations License for a nonmetallic mining operation that includes a frac-sand processing plant, the operator shall be required to monitor post-licensing the ambient level of airborne particulate matter of respirable (PM_{4.0}) and Total Suspended Particulates (TSP) as measured using a web-linked, real-time laser respirable particulates monitor equipped with a respirable dust cyclone and 5.0 µm PVC gravimetric filters and by the standards contained in 40 CFR part 50 (2011), Appendix B, at the boundary line of the licensed site or an alternative method approved by the Town Board.

- c. The type and number of monitors needed, the location of the monitors, and frequency and duration of the monitoring program shall be determined by the Town, after consultation with the Town's retained experts and the operator, and be reflected in the Mining Agreement. At a minimum, monitors shall be installed and maintained at the operator's expense, and the site shall have a minimum of four (4) automatic and continuous and four (4) laser respirable particulate monitors, kept properly maintained and functioning, appropriately located on the borders of the mine site and a web-linked weather station that provides real-time measurements of wind speed and direction, precipitation, and temperature at the mining site.
- d. Data analysis shall be designed to exclude background sources of dust by linking the on-site weather station wind direction measurements to perimeter real-time dust monitors required by this Subsection.
- e. Monthly readings and data from the Total Suspended Particulates (TSP) monitors shall be provided to the Town within ten (10) days of the end of the month and also be posted on a website (or at a location) designated by the Town. The real-time laser respirable particulate monitors and weather station shall be web-linked to permit continuous public access to the data. The gravimetric filters shall be collected daily for mass and crystalline silica analysis and the monitors' logged particulate concentrations, recorded not less than every ten (10) seconds, shall be posted every day on a website designated by the Town. The results of the laboratory analyses shall be provided to the Town within ten (10) days of the end of the month and also be posted on a website designated by the Town.
- f. If the real-time laser respirable particulate monitors show an exceedance of 35 micrograms per cubic meter of $PM_{4.0}$ in any thirty (30) minute period, the operator shall evaluate and implement additional best management practices to reduce $PM_{4.0}$ emissions below thirty-five (35) micrograms per cubic meter. Air monitoring results indicating in excess of three (3) micrograms per cubic meter of respirable crystalline silica [fifteen (15) minute average concentration - downwind perimeter minus upwind perimeter] shall require an alert to the Town and require that the operator implement additional effective best management practices in order to provide acceptable air concentrations.
- g. If the air monitors show an exceedance of 150 micrograms per cubic meter of TSP in any twenty-four (24) hour period, the operator shall evaluate and implement additional best management practices to minimize TSP.
- h. The Town may, at its discretion and at the operator's cost, order additional readings or samplings by a Town-designated independent testing service at any time deemed necessary to protect the public health and safety.

(9) **Off-Site Noise.**

- a. The operator shall control off-site noise levels to the maximum extent practicable by using best management practices, but noise levels shall be consistently maintained at or below 60 decibels (dba) at the site boundary. Such measures include, but are not limited to, control of engine compression braking as required by Section 10-1-41 of the Town of Cady Code of Ordinances, use of "white noise" back up alarms, and proper maintenance of required berming and mufflers on mining equipment/trucks.
- b. Backup generators shall be operated only during power outages and for testing and maintenance purposes.
- c. Excluded from this noise standard are temporary projects being done at the site on drainage ditches, screening berms, or road ditches.

(10) **Transportation Routes; Town Haul Routes; Road Assessments.**

- a. Neither the operator nor its employees or independent contractors shall utilize roads owned or maintained by the Town of Cady to transport materials to or from the licensed site or otherwise in connection with the property, including with empty vehicles unless a Town road haul route has been agreed upon and approved by the Town Board. To the greatest extent reasonably possible, the operator shall require trucks carrying material to or from the licensed nonmetallic mining site to travel on roads other than Town roads (i.e., federal highways, state highways, and county trunk highways) which have higher weight carrying design capacity.
- b. The operator shall require any employees or independent contractors providing services to the operator to comply with these transportation requirements.
- c. The site shall be served by sufficient and safe access points. The access points shall have the approval of the Town Board, and, if applicable due to the location, the County Highway Department and/or the Wisconsin Department of Transportation. Access points shall be designed and placed so that the lights of vehicles entering and exiting the site are directed away from residential, commercial and agricultural buildings on adjacent lands.
- d. The Town Board may require the operator to construct, at the operator's expense, an acceleration lane to serve the site if a Town road is being utilized.
- e. Trucks serving the site shall at all times operate with load covers or be of enclosed tanker design. The deposit or spilling of materials on roads is prohibited. [Cross-Reference: Section 7-3-8(c)(5)b].
- f. In the event that the operator believes that any Town road will regularly be used to transport materials, permanently or temporarily, to or from the nonmetallic mine site, the operator shall immediately notify the Town. Upon such a notification and a clear necessity for use of Town roads is presented, the Town will

designate haul routes to be used that will have the least impact on the Town and its residents (Haul Route). The operator shall cause its employees and independent contractors to use such designated haul route(s).

- g. Prior to a haul route being designated, a public hearing on the proposed haul route shall be conducted pursuant to the procedures in Sec. 7-3-5(c).
- h. To help preserve the integrity of designated haul routes, operators of silica sand mining/processing operations shall not sell sand or waste sand from their site to secondary local users (examples: fill material, bedding sand, etc.).
- i. As authorized by Section 349.16, Wis. Stats., each operator of a nonmetallic mining operation shall be required to enter into a Town Road Use Agreement with the Town of Cady addressing the issues herein regarding use of Town roads if such will be used at haul routes. The Town Road Use Agreement shall be negotiated upon the basis of a review of the factors in this Subsection and the following factors and such others as are determined by the Town Board to be of relevance to the proposed use of Town roads:
 - 1. The State, County and Town highways and roads in the Town of Cady which are proposed to be utilized for hauling purposes.
 - 2. The anticipated level of hauling truck traffic, per day, week, month and year.
 - 3. The tonnage or other measurement of nonmetallic mining proposed to be hauled by each fully loaded truck.
 - 4. Whether the haul trucks will be owned and operated by the operator or by other companies/independent contractors, and, if the latter, upon what arrangements will exist with the truck operator, whether an agent or independent contractor. If some or all of the hauling trucks are operated by persons other than the operator, the nature and extent of contractor controls proposed to be exercised by the operator over its use of Town roads shall be disclosed to the Town.
 - 5. Insurance, by type and amounts, proposed to be carried by the operator or other companies/independent contractors for all haul trucks to be operated in the Town of Cady.
- j. If such a Town road haul route is agreed upon, a form of maintenance funding by the operator and adequate funding for a Road Maintenance Escrow Account shall be agreed upon as a condition of license. [Cross-Reference: Sections 7-3-11 and 7-3-13].
- k. Prior to utilizing a designated haul route and annually thereafter, the operator and Town shall mutually agree to select an independent third party who will conduct an initial pre-operations Road Assessment and subsequent annual Road Assessments of the haul routes in cooperation with and including input from the parties. Such Road Assessment shall set forth in a report projected repairs

needed due to haul route use by the operator and its employees and contractors, and such Road Assessment shall contain a reasonable estimate of costs of such repairs. As part of such Road Assessment, the Town shall have a videotape prepared at the operator's expense documenting the condition of all haul roads prior to commencement of work at the licensed site.

1. The Road Assessment shall include, but not be limited to:
 1. Name and length of Town roads to be used.
 2. A general survey of the present condition of the pavement, roadbeds, shoulders, culverts, and the right-of-way.
 3. Estimated remaining life of roads at the time.
 4. Upgrades of pavement, roadbeds, shoulders, culverts, and rights-of-way needed to a design standard meeting or exceeding Wisconsin Department of Transportation standards to withstand the weight and volume of proposed haul traffic.
 5. A determination of upgrades of geometric designs of highways to Wisconsin Department of Transportation standards to accommodate anticipated traffic volume; including, but not limited to, haul truck traffic.
 6. Preparation of an inventory of affected Town highways and any necessary acquisition of rights-of-way required to accommodate recommended upgrades.
 7. Description by ownership, license number, haul weight, type, and axle configuration of trucks proposed to be used for hauling on Town roads.
- m. The Town shall ensure that any third-party engaged for the Road Assessment services, use sound professionally-accepted planning practices for haul route maintenance activities and work, and the Town shall make reasonable efforts to mitigate the costs of repairs to the haul routes. Such efforts may include, but not be limited to, reasonable preventive maintenance intended at overall cost reduction of haul route repairs while maintaining appropriate road conditions that protects public safety and recognizes the shared use of such roads with the general public. The operator shall have an opportunity to review the Road Assessment(s) and meet with appropriate Town representatives to discuss the Road Assessment. The parties shall have the right to modify the recommendations put forth in the Road Assessment by mutual written agreement in the Mining Agreement.

(11) ***Weight Limits; Truck Operator Permits.***

- a. The operator shall comply, and cause its contractors and employees to comply, with weight restrictions imposed on Town roads authorized by Sec. 10-1-11 of the Town of Cady Code of Ordinances, truck operator permits prescribed by Section 10-1-12 of the Town of Cady Code of Ordinances, other Town ordinances, and Sections 348.21 and 349.16, Wis. Stats., unless otherwise modified by mutual agreement in the Mining Agreement. [Cross-

Reference: Sections 10-1-11 and 10-1-12 of the Town of Cady Code of Ordinances].

- b. It is noted that Section 86.02, Wis. Stats, provides for triple damages to be paid by parties injuring a town road or highway.

- (12) **Control of Waste Materials.** The amount of waste material (non-marketable fines) returned to the mine site as part of the reclamation process shall not exceed the site specific ratio of waste to target material of the extracted raw material as determined prior to the processing of the raw material. The processing facility shall keep records of the tonnage of raw material drawn from each raw material source. The tonnage of waste by product that is returned to each mine reclamation site shall not exceed the tonnage of waste contained in the raw material received at the processing facility from that site. In the event of a conflict between the requirements of this Subsection and those of pertinent County reclamation standards, the more restrictive provision shall be applicable.

- (c) **Standards Regarding Groundwater and Surface Water.**

- (1) **Impacts to Groundwater and Surface Water.**

- a. Mining operations shall have at least one (1) monitoring well for every ten (10) acre sector of the licensed nonmetallic mining site. At least one (1) such well shall be a sentinel well at the boundary of the mining site that is down gradient of the groundwater flow.
- b. The operator, at the operator's cost, shall take quarterly monitoring well samples for lead, arsenic, turbidity, total suspended solids, chlorides, nitrates, specific conductivity, any chemical or residual of the chemical used as a flocculent, and any other toxic substance, metal or mineral that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made. The Town Board reserves the right to reasonably require sampling for other metals, minerals or toxic substances as a condition of licensing, at the operator's expense. This monitoring well requirement may not be applicable to sites that are used exclusively for drying (without chemicals), transfer or transloading at the nonmetallic mining site; such a determination shall be made by the Town Board if so requested by the operator in writing.
- c. Mining operations shall not be in violation of the groundwater quality standards in NR 140, Wis. Adm. Code.

- (2) **Impacts to Groundwater Quality; Mining to be Conducted Above Groundwater Table.**

- a. Mining operations shall not extract materials at a depth below the point that is ten (10) 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 two (2) miles of the nonmetallic mining site. A "significant reduction" is a lowering of 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-demand and

on a continuous and/or uncontaminated basis. [Cross-Reference: Section 7-3-12]. The Town Board reserves the right to reasonably require verification testing as a condition of licensing, at the operator's expense.

- (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 two (2) miles of the nonmetallic mining site, including, but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the commencement of mining activities. The Town Board reserves the right to reasonably require verification testing as a condition of licensing, at the operator's expense.
 - (4) **Impacts to Surface Water Use.** Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters which serve as a critical source of water for agricultural, recreational or municipal functions such as fire protection. 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 operations. The Town Board reserves the right to reasonably require verification testing as a condition of licensing, at the operator's expense.
 - (5) **Stormwater Management; Deposits on Town Roads.**
 - a. The operator shall repair any damage to, and remove sediment from, any private property, or town roads, ditches and other drainageways when the operator is determined by the Town to be primarily responsible for such sediment or damage caused by runoff from the nonmetallic mining site for any reason, including, but not limited to, heavy rains and/or snowmelt runoff.
 - b. The operator shall comply with the requirements of Sec. 15-1-7 of the Town of Cady Code of Ordinances requiring that the operator maintain clean streets on Town roads used to transport products associated with the nonmetallic mining site, keeping such roads free of dirt, mud, soil and other debris. Adverse weather conditions may compel temporary suspension of hauling activities from the site on Town roads in order to comply with these requirements.
 - c. In the event that the 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/or ground water.
- (d) **Hazardous Materials.**
- (1) **Compliance With Regulatory Requirements.** All hazardous chemicals shall be stored, used and disposed of in accordance with applicable state, federal, county and local laws and regulations.

- (2) **Disposal of Waste Materials Containing Chemicals or Toxins.** The operator shall not dispose of waste materials containing any hazardous chemicals in toxic amounts, or residuals declared to be hazardous by a government regulatory authority in toxic amounts, on the site or in the Town of Cady, except in accordance with applicable state and federal law and with prior approval of the Town Board.
- (3) **Emergency Spillage Plan.** The operator shall have a plan for responding to spills of any hazardous materials on the site. Said emergency spillage plan shall be filed with the Town Clerk prior to commencing operations, and also with any fire and emergency medical services department serving all or parts of the Town of Cady, the County Sheriff's Department, and the County Emergency Management office. [Cross-Reference: Sec. 7-3-8(a)(8) Emergency Responder Training].
- (4) **Refuse Disposal.** The operator shall be responsible for contracting, at the operator's cost, for regular removal of non-toxic refuse and waste from the nonmetallic mining site. Between collections, such refuse shall be stored in covered refuse disposal dumpsters.
- (e) **Special Exceptions to Minimum Standards of Operation.** The operator may request a special exception from the minimum standards of operation prescribed in this Section if the applicant can demonstrate that the standards required can be met by alternative means or are not applicable or necessary to the particular nonmetallic mining operation, and that the public health, safety and welfare will not be adversely affected thereby.
- (f) **Additional Conditions of Licensing.** The Town Board may impose requirements in addition to or exceeding the minimum standards of this Section if the Town Board has a rational basis to conclude that the intent of this Chapter, the objectives of the Town of Cady Comprehensive Plan, and the public health, safety and welfare will not be adequately protected without the imposition of additional measures.

Sec. 7-3-9 Annual Report.

- (a) **Annual Report Requirement.** Not later than March 1 of each calendar year, the operator shall submit a written annual report to the Town Board for all active and intermittent mining sites for which the operator has an Operations License from the Town of Cady. The annual report shall be in addition to the requirement for annual and semi-annual meetings between the operator and Town Board required in Section 7-3-8(a)(7) and other verification reporting required by this Chapter.
- (b) **Annual Report Contents.** The annual report shall include the following information:

- (1) A description of the operator, the nonmetallic mining site and associated operations. Included shall be information on any changes in the ownership of the parcel or the operating entity.
- (2) A map accurately depicting:
 - a. The area of excavation to date;
 - b. Areas reclaimed and unreclaimed, including a calculation of the number of acres in each category (Note: This requirement is not applicable if the operator has only conducted drying operations without chemicals, transfers and transloading on the site).
- (3) A description of activities and operations on the site for the previous calendar year;
- (4) A description of activities and operations on the site anticipated for the following calendar year;
- (5) A written report demonstrating how the operator has complied with all terms and conditions of its license and this Chapter. The report shall also include any surface water, groundwater, and all other monitoring results, as applicable.
- (6) A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

Sec. 7-3-10 Inspections.

- (a) **Inspection Authority.** The Town Board, or its authorized representative, are authorized to enter upon lands affected by this Chapter to make inspections to determine the condition of nonmetallic mining sites in the Town of Cady in order to safeguard the public health, safety and general welfare and determine compliance with the minimum standards of this Chapter and any conditions of license. Inspections of the site under this Chapter may occur prior to or after license issuance to determine compliance with this Chapter.
- (b) **Inspection Protocols.** The Town Board, or its authorized representative, may enter the nonmetallic mining site during regular hours of operation for inspection(s) and, if necessary, to investigate any complaints or concerns identified by the Town Board. The Town's representative(s) shall notify the operator's designated contact person by telephone or e-mail prior to entering the site, and will report his/her presence to the on-site supervisor upon entering the site upon showing proper identification.
- (c) **Inspection Warrants.** If permission to inspect the subject property is denied by the operator or owner, an inspection warrant may be sought pursuant to Sec. 66.0119, Wis. Stats.

Sec. 7-3-11 Financial Security.

- (a) **Financial Assurance.** Financial assurance shall be provided to the Town of Cady by an Operations License licensee as a condition of license approval in the amount necessary for the following:
- (1) **Road Repairs; Road Maintenance Escrow Account.**
- a. An amount necessary for the repair and maintenance of Town roads used for truck traffic transporting materials to or from the nonmetallic mining site shall be mutually agreed upon as part of a Mining Agreement [Cross-Reference: Sec. 7-3-13 below]. Upon approval of an agreement by the Town Board, the financial assurance may be in the form of a Road Maintenance Escrow Account. Both the Road Maintenance Escrow Account and underlying Mining Agreement and Town Road Use Agreement shall contain provisions under which the operator agrees to pay for all exceptional maintenance costs during and immediately after the term of the Agreements, and pay for ordinary maintenance at a rate to be determined upon the basis of the amount of use of Town roads by the operator in comparison with other use of said roads.
 - b. If a Road Maintenance Escrow Account is utilized, the Town will provide a detailed written statement and accounting to the operator for maintenance costs incurred as the work contained in the Assessment is completed, together with any supporting documentation reasonably requested by the operator. [Cross-Reference: Section 7-3-8(b)(10)]. Such statement shall be provided to the operator no less than fifteen (15) days prior to a withdrawal from the escrow account by the Town; the operator shall have the right to review the documentation and identify alleged errors and omissions. An exception to the provisions of this Subsection is that in the event an emergency or hazardous road condition exists that has not been immediately corrected by the operator, the Town Chairperson may order emergency road repairs be performed by a qualified contractor, and the licensed operator shall promptly reimburse the Town for reasonable emergency road repair costs.
 - c. The Town shall only receive reimbursement from the escrow account for actual out-of-pocket costs incurred by the Town for maintenance to the Haul Route necessitated by use of the Haul Route, or other Town roads improperly used by the operator in violation of this Chapter, or other Town roads, by the operator and its employees or independent contractors. Such maintenance costs must be primarily attributable to damage to the Town roads caused by the operator or its employees or independent contractors

hauling products, supplies and equipment related to the nonmetallic mining site, and may include the cost of professional consultants working with the Town in addition to actual construction costs.

- d. If the Road Maintenance Escrow Account becomes insufficient to properly fund repairs and maintenance to a Haul Route(s), or any other Town road used by the operator or its employees or independent contractors, the operator shall immediately deposit an amount as directed by the Town into the escrow account sufficient to meet such obligations.
- (2) **Alternative Water Supply.** An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within two (2) miles of the nonmetallic mining site or such other larger area shown to be impacted by the operator's nonmetallic mining operations.
 - (3) **Property Value Assurance.** By separate Mining Agreement, the Town and operator, as a condition of license, shall enter into a Property Value Guarantee Agreement with identified private property owners near the nonmetallic mining site. The actual terms and parties affected by an Agreement shall be addressed in such Agreement(s).
 - (4) **Other Areas of Financial Security.** In addition to the above, financial assurance and escrow accounts may be required by the Town Board to address other identified issues.
- (b) **Form of Financial Assurance.** The form of financial assurance made to the Town of Cady shall be that form approved by the Town Board, following review by the Town legal counsel, and may include utilization of escrow agreements/funds, irrevocable letters of credit, performance bonds, or other measures agreed upon by the Town Board.
 - (c) **Changes in Amounts of Financial Assurance.** If at any time after an Operations License has been issued by the Town of Cady the Town Board determines that the amount of financial assurance must be increased to meet specific road repair, water supply needs, or other areas identified by the Town Board as requiring a financial assurance mechanism, or the amount previously provided has been utilized, the Town shall notify in writing the operator of the additional amount(s) required and the basis for the request. The operator shall have thirty (30) days to provide, to the Town Board's satisfaction, the increased amount(s).
 - (d) **Proof of Financial Assurance for Reclamation.** The operator shall provide to the Town acceptable documentation that the operator has provided the financial assurance for required site reclamation as required by applicable Wisconsin law and county requirements.
 - (e) **Failure to Maintain Financial Assurances.** Failure by the operator to properly maintain the financial assurances and security required by this

Chapter, and particularly this Section, shall automatically terminate any license issued under this Chapter.

Sec. 7-3-12 Damage to Private Water Supplies.

- (a) **Damage to Private Water Supply Claims.** A property owner within two (2) miles of a nonmetallic mining site may seek remedies under this Section for any of the following damages to a private water supply caused by the operator or its employees and/or contractors:
 - (1) An enforcement standard or preventative action limit is exceeded in a private water supply well on the property owner's land.
 - (2) A substantial adverse impact on the quantity or quality 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 or uncontaminated basis.
 - (3) A lowering of surface waters which serve as a source of water for personal, business, agricultural or municipal functions on the owner's property to levels below base flow levels for more than five (5) days.
- (b) **Notice Requirements.** Any property owner under Subsection (a) above seeking a remedy under this Section shall simultaneously file a notice with the Town Clerk and the operator of the nonmetallic mining site of the occurrence of the event(s) under Subsection (a) describing the nature and extent of the problem.
- (c) **Use of Financial Assurance.**
 - (1) Within twenty-four (24) hours of receipt of such notice under Subsection (b), the Town Chairperson is authorized to expend funds provided for in Sec. 7-3-11, if deemed applicable and appropriate, to provide an interim water supply.
 - (2) If applicable, the Town shall also use funds under Sec. 7-3-11 to indemnify the Town of Cady for any claims filed under Section 281.77(4), Wis. Stats.
 - (3) An interim water supply shall continue to be provided until the Town Board has approved the report or plan under Subsection (d) below.
- (d) **Plan Requirement.** Within twenty (20) days of receipt of a notice pursuant to Subsection (b) above, the nonmetallic mine operator shall provide to the property owner and to the Town Clerk:
 - (1) A report that demonstrates that the impact to the property owner's water supply was not attributable to the mining operation, with technical data supporting such position; or
 - (2) A plan for a permanent alternative water supply to the affected property owner, to be paid for by the operator.

- (e) **Town Determination.**
- (1) The Town Board, following consultation with experts and with the operator and property owner, shall review the report or plan and approve or deny such report or plan.
 - (2) If the Town Board determines that the operator's report is incorrect or insufficient, the Town may continue to provide an interim water supply under the fund provided for in Sec. 7-3-11 during any subsequent negotiations, mediation, or litigation
 - (3) If the Town Board determines that the nonmetallic mine operator was not the cause of the damage to or failure of the private water supply, the operator may elect to seek reimbursement by the property owner for the costs of supplying interim water during a period not exceeding one (1) year. The costs to the Town for expert consultants to review the matter shall not be subject to this reimbursement provision.
- (f) **Other Claims.** A property owner beyond two (2) miles of the nonmetallic mining operation may apply to the Town for use of funds under Sec. 7-3-11 to remedy damages to a private water supply, provided that the property owner can demonstrate that the damage to the private water supply was caused by the nonmetallic mining operation. If the Town Board determines that sufficient cause exists that the damage may have been caused by the nonmetallic mining operation, the property can utilize the procedures and remedies of this Section.

Sec. 7-3-13 Mining Agreement.

The Town and an operator shall enter into a Mining Agreement as a condition of license, such agreement to provide additional site-specific provisions governing operations and indemnification. A Town Road Use Agreement may be a part of the larger Mining Agreement [Cross-Reference: Sec. 7-3-8(b)(10)]. Any of the provisions of this Chapter, including the license term, may be modified by agreement between the Town and the operator, but only if the Town Board determines that the agreement provides protections for the public, at a minimum, at least equal to those of this Chapter and is consistent with the goals and objectives of the Comprehensive Plan.

Sec. 7-3-14 Insurance and Indemnification.

- (a) **Insurance Requirements.** All operators licensed under this Chapter shall maintain the following insurance coverages commencing upon construction of the facility:
- (1) **Liability Insurance Coverage.**
 - a. The licensed operator shall, at its expense, at all times maintain a broad form comprehensive coverage policy of public liability

insurance insuring the licensed operator and property owner (if different) against loss or liability caused by the operator's occupation and use of the nonmetallic mining site in an amount not less than Five Million Dollars (\$5,000,000.00) of combined single limit liability coverage per occurrence, accident or incident, which may have a commercially reasonable deductible. The Town of Cady shall be listed as an additional named insured on the policy.

- b. As a condition of license, the operator shall also be responsible for ensuring that sufficient vehicle insurance coverage [One Million Dollars (\$1,000,000.00) per occurrence] is in effect for any trucks used to service the site by its employees or independent contractors.
- (2) **Worker's Compensation Insurance.** Worker's compensation insurance coverage in an amount required by Wisconsin law shall be provided by the operator.
 - (3) **Independent Contractors.** The operator shall require subcontractors and independent contractors and others not protected under the operator's worker's compensation insurance to obtain and maintain worker's compensation and employers' liability insurance.
 - (4) **Proof of Insurance.** Certificates of insurance evidencing compliance with the insurance requirements of this Subsection shall be provided to the Town. The operator shall provide written notice to the Town in the event there is a lapse in coverage exceeding thirty (30) days. All policies, other than worker's compensation policies, shall be written on an occurrence and not on a claims made basis.
- (b) **Defense of Licensing Decision(s) and Indemnity.**
- (1) **Defense of Licensing Decision.**
 - a. In addition to the indemnification described below, the licensed operator shall reimburse the Town its reasonable attorney's fees incurred in defending any legal actions brought by third parties challenging the legality or enforceability of this Chapter or any portion thereof, or the issuance of a license by the Town pursuant to this Chapter.
 - b. If the Town seeks reimbursement, it shall notify the licensed operator in writing promptly upon discovering any claim entitling the Town to a licensing defense reimbursement, but in no event more than ninety (90) days after receiving written notice of any action, lawsuit, proceeding, investigation or other claim against the Town which may give rise to a claim for a licensing defense reimbursement.
 - c. The licensed operator shall not be obligated to reimburse the Town with respect to any such liability, action or claim if the Town fails

to notify the operator in accordance with the provisions of this Subsection in sufficient time, including, without limitation, any responsive motion or answer to a complaint, petition, notice, or other legal, equitable action or claim, but only insofar as such knowing failure to notify the licensed operator has resulted in prejudice or damage to the operator.

- d. With respect to any third-party action, lawsuit, proceeding, investigation, or other claim which is subject to reimbursement under this Subsection, the licensed operator shall be entitled to assume, with counsel of its choice, the defense of such action, lawsuit, proceeding, investigation or other claim at the licensed operator's expense; provided, however, that the Town shall be entitled to participate, at its option, in the defense of such claim and to employ counsel of its own choice for such purpose (the fees and expenses of such separate counsel to be borne by the Town) and to assert against any third-party any and all cross claims and counterclaims the Town may have, subject to the operator's consent, which consent shall not be unreasonably withheld. If the licensed operator elects to assume the defense of any such claim, it may settle such claim in its sole discretion so long as either:

- 1. Such settlement provides an unconditional release of the Town; or
- 2. The licensed operator shall obtain the prior written consent of the Town (which consent shall not be unreasonably withheld).

- e. If the licensed operator elects to assume the defense of any claim, the Town shall cooperate with the licensed operator and its counsel in such defense.

- (2) **Indemnification.** The licensed operator shall defend, indemnify and hold harmless the Town and its officials, employees and agents from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees (such liabilities together known as "liability") arising out of the operator's selection, construction, operation, reclamation, and/or removal of the nonmetallic mining site and affiliate equipment, including, without limitation, liability for property or personal injury (including death) whether such liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification, however, shall not be construed as limiting or qualifying the Town's other indemnification rights available under law.

Sec. 7-3-15 Renewal of Operations Licenses.

- (a) **Renewal Request.** The operator shall make a written request to the Town Clerk for a renewal of its Operations License to operate its nonmetallic mining site no less than four (4) months prior to the date on which the license will expire. The application shall be accompanied by the payment of both the renewal application fee of One Thousand Dollars (\$1,000.00) and the base administrative escrow account fee of Five Thousand Dollars (\$5,000.00) established for the administration of this Chapter. [Cross-Reference: Section 7-3-5].
- (b) **Report Submittal.** The request for license renewal shall include the annual report from the previous calendar year in accordance with the provisions of Section 7-3-9.
- (c) **Preliminary Renewal Application Review by Staff.** The Town Clerk shall make a preliminary review the renewal application within thirty (30) days of receipt to determine whether the application is complete, and, upon a determination that the application is complete, shall forward it to the Town Board.
- (d) **Preliminary Renewal Application Review by Town Board; Additional Fees.**
 - (1) The Town Board shall review the renewal application to determine if additional information or expertise is necessary to properly evaluate the application. The Town shall retain an engineer and/or other qualified person with appropriate expertise to inspect the nonmetallic mining site. If the site has been reported as being inactive for the past year, a member of the Town Board or its designee may be assigned to inspect the site. If no additional information or professional assistance is deemed necessary, the Town Board shall schedule the renewal application for a determination under Subsection (f) below.
 - (2) If the Town Board determines that additional professional assistance is required to properly review the renewal application, the Town Board shall authorize hiring an engineer, attorney, land use planner, geologist, soils scientist, hydrologist, accoustical expert, or other qualified person with appropriate expertise to advise the Town and give written notice to the applicant of the additional administrative escrow account fee to be charged beyond the base administrative fee to cover the cost of review by the Town's retained expert(s). Such additional fee shall be paid before the next step in the renewal review is undertaken.
- (e) **Consultant Reports.** Once the applicant has submitted additional requested information and has paid the additional administrative fee in the required amount, the retained expert(s) shall report to the Town Board on whether the renewal application meets the requirements of this Chapter. The Town

Clerk shall place the request on the agenda of the next regular or special meeting of the Town Board prior to the expiration of the license.

- (f) **Renewal Determination.** The Town Board may grant the request for renewal if it finds:
 - (1) There have been no material violations of this Chapter, the Operations License or other Town regulations which have not been appropriately remedied.
 - (2) The operator has not received recurring or multiple citations, notices of violations or corrective orders from regulatory authorities and/or the Town, or otherwise exhibited a recurring pattern of noncompliance.
 - (3) All applicable fees have been paid in full and financial responsibility requirements have been met.
- (g) **Renewal Denial; Public Hearing.** If the Town Board denies the request for renewal, the Town Board shall notify the operator and provide written reasons for its determination. Following the determination, the operator shall be provided with an opportunity for a public hearing on the non-renewal and possible reconsideration.

Sec. 7-3-16 Violations, Enforcement Procedures and Penalties.

- (a) **Violations.** Each of the following occurrences shall constitute a violation of the terms and conditions of the licensing requirements of this Chapter and licenses issued hereunder, and any such violation shall be grounds for license revocation or suspension, issuance of a citation, injunctive relief or other remedies available to the Town after the expiration of the notice and any cure period (for whatever reason for such a default and whether it shall be voluntary or involuntary or be affected by operation of law or pursuant to any judgment, order or regulation). The following are violations under this Chapter:
 - (1) **Operating Without a License.** Engaging in nonmetallic mining and/or associated activities without an Operations License or Small Site License granted by the Town Board.
 - (2) **Noncompliance With Ordinance Requirements and/or Conditions of License.** Failure to comply with the minimum standards and other terms of this Chapter, other Town regulations, and/or other conditions imposed as a condition of license, including related contracts, financial assurances and agreements. There is a violation if there is a material failure by the licensed operator to comply with any requirements of this Chapter and/or conditions of license directly related to the operation and conditions of approval for the nonmetallic mining site and

associated operations, and if the operator fails to cure the material failure in order to come into compliance within a period of thirty (30) days after the date of such notice. A mitigating factor may be if the operator commences performance to correct such violation within such compliance period and is diligently proceeding to complete such performance, to the Town Board's satisfaction.

- (3) **Providing False or Misleading Information.** Making an incorrect, misleading or false statement in the information and documentation submitted during the licensing application and review process, during inspection of licensed operations by Town representatives, or with required monitoring, sampling and/or reporting.
 - (4) **Failure to Provide Annual Report.** Failure to timely file the annual operations report required under Sec. 7-3-9 or to appear before the Town Board under Sec. 7-3-8(a)(7).
 - (5) **Failure to Take Appropriate Action in Response to Violations.** Failure to take appropriate action in response to a notice of violation or noncompliance, citation, request for additional financial assurance, or other order issued by the Town Board or its authorized representative, or any other regulatory authority. There is a violation if there is a material failure by the licensed operator to comply with any statute, regulation, rule, contract or license administered by any federal, state or county regulatory authority or the Town directly related to the operation of and conditions of approval for the nonmetallic mining site and associated operations, and if the operator fails to cure the material failure in order to come into compliance within a period of thirty (30) days after the date of such notice (unless the regulatory authority has specified a shorter time for compliance). A mitigating factor may be if the operator commences performance to correct such violation within such compliance period and is diligently proceeding to complete such performance, to the Town Board's satisfaction.
- (b) **Public Hearings on Violations; Denial of a License Application or Renewal.** In the event of alleged violations, or the denial of a license application or renewal request, the following procedures shall be followed:
- (1) **Request for Public Hearing.**
 - a. Any person affected by a notice of violation or noncompliance, request for additional financial assurance or other order issued by the Town Board in connection with the enforcement of this Chapter, or upon denial of an application for a license or license renewal, may request and shall be granted a public hearing on the matter before the Town Board.
 - b. Such party shall file with the Town Clerk a written request for a public hearing, with shall set forth his/her name, address, e-mail address, telephone number(s), fax number, and a brief statement

of the grounds why the hearing is requested and/or why the mitigation of the order(s) is warranted.

- c. The written request for a public hearing shall be filed with the Town Clerk within thirty (30) days upon receipt of a notice of violation or noncompliance, or upon denial of an application or renewal application. Upon receipt of the written request for a hearing, the Town Clerk shall set a time and place for a public hearing before the Town Board and shall give the petitioner written notice thereof.
 - d. Following the public hearing, the Town Board, by majority vote, shall sustain, modify or withdraw the notice described in Subsection (b)(1)a above, or grant, deny or grant with conditions the license or renewal license, depending on the Town Board's findings as to whether the provisions of this Chapter have been sufficiently complied with. The hearing petitioner shall be notified in writing within ten (10) days of such determination.
 - e. The proceedings of the public 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 record in the minutes of the Town Board or in a separate report or resolution, which shall be on file with the Town Clerk as a public record. 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 operator, landowner or other appropriate person in violation of this Chapter, including, but not limited to, the following, or any combination of the following:
- (1) **Stop Work Order.** Issue a stop work order, as follows:
 - a. Representatives of the Town administering this Chapter are authorized to post an order stopping work upon land which has had a license revoked or on land currently undergoing activity in violation of this Chapter. Notice is given by both posting upon the land where the violation occurs one (1) or more copies of a notice poster stating the violation, and by mailing a copy of the stop work order by certified mail to the party whose activity is in violation of this Chapter. The stop work order shall specify that the activity on the site must cease or the site be brought into compliance within five (5) days.
 - b. Any stop work order shall remain in effect unless retracted by the Town Board, the Town's authorized administrative representative, or by a court of general jurisdiction or until the activity is brought into compliance with this Chapter. Continued violation(s) of a stop work order may be referred for legal action.

- (2) **Notice of Violation.** Issue a notice of violation and order that specifies the remedial action(s) to be taken to remedy a violation or other situation.
 - (3) **Citation Issuance.** Issue a citation in accord with the Town of Cady Code of Ordinances.
 - (4) **Action By Town Legal Counsel.** Refer the matter to Town legal counsel for consideration and commencement of legal action, including, but not limited to, the assessment of penalties and injunctive relief.
 - (5) **License Suspension or Revocation.** Suspend or revoke an Operations License pursuant to Subsection (d) below.
 - (6) **Request Compliance Review by Other Agencies.** Request review of the operations in question by federal, state and/or county regulatory bodies for compliance with their standards.
- (d) **Suspension or Revocation of Operations License.** After giving notice and providing for the option of a public hearing, the Town Board may suspend or revoke an Operations License for a violation(s) pursuant to Subsections (a) and (b) above.
- (e) **Penalties.**
- (1) **Forfeiture and Other Penalties.** Any person or entity who is found to have violated a provision of this Chapter shall be subject to a forfeiture and other penalties as provided in Sec. 1-1-6 of the Town of Cady Code of Ordinances, except that in cases of violations of this Chapter the maximum amount of potential forfeiture shall be Five Thousand Dollars (\$5,000.00) per violation. Issuance of a citation does not preclude the use of other remedies, such as, but not limited to, injunctive relief, or prosecution for violating other Town ordinances. The penalties and remedies in this Section are nonexclusive and shall not be interpreted as a limitation or prohibition against non-Town parties commencing private legal actions or requesting review by federal, state or county regulatory authorities. Each day that a violation exists constitutes a separate offense.
 - (2) **Court and Legal Costs.** Any person or entity adjudicated for a violation of this Chapter shall pay all court costs and reasonable attorney's fees.
 - (3) **Forfeitures Not to Offset Other Penalties or Financial Obligations.** Notwithstanding anything in this Section, a violator may not use the payment of fines, forfeitures, liquidated damages, required financial obligations, payment of mandatory fees or other penalties or obligations to evade or avoid compliance with this Section.
 - (4) **Contamination Cleanup Costs.** In contamination situations, and in addition to any other action, the Town may commence legal action

against both the party who releases or causes the contaminants and the owner of the licensed site whereupon the contaminants were released to recover the costs, together with the costs of prosecution. The party who releases or causes such contaminants to be released and the owner of the land where upon the contaminants have been released or caused shall be jointly and severally responsible for the costs of cleanup, consultant or contractor fees, including all administrative costs for the oversight, review and documentation, including that of Town employees/agents, equipment and mileage.

- (f) **Prior Infractions.** 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).
- (g) **Judicial Review.** Parties shall have the right to appeal actions under this Section to circuit court within thirty (30) days of the date of the Town determination.

SECTION II. SEVERABILITY.

- (a) If any provision of this Ordinance is adjudged invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.
- (b) If the application of this Ordinance to a particular parcel of land, building, structure, water or air is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not be applicable to any other land, building, structure, water or air not specifically included in said judgment.

SECTION III. CONFLICTING PROVISIONS REPEALED.

All Ordinances in conflict with any provision of this Ordinance are hereby repealed.

SECTION IV. EFFECTIVE DATE.

This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 6th day of May, 2013.

TOWN OF CADY, WISCONSIN

M. Tully
Chairperson

Cash Gruber

Town Clerk

INTRODUCED: 5/6/13

PASSED: 5/6/13

PUBLISHED/POSTED: 5/22/13

State of Wisconsin:
County of St. Croix:

I hereby certify that the foregoing ordinance is a true, correct, and complete copy of an ordinance duly and regularly passed by the Town of Cady Board of Supervisors on the 6th day of May 2013 and that said ordinance has not been repealed or amended and is now in full force and effect.

Dated this 6th day of May, 2013

Cash Gruber

Town Clerk