CHAPTER 31

REGULATION OF DAMS AND BRIDGES AFFECTING NAVIGABLE WATERS

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31.01 Definitions. Terms used in this chapter are defined as follows:

(1) "Corporation" means a private corporation organized under the laws of this state.

(2) "Department" means the department of natural resources.

(3) "Grantee" means the person, firm, corporation or municipality to whom a permit is granted, and all subsequent owners of the grant.

(4) "Municipality" means any town, village, city or county in the state.

(5) "Navigable waters" means all waters declared navigable by ch. 30.

(6) "Permit", unless the context otherwise requires, means legislative permission granted under s. 31.06 to construct, operate and maintain a dam in or across navigable waters, or under s. 31.08 to continue the operation and maintenance of any dam so situated which was constructed before such legislative permits were required.

History: 1983 a. 189.

31.02 Powers and duties of department. (1) The department, in the interest of public rights in navigable waters, to promote safety, and to protect life, health, property, property values, and economic values may regulate and control the level and flow of water in all navigable waters and may erect, or may order and require bench marks to be erected, upon which shall be designated the maximum level of water that may be impounded and the lowest level of water that may be maintained by any dam heretofore or hereafter constructed and maintained and which will affect the level and flow of navigable waters; and may by order fix a level for any body of navigable water below which the same shall not be lowered except as provided in this chapter; and shall establish and maintain gauging stations upon the various navigable waters of the state and shall take other steps necessary to determine and record the characteristics of such waters.

(2) The department may investigate and determine all reasonable methods of construction, operation, maintenance, and equipment for any dam so as to conserve and protect all public rights in navigable waters and so as to protect life, health and property; and the construction, operation, maintenance and equipment, or any or all thereof, of dams in navigable waters shall be subject to the supervision of the department and to the orders and regulations of the department made or promulgated under this chapter.

(3) The department or any member or any agent or employee thereof shall at all times be accorded free access to any and all parts of any dam and appurtenances constructed or maintained in navigable waters and may enter upon any property to investigate a waterway or use of water from any lake or stream.

(4) The department may order and require any dam heretofore or hereafter constructed to be equipped and operated, in whole or part, as follows:

(a) With slides and chutes for the passage of logs and timber products.

(b) With a lock, boat hoist, marine railway or other device of a size and construction sufficient to accommodate navigation.

(c) With good and sufficient fishways or fish ladders, or in lieu thereof the owner may be permitted to enter into an agreement with the department to pay for or to supply to the state of Wisconsin annually such quantities of game fish for stocking purposes as may be agreed upon by the owner and the department.

(d) With spillways or flood gates capable of permitting the passage through or over the same of freshets and floods during all seasons of the year.

(e) With booms, piers or other protection works ample to safeguard flood gates from trash or other floating material.

(4d) The department may not issue, amend, or revise an order under this section or under s. 182.71 (7) (b) with respect to a dam that, on June 1, 2015, met all of the following conditions unless the appropriate standing committee in each house of the legislature, as determined by each presiding officer, approves the order, amendment, or revision:

(a) The dam regulated the water levels of one or more lakes located in Vilas County.

(b) The dam was located in whole or in part in a city, village, or town with an equalized value exceeding $500,000,000.

(c) The dam's impoundment area at normal pool elevation exceeded 4,000 acres.

(d) The dam was continuously subject to a lake level order for a period of at least 40 years.

(4g) The department may not impose the requirement under sub. (4) (c) on an owner of a dam unless all of the following apply:

(a) The rules promulgated under sub. (4r) are in effect.

(b) The federal government or the state implements a program to provide cost−sharing grants to owners of dams for equipping dams with fishways or fish ladders and a grant is available to the dam owner under the program.

(4r) The department shall promulgate rules specifying the rights held by the public in navigable waters that are dammed. The rules shall include provisions on the rights held by the public that affect the placement of fishways or fish ladders in navigable waters that are dammed.

(5) The department shall give written notice to the public service commission of any hearing under this chapter involving public utilities.

(6) Except as provided in sub. (7m), the department may operate, repair and maintain the dams and dikes constructed across drainage ditches and streams in drainage districts, in the interest of drainage control, water conservation, irrigation, conservation, pisciculture and to provide areas suitable for the nesting and breeding of aquatic wild bird life and the propagation of fur−bearing animals.

(7) The department shall confer with the drainage commissioners in each drainage district on the formation of policies for the operation and maintenance of the dams; in districts having no commissioners, the department shall confer in like manner with the committee appointed by the county board, if any, to represent either such drainage district, or in the event that the drainage district is dissolved, to represent the interests of the county in all matters whatsoever pertaining to water conservation and control within the area which theretofore constituted such drainage district. This subsection does not apply to the Duck Creek Drainage District.

(7m) The drainage board for the Duck Creek Drainage District shall operate, repair and maintain dams, dikes and other structures in district drains that the board operates in the Duck Creek Drainage District in compliance with ch. 88 and any rules promulgated by the department of agriculture, trade and consumer protection under ch. 88. If a county drainage board fails to perform its duties under this subsection, the department of natural resources may exercise its authority under subs. (6), (8) and (9).

(8) The department shall give careful consideration to the suggestions of the drainage commissioners or committee of the county board, but the final decision in all matters under consideration shall rest with the department.

(9) So far as seems practicable, the department may designate or employ the drainage commissioners of any drainage district, or the committee of the county board above referred to, to operate the dams in such district or area formerly comprising a drainage district or perform services in the repair and maintenance of the dams, dykes and other works.

History: 1999 a. 9; 2001 a. 105; 2007 a. 96; 2015 a. 55, 387.

Cross−reference: See also chs. NR 333 and 353, Wis. adm. code.

Ordering a riparian owner to excavate and maintain a ditch to regulate lake levels was an unconstitutional taking of property. Otte v. DNR, 142 Wis. 2d 222, 418 N.W.2d 16 (Ct. App. 1987).

Sub. (1), 2011 stats., makes a distinction between the DNR's public trust authority and its police power authority. Only part of sub. (1) embodies the public trust doctrine. If the statute read only that the department "in the interest of public rights in navigable waters," may regulate and control the level and flow of water in all navigable waters, the statute would be seen as a direct enforcement mechanism for the public trust in navigable waters. But department authority to regulate and control the flow of water in all navigable waters "to promote safety and protect life, health and property" following "or," gives distinct and different authority to consider interests affected by the level of the navigable waters. Rock−Koshkonong Lake District v. Department of Natural Resources, 2013 WI 74, 350 Wis. 2d 45, 833 N.W.2d 800, 08−1523.

DNR may consider wetland water quality standards in Wis. Admin. Code ch. NR 103 when making a water level determination under sub. (1), 2011 stats. Section 281.92, 2011 stats., does not preclude the DNR from applying the wetland water quality standards in ch. NR 103 or other parts of ch. 281, when appropriate, after weighing factors under sub. (1). Rock−Koshkonong Lake District v. Department of Natural Resources, 2013 WI 74, 350 Wis. 2d 45, 833 N.W.2d 800, 08−1523.

It is unreasonable to conclude, given the history, context, and interpretations of "protect . . . property," that economic impacts cannot be considered when making a water level determination under sub. (1), 2011 stats. Rock−Koshkonong Lake District v. Department of Natural Resources, 2013 WI 74, 350 Wis. 2d 45, 833 N.W.2d 800, 08−1523.

Artificial lakes and land subdivisions. Kusler, 1971 WLR 369.

A Breach of Trust: *Rock−Koshkonong Lake District v. State Department of Natural Resources* and Wisconsin's Public Trust Doctrine. Mittal. 98 MLR 1468 (2015).

31.03 Permits for the Lower Wisconsin State Riverway. For activities in the Lower Wisconsin State Riverway, as defined in s. 30.40 (15), no person obtaining a permit under this chapter may start or engage in the activity for which the permit was issued unless the person obtains any permit that is required for the activity under s. 30.44 or 30.445.

History: 1989 a. 31, 359.

31.04 Permits for dams. Permits to construct, operate and maintain dams may be granted to persons, corporations or municipalities under this chapter.

31.045 Permits for dams that affect drained lands. (1) For the construction, raising or enlarging of a dam that will affect the water level in a drainage district organized under ch. 88, no person who obtains a permit under this chapter may construct, raise or enlarge the dam unless the person obtains the approval of the drainage board with jurisdiction of the drainage district.

(2) For the construction, raising or enlarging of a dam that will affect the water level in a drain, for an individual landowner, that is constructed under an order issued under s. 88.94, no person who obtains a permit under this chapter may construct, raise or enlarge the dam unless the person obtains the approval of the landowner.

History: 1993 a. 456.

31.05 Applications for permits to construct. Any person, firm, corporation or municipality desiring a permit to construct, operate and maintain a dam shall file with the department a written application therefor, setting forth:

(1) The name of the navigable waters in or across which a dam is proposed to be constructed and a specific description of the site for the proposed dam.

(2) The purpose or purposes for which the proposed dam is to be constructed, operated and maintained.

(3) In case the application is for a permit to construct, operate and maintain a dam for a private purpose, proof satisfactory to the department that the applicant owns or has an enforceable option to purchase the described dam site and at least 65 percent of the land to be flowed, or the flowage rights on at least 65 percent of such land. This subsection shall not apply to a person who has the power of eminent domain.

(4) A general description of the proposed dam, of the material to be used in the construction thereof, and a general description of all booms, piers, and other protection works to be constructed in connection therewith.

(5) The approximate amount of hydraulic power that the proposed dam is capable of developing.

(6) The name of the city, village or town in which the site of the proposed dam will be located and the name of the nearest existing dam above and below the site of the proposed dam.

(7) A map on the scale of not less than one inch per 1,000 feet showing the lands that may be affected by the construction, operation or maintenance of the proposed dam, or by any flowage that may be caused thereby and approximately the outline of such flowage, which map shall indicate the ownership of each tract of land within the flowage.

(8) Such additional information of any nature that may be required by the department.

History: 1975 c. 349; 1993 a. 246.

31.06 Hearing. (1) Upon receipt of an application for a permit under s. 31.05 the department may order a hearing or it may mail a notice that it will proceed on the application without public hearing unless a request for a public hearing is filed as provided in this section. The notice shall be mailed to the clerk of each

municipality directly affected by the proposed dam. The department may give further or other notice as it considers proper. The department shall mail a copy of the notice to the applicant who shall cause the notice to be published in each county in which affected riparian lands are located as a class 1 notice, under ch. 985. If a hearing is not requested in writing within 30 days after mailing of the notice, the department may waive the hearing.

(2) (a) If a hearing is ordered, the department shall, not less than 10 days before such hearing, mail written notice thereof to each person notified under sub. (1).

(b) The department shall require the applicant to publish a class 1 notice under ch. 985, of the hearing in each county in which affected riparian lands are located, and may require the applicant to mail such other notices as it deems necessary. Proof of publication and proof of mailing under this subsection and sub. (1) shall be filed with the department.

(3) (a) At a hearing under this section, or any adjournment of the hearing, the department shall consider the application and take evidence offered by the applicant and other persons supporting or opposing the proposed dam. The department may require the amendment of the application.

(b) If it appears that the construction, operation or maintenance of the proposed dam is in the public interest, considering ecological, aesthetic, economic and recreational values, the department shall so find and grant a permit to the applicant, provided the department also finds that the applicant has complied with s. 31.14 (2) or (3) and, where applicable, with s. 31.05 (3), based on the department's own estimate of the area of the flowage.

(c) 1. The enjoyment of natural scenic beauty and environmental quality are declared to be public rights to be considered along with other public rights and the economic need of electric power for the full development of agricultural and industrial activity and other useful purposes in the area to be served. In considering public rights to the recreational use and natural scenic beauty of the river, the department shall investigate the potentialities of the lake and lakeshore created by the flowage and shall weigh the recreational use and scenic beauty of the lake and lakeshore against the known recreational use and scenic beauty of the river in its natural state. The department shall further weigh the known recreational use and scenic beauty of the particular section of river involved against the known recreational use and scenic beauty of other sections of the same river and other rivers in the area remaining in their natural state without regard to plans of other dams subsequently filed or to be filed.

2. The department shall deny the permit if it finds any of the following:

a. It appears that the river in its natural state offers greater recreational facilities and scenic value for a larger number of people than can by proper control of the flowage level be obtained from the use of the lake and lakeshore and that the remaining sections of the river and other rivers in the area in their natural state provide an insufficient amount of recreational facilities and scenic beauty, and it further appears that the economic need of electric power is less than the value of the recreational and scenic beauty advantages of the river in its natural state.

b. The permit will cause environmental pollution, as defined in s. 299.01 (4).

(4) Not more than 20 days after receiving notice as provided in sub. (1) each county clerk may and upon request of the chairperson of the county board shall give written notice as provided in s. 59.11 (2) of a special meeting of the county board to be held at a time and place set by the county clerk, not less than 2 weeks nor more than 3 weeks after mailing of such notice, for the purpose of making findings as hereinafter provided. The county clerk shall give notice of the time, place and purpose of such special meeting to the department and to the applicant, who shall cause the same to be published in the county, as a class 2 notice, under ch. 985, and the applicant shall cause a copy thereof to be mailed at least 7 days prior to such special meeting to every person interested in any lands that will be affected by the proposed dam and whose post−office address can by due diligence be ascertained. Proof of such publication and notice shall be filed with the county clerk. At such special meeting the county board shall hear evidence offered by the applicant and other persons and shall find and determine by a majority vote of the county board members−elect whether the lake and lake shore created by the flowage or the river in its natural state offers greater recreational facilities and scenic beauty value for the larger number of people. The county clerk shall forthwith certify such finding and determination to the department. The jurisdiction and findings of each county board shall apply to that part of the proposed dam and flowage which is within the county.

(5) If a hearing on the application for a permit is conducted as a part of a hearing under s. 293.43, the notice and hearing provisions in that section supersede the notice and hearing provisions of this section.

History: 1971 c. 273; 1973 c. 90; 1979 c. 34 s. 2102 (39) (g); 1979 c. 221; 1983 a. 192; 1995 a. 201, 227; 1999 a. 83.

Cross−reference: See also ch. NR 305, Wis. adm. code.

31.07 Applications for permits to operate and maintain existing dams. Any person, firm, corporation or municipality desiring a permit to operate and maintain a dam constructed in or across navigable waters without legislative permission prior to July 10, 1915, shall file with the department a written application therefor setting forth:

(1) The name of the navigable waters in or across which such dam was constructed and a specific description of the dam site.

(2) The year in which the construction of the dam was completed, and a detailed description of the dam and equipment, including the maximum height or head of water that may be maintained thereby and the kind and character of material of which the dam is constructed.

(3) The purpose for which the dam was theretofore operated and is operated at the time application hereunder is made, and the purpose for which it is proposed to operate and maintain the dam.

(4) The approximate amount of hydraulic power developed thereby.

(5) The name of the city, village or town in which the dam site is located and the name of the nearest existing dam above and below the dam site.

(6) Such additional information of any nature whatsoever as may be required by the department.

History: 1993 a. 246.

31.08 Hearing. Upon receipt of an application under s. 31.07 procedure shall be had substantially as required by s. 31.06, and if the department finds that such operation and maintenance does not materially obstruct existing navigation or violate other public rights and will not endanger life, health or property, a permit is hereby granted to the applicant, provided the department also finds that the applicant has complied with s. 31.14 (2) or (3).

Cross−reference: See also ch. NR 305, Wis. adm. code.

31.09 Proposals to accompany applications. Each applicant for a permit to construct, operate and maintain a dam for the purpose of developing power or for the purpose of aiding in the development of power by other dams through the creation of reservoirs or otherwise, and each applicant for a permit to construct, operate and maintain a dam for any other purpose whatsoever, which is capable of developing 50 theoretical horsepower or more available for 50 percent of the time throughout the year, shall file with an application for a permit, in addition to the requirements of s. 31.05 or s. 31.07, as the case may be, the following proposals:

(1) That the department prior to the time the permit is granted shall value the dam site and all flowage rights and other property necessary for the purposes set forth in the application for the permit, whether the same or any part thereof are owned by the applicant or not.

(2) That the department shall audit all outlays for property and for the construction of the dam, buildings, and other structures and works constructed, maintained, and operated and used and useful under the permit.

(3) That the permit, if granted, shall be granted and accepted subject to the express condition that the state of Wisconsin, if it shall have the constitutional power, or any municipality, on not less than one year's notice, at any time after the expiration of 30 years after the permit becomes effective, may acquire all of the property of the grantee, used and useful under the permit, by paying therefor, the cost of reproduction in their then existing condition of all dams, works, buildings, or other structures or equipment, used and useful under the permit, as determined by the department, and by paying in addition thereto the value of the dam site and all flowage rights and other property as determined by the department prior to the time the permit was granted, as provided in sub. (1), plus the amounts paid out for additional flowage rights, if any, acquired after the valuation made by the department as provided in sub. (1); and that the applicant waives all right to any further compensation.

History: 1991 a. 316.

31.095 Water power permits, condition precedent. **(1)** Except where the stream to be improved forms a boundary line between this and another state, no permit shall be granted or transferred in accordance with this chapter until the applicant has filed with both the department and the public service commission, in addition to all other things required by law to be filed, an agreement setting forth:

(a) That, in the event any electric energy generated under said permit shall be transmitted or conveyed beyond the confines of this state to be there sold, the applicant will furnish to any resident of this state or any corporation domiciled therein electric energy at reasonable rates to be determined by the commission, provided that the commission after public hearing shall find that public convenience and necessity require such service.

(b) That the rate as determined by the commission shall in no event exceed the rate charged by applicant for similar service supplied under like conditions for the energy so transmitted outside the state.

(2) The commission may hold hearings, fix rates and do all things necessary and convenient to carry out the purposes of sub. (1).

31.10 Permit not to be valued. Each and every permit is granted, and shall be conclusively deemed to be accepted, subject to the condition that no element of value whatever shall ever attach to or be allowed for such permit in and of itself in the sale or acquisition of the property used and useful under such permit or otherwise.

31.11 Certificate of terms and forfeiture of permits. The department shall issue to every grantee of a permit a certificate evidencing a grant of the permit allowed by law. Every permit, and every franchise heretofore granted by the legislature, to construct, maintain and operate a dam shall become null and void, unless the dam thereby authorized be completed within 5 years from the time when the permit or the franchise was granted; but the department, for good cause, may extend such time for a period not exceeding 2 years.

31.12 Map, profile and plans. **(1)** The grantee of a permit under s. 31.06, to construct, maintain and operate a dam, before commencing any work of construction authorized by the permit, shall submit to the department a complete map and profile on the scale of not less than one inch per 1,000 feet showing the land that may be affected by the construction and maintenance of the dam, or by any flowage that may be caused thereby, and the outline of the flowage, and such other hydrographic and topographic data as the department may prescribe, and shall also file complete detailed plans and specifications for the proposed dam, including all booms, piers, or other protection works.

(2) The department shall examine the map, profile, plans and specifications; shall hear the grantee thereon and may reject the same or any part thereof, if unsatisfactory or incomplete, or may suggest and require modifications thereof. If the map, profile and plans and specifications are satisfactory and complete, or, if the same shall be modified as suggested and required, the department shall so find and approve the same, and thereupon the grantee may construct the proposed dam in accordance therewith, but the department may, at any time during the construction of any dam and in the interest of the public safety, or of any public rights in navigable waters, authorize, order or require such changes in the plans and specifications and the construction of the dam as shall be necessary.

(3) If the department, in the case of an application for a permit to construct a dam with a capacity of less than 250 hydraulic horsepower at ordinary stage of water, shall find that the information and data furnished in the original or amended application is sufficient, the applicant shall not be required to furnish the additional or more detailed information or data specified in subs. (1) and (2). The department may, however, at any time during the construction of any such dam authorize, order or require changes in the construction or the method or plan of construction thereof, as provided in sub. (2).

(4) Within 10 days after the completion of any dam the grantee shall file with the department a verified statement that the same was constructed in accordance with the plans and specifications approved by the department; or in case no plans and specifications were required to be filed, then that the dam was constructed in accordance with the description contained in the application.

Cross−reference: See also ch. NR 353 and s. NR 335.11, Wis. adm. code.

(5) The department shall establish an expedited procedure for approval of plans for low hazard dams, as defined in s. 31.19 (1g) (b), under this section. The expedited procedure shall apply, in lieu of the procedure under this section, if the department determines that all of the following are satisfied:

(a) The plan design is of a common construction and size or is for a minor addition to an existing dam.

(b) The plan design is submitted by a registered professional engineer.

(c) The plan design is submitted by a person who has designed similar dams and none of those similar dams has caused adverse impacts to the environment.

(d) The plan design contains no unusual siting requirements or other unique design features.

(e) The plan design is for a dam that is located entirely on land that the permit grantee owns or that is located entirely on land for which the permit grantee has acquired an easement.

(f) The plan design is not likely to have an adverse impact on the environment.

History: 2011 a. 167.

31.13 Raising or enlarging existing dams. **(1)** If the owner of any existing dam wishes to raise or enlarge the same, the owner may apply to the department for permission so to do, but the permission granted under this section shall be in amendment of any existing franchise, license, or permit previously granted authorizing the construction or maintenance of such dam only to the extent of giving the right so to raise or enlarge such dam, and shall in no way enlarge, alter, abridge or nullify property rights, privileges or obligations as to such dam, or the maintenance or operation thereof theretofore acquired or incurred. In addition to the requirements of s. 31.05 (1), (6) and (7), the owner's application shall state:

(a) The year in which the dam was completed.

(b) If constructed by legislative permission, a statement of the act of the legislature authorizing the same.

(c) A detailed description of the dam, including the maximum height or head of water that may be maintained thereby and the kind and character of material of which the same is constructed.

(d) The purpose for which such dam has been and is now used and the purpose for which it is proposed to use the same.

(e) The approximate amount of hydraulic power developed thereby.

(f) Such additional information of any nature whatsoever as the department may require.

(2) Upon receipt of an application under this section procedure shall be had substantially as required by s. 31.06; and if the department finds that the dam, raised or enlarged or rebuilt, or rebuilt, enlarged and raised in accordance with the application, will not materially obstruct existing navigation or violate other public rights, and will not endanger life, health or property, and that the applicant has complied with s. 31.14 (2) or (3), permission is hereby granted to raise or enlarge or rebuild, or rebuild, enlarge and raise the same in accordance with the application.

History: 1991 a. 316.

Cross−reference: See also ch. NR 305, Wis. adm. code.

31.14 Proof of ability to maintain dams required. (1) It is the policy of this section to preserve public rights in navigable waters, including those created by dams, and to provide a means of maintaining dams and the developments which have been made adjacent to the flowage of such dams.

(2) Except as provided in sub. (3), a permit shall not be granted under s. 31.06, 31.08 or 31.13:

(a) Unless the applicant furnishes to the department proof of ability to operate and maintain the dam in good condition, either by the creation of a special assessment district under ss. 31.38 and 66.0703, or by any other means which in the department's judgment will give reasonable assurance that the dam will be maintained for a reasonable period of time not less than 10 years; or

(b) If a majority of the municipalities in which 51 percent or more of the dam or flowage is or will be located files with the department, prior to the granting of the permit, their objections to the granting of such permit in the form of resolutions duly adopted by the governing bodies of such municipalities.

(3) Subsection (2) does not apply if the applicant complies with each of the following requirements:

(a) Furnishes proof satisfactory to the department that the applicant owns or has an enforceable option to purchase all the land which is or will be flowed by the impoundment, together with the shoreline and an immediately adjacent strip of land at least 60 feet in width, but the department may in a particular case permit a narrower strip where the 60−foot minimum is impractical and may, in furtherance of the policy stated in sub. (1), require ownership of a wider strip.

(b) Files with the department a writing in such form as the department requires in which the applicant agrees that following the initial filling of the proposed pond the applicant will not convey the dam to another without first obtaining department approval. The department may require from an applicant who does not have the power of eminent domain a bond or other reasonable assurances that the applicant will adhere to such agreement.

(c) Furnishes proof satisfactory to the department that the applicant has dedicated or will dedicate a parcel of land for public access to the impounded waters.

(4) No person may assume ownership of a dam after October 21, 1961, or the ownership of that specific piece of land on which a dam is physically located after April 27, 1982, without first complying with sub. (2) or (3). The transfer of the ownership of a dam or the ownership of a specific piece of land on which a dam is physically located made without complying with sub. (2) or (3) is void unless a permit to abandon the dam was granted under s. 31.185 or unless the transfer occurred by operation of law. Every person who accepts ownership by operation of law is subject to this chapter.

(5) For the purpose of implementing the policy stated in sub. (1), the department may by rule require all or specified classes of persons operating a dam for profit to create a fund or reserve to be used for major repairs, reconstruction or removal of the dam when necessary. Such rules shall prescribe the manner in which such fund or reserve is to be created, maintained and expended. This subsection shall not apply to a person who has the power of eminent domain.

History: 1981 c. 246; 1991 a. 316; 1999 a. 150 s. 672.

This section does not apply to cranberry dams. Tenpas v. DNR, 148 Wis. 2d 579, 436 N.W.2d 297 (1989).

31.18 Obligations of owners of bridges and dams. (1) The grantee of any permit, the owner of any dam constructed before permits were required by law, and the owner of any bridge at the city of Portage or at any point above that city, over the Wisconsin River, shall maintain and operate all such dams, slides, chutes, piers, booms, guide booms, weirs, tunnels, races, flumes, sluices, pits, fishways, locks, boat hoists, marine railways and all other equipment required by the department for the protection of public rights in such waters, and for the preservation of life, health and property, in good repair and condition, and shall not willfully, or otherwise, injure, remove or destroy the same, or any part thereof, unless the department shall have approved such removal or destruction in writing. In the event of emergency the department shall have power, pending investigation and hearing, to order the repair of any dam without notice and hearing.

(2) The owner of any such dam shall open such slide or chute for the passage of any craft or material lawfully navigating the stream, whenever requested so to do by the person in charge of such navigation, without charge or toll therefor. But such owner shall be under no obligation to otherwise aid passage through the slide or chute.

(3) Except when emergency shall require the same for the protection of life, health or property, no substantial alteration or addition shall be made to any dam heretofore or hereafter constructed without obtaining an order therefor from the department, which order may be issued only after an investigation and upon a finding that the proposed alterations or additions will not impair the sufficiency of such dam or any existing public rights in such waters.

(4) The department shall in the interest of public rights in navigable waters, or to promote safety and protect life, health and property, require the grantee of any permit, under this chapter, or of any permit or authorization heretofore provided for by legislative enactment, prior to flowing any lands by the construction of a dam thereunder, to remove from such lands all or any portion of the standing and fallen timber and all or any portion of the brush. Provided that in cases where the application for permit proposes construction of a dam for water reservoir or water storage purposes, and not for the purpose of operating a hydroelectric generating plant, the nature, extent and time for such removal shall be determined prior to the granting of a permit, except that subsequent to the granting of a permit the department may make such modification in the removal requirements as may be in the public interest and which will not materially alter the economics of the project; and in making such original determination or any modification thereof the economic need for the project shall be considered.

Cross−reference: See also ch. NR 305, Wis. adm. code.

31.185 Permits to abandon dams. (1) No owner of any dam may abandon or remove or alter the dam without first obtaining a permit from the department. No person may transfer ownership of a dam or the ownership of the specific piece of land on which a dam is physically located without first obtaining a permit from the department.

(2) An application for a permit to abandon, remove or alter a dam or an application for a permit to transfer ownership of a dam

or the ownership of a specific piece of land on which a dam is physically located shall be made to the department upon forms prescribed by it and shall contain the owner's name and address, a brief description of the dam and its location and other information as the department requires for the purpose of enabling it to act on the application.

(3) Section 31.06 governs procedure upon all applications hereunder.

(4) Prior to the hearing the department shall have its staff make its own investigation of the dam and, on the basis of such investigation, shall make recommendations as to the type of requirements, if any, which it would impose on the applicant under sub. (5) as a condition to granting the permit. Such recommendations shall be presented at the hearing. If no one registers opposition to the application at the hearing, the department shall grant the permit, subject to such conditions as it deems necessary under sub. (5). If someone registers opposition to the abandonment at the hearing and such opposition is not withdrawn, the department shall defer action on the application for a period of 120 days after the hearing. Within a reasonable time after the expiration of such period, the department shall deny the permit, or grant the permit, subject to such conditions as it imposes under sub. (5), unless, within such 120−day period, one or more municipalities or other persons or associations have agreed to acquire ownership of the dam and have furnished satisfactory proof of intent to comply with s. 31.14 (2) or (3).

(5) As a prerequisite to the granting of a permit under this section, the department may require the applicant to comply with such conditions as it deems reasonably necessary in the particular case to preserve public rights in navigable waters, to promote safety, and to protect life, health, property, property values, and economic values.

History: 1973 c. 90; 1981 c. 246; 2015 a. 387.

Cross−reference: See also ch. NR 305, Wis. adm. code.

Sub. (5) is not directed to the removal of a dam by the DNR. It creates a different procedure for a private party who seeks to remove a dam. Froebel v. DNR, 217 Wis. 2d 652, 579 N.W.2d 774 (Ct. App. 1998), 97−0844.

31.187 Abandoned dams. (1) The department may remove or cause to be removed, in such manner as it deems fit, old and abandoned dams in streams in this state, upon giving 60 days' notice in writing to the owner thereof, if the owner can be found. If the owner of the dam is unknown or cannot, by due diligence, be found, the department shall publish a class 3 notice, under ch. 985, in the county in which the dam is situated.

(2) Whenever the department determines that the conservation of any species or variety of wild animals will be promoted thereby, the department may maintain and repair any dam located wholly upon lands the title to which is in the state either as proprietor or in trust for the people after giving due consideration to fixing the level and regulating the flow of the public waters.

History: 1983 a. 27 s. 687; Stats. 1983 s. 31.187; 1991 a. 316.

This section, and not s. 31.185 or 283.31, governs removal of a dam by the DNR. There is no statutory authority to grant injunctive relief against the DNR when it causes damages during a dam removal. Froebel v. DNR, 217 Wis. 2d 652, 579 N.W.2d 774 (Ct. App. 1998), 97−0844.

31.19 Inspection of dams; orders. (1g) DEFINITIONS. In this section:

(a) "High hazard dam" means a large dam the failure of which would probably cause loss of human life.

(b) "Low hazard dam" means a large dam the failure of which would probably not cause significant property damage or loss of human life.

(c) "Significant hazard dam" means a large dam the failure of which would probably cause significant property damage but would probably not cause loss of human life.

(1m) DETERMINATION OF DAM SIZE. For the purposes of this section, a dam is considered to be a large dam if either of the following applies:

(a) It has a structural height of 25 feet or more and impounds more than 15 acre−feet of water.

(b) It has a structural height of more than 6 feet and impounds 50 acre−feet or more of water.

(2) LARGE DAM INSPECTION. (a) *Inspection by the department.* At least once every 10 years the department shall conduct a detailed inspection of each high hazard dam and each significant hazard dam.

(ag) *Owner responsibility.* 1. Owners of each high hazard dam, each significant hazard dam, and each low hazard dam shall engage a professional engineer registered under s. 443.04 to inspect the dam as specified in this paragraph.

2. An owner of a high hazard dam shall cause the dam to be inspected at least 4 times between each inspection conducted by the department under par. (a). An owner of a significant hazard dam shall cause the dam to be inspected at least 2 times between each inspection conducted by the department under par. (a). An owner of a low hazard dam shall cause the dam to be inspected at least once every 10 years.

3. The owner of a dam required to be inspected under this paragraph shall submit to the department, no later than 90 days after the date of the inspection, a report of the results of the inspection. The report shall include information on any deficiencies in the dam, recommendations for addressing those deficiencies, and recommendations on improving the safety and structural integrity of the dam.

(ar) *Dam classification.* The department shall classify each dam in this state as a high hazard, significant hazard, or low hazard dam for the purpose of this section.

(b) *Exemption for federally inspected dams.* Notwithstanding the inspection requirements under pars. (a) and (ag), an inspection under par. (a) or (ag) is not required if the dam is inspected periodically by or under the supervision of a federal agency in a manner which is acceptable to the department and if the results of each inspection are made available to the department.

(3) INSPECTION UPON COMPLAINT. If the department receives a complaint in writing from the mayor of a city, supervisor of a town or the president or trustee of a village which alleges that a dam maintained or operated in or across any navigable or nonnavigable waters or a reservoir is in an unsafe condition or if the department receives a complaint in writing from a person which alleges that the person's property or any property under the person's control is endangered by a dam or reservoir, the department shall investigate or cause an investigation to be made of the complaint.

(4) DISCRETIONARY INSPECTION. The department may inspect or cause an inspection to be made of any dam or reservoir.

(5) ORDER; REDUCTION IN WATER LEVEL. If the department finds pursuant to an investigation that a dam or reservoir is not sufficiently strong or is unsafe and that the dam or reservoir is dangerous to life or property, it shall determine what alterations, additions or repairs are necessary and shall order the owner or person having control of the dam or reservoir to cause those alterations, additions or repairs to be made within a time specified in the order. If the department finds pursuant to an investigation that a dam or reservoir is not sufficiently strong or is unsafe and that the dam or reservoir is dangerous to life or property, it may cause to be drawn off, in whole or in part, the water in the reservoir or impounded by the dam if it determines that this action is necessary to prevent impending danger to persons or property.

History: 1975 c. 349, 421; 1983 a. 27; 1989 a. 31; 2009 a. 28.

Cross−reference: See also ch. NR 333, Wis. adm. code.

31.21 Transfer of permit. (1) No transfer or assignment of any permit granted under s. 31.06 or 31.08 shall be of any effect whatsoever unless it is in writing and a certified copy thereof within 10 days after the execution thereof, is filed with the department and unless such transfer or assignment is approved in writing by the department; and no such transfer or assignment shall be

approved by the department except after an investigation and a finding that the transfer or assignment is not made or intended to be made for a purpose or to create a condition prohibited by s. 196.665 and that the transferee or assignee has complied with s. 31.14 (2) or (3). No permit shall be transferred or assigned to a foreign corporation, nor shall any permit granted to a municipality be assigned or transferred to any person, otherwise than as security for a loan made in good faith and concurrently with and as consideration for such transfer or assignment, and no foreign corporation shall have power to acquire title to any such permit, nor shall any person have power to acquire title to a permit granted to or acquired by a municipality, otherwise than in the enforcement of such security, and in no case shall any such foreign corporation hold title to or operate under any such permit for a period longer than 3 years.

(2) No municipality shall make or execute any lease or other contract with any person, firm, or corporation for the sale or use of hydraulic or hydroelectric power developed or generated by such municipality under a permit granted under s. 31.06 or 31.08 for a period longer than 10 years, unless the same shall be first approved by the department, after investigation and upon a finding that such lease or contract will not impair or interfere with the purpose or uses for which such dam was acquired or constructed by the municipality.

Cross−reference: See also ch. NR 305, Wis. adm. code.

31.23 Forfeitures; private bridges and dams. (1) Every person who constructs or maintains in navigable waters or aids in the construction or maintenance therein of any bridge or dam not authorized by law, shall forfeit for each such offense, and for each day that the free navigation of such waters are obstructed by such bridge or dam a sum not exceeding $50.

(2) Every person or corporation violating any of the provisions of this chapter, other than those mentioned in sub. (1), or violating any order made by the department pursuant to this chapter, shall forfeit for each such violation not more than $1,000.

(3) (a) There shall be no forfeiture under this section in any case where a bridge is built by a private citizen across any navigable waters having a width of 35 feet or more, providing such bridge does not impair the rights of the public for purposes of navigation or fishing.

(b) No such bridge shall be maintained unless its construction shall first be approved by the department after public hearing and on not less than 10 days' written notice to the applicant and to the county and town clerks of the county and town wherein all or a portion of the proposed bridge is to be located.

(c) Each applicant who shall apply to the department for a permit to construct any such bridge shall state in the application the proposed location of the bridge, the depth of the water to be spanned, the materials to be used in the construction of the bridge, the plans of the proposed bridge, together with such other facts as the department may require.

(d) Every such bridge used by the public shall at all times be maintained in a safe condition by the owners of the land abutting the approaches of the bridge, and the owners shall make such repairs as are reasonably necessary therefor. The town shall not become liable for any damages resulting from the insufficiency or want of repairs of such bridge. If the department upon inspection finds that such bridge is in need of repairs, it shall notify the owners responsible for the repairs thereof, and also send a copy of such notice to the town board, to make all repairs as are reasonably necessary therefor. If such repair work as ordered by the department is not commenced within 60 days after receipt of such notice, the department may close such bridge until it is so repaired. Whenever any owner responsible for such bridge shall fail to repair or maintain the bridge in a good and safe condition, after having been notified so to do by the department for 60 days after such notification, such town board upon its own initiative may make such required repairs on such bridge, and the cost thereof shall be paid by the owners responsible therefor, and the town clerk shall enter such amount of the cost of repairs upon the next tax roll of the town.

(e) This subsection does not apply to a bridge that is constructed, maintained, or operated in association with mining or bulk sampling that is subject to subch. III of ch. 295.

History: 1991 a. 316; 2013 a. 1.

Cross−reference: See also chs. NR 301, 305, and 320, Wis. adm. code.

Sub. (1) provides no substantive rule for which a violation would initiate the abatement procedures under s. 31.25. The remedy provided is limited to the forfeiture provided under sub. (1). Capt. Soma Boat Line, Inc. v. Wisconsin Dells, 56 Wis. 2d 838, 203 N.W.2d 369 (1973).

31.25 Nuisances, abatement. Every dam, bridge or other obstruction constructed or maintained in or over any navigable waters of this state in violation of this chapter, and every dam not furnished with a slide, chute or other equipment prescribed by the department, is hereby declared to be a public nuisance, and the construction thereof may be enjoined and the maintenance thereof may be abated by action at the suit of the state or any citizen thereof.

Section 31.23 (1) provides no substantive rule for which a violation would initiate the abatement procedures under this section. Capt. Soma Boat Line, Inc. v. Wisconsin Dells, 56 Wis. 2d 838, 203 N.W.2d 369 (1973).

31.253 Dam removal; opportunity for hearing. (1) OPPORTUNITY FOR HEARING PRIOR TO DEPARTMENT ACTION. Except as provided under sub. (4), prior to seeking or causing the removal of a dam under this chapter, the department shall hold a public informational hearing on the proposed removal or publish a class 2 notice under ch. 985 stating that it will seek or cause the removal of the dam without holding a public informational hearing unless a hearing is requested in writing within 30 days after the last publication of the notice. The department may hold further hearings or give further notice as it deems appropriate.

(2) OPPORTUNITY FOR HEARING PRIOR TO COURT ACTION. Except as provided under sub. (4), a court may not order or authorize the removal of a dam in an enforcement action under this chapter unless a public informational hearing or an opportunity for a public informational hearing was provided.

(3) PUBLIC INFORMATIONAL HEARING. If the department conducts a public informational hearing under this section, the department shall explain the basis for its decision to seek or cause the removal of the dam, the procedures which will be followed and opportunities for citizen involvement in those procedures and the department shall provide an opportunity for citizens to present comments, testimony and evidence concerning the removal of the dam. Notwithstanding s. 227.42, this hearing may not be converted or treated as a contested case.

(4) EXCEPTIONS. (a) This section does not apply if the department or a court determines that a dam constitutes an immediate and significant hazard to persons or property.

(b) This section does not apply to an application under s. 31.185 or departmental action under s. 31.185.

History: 1983 a. 507; 1985 a. 182 s. 57.

31.26 Civil liabilities. (1) The owner of any dam or of any privately owned bridge across the Wisconsin River or the Black River or any of their tributaries shall be liable for all damages occasioned to property by a failure to provide such dam or bridge with slides, booms and chutes as required by s. 31.18 (1). The person or party suffering any such damage shall have a lien upon the dam and all mills, machinery and appurtenances of such owner erected thereon, or served with water thereby, and on the lands adjoining, not exceeding 40 acres; or, as the case may be, a lien upon such bridge and its approaches.

(2) The claimant of such lien shall file a notice thereof in writing in the office of the clerk of the circuit court of the county in which the dam or bridge is located within 60 days after sustaining such damages and shall commence an action to enforce the lien within 6 months after filing such notice. Such lien shall accrue upon the filing of such notice and failure to file the same or to commence such action within the times specified therefor respectively

shall operate as a waiver of the lien. Judgment for the plaintiff for the recovery of damages and declaring such lien may be enforced by an execution sale of the property affected as in ordinary actions at law, and upon such sale all rights to maintain such dam or bridge shall pass to the purchaser.

(3) In case of any personal injury by reason of any such neglect or failure the damages sustained thereby may be recovered and a lien and judgment enforced in like manner; and if death results an action may be maintained by the representatives of the deceased in the manner provided in other cases of death resulting from negligence or wrong.

(4) No common law liability, and no statutory liability provided elsewhere in these statutes, for damage resulting from or growing out of the construction, maintenance or operation of any dam is released, superseded, or in any manner affected by the provisions of this chapter; and this chapter creates no liability on the part of the state for any such damages.

31.29 May employ hydraulic engineer and assistants. The department may employ and fix the salaries of a competent hydraulic engineer and other assistants necessary to carry out the provisions of this chapter.

31.30 Dams on Brule River. It is declared to be the policy of the state to prohibit forever the building or maintaining of any dam or dams across the Brule River or any of its tributaries in Douglas County, except that a dam with an adequate fishway may be constructed across said Brule River at each of the 3 sites hereinafter described, or at such other sites as are selected by the department in place of any or all of the sites hereinafter mentioned, the purpose of which shall be to provide a method whereby fish declared to be undesirable for said stream by the department may be eliminated or prevented from ascending the stream, and to permit said stream to be developed for trout in different stretches thereof: site No. 1 known as Clevedon site in the southeast quarter of the northwest quarter of section 10, township 49 north, range 10 west; site No. 2 known as the Old Mill site in the northwest quarter of the southeast quarter, section 11, township 47 north, range 10 west; and site No. 3, known as the Upper or Rock dam site in the northeast quarter of the southeast quarter of section 22, township 47 north, range 10 west; and all rights, privileges, and franchises granted prior to June 26, 1905, to any person or corporation to improve said Brule River or any of its tributaries in said county for any purpose whatever, are repealed and annulled. No domestic corporation organized subsequent to such date shall exercise any of the powers or privileges authorized or conferred by ss. 180.15 to 180.18, 1925 stats., in, across or along said river or any of its tributaries in Douglas County.

Cross−reference: See s. 30.25 for similar prohibition of dams on the Wolf River.

31.305 Dams in the Lower Wisconsin State Riverway. No dam may be constructed in the lower Wisconsin River as defined in s. 30.40 (14).

History: 1989 a. 31.

31.307 Dam on Milwaukee River. (1) The department shall conduct, or shall cause to be conducted, an environmental and engineering study concerning the removal of the North Avenue dam in the city of Milwaukee from the Milwaukee River.

(3) Upon completion of the study under sub. (1), the city of Milwaukee may apply for a permit to abandon the dam under s. 31.185 or the department may proceed under ss. 31.187 and 31.253 to cause the removal of the dam.

(4) For purposes of s. 30.92 (4) (b) 6., moneys expended from the appropriation under s. 20.370 (5) (cq) for the study under sub. (1) shall be considered as amounts expended for projects considered necessary without regard to location.

History: 1991 a. 39; 1995 a. 27.

31.309 Portage levee system and canal. (1) CITY OF PORTAGE LEVEE. (a) The department shall provide a grant in the 1995−97 fiscal biennium from the appropriation under s. 20.370 (5) (cq) to the city of Portage for the amount necessary for the renovation and repair of the city of Portage levee in the Portage levee system. The grant under this paragraph may not exceed $800,000 in fiscal year 1995−96 and $800,000 in fiscal year 1996−97.

(ag) The department shall provide a grant of $350,000 in fiscal year 2001−2002 and a grant of $350,000 in fiscal year 2002−2003 from the appropriation under s. 20.370 (5) (cq) to the city of Portage for the renovation and repair of the Portage canal.

(am) The city of Portage may use any amounts from the grant awarded under par. (a) for the renovation and repair of the Portage canal.

(b) When the department determines that the renovation and repair described under par. (a) are complete, the city of Portage shall assume the maintenance of the city of Portage levee in the Portage levee system in a manner that will best protect the surrounding area from the overflow of the Wisconsin River.

(2) LEWISTON AND CALEDONIA LEVEES. (a) The department shall maintain the Lewiston and Caledonia levees in the Portage levee system in a manner that will best protect the surrounding area from the overflow of the Wisconsin River.

(b) The department may expend in fiscal year 1995−96, from the appropriation under s. 20.370 (5) (cq), up to $400,000 for a study concerning the future of strengthening and maintaining the Lewiston and Caledonia levees in the Portage levee system. The study shall include a management plan for these 2 levees.

History: 1995 a. 27 ss. 1698, 1699, 1702 to 1706; Stats. 1995 s. 31.309; 1999 a. 9; 2001 a. 16.

31.31 Dams on nonnavigable streams. Any person may erect and maintain upon that person's land, and, with the consent of the owner, upon the land of another, a water mill and a dam to raise water for working it upon and across any stream that is not navigable in fact for any purpose whatsoever upon the terms and conditions and subject to the regulations hereinafter expressed; and every municipality may exercise the same rights upon and across such streams that they may exercise upon or across streams navigable for any purpose whatsoever.

History: 1991 a. 316.

31.32 Dams not to injure other dams or sites. No such dam shall be erected to the injury of any mill lawfully existing, either above or below it on the same stream; nor to the injury of any mill site on the same stream on which a mill or milldam shall have been lawfully erected and used or is in the process of erection, unless the right to maintain a mill on such last−mentioned site shall have been lost or defeated by abandonment or otherwise; nor to the injury of any such mill site which has been occupied as such by the owner thereof, if such owner, within a reasonable time after commencing such occupation, completes and puts in operation a mill for the working of which the water of such stream shall be applied.

31.33 Jurisdiction of department. (1) DAMS HERETOFORE OR HEREAFTER CONSTRUCTED; ACTION FOR DAMAGES. All mills and milldams lawfully erected or constructed, on streams not navigable at the time, under chapter 48, territorial laws of 1840, chapter 62, laws of 1857, ch. 56, R.S. 1858, ch. 146, R.S. 1878, ch. 146, R.S. 1898, ch. 146, 1911 stats., ch. 146, 1913 stats., or ch. 146, 1915 stats., or any special, private or local act, or under any other act whatsoever, that are not now abandoned but are still in existence and use, and all dams heretofore or hereafter erected or constructed on streams not navigable in fact for any purpose, shall be subject to and regulated and controlled, so far as applicable, by ss. 31.02, 31.12, 31.18, 31.19, 31.25, 31.26 and 196.665, except that those sections do not prevent the owner of any land flooded or otherwise injured by any milldam from recovering by action at law, full compensation for all damages resulting to him or her in times past and that will result to him or her in the future in consequence of that flooding and injury but no damages suffered more than 3 years before the commencement of the action shall be recovered.

The amount recovered constitutes a first lien upon the milldam and upon the mill, if any, and the lien may be enforced by execution sale of the property affected. In every such action the amount paid or secured to be paid under prior laws as damages shall be considered and proper allowance made therefor. The authority granted under this subsection to bring the action does not preclude the owner from proceeding under ch. 32. The owner may not exercise his or her option to bring the action after condemnation proceedings have been commenced against his or her property under ch. 32.

(2) LICENSE. A license is granted to each owner of any such milldam now in existence and use, and to each owner of any such milldam hereafter constructed, to maintain and use the same to operate mills or machinery, or for any other lawful private or public purpose, but subject, however, to the supervision of the department acting under ss. 31.02, 31.12, 31.18, 31.19, 31.25, 31.26 and 196.665. The right created by the license shall follow the title to the milldam and a conveyance of the latter shall transfer the right to the grantee.

(3) INTERPRETATION. Whenever ss. 31.02, 31.12, 31.18, 31.19, 31.25, 31.26 and 196.665 are applied to mills or milldams specified in sub. (1) every reference in any of them to a "permit" or to a "grantee" of a permit shall be regarded as referring respectively to a license granted by this section and to the owner of such a mill or milldam.

(4) HEIGHT. The height to which water may be raised by any such milldam and the length or period of time for which it may be kept up each year, may be restricted and regulated by the orders of the department.

(5) VIOLATION OF ORDERS, PENALTIES. Every person, firm or corporation violating any of the orders respecting any such mill or milldam made by the department shall forfeit for each such violation a sum not exceeding $500 which may be recovered by civil action as provided by ch. 778.

History: 1979 c. 32 s. 92 (8); 1981 c. 390; 1989 a. 31.

Cross−reference: See also ch. NR 333, Wis. adm. code.

This section applies to nonnavigable artificial waterways insofar as is necessary to protect navigable waters and owners of flooded waters. 63 Atty. Gen. 493.

Wisconsin's Milldam Act: Drawing New Lesson's From Old Law. Martini. 1998 WLR 1305.

31.34 Flow of water regulated. (1) Except as provided in subs. (2) and (3), each person, firm, or corporation maintaining a dam on any navigable stream shall pass at all times at least 25 percent of the natural low flow of water of such stream.

(2) Except as provided in sub. (3), if all of the following apply to a dam on a navigable stream, the person, firm, or corporation maintaining the dam shall pass an amount of water not less than the lesser of the low flow of the stream over the preceding 10−year period, as determined using the 7−day, 10−year low−streamflow method, or the amount of water passed by groundwater seepage and leakage through the dam structure:

(a) The dam is in a location where a dam was originally constructed prior to 1845 and regulates water discharge to a stream from a lake with a depth of over 125 feet.

(b) The precise level of the natural low flow of water at the location of the dam prior to its construction is not known.

(c) Historically there have been extended periods during which water passed through the dam only as groundwater seepage and as the result of leakage through the dam structure.

(2m) The department may not order a person, firm, or corporation maintaining a dam described under sub. (2) (a) to (c) to pass an amount of water greater than the minimum discharge described under sub. (2).

(3) The requirements under subs. (1) and (2) do not apply to any of the following:

(a) A plant or dam where the water is discharged directly into a lake, mill pond, storage pond, or cranberry marsh.

(b) Cases in which, in the opinion of the department, the applicable minimum discharge described in sub. (1) or (2) is not necessary for the protection of fish life.

(4) Any person, firm, or corporation violating this section shall be fined not less than $50 nor more than $1,000.

History: 2015 a. 55.

31.35 Dams in areas leased by county; restrictions; control by circuit judge; when. (1) Dams controlling the water elevations in areas covered by leases made under s. 59.01 shall be operated in such manner as not to divert waters or withhold from any cranberry reservoir to the damage of any cranberry marsh now served or dependent upon such water supply or to any crops or works therein.

(2) The circuit court for the county where the leased lands are located shall, upon petition and proof that any cranberry marsh or crops or works thereon are endangered or likely to be damaged by the operation of any dam or water control, make a summary order for the release, impounding or control of the waters affected by the dam or dams, to be and remain in force until dissolved by due notice and hearing.

History: 1977 c. 449.

31.36 Levee commissioners. (1) The right−of−way for such levees, if any additional are found necessary, shall be furnished by the municipalities in which they are located, and no construction work shall be begun until such rights−of−way are provided.

(2) Whenever levee commissioners under either general or special act are charged with the expenditure of money appropriated by the state or by any municipality for the construction, extension, improvement or repair of any levee or breakwater along the shore or bank of a river, stream or lake, s. 31.38 shall apply for the purpose of acquisition and condemnation of lands for such purposes and such commissioners have all the powers conferred by s. 31.38 for these purposes. Condemnations shall comply with s. 66.0703, so far as applicable. Commissioners may procure by condemnation lands for right−of−way, earth material, borrow pits, quarry, timber and brush privileges as they may, in their judgment, deem necessary for such purposes.

(3) Whenever said levee commissioners are not vested with power to buy rights−of−way, earth material, borrow pits, quarry, timber and brush privileges from money appropriated by the state they may receive from any person or municipality donations of land and moneys to pay for lands and privileges condemned hereunder and for the expenses of such condemnation proceedings.

(14) This section does not modify or repeal s. 31.35.

History: 1993 a. 490; 1995 a. 27; 1999 a. 150 s. 672.

31.38 Municipal authority to construct and maintain dams. (1) Every municipality may, subject to this chapter, authorize the acquisition, construction, maintenance or repair of dams across any lake or stream adjoining or within the limits of such municipality, and may locate such dam within or without such limits.

(2) Whenever it is deemed necessary to acquire, construct, maintain or repair any such dam, a plan therefor, with specifications and cost estimates, shall be prepared and presented to the governing body of the municipality for adoption. Cost estimates may include the estimated cost of maintenance for a period of years. When adopted by the governing body, the plan shall, where required, be submitted to the department or proper officer of the United States for approval. No work shall be done in pursuance of such plan until it has been so approved.

(3) For the purpose of this section, a municipality may purchase or condemn lands within and, when necessary, without its limits in order to protect any property situated within such limits.

(4) The municipality shall proceed in accordance with s. 66.0703 to make special assessments to property on account of

benefits resulting to the property from the improvement mentioned in sub. (2) or from the acquisition and maintenance of a dam. If the excess of benefits over damages accruing to property within the assessment district is not sufficient to pay the cost of the improvement, the municipality may pay the balance, either out of its general fund or out of any special fund created for that purpose. The municipality may issue its negotiable bonds, as provided in ch. 67, to pay for such improvement. The department upon request of a municipality shall assist in engineering, surveying and determination of charges necessary in establishing special assessment districts under this section, cost of which shall be advanced by the requesting municipality and later charged against the various parcels of the special assessment district in direct proportion to the assessed benefits of each parcel in the district.

(5) Whenever 2 or more municipalities propose to cooperate in acquiring, constructing, maintaining or repairing a dam, their governing bodies shall first meet and adopt a method of proceeding and a plan of apportioning to each its share of the entire cost. Such method of proceeding and plan of apportionment shall be embodied in a resolution adopted by the governing bodies of the cooperating municipalities acting jointly and later such resolution shall be adopted by each of the governing bodies acting separately.

(6) Whenever a county or town acts under this section, the references in s. 66.0703 to a city or village or clerk thereof mean the county or town or clerk thereof, as the case may be.

History: 1999 a. 150 s. 672.

31.385 Dam safety; aid program. (1b) In this section "dam safety project" means the maintenance, repair, modification, abandonment or removal of a dam to increase its safety or any other activity that will increase the safety of a dam.

(1m) The department shall promulgate the rules necessary to administer a financial assistance program for dam safety projects under which financial assistance shall be provided as follows:

(a) To municipalities and public inland lake protection and rehabilitation districts for any type of dam safety projects.

(b) To private owners for the removal of dams.

(c) To any persons for the removal of abandoned dams.

(2) The following standards shall apply to financial assistance under this section for dam safety projects:

(a) 1. Except as provided in subd. 2., financial assistance for a dam safety project is limited to the sum of the following:

a. No more than 50 percent of the first $400,000 of costs of the project.

b. No more than 25 percent of the costs of the project that exceed $400,000.

2. A project to remove a dam shall not be subject to the cost limits under subd. 1.

3. Financial assistance is limited to no more than $400,000 for each dam safety project.

(ag) Of the amounts appropriated under s. 20.866 (2) (tL) and (tx), at least $250,000 shall be used for projects to remove dams. A project to remove a dam may include restoring the stream or river that was dammed.

(ar) Of the amounts appropriated under s. 20.866 (2) (tL) and (tx), at least $100,000 shall be used for the removal of abandoned dams. The amounts required to be used under this paragraph are in addition to the amounts required to be used for the removal of dams under par. (ag).

(b) The department shall determine which projects shall receive funding priority.

(bm) The department may provide financial assistance for an activity other than the maintenance, repair, modification, abandonment or removal of the dam only if the cost of that activity will be less than the cost of the maintenance, repair, modification or removal of the dam.

(c) No financial assistance may be provided under this section for a dam safety project unless at least one of the following applies:

1. The department conducts an investigation or inspection of the dam under this chapter and the owner of the dam requests financial assistance under this section after having received department directives, based on the department's investigation or inspection of the dam, for the repair, modification or abandonment and removal of the dam or for another activity to increase the safety of the dam.

2. The municipality, public inland lake protection and rehabilitation district or other person applying for state financial assistance under this section has received directives from the department or is under order by the department to maintain, repair, modify, abandon or remove a dam on August 9, 1989.

(d) The financial assistance that is provided under this section shall be paid from the appropriations under s. 20.866 (2) (tL) and (tx), except as provided in par. (dm) and in 1991 Wisconsin Act 39, section 9142 (10d).

(dm) Financial assistance that is provided under sub. (7) shall be paid from the appropriation under s. 20.866 (2) (ta) and shall be treated as moneys obligated from the subprogram under s. 23.0917 (3).

(3) The department shall provide municipalities, public inland lake protection and rehabilitation districts and other persons receiving state financial assistance under this section with technical assistance for dam safety projects under this section. The department shall coordinate the financial assistance program under this section with other related state and federal programs.

(4) (a) The department shall maintain an inventory of all dams in the state that require a dam safety project under this section. The inventory shall list the dam safety projects in the chronological order in which they are required to be undertaken. For each dam safety project on the inventory, the department shall include a statement of which parts of the dam safety project are required to protect the rights held by the public in the navigable waters contained by the dam.

(b) The department shall provide notice to the owner of a dam that is included in the inventory. The department shall by rule establish a notice and hearing process for a dam owner to object to the inclusion of the owner's dam on the list. The department shall use this notice and hearing each time a dam is included in the inventory. The process shall include a public hearing in the city, village or town in which the dam is located, a public comment period, and an appeals process.

(5) Notwithstanding the limitations under sub. (2) (a) and the funding allocation requirements under sub. (2) (ag) and (ar), the department shall provide financial assistance to the village of Cazenovia in the amount necessary for a dam safety project to repair a dam that is located in the portion of the village that is in Richland County. The amount of the financial assistance may not exceed $250,000. The village need not contribute to the repair costs, and sub. (2) (c) does not apply to this dam safety project. The repair of this dam need not be included as a dam safety project under the inventory maintained by the department under sub. (4) for the village to receive financial assistance under this section.

(6) (a) Notwithstanding the limitations under sub. (2) (a) and the funding allocation requirements under sub. (2) (ag) and (ar), the department shall provide financial assistance to all of the following:

1. Adams County for a dam safety project for Easton Dam in the amount necessary for the project, but not to exceed $150,000.

2. The city of Stanley for a dam safety project for Stanley Dam in the amount necessary for the project, but not to exceed $150,000.

3. The city of Montello for a dam safety project for Montello Dam, in the amount necessary for the project, but not to exceed $150,000.

4. Eau Claire County for dam safety projects for Lake Altoona Dam, for Lake Eau Claire Dam, and for a dam located in Coon Fork Lake County Park, in the amount necessary for the projects, but not to exceed $27,000.

(b) The counties and cities need not contribute to the costs of the dam safety projects under par. (a) 1. to 4., and sub. (2) (c) does not apply to these projects. The dam safety projects under par. (a) 1. to 4. need not be included as dam safety projects under the inventory maintained by the department under sub. (4) in order to receive financial assistance under this subsection.

(7) Notwithstanding the limitations under sub. (2) (a), and beginning with fiscal year 2011−12 and ending with fiscal year 2019−20, the department shall set aside from the appropriation under s. 20.866 (2) (ta) not more than a total of $6,000,000 that may be obligated only to provide financial assistance to counties for projects to maintain, repair, modify, abandon, or remove dams. For purposes of s. 23.0917, beginning with fiscal year 2015−16, the moneys provided under this subsection from s. 20.866 (2) (ta) shall be treated as moneys obligated under s. 23.0917 (5g) (c) 2. c. To be eligible for financial assistance, a county must be under an order issued by the department to maintain, repair, modify, abandon, or remove a dam that is owned by the county and the order must be in effect on July 1, 2011. The amount of the financial assistance may not be for more than 25 percent of the costs of a project or $2,500,000, whichever is less. Subsection (2) (c) does not apply to a project for which financial assistance is provided under this subsection. A project need not be included under the inventory maintained by the department under sub. (4) in order for a county to receive financial assistance under this subsection.

History: 1989 a. 31, 336; 1991 a. 39; 1993 a. 16; 1997 a. 27; 1999 a. 9, 185; 2001 a. 16; 2007 a. 97; 2009 a. 28; 2011 a. 32; 2015 a. 55.

Cross−reference: See also chs. NR 335 and 336, Wis. adm. code.

31.387 Dam rehabilitation projects. The department shall establish and administer a grant program under which the department shall provide grants to counties to rehabilitate dams located in those counties. The department may only provide a grant for a project under this section to match federal funds provided for the project under the federal Watershed Protection and Flood Prevention Act of 1953 (Public Law 83−566).

History: 2001 a. 16.

31.39 Fees for permits, approvals and hearings. (1) FEES REQUIRED. The department shall charge a permit or approval fee for carrying out its duties and responsibilities under ss. 31.02 to 31.185 and 31.33 to 31.38. The permit or approval fee shall accompany the permit application or request for approval.

(2) AMOUNT OF FEES. (a) For fees charged for permits and approvals under ss. 31.02 to 31.185 and 31.33 to 31.38, the department shall classify the types of permits and approvals based on the estimated time spent by the department in reviewing, investigating and making determinations whether to grant the permits or approvals. The department shall then set the fees as follows:

1. For a permit or approval with an estimated time of less than 3 hours, the fee shall be $30.

2. For a permit or approval with an estimated time of more than 3 hours but less than 9 hours, the fee shall be $100.

3. For a permit or approval with an estimated time of more than 9 hours, the fee shall be $300.

(b) For conducting a hearing on an application for which notice is provided under s. 31.06 (1), the person requesting the hearing for the permit or approval shall pay a fee of $25.

(2m) ADJUSTMENTS IN FEES. (a) The department shall refund a permit or approval fee if the applicant requests a refund before the department determines that the application for the permit or approval is complete. The department may not refund a permit or approval fee after the department determines that the application is complete.

(b) If the applicant applies for a permit or requests an approval after the project is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

(d) The department, by rule, may increase any fee specified in sub. (2).

(2r) FEE FOR EXPEDITED SERVICE. (a) The department, by rule, may charge a supplemental fee for a permit or approval that is in addition to the fee charged under this section if all of the following apply:

1. The applicant requests in writing that the permit or approval be issued within a time period that is shorter than the time limit promulgated under par. (b) for that type of permit or approval.

2. The department verifies that it will be able to comply with the request.

(b) If the department promulgates a rule under par. (a), the rule shall contain a time limit for each type of permit or approval classified under sub. (2) (a) for determining whether the department will grant the permit or approval.

(3) EXEMPTIONS. This section does not apply to any federal agency or state agency.

History: 1977 c. 29; 1979 c. 221; 1981 c. 346; 1989 a. 31, 324; 1995 a. 27, 227; 1997 a. 27; 2011 a. 118.

Cross−reference: See also ch. NR 300, Wis. adm. code.

31.99 Parties to a violation. (1) Whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person:

(a) Directly commits the violation;

(b) Aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires or counsels or otherwise procures another to commit it.

History: 1975 c. 365.