Industrial Sand Mining near Waterways - Wetlands

Wisconsin waters are owned by all

“. . . the river Mississippi and the navigable waters leading into the Mississippi and the St. Lawrence, and the carrying places between the same, shall be common highways and forever free . . .”

Article IX, Section 1 of the Wisconsin Constitution
Wisconsin’s Wetlands

Identifying Navigable Waters

A waterway is navigable – public - if it

- is capable of floating the lightest
  recreational watercraft in common use on
  a recurring basis
- has defined bed and banks (an ordinary
  high water mark)
What is a Wetland?

- Has Hydric (wetland) soils
- Has dominance of wetland plants
- Has hydrology (water present in soil or at surface)

Navigable Waters-Wetland Laws

- s. 30.19 Stats - Ponds/Grading
- s. 30.195 – Stream realignment
- s. 30.20 – Dredging
- s. 30.123- Bridges/Culverts
- NR 340 – Non-metallic Mining Code

- s. 281.36 Stats – Wetland
- NR 103 – Wetland Water Quality Stds.
Jurisdiction
Wis. Stats. Section 30.19 requires permits for the following activities:
1. Construct, dredge, or enlarge any artificial water body that connects with a navigable waterway.
2. The construction of a pond or waterway that is within 500 feet of a navigable waterway.
3. The enlargement of a navigable waterway.
4. Grading in excess of 10,000 square feet on the bank of a navigable waterway.

Jurisdiction
• Wis. Stats. 30.20 requires permits to remove material from the bed of navigable waters.
• Wis. Stats. 30.195 requires permits to change the course or straighten a navigable stream.
• Wis. Stats. 30.123 requires permits for bridge/culvert over navigable water.
NR 340 Nonmetallic Mining Reclamation – Navigable Waters

- Recognizes the sensitivity of stream/lakebed and immediate banks and potential harm
- Avoid excavation in channel and bank where alternatives are available
- Applicant must demonstrate that bed/bank excavation is technically, economically and environmentally feasible and complies with all laws.
- Extra protection to ORW waters
- Defines the application process and decision process
- Code does not apply to sites < 1 acre – Ch 30 laws still apply
**Permit Application**

- Soils and geologic site composition
- Surface water, wetlands, floodplain
- Groundwater/surfacewater elevations
- Historical, arch features
- Existing topography
- Land legal description
- Operation Reclamation Plan
- Other local, State, Fed. Permits
- Mining purpose
- Upland alternatives including other property

**Financial Assurance**

- Costs for progressive staged/unstaged reclamation
- Greater of $3772/acre or $0.48/yard (’14 dollars)
- Performance bond or
- CD
- Irrevocable letter of credit
- Irrevocable trust
- Escrow acct, Govt Security
Below Water operation plan

NOTES:
1. AREA 1B represents approximately one year's excavation
2. Length of operation 3 to 8 years
3. Plant sizes 12”-16” above average existing site elevation at elevation 40.0

Final pond Bathymetry
A 30.19 permit can be issued if the project complies with all the NR 340 provisions and:

1. Will not injure public rights or interests including fish and game habitat;
2. Will not cause environmental pollution as defined in s. 299.01(4);
3. Comply with platting/sanitation laws;
4. No material injury to the rights of any riparian owners on any body of water affected will result.
Permit Conditions

• 10 yr renewable permit
• Compliance with project dimensions
• Ponds in floodplain are public including dedicated public access
• Stockpiling and storage consistent with NR 116
• Progressive and final reclamation
• Buffer zones
• Reclamation plan consistent with NR 135
• Other as needed to prevent envir. pollution

Financial Assurance-Performance Bond
Public Access for Floodplain ponds

DECLARATION OF RESTRICTIVE COVENANT

The undersigned, Taylor Creek Development (Owner), hereby declare:

1. They are the record owners of the following described lands, to-wit:
   The Southwest Quarter of the Northeast Quarter (SW ¼ NE ¼) of Section Thirty Five (35), Township Twenty-seven (27) North, Range Ten (10) West.

2. Said lands are subject to excavation and removal of gravel and other material therefrom; following such excavation, Milestone Materials will construct certain proposed ponds on said premises;

3. Said resultant ponds will be in the vicinity of the Chippewa River which flows across the said North Half of the Northeast Quarter (NE ½ NE ¼) of Section Thirty Five (35), Township Twenty-seven (27) North, Range Ten (10) West;

4. Milestone Materials has applied to the Department of Natural Resources for necessary permits for excavation and pond construction in said areas and a condition thereof is the granting of public fishing access on foot, from the said Chippewa River to the said proposed ponds, upon completion thereof;

5. The said excavation and pond construction will be to the benefit of the undersigned owners;

6. In consideration of the aforesaid benefits by issuance and obtaining of the said permits, the undersigned owners do hereby declare the following as a restrictive covenant on the lands described, to run with the lands, to-wit:

A 30 foot wide easement is granted to the public as shown on the map (Attachment A), for pedestrian access only for fishing, extending from the Chippewa River as it flows through the North Half of the Northeast Quarter (NE ½ NE ¼), Section Thirty Five (35), Township Twenty-seven (27) North, Range Ten (10) West over and across said SW ¼.

Un-restored site
Steep, high bank reclamation

Low bank, wetland restoration/reclamation
Wetland Permitting

• Applicant Resource Inventory – Wetland Delineation
• Pre-application meeting
• Submit application
• Completeness Review
• Public informational Hearing (IP)
• Decision
Pre-Application Meeting

Meeting is Requested, applicant will:
- Provide meeting materials to WMS in advance of meeting
- Be prepared to discuss project purpose, schedule, wetland impacts, data needs for alternatives analysis, mitigation, project modifications to avoid/minimize
- Make contact with ACOE to discuss federal requirements and invite ACOE staff to meeting

Pre-Application Meeting

During meeting WMS will:
- Assess whether project may qualify for limiting of scope
- ID applicable permits and requirements (plans, PAA, delineation)
- Be prepared to provide feedback on proposed project purpose, schedule, wetland impacts, data needs for alternatives analysis, mitigation, project modifications to avoid/minimize
- Log in meeting into the Waterway and Wetland permit database as an informal activity
- Provide written summary of meeting to applicant
Permit options: General Permits and Individual Permits

**General Permits (GPs)**
- new to the law and generally are for discharge of fill up to 10,000 square feet (0.23 acres)
- Specific eligibility requirements and conditions that have to be met to be issued.
- Standard for issuance is minimal adverse environmental effects to wetland functional values

**Individual Permits (IPs)**
- Pre-application meeting required
- Wetland compensatory mitigation is required for all individual permits
- Standard for issuance is no significant adverse impact to wetland functional values

**Standards for issuing wetland IPs:**

1. Proposed project is least environmentally damaging practicable alternative taking into consideration practicable alternative that AVOID wetland impacts
2. All practicable measures taken to MINIMIZE wetland impacts
3. Proposed project will not result in SIGNIFICANT ADVERSE IMPACTS to wetland functional values, water quality or in other significant adverse environmental consequences
New Mitigation Law

- Mitigation required for IP’s
- Types of mitigation
  - Purchase bank credits (preferred)
    - 1.2 : 1 (credit acres : acres lost) if same WMU or ½ mile, minimum
    - 1.32 : 1 if different watershed, minimum
  - In-lieu fee option not available at this time
  - Permittee-responsible project (aka ‘on-site’)
    - Occurs in the same WMU or ½ mile from loss
    - If ecologically preferable to bank purchase
- Collaborate with ACOE

Watersheds

- Water Management Units are available on SWDV.
S&G Site-Floodplain Overlay

Pit 31 Floodplain Map Created on Sep 07, 2011

Resource Map
Infrastructure impacts

Sand Mining-Dewatering
Questions?