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4.4.22 Mined Land Reclamation Permit Requirements

4.4.22.1 Introduction

A Mined Land Reclamation Permit is required for:

- All excavations and related activities defined as mining (see Appendix C, Definitions), from which more than 1,000 tons or 750 cubic yards, whichever is less, of a mineral(s) is (are) removed from the earth during twelve successive calendar months.
- The excavation of 100 cubic yards or more of minerals in or adjacent to any body of water not subject to NYSDEC permitting authority for their disturbance (“unprotected waters” – defined as class C or lower) under Protection Waters legislation (Article 15 of the Environmental Conservation Law). Alternatively, work in or adjacent to protected waterbodies must comply with Article 15 regulations (6 NYCRR Part 608).

It is rare for the Department to obtain a Mined Land Reclamation Permit. Mined Land Reclamation Permits required for NYSDOT projects are almost always obtained by the Contractor and landowner for mining activities outside of the project area.

**Alert!**

In addition to a Mined Land Reclamation Permit, other permits from federal, state, and local agencies may be required before work can commence in a borrow area. See NYSDEC’s webpages: Mined Land Reclamation Permit and Other Requirements for a Complete Application.

4.4.22.2 Section Objectives

This section details the types of instances in which a Mined Land Reclamation Permit is needed and the procedures that should be followed for obtaining and complying with a Mined Land Reclamation Permit.
4.4.22.3  NYSDOT Policy

It is the policy of NYSDOT to ensure that the necessary materials for capital projects and maintenance operations are obtained in accordance with all applicable laws and regulations, and to restore areas that were disturbed in the process of obtaining said materials to a pleasing and acceptable condition.

4.4.22.4  Legal Basis

The following federal and state laws and regulations are used as a source for this guidance:

State Laws:
Title 27 of the NYS Environmental Conservation Law (ECL) § 23-2703 declares that it is the State's policy to foster and encourage the development of an economically sound and stable mining industry, and to provide for the management and planning for the use of mineral resources.

- ECL § 23-2705 provides definitions such as "mined land-use plan" and "mineral".
- ECL § 23-2709 is the administration of title, and details the powers and duties of NYSDEC to administer and enforce provisions in this title.
- ECL § 23-2721 states that any act, omission, determination or order of NYSDEC, pursuant to or within the scope of this title, may be reviewed in accordance with Article Seventy-Eight of the Civil Practice Law and Rules (CPLR).
- ECL § 8-0117 details the phased implementation of actions or classes of actions by any state agency.

State Regulations:
- 6 NYCRR Parts 420-426

Federal Laws & Regulations:
No federal laws or regulations similar to the State's law and regulations exist for non-coal mines. The U.S. Mine Safety and Health Administration (MSHA), however, regulates health and safety aspects and procedures in all mines.

4.4.22.5  General Methodology Analysis and Evaluation

Determination as to whether or not a permit is required:
If a project involves mining (or excavating backfill, removing fill, etc.) more than 1,000 tons or 750 cubic yards (whichever is less); or, mining of 100 cubic yards of minerals from or adjacent to any body of water that is not regulated by Article 15 of the ECL within 12 successive months, then a Mined Land Reclamation Permit is required UNLESS the mining (or excavation, removal, etc.) is an integral part of a construction project and located within the project area. For the purpose of these permit requirements, project area means an area shown on NYSDOT plans within the project limits that is either on the State right-of-way, leased, or held on easement by the State. The project area considered to be an integral part of the project activities shall typically include the road section plus a reasonable work area at top of cut and toe of fill. To be
exempt from permitting requirements, the excavation or grading must meet the following criteria:

- Be necessary to prepare the site for construction;
- Take place within the project area and be an integral part of the construction activities;
- Must be reclaimed (see definition of “reclamation”) concurrently with the project or soon thereafter (i.e., within 6 months); and
- Have all necessary federal and state approvals for the project (Note: local municipalities may have land use restrictions or requirements such as property-line setbacks and operational timing restrictions. The Contractor is encouraged to follow these restrictions when appropriate, but is not obligated to comply with those local laws or ordinances that conflict with activities the Contractor must undertake as a part of a contract with the State. See IV. Local Ordinances under §107-01 Laws, Rules, Regulations and Permits of the Contract Administration Manual (CAM)).

For mines and borrow areas off of State right-of-way, lands leased or held on easement by the State, the Contractor and landowner are obligated to comply with applicable federal, state and local laws and ordinances. Please refer to NYSDOT Standard Specifications Section 107-08 Protection and Restoration of Property and Landscape.

Tip:
1,000 tons or 750 cubic yards is roughly equivalent to 40-50 tandem axle (10-wheeler) dump truck loads.

**Permit Application Procedure:**
If a Mined Land Reclamation Permit is required, then the Contractor must obtain the permit before the excavation or removal work can begin. The Contractor, however, can use the NYSDOT contract documents to satisfy NYSDEC’s requirements for a mined land-use plan. The documents must address the reclamation of the excavations/borrow areas if reclamation is not included as part of a construction project. NYSDEC staff may monitor the operation, in cooperation with NYSDOT’s EIC to ensure that the excavation and restoration activities are conducted properly, and that the borrow area is properly reclaimed.

**Alert!**
Permit applications typically require at least 45 days for NYSDEC approval, but longer time frames are required to review major projects and projects that require a public hearing (specific to the Mined Land Reclamation Permit Application). Typically, obtaining a permit for a major project may take up to 90 days after the application is deemed “complete” by NYSDEC (if no public hearing is needed), and up to 150 days after the completeness determination if a public hearing is necessary. Permit timeframes are provided at the following NYSDEC webpage: [http://www.dec.ny.gov/lands/25002.html](http://www.dec.ny.gov/lands/25002.html)

Please refer to the following NYSDEC website for additional information on the permit application procedure:

Other requirements for a complete application:
4.4.22.6  Interagency Coordination and Agreements

Previous interagency agreements have been incorporated into the current Mined Land Reclamation regulations, 6 NYCRR Parts 420 through 426.

4.4.22.7  Project Development and Construction Guidance

Permit requirements are summarized in Appendix 1, Federal and State Environmental Requirements, Regulations and Guidelines for their Implementation (Page 1-49) of the NYSDOT Project Development Manual.


4.4.22.8  Operations Guidance

Because the State's Mined Land Reclamation regulations exempt only excavation or grading "from construction projects", a permit is required if more than 1,000 tons or 750 cubic yards (whichever is less) of material is removed within twelve successive months from other than construction projects, even if the land is owned or leased by the State. Maintenance staff should seek assistance from the Regional Maintenance Environmental Coordinator (MEC) in preparing and submitting for a Mined Land Reclamation Permit if it is determined that one is required for maintenance activities.

No Mined Land Reclamation Permit is required for maintenance dredging, however, other permits may be required.
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Will the project involve mining (or excavation, removal, etc.) in or adjacent to waterbodies that are regulated by Article 15? YES

This project is not covered by the NYSDEC Mining Permit Program and may require an Article 15 Permit.

NO

Article 15 Permit Required*

Local

NO

NYSDOT or local project?

YES

NYSDOT

Mining in State ROW?

NYSDOT personnel Mining?

YES

Follow NYSDEC/ NYSDEP Article 15 MOU*

NO

NO

No Mined Land Reclamation Permit is required*

YES

Is the mining an integral part of a construction project and within the project area?

A Mined Land Reclamation Permit is required*

*Note – Other permits may be needed (i.e., Article 24, Section 404, SPDES, etc.). Consult with your Regional Environmental Unit.
4.4.22.10 Local Projects Guidance

All transportation projects are subject to the laws, regulations and requirements described herein no matter how the project is funded or who has designed the project, let the contract, or is contracted to perform the work.

4.4.22.11 Appendices

A. Legal Citation

State Laws:
- Environmental Conservation Law (ECL) § 23-2703
- ECL § 23-2705
- ECL § 23-2709
- ECL § 23-2721
- ECL § 8-0117

State Regulations:
- 6 NYCRR Parts 420-426

Federal Laws & Regulations:
- Not Applicable

B. Scope of Services

No part of the Base Scope of Services relates directly to Mined Land Reclamation Permits; however, various environmental studies including, but not limited to, the delineation of wetlands may be required in order to determine which permit program (if any) borrow activities will fall under.

C. Definitions

The following terms, unless otherwise noted, are defined in 6 NYCRR Part 420.1:

Affected land and land affected by mining - means the sum of that surface area of land or land under water which: (i) has been disturbed by mining since April first, nineteen hundred seventy-five (1975) and not been reclaimed, and (ii) is to be disturbed by mining during the term of the permit to mine.

Haulageway - means all roads utilized for mining purposes, together with that area of land over which material is transported, that are located within the permitted area.

Landowner - means the person in whom the legal title to the surface rights of the affected land is vested.
**Mine** - means any excavation from which a mineral is to be produced for sale or exchange, or for commercial, industrial or municipal use; all haulageways and all equipment above, on or below the surface of the ground used in connection with such excavation, and all lands included in the life of the mine review by NYSDEC.

**Mined land-use plan** - means the applicant’s proposal for mining and reclaiming the affected land. The mined land-use plan shall consist of a mining plan and a reclamation plan which shall include maps and other documents as required to describe and illustrate environmental, physiographic, cultural and surface conditions at and surrounding the mine as well as the applicant’s proposed mining and reclamation methods.

**Mineral** - means any naturally formed, usually inorganic, solid material located on or below the surface of the earth. For the purposes of this title, peat and topsoil shall be considered minerals.

**Mining** - means the excavation of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. **Mining** shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of waterbodies, or excavations in aid of agricultural activities.

**Overburden** - means all of the earth, vegetation and other materials which lie above or alongside a mineral deposit.

**Project Area** - (not defined in 6 NYCRR 420.1) for the purpose of these permit requirements, means an area shown on NYSDOT plans within the project limits that is either on the State right-of-way, leased, or held on easement by the State. The project area considered to be an integral part of the project activities shall typically include the road section plus a reasonable work area at top of cut and toe of fill.

**Reclamation** - means the conditioning of the affected land to make it suitable for any productive use including but not limited to: the planting of forests, the planting of crops for harvest, the seeding of grass and legumes for grazing purposes, the protection and enhancement of wildlife and aquatic resources, the establishment of recreational, residential, commercial, industrial and historical sites or for other uses demonstrated to be consistent with the policy of the department.

**Surface consolidated mine** - means a mine from which such minerals as limestone, dolostone, sandstone, marble, slate, flagstone, curbing, dimension stone, riprap, abrasives, gypsum, iron, tale, titanium or other metallic or nonmetallic minerals are removed.

**Surface unconsolidated mine** - means a mine from which such minerals as topsoil, borrow, fill, peat, humus, sand or gravel are removed.
D. References/Technical Documents

NYSDEC Mining and Reclamation
http://www.dec.ny.gov/lands/5020.html

E. Contacts

NYSDEC
Division of Mineral Resources
625 Broadway
Albany, NY 12233-6500
518-402-8072
dmn.info@dec.ny.gov

NYSDEC Regional Directory
http://www.dec.ny.gov/about/558.html

F. Sample Statements

Not Applicable.