



PLEASE NOTE

This document, prepared by the [Legislative Counsel Office](#), is an office consolidation of this regulation, current to April 3, 2004. It is intended for information and reference purposes only.

This document is *not* the official version of these regulations. The regulations and the amendments printed in the [Royal Gazette](#) should be consulted to determine the authoritative text of these regulations.

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

If you find any errors or omissions in this consolidation, please notify the Legislative Counsel Office at (902) 368-4291 or by email to pmporter@gov.pe.ca.

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 |
| (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 <i>Roads Act</i> R.S.P.E.I. 1988, Cap. R-15; | highway |
| (e) “Minister” means the Minister of Fisheries, 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) “watercourse” means the full width and length, including the bed and shore of every stream, river, estuary, lake, pond, creek, spring, ravine and gulch or any part thereof, whether same contains water or not. (EC753/90; 639/93) | watercourse |
| 2. (1) Subject to section 6, no person shall | Requirement for permit |
| (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) Before opening or operating any excavation pit, a contractor or property owner shall have made application for and be in possession of a valid permit issued therefor.

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; and
- (j) a plan for the restoration of the site to a condition suitable for agricultural, reforestation or other use acceptable to the Minister;
- (k) an undertaking to post a bond or other surety acceptable to the Minister to cover the costs of carrying out the plan mentioned in (j);
- (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) A permit issued under this section expires 12 months after the date of issue. Expiry

(7) The fee of \$100 for a permit or a renewal of a permit is payable by the applicant to the Provincial Treasurer. 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) *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 the proposed excavation pit is within 300 metres of any residential property other than a residence occupied by the applicant or within 500 metres of any church, school, hospital, cemetery, public hall, bathing beach, 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) if the bond or surety referred to in clause 3(3)(k) has not been executed;
- (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).

Issue

(3) Where the Minister is satisfied that the requirements of these regulations have been complied with, he shall issue a permit for an excavation pit subject to any conditions contained in the permit.

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), (h) and (l), and issue a permit for the pit to be valid for a period not exceeding six months. (EC753/90)

EXCAVATIONS FROM EXCAVATION PITS

Operation

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

- (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

(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)

Compliance with conditions

GENERAL

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

Application

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. of permit

(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.

Suspension etc. before hearing where environment may be harmed

(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.

Notice

Functions of Minister	<p>(4) The Minister, in providing an opportunity to be heard pursuant to subsection (1) or (2) shall</p> <ul style="list-style-type: none"> (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	<p>(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.</p>
Costs	<p>(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)</p>
Saving	<p>8. The requirements of these regulations are in addition to and do not abrogate the common law or occupier's liability. (EC753/90)</p>
Offences	<p>9. Any person who violates any provision of these regulations or fails to comply with any condition of a permit or fulfill any obligation imposed on him by these regulations is guilty of an offence and is liable on summary conviction to the penalties specified in section 32 of the <i>Environmental Protection Act R.S.P.E.I.</i> 1988, Cap. E-9. (EC753/90)</p>
Evidence of ownership of land	<p>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 <i>Real Property Assessment Act R.S.P.E.I.</i> 1988, Cap. R-4 is <i>prima facie</i> 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)</p>
Application of other acts	<p>11. Nothing in these regulations shall be deemed to affect the application of the <i>Oil and Natural Gas Act R.S.P.E.I.</i> 1988, Cap. O-5 or the <i>Mineral Resources Act R.S.P.E.I.</i> 1988, Cap. M-7. (EC753/90)</p>