



## WISCONSIN DEPARTMENT OF NATURAL RESOURCES NOTICE OF FINAL GUIDANCE & CERTIFICATION

Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.

### DOCUMENT ID

WW-19-0120-C

### DOCUMENT TITLE

DAM TRANSFER CHECKLIST

### PROGRAM/BUREAU

WATERWAYS PROGRAM

### STATUTORY AUTHORITY OR LEGAL CITATION

CH. 31, WIS. STATS.

### DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS)

12/2/2019

### DATE FINALIZED

12/30/19

### DNR CERTIFICATION

*I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.*

12/23/19

Signature

Date

## Dam Transfer Application Instructions

The Wisconsin Department of Natural Resources helps protect your rights in public waters as well as public safety, by ensuring adequate planning and design of projects affecting fish and wildlife habitat, water quality and natural scenic beauty. This is done through permit and plan approval requirements for individual water projects. Chapter 30 and 31 of the Wisconsin Statutes require written permits for certain activities on or near a watercourse.

S.710.11, Wis. Stats. states that a person may not accept transfer of ownership of a specific piece of land on which a dam is physically located unless they comply with s. 31.14(4), Wis. Stats. which requires proof of financial responsibility to repair, operate and maintain a dam for at least a 10 year period.

A municipally owned dam may not be transferred to a private individual or foreign corporation, and no dam may be transferred to a foreign corporation according to s. 31.21, Wis. Stats.

A permit is required to transfer ownership of large and small dams that are State regulated and located on navigable watercourse according to s. 31.185, Wis. Stats., before the dam is transferred to a new owner.

The process is slightly different for large and small dams that are State regulated and located on non-navigable streams. Note that navigability determinations are defined by today's standards rather than at the time of original dam construction. After completing an inspection, the buyer shows adequate financial capability to maintain the dam and the department issues a "transfer approval."

### Prior to applying for this permit:

- For more information, select "Transfer of ownership" from the Dams section on the website, [dnr.wi.gov/permits/water/](http://dnr.wi.gov/permits/water/).
- The following fact sheet explains the responsibilities in owning a dam in Wisconsin, [dnr.wi.gov/topic/dams/documents/FSOwnerResponsibility.pdf](http://dnr.wi.gov/topic/dams/documents/FSOwnerResponsibility.pdf).
- Contact your county, city, or village zoning department to find out if your project site is either in a mapped wetland or floodplain and if local zoning restrictions could affect your project.

### To apply:

- Apply online using our online ePermitting System at [dnr.wi.gov/permits/water/](http://dnr.wi.gov/permits/water/).
- Include all required attachments. Each document must be less than 15 megabytes and our online system offers a help guide to reduce file sizes.
- Permit processing review times begin when all of the required application materials are received by the DNR. Depending on the type, complexity, and location of the proposed project, processing can take 60 working days or three months to complete a review.
- The department may require additional information to evaluate the project.
- If you have questions regarding your application contact:
  - The local Water Management Engineer (WME) for your county, refer to <http://dnr.wi.gov/topic/dams/regionalcontacts.html> for information about dams.

### Please note, prior to starting any work at the project site, you are responsible for:

- Obtain all necessary local (e.g. city, town, village or county) permits
- Obtain U.S. Army Corps of Engineer permits or approvals
- Obtain any other applicable state permits

**Public notice newspaper posting:**

- As part of the permit process for transferring ownership of a dam located on a navigable watercourse, you are required to publish in the newspaper as a Class 1 public notice.
- The department will prepare the notice.
  - If you would like to delegate to the department the required task of publishing in the newspaper, please select and pay the additional fee.
- If requested, a **public hearing** may be required.

**Recorded transfer documents:**

- Once the department has issued the permit for the dam transfer;
  - The new owner will be required to notify the department of their acceptance of the dam in 30 days.
  - The notification will also need to include documentation that the transfer documents have been recorded with the appropriate Register of Deeds in connection with the land described.

**Paper copies of application materials:**

After the application has been submitted electronically, please submit one (1) hard copy of all of the required attachments, except the application fee, directly to the local Water Management Engineer. When the application has been successfully submitted, the person signing the application receives a pdf copy of the WRAPP form that was filled out electronically. Please also include a note that the application was submitted electronically.

**Required attachments** - Forms or documents you upload in our online ePermitting System

1. **Application form** - A complete, signed application form "Water Resources Application for Project Permits (WRAPP)" (Form 3500-053).
2. **Application fee** - Payment needs to be submitted through the ePermitting System as part of the application process. A list of fees can be found at <http://dnr.wi.gov/topic/waterways/documents/PermitDocs/feesheet.pdf>.
3. **Ownership documentation** - (i.e. copy of deed, land contract). The owner also needs to have adequate access (ingress/egress) to the dam to allow for ongoing operation, maintenance, and repairs. Please provide documentation such as a fee title ownership or a permanent easement for access. We suggest you seek the advice of legal counsel in preparing an easement.
4. **Photographs** that clearly show the on-the-ground conditions of the existing dam, including the spillway, embankments and other appurtenant works to the dam. Remember that too much snow cover or vegetation may obscure important details. If possible, have another person stand near the project area for size reference. Color images are preferred.
5. **Survey map** that shows the property boundaries and location of the dam. The map should show that you have legal access to all portions of the dam.
6. **Transfer agreement** - Provide documentation signed by both parties agreeing to the transfer of the dam. Please indicate the method of land transaction. Note that the land contracts shall be fully executed before the dam transfer can occur. A sample transfer agreement, [dnr.wi.gov/topic/dams/documents/SampleTransferAgreement.pdf](http://dnr.wi.gov/topic/dams/documents/SampleTransferAgreement.pdf), can be found here; however we suggest you seek the advice of legal counsel prior to using the document.

**7. Proof of financial responsibility** - Prospective new dam owners are required to demonstrate the ability to operate and maintain the dam in good condition for a period of at least 10 years. Instructions on calculating financial capability can be found at **financial capability for dams**

[dnr.wi.gov/topic/Dams/Documents/FinancialCapabilityforDams.pdf](http://dnr.wi.gov/topic/Dams/Documents/FinancialCapabilityforDams.pdf). Financial capability can be demonstrated through a number of means, including:

- Sample escrow agreement: [dnr.wi.gov/topic/Dams/Documents/SampleEscrowAgreement.pdf](http://dnr.wi.gov/topic/Dams/Documents/SampleEscrowAgreement.pdf)
- Sample letter of credit: [dnr.wi.gov/topic/Dams/Documents/SampleLetterofCredit.pdf](http://dnr.wi.gov/topic/Dams/Documents/SampleLetterofCredit.pdf)
- Sample performance bond: [dnr.wi.gov/topic/dams/documents/SamplePerformanceBond.pdf](http://dnr.wi.gov/topic/dams/documents/SamplePerformanceBond.pdf)

We suggest that you seek the advice of legal counsel prior to using these documents, and that you first submit the financial responsibility calculation to the local Water Management Engineer. After the amount has been approved, then you can submit the documentation to demonstrate financial capability directly to the local Water Management Engineer.

**8. Dam inspection report - A field inspection** is required to determine needed repairs and to establish a time limit for completion of the repairs. You will need to hire a consultant to complete the field inspection and financial responsibility calculations. The dam inspection must be performed by a Professional Engineer registered in Wisconsin, with experience in dam construction and repair. We suggest that you contact the local Water Management Engineer for more information about the field inspection. Responsibility for repairs may be negotiated between the buyer and seller. Depending upon the required work, plans and specifications may need to be prepared by a Professional Engineer registered in Wisconsin. The department will also need to determine whether operational water levels and flow releases are adequate.