

Chapter NR 340

SAND, GRAVEL OR ROCK EXCAVATION AND RECLAMATION ASSOCIATED WITH NAVIGABLE WATERWAYS AND ADJACENT AREAS

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NR 340.01 Purpose. (1) These rules are promulgated pursuant to ss. 30.19, 30.195, 30.20 and 227.014 (2) (a) & (b), Stats., in order to accomplish consistency in the application of ss. 30.19, 30.195 and 30.20, Stats., to the excavation of sand, gravel or rock and to give effect to the purpose for which those sections were enacted. It is recognized that serious degradation of water quality, fish and wildlife habitat, and public interests in recreation and scenic beauty may occur during and after the excavation, dredging or grading in or near navigable waterways. It is the purpose of this chapter to minimize the adverse effects caused during and after such activities, to provide for the expeditious rehabilitation of affected land, and to restrict excavation, dredging and grading where the adverse effects cannot be minimized or avoided.

(2) A secondary purpose of this chapter is to codify the definitions of certain terms set forth in s. 30.19, Stats.

Note: See sections NR 340.02 (2), (3), (4), (12) and (13).

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 340.02 Definitions. (1) "Abandonment of operations" means the cessation of project operations for more than 180 consecutive days where the cessation is not specifically set forth in an operator's application, project and reclamation plan and permit, or by other written request deemed sufficient by the department. Abandonment of operations does not include the cessation of activities due to labor strikes or natural disasters.

(2) "Bank" means the land surface abutting the bed of any navigable water body which, either prior to any project or alteration of land contours or as a result of the proposed project or alteration, slopes or drains without complete interruption into the water body.

(3) "Grade or otherwise remove" means the physical disturbance of the bank by the addition, removal or redistribution of topsoil.

(4) "Topsoil" means the uppermost surface layer of the ground before or after grading or otherwise removing. (This definition is solely for the purpose of defining the term as it is used in s. 30.19, Stats., and no inference should be drawn that the uppermost surface layer of the ground is adequate for purposes of revegetation after disturbance.)

(5) "Department" means the department of natural resources.

(6) "Operator" means any person engaged or who has applied for a permit to engage in project operations, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.

(7) "Permit" means any permit which may be required under ss. 30.19, 30.195 and 30.20, Stats., of an operator as a condition precedent to commencing project operations at a project site.

(8) "Reclamation" means the rehabilitation of the project site including, but not limited to, establishment of adequate vegetative cover, stabilization of soil conditions, prevention of environmental pollution and where practicable, restoration of fish, plant and wildlife habitat.

(9) "Project" and "project operation" mean excavation, grading or dredging operations or activities in navigable waterways and adjacent upland, the primary purpose of which is extraction of merchantable sand, gravel or rock for sale or use by the operator.

(10) "Project refuse" means all waste soil, rock, mineral, liquid, vegetation and other material resulting from the project and includes all waste materials deposited on, in, or near the project site from other sources. Project refuse does not include merchantable by-products directly resulting from or displaced by the project.

(11) "Project site" means the surface area disturbed by a project operation, including the surface area from which materials have been or will be removed, the surface area covered by or to be covered by project refuse and land disturbed or to be disturbed by the construction or improvement of haulageways.

(12) "To connect" means the direct physical joining of a waterway to an existing body of navigable water below the elevation of the latter's ordinary high watermark where the joining is by means of an open channel having a bed and banks.

(13) "Ultimate connection" means the joining of a waterway to an existing body of navigable water by means of a natural drainage course or an open or closed conduit, either of which tend to confine and direct flow into the existing body of navigable water.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 340.03 Applicability. (1) This chapter shall apply to all sand, gravel or rock projects that require a permit or contract pursuant to s. 30.20, Stats., to remove material from the bed of a natural waterway or a public artificial waterway. This chapter shall also apply to any such projects that require a permit pursuant to s. 30.195, Stats., to change the course of or straighten a navigable stream. Lastly this chapter applies to any such projects requiring a permit pursuant to s. 30.19, Stats.

(2) This chapter, except for NR 340.07, NR 340.08 and NR 340.09, Wis. Adm. Code, shall only apply to permits granted after the effective date of this chapter.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 340.04 Permit application. The application for a s. 30.19, 30.195 or 30.20, Stats., permit shall be submitted by the operator on a form Register, November, 1979, No. 286
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provided by the department and shall include in addition to a completed application as specified by s. 30.19 (2), Stats., the following:

(1) The location, extent, depth, and manner of project operations anticipated; proposed means of loading and transporting of material; and estimated volume and quality of material to be extracted, accompanied by an adequate documentation of the basis for such estimates;

(2) A legal description of all land within the project site which applicant owns, leases or has an option to purchase or lease;

(3) A timetable of the commencement, duration and cessation of project operations. The timetable shall reflect that the project site shall remain open for the minimum necessary period of time;

(4) A project and reclamation plan in accordance with the following section;

(5) Satisfactory evidence that the applicant has applied for or obtained all necessary local, state and federal permits and licenses for the project operations;

(6) Satisfactory evidence that the applicant or proposed operator is technically and financially qualified to conduct and complete project operations and progressive and final reclamation plans; and

(7) Estimated cost of progressive and final reclamation of the project site.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 340.05 Project and reclamation plans. Each permit application shall include, in addition to information otherwise required, a detailed plan describing:

(1) The nature, extent and final configuration of the project site including nature, depth, location and extent of stockpiled materials, and disposal of waste or overburden.

(2) The progressive and final reclamation plans detailing the manner, time and location of:

(a) The removal, stockpiling, and protection of all materials in conformance with the appropriate floodplain zoning ordinance and chapter NR 116, Wis. Adm. Code;

(b) Adequate measures to screen the project from view from the waterway;

(c) Grading and stabilization of the project site;

(d) Adequate diversion and drainage of ground and surface water from the project site with no resultant pollution of ground or surface water; or in the event that fish entrapment is likely to occur, impoundment of water of sufficient permanency, size, and quality to benefit public use, with stable slopes and banks and adequate public access; and

(e) Erosion and drainage control, and revegetation utilizing soil conservation service critical area planting guidelines for the slope and soil type or the Wisconsin department of transportation minimum seeding

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requirements for disturbed earth, with diverse, self-regenerative species utilized where consistent with final reclamation.

(3) An acknowledgement of continuing responsibility for restoration and revegetation of the project site until stabilization has been determined adequate by the department.

(4) A description of the existing natural and physical conditions of the project site, including necessary maps and cross sections acceptable to the department concerning:

- (a) Soil and geologic composition of the project area;
- (b) Location and dimensions of surface waters;
- (c) Location of ground water;
- (d) Hydraulic cross sections of the floodplains of any streams;
- (e) Location of manmade features in the project site;
- (f) Detailed map and description of the nature and extent of existing excavations, stockpiled materials, topsoil and refuse in the project site;
- (g) Historical and archaeological features, if known; and
- (h) Existing drainage patterns.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 340.055 Bonding. (1) **NOTIFICATION.** The department shall determine the required bonding level of the project and shall notify the applicant. Following approval of the permit, and as a condition of the permit, except for governmental units, the department shall require a bond to be filed with the department equal to the estimated cost to the state of fulfilling the reclamation plan in relation to that portion of the site that will be disturbed by the end of the following year. Upon notification of required bonding levels by the department, but prior to commencing the project, the operator shall file with the department a bond conditioned on faithful performance of all requirements of ch. 30, Stats., and all provisions of this chapter and the permit. Upon notification by the department of bonding approval and conformance with permit conditions, the operator may commence project and reclamation operations.

(2) **BOND REQUIREMENTS.** (a) Bonds shall be issued by a surety company licensed to business in this state. At the option of the operator, a performance bond or a forfeiture bond may be filed. Surety companies may have the opportunity to complete the reclamation plan in lieu of cash payment to the department.

(b) Each bond shall provide that the bond shall not be cancelled by the surety, except after not less than 90 days notice to the department in writing by registered or certified mail. Not less than 30 days prior to the expiration of the 90 day notice of cancellation, the operator must deliver to the department a replacement bond in absence of which all project operations shall cease.

(c) The bond shall be payable to the "State of Wisconsin, Department of Natural Resources".

(d) The estimated cost of reclamation of each project shall be determined by the department on the basis of relevant factors including but not limited to: expected changes in the price index, topography of the site, project methods being employed, depth and composition of overburden, depth of project operations, from data provided in the project and reclamation plan.

(e) Upon written approval of the department, an operator may deposit cash, certificates of deposit, or government securities with the department in lieu of a bond. Interest received on certificates of deposit or government securities shall be paid to the operator.

(3) **BOND REEVALUATION.** The department may reevaluate and adjust accordingly the amount of the project bond or security deposit after one year of the date of filing or previous reevaluation. Reclaimed areas shall be released from the bond coverage and the amount of the bond lowered proportionately. Such reevaluation shall be made pursuant to the preceding section.

(4) **MULTIPLE PROJECT PERMIT BONDING.** Any operator who obtains a permit from the department for two or more project sites may elect, at the time the second or subsequent site is approved, to post a single bond in lieu of separate bonds on each site. Any single bond so posted shall be in an amount equal to the estimated cost to the state determined under sub. (1) reclaiming all sites the operator has under project permits. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bond shall not be released until the new bond has been accepted by the department.

(5) **BOND RELEASE.** The department shall release the operator's bond if it finds, after inspection of the project site, that the operator has fully carried out and completed reclamation of the project site in accordance with the project and reclamation plan, and has otherwise complied with ss. 30.19, 30.195 and 30.20, Stats., and this code adopted pursuant thereto. Final inspection shall be made not less than one year, nor more than 2 years, after the scheduled completion of the project and reclamation plan.

(6) **ABANDONED SITES.** Bonds for any site abandoned at the time a permit expires shall not be released unless it is shown that no project operations have occurred at that site.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 340.06. Permits. (1) Permits shall be granted where the department finds that the provisions of this chapter and the relevant standards contained in ch. 30, Stats., have been met.

(2) Permits shall be granted for a specified period of time based on the nature of the operation and a reasonable progression of excavation. If seasonal operations are intended by the operator, that fact shall be set out in the permit. Extensions of the permits shall be granted on the basis of an application for extension under the guidelines set forth in this chapter.

(3) Permits shall be conditioned on compliance with the following:

(a) Projects shall be limited to the dimensions and depth approved by the department;

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- (b) Any waterway created by such project shall be a public waterway;
- (c) There will be no stockpiling or storage of materials contrary to s. 30.12, Stats., or chapter NR 116, Wis. Adm. Code, or any local floodplain zoning ordinance;
- (d) Progressive and final reclamation of the site;
- (e) If deemed necessary by the department, banks and drainages to navigable waterways shall be stabilized prior to and during project operations, and drainages shall be filtered where necessary to prevent siltation and water turbidity;
- (f) The operator shall notify the department in writing 15 days prior to initial commencement of project operations and 15 days after the final completion of project reclamation;
- (g) Such other requirements as are necessary to ensure project operation and progressive and final reclamation in a manner consistent with this chapter and to ensure the prevention of environmental pollution as defined in s. 144.30 (9), Stats; and
- (h) That the department shall retain continuing jurisdiction in the matter.

(4) Permits shall be denied if the department finds that the project does not conform with the minimum standards set forth in this chapter and the standards set forth in ss. 30.19, 30.195 and 30.20, Stats., as applicable, or if the applicant has previously failed and continues to fail to comply in a significant manner with ss. 30.19, 30.195 and 30.20, Stats., as they relate to sand, gravel or rock excavation, or this chapter, including failure to obtain a permit prior to any project operation.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 340.07 Violations. (1) An operator found either conducting project operations without the required permits or in violation of the conditions of a permit shall be ordered to submit a reclamation plan for the land already affected. Continued project operation and after-the-fact permit approval shall be prohibited until such a reclamation plan has been approved by the department and necessary progressive reclamation has been completed.

(2) The department may cancel and rescind the permit of any operator who is in violation of this chapter.

(3) The procedures set forth herein shall be in addition to any other remedies the department may seek.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 340.08 Permit modifications. (1) An operator, at any time prior to expiration of the permit, may apply for amendment or cancellation of a project permit or for a change in the reclamation plan for a project site. The application for the amendment, cancellation or change shall be submitted by the operator on a form provided by the department and shall identify the tract of land to be added to or removed from the permitted project site or to be affected by a change in the project and reclamation plan. Any increase in the size of the project site shall be subject to the notice and potential hearing provisions of s. 31.06 (2), Stats.

(2) When one operator succeeds to the interest of another in any uncompleted project operation, the department shall release the first operator from the responsibilities imposed by ss. 30.19, 30.195 or 30.20, Stats., and this chapter, as to such operation only if:

(a) Both operators are in compliance with the requirements and standards of this chapter and any permits and reclamation plans granted pursuant thereto;

(b) The successor operator assumes the responsibility of the former operator to complete the reclamation of the land; and

(c) The successor meets the standards set forth in section NR 340.04(6).

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 340.09 Permit extensions. (1) Requests for permit extensions must be submitted in writing to the department prior to the expiration date of the existing permit.

(2) No permit extension shall be granted unless the project is in compliance with the terms of the existing permit.

(3) Permit extensions may be granted for not more than one-half the duration of the original permit.

(4) Permit extensions may be conditioned upon correction of any unanticipated environmental damage occurring during the original permit.

(5) Permit extensions shall not be granted unless the permittee demonstrates that a reasonable progression of excavation has been followed at the project site.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 340.10 Inspections. Each project operation shall be inspected by department personnel at least once annually to ensure that the operation is in conformance with the operation's permit and progressive reclamation plan.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 340.11 Severability. If any provision of this chapter is declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.