

Frequently Asked Questions
NC Mining Act and Agricultural Pond Construction

General Statute 74, Article 7

1. If material that is excavated for an agricultural pond remains on site, are requirements of the Mining Act triggered?

No. If excavated material remains on site, the Mining Act is not triggered. The size or depth of the pond makes no difference in this case.

2. If material that is excavated for an agricultural pond is hauled away to another site, are requirements of the Mining Act triggered?

Yes. If excavated material leaves the site (sold or given away), then the Mining Act is triggered.

There are several exceptions:

- If the disturbed area is less than one acre (including any roads that are created to remove the material), then the activity (including hauling of excavated material) is exempt from the Mining Act.
- If the disturbed area is between one and five acres, and the excavated material is hauled to a site with an approved Sedimentation and Erosion Control Plan (construction site, etc.), then the activity is exempt from the Mining Act. This is referred to as a “one time borrow.”
- Although agriculture is generally exempt from the Sedimentation and Erosion Control Act, it is possible for the receiving site to apply for and receive a Sediment and Erosion Control Plan approval specifically for the purposes of avoiding the Mining Act requirements. DENR staff mentioned (and basically encouraged) this route where practical. Getting approval for a Sediment and Erosion Control Plan will generally be easier, faster, and less expensive than getting a mining permit.
- If the disturbed area is greater than five acres, and excavated material is hauled away, the Mining Act is always triggered.
- If the excavated material is hauled to a site owned by the same farmer, and it does not travel by a state road (essentially contiguous property), then the activity is exempt from the Mining Act.

3. If clay is brought in from an outside source for a pond liner or dike wall, is the Mining Act triggered?

The answers and exceptions are the same as #1 and 2 above. In all cases, the Mining Act applies to the site where material is excavated. So in this case, the agricultural pond site would not be subject to the Mining Act, but the clay excavation site could be:

- If the clay comes from off-site, and the excavation is less than one acre, the activity is exempt from the Mining Act.
- If the clay comes from off-site, and the excavation is between one and five acres, the excavation would be exempt from the Mining Act only if the agricultural pond site had an approved Sedimentation and Erosion Control Plan.
- If the clay comes from a site that is already used for these types of activities, it may already have a Mining Permit, and could just send clay to the pond site like any other customer.

For more information please contact the Department of Energy, Mining and Land Resources at
<http://portal.ncdenr.org/web/lr/mining>

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