ORDINANCE 113.1

TOWN OF CROSS PLAINS

AN ORDINANCE CREATING CHAPTER 108 OF THE GENERAL CODE OF

ORDINANCES TO REGULATE BLASTING AND MINERAL EXTRACTION

WITHIN THE TOWN OF CROSS PLAINS

The Town Board of the Town of Cross Plains, Dane County, Wisconsin does ordain that Chapter 108 of the General Code of Ordinances entitled "Town of Cross Plains Non-Metallic Mining Permitting Ordinance" be and the same is hereby created to read as follows:

Section I: Title

This ordinance shall be cited as the "Town of Cross Plains Non-Metallic Mining Permitting Ordinance" and hereinafter referred to as "this ordinance".

Section II: Authority

This ordinance is adopted to protect the public health, safety and welfare of residents of the Town of Cross Plains. This ordinance is authorized by the powers granted to the Town of Cross Plains by the Town's adoption of Village powers under sec. 60.10(2)(c), Wis. Stats., and is in accord with sec. 61.34 (1), Wis. Stats., and Wis. Admin. Code SPS 307, NR 135 and 415.

Section III: Purpose and Intent

The purpose of this ordinance is to regulate the excavation of non-metallic minerals and the use of explosives in non-metallic mining operations and in demolition of structures that require, at a minimum, a class 3 blaster's license under Wis. Admin. Code SPS 305.20 and issued by the Wisconsin Department of Safety and Professional Services. This ordinance is intended to limit the adverse effects of blasting on persons or property outside any controlled blasting site area. It is also intended to exercise the Town's police powers to create certain regulations on the operation of non-metallic mining operations.

Section IV: Definitions

When used in this ordinance, the terms below shall be defined and limited as follows:

(A) Affected building or structure. A building or structure within a distance extending 1,000 feet from the outer perimeter of a controlled blasting site area.

(B) Airblast. An airborne shockwave resulting from the detonation of explosives.

(C) Baseline Record. Pre-blasting test results, including well test results, of record that are measured after the longest period with no blasting activity.

(D) Blast area. The area of the blast as determined by the blaster in charge within the influence of flying rock missiles, the emission of gases, and concussion as determined by the blaster in charge.

(E) Blast site. The area where explosive materials are handled during the loading of blast  
holes, including 50 feet in all directions from the perimeter formed by the loaded blast  
holes and 50 feet in all directions along the full depth of the blast hole.

(F) Blaster. Any individual holding, at a minimum, a valid class 3 blaster's license issued by  
the Wisconsin Department of Safety and Professional Services as defined in Wisconsin  
Administrative Code SPS 305.20(1 )(b). The blaster shall also hold any other licenses  
required by law to conduct blasting and related activities in the Town. (Refer to Exhibit  
A: Wisconsin Administrative Code SPS 305.20)

(G) Blaster in charge. The qualified person in charge of and responsible for loading and firing  
the blast.

(H) Blasting. The use of explosives to loosen, penetrate, move or shatter masses of solid materials.

(I) Controlled blasting site area. An area that surrounds a blast site for which the operator has a legal right and duty to take all reasonable means to assure the safety of persons and property, either because the operator owns the area, because the operator has leased or has some special agreement with the owner of that area, or because the operator or blaster owes a special duty to other persons or property under other applicable regulations or laws.

(J) Ground vibration. A shaking of the ground caused by the elastic wave emanating from a blast.

(K) "Nonmetallic mining" or "Nonmetallic mining operation." These terms as used in this ordinance can refer to any of the following:

(1) 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.

(2) Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with materials transferred from off-site.

(3) Manufacturing processes aimed at producing nonmetallic products or by products of such manufacturing processes for sale or use by the operator.

(4) Stockpiling of nonmetallic products for sale or use off-site and stockpiling of waste materials.

(5) Transport of the extracted nonmetallic materials, finished products or waste materials to or from the extraction site.

(6) Disposal of waste materials.

(7) Reclamation of the extraction site.

(8)The term shall not include removal of field rock from farm property as part of preparing farms for planting.

(L) Operator. The individual or business entity conducting blasting activities, applying for a permit to blast, or operating a non-metallic mining operation.

(M) "Permit" or "Blasting Permit" or "Permit to Blast." A permit to engage in blasting or other activities authorized under this Ordinance.

(N) Town. The Town of Cross Plains, Dane County, State of Wisconsin.

(O) Town Board. The Town Board of the Town of Cross Plains.

(P) Town Clerk. The Clerk/Treasurer of the Town of Cross Plains.

Section V: Applicability

No person, business or other entity may conduct blasting or non-metallic mining or a non-metallic mining operation within the Town of Cross Plains, without first obtaining a valid permit in accordance with the requirements of this Ordinance and any other applicable state, federal or local law, statute or regulation.

(A) This ordinance shall apply:

1. To any person who blasts in the Town of Cross Plains in order to establish a footing, foundation, or other method of support for the construction, placement or erection a structure.

2. To any person who conducts blasting in the Town of Cross Plains as part of a non-metallic mining operation.

3. To any person who blasts in the Town of Cross Plains in order to demolish buildings or other structures when these projects require, at a minimum, a class 3 blaster's license under Wis. Admin. Code SPS 305.20 and issued by the Wisconsin Department of Safety and Professional Services.

(B) To any person who removes, or proposes to remove, more than 20 cubic yards of material in a year, from a property which is not subject to a conditional use permit issued by Dane County pursuant to sec. 10.255 of the Dane County Code unless the material is being used for agricultural operations or residential use on properties owned or leased by, or related to, the person.

Section VI: The Application

(A) Applications for a permit to blast or extract shall require an individual who holds a valid blaster's license issued by the Wisconsin Department of Safety and Professional Services with the proper classification to affix their signature accepting responsibility for the blasting activity and its compliance with local and state regulations.

(B) Applications for a blasting and/or extraction permit may be submitted by and issued to a blasting or extraction business entity, . An applicant for a blasting permit must hold a valid blaster's license issued by the Wisconsin Department of Safety and Professional Services with the proper classification supervises the blasting activities.

(C) Applications for a blasting permit shall require, all necessary Town, County and State permits and compliance with all Town, County and State regulations, including but not limited to, the requirements of this ordinance.

(D) The applicant shall submit a completed application form together with all additional, required documentation to the Town Clerk.

(E) The application shall include the following information on the form itself or on  
documents attached to the form:

(1) Applicant name including all individuals of a partnership, and officers of a corporation including a limited liability corporation, license number, address, contact phone numbers, and email address of the applicant.

(2) Signature indicating acceptance of responsibility for blasting and/or extraction activity, by an individual who holds a valid blaster's license issued by the Wisconsin Department of Safety and Professional Services with the proper classification or the owner of the extraction business. Name, address, license number, contact phone numbers, and email address of the blaster in charge of the blast, if different than the applicant. The applicant shall be personally responsible and liable for compliance with this ordinance regardless of the form of business entity which undertakes the activity.

(3) Name, address, contact phone numbers, and email address of any person (agent or employee) in charge of the operation who will respond to inquiries by the town.

(4) A map showing the location of the blasting site and a description of the operation at the site, including the location of all buildings located within 1,000 feet of the controlled blasting or extraction site, names, addresses and contact information of owners of those buildings.

(5)Proof of financial assurance. Applicant shall provide proof of financial assurance as more specifically set forth in the proof of insurance section in Section XIV of this Ordinance.

(F) An application shall be regarded as "complete" only when all of the information  
requested in Section VII(E)(l-5) of this ordinance has been provided to the Town Clerk  
on the application form, or on attachments to the application form, an expense reimbursement agreement has been executed by the applicant, and the application fee has been paid.

Section VII: Blasting Limits

(A) Blasting operations including a blasting site located any distance from a residence, private well, or inhabited structure that is not owned or controlled by the Operator:

(1) Shall not exceed ground vibration resulting from Operator's blasting of 0.30 inches per second on at least 85% of its blasts within any single calendar year, measured at the residence or inhabited structure closest to the site of the blast which is not owned or controlled by the Operator, and, shall not exceed ground vibration resulting from Operator's blasting of 0.40 inches per second on any blast within any single calendar year, measured at the residence or inhabited structure closest to the site of the blast that is not owned or controlled by the Operator. Notwithstanding any other provision in this subsection, the Operator shall not exceed the ground vibration limitation imposed by the Wisconsin Department of Safety and Professional Services in Figure 7.44 of Chapter SPS 307, or 0.65 inches per second, whichever is more restrictive, on any blast; and

(2) Airblast resulting from Operator's blasting shall not exceed 123 dB on at least 85% of its blasts within and single calendar year, measured at the residence or inhabited structure closest to the site of the blast that is not owned or controlled by the Operator, and, airblast shall not exceed 128 dB on any blast within a single calendar year. Notwithstanding any other provision in this subsection, the Operator shall not exceed the airblast limitation imposed by the Wisconsin Department of Safety and Professional Services in Chapter SPS 307 on any blast.

Section VIII: Pre-blasting Survey

(A) Prior to obtaining a blasting permit, the applicant shall notify, in writing, all residents or owners of buildings or other structures (including, but not limited to, wells) located within 1000 feet from the blasting site that the applicant intends to apply for a blasting permit from the Town of Cross Plains. The written notification shall include a statement indicating that, upon the written request, the applicant will perform a pre-blasting survey, which would provide a baseline record of the pre-existing condition of building or structures against which the effects of blasting can be assessed, and which would include both the interior and exterior of the buildings. The notice shall indicate that no survey will be done unless the resident or owner makes a written request for the pre-blast survey and a water quality test for existing wells. The resident or owner shall make any request for a pre-blast survey or water quality test to the applicant, in writing. The applicant shall conduct a pre-blast survey only of requested dwellings or structures and conduct water quality testing for existing wells at the applicant's expense.

(B) If the resident or owner requests a copy of the well test, then, within 48 hours of the request, the operator shall provide the copy.

(C) The Town reserves the right to require a baseline well pre-blast test and/or any post-blast well testing at any well being used, not owned by the operator, within 1000 feet of the blast site.

(D) Any pre-blast water quality and sediment testing shall be conducted by an independent survey company and a laboratory approved by the State of Wisconsin or an organization selected by the applicant and acceptable to the Town. Reasonable and reasonably related costs of such independent survey shall be the sole responsibility of the Operator. A pre-blasting well test conducted after a period of at least 180 days with no blasting shall establish a baseline for well test values.

Section IX: Procedures

Upon receipt of a completed application form for permits under Section 5 (A) 2 or 3 and the permit fee(s), the Town Clerk shall place the application on the agenda for the next meeting of the Town Board. The Town Board shall review the application. If it determines that the permit application is complete and the proposed blasting activity will comply with all the applicable provisions of this ordinance, the Town Board may grant a blasting permit. If the Town Board determines that the application is incomplete or that the proposed blasting activity will not be conducted in conformity with the provisions of this ordinance or Wis. Administrative Code SPS 307, the Town Board may deny the permit. Completed application form for permits under Section 5 (A) 1 and the permit fees shall be submitted to the Town Building Inspector. The Town Building Inspector shall approve if the Town Building Inspector determines the permit application is complete and the proposed blasting activity will comply with all the applicable provisions of this ordinance or deny if the Town Building Inspector determines that the application is incomplete or that the proposed blasting activity will not be conducted in conformity with the provisions of this ordinance or Wis. Administrative Code SPS 307.

Section X: Notification of Blasting

Notification must be given to the following persons and by the following means at least 24 hours prior to the initial blasting at a blast site as well as prior to all subsequent blasting events at the blast site:

(A) At least 24 hours prior to initial blasting at a blast site, the Operator shall notify all residents or owners of affected buildings. The blaster shall make all reasonable efforts to ensure timely and effective notice that a blasting operation is to begin, using such means as a written notice, a phone call, email or verbally in person.

(B) A resident call list shall be established for the purpose of notifying persons living in the vicinity of the blast site at least 24 hours prior to a blasting event. A resident shall be placed on this call list only upon request to be so listed and called. The call list must be maintained and used by the Operator prior to any blast.

(C) Whenever blasting is being conducted in the vicinity of gas, electric, water, fire alarm, telephone, telegraph or steam utilities, these utilities shall be notified no less than 72 hours prior to commencing blasting.

(D)Verbal (in person or by phone) or written (on hard copy or email) notice shall be given to the Town of Cross Plains at least 24 hours prior to the onset of any blasting event. If a schedule including dates and times of blasting events is known at the time of application, making that schedule part of the application may serve as written notice. If part of the application form, further notice shall be required only if there is deviation from the schedule.

Section XI: Blasting and Extraction Schedule

(A) All blasting and crushing operations shall be conducted between 8:00 am and 4:00 pm, Monday through Friday. All extraction activity shall be conducted between 7:00 a.m. and one half hour after sunset Monday through Friday and 7:00 a.m. and 2 p:00 p.m. on Saturday unless a variance has been granted.

(B)The Town Board may grant a variance from blasting and/or excavation hours for a temporary or occasional event reasonably needed for business purposes.

Section XII: Blasting Log

An accurate blasting log shall be prepared and maintained for each blast fired, and a true and complete copy of this log shall be kept by the Operator for a period of not less than 5 years and furnished to the Town of Cross Plains within 3 working days of a request for a copy of said log by the Town Clerk or Town Board. The Town of Cross Plains may require that the Operator furnish an analysis of any particular blasting log to be prepared by the Operator. Each blasting log shall include, but not be limited to, the following information:

(A) Name, signature and license number of the blaster in charge of the blast.

(B) Specific blast location, including address, bench and station number if applicable.

(C) Type of blasting operation.

(D) Date and time of the blast.

(E) Weather conditions at the time of the blast.

(F) Diagram of the blast layout and the delay pattern.

(G) Number of holes.

(H) Hole depth and diameter.

(I) Spacing.

(J) Burden.

(K) Maximum holes per delay.

(L) Maximum pounds of explosives per delay.

(M) Number, type and length of stemming used between decks.

(N) Total pounds and type of explosives used.

(O) Distance to nearest inhabited building not owned by the Operator.

(P) Type of initiation used.

(Q) Seismographic and airblast records, which shall include all of the following:

1. Type of instrument and last laboratory calibration date.

2. Exact location of instrument and the date, time, and distance from the blast.

3. Name of the person and firm taking the reading.

4. Trigger levels for ground and air vibrations.

The vibration and airblast levels recorded.

Section XIII. Excavation Standards.

(A) Prior to commencement of operations, the Operator shall communicate with the Town and develop:

1. An agreed-upon route for trucks, which all trucks shall follow.; and

2. A phasing plan showing the plan for opening, excavating and reclaiming the quarry over time.

3. An Operations Plan Map showing the entrances, structures, excavation areas and other major features of the excavation area and the entire property.

(B) The Town Board may require the Operator to execute a road use agreement prior to commencement.

(C)The Operator shall direct the truckers hauling material from the site to operate in strict conformity to the following standards:

1.No trucks may operate on a road during the time that school buses will be picking up or dropping off students on that road.

1. Trucks may not use engine braking.

2. Truck loads shall be covered to minimize dust.

3. Except in emergencies, trucks shall not be fueled or repaired at the excavation site.

4. Truckers shall abide by posted speed limits, weight limits and designated truck routes identified by the Town by sign, or communicated by the permit holder.

(D) Excavation sites shall minimize blowing dust and debris by using DNR best practices to control fugitive dust. The entry driveway to the extraction site shall be paved for a minimum of 300 feet from the edge of the road pavement. Any remaining length of driveway shall be covered with asphalt grindings. The operator shall maintain driveways on the site in a dust free manner in accordance with local, state and federal regulations and shall clean any dust or mud tracked onto public roads on an as-needed basis

(E) The excavated and working part of the site shall be fenced using a a 6-foot tall, woven-wire fence with three strands of barbed wire on top along the perimeter of the site. The fence shall be constructed as the mine develops with the mine area always contained in a fenced area.

(F) The excavator shall provide written notice of commencement of extraction operations to all residences and businesses within 1500 feet of the perimeter of the extraction site property. The notice shall be given at the commencement of a extraction season, or a period when the site will be active. A new notice shall be given if the operations have ceased for a month or more. The notice shall be delivered at least a week in advance of the commencement of operations.

(G) All lighting on an excavation site shall be shaded to prevent the light from shining onto residences or business located within 1000 feet.

(H) Noise generated by the operation shall be abated to the extent reasonably possible. Activity shall be managed to concentrate activities which generate noise to times when they will be the least disruptive of the neighborhood. Noise may not exceed 75 decibels at the property line except during the hours of 9 a.m. To 3:00 p.m. At all other operating hours, noise at the property line may not exceed 65 decibels.

(I)The operator shall construct a berm which shall extend around the entire property to screen the quarry. The berm shall be topped by tree screening as stated in a planting plan to be approved by the Town and County; the planting plan may omit trees along defined boundaries of the property at the request of the neighboring land owner. The berm shall be constructed according to the Operation Plan Map dated November 6, 2003. The operator shall maintain the berm and control noxious weeds throughout the property. The berms shall be constructed as needed and as the mine develops according to the operational plan. The acreage not being mined shall continue to be farmed.

(J) No additives that have not been approved by government agencies may be used with the water used for washing aggregates or dust control.

(K) All excavation equipment, plants and vehicles shall be fueled, stored, services and repaired on lands 5’ above the highest water table elevation in order to prevent against groundwater contamination from leaks or spills. Operators shall collect waste oil and place it in a special oil tank to be sold to a recycling company or used for heating.

(L) A spill prevention and emergency response plan shall be in place and apply to all operations on the site including subcontractors and suppliers.

(M) The operator shall test a sample of water drawn from any water wells installed on the property for the presence of petroleum or petroleum compounds or distillates to provide a baseline determination of whether there are contaminants already in the groundwater.

(N) The operator and all haulers shall access excavation site only through those points designated as entrances on the Operations Plan Map. The access to the driveway shall have gates securely locked when the extraction site is not in operation. The site shall be signed “SURFACE MINERAL EXTRACTION SITE- NO TRESPASSING.” These signs shall be placed every 200 feet around the perimeter of the quarry and maintained.

Section XIV: Monitoring

(A) The Operator shall monitor all blasts at the closest location to the controlled blast area of any affected building or structure beyond the controlled blast area, provided, however, that the Operator may monitor at another location approximately the same distance from the perimeter of the controlled blast area, if the Operator is unable to obtain permission to conduct the monitoring from the owner of the preferred location.

(B) The Town of Cross Plains by its Town Clerk or Town Board, may, at its discretion, require the relocation of the monitoring equipment to a more suitable site.

Section XV: Financial Assurance

(A) Each application for an explosives use permit or excavation as herein stated, or a renewal thereof, shall be accompanied by a Certificate of Insurance for a Commercial General Liability Policy against claims for bodily injury, death, or property damage arising out of the blasting operation. Said Policy of Insurance shall have limits of coverage of not less than five million ($5,000,000.00) dollars in the aggregate and two and one-half million ($2,500,000.00) dollars per occurrence.

(B) Each insurance policy shall provide that it shall not be cancelled by the insurance company, except after not less than ninety (90) days' notice to the Town, in writing, by registered or certified mail. Not less than thirty (30) days prior to the expiration of the ninety (90) day notice of cancellation, the blaster or excavator must deliver to the Town a replacement insurance policy in absence of which all blasting and/or excavation shall cease. The liability insurance must be issued by a company licensed by the State of Wisconsin to issue the policy.

Section XVI: Permit Durations. Renewals and Fees

(A) A short-term permit may be issued for a single blasting or excavating event and shall be valid for 14 days from the effective date of the permit. The non-refundable fee for a temporary permit shall be as determined by the Town Board. No renewal of short-term permit will be granted within a calendar year. A regular permit is required if blasting or excavating exceeds 14 days. All provisions of this ordinance apply.

(B) A regular permit shall be granted for blasting shall be for a period of no more than 180 days. The nonrefundable fee for a 180 day permit shall be as determined by the Town Board.

(C) A regular permit for excavation shall be for a calendar year, and may be renewed.

(D) An application for a renewal of any existing regular permit shall be made at least 60 days prior to anticipated blasting or to the resumption of excavation. Application may be made 60 days prior to the expiration date of the existing permit. The Town Board, at its discretion, may meet to consider approval, denial, or alteration of a regular permit renewal.

(E) Every applicant for an initial or renewal permit shall be required to sign an agreement under which the applicant agrees to pay for the cost of the Town’s professional staff or consultants to review the application. The cost shall include but not be limited to: engineering and attorneys’ fees. The agreement shall provide that the applicant shall deposit, in advance, a sum sufficient to pay the anticipated fees. If the deposit is expended, the applicant shall deposit an additional amount determined by the Town. Unexpended funds shall be refunded. Failure to pay the initial deposit or additional deposits within five days of the request shall result in the denial of the permit application.

(F) In the event that it is necessary for the Town to enforce any provision of this ordinance, the party or Operator shall be responsible for the Town’s cost of enforcement.

Section XVII: Revocation and Suspension

(A) The Town Board, on its own motion or following due review and investigation of a written complaint, may suspend or revoke the blasting and/or excavating permit for any violation of provisions or requirements of this ordinance or of other applicable State and Federal law.

(B) In general, the Town Clerk shall provide the Operator with no less than 72 hours notice of a meeting where action to suspend or revoke the blasting and/or excavating permit is on the agenda. Written or verbal notice of the suspension, and of conditions that must be met to reinstate the permit, shall be promptly given to the Operator at the address contained in the application.

Section XVIII: Penalties

In addition to reducing the permitted blasting level and the denial, suspension or revocation of a permit issued under this ordinance, any person who violates any provision of this ordinance shall

be subject to forfeiture in an amount not less than $1,000 nor more than $10,000 for each day of continued violation, plus the Town's legal costs, including but not limited to the cost of prosecution.

Section XIX: Severability and Interpretation

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

Section XX: No Liability for Damages

This ordinance shall not be construed as an assumption of liability by the Town of Cross Plains for damages because of injuries sustained or property destroyed by any person's failure to comply with the requirements set forth herein.

Section XXI: Effective Date

This ordinance is effective on publication.

The Town Clerk shall properly publish a summary of this ordinance as required under Sec. 60.80 (2) of Wis. Statutes as a Class I Notice in a newspaper.

Adopted this \_\_\_12\_\_\_\_\_\_\_ day of \_\_\_\_\_May\_\_\_\_\_\_\_\_\_\_, 2014.

Signatures of Town Board:

Town Board Chair\_\_\_\_/s/ Greg Hyer\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town Supervisor 1\_\_\_/s/ Vera Riley\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town Supervisor 2\_\_\_/s/ Jeff Baylis\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town Supervisor 3\_\_/s/ Greg Haack\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town Supervisor 4\_\_/s/ Paul Correll\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Posted Date:\_\_\_\_May 13, 2014\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attest: Town Clerk\_\_/s/ Nancy Meinholz\_\_\_\_\_\_\_\_\_