



September 10, 2018

Mr. Mike Pedersen, Kaukauna Utilities
777 Island Street
PO Box 1777
Kaukauna, WI 54130

RE: State Water Quality Certification for Hydroelectric Dam, Kaukauna Hydro Project,
FERC Project Number P-1510, Outagamie County, Wisconsin

Dear Mr. Pedersen:

Kaukauna Utilities (Applicant/Licensee) requested a State Water Quality Certification (WQC or certification) from the Wisconsin Department of Natural Resources (WDNR/ Department) on December 4, 2017, under Chapter NR 299, Wisconsin Administrative Code, and Section 401 of the Federal Clean Water Act.

The 4.8-megawatt (MW) project is located on the Lower Fox River in the City of Kaukauna, Outagamie County, Wisconsin. The project is currently under review for re-licensing with the Federal Energy Regulatory Commission (FERC).

The WDNR has reviewed the application for issuance of a FERC license to re-license the existing project. WDNR has made the determination that the project complies with the State's water quality standards enumerated in Ch. NR 299.04, Wis. Adm. Code. Enclosed is a State Water Quality Certification, which approves your project and lists the conditions which must be followed. Please read your certification carefully so that you are fully aware of what is expected of you. The certification contained here-in shall expire on the date of the expiration of the FERC licenses or upon revocation by WDNR. This certification may be amended at any point in time.

As a condition of the State Water Quality Certification, state law requires that you:

- Publish the enclosed certification as a Class I Notice, at your expense, in the Times-Villager, 1900 Crooks Avenue, Kaukauna, WI 54130
- Obtain, and send to me, an affidavit of publication from the newspaper to provide proof of publication

This Water Quality Certification decision becomes final 30 days after the date of publication, unless an objection is filed and a hearing is requested. We will contact you only if a hearing is requested. If you have any questions about your permit, please call me at (920) 387-7869 or email me at Cheryl.Laatsch@wisconsin.gov.

Sincerely,

Cheryl Laatsch, WDNR FERC Coordinator

cc: FERC, e-file

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

**Notice of Water Quality Certification
IP-NO-2017-35-N04110**

Kaukauna Utilities (Applicant/Licensee) requested a State Water Quality Certification (WQC or certification) from the Wisconsin Department of Natural Resources (WDNR/ Department) on December 4, 2017, under Chapter NR 299, Wisconsin Administrative Code, and Section 401 of the Federal Clean Water Act.

The Kaukauna Hydroelectric Project (P-1510) is located on the Lower Fox River, in the City of Kaukauna, Outagamie County, Wisconsin. The project is currently under review for re-licensing with the Federal Energy Regulatory Commission (FERC).

The Department has evaluated the proposal and determined that this activity will meet the standards found in Section NR 299.04, Wis. Admin. Code, and certification is granted, subject to the following conditions.

If you would like to know more about this project, contact Cheryl Laatsch at 920-387-7869, Cheryl.Laatsch@wisconsin.gov, or N7725 WI-28, Horicon, WI 53032. Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

CONDITIONS

1. The licensee shall obtain and comply with all federal, state and local permits; if obtaining such permits does not conflict with FERC license requirements.
2. The licensee shall meet current State of Wisconsin water quality standards applying to this project.
3. The license shall allow the Department to inspect the project area at any time upon reasonable notification to monitor compliance with certification conditions.
4. The licensee shall work with the Department to ensure proper compliance with the state endangered species law.
5. Cooperate with Wisconsin DNR on the implementation of the Lower Green Bay Remedial Action Plan to facilitate the management of contaminated sediment in the Lower Fox River by providing reasonable access to the project area for agencies involved with the implementation of the Remedial Action Plan and temporarily modifying run-of-river operation as needed during the removal or treatment of contaminated sediments;
6. When FERC issues the new license, the Licensee shall consult with the Department concerning any changes or modifications to the woody debris management plan, the impoundment drawdown plan, the operation monitoring plan, and the invasive species monitoring plan.
7. The Department may modify or revoke this certification if the project maintained according to the terms of the certification, or if the Department determines the activity is detrimental to the public interest.
8. Your acceptance of this certification signifies that you have read, understood and agreed to follow all conditions of this certification.
9. This certification does not authorize any activities other than what is included in the FERC approved license articles and management plans.
10. Licensee development within the FERC project boundary shall conform to the local zoning ordinances and the standards for floodplain and shoreland development contained in Chapters NR 115, NR 116, NR 117, Wis. Adm. Code, as long as these requirements do not conflict with FERC license requirements.

11. This State Water Quality Certification is valid for the term of the license. This State Water Quality Certification may be updated or modified throughout the term of the license, as deemed necessary by Department.

FINDINGS OF FACT

1. The Kaukauna Project is located at river mile (RM) 23 on the Lower Fox River in the City of Kaukauna, Wisconsin. The original license for the project was issued on March 21, 1939, with an expiration date of March 31, 1989. The Commission issued the current license for the project on January 30, 1989, with an effective date of April 1, 1989 and a term of 30 years. The current proposed project boundary for the Kaukauna Project encompasses approximately 25 acres, including the impoundment, the bypassed reach, tailrace, and land that is needed for project purposes, including land associated with the dam, powerhouse, generator leads, and appurtenant facilities.
2. The project is located downstream of Lake Winnebago on the Lower Fox River. The U.S. Army Corps of Engineers (Corps) manages releases from Lake Winnebago and nine federal dams on the Lower Fox River downstream of Lake Winnebago, including the Kaukauna and Rapide-Croche Dams that are located approximately 1 mile upstream and 4 miles downstream of the Kaukauna Project, respectively. The Kaukauna Project has little to no capacity for storage and therefore operates in a run-of-river mode using the flows regulated by the Corps in the Lower Fox River.
3. The Fox River is a navigable water.
4. The Kaukauna Project has little to no capacity for storage and therefore operates in a run-of-river mode using the flows regulated by the Corps in the Lower Fox River.
5. Kaukauna Utilities submitted to FERC an application for relicensing on March 24, 2017.
6. FERC issued a scoping document on June 20, 2017.
7. FERC issued a draft Environmental Assessment on August 7, 2018.
8. As of the date of this certification, the Environmental Assessment has not been finalized. Additionally, FERC has not yet issued the new license.
9. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.
10. Based on the review of the applicant's proposal and the above findings, the Department concludes that there is a discharge from this project. There is reasonable assurance that operation and maintenance of dam as proposed by the application and modified by the following conditions will not cause a violation of Wisconsin Water Quality Standards, and the dam will be in compliance with sections 301, 302, 303, 306, and 307 of the Federal Clean Water Act, P.L. 92-500, as amended, and other appropriate requirements of state law. The Department has made the determination that the proposed activity will comply with the State's water quality standards enumerated in Ch. NR 299.04, Wis. Adm. Code, subject to the conditions identified in the permit conditions.
11. The Department and the applicant have completed all procedural requirements. The project as authorized will comply with all applicable requirements of Sections 1.11 and 281, Wis. Stats., Section 401 of CWA, and Chapters NR 102, 103, 150 and 299 of the Wisconsin Administrative Code.

12. The proposed project, with the provisions of this certification, 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.
13. The proposed project will not adversely impact wetlands.
14. The Department has determined that an environmental assessment for WEPA compliance is not necessary.
15. Provided the project complies with the conditions in the order, the construction, operation, and maintenance of the proposed project is in the public interest considering ecological, aesthetic, economic, and recreational values as referenced per state and federal law in NR299.04.

CONCLUSIONS OF LAW

The Department has authority to issue Water Quality Certification under Chapter NR 299 of the Wisconsin Administrative Code.

NOTICE OF APPEAL RIGHTS

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

To request a contested case hearing pursuant to s. 227.42, you have 30 days after the decision is mailed, or otherwise serviced by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources.

A request for a contested case hearing shall include a written statement giving specific reasons why the proposed activity violates the standards under s. NR 299.04 (1) (b) and provide specific information explaining why the petitioner's interests are adversely affected by the department's determination. The request for hearing shall also include a written statement specifying that the petitioner will appear and present information supporting the petitioner's objections in a contested case hearing.

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.

Dated at Department Headquarters in Madison, Wisconsin on September 10, 2018.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By 

Cheryl Laatsch, Wisconsin Department of Natural Resources
FERC Coordinator