

TOWNSHIP OF METAMORA

ORDINANCE NO. 34

SOIL REMOVAL ORDINANCE

THE TOWNSHIP OF METAMORA, COUNTY OF LAPEER, STATE OF MICHIGAN  
ORDAINS:

ARTICLE I PURPOSE, INTENT, AND TITLE

SECTION 100. PURPOSE AND AUTHORIZATION

An Ordinance to regulate mining operations within the Township of Metamora, to provide for the issuance of permits for such activities, to provide for payment of fees, to prescribe rules and regulations and conditions for the issuance of permits, to provide for bonds, to insure compliance and satisfactory performance of the terms of said Ordinance, to provide for renewals of permits, to provide penalties for the violation of this Ordinance, and to provide for the relationship of this Ordinance to other laws and ordinances.

This Ordinance is enacted for the purpose of promoting the public health, welfare, and safety, of the residents of Metamora Township.

SECTION 101. INTENT

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 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, 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 Metamora Township. To meet these objectives, such mining operations shall be licensed and the fees required for licensure shall be utilized to offset costs and expenses of monitoring, inspection and administration.

SECTION 102. TITLE

This Ordinance shall be known and cited as the Metamora Township Soil Removal Ordinance and will be referred to hereinafter as "this Ordinance."

## ARTICLE II DEFINITIONS

BERM, shall mean a landscaped earth embankment of at least eight (8) feet in height, designed to act as a visual and sound barrier, with a slope no steeper than 1 on 4, properly landscaped with turf grass, trees, shrubs, and the like.

COMPLETION OR CESSATION OF OPERATIONS, shall mean the removal for the site of less than one thousand (1,000) cubic yards of earth materials per month for a continuous period of at least six (6) months.

EARTH MATERIALS, shall mean any soil, topsoil, subsoil, sand, gravel, rock, clay, peat, minerals or other similar material.

FENCE, when required by this Ordinance shall mean a six (6) foot high, cyclone type fence; but in no instance shall a fence be of lesser quality than NO. 11 farm fence of four (4) feet in height.

GREENBELT OR PLANTING, shall consist of a dense evergreen or similar plant material designed to provide an obscuring buffer.

MINING OPERATIONS, shall mean the excavation and/or removal for their existing site of any earth materials.

NUISANCE, shall mean anything that annoys, injures or endangers the safety, health, comfort or repose of the public, interferes with or destroys or renders dangerous any public thoroughfare, allows accumulation of noxious matter on private or public property, or in any way renders the public insecure.

OPERATOR, shall mean the owner of the site and/or the person who is responsible for the day-to-day activities at the mining site and/or the person responsible for payment of all application fees, biennial permit fees, and performance bonds.

PIT. OPERATIONS, shall mean any excavation where ponded water results or that lowers the surface to a point below the definition of a stripping operation.

PERFORMANCE BOND, shall mean cash, irrevocable letter of credit, or surety bond, acceptable to the Township Board, issued by a reputable surety company, authorized to do business in the State of Michigan.

PREMISES, shall mean a contiguous parcel of land in the same ownership.

RECLAMATION, shall mean the restoration of property in a fashion that makes its development possible by a use permitted in the applicable zoning district.

STRIPPING OPERATION, shall mean any one of the following types of excavation where no ponded water results:

- 1) Any operation which results in the removal of all or part of a visible surface landform, or
- 2) Any operation which is limited to the removal of topsoil only and does not disturb the underlying subsoil, whether the subsoil is composed of sand, gravel, clay or other material, or
- 3) Any operation which removes the surface soil(s) no lower than a point at least 6 inches above the mean elevation of the centerline of the nearest existing or proposed street or road established or approved by the Lapeer County Road Commission, or
- 4) Where there is no nearby street or road, an operation which removes the surface soils no lower than a point at least 6 inches above the mean elevation of the surrounding land within one quarter mile, as shown on United States Geological Survey Data.

### ARTICLE III REMOVAL OF EARTH MATERIALS

#### SECTION 300. REMOVAL PERMITS

After the effective date of this Ordinance, it shall be unlawful for any person to remove any earth material from any premises without a permit from the Township Board. No permit will be required where the removal of earth materials is carried on for the installation of the foundation and/or basement of any use permitted in the applicable zoning district, as regulated by the Metamora Township Zoning Ordinance, and covered by an active building permit. Usual and customary land balancing by cutting and filling, in preparation for immediately planned and approved development in accordance with this and other applicable ordinances and law, shall be exempted for the provisions of this section.

#### SECTION 301. APPLICATION FOR BIENNIAL PERMIT

Before the Township Board grants a permit, the Township Planning Commission shall review the plans and other data concerning such application and file its recommendation with the Township Board, in accordance with Section 302 of this ordinance. For all new mining operations, it shall also be necessary to obtain special land use approval from the Planning Commission pursuant to Section 1429 of

the Metamora Township Zoning Ordinances.

A separate permit shall be required for each separate site. Each application for a permit shall contain the following information as a condition precedent to the obligation to consider such request:

1. Full names and addresses of all parties of interest in said premises setting forth their legal or equitable interest.  
Proof of said legal and/or equitable interest;
2. Legal description of the property;
3. A boundary survey, sealed by a registered Land Surveyor, of the premises wherein the operation are proposed. Surveyor shall also set interior monuments at the 150' setback line to facilitate observation of compliance by the Township. Monuments shall be the same as those used to mark plat corners, and shall be preserved and protected by the operator during the life of the mining operation;
4. Topographical survey map at a scale of at least one (1) inch equals one hundred (100) feet, showing existing and proposed grades at two (2) foot contour intervals or less, consistent with sound engineering practice. Said grades shall be prepared and sealed by a Civil Engineer or Land Surveyor, registered as such by the State of Michigan;
5. Calculations by a Registered Civil Engineer or Land Surveyor showing the cubic yards of the earth material to be removed and a detailed statement and engineering plan as to how the removal is to be accomplished; together with cross-section drawings showing proposed slopes after the removal operations are complete.
6. Detailed site engineering plan drawn at a scale of at least one (1) inch equals one hundred (100) feet which:  
identifies all types of materials to be removed and/or redistributed; indicates the specific places on the property where the fill (redistributed material) is to be placed;  
indicates the maintenance areas, location of processing plants, storm drainage design including off-site ditch and drain elevations; includes the final grading plan, method of operation, such as wet or dry method; identifies the type of machinery or equipment to be used, and the estimated period of time that such operations will cover, including the location, timing, and other relevant details with respect to the phasing of work on the site. Where restoration is not complete, as-built drawings showing the present contours of the excavation shall be submitted with each subsequent year's request for permit renewal;
7. Statement of other similar operations carried on by

- applicant, including location by municipality;
8. The type and daily number of vehicles to be used in the proposed operations, both on-site and over adjoining Township roads;
  - 9 Detailed statement as to exactly what type of earth materials are proposed to be extracted.
  10. Identification of access roads, on-site roads, a drainage plan that identifies grades for proper drainage and any special drainage devices, fencing, any existing or proposed structures on the site, existing and proposed utilities.
  11. A detailed Reclamation Plan, drawn at a scale of 1" = 100' showing that the entire property will be left in a form that is suitable for development with uses that are permitted in the zoning district, relating such reuse to uses existing or probable for surrounding properties. Among items to be included in such plan are feasible circulation patterns in and around the site, the treatment of the exposed soil or subsoil (including measures to be taken to replace topsoil in excavated areas) in order to make the property suitable for the proposed reuse, treatment of slopes to prevent erosion, and delineation of drainageways and flood plains, which shall be left undisturbed.
  12. A map showing all parcels of property and names of each owner within 500 feet of the proposed mining site.
  13. Aerial photograph of the site properties within one half mile of the site.

#### SECTION 302. REVIEW PROCEDURE

1. The Township Clerk shall distribute the application copies as follows:
  - 5 copies to Township Board
  - 4 copies to Planning Commission
  - 1 copy to Recording Secretary for Clerk;s permanent file
  - 1 copy to Police Department
  - 1 copy to Fire Department
  - 1 copy to Township Planner
  - 4 copies to Towship Engineer
  - 1 copy to Township Attorney
2. After receiving the reports of all Township departments and consultants, the application shall be considered by

the Planning Commission and recommendation shall be made to the Township board for approval, approval with conditions, or denial of the mining permit.

3. After receiving the reports of all Township departments and consultants, the recommendation of the Planning Commission, and following such meetings or consideration as the Board deems appropriate with respect to the application, the Township Board may grant, grant with conditions, or deny the application for a mining permit.

#### SECTION 303. PERMIT FEES

To defray costs of engineering services, investigation, publication charges, and other administrative expenses incurred by processing such application, there is hereby established an initial application fee and a biennial operating permit fee. Permits issued by the Township Board shall be for a period not to exceed two (2) years, expiring on December 31st of the second calendar year, and such permits may be renewed by the payment of a biennial permit fee. The amount of the initial application fee shall be established from time to time by resolution of the Township Board. The biennial permit fee shall be based on the surface area, in acres, of the proposed operation times the depth, in feet, of the pit as shown on the plans submitted for review. The biennial permit fee may be limited to the volume of the cell or cells to be under excavation during the two year period. The amount of the fee per acre will be set from time to time by resolution of the Township Board. Such permits shall be renewed as herein provided for so long as the permittee complies with all of the provisions of this Ordinance, other Township ordinances, State Law, or other conditions of this permit.

#### SECTION 304. ISSUANCE OF PERMITS

1. After reviewing all of the information submitted by the applicant and other pertinent information and the recommendation of the Planning Commission, Township Engineer, Township Planner, Zoning Administrator and/or Township Attorney, the Township Board shall determine whether the issuance of the permit would or would not detrimentally affect the public health, safety, and welfare and whether granting the permit, as proposed, would or would not:
  - a. Permanently impair the intended land use potential of the property in question;
  - b. Detrimentially affect the adjoining and adjacent properties;

- c. Be inconsistent with the planning, land use, and zoning of the area where the proposed operation is to be located; and
  - d. Violate or defeat any of the requirements and standards set forth in this Ordinance.
- 2. Mining operations shall proceed in cells of 10 acres maximum. Each working cell shall be fully restored and rehabilitated prior to issuance of a permit for the next cell unless each working cell's performance bond is converted to a cash bond and escrowed with the Township Board, or there is compliance with paragraph i of Section 305 and paragraph 3 of Section 311 as hereinafter set forth.
  - 3. The commencement of operations during the time frame covered by the permit shall constitute acceptance of all limitations and conditions which the Township may impose as a part of the permit under Section 305 and/or 306 of this Ordinance.

#### SECTION 305 PERMIT CONTENT AND CONDITIONS

- 1. The permit shall contain the following:
  - a. The name and address of the holder of the licensure permits, as well as the name and address of the land owner, 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 period for which the permit shall be valid, including its expiration date.
  - d. The allowable daily duration of operation
  - e. The number of feet from all the property lines and right-of-way within which no cuts or excavations shall be made.
  - f. The steepest horizontal to vertical grade on finished slopes where excavations are to be 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 a failure to comply with one or more of the requirements of the Metamora

Township Soil Removal Ordinance, as amended, or other applicable law, ordinance or regulation, and/or the terms and conditions of this licensure permit, or upon the ground 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 Metamora Township board, the terms and conditions of the Metamora Township Soil Removal Ordinance, as amended, and of any other applicable laws, ordinances or regulations, and, further, that Metamora 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. A statement of the condition that in no event shall the area being mined and unreclaimed exceed the lesser of twenty (20) acres or forty (40) percent of the land constituting the subject matter of the permit, or establishment of sufficient reserves in the cell or cells unreclaimed.
  - j. A statement of the machinery, equipment and methods used in the operation.
  - k. Any additional reasonable condition deemed appropriate by the Township Board.
  - l. Failure or refusal to allow Township inspection of the mining operations site shall be deemed a violation of this Ordinance under Section 700 hereof.
2. The applicant shall provide the Township Board with recordable affidavit, to be recorded with the Lapeer County Register of Deeds, binding the applicant, and all heirs, successors, assigns and transferee of the applicant to the terms and conditions of the licensure permit.

#### SECTION 306 PERMIT RENEWAL

- 1. A licensee may apply for renewal of a licensure permit. In order to promote uninterrupted operations, application shall be made to the Township Clerk, no less than sixty (60) days and no more than ninety (90) days, prior to the expiration of then effective licensure permit. The application for renewal



shall be made on the form provided by the Clerk.

2. Upon receipt of an application, the Clerk shall refer copies thereof to the Metamora Township Board, the Zoning Administration, and to the township engineer. The Zoning Administrator and the township engineer shall forthwith the report in writing to the Township board with respect to compliance by the applicant with all aspects of this chapter during the period of the licensure permit which is about to expire. If there has been compliance in all respects with this ordinance, a renewal of the licensure 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.
3. 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, requires denial of the licensure permit renewal, the township board may either deny renewal outright, or consider renewal upon conditions which vitiate the underlying cause for denial.

#### SECTION 307. SPECIFIC REQUIREMENTS FOR PIT OPERATIONS

1. The applicant shall erect a fence with appropriate KEEP OUT-DANGER signs completely surrounding the portion of the site where the excavation takes place. In no event shall such signs be more than two hundred (200) feet apart. Said fence is to be a six (6) foot high, cyclone-type fence or a four (4) foot high, No. 11 woven wire fence along all property lines protected by lockable gates.
2. Any roads used for the purposes of ingress and egress to said excavation site shall be kept dust free at all times. This may be accomplished by surfacing with concrete or bituminous aggregate, or approved chemical treatment at a frequency sufficient to control any dust problems as specified by the Township Board.
3. Side slopes around the perimeter of the site and the banks adjacent to ponded water shall not have a slope exceeding one (1) vertical foot for each three (3) horizontal feet. The slope extending into the water shall not exceed one (1) vertical foot for each five (5) horizontal feet from the edge of the water out to a depth of five (5) feet.
4. In order to protect water wells and the water supply of the Township of Metamora, the pumping or drainage of water from such mining operations and/or de-watering is absolutely prohibited. A method of quarrying approved by the Township

Board shall be utilized.

5. All existing pit operations shall be at least fifty (50) feet away from the nearest street or highway right-of-way or property line. If the excavation is closer than 50 feet, the area shall be restored as part of the Reclamation Plan. No new cut or excavation shall be made closer than one hundred fifty (150) feet from the edge of the abutting street or highway right-of-way line or easement, or abutting property line; provided, however, that the Township board may prescribe stricter requirements in order to prevent undermining surrounding property where soil or geographic conditions warrant it.
6. All equipment shall be located and operated no closer than one hundred fifty (150) feet to the nearest abutting property line.
7. All equipment and facilities used in the production, processing or transportation of earth materials shall be constructed, maintained, and operated, in such a manner as to eliminate, to the maximum extent practicable, noises, vibrations, or dust which are injurious or unduly annoying.
8. All trucks leaving the site shall have their loads covered to prevent blowing of material onto Township roads and/or private property.
9. The applicant shall acquire approval as to haul routes, bonding requirements, weight limits, speed limits; and other matters within the jurisdiction of the agencies responsible for the public roads.
10. Reclamation with appropriate turf, vegetation, soil, overburden, shrubs and trees shall be implemented in a manner so as to prevent washout and erosion. Revegetation of the pit shall be started as soon as the first ten (10) acres are completely excavated and shall progress in stages as the excavation progresses. The slopes of the pit shall be graded, seeded and mulched in accordance with the approved Reclamation Plan and in a manner that prevents erosion. Topsoil shall not be removed from the site.
11. The Township Board shall require more stringent requirements where the Impact Assessment and/or Statement, or the report of the Township Engineer or Township Planner demonstrates the need for such, in the interest of the public health, safety and general welfare.
12. Operating hours shall be limited from 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. to 12:00 noon on Saturday. There shall be no operations conducted on any Sunday nor on specific holidays prescribed by the Township

Board.

SECTION 308. SPECIFIC REQUIREMENTS FOR STRIPPING OPERATIONS

1. No earth materials as defined herein, or similar materials, shall be removed in such manner as to cause water to collect or to exist in a place of danger or to become a menace to the public health. The premises shall at all times be graded so that surface water drainage off-site is maintained and is not interfered with.
2. Sufficient topsoil shall be stockpiled on said site so that the entire site, when stripping operations are completed, may be recovered with a minimum of four (4) inches of topsoil and the replacement of such topsoil shall be made immediately following the termination of the stripping operations each year. In the event, however, that such stripping operations continue over a period of time greater than thirty (30) days, the operator shall replace the stored topsoil over the stripped areas, in two (2) acre increments, as he/she progresses.
3. Any roads used for the purpose of ingress and egress to said excavation site shall be kept dust free at all times. This may be accomplished by surfacing with concrete or bituminous aggregate, or approved chemical treatment at a frequency sufficient to controlling dust problems as specified by the Township Board.
4. No stripping shall take place within one hundred fifty (150) feet from any street right-of-way line, adjoining residence, or any other property line; provided, however, that the Township board may prescribe stricter requirements in order to protect nearby residences from any potential adverse impacts of the stripping operation.
5. All equipment shall be located and operated no closer than one hundred fifty (150) feet to the nearest abutting property line.
6. All equipment and facilities used in the production, processing or transportation of earth materials shall be constructed, maintained, and operated, in such manner as to eliminate, to the maximum extent practicable, noises, vibrations, or dust which are injurious or unduly annoying.
7. All trucks leaving the site shall have their loads covered to prevent blowing of material onto Township roads and/or private property.
8. The applicant shall obtain approval as to haul routes,

bonding requirements, weight limits, speed limits, and other matters within the jurisdiction of the agencies responsible for the public roads.

9. In order to prevent all unnecessary dust and blowing of sand, there shall be no stockpiling of sand in piles in excess of one thousand (1000) cubic yards each and all stockpiles shall be restricted to a maximum height of fifteen (15) feet.
10. The Township Board shall prescribe more stringent requirements if deemed necessary in the interest of the public health, safety and welfare, as demonstrated by the Impact Assessment and/or Statement, or the report of the Township Engineer or the Township Planner.
11. Operating hours shall be limited from 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. to 12:00 noon on Saturday. There shall be no operations conducted on any Sunday nor on specific holidays prescribed by the Township Board.

#### SECTION 309. PLANS FOR RECLAMATION

1. Reclamation shall occur immediately upon completion of each 10 acre working cell. The property shall be fully reclaimed, in accordance with the approved Reclamation Plan, no later than one (1) year after extractive operations are complete. Non-compliance with this requirement shall be grounds for forfeiture of the operator's performance bond.
2. All excavations shall be made either to a water-producing depth of at least 8 feet below the low-water mark for at least 80 percent of the water area, or shall be graded or backfilled with earthen materials, to insure:
  - a. That stagnant water in the excavated area shall not collect and be permitted to remain therein; or,
  - b. That the surface of such area which is not permanently submerged is graded or backfilled as necessary so as to reduce the peaks and depressions thereof, and so as to produce a gently rolling surface that will minimize erosion due to rainfall and which will be in substantial conformity to the adjoining land area.
3. Vegetation shall be restored by the use of sufficient soil and overburden and by appropriate seeding of grasses or planting of shrubs or trees in all parts of the mining area where such area is not submerged under water.

#### SECTION 310. REMOVAL OPERATIONS EXISTING PRIOR TO PASSAGE OF THIS

## ORDINANCE

All existing mining operators shall obtain a removal permit in conformance with the requirements of this Ordinance. In order to obtain a permit as required under this Ordinance, previously existing operations shall comply with all provisions of this Ordinance, except that in cases where excavations already exist which are closer to property lines or road right-of-ways than permitted in this Ordinance, such noncompliance will be permitted, but the excavation may not be extended in any manner which would increase the existing non-compliance. All existing operations shall provide the same information required in Section 301 of this Ordinance but will not be subject to Planning Commission review for special land use approval.

### SECTION 311. PERFORMANCE BOND

1. The Township Board shall, to insure strict compliance with any regulations contained herein or required as a condition for the issuance of a permit for the removal of earth materials, require the operator to furnish a bond in the form of cash, an irrevocable bank letter of credit, or a surety bond acceptable in form and amount to the Metamora Township board, executed by a reputable surety company authorized to do business in the State of Michigan. The amount of such bond shall be at least \$1,000 for each acre of land owned or leased by the operator and may be greater if deemed necessary by the Township Board to insure compliance with this Ordinance. In fixing the amount of such bond, the probable cost of rehabilitating the premises upon default of the operator, estimated expenses to compel the operator to comply with court orders, and any other relevant factors shall be considered. Excess cash funds, if any, shall be returned with interest to the depositor, upon completion of the rehabilitation of the premises. The operator shall insure that the surety company and/or the bank shall give the Township 30 days notice, in writing, of any cancellation of a surety bond or letter of credit.
2. Upon request of the operator, the Township in its sole discretion may negotiate the terms and conditions of a recordable lien on the cell or cells, together with ingress and egress thereto in lieu of the performance bond required by paragraph 1 in this Section 311. The conditions of a recordable lien shall include:
  - A. A survey and legal description of the cell, cells and/or entire anticipated mining area;
  - B. An easement of ingress and egress to the cell, cells and/or entire area;

- C. A mortgage insurance policy in the amount of the recordable lien; and
  - D. Any and all other conditions deemed necessary by the Township in order to insure strict compliance with the Township regulations and conditions.
3. The operator shall submit the performance bond for the first cell of operation to the Township. When application is submitted for the next cell the first cell's performance bond shall be converted to a cash bond and escrowed with the Township unless the restoration of the first cell is complete. A new performance bond for the next cell shall be submitted to the Township before permit is issued to begin mining the next cell.

#### SECTION 312 INSURANCE REQUIREMENTS

Insurance shall be a precondition to commencement of operations, and maintenance in full force and effect of insurance shall be a precondition 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 that 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. 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 injuries occurring upon adjoining property as the result of conditions or activities conducted upon the subject property. The Township shall be named as an additional insured and the Township must receive a copy of the policy and/or the binder when it is issued.

#### ARTICLE IV DUMPING OF EARTH MATERIALS OR OTHER MATERIALS

##### SECTION 400. DUMPING RESTRICTION

No earth materials or other material of any sort shall be dumped or otherwise deposited on any property within Metamora Township except in conformance with a valid permit for a landfill issued by the Metamora Township Board.

#### ARTICLE V EXCAVATION OR HOLES

The existence within the limits of Metamora Township of any unprotected, unbarricaded, open or dangerous excavations, holes,

pits, or wells which constitute a hazard to the public health, safety, or welfare, is hereby prohibited, and such excavations, holes, pits, or wells are hereby declared a public nuisance. However, the provisions of the Article shall not prevent excavations for which a permit has been issued pursuant to the provisions of this Ordinance or the Building Code of Metamora Township where such excavations are properly protected, and provided further, that this section shall not apply to drains created or existing by authority of the State of Michigan, Lapeer County, Metamora Township, or by other governmental agencies. When the Ordinance Enforcing Officer shall determine a nuisance to exist as herein defined, he shall notify the owner of the lessee as shown on the latest tax rolls in writing of such finding and require the owner or lessee to abate such nuisance within a reasonable time, in no event more than thirty (30) days.

#### ARTICLE VI DRAINAGE AND EROSION CONTROL

Existing drainage patterns shall not be altered so as to result in flooding and/or interruption of flow of surface water to or across any adjacent or surrounding properties. All operations involving the moving or removal of earth materials shall comply fully with Act 347 of the Michigan Public Acts of 1972 (Soil Erosion and Sedimentation Control Act.)

#### ARTICLE VII INSPECTIONS

##### SECTION 700 ENFORCEMENT OFFICER

The Zoning Administrator or his/her 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 mining property for the purpose of conducting inspections to insure 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 inspection shall be deemed a violation of this Ordinance, and shall be cause for summary proceeding to suspend and/or revoke the license issued pursuant hereto pending such inspections. In addition to discretionary inspections, the Zoning Administrator shall make regular inspections during operations and reclamation with such frequency as shall be necessary to insure 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 Zoning Administrator shall make annual reports to the Township Board concerning compliance with this Ordinance.

##### SECTION 701 NONCOMPLIANCE, NOTICE, HEARING, SUSPENSION OR

## REVOCATION

1. Should the zoning Administrator, discover any noncompliance with the terms and conditions of this Ordinance and/or the licensure permit issued hereunder, and/or with any other applicable law, ordinance or regulation, the zoning Administrator shall prepare a notice of this fact detailing the violations, shall send copies of same to the licensee and to the Township Board. Within fifteen (15) days following such notice, the licensee shall advise the Township, in writing, whether or not it concurs that a violation exists; and, if it is agreed 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.
2. The licensee shall correct any and all violations forthwith, and in all events in a period not to exceed sixty (60) days from the date of the violation notice unless, due to circumstances beyond licensee's control, completion of corrective measures are not possible within such period, in which event the licensee may, upon approval of the township Board, and if sought within the sixty (60) day period, be granted reasonable additional time within which to make the correction.
3. 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, and shall notify the licensee of the time, date and place of the 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.
4. 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.
5. At the Township Board meeting, the matter of the disputed violation, of 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 commencement 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 supporting the existence of a violation of the failure to timely cure a violation. The Township Board shall ascertain whether the licensee made a reasonable effort to prevent the occurrence of the violation, or to cure the same in a timely manner.

6. In the event the Township Board shall determine that a violation of this chapter exists, or that the licensee has failed to cure a violation in a timely manner, the Township Board is authorized to take action in the following manner, 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 timely 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 one (1) month.
  - b. If the license has previously had one (1) uncured violation and/or one (1) failure to cure a violation in a timely manner, 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 damages, the Board is authorized to suspend the license for a period of up to three (3) months.
  - c. If the licensee is found to be in violation of this chapter on a third occasion, and/or if the licensee is found to have failed to cure a violation in a timely manner for the third, or any combination of these, and/or if there are violations and/or failure to cure in excess of three (3) , and/or if a violation has resulted in personal injury of one (1) or more individuals, the Township Board may suspend the license for a period of up to one (1) year, or revoke the license permanently.
7. 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 set forth above for violation hearings, to determine whether:

- a. To revoke the suspension order:
- b. To continue the suspension order for a fixed period of time; or
- c. To revoke the license permanently.

The 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.

8. Following the entry of a determination by the Township Board to suspend or revoke licensure, the institution of a lawsuit in the circuit court, or other court, shall not constitute a stay of the suspension or revocation, as the case may be.
9. The procedures and remedial action authorized under this section shall be in addition to, and not in lieu of, additional actions the Township may seek pursuant to other Township ordinances or laws of the State of Michigan.

#### ARTICLE VIII VIOLATION AND PENALTIES

##### SECTION 800 PENALTIES

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

##### SECTION 801 SEPARATE OFFENSE

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

##### SECTION 802 RIGHTS AND REMEDIES

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

#### ARTICLE IX VALIDITY

This Ordinance and the various parts, sections, subsections, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section, subsection, phrase, or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of this ordinance shall not be affected thereby. The Township board hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence, and clause thereof irrespective of the fact that any one or more parts, section, subsection, phrases, sentences, or clauses be declared invalid.

#### ARTICLE X RELATIONSHIP TO OTHER LAWS AND ORDINANCES

Whenever regulations or restriction imposed by this Ordinance are either more or less restrictive than regulations or restrictions imposed by governmental authority through legislation, rule or regulation, the more restrictive regulations or those which impose higher standards shall govern.

#### ARTICLE XI EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following publication of a summary of its regulatory effect, as provided by law.

#### CERTIFICATION OF TOWNSHIP CLERK

I, Marilyn Taylor, Metamora Township Clerk, hereby certify that the foregoing is a true copy of an Ordinance adopted by the Township Board at a regular meeting held on May 13, 1996 by the following vote:

Motion by Swertson, Supported by Derderian.

Ayes: 5  
Nays: 0  
Absent:

Motion: Carried

Marilyn Taylor  
Metamora Township Clerk

Township Board ordered notice of adoption and summary to be published one time in the Lapeer County Press on 5/22/96, 1996. A true and complete copy of the above ordinance may be purchased or inspected at the offices of the Township Clerk, 730 West Dryden Road, Metamora, Michigan 48455,

Mondays through Fridays, except holidays, during regular Township business hours.