

CHAPTER 238

AN ACT to renumber 107.05; to amend 32.02 (5); and to create 107.05 (2) to (10) of the statutes, relating to diversion of water to or from ore mines and permits for such diversion, and providing penalties.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 32.02 (5) of the statutes is amended to read:

32.02 (5) Any Wisconsin corporation engaged in the business of transmitting or furnishing heat, power or electric light for the public, or any corporation holding a valid permit issued under s. 107.05, for the construction and location of its lines or for ponds or reservoirs or any dam, dam site, flowage rights or undeveloped water power.

SECTION 2. 107.05 of the statutes is renumbered 107.05 (1).

SECTION 3. 107.05 (2) to (10) of the statutes are created to read:

107.05 (2) When surface streams or lakes are involved, the person engaged in or preparing to engage in mining or processing ore, shall apply to the public service commission for a permit to conduct or convey, to the same or another watershed, waters from the lands upon which it is engaged in mining operations. The application shall be in the form contemplated by s. 31.14 (4) for applications under that section, but the provisions thereof relating to the time for completion of structures shall not apply to applications under this section. Public hearing on the application shall be set by the commission and notice of such hearing shall be given in accordance with those provisions of s. 31.14 (7) which shall be specified by the commission. The provisions of s. 31.14 which relate to approval of plans for structures by the commission and to the entry of lands for making surveys shall apply to applications under this section. In addition to the notice requirements of s. 31.14 (7) specified by the commission, the applicant also shall cause notice of the hearing on the application to be published in the official state paper once a week for 3 successive weeks. After due publication of such notice in the official state paper, no permit issued at the conclusion of such hearing shall be held invalid upon the ground that any other provisions relating to the giving of notice have not been complied with and no person shall bring any action or maintain any proceeding to attack the permit or for damages except an action for inverse condemnation for damages suffered as a result of the exercise of the permit. The person engaged in or preparing to engage in mining or processing ore may include in such application, or in a separate application, a request for a permit to divert waters from any surface water upon which he is riparian or to use and consume said waters and underground waters in his ore processing operations on any land owned or leased by him on the same procedure and subject to the same conditions including without limitation the right to control, store, dam or impound said waters in connection therewith.

(3) The legislature hereby declares that the development of the iron ore resources of the state and the diversion or consumptive use of the waters of the state in connection therewith is in the public interest, for the public welfare and fulfills a public purpose. As the mining and processing of such iron ore will require considerable quantities of water, it is necessary that persons engaged in or about to engage in the mining and processing of such ores be assured of an adequate and continuing supply

of water for such operations before the large capital expenditures required for mills, plants and other improvements are made. In passing upon any application for a permit for the diversion or consumptive use of water under this section, the commission shall weigh the public rights in the stream which may be adversely affected against the public benefits which will result from the iron ore mining and processing operation in the form of increased opportunities for employment and industrial development and increased income to local agencies of government and to the state treasury. If the public benefits which will result from the proposed operation outweigh the public rights in the stream which will be impaired or eliminated, the permit shall issue.

(4) If a permit is granted pursuant to a final decision of the commission or as affirmed or modified pursuant to judicial review under ch. 227, the commission shall specify the duration of such permit which shall be for such time as is necessary to permit the mining to exhaustion and the processing of all iron ore which is referred to in the application, provided that the duration of such permit may be extended by the commission for good cause shown on application of the permittee.

(5) Upon the initial filing of the application the commission shall determine whether rights of downstream riparians may be injured by the exercise of the permit applied for. If the commission determines that such rights may be so injured, it shall fix a point on the stream below which riparian rights are not likely to be injured. When the commission has made such a determination, the applicant shall insofar as reasonably possible give individual notice by mail to all riparian owners on the stream between the point of proposed diversion and the downstream point fixed by the commission. When such notice has been served, the person so served shall bring no action nor maintain any proceeding to attack the permit or for damages other than by appearance at the hearing or by an action of inverse condemnation commenced not more than 3 years after the date of the first exercise of the permit.

(6) The commission shall retain jurisdiction and shall suspend or cancel the permit if it finds upon complaint of any person or state agency that:

- (a) The terms or conditions of the permit have been breached; or
- (b) Any law pertaining to the permit has been violated.

(6a) No permit issued pursuant to this section shall be revoked for breach or violation of the terms or conditions thereof or any law pertaining thereto unless and until the permittee has been given an opportunity to be heard thereon after 30 days' written notice to the permittee stating the specific grounds for the proposed revocation; but no permit shall be revoked by the commission unless and until the permittee has been given an opportunity to correct or remedy the alleged breach or violation within such reasonable time as may be prescribed by the commission and has failed to do so.

(7) Subject only to any modifications or amendments entered in judicial proceedings under ch. 227, the findings of the commission, entered at the hearing on the application as the basis for a grant or denial of a permit, on the effect of the permit on public or private rights, shall be final and conclusive on all persons and their successors in interest. Subject to such conditions as the commission prescribes therein including any condition as to the time of commencement of construction and conditions for the protection of public health, safety and welfare, and notwithstanding any other provisions of law, every permit issued under this section shall give the permittee the right to divert or use the waters specified in said permit as set forth therein, and the permittee may prevent by injunction or otherwise interference with such right by any person.

(8) In addition to the remedies provided in this chapter, if the commission finds that any private rights will be adversely affected by the exercise of the permit or permits granted hereunder, the applicant is empowered to acquire such rights by purchase or condemnation under ch. 32.

(9) The commission shall impose such conditions in the permit as it finds are reasonably necessary in the public interest for the restoration of waters after the completion of the mining operations or cancellation of the permit, for the orderly disposal of waste or tailings, and for leaving the lands in a neat and orderly condition, and may require the permittee to furnish security to the state for compliance with such conditions. Such security, if required, shall be in such form and amount as the commission deems necessary.

(10) Penalties for violations of this section shall be the same as for violations of s. 31.14.

SECTION 4. Wherever the words "corporation, company or person" appear in such series in ss. 107.05, 107.06, 107.08 and 107.10, the word "person" is substituted. The revisor of statutes is directed to show such changes in publishing the statutes.

SECTION 5. This bill is declared to be an emergency appropriation bill in accordance with the provisions of section 15.11 (2) of the statutes.

Approved July 28, 1959.

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