500.4 Nonmetallic Mining Ordinance

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SECTION I – PREAMBLE
The purpose of this subchapter is to promote the health, safety, prosperity, aesthetics and general welfare of the people and communities within the Town and set forth the rules and procedures for this municipality regarding nonmetallic mines within the Town. This ordinance is adopted pursuant to the Town's village and police powers under Wisconsin Statutes 60.10(2)(c) & 61.34.

SECTION II – INTENT
The general intent of this subchapter is to regulate the location, construction, installation, alteration, design, operation and use of all nonmetallic mines so as to protect the health of residents and transients; secure safety from disease and pestilence; further the appropriate use and conservation of land and water resources; preserve and promote the administration and enforcement of this subchapter and provide penalties for its violations.

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

SECTION IV – DEFINITIONS
A. Metallic Mining or Mining. Operations or activities for the commercial extraction from the earth of merchantable metallic minerals or the exploration or prospecting for such minerals and includes operations, processes or activities related to that extraction.
B. Nonmetallic mining and mining. All of the following:
    1. Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging. Nonmetallic mining does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.
    2. Processes carried out at a nonmetallic mining site that is related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the

nonmetallic mining site. These processes include, but are not limited to, stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals or chemicals, blasting, grading, crushing, screening, scalping and dewatering.

SECTION V – NONMETALLIC MINING

A. Nonmetallic mining in the Town shall be allowed only as provided for in this ordinance.
B. The applicant shall apply for a Town permit for a nonmetallic mine prior to starting work on any mining structure or facility and prior to operating any nonmetallic mine in the Town. The application shall be submitted on a form provided to the applicant by the Town Clerk, a copy of which is attached hereto as Appendix A.
C. The Town Board shall be the sole determining body of whether to issue the permit, after review and recommendation by the Town Plan Commission, and after a public hearing has been held by the Plan Commission, with notice given by US Mail to all adjoining landowners to the proposed nonmetallic mine. The Town Board shall grant the permit, either with or without conditions, if it is determined that the development and operation of the nonmetallic mine is in the best interests of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare.
D. The Town permit shall be void if the permittee violates any conditions of the permit or any conditions of any required Federal, State, or County permits.

SECTION VI – PROCEDURES

A. The applicant shall complete a Town of Berry Nonmetallic Mining Permit Application, Appendix A, and pay the required application fee.
B. After receiving the application and the application fee, the Town Clerk shall mail a copy of the application to all adjoining landowners to the proposed nonmetallic mining site with the date and time of the public hearing being held by the Town Plan Commission.
C. The Clerk shall then place the application on the agenda for the next Town Plan Commission meeting.
D. The Plan Commission shall hold a public hearing, review and consider the application and make a recommendation to the Town Board. After a decision has been rendered by the Plan Commission, the application shall be placed on the agenda of the Town Board.
E. The Town Board shall consider the recommendation of the Plan Commission. Before making a decision on the application, the Town board shall determine whether the application is complete, and whether the applicant has applied for or received any required Federal, State, and County permits for the proposed mine.
F. The Town Board shall grant the permit, either with or without conditions, if it is determined that the development and operation of the nonmetallic mine is in the best interests of the citizens of the Town, and will be consistent with the protection of public health, safety and general welfare.
G. The Town board may conditionally approve the permit and may attach conditions to protect public health and safety and promote the general welfare of the Town. Such conditions may include, but are not limited to, restrictive provisions and proof of financial security for reclamation, restrictive provisions and proof of financial security for town road maintenance and repair, restrictions on hours of operation, restrictions on truck routes on town roads, restrictions on truck and traffic volume into and out of the

mine site, restrictions to protect groundwater quantity and quality, restrictions to safeguard public and private drinking and agricultural wells, restrictions to control air emissions and dust from the mine and its operations, and any other restrictions deemed necessary or appropriate by the Town board to protect public health and safety and promote the general welfare of the Town and its citizens.

SECTION VII – EXCEPTIONS FROM ORDINANCE

A nonmetallic mining permit is not required from the Town of Berry for nonmetallic mines in existence prior to the effective date of this ordinance or for the activities listed in Wisconsin Admin Code Section NR 135.02(3). However, if a pre-existing nonmetallic mine is expanded after the effective date of this ordinance in a manner that requires a nonmetallic mining reclamation permit from Dane County, the expansion shall be subject to the permitting requirements of this ordinance.

SECTION VIII – ENFORCEMENT AND PENALTIES

Any violation of this ordinance shall be punishable by a forfeiture of not less than $100 nor more than $2,000 per day for every day in violation of this ordinance, plus the costs of prosecution for each and every violation. The Town's Attorney shall expeditiously prosecute all such violators. Each day of violation shall constitute a separate offense. The town board or its designee may inspect the mine site at any time for purposes of monitoring or enforcement of this ordinance.

SECTION IX – EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after the day after passage and publication as required by law.

Dated this 16th day of March, 2026

Posted: March 20, 2026
Published: March 20, 2026

Brenda Kahl, Clerk/Treasurer
Michael Statz, Supervisor
Derek Statz, Supervisor

Duane Haag, Chair
Nichole Schwoerer, Supervisor

Town Berry Non-Metallic Mining Application
This is a portion of Appendix A
9046 State Road 19
Mazomanie, WI 53560
Filing Fee $500

Date of Application _____

Company Name _____

Contact Person _____

Address _____

Phone _____ Fax _____Cell _____

Email _____

Proof of Insurance (please attach a copy of this at the back of the application) _____

Legal Description of land for proposed mine development _____

_____

Tax parcel number _____

Name and address of surface land owner _____

_____

Name and address of mineral owner _____

_____

1) Type of Mine:

___ Construction Fill (Sand, gravel, aggregate, or clay used in the construction trades).

___ Industrial Sand Mine (used to produce glass, moldings for castings, manufacture of abrasives, or processed into proppant or other industrial uses).

2) Final destination of mined material: _____

_____

3) Describe current land uses within and adjacent to the project area. Photos would be helpful in providing a view in all directions. Coordinate the photos with the description below.

_____

_____

_____

4) Permits:

A) Does this mine have a current reclamation permit from Dane County to operate? ____

B) List other permits (county, state, federal, DNR, etc.) necessary for this project, indicate status and provide a copy (if available)._____

_____

5) Size:

A) Expected maximum depth of mine? _____ feet. Depth is relative to what benchmark? _____ (Natural ground cover, mean sea level, road elevation, etc.)

B) Groundwater level in the project area? _____ feet. Confirmed or estimated? (circle one). Depth is relative to what benchmark? _____

C) Will any part of the mine extend below the water table? Yes _____ No _____
If yes - do you intend to dewater? Yes _____ No _____
If yes - Estimated dewatering rates in gallons per day?_____ . What impact, if any, will mine dewatering have on neighboring wells? Provide data to support any conclusions or statements made, including any monitoring well data, well construction data, and current water withdrawal rates. _____

_____

_____

_____

D) Specify total area (in acres) to be affected by this project. Include areas for future expansion, stockpiling, processing, haul roads, settling basins, buildings, parking facilities. Show all phases for the removal of material. Give a complete description of the entire site. Use a separate sheet if necessary. Any area of extraction must be at least 50 feet from any line fence or property boundary. _____

_____

_____

_____

6) Mining operations:
A) Describe the method that will be used to dispose of brush and other vegetative debris. Describe the process completely: _____

_____

_____

_____

B) Describe the methods that will be used to retain topsoil and all other overburden. Describe how the topsoil, subsoil, and other materials will be stored until the reclamation process takes place._____

_____

_____

_____

C) Describe the processing methods that will be used at the site. (processing methods may include stockpiling & storage, blending, grading, crushing, screening & cleaning, scalping, dewatering, and dust control). If there are none, please explain why they are not necessary._____

_____

_____

_____

D) Describe the method of extraction (shovel and truck, front-end loader and truck, hydraulic dredge, dragline and truck, selfloading scraper, other): _____

_____

_____

_____

E) Will explosives be used: Yes _____No _____
If yes - specify the types & methods of explosives used and describe what precautions will be used to prevent physical hazards to persons and neighboring property from flying debris, excessive air blasts, or ground vibrations. Depending on the mine's location to nearby structures,

more detailed information may be required on the blasting program (such as a third party blasting study). _____

_____

_____

_____

F) Will water be used at the site? Yes _____No _____ . (Water may be necessary for processing and also to keep dust under control at the pit site and the haul road, if present). If yes - describe the volume of water needed, the source of the water, and any run off control measures (if needed). _____

_____

_____

_____

G) Describe the methods used to control dust at the site. This includes mining processes, on haul roads, and while transporting to final destination. Be as complete as possible.

_____

_____

_____

H) Will fuel tanks, solvents, explosives, or other chemicals be stored on site? Yes _____ No _____

If yes - describe these materials and how they will be secured, stored, and method of containment. Indicate locations of storage facilities on mine map(s). _____

_____

_____

_____

I) Will any of structures need to be established on site. Yes _____No _____. This includes any storage shed, portable toilet, employee facility, etc. If yes - specify the number, type, and location: _____

_____

_____

_____

J) Identify the number of employees expected to work at the site and the facilities that will be provided:
_____

K) Hours / days of operation (including maintenance): _____

L) Length of time the mine is to remain operational? From 20_____ to 20 _____
7) Trucking operations:
A) How many loads per day: _____ . Hours trucks will operate: _____
B) Weight per load: _____
C) Type of truck: _____
D) Which township and county roads will be used to transport material? Please provide a complete description of all roads to be used to transport and to return to the site. Performance bonds may be necessary for the repair and/or restoration of any township road affected in an adverse way. What specific contributions will be taken to insure that the township roads will be maintained to a safe and secure condition?_____

_____

_____

_____

8) Environmental:
A) List resources that may be impacted by this project such as timber, agriculture, surface water, ground water, air quality, noise pollution, and plant, wildlife or fish habitat. Describe measures that will be taken to mitigate those impacts. _____

_____

_____

_____

B) Are there any known endangered species on or near the mine site? Yes _____No ____
If yes - Describe the species and whether an environmental impact statement will need to be prepared?_____

_____

_____

_____

C) Are there any known acid producing minerals or soils present? Yes _____ No _____
If yes - how will acid water pollution from the excavation, stockpiling, and waste areas be controlled?_____

_____

_____

_____

D) What is the schedule and method for well monitoring within a 1/4 mile of the mine's boundaries before, during and after the mine is opened, worked, and reclaimed? (Monitoring distance may need to be increased if the mine depth is near the water table, dewatering is used, or explosives are used):_____

_____

_____

_____

E) Describe erosion control practices that will be used during mining. If no measures will be used, explain why none are needed. _____

_____

_____

_____

F) Describe measures that will be taken to screen the operation from view of surrounding land uses or an explanation of why such measures are not needed. If they are not needed, please include photos of the area (aerial or ground level) Please show the areas affected on a plat.
_____

_____

_____

_____

9) Reclamation: (this section is preliminary - the actual Dane County Reclamation plan for the proposed mining site will need to be submitted to the township before the Plan Commission can officially review the application)
A) Describe progressive reclamation activities that will occur over the life of the operation. Be complete in the description. If necessary show the reclamation in the various phases. (Attach at the back if necessary)._____

_____

_____

_____

B) Is an excavated / impounded body of water to be left as part of the reclamation?
Yes _____ No _____ .
If yes - 1) Will it be secured to prevent unauthorized access by the public? Yes __ No __.
If yes - 2) Will it be stocked with fish? Yes ____No ____ . If yes - what species? _____

_____
C) Describe the methods that will be used at the cessation of seasonal operations to stabilize slopes from erosion. This includes both wind and water erosion. Be complete in your description.
_____

_____

_____

_____

D) Will the site will become inactive during current operations for an unspecified period of time?
Yes _____No _____ If yes - Describe the interim reclamation methods that will be used:
_____

_____

_____

_____

_____

E) Describe proposed reclamation including final slopes, high wall reduction, benching, terracing, and other structural slope stabilization measures. Will the reclamation practices being followed be in agreement with all items in Chapter 74 of the Code of Ordinances of Dane County?

F) Describe anticipated topography, water impoundments, artificial lakes, and future land use of the site. This should be based upon the entire proposed site. It should include a detailed

description of the process and how it will relate to the Dane County Non-Metallic Mining Reclamation Ordinance. _____

_____

_____

_____

G) Describe plans for the disposition of surface structures, haul roads, and related facilities after completion of mining. _____

_____

_____

_____

H) Describe the methods proposed for the disposal or reclamation of oversize and undersized materials. If returned to the site, how will they be incorporated into the reclamation process? _____

_____

_____

_____

I) Describe or attach a copy of a seeding plan that includes methods of seed bed preparation, seed mixtures, seeding rates, mulching, and other techniques needed to accomplish site stabilization. _____

_____

_____

_____

J) Describe long term maintenance needed to support reclamation.(as per the amended ordinance):_____

_____

_____

_____

K) Provide an estimate of the reclamation cost of each phase of the project or the entire site if phasing is not planned. _____

_____

_____

_____

To the best of my knowledge, I certify that the information provided on this application and accompanying documents is true and accurate.
Property Owners signature _____ Date _____

Please print or type the signature _____

Mining Company signature _____ Date _____

Please type or print the signature _____

Company _____

Address _____

Signature of this application authorizes the Town of Berry staff and its designees to enter upon the property to perform needed inspections. Entry will not require a prior notice.

The applicant agrees to provide twenty-five (25) copies of this application. These copies are necessary for the Plan Commission, Town Board, adjoining landowners, and general public at the public hearings.

TOWN OF BERRY NON-METALLIC MINING PERMIT
This is a portion of Appendix A
9046 STATE ROAD 19
MAZOMANIE, WI 53560

THE TOWNSHIP OF BERRY, LOCATED IN DANE COUNTY, WISCONSIN, HEREBY GRANTS A NON-METALLIC MINING PERMIT TO:

_____

RESIDING AT THE FOLLOWING ADDRESS:

_____

THIS IS A CONDITIONAL USE PERMIT. IT IS GRANTED WITH ALL OF THE CONDITIONS LISTED BELOW.

THIS PERMIT IS NOT TRANSFERABLE TO ANY OTHER PERSON OR COMPANY. IT IS TRANSFERABLE ONLY TO HEIRS OR SPOUSES PROVIDED THE STIPULATIONS AS OUTLINED IN THE APPLICATION AND PERMIT ARE FOLLOWED.

THE LAND ASSOCIATED WITH THIS PARTICULAR PERMIT IS LOCATED IN THE _____OF THE _____, SECTION ___ ,

TOWNSHIP _____ ,.RANGE _____ • IF OTHER SECTIONS OR PLOTS EXIST-PLEASE LIST PARCEL NUMBER _____

- Permits for operation need to be **renewed annually for at least the first 5 years**. At that point the duration might be extended for multiple years if the provisions of the permit have been followed.

- Permits will allow activity and reclamation in specific areas as outlined in the operational plan. The operational plan was submitted in detail with the application.

- Activities are to be in compliance with Wisconsin DNR (WDNR) (WPDES) permit

- A setback of 250 feet from any well and 250 feet from any structure (house, barn, garage, etc.)
- Hours of operation: _____

- Operator will follow all provisions of the Dane County Non-Metallic Mining Reclamation Ordnance and Wisconsin Administrative Rule NR135.

- Activities to be conducted in compliance with submitted materials listed under "Plan Review Documents" or the "operational plan". This includes the covering of all haul trucks-and any other stipulations agreed upon by the Township of Berry and the landowner or lease holder prior to the actual hauling and/or mining.

- Wells within _____ mile will be tested for quality.

- No hauling may take place from any mine or pit area after the permit(s) have/has expired.

- It **is the responsibility of the landowner and/or lease holder to keep all permits current. Failure to pay the necessary fee before the due date shall result in the fee increase to $750.00.or suspension of the permit.** The due date for this permit is: _____

- Annual review of the permit will take place prior to the expiration date of the permit (at least 15 but no more than 30 calendar days).

- A complete record of the hearing and the decision of the Plan Commission and/or Town Board will be available for inspection at the Town Hall upon request. Information can be reviewed/and/or requested at the convenience of the Town Clerk. Information may be sought Monday through Friday. This does not include Weekends or Holidays

- The Conditional Use Renewal fee is $200.00 annually for the first five (5) years. After that it will be for the duration of the permit as determined by the Town Board. Violations of the terms of this permit during a permit period will cause it to cease. This fee should be submitted to the Clerk of Berry.

- Revocation of Permit--If any condition of the permit is violated or if the use is substantially detrimental to persons or property in the neighborhood, the Plan Commission and/or Town Board shall hold a public hearing on the revocation of the permit. If, upon finding of facts, any material condition of the permit has been violated or if the character and quality of the area has been substantially and adversely affected by the continuation of the activities as allowed under the Conditional Use Permit, the Town Board may revoke and/or modify the Conditional Use Permit. At that point legal action will initiated to ensure that compliance with the Non-Metallic Minding Ordinance of Berry occurs.

- In the event of revocation or termination, the Conditional Use Permit will be determined to be void and the property shall be reclassified to its original type. At this point a performance bond, taken at the time of renewal will be invoked.

- Lapse of permit--Conditional Use Permits issued shall lapse and will be considered void 6 months after approval by the Plan Commission and/or Town Board unless the use is fully established and improvement of the property as described in the permit is implemented.

- Performance bonds and road maintenance procedures as agreed to by the Town Board, Landowner and/or Company shall be adhered to. Failure will result in revocation of this permit. This shall be in writing and signed by all parties prior to the issuance of this permit. Performance bonds and proof of liability are required prior to the issuance of a permit.

- Any person or persons jointly or severely aggrieved by the decision of the Plan Commission or Town Board or any taxpayer, or any officer, department, board or bureau of the Township, may commence an action in the Circuit Court for Writ of Certiorari.

- Any haul roads shall be maintained so that dust is kept to a minimum by an approved method. There are chemicals available to do this. A suitable surface may also meet the conditions of the permit.

- Any legal fees arising from non-compliance to this permit shall be paid for by the landowner, company, and/or haulers of the material.

- Other Conditions: (May include, but are not limited to: Tarping of loads, trucking routes and times of use, operation and processing methods used, other permits required for operation, etc.)

- Other conditions: _____

- Other conditions: _____

WE AGREE TO THE ABOVE CONDITIONS AND TERMS OF THIS PERMIT:

LANDOWNER

PRINTED NAME & SIGNATURE: _____

ADDRESS: _____

MINING COMPANY

PRINTED NAME & SIGNATURE: _____

ADDRESS _____
HAULER(S) NAME(S): _____

ADDRESS(ES) _____

HAULER(S) NAME(S): _____

ADDRESS(ES) _____

TOWN BOARD:
Chairman: _____ Supervisor: _____

Supervisor: _____ Supervisor: _____

Supervisor: _____ Clerk: _____