



December 14, 2011

IP-NE-2011-45-06836

Karen Harkness
City of Appleton
100 N. Appleton Street
Appleton, WI 54911

Dear Ms. Harkness:

We have reviewed your application for a permit to abandon a portion of the Lower Appleton Dam, Field File #44.01 on the Fox River, in the City of Appleton, Outagamie County. You will be pleased to know your application is approved with a few limitations.

I am attaching a copy of your permit which lists the conditions which must be followed. A copy of the permit must be posted for reference at the project site. **Please read your permit conditions carefully so that you are fully aware of what is expected of you.**

Please note you are required to submit photographs of the completed project within 7 days after you've finished construction. This helps both of us to document the completion of the project and compliance with the permit conditions.

Your next step will be to notify me of the date on which you plan to start construction and again after your project is complete.

If you have any questions about your permit, please contact me at (715) 526-4232 or email at scott.koehnke@wisconsin.gov or Miles Winkler at (920) 662-5195 or email at miles.winkler@wisconsin.gov.

Sincerely,

Scott Koehnke
Water Management Specialist

cc: Nick Domer-Corps of Engineers
Tim Roach-Outagamie County Zoning
Ryan Propson-Conservation Warden
Brian Mailet-ARCADIS
Jennifer Borski-WDNR
Miles Winkler-WDNR
Bob Strous-WDNR
Steve Hiniker – 1000 Friends of Wisconsin
WZ File

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

**Dam abandonment PERMIT
IP-NE-2011-45-06836**

Karen Harkness, City of Appleton, is hereby granted under Section 31.185, 31.18, Wisconsin Statutes, a permit to abandon a portion of the Lower Appleton Dam, Field File #44.01 on the Fox River, in the City of Appleton, Outagamie County, also described as Section 25, Township 21 North, Range 17 East, subject to the following conditions:

PERMIT

1. You must notify Scott Koehnke at phone (715) 526-4232 before starting construction and again not more than 5 days after the project is complete.
2. You must complete the project as described on or before **December 14, 2013**. If you will not complete the project by this date, you must submit a written request for an extension prior to the expiration date of the permit. Your request must identify the requested extension date and the reason for the extension. A permit extension may be granted, for good cause, by the Department. You may not begin or continue construction after the original permit expiration date unless the Department grants a new permit or permit extension in writing.
3. This permit does not authorize any work other than what you specifically describe in your application and plans, and as modified by the conditions of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.
4. You are responsible for obtaining any permit or approval that may be required for your project by local zoning ordinances and by the U.S. Army Corps of Engineers before starting your project.
5. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance.
6. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity is detrimental to the public interest.
7. You must post a copy of this permit at a conspicuous location on the project site, visible from the waterway, for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.
8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
9. You must submit a series of photographs to the Department, within one week of completion of work on the site. The photographs must be taken from different vantage points and depict all work authorized by this permit.

10. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Chapter 30, Wisconsin Statutes or this permit.
11. All equipment used for the project including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive and exotic viruses and species prior to use and after use.
12. The following steps must be taken every time you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters shall not be used on other non-infested waters.
 1. **Inspect and remove** aquatic plants, animals, and mud from your equipment.
 2. **Drain all water** from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps.
 3. **Dispose** of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
 4. **Wash your equipment** with hot (>104° F) and/or high pressure water-OR-Allow your equipment to **dry thoroughly for 5 days**.

INDIVIDUAL PERMIT CONDITIONS

13. After the site is 80% stabilized, or prior to at the direction of the Department, all temporary erosion control measures must be removed and disposed of properly. Any remaining temporary erosion control devices after this point constitute littering and may be enforced as determined necessary by the department.
14. Appropriate erosion control measures must be in-place and effective during every phase of this project.
15. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters and as specified in the plans and procedures that are part of or approved pursuant to this permit. All erosion control measures must meet or exceed the approved Stormwater Construction Technical Standards found on the Department's Website <http://dnr.wi.gov/org/water/wm/nps/stormwater/techstds.htm#Construction> developed by the Department under Wis. Admin. Code Ch. NR 151.31.
16. Erosion control measures must be in place at the end of each working day.
17. Erosion control measures must be inspected, and any necessary repairs or maintenance performed, after every rainfall exceeding 1/2 inch and at least once per week.
18. No portion of the bank or upland which is altered or disturbed and, as a result, unstable may remain unprotected for more than 7 days.
19. Site stabilization between October 1 and April 15 requires sodding or seeding and mulching (with a non-toxic tackifier).

20. The bank slopes must be no steeper than two-feet horizontal to one-foot vertical after construction.
21. The removal of vegetative cover and exposure of bare ground must be restricted to the minimum amount necessary for construction. Areas where soil is exposed must be protected from erosion by seeding and mulching, sodding, diversion of surface runoff, installation of straw bales or silt screens, construction of settling basins, or similar methods as soon as possible after removal of the original ground cover as described in the Wisconsin Construction Site Handbook (BMP's).
22. You must maintain a log of the erosion control inspections, repairs made, and rain events. This must be made available to Department personnel upon request and must remain on the project site at all times work is being performed.
23. You must supply a copy of this permit to every contractor associated with this project.
24. Existing coarse woody debris within and adjacent to the portion of the raceway that is not being filled in will be maintained. Additional opportunities to place more coarse woody debris at the site will be considered for the future.
25. A seepage barrier must be in place in both the head race abandonment as well as the building canal abandonment.
26. A 48-hour notification shall be given to Water Management Engineer, Miles Winkler at 920/662-5195 prior to any abandonment construction work.
27. Two copies of Record Drawings (as-builds) shall be provided together with a written summary of the work performed. The Record Drawings shall be stamped and signed by a professional engineer in the State of Wisconsin. Digital photos of the work performed shall accompany the Record Drawings.
28. Section 31.12(4), Stats., requires a verified statement to be filed with the Department within 10 days after completion of the construction/abandonment of the dam, stating that it was constructed/abandoned in accordance with the plans and specifications approved by the Department.

FINDINGS OF FACT

1. Karen Harkness, City of Appleton, has filed an application for a permit to abandon a portion of the Lower Appleton Dam, Field File #44.01 on the Fox River, in the City of Appleton, Outagamie County, also described as Section 25, T21N, R17E.
2. The abandonment consists of a portion of the left side of the Lower Appleton Dam, Field File #44.01. The portion of the dam to be abandoned consists of an independent head race canal that leads to a gated building raceway structure and the building raceway. The building raceway portion of the dam is housed by the Foremost Foods former dairy whey plant facility. The water from the building raceway discharges to a tail race that leads to the Fox River. The four drawings listed below show the project site and the proposed work at the abandonment site:

- "SITE LAYOUT", Drawing Number 1, as prepared by Martenson & Eisele, Inc.
 - "PLAN VIEW OF THE RACE ABANDONMENT AND CULVERT ACTIVITIES", Drawing Number 3, as prepared by ARCADIS U.S., Inc.
 - "HEAD RACE BED ELEVATIONS AND ABNDONMENT NCROSS SECTIONS", Drawing Number 3, as prepared by ARCADIS, U.S., Inc.
 - "CUTOFF PLUGS IN RACEWAY PLAN AND SECTIONS", Drawing Number 7, as prepared by ARCADIS U.S., Inc.
3. The City of Appleton will be required to complete the work as shown for the abandonment of their portion of the Lower Appleton Dam.
 4. The drawings listed above were included as part of the permit application submitted by the City of Appleton dated October 14, 2011.
 5. This portion of the dam was previously owned by Foremost Foods USA and is now owned by the City of Appleton. The portion of the dam to be abandoned consists of an independent head race canal that leads to a gated building raceway structure and the building raceway. The water from the building raceway discharges to a tail race that leads to the Fox River. The head race and building race are to be filled in with recycled demo material, poured concrete, clean fill and geo-fabric. All material to be used will be clean recycled demo material or clean off-site material.
 6. The City will abandon 600' of the approximately 845' of head race to an elevation of 714' MSL with approximately 14,000 cubic yards of fill material. Approximately 250' from the terminus of the head race abandonment, a slurry of flowable concrete 10' in width will be placed to create a seepage barrier. The entire building race of 160' long by 30' wide will be filled with approximately 1,450 cubic yards of fill material to an elevation of 706' MSL. Adjacent to the eastern face of the existing canal gate, a slurry of flowable concrete 7' in width will be placed to create a seepage barrier.
 7. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.
 8. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
 9. The proposed project will not adversely impact wetlands if constructed in accordance with this permit.
 10. The Department of Natural Resources and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 1.11, 31.185, 31.18, Wisconsin Statutes and Chapters NR 102, 103, 115, 116, 117, 150, 299 and 333 of the Wisconsin Administrative Code.

CONCLUSIONS OF LAW

1. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.

2. The Department has complied with s.1.11 Wis. Stats.
3. The Department has examined plans for the abandonment of the headrace and millrace portions of the left side of the Lower Appleton Dam, Field File # 44.01, currently owned by the City of Appleton.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review. If you are not the permit applicant, you must provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

The filing of a request for a contested case hearing does not extend the 30 day period for filing a petition for judicial review.

A request for contested case hearing must meet the requirements of section 30.209, Wis. Stats., and section NR 310.18, Wis. Adm. Code, and must include the following information:

1. A description of the Department's action or inaction which is the basis for the request; and,
2. A description of the objection to the decision that is sufficiently specific to allow the department to determine which provisions of Chapter 30, Wis. Stats., may be violated; and
3. A description of the facts supporting the petition that is sufficiently specific to determine how you believe the project may result in a violation of Chapter 30, Wis. Stats.; and,
4. Your commitment to appear at the contested case hearing, if one is granted and present information supporting your objection.
5. If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Dated at Shawano DNR Office, Shawano, Wisconsin on December 14, 2011.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By 
Scott Koehnke
Water Management Specialist