

§480-Y. Creation of agricultural irrigation ponds

1. General permit. A general permit is required for the alteration of a freshwater, nontidal stream to construct an agricultural irrigation pond. If the provisions of this section are met, an individual permit is not required.

[PL 1995, c. 659, §1 (NEW).]

2. Eligibility criteria. The following eligibility criteria must be met.

A. The farm must have an irrigation management plan, referred to in this section as the "irrigation plan." The irrigation plan must identify the total number of irrigated acres on the farm or on a specified management unit, the amount of water needed, the potential sources of water for irrigating the field and the water management practices that will be used to ensure that the amount of water used for crop irrigation will be kept to a minimum. For the purposes of this subsection, "farm" has the same meaning as in Title 7, section 152, subsection 5. [PL 2007, c. 649, §10 (AMD).]

B. The department must have assessed the affected area as having no significant habitat for fish and wildlife. For the purposes of this section, "significant habitat" means the same as "significant wildlife habitat" in section 480-B, subsection 10; a fish spawning or nursery habitat; a habitat required for migration of fish species to or from a spawning or nursery habitat; or a habitat otherwise supporting a moderate to high population of salmonid species as determined by the Department of Inland Fisheries and Wildlife. [PL 1995, c. 659, §1 (NEW).]

C. The pond may not be located in a wetland containing endangered or threatened plant species as determined pursuant to Title 12, section 544-B, subsection 3 or containing a natural community that is imperiled (S2) or critically imperiled (S1) as defined by the Natural Areas Program pursuant to Title 12, section 544. [PL 1999, c. 556, §33 (AMD).]

D. A site assessment must be conducted by the department prior to the submission of an application. The department may defer a site assessment for a reasonable period when winter conditions prevent the department from properly evaluating the affected area. [PL 1995, c. 659, §1 (NEW).]

E. The pond may not be located in a river, stream or brook if the department determines at the site assessment that there is a practicable alternative water supply that would be less damaging to the environment. For purposes of this paragraph, the term "practicable" means feasible considering cost, existing technology and logistics based on the overall purpose of the project. [PL 1999, c. 243, §15 (NEW).]

[PL 2007, c. 649, §10 (AMD).]

3. Standards. The following standards must be met.

A. The pond, dams, inlets and outlets must be designed by a professional engineer to United States Natural Resources Conservation Service standards. [PL 2011, c. 538, §10 (AMD).]

B. Dam fill material must be specified by the professional engineer and must be compacted to 95% of standard proctor. Compaction testing must be conducted with tests performed at a minimum of 2 per dam site or one every 100 feet of dam length, whichever is greater. [PL 1995, c. 659, §1 (NEW).]

C. For a pond that is constructed in a river, stream or brook, the pond outlet must be designed to passively discharge a minimum flow equal to inflow or the site-specific aquatic base flow, whichever is less, at all times. For a pond that is constructed adjacent to a river, stream or brook and that uses an inlet pipe or trench from the river, stream or brook, the inlet must be constructed to maintain the site-specific aquatic base flow. The site-specific aquatic base flow must be that specified by the department following consultation with the Department of Inland Fisheries and

Wildlife, the United States Natural Resources Conservation Service and other qualified advisors during the site assessment. [PL 2011, c. 538, §10 (AMD).]

D. The pond outlet must be designed and maintained to ensure a cold water release by using a method such as a bottom draw and to induce dissolved oxygen by using a method such as a riprap slope to increase water turbulence. [PL 1995, c. 659, §1 (NEW).]

E. An erosion control plan must ensure that siltation or sedimentation downstream of the dam site is kept to a minimum, to the fullest extent practical, during construction, operation and maintenance of the irrigation pond. [PL 1995, c. 659, §1 (NEW).]

F. The landowner shall maintain a permanently vegetated buffer strip that consists of field grasses or woody vegetation 25 feet wide around the pond except where slopes are equal to or greater than 20%, in which case the buffer strip must be 75 feet wide. Unless recommended to be thinned or mowed on an annual basis by the department or the United States Natural Resources Conservation Service, buffer strip vegetation may not be cut. An access road and irrigation pipes may cross through the buffer strip. [PL 1995, c. 659, §1 (NEW).]

G. All instream construction activities must be conducted between July 15th and October 1st of the same year unless the department determines in the site assessment that an earlier start date will not cause a significant adverse impact to fish and wildlife resources. [PL 1995, c. 659, §1 (NEW).]

[PL 2011, c. 538, §10 (AMD).]

4. Submissions. The following provisions apply to the submission of applications.

A. An application must be filed with the department and must include the following:

- (1) The application cover sheet, as provided by the department;
- (2) The United States Geological Survey topographical map with the boundaries of the farm and the pond site clearly marked;
- (3) A photograph of the stream at the proposed dam site;
- (4) A copy of the irrigation plan for the farm;
- (5) Site plans showing existing and proposed topography, stream channel location, existing wetland boundaries, maximum and normal pool elevations for a pond in a river, stream or brook, dam footprints, pond inlet and outlet locations, emergency spillway location, access roads, stockpile locations and buffer strips;
- (6) Cross sections through the dam and outlet structure, including proposed maximum pool elevation and normal pool elevation;
- (7) A plan to maintain minimum flow downstream, including any calculations used to create the plan;
- (8) A complete erosion control plan using practices contained in the "Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices" (1991) unless otherwise approved or required by the department. The erosion control plan must include a narrative with a sequence for implementing the plan, provisions to inspect and maintain erosion controls and a site plan showing locations of control measures. The plan must include provisions for maintaining a dry construction site. These provisions may consist of construction during a no-flow period, a temporary cofferdam or a stream diversion. The erosion control plan must also include provisions for dewatering and disposal of dredged and excavated soil material. The disposal of soil material dredged from the stream must comply with the requirements of the State's solid waste management rules;

(9) Test pit logs and test results from a minimum of 2 test pits dug in the footprint of the dam and results of tests done under the direction of a professional engineer on the dam fill material; and

(10) A copy of the property deed, lease, purchase and sale agreement or other legal document establishing that the applicant has title or right to or interest in the property proposed for pond development.

All design materials used to show that the dam design meets the standards of the general permit must be signed and stamped by a professional engineer. [PL 2011, c. 538, §11 (AMD).]

B. Following construction and prior to operation of the irrigation pond, the permittee must submit an inspection report by a professional engineer stating that the professional engineer inspected the dam and that it was constructed in conformance with the standards established in subsection 3. The report must specifically include evidence that the proper number of compaction tests were done and proper compaction specifications have been achieved. The inspection report must include a copy of the job diary and information on when inspections were done and what was inspected. [PL 1995, c. 659, §1 (NEW).]

[PL 2011, c. 538, §11 (AMD).]

5. Review period. Work may not commence until 30 days after the department has accepted an application for processing. This period may be extended pursuant to section 344-B with the consent of the applicant.

[PL 1999, c. 243, §16 (AMD).]

6. Notification. The department shall notify the applicant in writing within 30 days of acceptance for processing if the department determines that the requirements of this section have not been met. This notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this section within the specified time period, a general permit is deemed to have been granted.

[PL 1995, c. 659, §1 (NEW).]

7. Fees. The department shall assess a fee for review of an application filed pursuant to this section. The fee must be equivalent to the amount assessed for activities requiring an individual permit for stream alterations.

[PL 1995, c. 659, §1 (NEW).]

8. Violation. A violation occurs when an activity takes place that is not in compliance with the provisions of this section or the plans submitted with the application. Any deviation from the approved plans must receive prior department approval.

[PL 1995, c. 659, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 659, §1 (NEW). PL 1999, c. 243, §§15,16 (AMD). PL 1999, c. 556, §33 (AMD). PL 2007, c. 649, §10 (AMD). PL 2011, c. 538, §§10, 11 (AMD).

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