

(Final)

EXCAVATION OPERATIONS ORDINANCE  
#25  
IOSCO TOWNSHIP, MICHIGAN

SECTION	PAGE
2500 STATEMENT OF PURPOSE.....	2
2501 DEFINITION AND EXEMPT ACTIVITIES.....	2
2502 LOCATIONAL REQUIREMENTS.....	3
2503 BUFFERING REQUIREMENTS.....	3
2504 PERFORMANCE STANDARDS.....	4
2505 PERMIT REQUIREMENTS.....	7
2506 AMOUNT OF APPLICATION FEE.....	10
2507 ISSUANCE, DENIAL.....	11
2508 FINANCIAL GUARANTEES FOR COMPLIANCE AND RECLAMATION.....	11
2509 OTHER CONDITIONS.....	12
2510 EXISTING EXCAVATION AREAS.....	13
2511 INTERPRETATION.....	13
2512 PENALTIES.....	13
2513 EFFECTIVE DATE.....	13

## 2500 STATEMENT OF PURPOSE

This Ordinance is intended to regulate the use of land for the mining of minerals, largely sand and gravel. The extraction of oil and gas is not regulated by this Ordinance. This Ordinance is needed because mining activities may pose significant changes to the environmental integrity of the land. If regulated and managed properly the community can minimize damaging effects associated with changes to the topography, and loss of natural resources. In addition, good mining design can reduce safety hazards from heavy truck traffic, minimize degrading of roadways, and buffer surrounding land uses from potential hazards or negative impacts. Finally, the Township recognizes the importance of mineral extraction to the community and the need to properly manage this resource within Iosco Township.

No mining shall be permitted unless the Township Board shall first issue a Special Use Permit in accordance with the provisions of this Ordinance. It is the intent of this Ordinance that these regulations be consistent with the public health, safety and welfare and to ensure that lands subject to mining operations shall continuously be reclaimed and rendered fully suitable for an approved use.

## 2501 DEFINITION AND EXEMPT ACTIVITIES

Mining and excavation activities are defined as the removal from a parcel of land of any earth resource. It does not include the following exempt activities. A permit is not required for the following excavation activities:

- A. Any small scale extraction operation which disturbs or removes a total of 5,000 cubic yards of material within 120 days and shows no appreciable impact on sediment control, stormwater or other site factors and is accompanied by a minor sketch plan, shall be permitted by a land use permit.
- B. Grading and filling in conjunction with commercial, industrial, or residential construction provided valid building and soil erosion and sedimentation control permits have been issued.
- C. Foundations and building pads for any building or structure, provided that valid building and soil erosion and sedimentation control permits have been issued.
- D. Minor landscaping projects provided they do not encroach upon flood-prone areas, protected wetlands, natural drainways or the county drainage system.
- E. Swimming pool construction provided a valid land permit has been issued for construction of the pool.
- F. Excavations relating to the accessory use of land and designed to be filled upon completion of excavation, such as septic tanks, graves, etc.
- G. Excavations or leveling for private drives to provide ingress or egress which have been approved by the Township Board and Livingston County Road Commission.



- H. Accessory ponds established in conjunction with an agricultural or residential use which are three-fourths of an acre or less in size, providing:
1. The boundaries of the excavation are wholly within one owner's property.
  2. Off-site drainage is not affected.
  3. Appropriate township, county, and state permits shall be obtained prior to pond excavation as required.
  4. There shall be a minimum setback from the edge of the excavation to all dwellings and lot lines of at least one hundred (100) feet.
  5. There shall be a minimum setback from any septic tank and/or tile septic waste disposal field of at least one hundred (100) feet.

#### 2502 LOCATIONAL REQUIREMENTS

Excavation operations are allowed by permit issued pursuant to this Ordinance in any zoning district.

#### 2503 BUFFERING REQUIREMENTS

- A. Notwithstanding any other minimum yard sizes required by this Ordinance, excavation activities shall be setback the following distance:
1. One hundred (100) feet from the right-of-way of any public street, private road, or highway;
  2. One hundred (100) feet from abutting property;
  3. Four hundred feet (400) feet from an existing dwelling;
  4. The Michigan Department of Environmental Quality and Livingston County Soil Erosion Control Officer shall determine the setback from any natural or existing man-made surface water body, watercourse, or wetland.
- B. There must be a natural or man-made visual barrier from roadways and adjacent property. The specifics will be on an individual site basis, with discussions between the applicant and the Township Board. This natural visual barrier may consist of naturally occurring vegetation.

#### 2504 PERFORMANCE STANDARDS

- A. All operations shall be conducted in a safe manner, especially with respect to hazards to persons, damage to adjacent lands or collapse of supporting soil adjacent to an excavation.



B. To ensure the safety of motorists and infrastructure as a result of vehicular congestion, roadway deterioration, debris and dust from truck traffic and any other potential adverse condition the following criteria may apply:

1. Existing roadways will be adequately improved to carry the increased use of truck traffic. The amount of improvement and expected cost will be determined during the site plan review process.
2. There will be no serious impairment to the general level of air and noise quality due to heavy truck traffic, dust, emission and overall air quality. In making such a finding, consideration shall be given to the equipment and methods used to minimize such impacts.

C. No operation shall be conducted in a manner so as to lower the water table on surrounding properties.

D. Final grade on site shall not be steeper than a slope of 3:1 (horizontal-vertical).

E. Temporary stockpiling of topsoil or overburden, erosion, and similar operational problems shall not constitute a hazard to road traffic, pedestrians or adjoining property.

F. Topsoil stockpiles shall be seeded to prevent wind and water erosion.

G. All excavations shall use the most current best management practices (BMP) so as to control erosion and limit the amount of sediment reaching surface water.

Existing water table and water quality will be determined and regular monitoring of the quality of the water table and water will be conducted. Such determinations will be performed by qualified independent soil scientist, soils engineer, hydrologist, hydrogeologist or geologist regarding the surface water, the level of the water table and the size and location of existing and new water bodies on the site and within one mile of the site.

H. The excavation shall be graded in a fashion which will not cause water to accumulate in stagnant pools.

I. Trees and other vegetation or ground cover shall not be prematurely stripped off the surface of the ground so as to unnecessarily expose areas of ground that are prone to wind or water erosion that will cause the ground or dust to be carried by wind or water onto adjoining or surrounding properties, or onto public or private roads, or to create a nuisance.

J. The intensity level of sound shall not exceed seventy (70) decibels (dba) at the property line. The sound levels shall be measured with a type of audio output meter approved by the United States Bureau of Standards.



- K. Air pollution, noise, and vibrations shall be minimized from any effect upon adjacent properties by adequate soundproof equipment and building designed to accomplish such minimization and by proper use of berms, walls, and natural planting screens.
- L. Access to excavation areas shall be arranged to minimize danger to traffic and nuisance to surrounding properties.
- M. Truck and heavy vehicle traffic related to the excavation operations shall use major thoroughfares for access, wherever possible.
- N. Public streets within one thousand five hundred (1,500) feet of the exit of the extractive used site shall be kept reasonably clear of mud, dirt, and debris from vehicles exiting the site.
- O. All vehicles used for the transporting of materials from any extractive use site shall travel to and from the site on a street route, which minimizes adverse impacts on residential neighborhoods.
- P. Additional equipment or machinery for the operations on the premises shall not be permitted unless specifically applied for in the application and covered by the permit issued, or following application approval an addendum is agreed upon by the owner/operator and the Township Board, which will then become permanently attached and part of, the issued permit.
- Q. The hours of operation shall be set by the Township Board after consideration of the surrounding land uses and the particular traffic patterns on public haul routes in the area. The maximum range of hours is Monday through Friday from 7:00 a.m. to 6:00 p.m., Saturday from 8:00 a.m. to 12:00 p.m. (Noon) and shall be prohibited on legal holidays and Sundays. The Township Supervisor may provide temporary exemptions from hours of operations for an operator who must repair equipment or for public emergencies.
- R. The area involved in the use shall be enclosed by a chain link or similar fence, though the applicant may request a variance from the Iosco Township Board.
- S. The excavation shall not be used for the disposal of foreign material, other than clean off-site fill, without prior approval from appropriate local, county, and state entities.
- T. All work shall be undertaken and completed on a cell by cell basis. No work can begin in the next cell until reclamation in the previous cell is satisfactorily completed or underway pursuant to a phasing plan approved by the Township Board.
- U. Excavated areas shall be reclaimed under the following standards:
  - 1. Vegetation restored by the appropriate seeding of grasses or the planting of trees and shrubs to establish a permanent vegetative cover on the land surface to minimize erosion. Such vegetation shall be of sufficient diversity to support a variety of wildlife species.



2. When excavation operations are completed, the excavation area shall be graded so that no gradients in disturbed earth are steeper than a slope of 3:1 (horizontal-vertical).
  3. A layer of arable topsoil, of a quality approved by the Zoning Administrator shall be spread over the excavated area, except exposed rock surfaces, or areas lying below natural water level, to a minimum depth of four (4) inches in accordance with the approved contour plan.
  4. Excavation which has created or extended lakes, ponds, or other bodies of water shall meet standards and specifications (particularly with respect to underwater slopes and drop-offs) promulgated by the U.S. Department of Agriculture, Natural Resources Conservation Service or by the Department of Environmental Quality with appropriate approval from one or both agencies. Approval is based upon water body size as established by the above agencies and an application must be sent to both agencies for possible review.
  5. Backfill and grading materials shall not be noxious, flammable or toxic.
- V. Fill and soils shall not be overly compacted and of sufficient quality to be well drained, non-swelling. If the reuse plan involves development of dwellings or other building, fill and soils shall be of proper bearing capacity to support foundations and septic systems.
- W. Excavation shall meet standards and specifications and shall require a permit pursuant to Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental protection Act, Act 451 as amended 2001.

#### 2505 PERMIT REQUIREMENTS

Before granting a permit, the Township Planning Commission shall conduct a public hearing concerning such application and file its recommendation with the Township Board. A separate permit shall be required for each separate site. Each application for a permit shall be filed with the Township Clerk, accompanied by plans, drawings, and information prepared by appropriate registered professionals, depicting at a minimum:

1. Name, address and telephone number of surface owner and mineral rights of owner of land from which excavation will take place.
2. Name, address, and telephone number of operator (person, firm or corporation who will be conducting the actual excavation).
3. Location, size, and legal description of the total site area to be excavated. Include legend showing a north point, scale and date. The extent of the excavation will be designated on the documents accompanying the application.



4. Location, width, and grade of all easements or right-of-ways on or abutting the area subject to excavation.
5. A statement from the applicant identifying all other federal, state, and local permits required, if any.
6. Proof of liability insurance from the operator.
7. Notification of any deed restrictions on the property.
8. Name of financial institution backing the excavation operation.
9. Existing and proposed topography at two-foot contour intervals. Such topography shall extend a minimum of one hundred fifty (150) feet beyond the top of the bank of the excavation.
10. The existing surface water and drainage patterns.
11. A vertical aerial photograph, if deemed necessary, enlarged to a scale one (1) inch equals two hundred (200) feet, from the original photography flown at a negative scale no smaller than one (1) inch equals one thousand (1000) feet, and certified as flown not earlier than two (2) years prior to the date of application. The vertical aerial photograph shall cover:
  - a. All land requested in the permit application.
  - b. All contiguous land, which is or has been used by the owner or leaseholder applicant for excavation, processing, storage, or other permitted uses.
  - c. All lands within one-half (1/2) mile of the proposed planned excavation area.
  - d. Existing zoning classifications overlaid on all areas shown on the map.
12. A hydrogeologic report of the proposed excavation site. Such a report shall, at a minimum provide:
  - a. A detailed description of surface conditions.
  - b. Depth of water table throughout the planned excavation area.
  - c. A map depicting the thickness and depths of material to be excavated.
  - d. A discussion of the environmental impacts of the proposed excavation, including but not limited to the impact of the proposed excavation upon existing area wells.
  - e. A recommendation of the necessity to install monitoring wells.

13. A discussion of the proposed method of excavation, including:
  - a. The area and amount of material to be excavated in cubic yards.
  - b. Proposed side slopes and depths for all portions of the excavated area.
  - c. Proposed drainage system, settling ponds and retention ponds, as appropriate.
  - d. The time, duration, phasing, and proposed work schedule of the total project.
  - e. The proposed location of any building, storage areas, stockpiling areas, and sorting or crushing equipment as appropriate.
  - f. Area from which excavation will take place in the first year of operation and likewise for each successive year to completion.
  - g. The proposed location of access points to the site and proposed haul routes for disposal of excavated material.
  - h. Proposed plans for fencing and signs.
  - i. Provisions for buffer zones, landscaping, and screening.
  - j. A detailed list of the type of equipment.
  - k. List of proposed types and uses of explosives, if required, and a proposed plan for all safeguards for their use.
  - l. A detailed reclamation plan, drawn to an acceptable scale, and program to be performed upon completion of each phase of the project. At a minimum, the plan of reclamation shall include:
    - a) Physical descriptions of the location of each cell, number of acres included in each cell, estimated length of time to complete each cell in excavation.
    - b) Depiction of finished, stabilized, side slopes, including methods and plant materials proposed for use.
    - c) Landscape plan for the portion of the property disturbed by excavation.
    - d) A reuse plan for the site once excavation is complete.
14. Site plan and associated reports shall document the method of compliance with the performance standards of this Ordinance.



15. All means of access to the property shall be from major or secondary thoroughfares and shall not be held from residential streets.
16. The operator of any excavation operation must require, prior to the exit from the operator's premises, the drivers of all vehicles carrying product to thoroughly clean the license plates of their vehicles, and the failure of drivers to do so shall be a violation of this Ordinance.
17. Such other information as may be reasonably required by the Township Board to base an opinion as to whether a permit should be issued.

#### 2506 AMOUNT OF APPLICATION FEE

The amount of the application fee shall be the greatest of One Thousand (\$1,000.00) Dollars or Fifty (\$50.00) Dollars multiplied by the number of acres of land comprising the site of excavation. In addition to the Application Fee, the applicant shall advance to the Township the estimated expenses that will be incurred by the Township with respect to experts retained by it to review and process the application. Failure to pay in advance the sums provided for herein shall require an automatic denial of the permit. Permits issued by the Township Board shall be for a period of one (1) year expiring on March 31<sup>st</sup>, and such permits may be renewed as herein provided for so long as the permittee complies with all the provisions of this Ordinance or other conditions of this permit. The renewal of permits is also conditioned upon the payment of a renewal fee established by the Township Board.

#### 2507 ISSUANCE, DENIAL

After reviewing all of the information submitted by the applicant, and such other information as may be in the hands of the Township Board, the Township Board shall, at a regular or special meeting, determine whether or not a permit will be issued. The permit shall be issued in the event that the Township Board shall determine that the issuance of the permit would not detrimentally affect the public health, safety, and general welfare of the citizens of the Township.

#### 2508 FINANCIAL GUARANTEES FOR COMPLIANCE AND RECLAMATION

- A. Mining operation shall not commence until a financial guarantee to assure compliance with the permit, the approved application operational plan and reclamation plan shall have been filed with the Township Clerk as approved and required by the Township Board. The form and the amount of the financial guarantee shall be determined by the Township Board taking into consideration the size and scope of the proposed excavation, probable cost of rehabilitating the premises upon default of the operator, the estimated expenses to compel the operator to comply by court decree, and such other factors and conditions as might be relevant in determining the sum reasonable in the light of all such facts and circumstances surrounding each application. The Township Board, in considering any application to renew the permit, may at its discretion, increase or decrease the amount of the financial guarantee, based upon increased costs, new information, or partial reclamation. The performance guarantee shall be held in escrow, and may be released to the applicant in proportion to the work completed on the various restoration activities, provided an inspection report has been submitted to the Township Planner and Engineer and approved by the Township Board.



- B. No less the twenty-five (25%) percent of the total financial guarantee shall be in the form of cash or an irrevocable letter of credit issued by the financial institution licensed to do business in the State of Michigan, making the Township the beneficiary thereof.
- C. The balance of the guarantee, as determined by the Township Board, may be in the form of a corporate surety bond issued by a company licensed for such purposes in the State of Michigan. The conditions of such financial guarantees (letter of credit and surety bond) shall be that, if the permit holder has satisfactorily reclaimed the property being the subject of the Special Use Permit, the surety bonds shall be returned to the applicant, otherwise the Township shall have a right to use the cash or proceeds to the irrevocable letter of credit to the extent necessary to reclaim the property and to cover the cost of enforcing and bringing about compliance with the approved application, including reasonable attorney's fees, and the corporate surety bond shall serve to guarantee payment for all other reclamation and enforcement and compliance requirements.
- D. Any financial institution guaranteeing a corporate surety bond or issuing an irrevocable letter of credit in satisfaction of these requirements is subject to approval of the Township Board. The case or irrevocable letter of credit shall remain with the Township until the parcel or parcels have been reclaimed, and all equipment, machinery, materials, buildings, and other commercial improvements removed as requiring by this Ordinance.

#### 2508 OTHER CONDITIONS

The conditions of any permit issued under this section apply not only to the owner but also to the operator who is either an owner or lessee of mineral rights or any other person engaged in or preparing to engage in excavation.

- A. When an operator disposes of his interest in an excavation area prior to final reclamation by sale, lease, assignment, termination of lease, or otherwise, the Zoning Administrator may release the operator from the duties imposed upon him by this Ordinance as to the operations, but only if the successor, operator, owner assumes the obligations of the former operator with reference to the reclamation activities. At that time the permit may be transferred.
- B. Excavation operations authorized by permits shall be inspected with reasonable frequency to determine compliance with this Ordinance and permits issued pursuant to this Ordinance.
- C. The general site plan may be modified at any time by mutual consent of the operator and the Township Board to adjust to changed conditions, technology or to correct an oversight. The Board of Trustees may solicit comment from the Planning Commission on any modifications.
- D. When activities on or use of the area subjected to excavation, or any portion thereof, have ceased for more than one (1) year, as shown by examination of the premises, the operator shall be considered abandoned and a new permit necessary before additional excavation activities can occur.



- E. Upon cessation of mining operations by abandonment or otherwise, the operator, within a reasonable period of time not exceeding 12 months thereafter, shall remove all plant structures, buildings, stockpiles, and equipment unless such buildings or structures can be lawfully used in the district in which the same are located.

#### 2509 EXISTING EXCAVATION AREAS

All excavations existing on the effective date of this section shall be subject to the regulations with regard to future operations. Future operations shall be considered a new operation and shall require a permit issued pursuant to this Ordinance.

#### 2510 INTERPRETATION

The provisions of this Ordinance shall be held to be minimum requirements for the promotion of public health, moral safety, comfort, convenience, or general welfare. It is not intended by this Ordinance to repeal, abrogate, annul or in any way to impair or interfere with any existing provisions of the law or ordinance, or with any rules, regulations, or permits previously adopted, or issued, or which shall be adopted or issued pursuant to the law relating to the use of the premises described herein, provided, however, that where this Ordinance imposes a greater restriction than is required, or permits, the provisions of the Ordinance shall control.

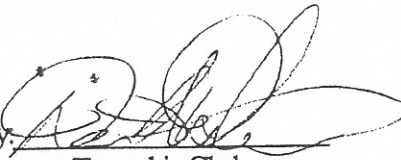
#### 2511 PENALTIES

The Township Board may initiate injunction or proceedings to prevent or enjoin any violation of this Ordinance. The rights and remedies provided herein are cumulative and in addition to other remedies provided by law. The use of any land located in the Township, or the operation of any vehicle as described above in violation of this Ordinance, is declared to be a public nuisance, per se, and may be abated by order of any court of competent jurisdiction.

#### 2512 EFFECTIVE DATE

This Ordinance is hereby declared adopted by the Township Board of the TOWNSHIP of IOSCO at a meeting thereof held on the 21<sup>st</sup> day of August, 2003, and ordered to be given publication in accordance with the statutes made and provided. This Ordinance shall take effect and shall be in force from and after thirty (30) days after publication of this Ordinance.

IOSCO TOWNSHIP BOARD

By:   
Township Clerk