

Chapter 26 ENVIRONMENT

Article I. In General

Secs. 26-1--26-25. Reserved.

Article II. Dikes

Sec. 26-26. Definitions.

Sec. 26-27. Penalty for violation of article.

Sec. 26-28. Fill or additions.

Sec. 26-29. Destruction.

Sec. 26-30. Removal of vegetation.

Sec. 26-31. Construction of bridges or walkways or construction.

Sec. 26-32. Motor vehicles.

Secs. 26-33--26-55. Reserved.

Article III. Hazardous Materials

Sec. 26-56. Definitions.

Sec. 26-57. Duty to remove.

Sec. 26-58. Failure to remove.

Sec. 26-59. Enforcement of article.

Sec. 26-60. Costs of hazmat unit.

Secs. 26-61--26-70. Reserved.

Article IV. Mineral Mining

Sec. 26-71. Name.

Sec. 26-72. Definitions.

Sec. 26-73. Effect of article in relation to existing ordinances.

Sec. 26-74. License required; requirements for existing operations and annual inspection required.

Sec. 26-75. Licenses nontransferable.

Sec. 26-76. License application procedure.

Sec. 26-77. Review and approval of license applications.

Sec. 26-78. Issuance.

Sec. 26-79. Renewal.

Sec. 26-80. Conditions of approval.

Sec. 26-81. Performance guarantees.

Sec. 26-82. Waivers and modifications.

Sec. 26-83. Minimum standards and requirements.

Sec. 26-84. Enforcement.

ARTICLE I. IN GENERAL

Secs. 26-1--26-25. Reserved.

ARTICLE II. DIKES

Sec. 26-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dike means a bank of earth, or other materials constructed either by the township or by the county drain commission, or under the supervision or control of the township or the county drain commission, whether on property owned by the township, county or on private property.

Dike elevation means the elevation of the lowest part of the dike, including any spillway located thereon.

Normal lake level means the elevation level of the lake water adjacent to the dike, as established as a normal water level by a court of competent jurisdiction, or established by any municipal or governmental regulating authority.

(Ord. No. 136, art. II, 11-27-78)

Cross references: Definitions generally, § 1-2.

Sec. 26-27. Penalty for violation of article.

Any person who violates any provision of this chapter shall be responsible for a municipal civil infraction and shall be punished by a fine as set forth in the Schedule of Civil Fines [Appendix C] and court costs. Equitable relief may also be awarded as permitted by Michigan law. Each day that a violation continues, shall be deemed a separate offense.

(Ord. No. 136, art. VIII, 11-27-78; Ord. No. 2000-03, 8-28-2000)

Sec. 26-28. Fill or additions.

No person shall add or permit or cause to be added any sand, gravel, or additional material to any part of the dike that lies above 1 1/2 feet in elevation above the normal lake level.

(Ord. No. 136, art. III(A), 11-27-78)

Sec. 26-29. Destruction.

No person shall disturb, cause or permit the dike to be disturbed so that the density or soil compaction of the dike or the dike materials shall be reduced by any excavation, digging, plantings, or in any other manner removing any of the materials from any dike.

(Ord. No. 136, art. IV, 11-27-78)

Sec. 26-30. Removal of vegetation.

Subject to the rights of owners to seed and maintain the property, no person shall remove or cause or permit the removal of any vegetation, shrubbery, trees, grass or other plantings growing on or along the dike; nor shall any person use or cause or permit the dike to be used in any manner which will cause the destruction of such vegetation without first obtaining written permission from the county drain commissioner or the township.

(Ord. No. 136, art. V, 11-27-78)

Sec. 26-31. Construction of bridges or walkways or construction.

No persons shall construct or cause or permit the construction of any structure, building or deck upon the dike. Any construction of a bridge or walkway over the waterway to the dike must be no lower than one foot above the dike elevation, and written permission for construction must be secured from the county drain commissioner's office prior to construction.

(Ord. No. 136, art. VI, 11-27-78)

Sec. 26-32. Motor vehicles.

No person shall drive any motor vehicle or cause or permit any motor vehicle to be driven on or along any part of the dike, such motor vehicles to include, but not by way of limitation, all cars, trucks, recreational vehicles, motorcycles, and motorbikes, without the written permission from the county drain commissioner or township, except for emergency vehicles.

(Ord. No. 136, art. VII, 11-27-78)

Secs. 26-33--26-55. Reserved.

ARTICLE III. HAZARDOUS MATERIALS*

***Cross references:** Fire prevention and protection, ch. 34.

Sec. 26-56. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Hazardous materials means material, waste, or a combination of waste and material, including solid, liquid, semisolid or contained gaseous material, which, because of its quantity, quality, concentration or other physical, chemical or general characteristics, poses a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of or otherwise managed.

Hazmat unit means the equipment provided by governmental or private emergency response service to provide emergency service in situations involving the suspected or actual spill, leak, accident or other similar occurrence involving hazardous materials.

(Ord. No. 147, art. II, 7-11-88)

Cross references: Definitions generally, § 1-2.

Sec. 26-57. Duty to remove.

It shall be the duty of any person who causes or has ownership or control of any property on which a spill, leakage or other dissemination of hazardous materials occurs to remove immediately such hazardous materials and undertake and complete a total cleanup of the area in such a manner as to ensure that all leakage, spillage or other dissemination of hazardous material is fully removed, and the area is fully restored to its condition prior to the placement, leakage, spillage or other dissemination of such hazardous materials.

(Ord. No. 147, art. VII, § 1, 7-11-88)

Sec. 26-58. Failure to remove.

Any person who fails to comply completely with section 26-57 shall be liable to the township, its agents, contractors and employees, for any costs incurred in the removal and cleanup of any and all hazardous materials and the restoration of the property to its former condition.

(Ord. No. 147, art. VII, § 2, 7-11-88)

Sec. 26-59. Enforcement of article.

If any person fails to remove any such hazardous material, after having been notified by the township to remove such materials, within the time specified in the notice, the township shall have the right to enter onto the property and remove and conduct a cleanup of all such hazardous materials either by township employees or by contractors and agents for the township. All costs of the removal shall be the responsibility of the person owning or in possession of the property. If costs are not paid, the township shall take whatever collection steps may be deemed appropriate.

(Ord. No. 147, art. VII, § 3, 7-11-88)

Sec. 26-60. Costs of hazmat unit.

If the hazmat unit is used for any aspects of the removal, cleanup, control or monitoring of any leakage, spillage or other incident involving hazardous materials, the owner or person in charge or possession of the property shall be responsible to the township for the cost incurred in

the use of the hazmat unit. If the owner or person in charge fails to promptly pay the costs, the township may take such collection efforts as may be appropriate.

(Ord. No. 147, art. VII, § 4, 7-11-88)

Secs. 26-61--26-70. Reserved.

ARTICLE IV. MINERAL MINING

Sec. 26-71. Name.

This article shall be known as and may be cited as "The Georgetown Charter Township Mineral Mining Ordinance".

(Ord. No. 9804, § 1, 10-26-98; Ord. No. 2005-07, 5-9-05)

Sec. 26-72. Definitions.

For purposes of this article, the following definitions and provisions shall apply:

- (a) *Mineral mining official*: The engineer of Georgetown Charter Township or such other person as from time to time appointed by resolution of the township board.
- (b) *License*: A mineral mining license as required by this article to commence or continue mineral mining operations within the township.
- (c) *Mineral mining or mining*: The excavation, removal or processing of sand, gravel, clay, stone, peat, muck, topsoil or other minerals or similar materials, including overburden, or the storage or transporting of minerals on a mining site, or the reclamation of the site after removal or excavation of minerals. However, the following excavation activities are not included within the definition of mineral mining or mining and are exempt from the requirements of this article:
 - (1) Excavation approved by a governmental body of competent jurisdiction in conjunction with the installation or maintenance of publicly owned or operated utilities, drains, roads or other improvements where the excavation is limited to the site of the public utility or improvement.
 - (2) Excavation which by its nature is of limited scope and duration and which is undertaken solely for the immediate use and development of the land excavated, such as for the purpose of construction or installation of a building, septic tank, swimming pool and similar limited excavations.
 - (3) Excavation in conjunction with farming operations conducted in accordance with generally accepted agricultural practices, including agricultural drainage work

incidental to farming operations and irrigation or stock watering ponds, if no material is removed from the property.

The mineral mining official shall determine whether an excavation is or is not exempt from the requirements of this article, subject to the appeal provisions of this article.

(d) *Review board:* A mineral mining review board (the "review board") is hereby created. The review board shall consist of two members of the township board appointed by the township board and two members of the township planning commission appointed by the township supervisor subject to confirmation by the township board and a mineral mining official. The terms of the members of the review board shall be three years but in no event longer than their respective official tenures. Meetings of the review board shall be open to the public and shall be held as necessary to consider applications for licenses or to take other actions as provided by this article. A meeting shall be held within 45 days of receipt by the township of an application for a license. Action of the review board requires a concurring vote of not less than three members. The review board shall keep a record of its proceedings, findings and determinations, which shall be a public record and shall be filed in the office of the township clerk. The review board may establish rules to govern its procedures and may call on other township officials or boards for assistance in the performance of its duties.

(e) *Site:* A parcel or unit of land used or proposed to be used for mineral mining purposes regulated by this article.

(f) *Township board:* The Georgetown Charter Township Board.

(g) *Township:* Georgetown Charter Township.

(Ord. No. 9804, § 2, 10-26-98; Ord. No. 2005-07, 5-9-05)

Sec. 26-73. Effect of article in relation to existing ordinances.

This article is not intended to repeal or annul or to otherwise affect any existing ordinance unless expressly stated herein. However, to the extent that any restriction or standard imposed by this article is more stringent or restrictive than existing restrictions or standards, this article shall control.

(Ord. No. 9804, § 3, 10-26-98)

Sec. 26-74. License required; requirements for existing operations and annual inspection required.

(a) After the effective date of this article, no person shall commence mineral mining operations on any site within the township except in accordance with a license issued under this article. Subject to the terms and provisions of this article, a license shall expire on the June 30 which occurs not more than five years following the date of issuance of the license (unless earlier suspended or revoked).

- (b) For all mineral mining operations within the township which exists as of the effective date of this article, license shall be obtained and the mineral mining operations shall comply with the terms and provisions of this article not later than July 1, 1999; provided that any person who shall have obtained, prior to the effective date of this article, a special land use approval for commercial soil removal in accordance with the township zoning ordinance, shall not be required to obtain a license or otherwise comply with the terms and provisions of this article until the date which is five years after the date such special land use was approved by the township board unless, after an inspection by the mineral mining official, a determination is made by the review board that such site is being operated or maintained in a manner which is dangerous to human health, safety or public welfare.
- (c) The mineral mining official may review and inspect any site with or without notice to the license holder in order to ensure compliance with the terms and provisions of this article and other applicable ordinance of the township. The mineral mining official shall inspect any site for which an application to issue or renew a license has been filed with the township. Such inspection shall occur between October 15 and December 30 upon giving written notice to the applicant or licensee not less than ten business days before the inspection. A written report of the results of the inspection shall be furnished to the review board and to the applicant or licensee on or before the January 15 following the inspection. The applicant or licensee shall remedy and/or abate any violation of this article or any other ordinance of the township, which is cited in such report prior to the issuance of a license or renewal of a license.

(Ord. No. 9804, § 4, 10-26-98)

Sec. 26-75. Licenses nontransferable.

A license issued pursuant to this article shall not be transferable in whole or in part without prior approval of the review board. If the property owner and the operator are not the same person, the license shall be applied for by, and issued jointly to, the property owner and the operator.

(Ord. No. 9804, § 5, 10-26-98)

Sec. 26-76. License application procedure.

The license application procedure set forth in this article shall be completed prior to commencing any new mineral mining operation or prior to continuing, after July 1, 1999, any mineral mining operation which exists on the effective date of this article, subject to the provisions of section 26-74(b) of this article:

- (a) The application for a license shall be made on forms provided by the mineral mining official.

- (b) Seven copies of the completed application and required attachments shall be filed with the mineral mining official at least 30 days prior to the meeting of the review board at which the application will first be considered by the review board. The mineral mining official shall review the application and attachments to determine if the application contains the information and plans required by this article. In reviewing the application, the mineral mining official may consult with other appropriate township officials. If the application and attachments are determined to be complete, the mineral mining official shall transmit the application to the review board, along with any comments the mineral mining official or other township officials may have regarding the proposed mineral mining operations.
- (c) If the application is for an existing mineral mining operation or for renewal of a license previously granted under this article, the mineral mining official shall physically inspect the site to determine compliance with the standards and requirements of this article applicable to the site in question. The mineral mining official shall report the results of the site inspection to the review board.
- (d) Fees shall be paid by the applicant to the township treasurer at the time of filing the application for a license or for renewal of a license. Transmittals shall not be made unless the required fees have been paid in full. The amount of the fees shall be established from time to time by resolution of the township board. No part of any fee paid to the township shall be refundable.
- (e) The application filed with the mineral mining official shall provide the following information and be accompanied by documents, plans, maps and other attachments as the applicant deems necessary or as are required herein.
 - (1) The name of the owner(s) of the site from which minerals will be mined or upon which the mineral mining operations will take place.
 - (2) The name and address of the applicant(s) for the license.
 - (3) The name and address of the person, firm or corporation who will be conducting the mineral mining operations.
 - (4) The location, width and grade of all easements or right-of-way on or abutting the site.
 - (5) The location of all structures on the site.
 - (6) The location of all areas on the site subject to inundation or flood hazard, and the location, width and directions of flow of all watercourses and flood control channels that may be affected by the excavation.
 - (7) Processing and storage areas.

- (8) Proposed fencing, gates, parking and signs.
- (9) The location, size, and legal description of the site and the area of the site from which minerals will be mined or upon which the mining operations will take place.
- (10) A detailed statement of the types of minerals to be mined, stockpiled or processed on the site or transported from the site.
- (11) A detailed statement of the proposed method of mining, stockpiling, processing or hauling.
- (12) The off-site route over which materials will be hauled to or from the site, including an identification of the truck routes that will be used.
- (13) A description of the location, width and proposed surface treatment of all on-site roads, including driveway approaches.
- (14) The location of any floodplain, floodway, wetland, lake, creek, stream, easement or wooded area affecting or adjoining the site.
- (15) Identification of the use and zoning district of all adjoining or contiguous properties.
- (16) A description of the types of machinery, equipment and facilities to be used at the site and where the machinery, equipment and facilities will be located and stored on the site.
- (17) The estimated number of years to complete mining and reclamation operations at the site and the number of phases, as applicable.
- (18) Any other information reasonably necessary to determine the character and nature of the proposed mining operations.
- (19) An overall plan of operation including a topographic survey map of the site drawn at a scale not less than 1 inch = 200 feet showing on a four-foot contour interval existing grades of the site prior to any mineral removal and proposed grades subsequent to mineral removal. The plan shall identify the north direction. The plan shall clearly show the area to be mined, including existing land use, structures, and roads within 100 feet of all property lines, areas for stockpiling, maintenance areas, berms, fencing, other proposed uses of the site and other information required by this article. The plan of operation shall be accompanied by a projected schedule of mining operations, including the following specific dates:

- a. Commencement and completion of mining operations as provided by the plan of operation;
- b. Commencement and completion of erosion and drainage control measures to be instituted during mining operations; and
- c. Commencement and completion of fencing, roads, utilities, or any other structures or improvements to be located on the site as provided by the plan of operation.

(20) A plan of reclamation shall be submitted in three parts consisting of: a recent aerial photograph of the site with a general plan of reclamation as an overlay or as a separate drawing; a reclamation contour plan; and a description of reclamation methods and materials proposed for restoration of topsoil and replanting. The general plan of reclamation shall be presented at the same scale as the plan of operation and shall provide the following information:

- a. The general areas of land which have already been completely reclaimed, if any.
- b. The general areas of reclamation underway.
- c. The general areas currently used or proposed for use for topsoil and overburden storage.
- d. The general areas proposed for reclamation during each year of the five-year license period.
- e. The general areas proposed for topsoil and overburden storage.
- f. The acreage for each item shown on the overlay or separate drawing.
- g. A reclamation contour plan with contour intervals not to exceed two feet indicating the general grade and slopes to which excavated areas will be reclaimed.
- h. A description of the method and materials proposed for restoration of topsoil to the required fertility and the amount of any type of planting that will be undertaken as a part of the reclamation plan.
- i. The projected schedule of reclamation operations, including the following specific dates: commencement and completion of reclamation operations as provided by the reclamation plan; commencement and completion of erosion and drainage control

measures to be instituted under the reclamation plan; and commencement and completion of final grading, topsoil replacement, and replanting as provided by the reclamation plan.

- (f) Operation plans and reclamation plans shall be prepared to clearly depict and describe the sequence of mining operations including existing conditions, mining underway, mining completed, mining proposed, reclamation proposed, stockpiles, roadways, and similar land use elements. Operation plans and reclamation plans shall clearly identify and locate one or more permanent benchmarks as necessary to determine compliance of the mining operations or reclamation activities with the contours and elevations shown on the plans. All plans and maps required to be submitted as a part of the application shall be prepared and sealed by a registered civil engineer or land surveyor.
- (g) If the application is for an existing mineral mining operation or for renewal of a license previously granted under this article, the application shall include a statement regarding compliance with the minimum standards and requirements of section 26-83 of this article and with the other standards, requirements, conditions or plans which are applicable under this article to the site in question.
- (h) All applicable documents, including required plans and maps, will be reviewed to determine compliance and consistency with the minimum standards and requirements of section 26-83 of this article. Accordingly, applicants are strongly advised to thoroughly review those standards and requirements (as well as other provisions of this article) and to address any questions regarding applicable requirements or procedures to the mineral mining official prior to preparing or finalizing their application for a license.

(Ord. No. 9804, § 6, 10-26-98)

Sec. 26-77. Review and approval of license applications.

- (a) The review board shall make its decision to approve, approve with conditions, or deny the application at the public hearing or within a reasonable time following the public hearing not to exceed 60 days.
- (b) The review board's decision shall be incorporated in a statement of conclusions relative to the application under consideration. The statement shall specify the basis for the decision and any conditions imposed relating to an affirmative decision.
- (c) All documents, plans, maps and other attachments to the license application which are approved by the review board shall be incorporated in the terms of the license issued and shall be binding on the licensee. No mining operations shall be conducted on the site except in strict compliance with the documents, plans, maps and other attachments to the license application, unless modified by the review board.
- (d) No mining operations, including, but not limited to, grading, tree removal, soil stripping or other site improvements or changes shall commence until a license has been issued by

the review board as provided by this article. In the case of an existing operation, no mining operations shall continue after June 30, 1999 without a license, except as otherwise expressly provided by this article.

(Ord. No. 9804, § 7, 10-26-98)

Sec. 26-78. Issuance.

- (a) If the review board finds that the proposed mining operations will comply with the standards, requirements and conditions of this article, the review board shall authorize the mineral mining official or the chairperson of the review board to issue a license, which license shall be issued within seven days thereafter subject to any condition of approval imposed by the review board as provided by this article.
- (b) The license shall be issued for a period not to exceed five years, beginning on the date of issuance.
- (c) A license issued as provided by this article shall not relieve the licensee from complying with any other applicable statute, ordinance, rule or regulation.
- (d) A review board decision regarding an application for a license shall be incorporated in written statement of conclusions, which statement shall be available to the applicant within 30 days after the review board decision.

(Ord. No. 9804, § 8, 10-26-98)

Sec. 26-79. Renewal.

- (a) A license may be renewed by the review board for successive periods not to exceed five years ending on June 30.
- (b) To be considered for renewal, an applicant must submit a written request for renewal to the mineral mining official for transmittal to the review board at least two months prior to the expiration date of the existing license. The review board may require the applicant to submit some or all of the information, documents, plans, maps or other materials as required with an original license application, as determined by the review board to be necessary to its review of the request for renewal or to determine the extent of compliance with prior mineral mining approvals or conditions of approval at the site.
- (c) If the review board determines that the mining operation continues (and will continue) to meet all applicable standards, requirements and conditions under this article or under a prior approved license and plans, the review board shall approve, or approve with conditions, the request for renewal. If the review board determines that the mining operation fails to meet any applicable standard, requirement or condition, the review board may deny the request for renewal of a license.

- (d) No minerals shall be extracted from a site after the expiration of a license. However, if an application for renewal of an existing license is filed as required by subsection (b) and is thereafter diligently pursued by the applicant, mineral mining operations in compliance with the terms and conditions of the license may continue beyond the expiration of the license until either:
- (1) The review board approves the renewal of the license, in which case the mineral mining operations shall thereafter proceed only as permitted by the terms and conditions of the renewed license; or
 - (2) The review board denies the application for renewal, in which case all mineral mining operations shall cease until a new license is issued as provided by this article.
- (e) A review board decision regarding an application for renewal of a license shall be incorporated in written statement of conclusions, which statement shall be available to the applicant within 30 days after the review board decision.

(Ord. No. 9804, § 9, 10-26-98)

Sec. 26-80. Conditions of approval.

- (a) In addition to the specific requirements provided by this article, the review board may impose reasonable conditions on the issuance or renewal of a license. Conditions of approval may be imposed as necessary: to eliminate or mitigate any potentially adverse impact of the mineral mining operations on adjacent or nearby property, public services or facilities, or the natural environment; to conserve natural resources and energy; to ensure that the mining operations will not create a nuisance or unreasonably interfere with the enjoyment of life or property; or to otherwise protect the public health, safety and general welfare of the community. The conditions may include, without limitation, conditions regarding the location, design or operation of a site.
- (b) The conditions imposed by the review board shall be in writing and incorporated in the terms of an approved or renewed application for a license. The conditions shall remain unchanged except upon the approval of the review board.

(Ord. No. 9804, § 10, 10-26-98)

Sec. 26-81. Performance guarantees.

- (a) The review board shall require as a condition of approval of any application for a license that the applicant provide a performance guarantee in the form of a cash deposit, certified check, irrevocable bank letter of credit, surety bond or other type of security acceptable to the review board. The performance guarantee shall name the township as the beneficiary in an amount established by the review board. The performance shall be conditioned upon the prompt and complete compliance with all applicable provisions of this article and with the terms and conditions of a license issued by the review board.

- (b) The performance guarantee shall be deposited with the township clerk at the time that the license is issued and shall be kept continuously in effect by the applicant at all times during the mineral mining operations on the site and until there has been complete compliance with all applicable requirements and conditions applicable to the mining operations or reclamation of the site. The review board shall require the applicant to make whatever arrangements are necessary to insure that the township will be notified in the event of any lapse in the effectiveness of the performance guarantee.
- (c) The amount of the required performance guarantee shall be established by the review board. In establishing the amount of the performance guarantee, the review board shall consider the scale of the operations, the prevailing cost to restore and reclaim the site if the applicant defaults, court costs, and other reasonable expenses. For each acre restored and reclaimed in compliance with the requirements of this article, the review board may allow the amount of the performance guarantee to be reduced on a pro-rata basis as determined appropriate by the review board.
- (d) The performance guarantee shall be executed by the applicant as principal. If the operator and the property owner are different, the review board may require both the property owner and the operator to execute the performance guarantee or to provide additional security as determined necessary by the review board to ensure performance of the terms, conditions and requirements of a license.

(Ord. No. 9804, § 11, 10-26-98)

Sec. 26-82. Waivers and modifications.

The review board may waive or modify any requirement of this article which the review board determines not essential to protect the public health, safety and welfare and not essential to meet the intent and purposes of this article because of the scale, scope, or nature of the particular mining operation under consideration. A waiver or modification made under this section shall be in writing and incorporated in the terms of an approved or renewed license.

(Ord. No. 9804, § 12, 10-26-98)

Sec. 26-83. Minimum standards and requirements.

- (a) **Applicability:** The minimum operational, maintenance, performance and reclamation standards and requirements provided by this section shall apply to all mineral mining sites, new or existing.
- (b) **Fencing and signs:** All areas of the perimeter of a site which located within 100 feet of the property line which exceed a slope of three feet horizontal to one foot vertical may be fenced with a four-foot high fence and shall be posted with signs not less than 300 feet apart adequate to indicate the danger of trespassing in the area, unless a common line agreement exists. The review board may also require fencing or signs around all or any

portion of the perimeter of a site or around any water areas, including retention ponds and setting ponds, as necessary to protect the public health, safety and welfare. The minimum specifications for site fencing shall be as follows: #9 gauge top wire; #12 gauge bottom wire; all stays shall be of #14 gauge wire with spacing of six inches vertical by 12 inches horizontal. Support posts shall be spaced no greater than 16 feet apart.

- (c) Screening: All areas being actively excavated may be required to be visually screened to a height of six feet from all adjacent public highways and adjacent lands zoned residential or, alternatively to have a greenbelt, as defined in the township zoning ordinance, located within the 100 foot area inside the property line unless a common line agreement exists. To determine whether the areas of active excavation are visually screened from adjacent public streets, visibility shall be evaluated based on the line of sight as viewed from points which are four feet above the nearest street paving. To determine whether areas of active excavation are visually screened from adjacent residential property, visibility shall be evaluated based on the line of sight as viewed from points which are six feet above the mean ground elevation of the adjacent residential property. The following methods are acceptable for screening of mining areas and may be used singly or in combination as necessary to achieve the required screening result:
- (1) Construction of a raised earth berm area on the site along the boundary lines abut a public highway or abut privately owned property which is improved and occupied for residential purposes (including property upon which dwellings are built and occupied after the effective date of this article). The berm shall be of sufficient length and height to screen the mining area. During the planting season following the placement of the berm and as often as may be necessary to assure the existence of a vegetative groundcover, the applicant shall seed or plant the berm in a manner for the area and soil conditions to provide vegetation to prevent erosion and to provide a visible ground cover substantially similar to the vegetation cover growing on adjacent properties. The slope of the berm shall not exceed a slope of three feet horizontal to one foot vertical.
 - (2) Planting of evergreen trees along the boundaries of the site with sufficient rows and depth to permit effective screening of the mining area as required by this section.
 - (3) Construction of a fence of any material which is compatible with the character of the surrounding area. The fence shall provide at least an 80 percent solid visual barrier and shall be maintained in good repair.
 - (4) Use of other methods as determined by the review board to be appropriate and sufficient to achieve the required screening.
 - (5) The review board may waive the screening requirements of this section to the extent that the topography of the area or other natural conditions act as

a screen which meets the intent of the screening requirements of this section.

- (d) Hours of operation: The maximum hours of operation on a site shall be 7 a.m. to 6 p.m., Monday through Friday and 8 a.m. to 3 p.m. on Saturday. Mining operations shall not be permitted at any time on Sundays. The review board may place further restrictions on the hours of operation as necessary to protect the health, safety and welfare of neighboring properties and residents.
- (e) Access to public roadways: All sites shall have access to at least one public street. All driveway approaches providing access to a site from a public street must be approved by the Ottawa County road commission.
- (f) On-site roads:
 - (1) All on-site roads shall be maintained by the operator to minimize dust through the application of chloride, water and/or similar dust retardant materials. The application of oil to on-site roads is prohibited. Truck washing equipment may be required by the review board if other methods of dust control are not sufficiently effective.
 - (2) To minimize the deposit of dirt, gravel and dust onto a public street, a paved or bituminous surface shall be provided for all on-site entrance and exit roads for a distance into the site of not less than three hundred (300) feet from the edge of the pavement in the public street right-of-way.
 - (3) All entrances and exits to the site shall be securely locked during hours when mining operations are not permitted on the site.
- (g) Machinery, equipment and facilities: All vehicles, machinery, equipment and facilities used in connection with the mining operations shall be used, operated and maintained in a manner to reduce, to the maximum extent practicable, noises, vibrations, dust or other adverse conditions which interfere with the reasonable use and enjoyment of surrounding property.
- (h) Transportation vehicle standards:
 - (1) All vehicles used to transport excavated material shall be loaded in a manner so that the material cannot be unintentionally discharged from the vehicle. Vehicles shall be cleaned of all material not in the load-bed prior to entering the public streets.
 - (2) If materials excavated from the site are deposited or spilled upon the public roadway, it shall be the responsibility of the licensee, without requiring any action or request by the township, to immediately remove the spilled or deposited material.

- (i) Lighting: All lighting used to illuminate the mining area, access roads, stockpile areas, and other areas used in connection with the mining operations shall be directed away from surrounding property. The review board may also require that lighting be shielded if the lighting shines directly toward a residential use or a public street.
- (j) Location of excavation: No excavation shall be made which creates a pit or depression within 100 feet from the nearest right-of-way line or property line, unless otherwise approved pursuant to a procedure authorized in the township zoning ordinance. In the event contiguous parcels of property are used for mining purposes, the review board may require the partial or complete elimination of minerals between such parcels of property. However, the review board may prescribe stricter requirements regarding the location of excavation as necessary to provide lateral support to surrounding property as required by soil or geographical conditions, or as otherwise necessary to preserve the public health, safety or general welfare.
- (k) Drainage and erosion control:
 - (1) All excavations shall be made to a minimum five-foot deep with a minimum ten-foot average depth, provided, however, that the slope of the bed of any water area for the first 25 feet from the shoreline shall not exceed five feet horizontal to one foot vertical. The provisions of this subsection (k)(1) shall not apply to any water area which has been fully reclaimed prior to September 1, 1998.
 - (2) Surface water shall be directed in a manner so as not to interfere with adjoining property. However, the maintenance of the natural flow of surface water shall not be deemed an interference with adjoining property.
 - (3) Erosion control measures shall be instituted to comply with the Soil Erosion and Sedimentation Control Act (Act No. 347 of the Public Acts of 1972, as amended).
- (l) Dust control: Dust control measures shall be instituted to comply with the Michigan Clean Air Act (Act No. 345 of 1965, as amended) and to prevent dust from being a nuisance to adjoining property.
- (m) Noise control: Noise control measures shall be instituted to comply with any applicable Michigan statute, rule or regulation and Section II(15) of Township Ordinance No. 135, [section 38-72 of this Code] including amendments.
- (n) Special land conditions: A licensee shall comply with all soil erosion, wetlands and floodplain rules and regulations of the State of Michigan, Ottawa County and the township.
- (o) Fueling of vehicles: Fueling of vehicles on any site shall comply with statutes, rules and regulations enforced and implemented by the Michigan Department of Environmental Quality.

- (p) Treatment of banks:
- (1) The banks of all excavations shall be sloped to the water line in a water-producing excavation, and to the pit floor in a dry operation at a slope to a degree not less than that required to prevent accelerated erosion and to a degree sufficient to maintain vegetation. In no event shall the finished slopes of banks exceed a slope of three feet horizontal to one foot vertical.
 - (2) The banks of all excavations shall be reclaimed with vegetation as required by this article.
- (q) Vegetation: Vegetation shall be reclaimed by the use of top soil and appropriate seeding of grasses or planting of shrubs or trees on all areas of the site except areas which will be submerged under water or within 25 feet of the shoreline of submerged areas.
- (r) Stockpiling and replacement of topsoil: If topsoil exists suitable for growing turf or other vegetation at the time the mining operations are scheduled to begin, topsoil may be stockpiled on the site. When mining operations are completed the entire site shall be covered with a minimum of four inches of topsoil. The replacement of topsoil to a minimum depth of four inches shall be made immediately following the termination of the mining operations or any phase of the operations, as applicable. The topsoil shall be replaced in a manner suitable for growing turf or other vegetation.
- (s) Fill material: If filling of an excavated area is necessary during reclamation, only inert material, as defined by the Michigan Solid Waste Management Act (Act No. 641 of the Public Acts of 1978, as amended) shall be used.
- (t) Termination of operations and reclamation: Upon termination of mining operations, the license shall be responsible to reclaim the site in accordance with reclamation plans approved by the review board. If the licensee fails to reclaim the site as required by the approved reclamation plans, the township may come upon the site and reclaim the land in accordance with those plans and may use the proceeds of the performance guarantee required by this article to defray the costs of the reclamation.
- (u) Cessation of mining:
- (1) Upon the cessation of all mining operations (or any phase of operations, as applicable) except stockpiling, and within a reasonable period of time, not exceeding 12 months thereafter, all tanks, buildings, stockpiles, and equipment shall be removed from the site unless the building or structures can lawfully be used on the site for other purposes as permitted by applicable laws or ordinances.
 - (2) Storage and stockpiling of mined products after cessation of mining activities may be permitted by the review board by annual license granted for that limited purpose. In no event shall any additional materials be allowed to be added to these

stockpiles and a license granted for storage or stockpiling of mined products shall not interfere with or excuse reclamation as otherwise required under this article.

- (v) Special circumstances: Because of extraordinary circumstances, peculiar or unforeseen conditions or reasonable engineering concerns, the township may require compliance with performance standards and other reasonable conditions not otherwise specified herein in order to protect the health, safety and general welfare of neighboring property and persons.

(Ord. No. 9804, § 13, 10-26-98; Ord. No. 2003-02, 4-14-03)

Sec. 26-84. Enforcement.

- (a) Violation; notice of violation:

- (1) It shall be unlawful for any person to own, operate or maintain a mineral mining operation or a site regulated by this article, or cause the same to be done, except in full compliance with all of the provisions of this article and the terms or conditions of any license.
- (2) Upon determining that there has been a violation under this article, the mineral mining official shall serve a notice of violation on the licensee or the person responsible for the violation directing the discontinuance of the illegal action or condition and the abatement of the violation. The notice shall be in writing, shall specify the nature of the violation, and shall be mailed or personally served on the licensee or the person responsible for the violation. The violation shall be abated within the time specified in the notice of violation. The failure of the mineral mining official to provide a notice of violation shall in no way excuse a violation of this article.

- (b) Unsafe condition; notice of unsafe condition:

- (1) Any site that is operated or maintained in a manner which is dangerous to human health, safety or public welfare is deemed unsafe.
- (2) Upon receipt of notice from the mineral mining official that a site is being operated or maintained in an unsafe manner, operations at the site shall cease immediately. The notice of the unsafe condition shall be in writing, shall specify the nature of the conditions at the site deemed unsafe, and shall specify the circumstances, if any, under which mining operations will be permitted to resume. The notice shall be given to the owner, the licensee, the licensee's agent, or other person in charge at the site. A copy of the notice shall also be mailed to the licensee at the address listed in the license application.
- (3) Any person who shall continue any work at a site after a notice of unsafe condition has been issued, except work that the person has been directed to

perform to remove an unsafe condition, shall be deemed in violation of this article.

(c) Suspension or revocation of license:

- (1) The review board may suspend or revoke for failure of a licensee to discontinue any illegal action under this article, for failure to abate a violation for which a notice of violation has been issued, or for failure to comply with a notice of unsafe condition. The decision to suspend or revoke a license shall be made at a public hearing held by the review board.
- (2) In determining whether or not to suspend or revoke a license, the review board shall consider the type, nature, severity, frequency, duration, preventability, potential and actual effects of a violation on the public health, safety and welfare, and the violator's recalcitrance or efforts to comply. A violator shall bear the burden of demonstrating the presence and degree of any mitigating factors to be considered by the review board. However, mitigating factors shall not be considered unless the review board determines that the violator has made all good faith efforts to correct and terminate all violations. The fact that suspension or revocation of a license may cause the violator severe financial damage shall not be determinative of whether or not to suspend or revoke a license. The review board shall make written findings of fact in support of its decision. Such written findings of fact shall be filed with the township clerk and be mailed to the licensee.

(d) Appeal of a determination of the mineral mining official:

- (1) Any person aggrieved by a determination of the mineral mining official may appeal the determination of the mineral mining official to the review board, as provided by this section.
- (2) The appeal must be in writing and must be received by the township clerk within 15 business days after the date of the determination by the mineral mining official.
- (3) The appeal must include a written statement as to why the person believes that the mineral mining official's determination is incorrect.
- (4) Upon receipt of the appeal, the review board shall schedule a public hearing to review the mineral mining official's determination. Notice of the public hearing shall be given as provided by section 26-77(a) of this article.
- (5) At the public hearing, or within a reasonable time following the public hearing, not to exceed 60 days, the review board shall make its decision to affirm or reverse the determination of the mineral mining official from which the appeal

was taken. The review board shall make written findings of fact in support of its decision.

- (e) Action or decision of review board final; appeal of a decision of the review board:
 - (1) Except as otherwise provided by subsection (2), all decisions of the review board shall be final.
 - (2) Any person aggrieved by a decision of the review board may appeal the decision of the review board to the township board. The appeal must be in writing and must be received by the township clerk within 15 business days after the decision of the review board. The appeal must include a written statement as to why the person believes that the review board's decision is incorrect. Upon receipt of the appeal, the township board shall hold a public hearing and shall have the power to reverse, affirm or modify the decision of the review board. In making its determination, the township board shall consider any applicable standards or requirements provided by this article and the written findings of the review board. The township board shall make written findings of fact in support of its decision. The decision of the township board shall be final.
- (f) Penalties: Any person who shall violate, disobey, fail, neglect, or refuse to comply with any provision of this article shall be responsible for a municipal civil infraction and shall be punished by a fine as set forth in the Schedule of Civil Fines [Appendix C] and court costs. Equitable relief may also be awarded as permitted by Michigan law. Each and every day during which a violation of this article continues shall constitute a separate violation. The imposition of any fine, imprisonment or other penalty shall not exempt a person from compliance with the provisions of this article.
- (g) Abatement of violation of unsafe conditions: In addition to any other remedy available at law, the township may bring an action for an injunction or other process against a person, or an agent of a person, to prevent, restrain, correct or abate any unsafe condition on a site or violation of any provision of this article.
- (h) Appearance tickets: The mineral mining official may issue an appearance ticket to a person who is in violation of any provision of this article or of the terms or conditions of any license, as authorized by applicable state law.

(Ord. No. 9804, § 14, 10-26-98; Ord. No. 2000-03, 8-28-2000)

Chapter 30 FEES AND CHARGES

(See Appendix B)