

140.000 - GRAVEL AND OTHER MINERAL MINING LICENSING AND REGULATIONS Ord. No. 84-01 Adopted: April 5, 1984

An Ordinance to provide for the licensing, regulation, inspection and monitoring of all mineral operations in the Township of Atlas, and to provide for penalties in the event of violations of this Ordinance, including suspension or revocation of permit.

THE TOWNSHIP BOARD OF THE TOWNSHIP OF ATLAS, COUNTY OF GENESEE, STATE OF MICHIGAN,
PURSUANT TO THE AUTHORITY CONFERRED BY LAW, ORDAINS AND ENACTS THE FOLLOWING:

140.001 - Art. I. Intent and short title.

01.00.00. In the preparation and development of this Ordinance on the basis of the advice of experts and upon independent investigation, it has been recognized that there are activities and impacts which require regulation in view of the noise, dirt, dust and temporary and permanent changes to the topography and environment which are inherent in mineral mining operations. It is the intent of the Township to regulate, inspect and monitor mining operations in order to minimize the existence of dangerously steep slopes, shifting earth, impairments or pollution of ground water, water table, surface water, and the water shed, and to protect the air, water and natural resources and the public trust therein, and the health, safety and general welfare of the residents of Atlas Township. To meet these objectives, such mineral mining operations shall be licensed and the fees required for licensure shall be utilized to offset costs and expenses of monitoring, inspection, and administration.

01.02.00. This Ordinance shall be known as the "Ordinance to License and Regulate Gravel and Other Mineral Mining" and shall hereinafter be referred to as "this Ordinance".

140.002 - Art. II. Interpretation, existing operations and restrictions.

02.00.00.

02.01.00. All operations regulated by this Ordinance shall be conducted in a manner so as to meet all standards and requirements hereunder, and, in addition, all other applicable law, ordinances and regulations effective in this Township, and the more restrictive provisions of this Ordinance and such other law, ordinances and regulations shall govern in the event of a conflict.

02.02.00. This Ordinance shall supersede and replace Ordinance 10, as previously amended and adopted.

02.03.00. It is not the intention of this Ordinance to retroactively relieve compliance with any formerly effective provisions of law, or ordinance, or consent judgement relating to such operations.

140.003 - Art. III. Definitions.

03.00.00.

03.01.00. For the purpose of construction and application of this Ordinance, the following definitions shall apply:

- .01. *New Operation Area*: Shall mean the area which has been or is in the process of being striped of over-burden, the area being mined, the area used for structures, improvements, of stockpiles and storage, and worked-out areas which have not been reclaimed.
- .02. *Reclamation*: Shall mean the establishment, recovery and reconstruction of the land contained in a mining site, or part thereof, to a condition approved by the Township Board as part of a plan incorporated into a permit issued hereunder.
- .03. *Township*: Shall mean the Township of Atlas, County of Genesee, State of Michigan.
- .04. *Township Board*: Shall mean the Atlas Township Board.
- .05. *Vibration Perception Threshold*: Shall mean the minimum ground or structure borne vibrational motion necessary to cause a reasonable and normal person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.

03.02.00. Terms not specifically defined, above, shall have the meanings customarily assigned to them.

140.004 - Art. IV. Permits, prohibition.

04.00.00.

04.01.00. From and after the effective date of this Ordinance, no person shall commence and/or continue to operate any mineral mining operation in Atlas Township except in accordance with a permit issued by the Township Board pursuant to this Ordinance.

140.005 - Art. V. Application procedure for mining permit.

05.00.00.

05.01.00. Application shall be made to the Township for a permit. The application shall be submitted to the Township Clerk who shall apprise the Township Board of the filing of the Application, and shall refer the Application to the Planning Commission of the Township for recommendation. Following action of the Planning Commission, the matter shall be placed upon the agenda of the Township Board for final action. In its deliberations on the Application, the Township Board shall be entitled to continue this further, shall consult with any and all experts deemed appropriate within the discretion of the Township Board. Upon completion of deliberations, the Township Board shall either grant the permit, or deny the same and state the reasons for denial.

05.02.00. The Application submitted for a permit shall contain the following:

.01. *Identifications.*

- A) Names and addresses of all owners or parties of interest in the proposed mining site, together with their legal or equitable interest in the property.
- B) Name and address of applicant.
- C) Name and address of person, firm or corporation that will be conducting the actual removal operation, and the name, address and telephone number of the specific person designated by the applicant for the purpose of receiving all notice, correspondence and communications.
- D) Location, size and legal description of the proposed mining operation area, as well as the total site and any and all adjoining land owners by the applicant and/or any persons or entities affiliated with applicant.
- E) Location and type of proposed processing plant.
- F) Amount of each and every kind of material or resource to be removed.
- G) Proposed method of removal and extraction, processing, and/or other procedures undertaken prior to transport of minerals from the site.
- H) Proposed vehicular access to and from the operation and the generally anticipated haul route within the Township.
- I) Types and amounts of explosives proposed to be used, and the areas to be blasted, if specifically approved in the license.
- J) Estimated period of time to complete operations with number, duration and description of each phase or phases where appropriate.
- K) Amount and source of water to be utilized in processing, and the anticipated means and location of treatment and disposal of such water following use.
- L) Name and address of the banking or savings and loan entity which is to issue the irrevocable letter of credit to be posted by the applicant.
- M) Sworn statement that the applicant has never defaulted on any bond posted to insure performance by the applicant in connection with any gravel or mineral mining or any related mining and/or construction activity, or, if applicant has defaulted on any such bond, a brief description of the circumstances surrounding the default, including the name of the surety, date of default and any remedial action which was taken.
- N) The name of the operator's carrier for public liability and property damage insurance.
- O) The contemplated period of time following reclamation required prior to the date upon which the property will be usable for construction and improvement in accordance with the terms of the Township Zoning Ordinance in the district in which the property is

situated. If the response hereto varies with respect to two or more locations on the property, provide the appropriate answer in relation to each varying portion of the property. Plans for any phasing of reclamation shall be indicated if such phasing is proposed.

.02. *Vertical aerial photography.*

A) Vertical aerial photograph, enlarged to a scale of one inch equals 200 feet, from original photograph flown at a negative scale no smaller than one inch equals 660 feet, and certified as having been flown not earlier than two months prior to the date of application. The vertical photograph shall cover:

- (1) All land anticipated to be mined in the application, together with adjoining land owned by the applicant.
- (2) All contiguous land which is or has been used by the owner or leasehold applicant for mineral extraction and/or processing and/or storage, and all contiguous in which the applicant or any affiliate has a current interest.
- (3) All lands within one-half mile of the proposed mining area.
- (4) All private and public roads from which access to the property may be immediately gained.
- (5) Boundary of the entire planned mining area of courses and distance.
- (6) Site topography and natural features including location of water courses within the planned mining area.
- (7) Means of vehicular access to the proposed operation.

.03. *Sectional map.* Sectional map at an appropriate scale to cover the areas within one mile of the boundaries of the land included in the permit application showing the existing classification of all land appearing on the map as shown on the official Township Zoning Map, roads, streets and all uses of land within the area of the sectional map, and the names of these roads and streets.

.04. *Topographic survey.* Topographic survey taken from aerial photographs of field surveys of the existing parcel drawn to a scale of one inch equals 200 feet prepared by a Registered Civil Engineer or Registered Land Surveyor licensed by the State of Michigan within the minimum four foot contour in intervals based upon U.S.G.S. data. The drawing shall also clearly show each and every area to be mined, and each and every area to be utilized for stockpiling, processing, plant location, and maintenance and storage areas.

.05. *Geological and engineering survey.* Geological and engineering survey and data prepared by a geologist or civil engineer licensed by the State of Michigan, indicating:

- A) Quality and quantity of each type of mineral to be excavated.

- B) Level of water table throughout the planned mining area for which a permit is sought.
- C) Opinion as to each and every effect on the water table and private wells of property owners within the reasonable anticipated area of impact during and subsequent to the operation.
- D) Quality of surface water, ground water and water shed anticipated to be impacted during and subsequent to the operation of the geographical extent reasonably expected to be affected.
- E) Opinion whether the exposure of subterranean waters and/or the impoundment of surface waters, where proposed, will establish a stable water level at the level or levels proposed as part of the operation, and that the same will not interfere with existing subterranean water or cause any harm or impairment to the general public.
- F) Detailed plan for the disposition by controlled flow or controlled drainage of any excess water into existing drains or water courses or drains or water courses to be established, in accordance with Ordinance Number 44 - Flood Plain and Wetland Protection Ordinance, and in accordance with the Storm Water Management Plan of Atlas Township.
- G) Detailed engineering and drainage plan prepared in accordance with Genesee County Drain Commission specifications and application for a Soil Erosion Permit.

.06. *Plan of operation (Overlay)*. A plan of operation shall be presented on a transparent overlay at the same scale as the vertical aerial photograph (05.02.02.), and, when so applied, shall delineate the following:

- A) Area to be actively excavated, and if the same shall be in phases, a designation of such phases.
- B) Area for settling ponds, crushing facilities, driers and washing plant facilities.
- C) Area for treatment facilities and mineral storage and stockpile.
- D) Area for overburdened storage.
- E) Area for production facilities for resource-related industry.
- F) Area for location of buildings and/or other improvements be they permanent or temporary.

To supplement the plan of operation overlay, required above, the following shall be submitted: description of operation including all mobile and stationary machinery and equipment utilized or to be utilized; method or methods of treatment of water utilized in the operation prior to discharge into the ground or into the surface water system; and, provisions for sanitary sewage facilities on the site.

.07.

Reclamation plan. A plan for the reclamation for the site shall be submitted in three parts; A) a reclamation plan as an overlay for the vertical aerial photograph; B) a reclamation contour map; and, C) a description of reclamation methods and materials proposed for renewal of topsoil and replanting, including a reclamation schedule indicating the time sequence within which each area mined will be reclaimed as mining operations progress. Wherein any on-site development proposed, a specific site plan shall be submitted as a part of the reclamation phasing plan.

The plan for reclamation shall be prepared on transparent overlay at the same scale as the vertical aerial photograph, illustrating, with the acreage for each item shown on the overlay:

- (1) Each phase of reclamation, reflecting the sequence of each phase in relation of all others.
- (2) Location and boundaries of all permanent water areas.
- (3) Distance of all reclamation areas and water areas from property boundary.

A restoration contour map shall be prepared to the same base as heretofore required, to indicate the grade and slopes to which excavated areas shall be reclaimed, and the distance of such reclaimed areas from the property boundaries. Such grade and slope designations shall also include areas proposed to be beneath the surface of permanent water areas.

A description of methods and materials proposed reclamation shall include topsoiling and the amount and type of plantings.

In no event shall the area being mined, and which is unreclaimed, exceed the lessor of 75 acres and 40 percent of the property being the subject of the application.

Notwithstanding 05.02.01. J above, the plan for reclamation shall contain a date by which all reclamation shall be completed.

- .08. *Environmental impact report.* An environmental impact report, detailing the effects of the proposed operation on all aspects of the environment as outlined in the Michigan Environmental Protection Act shall be prepared and submitted with the application. All pollution control measures shall be detailed within the Environmental Impact Report.
- .09. *Application fee.* The application shall be accompanied by an administrative and processing fee, to be paid by the applicant in the amount of one thousand dollars (\$1,000.00) for the first 50 acres or less, and five dollars (\$5.00) for each additional acre in excess of 50 acres on the property constituting the subject of the application.
- .10. *Review procedure.* Review of the application shall proceed as follows:
 - A) Upon receipt of an application under this Ordinance, the Clerk shall forward copies of the same to the Township Planning Commission, Township Planner, and Township Engineer.
 - B)

The Planning Commission shall review and study the application, together with such supplemental information deemed necessary and report its recommendation of approval or denial to the Township Board including recommended conditions or statement to be included in the permit if granted.

- C) The Township Planner and the Township Engineer shall review the application and report their recommendations to the Planning Commission. Such report shall include a recommendation concerning whether or not an environmental report, assessment or statement beyond those required herein should be made.
- D) After considering the reports of the Planning Commission, Township Planner, and Township Engineer, and such other facts, opinions and reports as may be requested and available by the Township Board, and after conducting a public hearing on the application, the Township Board may issue a mining permit, or, in the alternative, it may deny the permit and state the reasons for denial.

140.006 - Art. VI. Annual permit; content, conditions and fees.

06.00.00.

06.01.00. The annual permit shall contain the following:

- A) The name and address of the holder of the licensure permit, as well as the name and address of the land, if different from that of the licensure permit holder. In addition, the permit shall also include the name, address and phone number of the person designated as agent for all notice, correspondence and communication.
- B) The legal description of the property to which the permit shall apply.
- C) The one year period for which the permit shall be valid, including its expiration date.
- D) The allowable hours of operation.
- E) The number of feet from all the property lines and rights-of-way within which no cuts or excavations have been made.
- F) The steepest horizontal to vertical grade on finished slopes where excavations have been made.
- G) A statement essentially corresponding to the following: "This permit may be suspended or revoked upon a hearing of the Township Board, with notice by regular mail of said hearing to the applicant, based upon failure to comply with one or more of the requirements of the Atlas Township Ordinance to License and Regulate Gravel and Other Mineral Mining, as amended, or other applicable law, ordinance or regulation, and/or the terms and the grounds that the use constitutes a nuisance or danger to the public health, safety and/or welfare".
- H)

A statement to be countersigned by the applicant corresponding substantially to the following: "The undersigned has read this permit and understands and agrees that, incorporated by reference as a part of the terms and conditions hereof, are all the statements and contents of the application for the permit as approved by the Atlas Township Board, the terms and conditions of Ordinance No. ____, as amended, and of any other applicable law, ordinances or regulations, and, further, that Atlas Township employees and agents are permitted to come upon the premises at any reasonable time for the purpose of inspecting, monitoring and/or administering this Ordinance".

- I) Any additional reasonable condition deemed appropriate by the Township Board.
- J) A statement of the condition that in no event shall the area being mined and unreclaimed exceed the lessor of 75 acres or 40 percent of the land constituting the subject of the permit.
- K) A statement and description of the machinery, equipment and methods used in the operation.

06.02.00. The applicant shall provide the Township Board with a recordable affidavit, to be recorded with the Genesee County Register of Deeds, binding applicant, and all heirs, successors, assigns and transferees of the applicant to the terms and conditions of the annual permit.

06.03.00. For the purpose of reimbursing the Township for inspections, monitoring, administration and enforcement of this Ordinance with respect to the licensee, and in view of the relative impossibility of calculating and precisely anticipating amounts to be required for such purpose, the licensee shall make monthly payments to the Township in an amount equal to six (\$.06) cents per ton with respect to each ton of minerals removed from the subject property, commencing one month after the date of issuance of the licensure permit, provided, in no event shall such fee be less than one thousand dollars (\$1,000.00) per month. At the end of each calendar year, and as the date of termination in the final year of operations, an entity performing audits in the regular course of its business shall certify the amount of materials sold by the licensee during the previous year, or during such portion of the year until the date of termination, as applicable.

In the event the license objects to the above described method of fee determination, the following shall govern:

- A) Upon issuance of each annual permit, and prior to commencing operation, the licensee shall make an initial deposit of seven thousand five hundred dollars (\$7,500.00) to the Township. The Township Treasurer shall hold such amount in an account for the licensee for each annual permit issued.
- B) The fee requirement shall be determined on a monthly basis and paid out of said account, and shall be equal to the aggregate of the statements and invoices to the Township for all costs and expenses incurred which are reasonably related to inspections, monitoring, administration and enforcement of this Ordinance, including reasonable attorneys fees

incurred, if any, plus an amount equal to 25 percent of the total of such invoices and statements (payable to offset the fixed costs of the Township for employee salaries, equipment, and the like).

- C) The fee requirement shall be invoiced to the licensee on a monthly basis, and shall be paid to the Township within 30 days. Upon receipt, the payment shall be disbursed as follows: the amount equal to the statements and invoices shall be credited to the licensee's account, to reimburse the amounts paid out, as aforementioned; the balance shall be credited to the general fund.
- D) The amount on account with the Township in connection with the licensee shall be maintained at a minimum of seven thousand five hundred dollars (\$7,500.00), the licensee shall be invoiced immediately for the deficiency and such amount shall be paid within 30 days.

06.04.00. *Annual permit renewal.*

A licensee may apply for renewal of the annual permit. In order to promote uninterrupted operations, application shall be made to the Township Clerk no less than 30 days and no more than 60 days prior to the expiration of a then effective permit. The application for annual renewal shall be made on the form provided by the Clerk.

Upon receipt of an application, the Clerk shall refer copies of same to the Atlas Township Board, the Director of the Township Building Department, and to the Township Engineer. The Director of the Building Department and the Township Engineer shall forthwith report in writing to the Township Board with respect to compliance by the applicant with all aspects of this Ordinance during the period of the permit which is about to expire. If there has been compliance in all respects with this Ordinance, a renewal of the permit may be granted. In the event there has not been compliance, the Township Board may, in its discretion, either deny the renewal or grant the renewal for a period determined to be appropriate by the Township Board upon stated conditions.

In all events, if it appears that protection of the public health, safety and general welfare and/or protection of the air, water and natural resources, and the public trust therein, require denial of the permit renewal, the Township Board may either deny renewal outright, or consider renewal upon conditions which overcome the underlying cause for denial.

140.007 - Art. VII. Performance bond; insurance.

07.00.00.

07.01.00. The mining operation shall not commence until such time as the licensee has posted with the Township Clerk a performance bond in an amount determined by the Township Board, following recommendation of its experts, to reasonably ensure necessary reclamation. No less than 25 percent of the total bond shall be in the form of cash or an irrevocable letter of credit issued by a banking or savings and

loan institution licensed to do business in the State of Michigan, making the Township the beneficiary thereof. All of the rest and balance of the bond shall be a corporate surety bond issued by a company licensed for such purposes in the State of Michigan. The conditions of such bonds shall be that, if the licensee has satisfactorily reclaimed the property being the subject of the permit in accordance with the approved reclamation plan, the performance bond shall be returned to the licensee; otherwise, the Township shall have a right to use the cash or proceeds of the irrevocable letter of credit to the extent necessary to reclaim the property and to cover the costs of enforcing and bringing about compliance with this Ordinance, including reasonable attorney's fees, and the corporate surety bond shall serve to guarantee payment for all such reclamation and enforcement and compliance requirements, as aforementioned.

The cash or irrevocable letter of credit shall remain with the Township until the parcel or parcels have been reclaimed, and all equipment, machinery, materials, buildings and other operation related improvements removed as required by this Ordinance and/or by the terms of the permit.

In the establishment of the amount of the performance bond, the Township Board shall take into account the size and scope of the proposed operation, the current and projected costs of reclamation in the event of default by the operator at such time as it is likely to be most costly, and other such conditions and factors as might be relevant in determining a sum reasonable in light of all the facts and circumstances. The Township Board, in considering any application to renew the permit, may, in its discretion, increase or decrease the amount of the performance bond, based upon increased costs, new information, or partial reclamation.

07.02.00. In the event that the applicant chooses to post cash in lieu of an irrevocable letter of credit, as provided above, such cash may be deposited in an interest bearing account in control of the Township at a bank or savings and loan institution satisfactory to the Township, provided that all sums of deposit shall be readily accessible to Township in the event of need. Such interest shall accrue for the benefit of applicant, or be paid over to applicant.

07.03.00. Insurance shall be a pre-condition to commencement of operations, and maintenance in full force and effect of insurance shall be a pre-condition to the right to continue operations. The applicant shall provide binders for personal injury and property damage insurance for the project to be carried by an insurance company licensed to do business in the State of Michigan during all times during which any reclamation is left to be done, and during all times any machinery and/or equipment remains on the site, or any structures, equipment or improvements to be removed remain on the site, said insurance to contain a hold-harmless clause regarding liability of the Township during any reclamation phase. This insurance shall be carried in amounts no less than one million dollars (\$1,000,000.00) for personal injury, and not less than one million dollars (\$1,000,000.00) for injury and damage to more than one person's property arising out of a single occurrence. This insurance shall cover injury or damage occurring upon the site of the operation, as well as upon injuries occurring upon adjoining property as the result of conditions or activities conducted upon the subject property.

140.008 - Art. VIII. Standards and required improvements.

08.00.00.

08.01.00. All mining sites shall be fenced prior to the commencement of extractive operations and prior to the placement on the site of machinery or buildings. The fence shall completely surround the borders of the subject property, provided, however, for good cause shown in relation to the protection of public safety in view of the operations conducted, the Township Board may, in its discretion, modify the precise location of fencing. The minimum specifications for the fencing shall be as follows: a six-foot high farm-type fence of Number 9 gauge wire, Number 12 gauge bottom wire, Number 14 gauge stays and intermediate wires with spacing of six inches vertically by 12 inches horizontally; all stays shall be of 14 gauge wire; and, support posts shall be spaced on 16 foot centers, or less.

08.02.00. The perimeter of any mining site shall be conspicuously and adequately posted with signs sufficient to indicate the danger of trespassing in the area. In no event shall such signs be more than 200 feet apart, and the same shall be constructed of a rigid and sturdy material, and shall be maintained and replaced as needed.

08.03.00. All active excavations and mining operations shall be visually screened from view from all adjacent public highways and residentially used parcels. Any of the following methods shall be used for such screening, as determined by the Township Board, following recommendation of the Planning Commission:

- A) Construction of a raised earth berm along the boundary lines of the premises where such lines abut a public highway, abut privately owned property which is improved and occupied for residential purposes, and at such places as are necessary to screen processing equipment from the view of a person standing at ground level on any parcel of land improved and occupied for residential purposes located adjacent to or which fronts on any of the roads forming the boundaries of the mining site. When constructed along public highways, the berm shall be of a sufficient height to screen processing equipment from view of the general public using the highway. Where the berm is constructed adjacent to residential property, or to screen nonadjacent residential property, it shall be sufficient in length and height to screen that portion of the property actually improved and occupied for residential purposes. All berms constructed adjacent to residential property shall be designed to prevent soil erosion, encroachment and excessive water runoff. During the next planting season following the placement of the berm, and as often as may be necessary thereafter to ensure the existence of a vegetative ground cover, the licensee shall seed or plant the berm in a manner suitable for the area, and for soil conditions, so as to provide a visible ground cover substantially similar to the vegetation cover previously on the property and/or on adjacent property.

Where the topography of the area acts as a natural screen, the Township Board may waive the berm requirement. The berm shall have slopes not in excess of one foot vertical to three feet horizontal; or,

- B) Planting of coniferous trees along the boundaries of the property with sufficient rows and depth to permit effective screening, as determined by the Township Board and following recommendation of the Planning Commission.

08.04.00. The hours of operation by licensee shall be as follows:

- A) Activities involving the sale of mineral and/or any other removal of mineral and/or any other activity involving ingress and egress by large vehicles and/or equipment, shall be carried on exclusively between the hours of 7:00 a.m. and 5:30 p.m.
- B) Activities involving the mining and extracting of minerals, processing and stockpiling of minerals and/or any other operation of motor driven vehicles and/or equipment shall be limited to the hours of 7:00 a.m. through 7:00 p.m.
- C) Equipment maintenance and repair may be carried on at any time between the hours of 7:00 a.m. and 7:00 p.m. provided, however, that emergency repairs may be made during other hours with the condition that the Director of the Building Department be given notice of such activities.
- D) No activities on the property shall occur on Sunday with the exception of emergency repair activity required to permit the commencement of operations on the following Monday morning, however, this exception shall not apply in the event that such activities shall involve the operation of vehicles and equipment earlier than 7:00 a.m. and later than 7:00 p.m.
- E) The use of explosives of any kind shall only be permitted if authorized in the permit issued under this Ordinance, and, in addition, shall only be authorized upon 14 days advance written notice to the Director of the Building Department.
- F) The limitation of operations on legal holidays shall be the same as the limitations applicable to Sundays.

08.05.00. All parcels being mined under the provisions of this Ordinance shall have direct access to a major thoroughfare as designated on the Inter-County Right-of-Way Plan having a minimum right-of-way width of 120 feet, which roadway shall be improved in accordance with Genesee County Road Commission requirements. In the event the operation of a mined area shall cause any mined material, overburden and/or similar materials to be deposited upon the public highway in Atlas Township, it shall be the responsibility of the operator to remove such materials within 12 hours of receipt of notice from the Director of the Building Department. This requirement shall not waive any other higher or more restrictive requirements by any other governmental entity or agency.

08.06.00. All roads within the mineral mining site shall be maintained by the operator at all times in a dust controlled condition by the use of hard surface paving material, or the application of other dust retardants. Moreover, the location and maintenance of roads shall be such as to avoid harm and/or impairment to any bodies of water, as well as to surface and/or ground water.

08.07.00. All equipment and facilities used in the production, processing or transportation of mineral such as sand, gravel, or stone shall be constructed, maintained and operated in such a manner as to eliminate, insofar as practical, sounds, vibrations, or dust which interfere with the reasonable use and enjoyment of surrounding property. As a minimum, the operations shall conform to all performance standards set forth in the Township Zoning Ordinance, as amended, or any succeeding Zoning Ordinance, except as specifically modified herein. Where feasible, the processing plant and accessory equipment shall be situated below the average grade of the surrounding parcels so as to effectuate screening from sight, sound, dust and vibration.

08.08.00. The intensity level of sounds shall not exceed the following decibel levels, as measured from the nearest property line of the following types of adjacent uses, where applicable: 55 decibels from residentially used property; and 60 decibels from commercially used property; and 70 decibels from industrially used property. Measurements shall be made under this section on an "A" Weighing Scale.

08.09.00. All lighting used to illuminate the property and operation and each and every portion thereof, shall be directed away from surrounding property. Shielding shall be required where lighting would otherwise be directed toward a residential use and/or county road.

08.10.00. No aspect of the operation, including, without limitation, mining, storage and/or transportation of minerals, shall result in a danger to the public health or safety, and/or impairment and/or pollution of the ground water, surface water and/or watershed. Surface water shall at all times be directed in such a manner so as not to interfere with the adjoining property owners, provided, however, that maintenance of the direction and volume of the natural flow of surface water shall not be deemed an interference. Proper drainage shall be provided at all times to prevent the collection and stagnation of water, except in conformance with the reclamation plan as approved as part of the permit. All storm water and drainage plans shall be prepared in accordance with the Township Storm Water Management Plan and subsequently reviewed and approved by the Township Engineer prior to issuance of any permit.

08.11.00. All machinery and other operations conducted on or at the mining site which cause vibration shall be conducted so as to prevent transmission of ground vibration. The ground vibration shall be measured from any lot line adjoining the site, and the vibrations shall not exceed the vibration perception threshold of an individual standing on said lot line.

08.12.00. Activities in connection with the mining operation shall not create slopes and/or a pit or depression in the earth closer than 160 feet from the center of the nearest street, highway, alley or road, or 100 feet from the nearest property line; provided, however, the Township Board may, as part of the permit,

prescribe greater distance requirements in order to insure sublater support to surrounding property as reasonably required, or where the Township Board reasonably finds the same to be necessary for the protection of the public health, safety or welfare from a particular danger.

08.13.00. Machinery, equipment and methods of operation on the mining site shall be limited to those specified in the permit application, unless approval for same is subsequently granted by the Township Board, in which case, such approval shall be made part of the permit.

08.14.00. Any and all activities of the mining operation where applicable, shall be subject to the Flood Plain and Wetlands Protection Ordinance #44 for the Township of Atlas, as amended, in addition to all of the standards required in any other applicable law, ordinance or regulation, including this Ordinance. Where applicable, the licensee shall obtain a concurrent permit from the Township Board, as required by the Flood Plain and Wetlands Protection Ordinance #44 prior to the commencement of any operations and shall also follow the standards and specifications of the Township Storm Water Management Plan.

08.15.00. All machinery, equipment, processing plant, and related uses shall not be closer than 160 feet from the center of the nearest street, highway, alley, or road, or 100 feet from the nearest property line regardless of the minimum setbacks as prescribed in the Township Zoning Ordinance.

08.16.00. All stockpiles of mineral and processed material shall not be located within the setback area required in Section 08.15.00. The height of said stockpiles shall not exceed the applicable height standards for the zoning district in which the stockpiles are located. Screening as required in Section 08.03.00 may be located within said setback area if so approved as a part of the permit by the Township Board.

140.009 - Art. IX. Standards for reclamation of mined area.

09.00.00.

09.01.00. In such cases as the reclamation plan provides for a permanent water area, excavations shall be made to a water depth of at least ten feet below the low water mark, for at least 80 percent of the entire water area. Upon completion of any phase of reclamation wherein a permanent water area is provided, said water area shall be tested by water quality for body contact by the County Health Department prior to continuation of reclamation.

09.02.00. The surface area of all land not to be permanently submerged underwater shall be graded and back filled as necessary so as to reduce peaks and depressions, and so as to produce a gently rolling surface that will minimize erosion due to rainfall, and which will produce a natural appearance in relation to the property as it existed prior to the commencement of mining operations and in relation to vacant property in the area of the subject property.

09.03.00. Slopes shall be graded to permanent water areas, if any, and to the pit floor in connection with an operation without permanent water areas, and shall not be graded to the exterior areas of the property so as to create the potential of flooding on adjoining properties and roads. In no event shall a reclaimed

slope have a grade in excess of a minimum ratio of one foot vertical to four feet horizontal. Moreover, for permanent water areas, for a distance of not less than ten feet nor more than 50 feet, the submerged slopes shall be graded from the water's edge at a grade not in excess of a minimum ratio of one foot vertical to seven feet horizontal.

09.04.00. Vegetation shall be reclaimed by the use of sufficient soil and overburden, and by appropriate seeding of perennial grasses and ground cover or planting of shrubs or trees in all parts of the reclaimed mining area not to be submerged under water, or within 25 feet of the shore line of a permanent water area. Reclamation with appropriate turf, vegetation, soil, overburden, shrubs and trees shall be implemented in a manner so as to prevent washout and erosion. In the event of a disagreement between the licensee and the Director of the Building Department, with respect to the meaning and interpretation of this Section, the Township Board shall make a final determination.

09.05.00. In the event filling of the mined area is necessary in the course of reclamation, the fill material shall not consist of and/or contain any organic waste, hazardous waste, industrial waste, or sludges and sewage residues, whether or not compounded, mixed, combined, bound or contained within any other material through any chemical or physical process or a combination thereof, or in any other fashion, and, moreover, such fill material shall not contain any other material which will, or is likely to, impair or harm the air, water and natural resources, and public trust therein, and/or the public health and safety. Any solid waste regulated by Act 641 of the Public Acts of 1978 and any hazardous waste regulated by Act 64 of the Public Acts of 1979 shall not be used for fill and/or reclamation material of a mined area.

09.06.00. Upon cessation of mining operations as provided for in the permit, or as a result of any earlier termination, voluntary or involuntary, the licensee, within the dates stated in the permit, or within 150 days after the termination of the operation (not including days in the months of December through March, inclusive) shall complete reclamation of the property. Moreover, within a reasonable period of time, not to exceed the time stated in the permit, or within seven months stated in the permit, or within seven months after termination, whichever period is shorter, the licensee shall remove all buildings, structures, machinery, equipment, vehicles and stockpiles provided it shall not be necessary to remove buildings, structures which may lawfully be used in the zoning district in which the property is situated. The Township Board may permit materials which have been mined, processed and stockpiled during the mining period to be sold during the reclamation period if and to the extent such activity does not interfere with reclamation, and not thereafter, and, such stockpiles shall in all events be removed within the time provided for reclamation hereunder. In the event the Township is required to complete reclamation, any remaining mined materials, overburden, top soil, stockpiles or similar materials may be used in the reclamation of the mining area.

09.07.00. The standards set forth in this Article shall be considered minimum standards, and stricter standards may be required by the Township Board, if and to the extent such stricter standards are demonstrated to be necessary to protect the environment and/or the public health, safety and/or welfare.

140.010 - Article X. Inspections.

10.00.00.

10.01.00. The Director of the Building Department, or his designate or agent, shall be responsible for inspections under this Ordinance, and shall at all reasonable times have the right to peaceably enter upon the licensed property for the purpose of conducting inspections to ensure compliance with this Ordinance, and with all other applicable law, ordinances and/or regulations the Township is authorized to enforce. Any refusal to permit such inspections shall be cause for summary proceedings to suspend and/or revoke the license issued pursuant hereto pending such inspections. In addition to discretionary inspections, the Director shall make regular inspections during operations and reclamation with such frequency as shall be necessary to ensure and monitor compliance under all of the circumstances, and, further, shall utilize the services of such experts as the Township Board shall authorize for such purpose. The Director shall make quarterly reports to the Township Board concerning compliance with this Ordinance.

10.02.00. Should the Director, or his designate, and/or agent, discover any noncompliance with terms and conditions of this Ordinance and/or the permit issued hereunder and/or with any other applicable law, ordinance or regulation, the Director shall prepare a notice of this fact detailing the violations, and shall send copies of same to the licensee and to the Township Board. Within 15 days following such notice, the licensee shall advise the Township, in writing, whether or not it concurs that a violation does exist, the licensee shall take steps to remedy the violation. If the licensee does not agree, it shall, within the same period of time, state the reasons for such lack of agreement.

The licensee shall correct any and all violations forthwith, and in all events in a period not to exceed 60 days from the date of the violation notice unless, due to circumstances beyond licensee's control, completion of the corrective measures are not possible within such period, in which event the licensee shall have a reasonable additional time within which to make the correction.

In the event of a dispute with respect to the existence of a violation, the Township Board shall set a reasonable time for a hearing. After a review of the reasons stated by the licensee for its position that no violation exists, the Township may, in its discretion, include in the notice of hearing, responsive allegations with respect to the claimed violation.

In the event the licensee has concurred that a violation exists, but has not remedied the same in a timely manner as provided for herein, a notice of violation shall be sent and a hearing thereon established utilizing the same form and procedure as set forth above with respect to the notice and hearing on a violation.

At the Township Board meeting, the matter of a disputed violation, or the failure to timely cure a violation, shall be considered, which consideration may be adjourned from time-to-time. Such consideration shall include a hearing conducted at the meeting or meetings, and shall further include the opportunity of the licensee to appear in person, or by a duly authorized representative to present argument, witnesses and other evidence on behalf and in the defense of the licensee, or, in addition to or in lieu thereof, to file a written presentation prior to the initiation of the meeting. The licensee shall also be afforded the opportunity to examine individuals who have made statements or submitted other evidence supporting the existence of a violation or the failure to timely cure a violation, provided, such examination shall be limited in scope to matters relating directly to the statements made and evidence submitted. The Township Board shall make an effort to ascertain whether the licensee made a reasonable effort to prevent the occurrence of the violation, or to cure the same in a timely manner.

In the event the Township Board shall determine that a violation of this Ordinance exists, or that the licensee has failed to cure a violation in a timely manner, the Township Board is authorized to take the following action, taking into consideration whether the licensee made a reasonable effort to prevent the occurrence of a violation and/or cure the same in a timely manner:

- A) If the violation constitutes the first uncured violation, and/or the first failure to cure a violation in a manner, and the same has not resulted in damage to person or property, the Board is authorized to suspend the license for a period of up to two weeks.
- B) If the violation constitutes the second uncured violation, and/or the second failure to cure a violation in a timely manner, or a combination of these, and the same has not resulted in damage to person or property, the Township Board is authorized to suspend the license for a period of up to one month.
- C) If the licensee has previously had two uncured violations and/or two failures to cure a violation in a timely manner, or a combination of these, and there is an additional uncured violation and/or failure to cure a violation in a timely manner, and/or if any violation or failure to cure a violation results in property damage, the Township Board is authorized to suspend the license for a period of up to three months.
- D) If the licensee is found to be in violation of this Ordinance on a sixth occasion, and/or if the licensee is found to have failed to cure a violation in a timely manner for the sixth time, or any combination of these, and/or if there are violations and/or failures to cure in excess of six, and/or if a violation has resulted in personal injury of one or more individuals, the Township Board may suspend the license for a period of up to one year, or revoke the license permanently.

In the event the Township Board shall determine, in its discretion, that serious and irreparable harm and damage is likely to occur to person or property, or that an impairment or pollution of the environment is likely to occur, the Township Board may order an emergency summary suspension of the license, which shall become effective upon service of same upon the licensee. The Township Board shall thereafter, as soon as is practical, conduct a hearing with the same notice and procedural standards as set forth above for violations hearing, to determine whether: (1) to revoke the suspension order; (2) to continue the suspension order for a fixed period of time; or (3) to revoke the license permanently. The Township Board shall state reasons for its determination. If the licensee wishes to expedite the hearing procedure, the licensee may waive the advanced notice requirement and proceed immediately to a hearing.

10.03.00. Following the entry of a determination by the Township Board to suspend or revoke the permit, the institution of a lawsuit in the Circuit Court, or other Court, shall not constitute a stay of law suspension or revocation, as the case may be. Once such revocation occurs, the Director of the Building Department shall take such steps necessary to cause reclamation of the site in accordance with the licensee's reclamation plan.

10.04.00. The procedures and remedial action authorized under this Article shall be in addition to, and not in lieu of, additional actions the Township may seek pursuant to the following Article XI.

140.011 - Art. XI. Violations and penalties.

11.00.00.

11.01.00. Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than 90 days, or both such fine and such imprisonment, as determined by the Court, together with costs.

11.02.00. A separate offense shall be committed upon each calendar day during which a violation shall occur or continue.

11.03.00. The rights and remedies provided in this Article are cumulative and in addition to such other remedies provided in this Ordinance, and/or by law and/or in equity. The Township shall not be prohibited from pursuing any other lawful remedy it may have in order to bring about compliance with this Ordinance.

140.012 - Art. XII. Severance clause.

12.00.00.

12.01.00. This Ordinance, and each article, section, subsection, paragraph, subparagraph, or word shall be deemed severable, and, if any portion or provision is adjudicated by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remainder of this Ordinance shall remain in full force and

effect.

140.013 - Art. XIII. Effective date and declaration.

13.00.00.

13.01.00. This Ordinance is hereby declared to have been adopted by the Township Board of the Township of Atlas, County of Genesee, State of Michigan, at a meeting thereof duly called and held on the 19th day of March, 1984 in order to be given publication in the manner prescribed by law, and shall take effect upon publication.