

## **CHAPTER 61-38 DREDGED AND FILL MATERIAL DISPOSAL**

**61-38-01. (Contingent effective date - See note) Definitions.** The state engineer shall adopt definitions that are consistent with federal law for, among other words: "dredged material", "fill material", "general permit", "person", "waters of the state", and "wetlands".

**61-38-02. (Contingent effective date - See note under section 61-38-01) Powers.** The state engineer has the following powers:

1. To exercise general supervision of the administration and enforcement of this chapter and all rules and orders adopted pursuant to this chapter.
2. To advise, consult, and cooperate with other agencies of the state, the federal government, and other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter.
3. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants may not be expended for other than the purposes for which provided.
4. To enter upon or through permittee's premises where dredged or fill material is discharged, after written notice to the permittee. Such power may be exercised by authorized agents, representatives, and employees of the state engineer.
5. To exercise all incidental powers necessary to carry out the purposes of this chapter.
6. To make rules governing the application, issuance, denial, modification, or revocation of permits for the discharge of dredged or fill material into waters of the state and for the administration of this chapter.
7. To hold any hearings necessary for the administration of this chapter.
8. To initiate actions in court for the enforcement of this chapter including actions to enjoin any threatened or continuing violation of any requirement.
9. To issue administrative orders to restrain any person from engaging in any unauthorized activity.
10. To take all action necessary or appropriate to secure to the state the benefits of section 404 of the Clean Water Act [33 U.S.C. 1344].

**61-38-03. (Contingent effective date - See note under section 61-38-01) Permits - Certification from state department of health required.** The state engineer may not issue a permit under this chapter without a certification from the state department of health that the permitted activity will not adversely affect water quality.

**61-38-04. (Contingent effective date - See note under section 61-38-01) Specification of disposal sites.** The state engineer shall specify a disposal site for each permit issued. Each disposal site must be specified for each permit through application of rules adopted by the state engineer. The rules must be consistent with federal law. The state engineer may prohibit the specification of any defined area as a disposal site, withdraw any defined area from specification as a disposal site, or deny or restrict the use of any defined area for specification as a disposal site whenever the state engineer determines, after notice and opportunity for public hearing, that the discharge of dredged or fill materials will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

**61-38-05. (Contingent effective date - See note under section 61-38-01) Discharge of dredged or fill material - Permit required - Exceptions.**

1. Except as otherwise provided by this chapter, no person may discharge dredged or fill material into waters of the state unless that person has a permit from the state engineer. No person may discharge dredged or fill material in violation of a permit. A permit is not required for:
  - a. The discharge of dredged or fill material when an activity is authorized by a general permit issued pursuant to section 61-38-06;
  - b. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
  - c. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levies, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures, which does not change the character, scope, or size of the original fill design;
  - d. Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance of drainage ditches;
  - e. Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the state;
  - f. Construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the waters of the state are not impaired, that the reach of the waters of the state is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized; or
  - g. The placement of fill material associated with activities which the state regulates by requiring best management practices under chapter 61-28.
2. Any discharge of dredged or fill material into waters of the state incidental to any of the activities identified in subdivisions a through g of subsection 1 must have a permit if it is part of an activity whose purpose is to convert an area of waters of the state into a use to which it was not previously subject, where the flow or circulation of waters of the state may be impaired or the reach of such waters reduced, or if the discharge contains a toxic pollutant. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.

**61-38-06. (Contingent effective date - See note under section 61-38-01) General permits.**

1. In carrying out the functions relating to the discharge of dredged or fill material, the state engineer may, after notice and opportunity for public hearing, issue general permits on a state or regional basis for any category of activities involving discharges of dredged or fill material if the state engineer determines that the activities in the category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal accumulative adverse effects on the environment. Any general permit issued under this section must set forth the requirements and standards which apply to any

activity authorized by the general permit. General permits must be issued pursuant to rules adopted by the state engineer which are consistent with federal law.

2. A general permit may be revoked or modified by the state engineer if, after opportunity for public hearing, the state engineer determines that the activities authorized by the general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.
3. The state engineer may require an individual permit for any proposed activity under a general permit where the nature or location of the activity makes an individual permit more appropriate.

**61-38-07. (Contingent effective date - See note under section 61-38-01) Emergency permits.** The state engineer may issue a temporary emergency permit for the discharge of dredged or fill material if unacceptable harm to life or severe loss of physical property is likely to occur before a permit could be issued or modified under procedures normally required.

**61-38-08. (Contingent effective date - See note under section 61-38-01) Permit application - Notice - Hearing.** Any person desiring to discharge dredged or fill material for which a permit is required shall file an application with the state engineer. The application must be on a form prescribed by the state engineer and must include information required by the state engineer. The state engineer may issue a permit after notice and opportunity for public hearing. Within fifteen days of receipt of all the information required to complete an application for a permit, the state engineer shall publish the notice.

**61-38-09. (Contingent effective date - See note under section 61-38-01) Proceedings.**

1. Any proceeding to determine compliance or violation of the provisions of this chapter or any rule, order, or condition in a permit issued pursuant to this chapter by the state engineer must be conducted in accordance with chapter 28-32.
2. Any person claiming to be aggrieved or adversely affected by actions taken or by any rule or order issued pursuant to this chapter may request a hearing by the state engineer if no hearing on the matter resulting in the action has been held. If a hearing has been held, the person claiming to be aggrieved or adversely affected may petition for reconsideration and may appeal in accordance with chapter 28-32.

**61-38-10. (Contingent effective date - See note under section 61-38-01) Penalties.** The state engineer may assess or sue to recover civil penalties and seek criminal remedies as provided in this section.

1. The state engineer may assess or recover civil penalties for discharges of dredged or fill material without a required permit or in violation of any permit condition of up to five thousand dollars per day of such violation.
2. The state engineer may seek criminal fines against any person who willfully or with criminal negligence discharges dredged or fill material without a required permit or violates any permit condition issued under this chapter of up to ten thousand dollars per day of such violation.
3. The state engineer may seek criminal fines against any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any rules adopted pursuant to this chapter, or falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit of up to five thousand dollars for each instance of violation.

**61-38-11. (Contingent effective date - See note under section 61-38-01) Restoration.**

In lieu of or in addition to the penalties authorized under section 61-38-10, the state engineer may require restoration of areas in which dredged or fill material has been illegally discharged. If the state engineer determines that any person has discharged dredged or fill material without a permit or in violation of any permit condition, the state engineer shall notify the person by registered or certified mail. The notice must specify the nature and extent of noncompliance and state that the area in which the dredged or fill material is located must be restored to the satisfaction of the state engineer within thirty days of receipt of the notice. If the area is not restored as required, the state engineer shall cause the restoration of the area and assess the cost of the restoration against the person or persons responsible for the illegal discharge.