

Chapter NR 346

DREDGING CONTRACT FEES

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NR 346.01 Purpose. These rules are promulgated pursuant to ss. 30.20 c2d cad and 227.11 c2d cad and cbd, Stats., to establish a commercial and noncommercial class of dredging projects, to provide for bonding and to establish procedures applicable to the removal of material from the beds of natural lakes and outlying waters for which a contract is required between the state of Wisconsin and the person desiring to remove bed material. Implementation of these rules will also provide for protection of the public interest in the natural lakes in Wisconsin during the execution of dredging contracts.

History: Cr. Register, September, 1980, No. 297, eff. 10-1-80; correction made under s. 13.93 c2md cbd 7., Stats., Register, October, 1995, No. 478.

NR 346.02 Applicability. All removal of bed material from the beds of natural lakes and the natural bed portions of raised lakes regulated by s. 30.20 c2d cad, Stats., must involve a contract between the person removing the material and the state of Wisconsin. The contract is required because the beds of natural lakes are owned by the people of the state of Wisconsin. The department of natural resources administers the trust interest in the beds of natural lakes on behalf of Wisconsin citizens. Definitions and procedures set forth in this rule will identify the contract consideration required for the sale of different types of bed material.

History: Cr. Register, September, 1980, No. 297, eff. 10-1-80.

NR 346.03 Definitions. c1d XApplication feeY means a fee required by s. 30.28, Stats., consisting of a basic \$10 fee plus a supplemental fee ranging from \$5 to \$65 in proportion to the project cost.

c2d XBed materialY means all earth, muck, sands and gravels, clays, marl, stones and boulders lying below the ordinary highwater mark of natural lakes.

c3d XBondsY means surety or performance bonds guaranteeing performance of a contract or obligation. The amount of the bond is related to the restoration cost required to eliminate dangerous conditions or adverse environmental conditions caused by the improper removal of bed material from the bed of a natural lake.

c4d XCommercial removal feeY means a fee related to the commercial value of natural lake bed material proposed for use in a commercial venture equal to the royalty paid to owners of similar upland commercially valuable materials.

c5d XNatural lakeY means any navigable, nonartificial body of water in a depression of land or a navigable, nonartificial widening of a river characterized by the general absence of any noticeable current from its inlet to its outlet. For purposes of this chapter, the term natural lake includes that portion of a raised lake that would exist in the absence of the artificial raising of the lake.

c6d XNoncommercial removal feeY means a minimal fee of

\$1 required as consideration for natural lake bed material removal projects where the material has no commercial value.

c7d XOutlying waterY means Lakes Superior and Michigan, Green Bay, Sturgeon Bay, Sawyer[s Harbor, and the Fox river from its mouth up to the dam at DePere.

c8d XRemoval of bed materialY means the excavation of materials by any means from the bed of a natural lake for the purposes of enhancement of a portion or all of the aquatic environment or for the purpose of gaining commercially valuable materials.

History: Cr. Register, September, 1980, No. 297, eff. 10-1-80.

NR 346.05 Fees. c1d Permit application fees shall be paid in accordance with the specifications in s. 30.28, Stats., and this chapter.

c2d Except as provided in sub. c3d, a fee of \$1 shall be charged for the removal of bed material from natural lakes.

c3d A fee will be charged for commercially valuable materials to be removed from the bed of a navigable lake. The fee will be equal to the royalty paid to owners of upland in the immediate vicinity of the natural lake in question for materials similar to those materials which are to be removed from the bed of a navigable lake. Current royalty prices for upland materials shall be obtained from commercial operators active in the project vicinity.

History: Cr. Register, September, 1980, No. 297, eff. 10-1-80.

NR 346.06 Bonding. c1d A performance or surety bond may be required for noncommercial removal projects regulated by this chapter. The bond amount shall be equal to the estimated cost for restoration of dangerous conditions or undesirable environmental conditions as determined by the department caused by incomplete or improper removal of bed materials from the project site or for removal in excess of volumes authorized. The maximum bond amount shall not exceed the estimated project cost. In determining the need for a bond the department shall consider the potential for creating unsafe conditions, environmental sensitivity of the project site, the qualifications of the applicant or contractor and potential for removal in excess of authority.

c2d A performance or surety bond shall be required for commercial removal projects. The amount of the bond shall be determined by the department on the basis of the methods of removal, project site conditions, project size, project duration and the qualifications of the applicant or contractor.

History: Cr. Register, September, 1980, No. 297, eff. 10-1-80.

NR 346.07 Procedure. c1d FEE SCHEDULES. cad Application fees shall be submitted as a part of a complete application for a contract to remove material from the beds of natural lakes. The application fee shall be remitted to the applicant if the requested dredging contract is denied.

cbd Noncommercial fees shall be submitted by the applicant upon receipt of the contract from the department.

ccd Commercial removal fee shall be submitted in annual installments based upon the charge specified in the contract per cubic yard times the number of cubic yards of material removed under the contract for that calendar year. Quantities removed will be measured in its original position, computed by the method of average end areas, with no correction for curvature, or by the method of truncated prisms.

Note: The methods of measuring the amounts of bed material removed during commercial projects were obtained from, XState of Wisconsin, Department of Transportation, Division of Highways, Standard Specifications for Road and Bridge Construction, Edition of 1975, Section 208.4 Method of MeasurementY, page 103.

The following excerpt from, XElementary Surveying, 5th Ed.Y, by Russell C. Brinker, pages 477 & 478, presents formulas for the methods of calculation specified by the Wisconsin department of transportation and incorporated in NR 346.

End-areas formulas. The volume between 2 vertical cross sections A1 and A2 is equal to the average of the end areas multiplied by the horizontal distance L between them. Thus:

$$V_e = \frac{L(A_1 + A_2) \text{ cu. yd.}}{2 \times 27}$$

This formula is approximate and gives answers which generally are slightly larger than the true prismoidal volumes. It is used in practice because of its simplicity. Increased accuracy is obtained by decreasing the distance L between the 2 sections. When the ground is irregular, cross-sections must be taken closer together.

Prismoidal formula. The prismoidal formula applies to the volumes of all geometric solids which can be considered prismoids. Most earthwork volumes fit this classification but relatively few of them warrant the precision of the prismoidal formula, which is:

$$V_p = \frac{L(A_1 + 4A_m + A_2)}{6}$$

where V_e = volume;

A₁ and A₂ = areas of successive cross-sections taken in the field;

A_m = area of a section midway between A₁ and A₂;

L = horizontal distance between A₁ and A₂.

c2d BONDS. cad Bonds in the amount specified in the contract received by the applicant shall be secured by the applicant and submitted to the department of natural resources prior to any removal of material by the applicant on the contract issued by the department.

cbd Upon the successful completion of the dredging contract the applicant shall request a release from the bonding requirements. The department shall inspect the dredging site. If the department determines that the contract has been satisfactorily completed, the department will advise the applicant and bonding company that the bond may be canceled.

History: Cr. Register, September, 1980, No. 297, eff. 10-1-80.

NR 346.08 Enforcement. c1d If the department determines that the dredging contract has not been properly completed, it may initiate action to cause the applicant or applicant[s] agents to comply with the terms of the contract.

c2d For dredging contracts with bonds where the applicant refuses to perform the requested remedial work, the department may require the bonding company or its agent to either perform the required remedial work or pay the amount of the bond to the department. The department, in its discretion, shall either complete the remedial work or contract for the completion of such work.

c3d If the department determines that the dredging project has not been properly completed, and there is no bond, the department may initiate an abatement action pursuant to s. 30.03, Stats., to cause the applicant to restore the project site to comply with the terms of the contract, and forfeiture if the department thinks a forfeiture is appropriate.

History: Cr. Register, September, 1980, No. 297, eff. 10-1-80.

NR 346.09 Municipal dredging projects. Dredging from the beds of natural lakes by municipalities defined in s. 291.01 c12d, Stats., may be done with no compensation to the state if the material dredged is for a municipal purpose and not for resale.

History: Cr. Register, September, 1980, No. 297, eff. 10-1-80; correction made under s. 13.93 c2md cbd 7., Stats., Register January 2002 No. 553.