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For more information concerning the history of these regulations, please see the [Table of Regulations](#).

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CHAPTER E-9

ENVIRONMENTAL PROTECTION ACT

EXCAVATION PITS REGULATIONS

Pursuant to section 25 of the *Environmental Protection Act* R.S.P.E.I. 1988, Cap. E-9, Council made the following regulations:

1. In these regulations

Definitions

- (a) “abandoned” in relation to an excavation pit, means an excavation pit for which a valid permit has not been in force for a period of one year; abandoned
- (a.1) “Act” means the *Environmental Protection Act* R.S.P.E.I. 1988, Cap. E-9; Act
- (b) “contractor” means any person who has an understanding, agreement or contract with an owner of property to open an excavation pit on the land of the owner; contractor
- (c) “excavation pit” means any excavation in the ground for the purpose of searching for or removing clay, gravel, sand, shale, subsoil, topsoil, rock or any other surface or subterranean deposit, but does not include an excavation made within the boundaries of a highway, or a snow-trap constructed to protect a roadway from snow accumulation; excavation pit
- (d) “highway” means a highway as defined in the *Roads Act* R.S.P.E.I. 1988, Cap. R-15; highway
- (e) “Minister” means the Minister of Agriculture, Aquaculture and Environment; Minister
- (f) “operate”, in relation to an excavation pit, means to search for, move or remove any clay, gravel, sand, shale, subsoil, topsoil, rock or any other surface or subterranean deposit, or any part thereof; operate
- (g) “residential premises” or “premises” includes watercourse
- (i) any house, dwelling, apartment, flat, tenement or other place that is occupied or may be occupied by a natural person as a residence or that part of any such place that is or may be occupied by a natural person as a residence, whether such residential premises are furnished, partly furnished or unfurnished, and
 - (ii) land rented as a mobile home site whether or not the lessor also rents that mobile home to the lessee,

but does not include premises exempted by these regulations;
(EC753/90; 639/93; 239/07)

Requirement for
permit

- 2.** (1) Subject to section 6, no person shall
- (a) open or operate an excavation pit;
 - (b) remove excavated material from an excavation pit;
 - (c) being the owner of any property
 - (i) allow any other person to operate an excavation pit on that property,
 - (ii) allow any other person to remove excavated material from that property,
- except in compliance with a valid permit issued under these regulations.

Compliance by
owner with order of
Minister

- (2) The owner of property upon which an excavation pit is situated, whether or not there has been a permit issued therefor, shall at his own expense, comply with the provisions of an order by the Minister for the closure and restoration of the pit. (EC753/90)

APPLICATIONS FOR PERMITS

Application for
permit

- 3.** (1) A contractor or a property owner who wishes to obtain a permit to open or operate an excavation pit shall apply for the permit on a form approved by the Minister and pay the fee of \$100.

Applicant

- (2) An application under subsection (1) shall be made
- (a) by the contractor in the case of an excavation pit that is to be operated by a contractor, but must contain the approval in writing of the owner of the property on which the excavation pit is to be located; or
 - (b) by the owner of the property on which the excavation pit is to be located, in the case of an excavation pit that is to be operated by the owner of such property.

Contents of
application

- (3) Subject to subsection 4(2), an application under subsection (1) shall contain
- (a) a map or plan showing the location, shape, dimension, approximate area and description of the property on which the excavation pit is to be located and the location of the proposed excavation pit, together with existing grades of the property on which the excavation pit is to be located, and the anticipated grades of the excavation pit when it has been abandoned.
 - (b) details of the existing land use of the proposed site of the excavation pit;
 - (c) information in respect of the use of all land within a distance of 500 metres of the boundary of the proposed pit;

- (d) the location and extent of all watercourses within the property boundaries or within 250 metres of the excavation pit;
- (e) the details of all drainage from the proposed excavation pit;
- (f) the plans to prevent soil eroded from the excavation pit from entering any adjacent watercourses;
- (g) a description of all entrances and exits from the proposed excavation pit;
- (h) the location and amount of all stockpiles of the matter being excavated, overburden and waste;
- (i) proposals for the protection of people and livestock from any hazards that may be created by the excavation pit, including proposals for the fencing and posting of signs for the pit;
- (j) a plan for the restoration of the site to a condition suitable for agricultural, reforestation or other use acceptable to the Minister; and
- (k) revoked by EC239/07;
- (l) such other information as may be required by the Minister.

(4) A plan referred to in clause (3)(a) may be an aerial photograph, a survey plan certified by a Prince Edward Island land surveyor, or it may be a line drawing made by the applicant, but any plan submitted shall be of such detail and shall identify the matters referred to in subsection (3) with such clarity as shall be satisfactory to the Minister. Plans

(5) Each application under subsection (1) shall contain the real property tax number and the name of the owner appearing on the tax notices under the *Real Property Tax Act* R.S.P.E.I. 1988, Cap. R-5. Tax number

(6) The Minister may require an applicant to post a bond, in an amount and for a term acceptable to the Minister, to cover the costs of restoration of the site in accordance with the plan submitted with the application under clause 3(3)(j). Bond

(7) Revoked by EC239/07. Fees for permit
renewal

(8) No fee shall be payable in respect of an application submitted by the owner of property on which a proposed pit is located where the owner certifies that no material will be removed for sale. (EC753/90; 639/93; 162/04; 239/07) *Idem*

PERMITS

4. (1) Except as provided in subsections (2) and (4), no permit shall be issued Refusal of permit

- (a) if an application in accordance with section 3 has not been submitted;

- (b) if the plan submitted by the applicant does not contain sufficient particulars;
- (c) if the use of the land as an excavation pit would be in contravention of any other Act, regulation or bylaw;
- (d) if any part of a proposed excavation pit is within 300 metres of any residential premises other than a residence occupied by the applicant;
- (d.1) if any part of a proposed excavation pit is within 500 metres of any church, school, hospital, nursing home, cemetery, public hall, bathing beach, public skating rink, public park or public playground;
- (e) if in the opinion of the Minister the location of a road from the excavation pit giving access to the highway would create a hazard to the public;
- (f) if in the opinion of the Minister the proposals of the applicant are insufficient to provide reasonable protection for people and livestock from the hazards created by the excavation pit;
- (g) if in the opinion of the Minister any detrimental effect on the water-table or surface drainage patterns would occur;
- (h) if any part of the site proposed for an excavation pit is within 50 metres of a watercourse;
- (i) if in the opinion of the Minister the operation of an excavation pit at that location would create a conflict with existing land use, natural features or aesthetic quality of the surrounding area;
- (j) revoked by EC239/07;
- (k) for any period of time exceeding one year from the date of issue;
or
- (l) for a pit to be located within 60 metres of a highway.

Exception

(2) Where an application for a permit under section 3 is made in respect of an excavation pit for which a valid permit has been in force within six months prior to the date on which the application was received by the Minister the Minister may waive the requirements of clauses 3(3)(a) to (i).

Exception

(3) Notwithstanding anything to the contrary in subsection (2), the Minister may issue a permit under subsection 4.1(1), if

- (a) the owners of all residential premises within 101 to 300 metres of any part of the proposed excavation pit acknowledge in writing that they have no objection to the proposed excavation pit; and
- (b) no residential premises are located within 100 metres of the proposed excavation pit.

Waiver of certain requirements

(4) Where the Minister is of the opinion that

- (a) it is in the public interest;

(b) it would result in a substantial improvement to the usefulness and appearance of the property; and
 (c) there would be no hazard to the public or damage to the environment,
 the Minister may waive the requirements of clauses (1)(d), (d.1), (h) and (l), and issue a permit for the pit to be valid for a period not exceeding six months. (EC753/90; 239/07; 602/15)

4.1 (1) Subject to section 4, the Minister may issue a permit to an applicant on an application made under subsection 3(1), if the Minister considers that

Minister may issue permit

- (a) the application complies with section 3;
- (b) the application is in the public interest;
- (c) the operation of the proposed excavation pit would result in a substantial improvement to the usefulness and appearance of the property subject to the permit;
- (d) the operation of the proposed excavation pit would not represent a hazard to the public or result in damage to the environment; and
- (e) where the Minister has required a bond to be posted under subsection 3(6), the applicant has posted such a bond.

(2) A permit issued under this section expires on January 31 of the year following its issue. (EC239/07)

Permit expires

EXCAVATIONS FROM EXCAVATION PITS

5. (1) No person shall, in operating an excavation pit,

Operation

- (a) excavate below a line extending horizontally from an adjacent property boundary, within eight metres of that boundary; or
- (b) excavate below a gradient line which slopes downward from an adjacent property boundary at a slope of one unit vertical to one unit horizontal.

(2) The holder of a permit for an excavation pit shall

Screening

- (a) except in case of an excavation pit permitted under subsection 4(4), ensure that the interior of the excavation pit is screened from view of every adjacent highway either by a growth of trees of sufficient density or by the creation of an earthen berm;
- (b) control dust on the access road to the pit by means of an approved method.

(3) The holder of a permit shall, before the pit becomes an abandoned pit, slope all walls of the excavation pit to a run-rise ratio of at least three to one.

Walls

Compliance with conditions (4) No person who holds a permit under these regulations shall fail to carry out any proposal contained in the application or any condition placed on the operation of the excavation pit. (EC753/90)

GENERAL

Application **6.** These regulations apply to all excavation pits except those located in the City of Charlottetown, or any town. (EC753/90)

Suspension etc. of permit **7.** (1) Where the Minister has reasonable and probable grounds to believe, and does believe, that a person has contravened or violated any provision of these regulations, or has failed to comply with any provision or condition of a permit issued under these regulations, he may, subject to subsection (2), upon giving reasonable notice to such person and an opportunity to be heard with respect to the alleged contravention, violation, or failure to comply, suspend or revoke the permit and may issue an order requiring the person to take such corrective action as the Minister deems necessary for the protection of the environment.

Suspension etc. before hearing where environment may be harmed (2) Where, in the opinion of the Minister, the giving of notice and an opportunity to be heard before the issuance of a suspension or revocation of a permit, or an order for corrective action, could result in irreparable or undue harm to the environment, the Minister may issue the suspension, revocation or order forthwith, provided that he at the same time advises the person affected that he has the opportunity to be heard as soon as practicable with respect to the suspension, revocation or order, and provide such opportunity.

Notice (3) The recipient of an order pursuant to subsection (1) or (2) shall have five days of the date of receipt of the order to provide the Minister with notice that he seeks an opportunity to be heard.

Functions of Minister (4) The Minister, in providing an opportunity to be heard pursuant to subsection (1) or (2) shall

- (a) consider any representations made thereat;
- (b) determine whether he shall affirm, revoke, or revise his decision on the basis thereof; and
- (c) advise the person affected accordingly.

Failure to comply with order (5) Where a person to whom an order has been issued pursuant to this section fails to comply with the order or any provision thereof, the Minister may carry out the directives contained in the order and charge the costs of the work done to the person to whom the order was issued, and the person charged is personally liable therefor, and neither the Minister nor any person acting for him hereunder is personally liable for

any action taken under this section, nor for the costs of any goods, materials, or labour incurred in taking such action.

(6) The costs involved in carrying out the work done under this section are a debt due to the Crown by the person to whom the order was issued and may be recovered from him as such. (EC753/90) Costs

8. The requirements of these regulations are in addition to and do not abrogate the common law or occupier's liability. (EC753/90) Saving

9. Revoked by EC239/07. (EC753/90; 239/07) Offences

10. In any proceedings relating to an offence under these regulations a certificate purporting to be signed by a person authorized by the Provincial Treasurer to the effect that the person named therein is the person in whose name the parcel of land specified in the certificate is assessed in the assessment roll maintained under the *Real Property Assessment Act* R.S.P.E.I. 1988, Cap. R-4 is *prima facie* evidence that the person so named is the owner of the parcel of land so specified and that the person signing the certificate has authority to do so. (EC753/90; 639/93) Evidence of ownership of land

11. Nothing in these regulations shall be deemed to affect the application of the *Oil and Natural Gas Act* R.S.P.E.I. 1988, Cap. O-5 or the *Mineral Resources Act* R.S.P.E.I. 1988, Cap. M-7. (EC753/90) Application of other acts