

# Frac Sand Seminar



**BAKKE**  **NORMAN**

**2012**

# Table of Contents

Frac Sand Presentation.....3

Appendix Sample Forms.....13

Moratorium.....14

License Ordinance.....16

Findings of Fact.....35

Mining Agreement.....37

Introducing Bakke Norman Municipal Attorneys.....53



"Frac Sand"

Polk County Towns Ass'n.

2012

Adam M. Jarchow

---

---

---

---

---

---

---

---

What is "frac sand"?

Silica sand that looks much like everyday sandbox sand.



---

---

---

---

---

---

---

---

What is Frac sand used for?

In the hydro-fracturing ("fracking") process, frac sand is used to keep the fractured cracks in the shale open so oil and gas can escape.



---

---

---

---

---

---

---

---



### What's So Special About Our Sand?

- Our sand is the ideal size, shape and hardness for the fracking process.



---

---

---

---

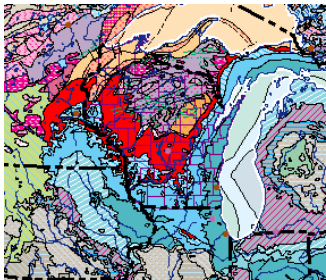
---

---

---

---

### Where is the Wisconsin Frac Sand? (Best sand in Red)



---

---

---

---

---

---

---

---

### Where are the Mines?



---

---

---

---

---

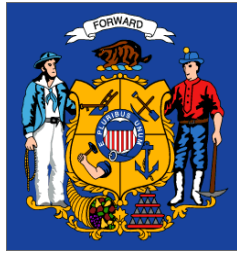
---

---

---

The Good

- Jobs
  - At the plants
    - As many as 40-50 at a plant
    - \$15-25 per hour
  - Truckers
  - Contractors Building Plants
    - EOG Plant was \$100M
  - White Collar Managers
  - Engineers
  - Lawyers
- Economic Development
- Opening of old Rail Lines
- Income to Farmers and other Landowners
- Increase in Tax Base



Wisconsin Flag – Note the person on your right is a miner

---

---

---

---

---

---

---

---

The Bad

- Noise
- Traffic
- Aesthetic Value of Land Damaged
- Conflicts with Neighbors
  - Potential for Decrease in Property Value
  - Disturbance of Peace and Quiet
- Damage to Roads from Heavy Trucks
- Pollution (maybe)
  - Chemicals used during process
  - Dust
  - Other Air Impacts
  - Possible Impacts to Water Resources
  - Light Pollution at Night



**Chippewa Herald**  
**Sand company fined for spill**  
 | Posted: Wednesday,  
 December 7, 2011 12:15 pm  
 Superior Silica Sands paid a  
 \$4,192.50 fine this fall for a  
 spillage of wash water that made  
 its way into Trout Creek.

---

---

---

---

---

---

---

---

What is a Town's Role?

- That is up to each Town Board
- A Town may do any of these:
  - Decide not to do anything;
  - Do as much as possible to stop it;
  - Impose some regulation.
- A Town should not take the ostrich approach:




---

---

---

---

---

---

---

---

So the Town has decided to take some action, what are its options?

- Impose a moratorium
- Zoning
  - County Zoning
  - Town Zoning
- Adopt Ordinances
  - License Ordinance
  - Blasting Ordinance
  - Citation Ordinance
- Mining / Developer's Agreement
- Road Agreement




---

---

---

---

---

---

---

---

Village Powers

- Many of the following items are contingent upon the adoption of Village Powers under Wis. Stat. § 60.10(2)(c).
- Many towns have adopted Village Powers a long time ago, so if you are not sure, search your records.
- It would have occurred at an Annual Town Meeting.
- There is likely a resolution, but a notation could just be in the minutes.
- If Village Powers have not been adopted, call a special Town Meeting under Wis. Stat. §60.12.




---

---

---

---


---

---

---

---

Moratorium Authority

- *Wis. Realtor Assn. v. Town of West Point*, 2008 WI APP 40, 747 N.W.2d 681
  - A town moratorium for land divisions was authorized under Wis. Stat. § 236.45 for a two year time period pending the adoption of a comprehensive plan.
  - Emphasizes that time periods must be reasonable.
  -  Caution that this case was decided under the subdivision ordinance. To my knowledge, there is no case that has addressed a moratorium under general police powers for Towns relating to frac sand. Thus, there is room for a challenge.
- SB 504 – As it turns out, as far as frac sand, this is much ado about nothing. Early versions imposed rules on municipalities that desire to pass moratoriums on “land development”. Frac sand facilities likely would have fallen into that definition. “Land development” was removed from final bill.
- An ordinance is probably the best vehicle for a moratorium (sample attached in appendix).
- Use Caution- if used improperly, it could cause more harm than good.

---

---

---

---

---

---

---

---

### License Ordinance

- In my Opinion, a Good License Ordinance Should Accomplish Three Goals:
  1. Gather Information (application process).
  2. Impose Rules (rationally related to a reasonable governmental interest).
    - Town Board decides how extensive
  3. Encourage Discussion, Cooperation and Negotiation of Mining / Developer's Agreement.
    - Contains provisions that are unlikely to be acceptable to a big, extensive, long-term operation like a sand mine.
      - Limit license term
      - Limit Operating Hours
      - Provision Allowing for License Ordinance Terms to be changed in a Mining Agreement by the Town Board
- Sample Ordinance in attached appendix (note that the base document for this ordinance was the Town of Howard's Ordinance).

---

---

---

---

---

---

---

---

### Authority to Regulate *Zweifelholfer v. Cooks Valley* 2012 WI 7

Unanimous Wisconsin Supreme Court Decision (Prosser did not participate).



---

---

---

---

---

---

---

---

### *Zweifelholfer v. Cooks Valley* 2012 WI 7

#### FACTS

- Landowner, plaintiffs, desired to have a frac sand operation on their property.
- Town passed a non-metallic mining license ordinance imposing rules and regulations on non-metallic mining operations.
- Landowner challenged the ordinance arguing that it was a disguised zoning ordinance and not enforceable because it was not adopted in accordance with relevant procedural rules (including approval by the county).
- The Town argued that it was not a zoning ordinance, but was instead a valid exercise of the Town's police powers.

---

---

---

---

---

---

---

---

Zweifelholfer v. Cooks Valley

2012 WI 7

ISSUE

- Is the ordinance a disguised zoning ordinance that is unenforceable or is it a valid police power ordinance?
- Wisconsin's Zoning enabling act, Wis. Stat. § 62.23(7)(a), describes the grant of zoning power to the local government as follows: "For the purpose of promoting health, safety, morals or the general welfare of the community, the council may regulate and restrict by ordinance . . . the location and use of buildings, structures and land for trade, industry, mining, residence or other purposes . . ."
- Wisconsin Stat. § 61.34(1) prescribes a local government's police powers as follows: "[The local government] . . . shall have power to act for the government and good order of the [local government], for its commercial benefit and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language."
- Distinction is important because zoning ordinances must be passed with different / additional procedural safeguards.

---

---

---

---

---

---

---

---

---

---

---

---

Zweifelholfer v. Cooks Valley

2012 WI 7

HOLDING

- Court held that the ordinance was a valid exercise of the Town's police powers and was not a zoning ordinance.
- Police Powers are defined as:
- "The very existence of government renders imperative a power to restrain the individual to some extent. This is called the 'police power' . . . It may be described, though not defined, as the power of the government to regulate conduct and property of some for safety and property of all."

---

---

---

---

---

---

---

---

---

---

---

---

Zweifelholfer v. Cooks Valley

2012 WI 7

Where's the Line?

- This decision is important for towns because it not only upheld the ordinance, but also because of how narrowly zoning was defined.
- The Court notes that the dividing line between zoning and police power regulation is far from clear and that there is no one factor that is dispositive.
- However, the Court's analysis emphasizes that a touchstone of zoning ordinances are that they divide the town into zones with different land uses available in different zones noting that such ordinances generally also have a map.
- By placing such emphasis on the zone and map portion of a zoning ordinance, the Court appears to have provided towns with significant room to adopt non-zoning, police power ordinances.

---

---

---

---

---

---

---

---

---

---

---

---



*Zweifelholfer v. Cooks Valley*  
2012 WI 7

**A Few More Things...**

- The adoption of Village Powers by the Town was crucial.
- A secondary issue discussed by the Court was the notion that zoning typically controls "where" an activity takes place, not "how". Police Power ordinances typically control how.
- There were other factors. But those seemed to be the big factors.
- Recommend Reading even if frac sand is not an issue because it provides a very nice analysis of police powers, zoning powers, town powers and village powers.

---

---

---

---

---

---

---

---

**What Should Towns do with this power?**

- Exercise it cautiously.
  - Do not just pick up another Town's Ordinance and adopt it.
  - Every town and every situation is different.
  - Thought should be given to what you are trying to accomplish and why.
  - Thought should also be given to who is going to enforce the ordinance and how.




---

---

---

---

---

---

---

---

**Items to Consider in an Ordinance**

- The Application and Application Process
  - Use this as an opportunity to gather information. These operations tend to generate a significant amount of rumors. A written application with plans, maps and a written description of what will occur can help control those rumors. Plus, the Board then understands exactly what it is considering.
  - Who will review the application and how (engineers and attorneys?).
  - How much should the fee be? Enough to reimburse the Town for its costs in considering the application.
- What Regulations should be included?
  - Air and dust issues.
  - Water issues (including financial assurances for neighbors).
  - Roads (including financial assurances and haul routes).

---

---

---

---

---

---

---

---

### Items to Consider in an Ordinance (continued...)

- What Regulations should be included? (continued...)
  - Noise
    - Jake Braking
    - Berms
    - Decibel levels
    - Backup alarms (white noise if possible)
  - Aesthetic Value (berms and landscaping)
  - Hours of Operation
  - Blasting (a separate blasting ordinance is advised)
  - Meetings with the Town Board and Reports to the Board
  - Reporting of Leaks and Hazards
  - Compliance with other permits
  - Penalties for non-compliance
    - Forfeitures will be part of it, so pass a citation ordinance and make sure you publish a summary in the paper.

---

---

---

---

---

---

---

---

---

---

### Last but not Least...

- Add a provision allowing the Town Board to change terms of your ordinance in a Mining Agreement / Developer's Agreement if the Town and residents are protected at least as well.
- With the provision, you have completed the "carrot and stick" – ordinance being the stick and Agreement being the carrot.
- This allows you to try to negotiate some really exciting things like property value guarantees, royalties, etc.
- Structure your ordinance to encourage this behavior.
- Sample Ordinance in appendix (based off Howard Ordinance).

---

---

---

---

---

---

---

---

---

---

### Zoning – *A Quick Note*

- Zoning can be a very valuable tool for Towns dealing with this issue.
- A Town may have its own zoning, but the county must approve if the county has adopted county-wide zoning.
- Not many towns in Western Wisconsin with their own zoning ordinance.
- Many Towns have adopted County Zoning. Must pass a resolution.
- Doing this can be powerful because most of the property that can be used for frac sand mining is zoned agricultural and in many zoning ordinances non-metallic mining is prohibited in the agricultural district.
- Thus, generally rezoning is the first step. The Town has a veto over rezoning. This can be a really important tool and bargaining chip.
- A primer on zoning is available upon request ([ajarchow@bakkenorman.com](mailto:ajarchow@bakkenorman.com))

---

---

---

---

---

---

---

---

---

---

### Mining Agreement

- In my opinion, this is where the lawyer can add the most value.
- First, figure out what the Town Board wants.
  - Sometimes that is easier said than done because they are often reluctant to take a public stance in an open meeting.
  - Also, in some towns, the board members can't agree on what direction they want to go.
- Once you determine what the Board wants, devise a strategy. This also isn't easy because you have to keep open meetings and public records issues in the front of your mind.
- Consider a closed session under 19.85(1)(e) to come up with a strategy (once you know you will be trying to negotiate an agreement). Use this meeting to understand what your bargaining position should be and what the Board wants to see in an agreement.
- Another way to handle it is for the other board members to appoint one member as the lead negotiator and for that person to work with the Town Attorney.
- Take care not to shuttle back and forth between board members by phone or email as you may get yourself into open meetings trouble.

---

---

---

---

---

---

---

---

---

---

### Mining Agreement

- Help the Mining Company understand what you are trying to accomplish
  - Town Boards are under a great deal of pressure from their constituents and the mining company should be made to understand that and to understand how it can help mitigate some of that pressure with favorable terms in a mining agreement. Often these companies are not from Wisconsin, and don't understand the process or the politics. Helping them understand, helps your Town.
  - Make it clear to the company that at some point, open meetings and public records laws will apply, and everything that is said or done should take that reality into account. Remember, public perception is important.
- Use the Agreement to turn public perception.
  - The issues raised by Townspeople are usually legitimate and heartfelt. Don't minimize those issues. If air quality is an issue, try to address it in the Agreement. If property prices are an issue, try to address it in the agreement.

---

---

---

---

---

---

---

---

---

---

### Keep the Public Informed

- Err in favor of over-disclosure and providing more information than is legally required. Don't leave yourself open to accusations that you are doing things in secret. Remember, public opposition is real and the threat of a lawsuit is real. If you stumble on a procedural issue, it could ruin all of your hard work.
- Before adopting an ordinance or mining agreement, make it available for the public and let the public know it is available. For example publish or post the agenda well in advance of meeting where those items will be considered and simply note on the agenda that the public can obtain a copy of the agreement at the town hall. Make sure the mining company understands that this will happen and at that point, the agreement is locked.
- In considering the agreement, take time to go through it with the public so you can point out the areas that address the concerns raised by the public.

---

---

---

---

---

---

---

---

---

---

### A Few Tips...

- Control your meetings. If you are the Town Attorney, don't be shy. Set some ground rules ahead of time and make people (including board members) follow the rules.
  - If it is public comment, make it that (not a debate or discussion between members of the audience).
  - Try to limit character attacks if possible.
  - Be fair; let all sides have their say – sometimes people just need to vent.
- If you adopt a mining agreement that varies the terms of your ordinance, adopt findings of fact that specifically state that the Board finds that the mining agreement provides equal or better protection and why. A sample of findings of fact is included in the Appendix.
- You can't please everyone – deal with it.

---

---

---

---

---

---

---

---

### GO GATORS!



---

---

---

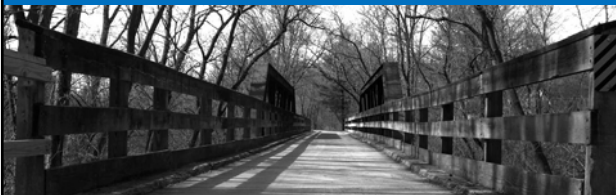
---

---

---

---

---



### THANK YOU...

1.800.328.5630 [www.bakkenorman.com](http://www.bakkenorman.com) [ajarchow@bakkenorman.com](mailto:ajarchow@bakkenorman.com)

---

---

---

---

---

---

---

---

# **APPENDIX**

## **SAMPLE**

### **FORMS**

- 1. Moratorium**
- 2. License Ordinance**
- 3. Findings of Fact**
- 4. Mining Agreement**

## **ORDINANCE**

An ordinance to impose a moratorium on the expansion of existing or creation of new non-metallic mining, including silica/frac sand mining operations and processing plants related to silica/frac sand mining operations in the Town of New Haven pending study of possible legislative action.

### **THE TOWN BOARD OF NEW HAVEN DOES ORDAIN AS FOLLOWS:**

**SECTION 1. *Purpose.*** The purpose of this moratorium is to allow the Town of New Haven adequate time to study the possible impacts that non-metallic mining, including silica/frac sand mining operations and processing plants related to silica/frac sand mining may have on the health, safety, and welfare of residents of New Haven, including air and water quality, town infrastructure, property values, and the local economy, to allow residents and the Town Board the opportunity to consider enacting zoning or other regulatory ordinances, to determine the advisability of amending its Comprehensive Plan and to review and consider amending or adopting other police powers, licensing ordinances or zoning ordinances so as to effectively regulate non-metallic mining, including silica/frac sand mining operations and related processing plants.

**SECTION 2. *Moratorium Imposed.*** That pursuant to Wis. Stats. §§ 60.10(2)(c) and 60.23, the Board of the Town of New Haven hereby prohibits the expansion of any existing non-metallic mining, including silica/frac sand mining operations or related processing plants beyond its physical dimensions as of the date of adoption of the Ordinance, and further prohibits the creation of any new non-metallic mining operations, including silica/frac sand mining operations or related processing plants in the Town of New Haven during the pendency of the moratorium. For purposes of this Ordinance, the term “physical dimensions” shall refer to the external footprint of the existing quarry, pit, or other excavation area within which non-metallic mining, including silica/frac sand extraction or processing activities are occurring as of the date of this Ordinance.

**SECTION 3. *Duration of Moratorium.*** This Ordinance shall be effective for no longer than a period of six (6) months following its date of adoption by the town board.

**SECTION 4. *Study Committee.*** For purposes of implementing the intent of this Ordinance, the Town Board shall appoint an ad hoc committee comprised of the citizens of New Haven. The Committee shall include one member of the Town Board. The Committee shall be charged with researching the issues associated with non-metallic mining, including silica/frac sand mining operations and making recommendations to the Town Board regarding regulatory and police powers necessary to responsibly manage new, existing or proposed non-metallic mining, including silica/frac sand operations. Issues under consideration by the Committee shall include but are not limited to possible regulatory structures including zoning, licensing, and blasting ordinances, and developers agreements; health concerns; environmental impacts; impacts on town infrastructure; impacts on the local economy; and financial considerations for the town.



The Committee shall make bi-monthly reports to the Town Board including any findings and/or recommendations for action.

**SECTION 5.** *Effective Date.* That this Ordinance shall take effect upon its adoption and publication of this Ordinance in its entirety as a Class One Notice under Ch. 985, Wis. Stats., and the Town Clerk shall mail a copy hereof to the Dunn County Clerk.

ENACTED: \_\_\_\_\_, 2011

**TOWN OF NEW HAVEN**

By: \_\_\_\_\_  
Roger Hanson, Chairman

By: \_\_\_\_\_  
Donald Siniff, Supervisor

By: \_\_\_\_\_  
Marv Prestrud, Supervisor

ATTEST:

By: \_\_\_\_\_  
Diane Duerst, Clerk

# THE TOWN OF CLINTON

## NONMETALLIC MINE OPERATOR'S LICENSE ORDINANCE

### ORDINANCE NO: 2012 - 01

#### Section 1. Finding, Purpose and Authority

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

(2) Purpose. The purpose of this Ordinance is to provide minimum standards for all nonmetallic mining operations in the Town, and to require licenses for nonmetallic mining Operators in order to protect public health and safety, to preserve the scenic beauty of the Town's landscapes and environment, to protect the public from damage to both the quantity and quality of ground and surface waters, to minimize or prevent adverse impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Clinton.

(3) Authority. This Ordinance is adopted by the powers granted to the Town of Clinton by the Town's adoption of Village powers under Wis. Stat. §§ 60.10 and 61.34, its authority under § 66.0415, and other authority under the statutes. Any amendment, repeal or recreation of the statutes relating to this Ordinance made after the effective date of this Ordinance is incorporated into this Ordinance by reference on the effective date of the amendment, repeal or recreation.

#### Section 2. Applicability and Scope

(1) This Ordinance shall apply to all nonmetallic mining operations and mine sites within the Town of Clinton except as set forth in sub. (2).

(2) This Ordinance shall not apply to the following nonmetallic mining operations:

- (a) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
- (b) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the highway, railroad or other transportation facility.
- (c) Grading conducted for preparing a construction site (except a nonmetallic mining site) or restoring land following a flood or natural disaster.
- (d) Excavations for building construction purposes conducted on the building site.
- (e) Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.
- (f) Removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.
- (g) Nonmetallic sand and gravel mines in operation prior to the enactment of this Ordinance shall not be required to register or to apply for a license under this Ordinance, as long as said mine operates under the original reclamation plan approved by the County, and the reclamation plan is not modified in any way. If the reclamation plan is modified, the mine is considered a new operation and is subject to the licensing requirements of this ordinance.

### **Section 3. Definitions**

- (1) "Nonmetallic minerals" means 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, beryl, diamond, clay, coal, feldspar, peat and talc.
- (2) "Nonmetallic mining" means any or all of the following:
  - (a) Extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use or sale, including drilling and blasting as well as associated activities such as excavation, grading and dredging of such materials.
  - (b) Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation, drying, dewatering, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with materials transferred from off-site.

(c) Manufacturing processes aimed at producing nonmetallic products for sale or use by the Operator.

(d) Stockpiling of nonmetallic minerals or finished products for sale or use off-site; and stockpiling of waste materials.

(e) Transport, transfer or transload of the extracted nonmetallic minerals, finished products or waste materials to or from the extraction site.

(f) Disposal of waste materials.

(g) Reclamation of the extraction site.

(3) "Waste Material" means 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.

(4) A "mine site" or "site" means land from which mineral aggregates or nonmetallic minerals will be 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 or haulage ways associated with nonmetallic mining operation; and all contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or Operator.

(5) "Landowner" means the person who has title to land in fee simple or who holds a land contract for the land.

(6) "Town" means the Town of Clinton, in Barron County, Wisconsin.

(7) "Town Board", means the Town Board of the Town of Clinton, in Barron County, Wisconsin.

(8) "Operator" means any person who is engaged in, or who has applied for a license to engage in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.

(9) "Operator's license" or "license" means the license required of mining Operators in this Ordinance to undertake nonmetallic mining in the Town of Clinton.

#### **Section 4. License Required**

(1) License Requirement. No person shall operate a nonmetallic mine site within the scope of this Ordinance in the Town of Clinton without first obtaining an Operator's license from the Town Board.

(2) License Term

(a) An Operator's license shall be granted for a period of two (2) years commencing on the date the license is issued and ending on the second (2<sup>nd</sup>) anniversary of the issuance of the license.

(b) An Operator's license may be renewed as set forth in Section 8, except that a temporary Operator's license may not be renewed.

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

(4) License Transfer. An Operator's license may be transferred to a new Operator only with the prior written permission of the Town Board, which shall be granted if the new Operator agrees to the conditions in place with the current Operator and if the new Operator provides all financial assurances as may be required by the Town, county, or state. For clarity, if the current Operator enters into a Mining Agreement with the Town, pursuant to Section 13 of this Ordinance, the current license may not be transferred unless an until the new Operator agrees with the Town in writing to assume all of the obligations under said Mining Agreement and to abide by the terms and conditions set forth in said Mining Agreement.

(5) License Revocation. An Operator's license may be revoked under the procedures in Section 9.

(6) Temporary Operator Licenses. The Town Board may grant a temporary nonrenewable Operator's license not to exceed six (6) months, for mining operations within the scope of this Ordinance that were in existence as of the effective date of this Ordinance, provided that the Operator certifies that its operation will comply with the minimum standards in Section 7 and that the Operator submits a complete application under Section 5 within sixty (60) days of issuance of the temporary license.

**Section 5. Procedures For Applying For A License To Mine**

(1) Application Form. The Application Form for a license to mine in the Town of Clinton shall be available from the Town Clerk.

(2) Application Submittal. The applicant shall submit five (5) copies of the Application Form and all required documentation required under Section 6 to the Town Clerk accompanied by the payment of both the application fee and the base administrative fee established for the administration of this Ordinance in amounts of \$2,500 and \$500, respectively. The fees shall be made payable to "Treasurer, Town of Clinton." The Application Form shall be signed by the Operator and by the landowner, provided the landowner is a person other than the Operator.

(3) Initial Review by the Town Board.

(a) Preliminary Review. The Town Clerk shall forward the application to the Town Board for initial review to determine if additional information or expertise is necessary to properly evaluate the application. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for consideration under sub. (4).

(b) Additional Information. The Town Board may request the applicant to submit additional information if the Town Board determines that application is incomplete. The Town Board may also retain the services of an engineering firm or other qualified person with appropriate expertise ("retained expert") to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this Ordinance.

(c) Additional fees. If the Town Board determines that additional expertise is required, the Town Board shall authorize retaining the services of an engineering firm, attorney or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of the services of any such retained expert. The additional fee shall be paid before the additional review is undertaken.

(d) Report. Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall report to the Town Board on whether the application meets the requirements of this Ordinance.

(4) Decision by the Town Board.

(a) Notice. Once the application is complete and any report by a retained expert has been completed, the Town Clerk shall place the application on the agenda for the next regular meeting of the Town Board. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. In the discretion of the Town Board, the Town Board may hold a public hearing regarding the application.

(b) Town Board Decision. The Town Board may take immediate action or set a date for the meeting at which time they shall make a final decision on the Operator's license. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall grant the license if it determines that the operation of the mine will be consistent with the minimum standards and the purposes of this Ordinance. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section 9(3).



## **Section 6. License Application**

All applicants for a mining Operator's license shall submit a complete application form. Incomplete applications will be returned to the applicant and review of the application will be put on hold. Applicants shall submit all of the following information, including any information not specifically requested on the application form as attachments to the form:

(1) Ownership Information.

(a) The name, address, phone number(s), and e-mail address of the Operator of the nonmetallic mining operation.

(b) The name, address, phone number(s), and e-mail address of all owners or lessors of the land on which the mining operation will occur.

(c) If the operation is subject to a lease, a copy of a fully executed lease and/or agreement between the landowner and the Operator who will engage in mining operations on the proposed site.

(d) The Operator shall designate a local contact person (either on site or with an office in Barron, Polk Chippewa or Dunn County) who the Town can contact for information or with concerns. Said contact person shall be available by phone or in person during the hours the mine is in operation.

(2) Site Information and Maps.

(a) A certified survey map(s), survey or other reasonably accurate and complete map and parcel identification number(s) of the property on which the nonmetallic mining operation will be located.

(b) An aerial photo of the proposed site at a scale of 1 inch equals 660 feet signed by both the Operator and the landowner.

(c) The location within the site of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.

(d) A topographic map or maps of the mine site extending 3 and 1/2 miles beyond the site boundaries at contour intervals no wider than 10 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within one mile of the site.

(e) A map on which the all residential, agricultural and municipal wells within 3 and 1/2 miles of the boundaries of the site in all directions are marked and given a numerical identification of the location.

(f) The location and name of all surface waters, including lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the site and within 3 and 1/2 miles of the site.

(g) A description of the distribution, depth and type of topsoil on the site as well as the geological composition and depth and width of the nonmetallic deposit.

(h) For manufacturing, drying, transfer, transload or processing facilities within the Town, a map identifying the location of all other non-contiguous sites within the Town of Clinton and any other municipality, if any, that will contribute extracted material to the same manufacturing, drying, transfer, transload or processing facility to which the site for which the applicant seeks a license.

Notwithstanding anything to contrary in this Section 6(2), if the Operator will only be conducting drying (without chemicals), transfer or transloading at the mine site, the Operator shall state the same in its application and may omit the items described in Sections 6(2)(d)-(g) in its initial application; provided, however, at the request of the Town Board, the Operator shall supplement its initial application with such information.

(3) Operation Plan

(a) Dates of the planned commencement and cessation of the operation.

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

(c) Estimated volume of material to be extracted over the life of the mine and for the next calendar year (or if the mine site is solely a drying, processing, transload or transfer facility, the amount of product that will pass through the site over the life of the site and for the next calendar year).

(d) Location of road access points. The proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.

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

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

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

(h) A listing of all chemicals and approximate quantities used in the manufacturing or processing operations or in controlling dust. Note: If the Operator desires to change or add chemicals, the Town Board must be notified in advance of any such change or addition.

(4) Information Demonstrating Compliance with Minimum Standards.

(a) The Operator shall provide the information necessary to demonstrate that the mining operation will comply with the minimum standards in Section 7.

(b) For mining operations commencing after the effective date of this Ordinance, the Operator shall also provide information establishing baseline conditions at the site before mining operations commence, including the groundwater elevation across the site, groundwater quality at the site for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made, and the base flow of surface water within 3 and 1/2 miles of the site.

Notwithstanding anything to contrary in this Section 6(4), if the operator will only be conducting drying (without chemicals), transfer or transloading at the mine site, the operator shall state the same in its application and may omit the items described in Sections 6(4)(b) in its initial application; provided, however, at the request of the Town Board, the operator shall supplement its initial application with such information.

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

**Section 7. Minimum Standards of Operation**

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

(1) General Standards.

(a) The Operator shall stake or otherwise mark the borders of the entire site and shall secure the site by fencing or other appropriate measures.

(b) The Operator shall demonstrate compliance with all of the other provisions of this Ordinance.

(c) No blasting or “bumping” shall occur without special permission by Town Board, or the Operator shall have obtained a blasting permit from the Town pursuant to the Town’s Blasting Ordinance if one has been enacted.

(d) The Operator shall demonstrate that all other applicable federal, state and local permits and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation.

(e) The Operator shall minimize backup alarm sounds as much as possible, and use “white noise” backup alarms to the extent permitted under federal and state regulations

(f) No jake braking of trucks entering and leaving the mine site. Operator shall inform all truck drivers and any independent contractors that they must comply with the no jake braking rule and all other applicable traffic codes. If a trucker disregards this notice, Operator shall take steps to correct the action or stop using any such trucking company that refuses to comply.

(g) The Operator shall meet at least annually with the Town at a regular April Town Board meeting (or a special Town Board meeting at the Town Board’s discretion) regarding operations and possible issues.

(h) The Operator shall contact the Town Chairperson as soon as possible and no later than within 2 hours, in the event of hazardous chemical or waste spills, leaks or contamination of any kind or in the event of a release of any chemical, dust or particles above levels permitted by applicable regulations.

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

(2) Standards Regarding Off-Site Impacts.

(a) The Operator shall undertake all measures necessary for the control of surface water runoff from nonmetallic mining operations in order to prevent pollution and erosion of sediment onto neighboring properties, surface water and groundwater, and shall also comply with the standards for erosion control under NR 216 and NR 151 as applicable.

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

(c) The Operator shall provide a buffer area of a minimum of 50 feet along bordering property lines and public roadways.

(d) The Operator shall screen the mining operations 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 on the analysis and configuration of berm construction and placement.

(e) The Operator shall limit normal hours of operations to 12 hours a day Monday through Friday during daylight hours and not later than 6:00 pm to minimize off-site impacts to residents. The Operator may submit a plan for extended hours as a special exception or as part of a Mining Agreement, if it can demonstrate that additional hours are reasonably necessary for the mining operation and it would be consistent with public, health safety and welfare.

(f) The Operator shall obtain a current bus schedule from all school districts which operate regular bus runs on any roads used by the trucks. The Operator shall ensure that trucks from the mining site shall not interfere with the safety of children being taken or returned from school, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is highest.

(g) The Operator shall limit night lighting on site, to that which is minimally necessary for security and, wherever possible, shall be shielded from illuminating off-site areas. Every effort consistent with legal requirements for aerial safety shall be made to minimize illumination of the night sky. Upon written complaint of light pollution made to the Town Board, the Town shall notify Operator, which shall take steps to mitigate the light pollution by redirecting the lighting and taking other reasonable steps to address the complaint.

(h) The Operator shall utilize all relevant dust control measures specified in Wis. Admin. Code § NR 415.075.

(i) Operator must meet the air quality standard of 3 micrograms per cubic meter of respirable crystalline silica (as established by the California OEHHA) at the boundary of the mine. Operator must meet the EPA particle size standards PM 10 and, PM 2.5 at the boundary of the mine site. At Operator's Expense, site must have a minimum of 4 automatic and continuous monitors, installed and properly functioning, strategically located on the borders of the mine site, with monthly readings from the monitors collected by an independent service. Data from those readings must be given to the Town and posted on a web site designated by the Town. The Town may, at its discretion, order additional collections of readings by the designated independent source at any time it deems it necessary to protect the health and safety of the public.

(j) The Operator shall control off-site noise levels to the maximum extent practicable (for example but not limited to "jake" braking).

(k) To the greatest extent reasonably possible, the Operator will direct trucks carrying material to or from the mine site to travel on roads other than Town roads (i.e., United States Highways and County Roads). The Operator will direct any employees or

contractors providing services to the Operator to comply with this provision. In the event that the Operator believes that any town road will regularly be used to haul materials to or from the mine site, the Operator will notify the Town and comply with Section 10 of this Ordinance.

(l) The Operator will comply, and cause its contractors and employees to comply, with the seasonal spring special weight restriction imposed upon Town roads for the approximate six (6) week period beginning in March.

(3) Standards Regarding Groundwater and Surface Water.

(a) Impacts to Groundwater Quality.

(i) Mining operations shall have at least one monitoring well for every 10-acre sector of the mine site, and the Operator shall take quarterly samples for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made.

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

(b) Impacts to Groundwater Quantity.

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

(ii) Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within 3 and 1/2 miles of the mine site. A significant reduction is a drop in the water table that results in a substantial adverse impact on a private well including but not limited to the inability of a well to provide water on a continuous basis. See Section 11 of this Ordinance for further details.

(c) 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 3 and 1/2 miles of the mine site, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.

(d) 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 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 operation.



(e) Storm Water Management. Operator shall repair any damage to, and remove sediment from any private property, or town roads, ditches and other drainage ways when Operator is found responsible by the Town for such sediment or damage caused by runoff from the mine site for any reason, including but not limited to heavy rains and/or snowmelt runoff.

Notwithstanding anything to contrary in this Section 7(3), if the operator will only be conducting drying (without chemicals), transfer or transloading at the mine site, the operator shall state the same in its application and shall not be obligated to comply with Section 7(3)(a)(i) of this Ordinance.

(4) Hazardous materials.

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

(b) The Operator shall not dispose of waste materials containing any hazardous chemicals in toxic amounts, or residuals declared to be hazardous by a government agency in toxic amounts on site or in the Town of Clinton, except in accordance with applicable state and federal law and with prior approval of the Town Board.

(c) The Operator shall have a plan for responding to spills of any hazardous materials on the site. Said plan shall be given to the Town prior to commencing operations, and shall be updated any time any change or addition is made to any hazardous materials used on the site.

(5) Special Exceptions.

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

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

**Section 8. Annual Report and License Renewal**

(1) Annual Report.

(a) No later than March 1 of each calendar year, the Operator shall submit an annual report to the Town Board for all active and intermittent mining sites for which the Operator has a license in the Town of Clinton.

- (b) The annual report and shall include the following information:
- (i) An identification of the Operator and location of the mining site.
  - (ii) A map or drawing accurately showing the area of excavation, the unclaimed area and any the reclaimed area including a calculation of the number of acres for each type (not applicable if the operator has only conducted drying (without chemicals), transfer or transloading at the mine site).
  - (iii) A description of activities and operations on the site for the previous calendar year.
  - (iv) A description of activities and operations on the site anticipated for the following calendar year.
  - (v) A written report demonstrating how the Operator has been in compliance with all terms and conditions of its license and this Ordinance. The report shall also include any groundwater, surface water and other monitoring results, as applicable.
  - (vi) A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

(2) License Renewal.

- (a) The Operator shall make written request to the Town Clerk for a renewal of the license to operate the mine no later than six (6) 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 \$2,500 and the base administrative fee of \$500 established for the administration of this Ordinance.
- (b) The written request for renewal shall include the annual report from the previous calendar year in accordance with the provisions of subsection (1).
- (c) The Town Clerk shall review the renewal application within 30 days of receipt to determine whether the application is complete and upon a determination that it is complete shall forward it to the Town Board.
- (d) The Town Board shall review the application to determine if additional information or expertise is necessary to properly evaluate the application. The Town shall retain an engineer or other qualified person with appropriate expertise to inspect the mine site unless the site is reported as being inactive during the past year, in which case a member of the Town Board or their designated person may be assigned to inspect the site. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for a decision under par (g).

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

(f) Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall report to the Town Board on whether the renewal application meets the requirements of this Ordinance. The Town Clerk shall place the request on the agenda of the next regular meeting or a special meeting of the Town Board prior to the expiration of the license.

(g) The Town Board may grant the request for renewal if it finds:

(i) there have been no material violations of the Ordinance or the license which have not been appropriately remedied, and

(ii) the Operator has not received multiple or recurring citations or orders for violations of the Operator's license or this Ordinance.

(iii) all applicable fees have been paid and financial responsibility requirements have been met.

(h) If the Town Board denies the request for renewal, the Town Board shall notify the Operator and provide the Operator with an opportunity for a hearing.

### **Section 9. Inspection, Enforcement, Procedures and Penalties**

(1) Inspection. The Town Board or other authorized representative of the Town, may make inspections to determine the condition of nonmetallic mining sites in the Town in order to safeguard the health and safety of the public and determine compliance with the minimum standards under this Ordinance. The Town Board or their authorized representative may enter the mine site during regular hours of operation for inspection and, if necessary, to investigate any complaints. The Town official shall notify the Operator's designated contact person by phone prior to entering the site, and will report his presence to the onsite supervisor upon entering the site upon showing proper identification, and upon reasonable notice.

(2) Violations. The following are violations under this Ordinance:

(a) Engaging in nonmetallic mining without an Operator's license granted by the Town Board.

(b) Failure to comply with the minimum standards and other terms of this Ordinance.

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

(d) Failure to timely file the annual operational report under Section 8 or to annually appear before the Town Board under Section 7(1)(g).

(e) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 10 or other order issued by the Town.

(3) Hearings

(a) Any person affected by a notice and order issued in connection with the enforcement of this Ordinance under sub. (4), or upon denial of an application for a license or license renewal, may request and shall be granted a hearing on the matter before the Town Board, provided such person shall file with the Town Clerk, a written petition requesting the hearing and setting forth his name, address, telephone number and a brief statement of the grounds for the hearing or for the mitigation of the order. Such petition shall be filed within thirty (30) days of the date the notice and order are served or upon thirty (30) days upon denial of an application for a renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof.

(b) After the hearing, the Town Board by a majority vote, shall sustain, modify or withdraw the notice under sub. (4), or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this Ordinance have been complied with, and the petitioner shall be notified within ten days in writing of such findings.

(c) The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.

(4) Remedies.

The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance, including the following:

(a) Issue a stop work order.

(b) Issue a notice of violation and order that specifies the action to be taken to remedy a situation.

(c) Issue a citation in accord with the Town of Clinton citation ordinance if the Town has enacted such an ordinance.

(d) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub (6) and injunctive relief.

(e) Suspend or revoke the Operator's license under sub (5).

(5) License Suspension or Revocation. After giving notice and a hearing, the Town Board may suspend or revoke an Operator's license for a violation under sub (1).

(6) Penalties.

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

(b) Any person or entity adjudicated for violation of this Ordinance shall pay court costs and reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.

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

#### **Section 10. Financial Assurance**

(1) Financial assurance shall be provided to the Town as a condition of license approval in the amount necessary for the following:

(a) Road repair. An amount necessary for the repair and maintenance of Town roads used for truck traffic transporting materials to or from the site. Upon the agreement of the Town Board, the financial assurance may be in the form of a Road Maintenance Escrow Account.

(b) Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within 3 and 1/2 miles of the site or such other area shown to be impacted by the Operator's operations.

(2) The form of financial assurance made to the Town of Clinton shall be that form agreed to by the Town Board and may include performance bonds, escrow agreements, irrevocable letters of credit or other measures agreed upon by the Town Board.

(3) If at any time after a license is issued, the Town determines that the amount of financial assurance must be increased to meet specific road repair or water supply needs, or the amount available has been utilized, the Town shall notify the Operator of the additional amount

needed and the basis for the request. The Operator shall have 30 days to provide the increased amount.

(4) The Operator shall also provide to the Town proof that it has provided the financial assurance for reclamation required under Wisconsin law, if applicable.

(5) Notwithstanding anything to contrary in this Section 10, if the operator will only be conducting drying (without chemicals), transfer or transloading at the mine site, the operator shall state the same in its application and shall not be obligated to comply with Section 10(1)(b) of this Ordinance; provided, however, in the event that the Town Board determines that 10(1)(b) should apply to a particular Operator as a result of the nature of that Operator's operations, Section 10(1)(b) shall apply.

### **Section 11. Damages to Private Water Supply**

(1) A property owner within one (1) mile of the mine site may seek remedies under subs (2)-(5) for any of the following damages to private water supply caused by the Operator or its employees or contractors:

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

(b) 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 basis.

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

(2) Any property owner under sub (1) seeking a remedy under this Section shall simultaneously file a notice with the Town and the mine Operator of the occurrence of the event under sub (1) explaining the nature and extent of the problem.

(3) Within 24 hours of receipt of such notice under sub (2), the Town may use funds provided under Section 10 (if applicable) to provide an adequate interim water supply. If applicable, the Town shall also use funds under Section 10 to indemnify the Town for any claims filed under Wis. Stat. § 281.77(4). An interim water supply shall continue until the Town has approved the report or plan under sub (4).

(4) Within 20 days of receipt of notice under sub (2), the mine Operator may provide to the property owner and to the Town a report that demonstrates that the impact to the property owner was not attributable to the mining operation, or to present a plan for a permanent alternative water supply to be paid by the Operator.



(5) The Town shall in consultation with the property owner review the report or plan and approve or deny such report or plan. If the Town determines that the Operator's report is incorrect or insufficient, the Town may continue to provide an interim water supply (if a fund for the same has been set up pursuant to Section 10) during any subsequent negotiations, mediation, or litigation. If the Town determines that the mine Operator was not the cause of damage to 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 year.

(6) A property owner beyond one (1) mile of the mine site may apply to the Town for use of funds under Section 10, if applicable, to remedy damages to a private water supply identified in sub (1), provided that the property owner can demonstrate to the Town that the damage to the private water supply was caused by the mine. If the Town determines that the damage was caused by the mine, the property owner can utilize the remedies in subs (2) to (4).

### **Section 12. Severability, Interpretation, and Abrogation**

(1) **Severability.**

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

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

(2) The provisions of this Ordinance shall be liberally construed in favor of the Town of Clinton and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town of Clinton.

(3) This Ordinance is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Ordinance.

### **Section 13. Mining Agreement**

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

**Section 14. Effective Date**

Following passage by the Town Board, this Ordinance shall take effect the day after the date of publication or posting as provided by Wis. Stat. § 60.80.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012  
by a vote of \_\_\_ yes, \_\_\_ no.

\_\_\_\_\_  
Jim Gores  
Town Board Chairperson

Attest: \_\_\_\_\_  
Melanie Miller  
Town Clerk

## **FINDINGS OF FACT**

### **TOWN OF CLINTON**

The Town Board of the Town of Clinton, Barron County, Wisconsin, makes the following Findings of Fact regarding the Non-Metallic Mine Operator's License Application, License and Mining Agreement of Superior Silica Sand LLC:

1. The Town has adopted a Non-Metallic Mine Operator's License Ordinance ("Ordinance").

2. Pursuant to the terms of the Ordinance, Superior Silica Sand LLC ("SSS") has submitted an application ("Application") to the Town for the issuance of an Operator's License under the Ordinance ("License").

3. In connection with the Application, and Section 13 of the Ordinance, SSS indicated its desire to negotiate and enter into a Mining Agreement ("Mining Agreement").

4. The Town, through the Town Attorney, has negotiated a Mining Agreement with SSS.

5. After reviewing the Application and supporting materials, listening to presentations by SSS employees regarding the proposed project, visiting the property and other similar facilities, considering comments of the public regarding the proposed project and considering the terms and conditions set forth in the Mining Agreement, the Town believes that SSS has met the requirements of the Ordinance and should be issued a License.

6. Pursuant to Section 13 of the Ordinance, the Town also believes that the changes made to the Ordinance as set forth in the Mining Agreement provide protections for the public at least equal to those set forth in the Ordinance. Specifically, the Town makes the following findings in light of the fact that the SSS facility and property will only be used for drying and transloading sand, without chemicals (and not extracting sand from the property):

a. SSS will have less impact on the property and surrounding properties than would be the case if it were extracting sand from the site and/or using chemicals in the drying process;

b. Because of the diminished impact, not all of the extensive regulations contained in the Ordinance are necessary or applicable;

c. SSS has agreed to cover trucks and trains;

d. SSS has agreed not to store or stockpile sand outside;

e. SSS has agreed to build a berm around the portion of the property on US Highway 8;

- f. SSS has agreed not to use chemicals in its drying process;
- g. S SS has agreed that its water usage will be fairly limited;
- h. SSS has agreed to night-lighting limitations;
- i. SSS has agreed to limit noise;
- j. SSS has agreed to prohibit jake braking;
- k. SSS has agreed not to operate on Town roads unless it comes back to the Town to obtain haul routes and makes escrow payments;
- l. SSS has agreed to install a baghouse leak detection system and an air monitoring system that the Town finds will provide at least as much protection (given the use of the property and facility) as would be provided in the Ordinance (and which are greater than required by State or Federal law);
- m. SSS has agreed to abide by more stringent air requirements than are set forth in State or Federal law;
- n. SSS has agreed to allow the Town to hire independent inspectors to make sure SSS is in compliance with all applicable laws, rules and regulations;
- o. SSS has agreed to a limited guaranty of certain properties near the facility;
- p. SSS has agreed to provide a royalty payment to the Town to compensate it for the impacts of its proposed project;
- q. SSS has exhibited a cooperative attitude in the is process; and
- r. The changes to the Ordinance which are set forth in the Mining Agreement will have no, or very limited, negative impact on the Town and its residents and any such negative impacts are more than offset by positive impact of the additional items which were agreed to by SSS in the Mining Agreement such that the public will be more protected with the Mining Agreement than with just the Ordinance.

The Town Board of the Town of Clinton, Barron County, Wisconsin, has made and adopted these Findings of Fact as of this 10<sup>th</sup> day of April, 2012.

\_\_\_\_\_  
Jim Gores, Town Chairman

\_\_\_\_\_  
Robert Heil, Supervisor

\_\_\_\_\_  
Larry Peterson, Supervisor

Attest:

\_\_\_\_\_  
Melanie Miller, Clerk

## MINING AGREEMENT

**THIS MINING AGREEMENT** (“Agreement”) is made and entered into effective as of the Effective Date (defined below) by and between SUPERIOR SILICA SANDS LLC, a Texas limited liability company (“SSS”) and the TOWN OF CLINTON, a Wisconsin Town located in Barron County (“Town”).

### RECITALS

A. SSS desires to engage in nonmetallic mining activities as defined by the Town’s Nonmetallic Mine Operator’s License Ordinance (“Ordinance”), on the property (“Property”) located in the Town of Clinton, Barron County, Wisconsin, and described in the attached Exhibit A.

B. The Property is owned by Carol and Jay Frank (approximately 82 Acres) and Monty Peterson (approximately 7 acres), but SSS is in the process of purchasing the Property (collectively, the “Owners”).

C. SSS desires certain exceptions from and modifications of the requirements of the Town’s Ordinance.

D. The Town is willing to grant such exceptions and modifications under the conditions set forth below.

### AGREEMENT

THEREFORE, SSS and the Town agree as follows:

#### 1. License

1.1. The Town acknowledges receipt of the fee and materials sufficient to fulfill the application requirements of the Ordinance.

1.2. By signing this Mining Agreement (“Agreement”), the Town grants a license to operate the mine site in the manner set forth and described in SSS’s application for a mine Operator’s license under the Ordinance for the term of this Agreement (“License”). This Agreement is adopted pursuant to Section 13 of the Ordinance and the provisions of this Agreement shall modify the provisions of the Ordinance specifically referenced in this Agreement in the manner specifically referenced in this Agreement.

#### 2. Term

2.1. This Agreement shall be effective upon the later of (i) signing by all parties; (ii) the effective date of the Ordinance.

2.2. This Agreement shall terminate at 11:59 p.m. on December 31, 2037; and thereafter, will be renewed for one (1) additional twenty-five (25) year term if the renewal License is issued for such term pursuant to Section 3.1.1 below.

2.3. The obligations of SSS and the Town's rights under this Agreement shall survive termination of the Agreement.

### **3. Operation**

3.1. Except as provided in this Section 3, SSS shall comply with the requirements, obligations and provisions set forth in the Ordinance:

3.1.1. License Term. The Term of the License set forth in Section (4)(2) of the Ordinance shall be modified to commence on the date of this Agreement and shall expire at 11:59 p.m. on December 31, 2037. Section 8(2)(g) of the Ordinance is modified so that the Town is required to renew the License for an additional twenty-five (25) years if: (i) SSS timely submits the materials and the renewal fee described in Section 8(2) of the Ordinance; (ii) SSS agrees that the terms of this Agreement continue to be binding; (iii) SSS meets the requirements set forth in Section (8)(2)(g)(i)-(iii); and (iv) SSS is then in compliance with all of the terms and conditions of this Agreement, the Ordinance, the License and all other applicable laws, rules, regulations and orders.

3.1.2. Hours of Operation. The Hours of Operation set forth in Section 7(2)(e) of the Ordinance shall be modified to be 24 hours per day, 7 days per week.

3.1.3. Fencing. In lieu of the fencing of the borders of the entire site described in Section 7(1)(a) of the Ordinance, SSS shall provide the buffer described in Section 7(2)(c) of the Ordinance, construct an earthen berm in the manner described in Section 7(2)(d) of the Ordinance (with gaps for road and rail access) and place a gate across the main entrance to the facility off of United State Highway 8. Earthen berms will be built in a manner to provide a substantial reduction of sound at the property boundary. Should the aforementioned measures fail to keep noise levels at or below 70 decibels, SSS will plant small trees or shrubs along the top of the berm to further reduce noise levels. SSS will also meet with Town officials and work towards reducing any other noise levels which are determined to be above the 70 dba level. The earthen berms shall be constructed prior to the commencement of operation and during 2012-2013, analysis will be conducted to determine if other vegetation including small trees should be planted on the berms to improve sound barriers and dust migration.

3.1.4. Lighting. Without limiting the provisions set forth in Section 7(2)(g) of the Ordinance, and in furtherance of the same, all lights must have full cut off shrouds so that no light is directed upward or at structures not on the Property. Portable lighting shall be used only as necessary to illuminate work areas.

3.1.5. Roads and Traffic. SSS will comply with Section 7(2)(k) of the Ordinance. SSS agrees that neither it nor its employees or independent contractors will

use roads owned or maintained by the Town (“Town Roads”) to transport materials to or from the Property or otherwise in connection with the Property (for clarity, traveling, or turning around, on Town roads even if the truck is empty is prohibited). In the event that it shall become reasonably necessary for SSS or its employees or contractors to utilize any of the Town Roads (whether permanently or temporarily), SSS shall immediately notify the Town. Upon notification to the Town, the Town will design haul routes to be used that will have the least impact on the Town and its residents (“Haul Route”). SSS shall follow, and cause its employees and contractors to follow, the Haul Route. SSS shall pay \$0.10 per ton of sand (or other product) for each mile (pro-rated for portions of a mile) such sand (or other product) is hauled over the Haul Route into the Road Maintenance Escrow that will be established by the Town Board at the time that the Haul Route is established to provide the financial assurance described in the Ordinance (“Escrow”). Such payments shall be made quarterly by SSS and SSS shall provide such reasonable documentation to support the payments as may be reasonably requested by Town. If the balance of the Road Maintenance Escrow reaches \$250,000 then SSS shall be entitled to suspend payments to the Road Maintenance Escrow until such time as the Escrow balance reduces to \$50,000.

3.1.6. Maintaining Roads. Prior to hauling on the Haul Route and annually thereafter, SSS and Town shall mutually agree to an independent third party who will conduct an initial and annual assessments (the “Assessment”) of the Haul Route, in cooperation with and including input from the parties. Such Assessment shall set forth repairs needed as a result of Haul Route use by SSS and its employees or contractors and such Assessment shall also contain a reasonable estimate of costs for such repairs. Town shall use, and shall ensure any third party engaged for the Assessment uses, sound planning practices for any and all Haul Route maintenance activities, and Town shall make all reasonable efforts to mitigate and reduce cost of repairs to the Haul Route. Such efforts may include, but would not be limited to, preventive maintenance aimed at overall cost reduction of Haul Route repairs. SSS shall have an opportunity to review the Assessment and meet with appropriate Town representatives to discuss the Assessment. Parties shall also have the right to modify the recommendations put forth in the Assessment by mutual agreement. The Town will provide a detailed written statement and accounting to SSS for maintenance costs incurred as the work contained in an Assessment is completed, together with any additional supporting documentation reasonably requested by SSS. Such statement shall be provided to SSS no less than thirty (30) days prior to a withdrawal from the Escrow by Town. SSS shall have the right to review the documentation and identify errors or omissions. Town shall only receive reimbursement from Escrow for actual out-of-pocket costs incurred by the Town from maintenance to the Haul Route (or other Town Roads used by SSS in violation of this Agreement and the Ordinance) necessitated by use of the Haul Route (or such other Town Roads) by SSS and its employees and contractors. Such maintenance costs must be directly attributable to damage to the Haul Route caused by Operator or its employees or contractors hauling of products and equipment related to the Property. The Escrow funds may be used by the Town solely and exclusively for the purpose of carrying out repairs as set forth in an applicable Assessment, in accordance with and subject to the terms and conditions of this Agreement. If the Escrow is ever insufficient to fix the Haul Route or

any other Town Road damaged by SSS, its employees or contractors, SSS shall immediately pay an amount into the Escrow Account sufficient to cover the costs of such maintenance. For clarity, except as set forth in this Section 3.1.6 and Section 3.1.5 of this Agreement, as of the effective date of this Agreement, the Town is not requiring SSS to provide the other financial assurances described in Section 10 of the Ordinance.

3.1.7. Air Monitoring. In lieu of the monitoring requirements set forth in Section 7(2)(i) of the Ordinance, SSS shall install a bag-house leak detection and particle detector system which shall provide monitoring of the bag-house and its emissions. The system installed by SSS will automatically shut down the facility if it detects a leak in the bag-house dust collection system or emissions higher than the level specified in this Section 3.1.7. Data from those instruments must be given to the Town and posted on a web site (or a location) designated by the Town. The Town may, at its discretion, order additional collections of readings by a designated independent source at any time it deems it necessary to protect the health and safety of the public. SSS will install and maintain an ambient air monitor to measure 24-hour integrated samples of coarse fraction particulate matter (PM<sub>10</sub>). The monitoring site location will be selected in consultation with WDNR, Bureau of Air Management and the Town, and if a property owner agrees, at the Town's request the air monitor may be located somewhere off the Property. Samples will be collected on a once every six-day schedule on pre-weighted filters, with the analytical results being no higher than 125 µg/m<sup>3</sup> (24-hour average) (which is less than the National Ambient Air Quality standard for PM<sub>10</sub> of 150 µg/m<sup>3</sup> (24-hour average)). At the end of each month, SSS will e-mail the Town a letter report documenting the results. If there are no ambient PM<sub>10</sub> concentrations which exceed the national standard in a two-year period, SSS will have the right to request (and the Town may, at its discretion grant or deny the request) suspension of further ambient monitoring (pending the development of new ambient standards). At the Town's cost, the Town may, at anytime during the term of this Agreement, hire an independent party to perform air monitoring at the Property and the facility to ensure that SSS is in compliance with applicable laws, rules and regulations and this Agreement.

3.1.8. Commencement on the Property. SSS shall not commence any activity on the Property, and the License shall not become effective, unless and until SSS has become the fee owner of all of the Property. Neither the License issued to SSS nor the agreements set forth in this Agreement shall apply to any other party (including the current Owners of the Property and such current Owners shall have no rights arising from this Agreement or the License granted to SSS). SSS agrees that in the event it does not purchase the Property from the Owners (either one or both parcels), the Owner of such parcel of the Property may notify the Town of the same. In such event, the existence of this Agreement shall not limit or prevent the Owners from selling or leasing the Property to another party or from engaging in any activity on the Property, including the activities contemplated by this Agreement (if the Town issues a license to such party and such party complies with applicable laws and rules (including the Ordinance)).



3.1.9. Annual Report. The requirement for an annual report set forth in Section 8(1)(a) of the Ordinance is modified so that such an annual report shall only be required if the Town board requests SSS to provide such a report.

3.1.10 Penalties. Section 9(6)(a) of the Ordinance is modified so that each day does not constitute a separate violation so long as SSS is taking diligent action to remedy the violation and such violation is not putting the health or safety of the Town or its residents at risk.

3.2. SSS shall use best management practices to keep noise from nonmetallic mining activity at or below seventy (70) decibels (dba) at the property boundary. These practices include the use of mining, safety and health administration (MSHA) approved “white noise,” back up alarms, and properly maintained mufflers on mining equipment and the earthen berms described above. Exceptions to this section are haul trucks and trains entering and leaving the site and work projects done on the screening berms, drainage ditches or road ditches.

3.3. SSS shall not use, and shall cause its employees and contractors or any other parties entering or leaving the property not to use compression release engine brakes, commonly known as Jake brakes. SSS shall, and shall cause, its employees and contractors to adhere to all posted speed limits.

3.4. SSS shall comply with all governmental permits.

3.5. The License granted by the Town to SSS pursuant to the Ordinance only allows, and SSS will only use the Property for conducting drying (without chemicals), transfer or transloading of silica sand and other activities which are incidental to the same. The permit issued to SSS does not allow, and SSS shall not conduct, any activities relating to extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use or sale, including drilling (except for one water well to serve the facility) or blasting or any associated activities such as excavation, grading and dredging of such materials. SSS shall not chemically coat the sand at the Property or otherwise add or use chemicals at the Property (other than everyday household chemicals for cleaning and maintaining the facilities located on the site).

3.6. All trucks and trains entering or leaving the Property carrying sand shall be covered at all times during the transport process and shall take all actions within reason to prevent the release of excessive diesel emissions by taking actions such as turning off engines when not in use. SSS will cooperate with DOT in order to design an entrance and exit plan for trucks that is as safe as possible and causes as little disruption as possible to traffic flow and neighboring properties.

3.7. Trucks delivering the sand to the Property shall unload the sand directly into the covered drying facility for drying and after dried, the sand shall be directly loaded into enclosed storage bins, and then directly from the enclosed storage bins, the dried sand shall be loaded directly into the enclosed rail cars. No sand shall be transported or transloaded around or on the Property except as described in the foregoing sentence. No sand shall be stockpiled or stored on the Property.

3.8. SSS shall at all times have an agent, whose name, fax number, email address and telephone numbers are made known to the Town Clerk, available to respond to complaints and problems and the notice required under section B.2. of the Property Value Guarantee (Exhibit B).

**4. Storm Water Management**

4.1. SSS shall comply with any Storm Water Management and Erosion Control plan to which it is subject.

4.2. SSS shall repair any damage to, and remove sediment from town road ditches and other drainage ways adjacent the Property.

**5. Property Value Assurance**

5.1. SSS hereby grants the property owners specified in the attached Exhibit C the Property Value Guaranty set forth in the attached Exhibit B.

5.2. The property owners listed in Exhibit C are third party beneficiaries of section 5.1.

**6. Laws to be Observed**

6.1. SSS shall at all times comply with all federal, state, county, and local laws, regulations and ordinances applicable to SSS's operations on the Property which are in effect or which may become effective in the future.

6.2. This Agreement modifies certain requirements of the Mine Ordinance. Any sections of the Ordinance not specifically modified by this Agreement remain in effect.

6.3. SSS shall provide the Town with copies of all such permits or licenses and all related application materials and reports submitted by or on behalf of SSS and all documents and other materials provided to SSS by such federal, state or local authorities.

**7. Royalty.**

7.1. Payment. SSS shall pay to the Town a royalty ("Royalty") equal to ten cents (\$0.10) for each ton of sand which is dried, processed, loaded, shipped or otherwise handled at the Property; provided, however, commencing on January 1, 2018, and continuing each and every fifth (5<sup>th</sup>) year thereafter, the Royalty shall be increased by \$0.015 as follows:

	<u>Period</u>	<u>Royalty Amount</u>
1.	01/01/2018 – 12/31/2022	\$0.115
2.	01/01/2023 – 12/31/2027	\$0.13
3.	01/01/2028 – 12/31/2032	\$0.145

4. 01/01/2033 – 12/31/2037 \$0.16

[5-9 assumes renewal of the License]

5. 01/01/2038 – 12/31/2042 \$0.175

6. 01/01/2043 – 12/31/2047 \$0.19

7. 01/01/2048 – 12/31/2052 \$0.205

8. 01/01/2053 – 12/31/2057 \$0.22

9. 01/01/2058 – 12/31/2062 \$0.235

If such sand is dried at the Property, the weight of the sand for the purposes of this Royalty payment shall be measured after completion of the drying process.

7.2 Manner of Payment. Royalties shall be paid by SSS to the Town semi-annually on January 20<sup>th</sup> and July 20<sup>th</sup> for the six-month periods ending on December 31 and June 30, respectively. If operations on the Property commence at any time after January 1 or July 1 of a calendar year, the first Royalty payment for the short six-month period shall be paid by January 20<sup>th</sup> or July 20<sup>th</sup> following the short six (6) month period (i.e., if operations commence on November 1, 2012, a Royalty payment for November and December shall be due on January 20, 2013). SSS shall with each semi-annual payment also furnish a detailed report to the Town setting forth a listing of all sand dried, processed, loaded, shipped or otherwise handled on the Property, the calculation of the Royalties earned for each semi-annual period, certified as true and accurate by a corporate officer of SSS. The report shall also include an estimate by SSS of the amount of Sand SSS reasonably expects to ship in the upcoming six (6) month period.

7.3 Record Keeping. During the Term and for a period of four (4) years after expiration of the Term, SSS will keep true and accurate records adequate to permit the Town to verify the components and calculation of all Royalties payable to the Town pursuant to the provisions of this Agreement. Upon at least 3 days prior notice, SSS's books and records shall be open during normal business hours at SSS's main offices for inspection by the Town Chairman, the Town Treasurer or the Town's agents to the extent reasonably necessary or required by the Town to verify the accuracy of the reports made under Section 7.2. The Town and its agents will have the right to make copies of the relevant records on SSS's copiers at a charge not to exceed SSS's actual cost of copier operation. Notwithstanding the foregoing, SSS shall not destroy any such records if a request to review or any claim by the Town is then pending with respect to such records or the terms of this Agreement. In the event of any breach of this Section 7 by SSS, the Town shall be entitled to receive from SSS and SSS shall pay to the Town any and all costs of investigation under, and enforcement of, this Section 7, including the Town's reasonable attorney's fees in addition to any other relief to which the Town may be entitled.

## **8. Reimbursement and Enforcement**

8.1. Reimbursement. SSS shall reimburse the Town for all consulting, inspection, engineering and legal fees incurred in connection with the drafting of this Agreement or otherwise incurred in connection with considering SSS's use of the Property, the Ordinance or this Agreement. Such amounts shall be due within thirty (30) days after the Town delivers an

invoice to SSS for the same. Any amounts due under this Agreement which are not paid within 30 days of the due date shall accrue interest at the rate of one (1) percent per month.

8.2 Inspection and Right of Entry. SSS shall, upon request by the Town, provide the Town's officers, agents, employees and contractors with access to the Property for purposes of determining or enforcing compliance with this Agreement or as otherwise provided by law or this Agreement. In the event of SSS's failure or refusal to permit access to the Property, the Town may obtain an inspection warrant, injunction or other relief from a court to enforce its right to access.

8.3 Notice of Default. In the event that SSS fails to perform any of its obligations under this Agreement, the Town shall provide a notice of default and the parties shall hold an initial meeting within ten (10) days following notice of such default for purposes of attempting to resolve the default on an amicable basis unless the Town determines that threats to health, safety or property require a shorter notice period. If the parties cannot so resolve the matter the Town may elect to enforce the remedies provided for herein.

8.4. Disputes Concerning Agreement. Any dispute concerning any provision of this Agreement, other than a default under 8.3, the parties agree to initially attempt to resolve disputes as follows: The party which asserts a dispute shall first give notice thereof to the other party and specify the nature of the dispute and shall meet with such other party, within 30 days of the event giving rise to the dispute. Such notice shall set forth all reasons supporting the basis of the dispute. Within 30 days following the date of the notice, a meeting between the Parties shall be held to attempt in good faith to negotiate a resolution of the dispute or controversy.

#### 8.5 Remedies

8.5.1. Corrective Orders. The Town may issue a notice of violation and order that specifies the action to be taken to remedy a default and the time period for curing the default.

8.5.2 Remediation and Reimbursement. In the event SSS fails to perform any of its obligations under this Agreement, including, but not limited to, maintenance of storm water management facilities, the Town may, but shall not be required to, perform such obligations at SSS's expense. Before performing SSS's obligations, the Town shall give SSS at least thirty (30) days written notice unless the Town determines that threats to health, safety or property require a shorter notice period. SSS shall reimburse the Town for all expenses incurred for materials, contractors, engineers, attorneys and other consultants in connection with performing SSS's obligations within thirty (30) days of billing therefor.

8.5.3 Legal Action. The Town retains the right to commence legal action to enforce the terms of this Agreement and seek remedies which include: Termination of the Agreement for a default, specific performance of the obligations under this Agreement, penalties and/or damages in an amount determined by the court, and/or injunctive relief.

8.6 Preservation of Remedies. The remedies provided herein shall not be exclusive of other remedies. 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 subsequent violation(s).

## **9. Obligations to Run with the Land**

9.1. SSS and the persons signing for SSS warrant that SSS has full right and authority to enter into this Agreement.

9.2. The obligations of SSS under this Agreement shall run with the land and be binding on SSS and their heirs, grantees, representatives, successors and assigns.

9.3. The Town may record a copy of this Agreement or a memorandum of this Agreement with the Register of Deeds. The cost of recording shall be paid by SSS.

## **10. Miscellaneous Provisions**

10.1. All parties participated in negotiating the terms of this Agreement. No party shall benefit from not having drafted this Agreement. If any term, section or other portion of this Agreement is reviewed by an administrative agency, court, mediator, arbitrator or other judicial or quasi-judicial entity, such entity shall treat this Agreement as having been jointly drafted by the parties.

10.2 No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the Town and SSS, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute approval of any breach or wrongful act by SSS.

10.3 Any notice required or permitted by this Agreement, except the notice required under the Property Value Guarantee (Exhibit B), shall be deemed effective when personally delivered in writing, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, and addressed as follows:

If to SSS: Superior Silica Sands LLC  
Attn: Rick Shearer, CEO  
3014 LCR  
Kosse, TX 74453

If to Town:  
Town Clerk, Town of Clinton  
1717 9 1/2 Street  
Barron, WI 54812

Any party may change the address to which notices must be sent by giving notices as provided herein.

10.4. This Agreement shall be governed by and construed in accordance with the laws of the state of Wisconsin. All disputes arising under this Agreement shall be venued in a Wisconsin court of competent jurisdiction.

10.5 No changes, amendments, alterations or modifications to this Agreement shall be effective unless in writing and signed by both Parties and, if required, upon a approval by competent governing authorities of each Party.

10.6 This Agreement is entered into with SSS for the Property for the purposes of drying, transloading and transporting silica sand. SSS may not assign or transfer its rights and obligations under this Agreement or the License to any entity, person or trust without the prior written consent of the Town, which will not be unreasonably withheld. The Town will only consider approving such a request if (i) the assignee assumes in writing the obligations of SSS under this Agreement, (ii) SSS is then in compliance with this Agreement, the Ordinance, the License all other applicable laws, rules and regulations, and (iii) the assignee demonstrates that it has the financial wherewithal to fulfill the obligations of this Agreement and the License. If SSS and the proposed assignee fulfill the three items listed above to the reasonable satisfaction of the Town, there shall be presumption that it would be unreasonable for the Town to withhold its consent to the proposed assignment.

*(Signatures appear on following page)*

IN WITNESS WHEREOF, the undersigned have signed this Mining Agreement to be effective as of the date set forth above.

Dated: \_\_\_\_\_, 2012

SUPERIOR SILICA SAND LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Richard J. Shearer, CEO

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2012,  
the above-named Richard J. Shearer, CEO to me known to be  
the person executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

Dated: \_\_\_\_\_, 2012

TOWN OF CLINTON  
a Wisconsin town

By: \_\_\_\_\_  
Jim Gores, Chairman

Attest: \_\_\_\_\_  
Melanie Miller, Clerk

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2012,  
the above-named Jim Gores, Chairman and Melanie Miller, Clerk  
to me known to be the persons executed the foregoing instrument  
and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

CONSENT OF PROPERTY OWNERS

We, the undersigned Owners of the Property have reviewed this Agreement and consent to its execution and implementation.

\_\_\_\_\_  
Jay Frank

\_\_\_\_\_  
Monty Peterson

\_\_\_\_\_  
Carol Frank

\_\_\_\_\_  
Ilene Peterson

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2012,  
the above-named Jay Frank and Carol Frank, husband and wife  
and Monty Peterson and Ilene Peterson, husband and wife, to me known to be  
the persons executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_



**EXHIBIT A**

**PROPERTY**

**See attached map for the approximate area. The actual area will be approximately 89 total acres and shall be that approximate area in the vicinity of what is set forth on the map and ultimately transferred from the Petersons and Franks to Superior Silica Sand LLC.**

## **EXHIBIT B**

### **PROPERTY VALUE GUARANTY**

Upon the effective date of the attached Agreement (“Effective Date”) and until June 30, 2018 (“Termination Date”), SUPERIOR SILICA SAND LLC, a Texas limited liability company (hereinafter referred to as “SSS”), will provide property value Guaranty (“Guaranty”) to the owners of parcels of land, identified on the attached Exhibit C, subject to the following terms and conditions.

#### A. Determination of Fair Market Value.

- 1) An owner desiring to sell property shall notify SSS of that fact not later than December 31, 2017.
- 2) The owner and SSS shall then agree on an appraiser who is licensed as a real estate appraiser in Wisconsin.
- 3) In the event SSS and the owner cannot agree on an appraiser, the owner shall select a bank or credit union in Barron County, with whom the owner does not do business, to provide the name of an appraiser it regularly employs to do appraisals.
- 4) The appraiser selected pursuant to 2) or 3) above shall provide SSS and the owner with an appraisal of the fair market value of the property, assuming SSS’s mine site did not exist (“Fair Market Value”).
- 5) SSS shall pay for the appraisal.

#### B. Sale of Property.

- 1) The owner shall then enter into a listing contract with a Wisconsin licensed real estate broker. The listing contract shall exclude SSS as a potential buyer so that if SSS purchases the property, no commission shall be due.
- 2) Before accepting any offer of less than the Fair Market Value, the owner shall give two (2) business days’ notice by fax, email or personal delivery with a copy of the offer to SSS’s agent as designated in Section 3.8. If notice is by fax or e-mail, it shall also require confirmed receipt by SSS that the notice has been received within two (2) business days.
- 3) If the owner sells the property for less than the Fair Market Value, SSS shall pay the owner the difference between the selling price and the Fair Market Value less the realtor’s commission that would have been payable on that difference; provided, however, the maximum amount to which any owner shall be entitled under this Property Value Guaranty shall be \$25,000. SSS shall make the payment within 30 days of the recording of the conveyance of the property.

C. Applicability.

- 1) The Guaranty shall apply only once for any property identified in Exhibit C and shall only be available to the property owners (their estates or heirs) as of the Effective Date.
- 2) Properties do not qualify for the Guaranty in the event the property owner wishes to sell or otherwise convey the property to a third-party by a transaction which is not considered an arm's-length transaction (such as a sale or gift to a relative).

## EXHIBIT C

### PROPERTY OWNERS

1. Ken and Ronda Giesel  
1364 10 ½ Street  
Barron, WI 54812
2. Allen Ferber  
1059 13 ½ -14<sup>th</sup> Ave  
US HWY 8  
Barron, WI 54812
3. Karen Johnston  
1069 13 ½ -14<sup>th</sup> Ave  
US HWY 8  
Barron, WI 54812
4. Richard and Cora Ayers  
1067 13 ½-14<sup>th</sup> Ave  
US HWY 8  
Barron, WI 54812
5. Adam Olson  
1370 11<sup>th</sup> Street  
Barron, WI 54812
6. Rick and Julie Jari  
1097 13 ½-14<sup>th</sup> Ave  
US HWY 8  
Barron, WI 54812

**Introducing  
Bakke Norman Municipal Attorneys**





*Gary Bakke*

Gary is the senior attorney at Bakke Norman. After retiring from his litigation and family law practices, he now concentrates on supporting the firm on complex business litigation, small business counseling and municipal law. He also serves as mediator, arbitrator and as an expert witness on legal issues. A founder of Bakke Norman, Gary has practiced law in New Richmond for more than 46 years.

Gary has made significant contributions to the State Bar of Wisconsin. He served as Bar President and also held several Wisconsin State Bar leadership positions, including Bar President and Chair of the Practice Management Section and the Family Law Section.

Throughout his career, Gary has emphasized education and progressive thinking, from being at the forefront of incorporating computers into the law practice to sharing his knowledge and experience with others. As State Bar President, he wrote and spoke frequently about the future of the practice of law and the need for professional changes. He has been a guest instructor at the University of Wisconsin Law School and spoken at American Bar Association events in London, Washington, DC, San Francisco, Atlanta and Niagra Falls, Canada.



*Terry Dunst*

Terry represents cities, villages and towns in northwestern Wisconsin in all areas of municipal law, including zoning, frac sand issues, impact fees, open meeting and public records laws, drafting ordinances, and board-of-review issues. He also helps families and individuals with real estate, estate planning, probate and bankruptcy matters.

Terry's career began with fifteen years in the software industry, including three years on assignment in England as head of European sales. Terry draws on this experience, presenting continuing legal education seminars for the State Bar of Wisconsin on topics such as using the Internet for legal research, metadata, e-discovery, and technology and ethics. He is also a past chair of the Technology Track at the Wisconsin Solo & Small Firm Conference.

Terry teaches administrative law as an adjunct instructor at Concordia University of Wisconsin. He has presented numerous seminars for Wisconsin municipal officials. He also writes the Wisconsin Municipal Law Blog.



*Bridget Finke*

Bridget assists individuals and businesses throughout northwestern Wisconsin with business, real estate, estate planning and probate issues. Utilizing her personal experience growing up on a dairy farm, Bridget assists farm families with their legal needs, including transitioning the family farm and reviewing frac sand leases. She uses a variety of strategies for business succession planning such as business entities, buy-sell agreements, trusts and wills. Bridget also prosecutes and defends appeals, drawing on her experience as law clerk to Judge Gregory Peterson at the Wisconsin Court of Appeals.

Bridget currently serves as Vice-Chair of the Board of Directors for the Community Foundation of Dunn County (formerly Greater Menomonie Area Community Foundation) and is a member of the River Falls FFA Alumni. She is also a frequent speaker on estate planning topics.

An avid Green Bay Packers fan, Bridget loves spending Sunday afternoons at Lambeau Field. She also spends time working on her family's 150-cow dairy farm.



*Adam Jarchow*

Adam works primarily with business clients on a wide variety of legal issues. With a background in finance, Adam especially enjoys assisting business owners who have cultivated their own companies and are ready to sell to retire and enjoy the fruits of their labor. Adam also works on mergers and acquisitions, succession planning, franchise issues on behalf of franchisors and franchisees, real estate transactions, private placement offerings, bank loans (both asset-based and real estate-based), workouts, entity formation, employment agreements, non-competition agreements, and general contract negotiation and drafting. Adam's business clients include small family-owned businesses, banks, large corporations, and farms of all sizes.

Adam utilizes his business experience in his work for local municipalities. He is the town attorney for St. Croix Falls and Prairie Lake and the village attorney for Luck, Almena and Haugen. He has extensive experience dealing with issues relating to municipal law, including frac sand mining. He also represents clients in the areas of bankruptcy, collections and creditor's rights.

A Clear Lake native, Adam practiced in a large Florida firm and with an international firm in their Minneapolis offices before joining Bakke Norman. Adam and his wife, Barbara, reside about 10 miles north of Amery.



*Deanne Koll*

Deanne is a business litigator who counsels banks and businesses on collection issues and creditor's rights in bankruptcy. She also defends local banks in lender liability actions and continues to represent individuals with personal legal issues related to family and criminal concerns.

Deanne is active with the State Bar of Wisconsin. She was elected as a board member for the Young Lawyers Division of the State Bar since 2007. In 2008, she was elected to the Executive Committee of that Division. In 2010, she was appointed by the State Bar president to the Bench and Bar Committee and continues to serve in this capacity.

Deanne and her husband live on the Kinnickinnic River near Roberts. When she is not busy with work, she enjoys coaching basketball and hunting deer and turkey with her father.



*Tom Schumacher*

Tom has over 25 years of experience representing small businesses and municipalities. He assists closely held businesses with all aspects of business planning, including choice of entity, capital formation, ongoing business financing, contract negotiation, noncompete and nondisclosure agreements, mergers and acquisitions. In that time, he has worked on a number of issues that arise for municipalities, including ordinance drafting, negotiation and preparation of developer's agreements, frac sand mining, moratoriums, advising on open meetings, public records and conflict issues. He also represents community banks in financial workouts, including the structure and documentation for significant commercial loans.

A founder of Bakke Norman in 1985, Tom has served as the firm's managing shareholder since 1999. He has worked in various capacities with the State Bar of Wisconsin, helping plan and develop the Wisconsin Solo & Small Firm Conference and acting as chair of the Law Office Management Section. Tom is a member of the economic development boards for Baldwin and New Richmond and a director of the St. Croix County Economic Development Corporation. He also served on the Baldwin-Woodville Area School Board for 15 years.

Tom stays active as a basketball referee, running and playing golf.



# BAKKE NORMAN

## LAW OFFICES

Serving Northwestern Wisconsin  
*Since 1985*

Gary L. Bakke

Terrence L. Dunst

Bridget M. Finke

Adam M. Jarchow

Deanne M. Koll

Timothy J. O'Brien

Peter M. Reinhardt

Robert J. Richardson

David C. Schoenberger

Thomas R. Schumacher

Tamara M. Skoglund

Rolv Slungaard

### Legal Services

#### Featured Services

- Family-Owned Businesses
- Municipalities
- Community Banks
- Farms

#### Business Services

- Business Transactions
- Business Litigation
- Employment Law
- Tax Advice
- Creditor Services

#### Personal Services

- Estate Planning & Probate
- Criminal Defense
- Personal Injury
- Family Law
- Bankruptcy
- Employment Law

**Baldwin Office**  
990 Main Street  
715-684-4545

**Menomonie Office**  
2919 Schneider Avenue  
715-235-9016

**New Richmond Office**  
1200 Heritage Drive  
715-246-3800

**800-328-5630**

[www.bakkenorman.com](http://www.bakkenorman.com)