

Town of Eaton

1991

GRAVEL PIT REGULATIONS

PURPOSE: To cope with the recognized hazards which open excavations create; to safeguard the public health and welfare; to preserve our natural assets of soil, water, forests and wildlife; to maintain aesthetic features of our environment; to prevent land and water pollution; and to promote soil stabilization; as enabled in RSA 155-D (Chapter 481 of the 1979 Session Laws).

DEFINITIONS. For these regulations:

- I. "Earth" means sand, gravel, rock, soil or construction aggregate.
- II. "Excavation" means a land area which is used, or has been used, for the commercial taking of earth, including all slopes.
- III. "Regulator" means the Planning Board of the Town of Eaton.
- IV. "Active Excavation" means all excavation existing prior to August 24, 1979, and for which a permit has been applied for by April 1, 1981. After this date, an active excavation is one which has a valid permit.

PERMIT REQUIRED. No owner shall permit any excavation of earth on his premises without first obtaining a permit therefor, except:

- I. Excavation that is incidental to the lawful construction or alteration of a building or structure or the lawful construction or alteration of a parking lot or way including a driveway on a portion of the premise where removal occurs.
- II. Excavation that is incidental to agricultural or silvacultural activities, normal landscaping or minor topographical adjustment.
- III. Excavation from an area contiguous to or from contiguous land in common ownership with, stationary manufacturing and processing plants in operation as of the effective date of this chapter which use earth obtained from such areas.
- IV. Excavation from granite quarry.
- V. Excavation performed exclusively for the lawful construction, reconstruction or maintenance of a Class I, II, III, IV, or V highway by a government which has a contract for the construction, reconstruction or maintenance of the highway, provided that a copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with and accepted by the regulator prior to start of excavation but such excavation shall not be exempt from the provisions of RSA 155-D:4 and 155-D:10.

APPLICATION FOR PERMIT. Any owner or owner's designee subject to this chapter shall, prior to excavation of his land, apply to the regulator for a permit for excavation. The applicant shall also send a copy of the application to the Conservation Commission of Eaton. Such application shall be signed and dated by the applicant and shall contain at least the following information.

- I. The name and address of the owner of the land to be excavated, the person who will actually do the excavating and all abutters to the premises on which the excavation is proposed:
- II. A sketch and description of the location and boundaries of the proposed excavation, the number of acres to be involved in the project and the municipalities in which the project lies.
- III. A sketch and description of the access and visual barriers to public highways to be utilized in the proposed excavation.
- IV. The breadth, depth and slope of the proposed excavation and the estimated duration of the project.
- V. The elevation of the highest annual average ground water table within or next to the proposed excavation.
- VI. A plan for the restoration of the area affected by the excavation at least in compliance with RSA 155-D:5, including a timetable therefor as to fully depleted sites within the excavation area during said project; and
- VII. Such other information as the regulator may require.

PROHIBITED PROJECTS. The regulator shall not grant permit:

- I. Where an excavation is proposed below road level within 50 feet of any highway right of way unless such excavation is for the purpose of said highway.

- highway.
- II. For excavation within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter unless approval is requested by said abutter;
 - III. When the excavation is not permitted by zoning or other applicable ordinance.
 - IV. When the issuance of the permit would be unduly hazardous or injurious to the public welfare;
 - V. Where existing visual barriers in the area specified in RSA 155-D:3, III would be removed, except to provide access to the excavation;
 - VI. Where the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey.
 - VII. When excavation is planned beneath or adjacent to inland surface waters in such manner that a permit is required from the Water Supply and Pollution Commission, the Water Resources Board, the Special Board on Dredge and Fill or other State or Federal agencies with jurisdiction over the premises, but the regulator may approve the application when all necessary permits have been obtained; or
 - VIII. Where the project cannot comply with the restoration provisions of RSA 155-D:5.

RESTORATION. Within 12 months after the expiration date in the permit therefore or the completion of the excavation, whichever first occurs, the owner of the excavated land shall restore, or cause to be restored, the area affected by the excavation to meet each of the following minimum conditions:

- I. Except for exposed rock ledge, said area shall be covered with vegetation suitable to prevent erosion and with soils suitable to sustain such vegetation;
- II. Debris resulting from the excavation shall be buried or removed.
- III. All slopes shall be graded to natural repose for the type of soil of which they are comprised; and
- IV. The elimination of any standing bodies of water created in the excavation project as may constitute a hazard to health and safety unless the regulator specifies different restoration.

HEARING. Prior to the regulator approving an application for an excavation permit or an application for an amended excavation permit, a public hearing shall be held within 30 days on such application. A notice of said hearing shall be sent to all abutters and shall specify the grounds for the hearing as well as the date, time and place and at least 14 days notice of the time and place of such hearing shall be published in a paper of general circulation in Eaton and a legal notice thereof shall also be posted in at least 2 public places in Eaton; the 14 days shall not include the day of publication nor the day of the meeting, but shall include any Saturdays, Sundays and legal holidays within said period. Within 20 days of said hearing or any continuation thereof, the regulator shall render a decision approving or disapproving the application, giving reasons for disapproval.

ISSUANCE OF PERMIT. If the regulator after the public hearing approves the application for a permit and determines it is not prohibited by RSA 155-D:4, it shall upon receipt of an excavation fee of \$25.00 and the posting of a bond or other such surety with the municipal treasurer in an amount, as it requires, reasonably sufficient to guarantee compliance with the permit, grant a permit to the applicant for an excavation. A copy of the permit shall be prominently posted at the excavation site or the principal access thereto. A permit shall not be assignable or transferable without the prior written consent of the regulator. A permit shall specify the date upon which it expires. The regulator may include in permit such reasonable conditions as are consistent with the purpose of this chapter including the provision of visual barriers to the excavation. Permits will be issued for a maximum of four (4) years for excavation areas up to one acre. Areas over one acre will be issued permits for a maximum of two (2) years.

APPEAL. If the regulator disapproves or approves an application for an excavation permit or an application for an amended permit, any interested person affected by such decision may appeal to the regulator for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable and said appeal shall be filed within 10 days of the date of the decision appealed from. The regulator shall either grant or deny the request for rehearing within 10 days, and if the request is granted, a rehearing shall be scheduled within 30 days. Any person affected by the regulator's decision on a motion for rehearing to the regulator may appeal in conformity with the procedures specified in RSA 31:77-87.

APPLICATION FOR AMENDMENT. When the scope of a project for which an excavation permit has been issued is proposed to be altered so as to affect either the size of location of the excavation, the rate of removal or the plan for restoration, the owner shall submit an application for amendment of his excavation permit which application shall be subject to approval in the same manner as provided for an excavation permit.

ENFORCEMENT.

- I. The regulator or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of his permit or this chapter or made a material misstatement in the application upon which his permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with RSA 155-D:9.
- II. The regulator or a person affected thereby may seek an order from the superior court that the violator cease and desist from violation of any provision of his permit or this chapter and take such action as may be necessary to be in compliance with his permit and this chapter. If the Superior Court issues such an order, the regulator or the person affected, as the case may be, shall have judgement for all costs and attorney fees in seeking such an order.
- III. To ascertain if there is compliance with this chapter, a permit issued hereunder or an order issued hereunder, the regulator or its duly authorized agent may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since the effective date of this chapter.
- IV. Whoever violates any provision of this chapter, a permit issued hereunder or a valid order issued hereunder shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

REGULATIONS. The regulator may adopt such regulations as may be reasonably necessary to carry out the provisions of this chapter including adopting a permit fee schedule.

EXISTING OPERATIONS. Any owner of an existing excavation in use as of the effective date of these regulations and which is subject to these regulations may continue such existing excavation. All such persons shall register their operation on a form supplied by the Planning Board by June 1, 1981, and shall perform restoration in compliance with RSA 155-D:5 within a reasonable period following the intended cessation of the excavation or any completed section thereof.

EFFECTIVE DATE. August 24, 1979.