

ASHLAND COUNTY METALLIC MINERAL MINING IMPACT ORDINANCE

WHEREAS, Ashland County has concerns regarding potential adverse impacts from metallic mineral mining in the County, and

WHEREAS, the metallic mineral mining industry, like other businesses, is entitled to use public roads, highways and bridges in the County. However, roads, highways and bridges are substantially more likely to be damaged or destroyed and/or have substantially shortened useful lives when subjected to heavy usage by vehicles and equipment of the size and weight used in metallic mineral mining, and

WHEREAS, it is appropriate that Ashland County, in the public interest, use its police powers to address this foreseeable harm to public property, and

WHEREAS, metallic mineral mining poses a substantial risk of harm to existing wells and to the ability of property owners in the vicinity of a mine to obtain a supply of good quality water from new wells, and

WHEREAS, while §295.61(8) Wisconsin Statutes entitled “Damage claims” contains an optional procedure available to some, it is appropriate that Ashland County use its police powers, in the public interest, to enact this complimentary Ordinance,

NOW, THEREFORE,

The County Board of Supervisors of the County of Ashland does ordain as follows:

1.0 Applicability. This Ordinance applies to and covers each Applicant or Operator who engages in or applies to engage in metallic mineral mining in Ashland County.

However, this Ordinance does not apply to an Applicant or Operator who only engages in the following activities:

- a) “Exploration”, as defined in §295.44(1)(h) Wisconsin Statutes,
- b) “Exploring”, as defined in §293.01(5) Wisconsin Statutes,
- c) “Prospecting”, as defined in §293.01(8) Wisconsin Statutes, or
- d) “Bulk sampling”, as defined in §295.41(7) Wisconsin Statutes,

as such activities are less likely to cause the types of harm this Ordinance is intended to address.

1.1 Definitions. When used in this Ordinance:

A. “Applicant” means a person who applies for or is preparing to apply for:

- 1) A mining permit from the State to engage in metallic mineral mining in Ashland County, and/or
- 2) A special use permit for metallic mineral mining from Ashland County.

- B. "Operator" means any person who is engaged in metallic mineral mining, who holds a mining permit from the State to engage in metallic mineral mining in Ashland County or who holds a special use permit for metallic mineral mining from Ashland County.
- C. "Bridge" or "bridges" means a bridge or bridges open to public usage which are owned, in whole or in part, by the County or by a town in the County. If the bridge was constructed with funds from the State, County and/or town, it is covered by this Ordinance.
- D. "Road" or "roads" means a road or roads open to public usage which are held, maintained or owned, in whole or in part, by the County or by a town in the County. A road on which state gas tax is paid is covered by this Ordinance.
- E. "Highway" or "highways" means a highway or highways open to public usage which are held, maintained or owned, in whole or in part, by the County or by a town in the County. A highway on which state gas tax is paid is covered by this Ordinance.
- F. "Mining" means metallic mineral mining.
- G. Words which are not defined in this Ordinance shall have the meaning set forth in Wisconsin Statutes.

1.2 Upon notification that an Application for a metallic mineral mining permit, which includes or covers property in Ashland County, has been approved by the Department of Natural Resources but before beginning mining, the Operator shall furnish to the County of Ashland:

- a) A cash deposit to be placed in the road, highway and bridge repair/replacement trust account provided for herein, and
- b) A cash deposit to be placed in the well damage trust account provided for herein.
- c) The County shall pay to the Operator the amount of interest, if any, which such cash deposits earn in such trust accounts.
- d) The Operator shall furnish the cash deposits required by this Ordinance in the amounts provided for herein. Such cash deposits shall be deposited in separate trust accounts with each fund identified as coming from the Operator that paid such funds.
- e) This Ordinance is to be administered by the County Zoning Committee, as that Committee is anticipated to be the County Committee most involved in this subject.

1.3 Road, Highway and Bridge Repair/Replacement Trust Account.

- A. In the interest of brevity, the road, highway and bridge repair/replacement Trust Account is referred to herein as the "Road Repair Trust Account".
- B. The purpose of the Road Repair Trust Account is to make funds from the Operator readily available to use to pay the costs and expenses associated with repairing,

rebuilding, replacing and/or reconstructing roads, highways and bridges in the County damaged or destroyed, in whole or in part, by the Operator's activities. If an Operator's usage is a substantial factor in causing damage to, the destruction of or the shortening of the useful life of a road, highway and/or bridge in the County, the Operator is liable and responsible under this Ordinance for paying its pro rata share of the costs and expenses associated with or related to the repair, reconstruction or replacement of such road, highway and/or bridge.

- C. The Operator shall initially furnish to the County for the deposit into the Road Repair Trust Account the amount equal to the estimated replacement costs to the County and to the town or towns which have roads, highways and/or bridges in the County which may be reasonably expected to be used by mining equipment and/or vehicles of the Operator for one cycle of road, highway and/or bridge replacement.
- D. The County will determine such estimated costs and expenses on the basis of relevant factors including, but not limited to, the location of such roads, highways and bridges in relation to a metallic mineral mine, the extent to which the roads, highways and/or bridges in question are expected to be utilized, the costs and expenses of replacing the same and the costs and expenses associated with materials, supplies, labor and other relevant factors.

1.4 Well Damage Trust Account. The Operator shall initially furnish to the County for deposit into the Well Damage Trust Account the amount of money equal to the damages that are likely to be sustained by property owners in the County with existing wells and by property owners in the County who may install wells, that are likely to be adversely impacted by mining activities, based on the maximum number of such wells. If an Operator's mine or mine related activities are a substantial factor in causing any of the types of harm or damages provided for in this Section 1.4, the Operator is liable and responsible under this Ordinance for paying its pro rata share of the same.

The purpose of the Well Agreement Trust Account is to make funds from the Operator readily available to use to pay damages to a property owner:

- A. Whose existing well is contaminated or polluted due to mining and/or mining-related activities of the Operator, and/or
- B. Whose well experiences or suffers harm in terms of quantity and/or quality of water as a result of a mine or mining activities of the Operator, and/or
- C. Whose property is damaged or impaired in terms of a landowner's ability to drill or install a well which will provide an adequate supply of good quality water on the property owner's property due to mining or mining-related activities of the Operator.

The County will determine such estimated damages on the basis of relevant factors including, but not limited to, the size, extent, nature, type, location and anticipated duration of mining activities of the Operator, how deep, wide and large the mine is likely to be, the proximity of the mine to the lands of others, the number and location of existing wells and anticipated wells and

hydrological information which is available. The value of real estate, the cost and likelihood of replacing wells, the cost of providing water when it is not available from a well on the property and any other further impacts and relevant factors will be considered.

1.5 Rebuttable Presumptions.

- A. If metallic mineral mining in the County is being conducted within ten (10) miles of an existing well in the County and the quantity or quality of water from such well becomes polluted, contaminated, impaired, reduced, harmed or limited or otherwise adversely affected, subsequent to such mining activities commencing, a rebuttable presumption exists that such mining activities are a substantial factor in causing such problem(s).

- B. If metallic mineral mining in the County is being conducted within ten (10) miles of land in the County and, subsequent to mining activity, a well on that land does not provide an adequate supply of good quality water, a rebuttable presumption exists that such metallic mineral mining activities are a substantial factor in causing such problem.

1.6 Additional Information/Opinion of Experts. If the County determines it needs additional information and/or expertise to determine the appropriate amount of cash from the Operator to furnish to either of the Trust Accounts provided for in this Ordinance, the County may hire or contract with such engineering consultants, hydrologists and/or other experts as it determines are necessary to conduct such studies and provide opinions to determine what amounts are appropriate for the Operator to deposit in either or both of such Trust Accounts. The cost of such engineering consultants, hydrologists and/or other experts is payable from the appropriate Trust Account addressed by such expert.

The County may request, receive and consider information and materials from the Operator in regard to the appropriate amount of cash from the Operator to furnish to either or both of the Trust Accounts provided for in this Ordinance. The County may negotiate with the Operator in regard to such amounts but if such negotiations do not lead to a reasonably prompt agreement, the County will make such determination on its own.

1.7 Application for Benefits – Road Repair Trust Account. The County or a town in the County which has a road, highway and/or bridge damaged or destroyed, in whole or in part, by mining or mining-related activities may apply to the County for money from the Road Repair Trust Account for the purposes of repairing, replacing or reconstructing the damaged or destroyed road, highway and/or bridge.

An application for funds from the Road Repair Trust Account shall be in writing and set forth the name, address and telephone number of the Applicant, the contact person for the Applicant, a clear statement as to what the Applicant seeks, the reason the Applicant contends the Operator is responsible, the amount of funds sought from the Trust Account and how the amount of funds sought was arrived at.

The County, after receiving an application for funds from the Road Repair Trust Account will provide the Operator with a copy of such application along with a notice informing the Operator that the Operator has thirty (30) days from the Operator's receipt of such notice to

object to the application, state the reasons for its objection and present to the County any information and/or documents or materials the Operator desires in respect to the application.

If the County, after notifying the Operator of its receipt of an application for funds from the Road Repair Trust Account, receives a written objection from the Operator within the aforesaid thirty (30) day period which sets forth the reasons for the objection along with information and documents, the County shall review and consider the same.

The County may, in its discretion, hire or contract with such engineers and/or other experts as it determines is necessary and appropriate to provide the County with information and/or opinions in regard to the application and objection. Input and/or assistance from the County Highway Commissioner may be obtained and considered.

The County may, in its discretion, request, from time to time, additional information and materials from either or both the Applicant and/or the Operator in regard to the application and objection.

When the County determines it has received sufficient information and materials to enable it to make an informed decision, it shall make a decision on the application and reduce its decision to writing. When making its decision, the County may rely on the opinions of experts on the subject.

The County's written decision will be mailed to both the Applicant and the Operator, by registered or certified mail, within five (5) days of the filing of the County's decision.

The costs and expenses the County incurs in connection with administering this Ordinance including, but not limited to, the costs and expenses of per diems, mileage, clerical services, consultants, experts and legal counsel, are payable from the Road Repair Trust Account.

1.8 Application for Benefits – Well Damage Trust Account. Any person or entity owning an interest in land in the County which contends his/her/its well on land in the County has been harmed, damaged or adversely affected in a manner specified in Section 1.4 of this Ordinance may apply to the County for funds from the Well Damage Trust Account.

An application for funds from the Well Damage Trust Account shall be in writing and set forth the name, address and telephone number of the Applicant, the contact person for the Applicant, a clear statement as to what the Applicant seeks, the reason the Applicant contends the Operator is responsible, the amount of funds sought and how the amount of funds sought was arrived at.

The County, after receiving an application for funds from the Well Damages Trust Account will provide the Operator with a copy of the application along with a notice informing the Operator that the Operator has thirty (30) days from the Operator's receipt of such notice to object to the application, state the reasons for its objection and present to the County any information and/or materials and documents it desires in response to the application.

If the County, after notifying the Operator of its receipt of an application for funding from the Well Damage Trust Account, receives a written objection from the Operator within the aforesaid thirty (30) day period which sets forth the reasons for the objection together with any information, documents and materials the Operator desires, the County shall review and consider the same.

The County may, in its discretion, hire or contract with hydrologists, real estate experts and other experts as it determines is appropriate to provide the County with information and opinions in regard to the application and objection.

The County may, in its discretion, request, from time to time, additional information and materials from either or both the Applicant and the Operator in regard to the application and the objection.

When the County determines it has sufficient information and materials to enable it to make an informed decision, it shall make a decision on the application and reduce its decision to writing. When making its decision, the County may rely on the opinions of experts on the subject.

The County's written decision will be mailed to both the Applicant and the Operator by registered or certified mail within five (5) days of the filing of the County's decision.

The costs and expenses the County incurs in connection with administering this Well Damages Trust Account including, but not limited to, the costs and expenses of per diems, mileage, clerical services, consultants, experts and legal counsel, are payable from the Well Damage Trust Account.

1.9 Additional Deposits. The Operator shall, from time to time, as the County determines is reasonably necessary, make additional cash deposits into either or both the aforesaid Trust Accounts so as to maintain a proper level of funding to cover the purposes of each of such Trust Accounts. The County may obtain the opinions of experts in determining the amount and frequency of such additional deposits.

1.10 Certiorari Review. If either the Applicant for benefits or the Operator concludes that the County's decision on an application for benefits under this Ordinance was in error, the Applicant and/or the Operator may, within thirty (30) days of the date of the County's written decision, seek certiorari review of the County's decision in the Circuit Court of Ashland County.

1.11 Termination of Trust Accounts. The Trust accounts provided for in this Ordinance will terminate two (2) years after the Operator has fully completed all aspects of its reclamation activities at the mine, unless there are still claims pending against that Trust Account, in which event, that Trust Account will continue to exist until all pending claims have been finally concluded.

1.12 Deadline for Filing Claims. No application for funds from either of the Trust Accounts provided for in this Ordinance will be accepted by the County more than one (1) year after the Operator has fully completed all aspects of its reclamation activities at the mine.

1.13 Remaining Funds. As to each individual Trust Account, after all applications for funds from that Trust Account have been finally concluded and all expenses of the County have been paid or reimbursed, the remaining funds, if any, which are in that Trust Account will be refunded to the Operator and that Trust Account will terminate.

1.14 Violations. A person or Operator who violates a term or provision of this Ordinance may be required to forfeit not more than Two Thousand Five Hundred Dollars (\$2,500.00) per violation plus court costs. Ashland County is entitled to be reimbursed for its actual reasonable attorney fees, costs and disbursements associated with the enforcement of this Ordinance. Each day a violation occurs is a separate offense for which a separate forfeiture may be imposed. Injunctive relief is available to enforce this Ordinance without the necessity of the County being required to show irreparable harm or injury.

1.15 Effective Date. This Ordinance shall be effective on the first date following its publication.

1.16 Publication. As per §59.14(1) Wisconsin Statutes, the County Clerk shall immediately publish this Ordinance as a Class 1 notice under Chapter 985 Wisconsin Statutes and shall procure and distribute copies of this Ordinance to the several town clerks, who shall file it in their respective offices.

Dated this 20th day of June, 2013.

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Pat Jones
W. Milligan
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