

CLYDE TOWNSHIP ORDINANCE# 12-B

AN ORDINANCE TO AMEND CLYDE TOWNSHIP ORDINANCE NO. 12 AS PRESENTLY AMENDED, IN ITS ENTIRETY, BEING AN ORDINANCE TO REGULATE THE REMOVAL OF TOPSOIL, SUBSOIL, SAND, GRAVEL AND OTHER MATERIALS, INCLUDING THE MOVING AND FILLING OF LAND AND DRAINAGE INCIDENTAL THERETO, TO ESTABLISH PERFORMANCE STANDARDS, TO DEFINE CERTAIN TERMS, TO PROVIDE FOR ADMINISTRATION AND REVIEW COSTS, FOR THE ISSUANCE, RENEWAL AND REVOCATION OF PERMITS, TO PROVIDE FOR SECURITY FOR PERMITS, TO PROVIDE FOR EXCEPTIONS AND WAIVERS SUBJECT TO CONDITIONS AND OTHER REGULATIONS, INCLUDING BUT NOT LIMITED TO RECLAMATION AND RESTORATION, AND TO PROVIDE FOR PENALTIES AND ENFORCEMENT COSTS, FOR ANY VIOLATION OF THE ORDINANCE.

The Township of Clyde Ordains:

Part I. Amendment/Purpose

Section 1. Purpose.

The purpose of this Ordinance is to amend, in its entirety, Ordinance No. 12, of the Township of Clyde, entitled "An Ordinance to Regulate the Removal of Topsoil, Subsoil, Sand, Gravel and Other materials and the Moving and Filling of Land" in order to establish permit procedures, standards of operations, and variance of requirements.

Section 2. Amendment of Ordinance 12

Clyde Township Ordinance No. 12 as currently amended, is hereby further amended, in its entirety, to read as set forth in Part II.

Part II. Ordinance 12 As Amended In Its Entirety

ORDINANCE NO. 12A, AS AMENDED

AN ORDINANCE TO REGULATE THE REMOVAL OF TOPSOIL, SUBSOILS AND, GRAVEL AND OTHER MATERIALS, INCLUDING THE MOVING AND FILLING OF LAND, AND DRAINAGE INCIDENTAL THERETO, TO ESTABLISH PERFORMANCE STANDARDS, TO DEFINE CERTAIN TERMS, TO PROVIDE FOR ADMINISTRATION AND REVIEW COSTS, FOR THE ISSUANCE, RENEWAL AND REVOCATION OF PERMITS, TO PROVIDE FOR SECURITY FOR PERMITS, TO PROVIDE FOR EXCEPTIONS AND WAIVERS SUBJECT TO CONDITIONS AND OTHER REGULATIONS, INCLUDING BUT NOT LIMITED TO RECLAMATION AND RESTORATION, AND TO PROVIDE FOR PENALTIES AND ENFORCEMENT COSTS, FOR ANY VIOLATION OF THE ORDINANCE.

Section I. Purpose.

The removal of topsoil, subsoil, sand, gravel and other materials results in the emission of noise, dirt, dust and odors and said operations effect permanent changes in the topographical and geological characteristics of land; and further, because of said changes, said operations create dangers and hazards by virtue of shifting earth, standing water, filtration into the underground water systems and other like considerations. In recognition of the fact that the promotion of the public health, safety and general welfare of the residents of Clyde Township and the prevention-of-nuisances and hazards require reasonable control of these operations it is deemed necessary that said operations be regulated and that standards be established wherein procedures permitting said operating requirements are set forth, the administration of such standards are provided for, and penalties are provided.

Section 2. Definitions

1. **Enforcement Costs.** All costs arising from or because of a violation, or threatened violation, of the permit, ordinance or other applicable law, that the Township incurs or would incur in seeking correction of such violation, or threatened violation, and compliance with all applicable requirements and law, and performance by the permit holder and any insurance company posting a bond or policy of any nature, and of any other person pertinent to the enforcement of the permit or ordinance, whether or not the permit is suspended or revoked as a part of the same, and the use of the bond proceeds or any other security to hold the Township harmless relative to these costs, including but not limited to engineering fees, inspection costs, testing costs, planner fees, attorney fees, court costs, ordinance enforcement officer costs, code inspector costs, and any other similar costs. With regard to a violation or threatened violation, enforcement costs shall include review costs and vice-versa. Enforcement costs includes the costs described herein whether a permit is still effective, or has expired or is revoked or suspended or otherwise in question.
2. **Ground Water.** Any water found under the surface of the earth.
3. **Person.** Any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision, or other duly established legal entity.
4. **Review Costs.** All costs arising from or associated with an application, review process, permit, and renewal or expiration or termination of an application or permit, including but not limited to Township engineering fees, testing, inspections, attorney fees, planner fees, Ordinance Enforcement Officer and code inspector fees and costs, special meeting and public hearing costs including mailing and publication, as well as any other similar costs, if any; review costs also includes these costs as they apply to

the costs of inspecting the site and its operations, etc., subsequent to the issuance of the permit. With regard to a violation or threatened violation, review costs shall include enforcement costs and vice-versa.

5. **Roads on Site.** Roads designated on approved plans, and such other areas used by vehicles and/or equipment for travel on a regular basis other than for travel on an infrequent basis necessitated by the mining operation such as trucks and/or equipment going to and from a regular course of travel to the area which is currently being mined.
6. **Site.** A parcel or unit of land.
7. **Soil Excavation.** The excavation or removal of any kind or nature from a site of gravel, clay, sand, soil or other similar materials.
8. **Surface Waters.** Water occurring generally on the surface of the earth.

Section 3. Administration

The Township Board is hereby granted authority under this Chapter to entertain applications, hold public hearings, grant permits and do all other acts authorized herein and in the Township Zoning Ordinance.

Section 4. Enforcement

1. **Agency.** This Chapter shall be enforced by the Ordinance Enforcement Officer appointed by the Township Board.
2. **Inspections.** By accepting a permit issued under this Chapter, and/or the Township Zoning Ordinance, the owner and/or operator of any operation shall be presumed to have consented to regular and routine inspections of the property. Said consent shall be authority to go on to any property under permit for purposes of any inspection.
3. **Authority to Issue Appearance Tickets.** The Township Enforcement Officer shall have the authority to issue Appearance Tickets for a violation hereof pursuant to Act 175, of Public Acts of 1927, as amended, of the State of Michigan.

Section 5. Permit

1. Requirement Established. From and after the effective date of this Ordinance, no person shall operate facility for the extraction of soil, sand, gravel, or similar material in Clyde Township except in accordance with a permit issued by the Township Board pursuant to the authority of this Ordinance and the Township Zoning Ordinance.
2. **Issuance Procedure.**
 - A. Application. A permit shall only be issued based on an original signed application submitted to the Township Clerk together with ten duplicates as stated below. Prior to submission of an application, the Applicant shall attend a pre-application conference with Township officials and pay a pre- application fee, as determined by resolution of the Township Board. To be complete, each application must contain the following:
 1. Names and full address of all parties having an interest in the land and/or and interest in the operation on the site. Evidence of such interest shall be provided along with any current partnership agreement, articles of incorporation or assumed name certificate. Written consent of the legal title holder is also required.
 2. The applicant's signature and date shall appear on the first page of the application original and on all duplicates submitted to the Township for review. In addition, each page of the complete application submittal shall include the original application date in the lower right hand comer. If the application is subsequently amended, each replacement page shall bear, in the lower right hand comer, the original application date and the date of submittal of the page revision. All applications shall be made in a loose leaf, 3-ring binder in order to facilitate the replacement of pages.
 3. A full legal description and drawing of the site prepared by a registered surveyor showing the number of acres on each portion of the site to be mined.
 4. An aerial photo showing the property and adjacent areas within 2,000 feet of the site and a map showing the property boundaries of all parcels within 500 feet of the site, including the name of the property owner and use of the site.
 5. Detailed drawings, prepared by a registered land surveyor or registered professional engineer, showing the following:
 - a. Existing site improvements including buildings, drives, wells, high-tension power lines, pipelines, and drain fields.

- b. Existing topography at contour intervals of five (5) feet, interpolated from US Geological Survey (USGS) data or other source acceptable to the Township, unless an interval of less than five (5) feet is deemed necessary for review by the Township Planner or Engineer at the Pre- Application Conference.
 - c. Extent of future mining areas and depth thereof.
 - d. Location and description of structures and stationary and/or portable equipment to be located on the site during mining operations.
 - e. Location and description of soil types.
 - f. Tree areas and other natural features to be preserved
 - g. Location and type of materials for visual screening the site.
 - h. Location and dimensions of drives.
 - i. Lane widening on public roads at intersections with drives.
 - j. Locations of test wells for monitoring water quality.
 - k. Location of proposed fencing.
 - l. Borrow and soil storage areas.
6. A complete description of proposed pollution and erosion control measures.
 7. A map showing truck routes and/or private easements to the site and a letter of preliminary comments from the Road Commission(s) impacted by the truck routes.
 8. The estimated average amount and maximum amount of materials to be extracted or each year of the plan.
 9. Evidence that a bond or security deposit has been supplied to the St. Clair County Road Commission in an amount sufficient for maintaining the truck haul route during the term of the permit until reclamation has been completed.
 10. The estimated average number of trucks per day by size or classification, and the maximum number of trucks per day that are to enter and exit the site each year of the plan.
 11. An environmental report detailing the effect of the proposed operation on the air, soil, minerals, water, vegetation, and aesthetics of the site and surrounding area.
 12. A detailed reclamation plan showing that the entire property will be left in a form that is suitable for development with uses that are permitted in the underlying district, relating such reuse to uses existing or probable for surrounding properties. The

reclamation plan shall include the following elements:

- a. Proposed topography at contour intervals of two (2) feet for the entire site.
 - b. Schedule of progressive rehabilitation. After mining is completed on one specified area, quadrant, or cell, reclamation shall follow progressively in reasonable stages set forth in the plan before mining continues on other areas of the site.
 - c. Proposed ground cover and other plantings to stabilize the soil surface and to beautify the restored area.
 - d. Concept plan of the proposed use of the site when restored, drawn to scale, and prepared by a registered engineer, registered landscape architect, or registered architect. The concept plan shall include the proposed circulation system, including location of internal roads and connection to the external road network, delineation of drainage patterns, identification of flood plains, and conceptual layout of lots (if residential is proposed). The use proposed in the concept plan must be acceptable to the Township Board based on a review of the zoning district, Township Master Plan, surrounding land uses, and site characteristics. In addition, the applicant shall describe provisions for obtaining necessary permits and approvals for the future use(s).
 - e. When the proposed future use, as deemed appropriate by the Township Board, includes residential units or other uses requiring the use of septic fields, the Applicant shall provide a description of the construction and rehabilitation techniques that will be used to ensure that developable areas of the site have suitable soils to meet septic field standards established by the St. Clair County Health Department. Also, provisions to supply the site with potable water for future uses shall also be described.
 - f. Details as to how compliance with the Restoration Standards in Section 11 will be met.
 - g. Description of methods and materials to be used in restoring the site.
 - h. The proposed date for completing all extraction operations and the date for completing the final restoration.
13. Michigan State Fire Marshall and/or Michigan State Police permit for the on-site storage or transfer of fuels, or a written indication from the applicable agency that a permit is not required.
 14. An application fee, in an amount established by resolution of the Township Board, shall be provided at the time of the application submittal.

15. The first annual permit fee, in an amount established by resolution of the Township Board, shall be provided at the time of application submittal and, if approved, subsequently on the anniversary date of the issuance of the mining permit. The fee shall be held in escrow pending decision on granting the application. The annual fee shall remain payable on all acreage not yet restored.
16. A detailed description of the proposed mining operation, and specifications of whether the operation will be performed in a manner that does or does not require artificial means to lower the existing groundwater table.
17. Drawings, aerial photographs and plans submitted with an application shall be correlated by transparent overlays, combined maps or other means that clearly set forth site features and proposed features and requirements of this ordinance including setbacks.
18. Copy of permit from the Michigan Department of Environmental Quality (DEQ), or letter from the DEQ showing that a permit is not required for the proposed mining or reclamation by the:
 - a. Inland lakes and Streams Act, being PA 346 of 1972, as amended
 - b. Goemaere-Anderson Wetland Protection Act, being PA 203 of 1979.
19. A hydro geological analysis, prepared by a Registered Professional Engineer or Certified Professional Geologist with experience in hydro geological studies, shall be provided for all projects that propose a dewatering operation during any phase of the development. The analysis shall demonstrate that the proposed operation will have no significant impact to existing private water supply wells within the influence of the site dewatering operations. The hydro geological report shall include the following:
 - a. Test pumping data at the site and analytical computations used to assess potential site dewatering impacts.
 - b. A test well and computer model shall be used to determine the probable draw-down of the Proposed dewatering. The hydro geological report shall determine the direction and rate of flow of groundwater, the up gradient and down-gradient water quality, aquifer characteristics (when soil dewatering is planned), extent of dewatering influence, and impact on surrounding water supply wells. A minimum of three (3) monitor wells shall be installed according to the 3-point method,

retained for future monitoring, and constructed according to the requirements of the Michigan Department of Environmental Quality. Locations of wells shall be approved by the Township Engineer.

- c. Well logs of existing wells within 2,000 feet of the site boundaries.
 - d. A written statement of the impact the proposed operation will have on private wells shall be provided, as well as a plan for mitigating measures in the event that existing wells are impacted by the dewatering operations.
 - e. Groundwater testing of each well shall take place prior to commencing extraction operation to establish background water quality levels. Annual tests of each well shall be performed and results shall be provided to the Township within 30 days of the anniversary of permit issuance. At a minimum, the groundwater shall be tested for the following: Benzene, Ethylene, Xylene, Toulene (BETX), and Polynuclear Aromatic Hydrocarbons (PNA).
 - f. A description of the discharge rate and discharge location(s) of the dewatering operation, including an assessment of the potential for flooding in the area and downstream from the point of discharge.
20. In the event that no dewatering is proposed, the applicant shall provide sufficient data to establish the direction of groundwater movement in the area. A minimum of three (3) monitor wells shall be installed according to the 3-point method, retained for future monitoring, and constructed according to the requirements of the Michigan Department of Environmental Quality. Locations of wells shall be approved by the Township. In addition, the Applicant shall supply well logs of existing wells within 2,000 feet of the site boundaries. Groundwater testing shall be performed in accordance with Section 5.2.A.19.e above.
21. Ten duplicate copies of all of the above. One duplicate is for the Township Planner for review and report; one duplicate is for the records of the Township Board; eight duplicates are for use by the Planning Commission. The original is maintained in the Township Clerk's records. Additional copies for use by the Township Board will be required following recommendation by the Planning Commission.
22. Such other information and material as the Board shall require.
- B. Fees and/or Costs.
1. An applicant for a permit shall pay, with any application, the application fee which is an amount equal to the specific dollar

amount set forth below, for any permit or renewal issued hereunder, plus the application review costs; a deposit, to be applied on the review costs portion of the application fees and/or costs, shall be set by the Township Clerk; the application fee, including review costs, may be modified by Resolution of the Township Board, from time to time. The review costs for the inspection/review process continuing after issuance of a permit, shall be paid by the applicant and/or permit holder. The escrow amount, equal to the Township Clerk's estimate of the annual costs based upon the size and particulars of the project, shall be paid to the Township Clerk by the applicant/permit holder with an application, and as billed by the Township as the application is being processed, and again before the issuance of a permit. The estimated escrow amount shall also include a minimum amount that must be maintained by the applicant/permit holder throughout the term of the application process and, upon the approval of a permit, throughout the term of a permit, and as it may be modified by the Clerk or Township Board, from time to time. The Township Board may require that its engineers or other agents do any reviewing, inspecting, testing, etc., where appropriate as determined by the Township Board.

2. Refer to Ordinance 52, as amended.

C. Public Hearing and Referral to Planning Commission

1. Before granting a permit for any property, or additional area of property, not previously under a permit, the Township Board shall refer the application to the Planning Commission for a public hearing concurrent with the special land use permit procedure and for findings and recommendations as to whether the granting of the permit, as proposed, would
 - a. Permanently impair the intended land use potential of the Property in question.
 - b. Detrimentially affect the adjoining properties.
 - c. Be consistent with the planning and zoning of the area where the proposed operation is to be located.
 - d. Protect the public health, safety, and welfare. The Township Board may hold an additional public hearing following receipt of a recommendation by the Planning Commission.
2. Before granting a permit for property previously under a permit, the Township Board shall follow the same procedure as outlined in Section 5.2 above, except that the referral to the Planning Commission and the holding of a public hearing shall be discretionary with the Township Board.

D. Basis for Issuance.

The Township Board shall authorize issuance of a permit only if it finds that:

1. There has been compliance with all the requirements and standards of this Chapter, and the other applicable code of Ordinances, Chapter, Standards and Regulations and any applicable Federal, State or County laws, Ordinances, Rules, Regulations, Orders or Judgments., and payment of applicable personal property taxes, and all application fees, including the review costs portion thereof, and including the continuing review costs upon issuance of the permit.
2. The proposed operation will not create an unreasonable hazard, annoyance or inconvenience to the owners or occupants of nearby property and does not impair the public health, safety and welfare of the Township;
3. The granting of said permit will not significantly change the character of the neighborhood or unreasonable reduce the value of nearby property;
4. The granting of said permit will not do damage to the ground water or surface drainage and would be environmentally safe pursuant to the EPA ACT.
5. That the Township interests are protected and what, if any, additional conditions should be required as a part of a permit to insure that the requirements of this Ordinance are satisfied.

E. Duration. Expiration and Renewal.

1. After considering all the available facts and details, the Township Board may issue a permit for a period of up to one (1) year, expiring on January 31 of each year; Provided however, before any approval of a permit, the liability insurance requirements, bond requirements, and escrow amounts shall be established and referenced within the terms of the Permit, and all permit fees and costs shall be reviewed and paid; upon the filing of an application or bond or insurance policy, it shall be the obligation of the permit holder, the owner, and any insurance company, to thereafter keep the Township Clerk advised of a correct mailing address for all notice purposes; additionally, for all notice purposes, delivery of a written notice to any person, who appears to be in charge at the site and/or posting the site, shall constitute notice for all purposes herein as to the owner and permit-holder. All review costs shall be paid and all reclamation shall be completed 30 days prior to the expiration date of an existing Permit, and if Phases are approved or intended failure to timely apply for or obtain a renewal of a Permit shall constitute a violation, as well as requiring that all

reclamation be accomplished within the term of the expiring Permit. No further operations, other than continuing reclamation, shall be permitted on a site when an area within the site subject to reclamation has not been restored within required time limits. No Permit shall be assigned except with prior Township approval. A cumulative change from the date of the Application of more than 15% in the membership or stockholder interests of the owner of the land or the permit-holder shall constitute an illegal assignment, unless first reported to and approved by the Township, together with any updating of records and filings. All permits are issued subject to future ordinance amendments and specifically subject to (2) below as to a renewal. It shall always be the permit holder's obligation to identify existing violations, when seeking a permit or a renewal.

2. A permit shall be renewed annually for a year or less by the Township Board, but only after a determination has been made that the operations and site is in compliance, and that the paperwork, including but not limited to site and engineering plans, is updated as is appropriate to determine the status of the operations and site, including but not limited to identifying the specific progress in reclamation and further excavation since the last filing, and only after a determination has been made as to the need for any further conditions, change in the bond, correction of known violations, or any other such matter; no permit shall be renewed from time to time except upon a re-determination that the standards for the issuance of a Permit are being met, including all applicable law. Renewal of a Permit with violations existing does not waive enforcement action of any nature relative to the violation. Violations shall constitute a basis for non-renewal, depending upon the nature and number of violations, and the applicant's history of compliance or noncompliance. The issuance of a permit or the renewal thereof does not, under any circumstances, operate as a waiver of existing violations or other noncompliance with the law, regulations, or permit. An Application for renewal shall be filed at least 60 days before the expiration date of the Permit and supplemented to the extent of changes between the filing date and the date that the Township acts upon the renewal.

F. Conditions.

1. Violation. Any violation of a condition(s) included in the permit shall be construed as a violation of this Chapter and shall give rise to the penalties provided in this Chapter and shall be grounds for revoking the permit.
2. Exclusions. No permit shall be required for:

- a. Building Construction Excavations. Excavations for the construction of buildings and structures for which a building permit has been issued.
 - b. Landscaping. The moving, grading or leveling of earth or rock materials, by property owner(s) solely upon his property and not removed to other noncontiguous property whether owned by said property owner or not.
 - c. Minimal Soil Removal. The removal of soil, etc., when no more than twenty (20) cubic yards are removed in any calendar year.
3. Revocation.
- a. Notice of Violation. The Township Board may, in its discretion, notify the owner, and/or permit holder and/or operator of any violation of the permit and/or this Ordinance, but it is the responsibility of the owner and operator and permit holder and bonding company to be aware of the status of the site and all matters relevant thereto and to guard against violations occurring.
 - b. Failure to Abate Violation. In the event that the Township gives such notice of violation, any written notice shall be given to the permit holder at the last address given by the permit holder to the Township, or by posting the site, or delivering written notice to any person who appears to be in charge at the site; upon failure of the owner and/or permit holder and/or operator to abate said violation within five (5) days after mailing or delivery of said notice, said operation site may be summarily closed, and the permit therefore suspended or revoked, and resort had to the bond. If the Township Board determines the continued operation of the site with the violation would be detrimental to the health and/or safety of persons and/or property or that for any other reason reasonably appears to require immediate action, the Board may summarily, and without five (5) days notice, suspend or revoke the permit, but shall grant a hearing upon request as provided herein.
 - c. Hearing Request. Any owner, and/or permit holder and/or operator aggrieved of any notice sent pursuant to this subsection, may request a hearing before the Township Board, if the request is in writing and delivered to the Township. The request should set forth why the operation site should not be summarily closed, the permit suspended or revoked, and resort had to the bond.
 - d. Action Pending Hearing. In any case, if the Township Board determines the operation would be detrimental to the health and/or safety of persons and/or property, the Board may summarily, and without five (5) day notice, suspend or

revoke the permit, but shall grant a hearing upon request as provide herein.

e. Hearing. If a request for a hearing is received, the Township Board shall hold a hearing within seven (7) days and may after the hearing continue the suspension or revocation of the permit, or take such other action as appears appropriate under the circumstances, including reimbursement for all costs incurred in obtaining compliance.

4. Changes. The permittee shall submit a written request to the Township Board for approval of changes to the original plans, specifications, reports and methods of operation submitted with a permit application. No such change shall be initiated until the written approval of the Township Board has been obtained.

Section 6. Surety Bond

1. Requirement Established. The applicant shall post a surety bond or some other equitable security satisfactory to the Township Board naming the Township of Clyde the Beneficiary thereof in an amount determined by the Township Board to be reasonably necessary to insure compliance hereunder.

Conditions of Bond

A. Guarantee Compliance.

1. Bonds shall guarantee compliance with this Chapter, the permit requirements and conditions, and that the operation will be carried out according to the approved plans and specifications and that all review costs and all enforcement costs arising from or because of the permit are paid, including those amounts owed to the Township during the term of a permit or a renewal, and shall hold the Township harmless from all fees and costs up to the bonded amount; any bond, notwithstanding anything to the contrary, is required to extend 60 days beyond any permit expiration date, unless and until released by the Township Board.
2. In the event that the Township receives notice of an intended cancellation of a bond, prior to the filing of an approved substitute bond, such notice shall constitute a violation that automatically causes the revocation of the permit that the bond relates to; any reclamation that was to have been performed pursuant to that permit and any other portion of site that does not then comply with all applicable law and the permit requirements to have been performed by the expiration of the permit are then to be immediately reclaimed and are in violation; the bond shall guarantee the correction of those matters without regard to whether or not the bond is in fact canceled, including the reclamation and review costs and enforcement costs.

3. The bond shall not require the Township to notify the bonding company of a violation or extension of time to correct a violation, or of a change in the permit, ordinance, site, etc.
 4. Any bonding company shall be one of the major insurance companies in Michigan, shall have an A rating or better based on standard insurance ratings, shall not be a foreign or off-shore insurance company, shall have an office within the State of Michigan, legally authorized to do business in Michigan, and shall consent to lawsuit venue in St. Clair County, Michigan.
 5. Effective for Permits or renewal Applications filed after the effective date of this Ordinance# 12-B, the bond shall be required to be for the entire term of the Permit with no cancellation provision.
- B. Forfeiture of Bond. In the event of a violation, or in the event of the lack of timely compliance with any applicable requirements sufficient to constitute an anticipatory violation where there is no longer sufficient time for the permit-holder to timely comply with such requirements or a violation is imminent, a violation then exists and the bond proceeds shall be used to the extent necessary; the permit holder shall be liable for the same and for any deficiency.
2. Non-Compliance Enforcement. By filing an application every applicant shall be deemed to have granted a license to the Township and its agents and contractors to go onto a property under permit to use the bond proceeds for the purposes allowed by the bond; for which there has been non-compliance.
 3. Establishing Amount
 - A. Considerations. In fixing the amount of such bond, the Township Board shall take into account:
 1. The size and scope of the proposed operation.
 2. Reclamation and review costs and enforcement costs arising from or because of a violation, including an anticipatory violation, or other non-compliance.
 3. Other such conditions and factors as might be relevant in determining the sum reasonable in light of all facts and circumstance surrounding each application.
 4. Notice of Lapse. The applicant shall notify the bonding company and provide proof thereof that the Township be notified in the event of any lapse in the effectiveness of the bond.
 5. Reduction of Bond. For each acre restored and reclaimed in accordance herewith, or otherwise, said bond may be reduced pro-rata as determined by the Township Board.

Section 7. General Comprehensive Liability Insurance

1. **Requirement Established.** The applicant shall secure and file with the Township Clerk certifications of proof of insurance, insuring the Applicant, his employees and/or agents or representatives, and the Township for general comprehensive liability in an amount of at least or hundred thousand (\$100,000.00) dollars per person and three hundred thousand (\$300,000.00) dollars per occurrence.
2. **Notice of Discontinuance.** The certifications or renewals thereof shall provide that the Township shall be notified upon discontinuance or alteration of any such insurance coverage for any reason.

Section 8. Performance Standards.

1. **Performance Standards:** With a permit, or without a permit, if one is not required, the carrying on of any alterations, modifications or changes in geographical or geological structures, which shall include all soil excavation and of removal of land, or the creation or alteration of waterways, canals, etc, for either immediate use or for removal to other places, the performance standards for sound, vibration, etc. shall be complied with as follows:
 - A. **Atmospheric Discharge.** It shall be unlawful to discharge in the atmosphere from any single source of emission whatsoever any air contaminator for a period or periods aggregating more than four (4) minutes in any one half hour which is".
 1. **Smoke.** As dark or darker in shade as that designated a No.2 on the Ringelmann Chart as published by the United States Bureau of Mines, which is hereby made a part of this Chapter. However, the Umbra scope readings of smoke densities may be used when correlated with the Ringelmann Chart. A Ringelmann Chart shall be on file in the office of the Building Department.
 2. **Other Air-Borne Solids.** Of such opacity as to obscure observer's view to a degree equal to or greater than the smoke describe in paragraph A above, except when the emission consists only of water vapor. The quantity of gas -borne or air-borne solids shall not exceed 0.20 grains per cubic foot of the carrying medium at a temperature of 500 degrees Fahrenheit.
 - B. **Debris on Public Roads.** The owner and/or permit holder of a site where there is soil removal, shall take whatever steps are necessary to avoid any motor vehicle carrying or tracking unto any public right-of-way from the site, any mud, dirt, clay, refuse, etc.
 1. **Obligation to Clean.** If mud, dirt, clay, refuse, etc., is carried or tracked onto a public right-of-way, and it does, or might constitute a nuisance or hazard to public safety, the owner and/or permit holder shall not leave any such debris on a public right-of-way after the end of any working day.
 2. **Notice from Township.** If notified during a working day the Township of a condition which requires cleaning, the matter shall be taken care of within one (1) hour, weather permitting.
 3. **Violations.** If a nuisance or hazardous condition is left after a working day, or

not cleaned up within one (1) hour after receive a request from the Township, and weather does not prevent the clean-up the Township may issue a Citation for a violation of this sub-section due to the allowance of said condition to remain on the highway, and/or close the right-of-way and charge the owner and/or permit holder with the cost thereof, which may be collected in any court having general jurisdiction.

- C. Drainage. Natural drainage shall not be blocked, or diverted or altered, or altered in such a manner as to cause the natural water flow to back up onto adjacent property, or to flow in a different course or cause the natural water flow to back up onto adjacent property, or to flow in a different course or rate of flow upon leaving the property upon which the blocking diversion or alteration occurs, unless and application is made and a permit is issued by the Building Department pursuant to plans which provide for a drainage flow which will not be detrimental to surrounding properties.
 - 1. Retention Areas. No area designated for, and/or used as a drainage retention area shall be altered, filled in, abandoned or used for other purposes, unless it is done pursuant to a permit issued under this subsection.
 - 2. Permit. A permit shall be required under this subsection notwithstanding a permit is not otherwise required by this Chapter. Permit requirements and procedures shall be as adopted by the Township Board, from time to time, by resolution.
- D. Drifting and Blown Material. The drifting or air-borne transmission beyond the property line of dust, particles or debris from an open stockpile, working areas or unplanted areas, shall be unlawful and may be summarily caused to be abated.
- E. Electromagnetic Radiation. Applicable rules and regulations of the Federal Communication Commission in regard to propagation of electromagnetic radiation are hereby name a part of this Code and shall be on file in the office of the Building Department.
- F. Gases. The escape of or emission of any gas in concentrations so as to be injurious, destructive or explosive shall be unlawful and may be summarily caused to be abated.
- G. Glare or Heat. Any operation producing intense glare or heat shall be performed within an enclosure so as to completely obscure and shield such operation from direct view from any point along the lot one except during the period of construction of the facilities to be used an occurred.
- H. Light Exterior lighting shall be so installed as far as practical to reflect light away from any residential use, and in no case shall more than one foot candle power of light cross a lot line five feet above the ground in a residential district.
- I. Odors. The emission of noxious, odorous matter in such quantities as to be readily detectable at any point along lot lines, who diluted in the ratio of one volume of odorous air to four or more volumes of clean air, or as to produce a public nuisance or hazard beyond lot lines, is prohibited.
- J. Radioactive Materials. Radioactive materials shall not be emitted to exceed quantities established as safe by the U.S. Bureau of Standards, as amended from time to time.

K. Sound. The pressure level of sound shall not exceed the following decibel levels when adjacent to the following types of uses:

<u>Sound Level</u>	<u>Adjacent Use</u>	<u>Where Measured</u>
75 db	Residential or Agricultural	Common Property Line
85 db	Commercial	Common Property Line
90 db	Industrial and other	Common Property Line

The sound levels shall be measured using a weighted decibel measurements (referenced to 20 micropascals) and with a type of audio output meter approved by the U.S. Bureau of Standards. Objectionable noises due to intermittence, beat, frequency, or shrillness, shall be muffled so as not to become a nuisance to adjacent uses.

- L. Vibration. All machinery shall be so mounted and operated as to prevent transmission of ground vibration exceeding a displacement of .003 of one inch measured at any property line of its source.
 - M. Roads. Roads on soil excavation sites shall be designed and constructed so that traffic will flow smoothly and will not be interrupted by inclement weather. Non-paved roads between the site and the nearest paved roads, paved roads off of site within 1/4 mile of the site entrance which are used by vehicles and/or equipment traveling to on from the site, and all roads on site shall not be used unless they are treated by sufficient oil, water and/or chemical substance, whichever would be appropriate for the surface, and frequent enough so that they are dust free whenever used by vehicles and/or equipment.
 - N. Soil Erosion. If a soil erosion permit is required by Act 347, of the Public Acts of 1974 of the State of Michigan, as amended, no operation shall take place until a permit has been obtained. There shall be compliance at all times with the requirement of the soil erosion permit.
2. Waiver of Provisions. Any provision of Sections 5 through 12 of this Ordinance may be waived upon;
- A. Written request of the applicant and,
 - B. Review and recommendation of the Planning Commission and,
 - C. A determination by the Township Board of the following:
 - (1) That the waiver will not cause or tend to cause a blight, nuisance, danger or hazard to the surrounding area by virtue of sight, noise, odor, shifting earth, standing water, filtration in to the underground water systems or drainage.
 - (2) That the waiver creates a more harmonious aesthetic condition with the surrounding area.
 - (3) That the waiver is in the best interests of the health, safety and welfare of the Township and,
 - D. In the event a provision is waived the Township Board may impose alternatives or lesser restrictions that are reasonable.

Section 9. Hours of Operation

- 1. Hours. Hours of operation shall be 8:00a.m. to 5:00p.m., unless otherwise specified by

the Township Board. No operation shall be permitted on Sundays and Legal Holidays. In emergency situations this time period may be modified by the Township Ordinance Enforcer provided such emergency order shall not be effective for more than 72 hours.

2. Gates At all vehicular entrances and exists there shall be installed a gate(s) with latching or closing devices of keeping said gate(s) securely closed at all times except during operational hours hereinabove authorized. The gate(s) required by this Section shall be of a design and structure approved by the Zoning Enforcer.
3. Posting of Hours: At all vehicular entrances and exists and pedestrian passageways there shall be conspicuously posted the days and hours of operation of the quarry; said days and hours of operation shall be inconsistent with any limitations thereon imposed under this Section.

Section 10. Operational And Design Requirements for the Extraction of Soil, Sand, Gravel, or Similar Material

1. All persons or firms engaged in the extraction of soil, sand, gravel, or similar material shall comply with the following:
 - A. Operate only with a permit issued under this ordinance.
 - B. Make payment to the Township Clerk, on each anniversary date of the permit, of the annual permit fee established by resolution of the Township Board, to be held in escrow pending satisfactory results of the Township's annual inspection.
 - C. Operate only in compliance with the terms and limits of the permit.
 - D. Other than as specified in the application and permit, no processing of any nature shall be conducted at any time on site.
 - E. All fixed machinery and equipment and buildings shall be located at least 200 feet from any lot line and 500 feet from any existing residence.
 - F. No extraction, processing, loading, weighing, stockpiling or other operations or equipment storage or repair shall take place closer than 200 feet from any road right-of-way, 500 feet from a residence, or 200 feet from any other property boundary.
 - G. There shall be no excavation unless there is adequate lateral support for adjoining land as determined by the Township.
 - H. Stockpiles of soil to be used for the reclamation shall be seeded or otherwise maintained to avoid erosion.
 - I. Grading shall be maintained so that a drainage nuisance is not caused on adjacent property.
 - J. The operation shall be conducted so it will not cause any contamination or change in the quality of ground or surface water outside the site. The quality of ground water shall be monitored by adequate test wells as determined by the Township.
 - K. There shall be no excavation within 500 feet of any stream or waterway unless approved in writing by the Michigan Department of Environmental Quality (MDEQ).
 - L. There shall be not more than one entranceway from a public road for each 660 feet of front lot line.
 - M. Each entranceways hall be located not less than 500 feet from an intersection of

- two or more public roads.
- N. The site including ingress and egress shall be treated and maintained so that dust does not blow onto neighboring properties.
 - O. A sound dampening berm shall be constructed around the perimeter of the site. The height of the berm shall be no less than 10 feet in height and shall not have a grade of less than 1 :3. The outer edge of the berm shall sit no closer than 40 feet from the property line. The berm shall be seeded with appropriate vegetation and maintained to prevent erosion. Chain link fences and landscaping shall be installed at all locations around the site which lack natural screening in accordance with Zoning Ordinance requirements.
 - P. Where an excavation leaves standing water or takes place to a depth of greater than five (5) feet, the applicant shall erect a fence completely surrounding the portion of the site where the excavation extends, said chain link fence to be not less than six (6) feet in height complete with gates. Gates shall be kept locked when operations are not being carried on.
 - Q. Where quarrying operations result in a body of water, the owner or operator shall place appropriate "Keep-Out-Danger" signs around said premises not more than two hundred (200) feet apart.
 - R. All portions of the site not currently being mined (without mining activity for forty days) shall be graded so that slopes are not steeper than one (1) foot vertical for each two (2) feet horizontal and shall be adequately covered and planted to prevent erosion. If mining is completed, it shall be finished graded pursuant to Section II below.
 - S. All fuels, chemicals and other hazardous materials to be contained on site shall be noted in the application, including material, quantity, use, and method of primary and secondary containment. All containment structures or devices shall be designed and operated to prevent groundwater pollution. The applicant shall also provide a written spill response plan, in the event that a hazardous materials spill occurs on site. Said plan shall indicate how any and all contaminated material will be collected and disposed.
 - T. Only equipment or vehicles owned or leased by the operator shall be stored on the site overnight.
 - U. The truck and trailer license plates shall be washed or wiped clean before leaving the site on each trip.
 - V. Materials will only be loaded onto trucks reaching and leaving the site on truck routes specified on the permit.
 - W. The Applicant shall be responsible for adequately treating against dust and improving\ and maintaining to St. Clair County Road Commission standards the public roads, bridges and culverts directly servicing the site; as necessitated by the truck traffic over the haul route to or from the site. Any roads used for the purpose of ingress and egress to said excavation site which are located within three hundred (300) feet of occupied residences shall be kept dust free by hard topping with cement, bituminous substance or chemical treatment.
 - X. The Applicant shall maintain a record or copy of the load ticket for each truck departing with extracted materials from the site. These records must include driver and truck/trailer identification, date, time, and load; and must be made available

to the Township upon demand for inspection and copying.

- Y. Potable water supply and sanitary sewage disposal systems shall be approved for the site by the County Health Department.
- Z. No material from outside the site shall be brought in for processing or storage.
- AA. No explosives shall be used on the site.
- BB. For sites proposed, access shall be to and from a Class "A" roadway, as defined and designated by the St. Clair County Road Commission. Routing of vehicles to and from a disposal area shall be designated on a map of the Township accurately depicting all roads involved with vehicle routing to the site throughout the Township. Routing of vehicles along thoroughfares through concentrations of residential development shall be avoided. Failure to adhere to the routes designated on an approved routing plan or subsequently approved by the Township Board, shall be considered a violation of this ordinance and subject to the penalties set forth in this ordinance.

Section 11. Restoration.

1. **Reclamation.** In accordance with the following restoration standards reclamation must begin as soon as the mining of any area of the site is completed or mined to the limits shown on the application (whichever comes first):
 - A. The reclamation shall be in accordance with the permit.
 - B. Ponding shall be avoided in all areas except in designated lake areas. This shall be accomplished by all excavation being either to a water-producing depth or shall be graded or backfilled to ensure that the excavated area will not retain or collect stagnant water. For the purposes of this subsection, a water producing depth shall be defined as not less than ten (10) feet below the average summer level of water in the excavation.
 - C. In the event filling of a mined area is necessary in the course of reclamation, the Fill material shall consist only of soil material, which is brought into the site in compliance with the following:
 1. A detailed statement indicating the quantities of material to be disposed of, and the exact locations from which the material will be brought.
 2. A report specifying in detail the testing to be undertaken by the applicant at each source location to ensure that the material being brought on site is not contaminated. The report shall include an opinion by a qualified independent soil scientist, soils engineer, hydrogeologist or geologist, confirming that the material from each source location is not contaminated.
 3. Set forth in detail the arrangement and nature of all operations, including the quantity of each type of material to be brought on site and the location from which it will be brought.
 4. Set forth a detailed explanation as to the routing of all vehicles bringing material to the site, and their size, weight and frequency of trips.
 5. Set forth in detail the precautions taken to ensure against any soil erosion or sedimentation control problems.
 6. Set forth in detail the contingency cleanup procedures to be utilized in the event of any contamination of the underlying groundwater or surface water.

- D. In addition to the above, the reclamation plan shall show an internal future development area and conceptual road and lot layout plan. Within this area, site grades shall be reduced to a sufficient slope to support an internal road on residential lots fronting on at least one side of the road. Examples include
- 1) perimeter development area with lots surrounding the excavated portion of the site or
 - 2) another area with sufficient land to support a future residential development.
- This requirement to show a future residential development area concept plan may be waived by the Township Board if the Board finds that a residential use of the site is not feasible and desirable. If this finding is made, a concept plan for an alternative land use acceptable to the Township shall be provided.
- E. For grades that may be submerged, refer to ordinance 52, as amended.
- F. Topsoil of a quality equal to that occurring naturally in the area shall be replaced on excavated areas not covered by water, roads or other structures. The depth of topsoil over the entire site shall be sufficient to allow sod to grow.
- G. Vegetation shall be restored by the appropriate seeding of grasses and the planting of trees and shrubs to establish a permanent vegetative cover on the land surface, to minimize erosion, and ensure long term stability of any sloped areas.
- H. Reclamation must be completed within 12 months of cessation of operations. All plant structures, buildings, stockpiles and equipment shall be removed; provided, however, that buildings and structures which have a function under the reclamation plan and which can be lawfully used under the requirements of the zoning district in which the property is located may be retained. No further operations shall be permitted on a site when an area within the site subject to reclamation has not been restored within this time limit. As part of the reclamation process, all site debris including tree stumps, man-made materials, etc. shall be removed from the site and properly disposed.

2. Release of Surety Bond

- A. Upon completion of the restoration or upon completion of a part thereof, the person posting the bond may make application to the Township for refund or reduction of the bond or its pro-rate share. Upon examination by the official designated by the Township Board, and upon its notice in writing to the Township Board that said restoration is in keeping with the approved plan, the Township Board shall refund or reduce the bond on a pro-rated basis.
- B. In the event that the restoration does not comply with the above requirements, the Township may utilize the bond proceeds to restore the site and affected areas to comply with the approved plan. Should the costs of restoration exceed the amount of the bond, the permittee shall pay the Township the amount in excess.

Section 12. Effective Date for Existing Removal Operations.

Existing lawful operations shall be given a reasonable period of time, not exceeding six months, to comply with the various provisions of this Ordinance.

Section 13. Penalty.

Any person, firm, corporation or other entity who violates any provision of this ordinance shall be responsible for commission of a municipal civil infraction, and shall be liable for a civil fine in the following amounts: \$5,000.00 for a first offense; \$10,000.00 for a second offense; \$15,000.00 for a third offense; and \$20,000.00 for fourth and subsequent offenses. The determination of repeat offenses shall be based upon the three year period immediately preceding the violation date. Each day that a violation exists constitutes a separate offense. Such responsible party shall also be liable for the actual enforcement costs of the Township, as set forth in the Michigan Revised Judicature Act, in an amount not less than \$9.00 or more than \$500.00, and may be subject to liens, injunctions, or other equitable remedy permitted by law pertaining to municipal civil infractions.

Section 14. Severability.

If any portion of this Ordinance or the application thereof, to any person or circumstances shall be found to be invalid by a Court, such invalidity shall not affect the remaining portions or application, provided that such remaining portions or applications are not determined by said Court to be inoperable, and to this end, this ordinance is declared to be severable.

Section 15. Construction.

It is not otherwise intended by this Ordinance to repeal, abrogate or annul or in any way impair or interfere with any other existing provisions of law or ordinance or with any rules or regulation adopted or issued or which shall be adopted or issued. Provided however, that when this Ordinance imposes a greater restriction than is required by any existing law, ordinance, rules or regulations, the provisions of this Ordinance shall control.

Section 16. Effective Date.

Ordinance 12-A was originally effective on 8/23/04 and was last amended by Ordinance 12-B in 2011 which was effective 30 days after publication.

This Ordinance shall become effective 7 days after publication as provided by law.

Signature on file
Kathleen Turner, Clerk
Clyde Township

CERTIFICATION

I, Kathleen Turner, Clyde township Clerk, hereby certify that Ordinance No. 12-B was adopted by the Clyde Township Board at a regular meeting of the Township Board held at the Township Hall on the 20th day of December, 2011.

Vote on this Ordinance. 6 members being present, was as follows:

AYES: 6 DeShon, Vincent, Gerspach, Turner & Marks

NAYS: 0

ABSENT: 1 Muir

I further certify that said Ordinance NO. 12-B adopted by the Clyde Township Board on the 20th day of December, 2011, was published as provided by law once in The Times Herald, a paper published in the County of St. Clair and circulated in the Township of Clyde on the 10th day of January, 2012, this being the first and final day of publication of this ordinance.

Signature on file
Kathleen Turner, Clerk
Clyde Township