

105.52 DIVISION OF WATERS, SOIL AND MINERALS

105.52 Examination and repair of dams and reservoirs

Upon complaint or upon his own initiative, the commissioner is authorized to examine any reservoir, dam, control structure, or waterway obstruction. If the commissioner determines that additional engineering investigations are necessary in order to determine the safety of the dam, reservoir, control structure, or waterway obstruction and the nature and extent of the necessary repairs or alterations, he shall notify the owner thereof to cause such investigations to be made at the owner's expense and filed with the commissioner for his use in determining the condition of the structures and the need for the repair, alteration or removal thereof. If the commissioner determines that such reservoir, dam, control structure, or waterway obstruction is unsafe or needs repair or alteration, he shall notify the owner thereof to repair, alter, or remove the same as the exigencies of the case may require, and shall issue an order to that effect in the same manner and subject to the same conditions as if the owner had made application for permit for the said repairs, alterations, or removal. The engineering investigations or the work of repair, alteration, or removal shall be commenced and completed within such reasonable time as may be prescribed by the commissioner.

[1973 c 344 s 5]

105.54 [Repealed, 1973 c 315 s 20]

105.54 Penalties

Whoever does any of the following is guilty of a misdemeanor:

(1) Undertakes or procures another to undertake an alteration in the course, current, or cross-section of public waters or appropriates waters of the state without a permit from the commissioner previously obtained regardless of whether the commissioner would have granted a permit had an application been filed;

(2) Undertakes or procures another to undertake an alteration in the course, current, or cross-section of public waters or appropriates waters of the state in violation or in excess of authority granted pursuant to a permit duly issued by the commissioner, regardless of whether an application had been filed for permission to perform the act involved, or whether the act involved would have been permitted had a proper application been filed;

(3) Undertakes or procures another to undertake an alteration in the course, current, or cross-section of public waters or appropriates waters of the state after a permit to undertake such project has been denied by the commissioner;

(4) Violates any other provision of chapter 105.

[1973 c 315 s 19]

CHAPTER 106. DRAINAGE

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106.021 Powers of county boards and of district courts

Subdivision 1. Generally. The county boards of the several counties, and the district courts are authorized to make all necessary orders for and cause to be constructed and maintained public drainage systems; to deepen, widen, straighten, or change the channel or bed of any waterway following the general direction thereof, and when practical, terminating therein; to extend the same into or through any municipality for the purpose of securing a suit-

able outlet; and to construct all needed dikes, dams, and control works and power appliances, pumps, and pumping machinery in the manner set forth by law.

[1973 c 479 s 4]

Subd. 2. Drainage of lakes. No lake shall be drained nor shall a natural watercourse be channelized except upon the determination of the commissioner of natural resources of the state of Minnesota that such lake or natural watercourse is not public waters of the state as defined by section 105.38, or pursuant to the permit of the commissioner as provided in subdivision 3.

[1973 c 479 s 5]

[For text of subd. 3, see M.S.1971]

Subd. 4. Application to commissioner. The petitioners for any public ditch, or the board or court may make application to the commissioner of natural resources for the authority required by subdivision 3 or for the determination of the status of lakes basins or natural watercourses required by subdivision 2.

[1973 c 479 s 6]

[For text of subd. 5, see M.S.1971]

Subd. 6. Criteria for proposed drainage systems. Before January 1, 1974, the commissioner of natural resources shall promulgate, in the manner provided in chapter 15, a list of criteria that county boards or court must consider when establishing and improving drainage systems. The criteria shall relate to the social, economic, and environmental impact of the proposed drainage system, and shall be limited to the following:

- (a) An economic analysis of the private and public benefits and costs derived from the proposed project;
- (b) An analysis of present and anticipated agricultural land acreage availability and use within the county;
- (c) An analysis of flooding characteristics of project lands involved;
- (d) An analysis of alternative measures for the conservation, allocation, and development of the drainage waters;
- (e) An analysis of water quality effects as a result of the proposed project;
- (f) An analysis of fish and wildlife resources affected by the proposed project;
- (g) An analysis of shallow ground water availability, distribution, and use in the project area;
- (h) An analysis of the overall environmental impact of all the criteria in items (a) to (g).

[1973 c 479 s 7]

106.081 Preliminary survey and report

Subdivision 1. Survey and report. The engineer shall promptly proceed and examine all matters set forth in the petition and order and make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable him to determine whether the same is necessary and feasible in compliance with the requirements of section 106.021. If some other plan than that described in the petition is found practical, the engineer shall so report, giving such detail and information as is necessary to inform the court or board on all matters pertaining to the feasibility of the proposed plan, either as outlined in the petition or according to a different plan recommended by the engineer. He shall show all changes, whether by extension, adding laterals, or otherwise, that may be necessary to make the plan of the proposed improvement practicable and feasi-

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ble. If the construction of a ditch or drain is involved in the proposed improvement, the engineer shall examine and report the nature and capacity of the outlet and any necessary extension thereof.

[1973 c 479 s 8]

[For text of subd. 2, see M.S.1971]

Subd. 3. Inclusion in preliminary report. If he finds the improvement petitioned for is feasible, and complies with the requirements of section 106.021, he shall include in his report a preliminary plan of the proposed system showing thereon the proposed drain and laterals or other improvements, and the outlet thereof, together with the watershed of such drainage system and the lands and properties likely to be affected, including so far as known the names of the owners thereof. He shall show upon such plan the elevation of the outlet and the controlling elevations of the lands likely to be affected and also the probable size and character of the ditches and laterals necessary to make the plan practicable and feasible. All elevations so far as practical shall be referred to standard sea level datum. He shall show in his report the character of the outlet and the sufficiency thereof and also the probable cost of the drains and improvements shown on his plan, and all other information and data necessary to disclose the practicability, necessity and feasibility of the proposed improvement, including an analysis of the project as required by section 106.021 and such other information as the board or court may order.

[1973 c 479 s 9]

Subd. 4. Limitation of survey. The engineer shall confine his preliminary survey to the drainage area described in the petition, except to secure outlet, unless authorized by order of the board or court, with the consent of the bondsmen, at a hearing after ten days notice by mail to the petitioners and bondsmen; and any investigation made by the engineer as to outlet, without such order, shall be confined to running the necessary levels to ascertain the distance necessary to secure the proper fall. The preliminary survey shall include an analysis of the impact of the project as required by section 106.021.

[1973 c 479 s 10]

106.091 Filing engineer's report; authority of director

[For text of subd. 1, see M.S.1971]

Subd. 2. Commissioner's report. The commissioner of natural resources shall make an advisory report to the board or court giving his opinion as to the sufficiency and adequacy of the engineer's report. The commissioner shall set forth in his report any matters pertaining to the project which should be further investigated and evaluated in accordance with section 106.021. If the commissioner determines that the report is not adequate and sufficient, he shall so report. The commissioner's initial report shall be filed with the auditor or clerk on or before the date fixed for the preliminary hearing or at any continuance thereof. The commissioner may request additional time for review and evaluation of the engineer's report in cases where such additional time can be shown to be necessary for proper evaluation. However, no request for additional time for filing the commissioner's report may be made after five days from the date of notice by the auditor or clerk that a date is to be fixed for the preliminary hearing. No extension of time shall exceed two weeks from the date of the request.

[1973 c 479 s 11]

106.101 Preliminary hearing

[For text of subd. 1, see M.S.1971]

Subd. 2. Hearing. The engineer shall attend the hearing and supply such information as may be necessary. The petitioners and all other parties in-

terested may appear and be heard. The commissioner's report on the preliminary plan shall be publicly read and included in the record of proceedings.

[1973 c 479 s 12]

[For text of subd. 3, see M.S.1971]

Subd. 4. Dismissal. At said hearing or any adjournment thereof, if it shall appear that the proposed improvement is not feasible, or that the adverse environmental impact is greater than the public benefit or utility based upon the requirements and criteria required to be considered by section 106.021, and no plan is reported by the engineer whereby it can be made feasible, and acceptable, or that it is not of public benefit or utility, or that the outlet is not adequate, the petition shall be dismissed.

[1973 c 479 s 13]

Subd. 5. Findings and order. If the board or court shall be satisfied that the proposed improvement as outlined in the petition or as modified and recommended by the engineer is feasible, that there is necessity therefor, that it will be of public benefit and promote the public health, based upon the requirements and criteria required to be considered by section 106.021, and that the outlet is adequate, the board or court shall so find and by such order shall designate the changes that shall be made in the proposed improvement from that outlined in the petition including such changes as are necessary to minimize or compensate for adverse impact on the environment. These changes may be described in general terms and shall be sufficiently described by filing with the order a map outlining the proposed improvement thereon. Thereafter the petition shall be treated as modified accordingly. When the ditch shall outlet into an existing county or judicial ditch, the board or court may find that the outlet is adequate subject to confirmation and permission being obtained in accordance with section 106.531. In such case the board or court shall assign a number to the ditch and the board or court shall proceed to act in behalf of the ditch to obtain outlet rights in accordance with section 106.531.

[1973 c 479 s 14]

[For text of subds. 6 and 7, see M.S.1971]

106.121 Engineer's survey

[For text of subds. 1 to 3, see M.S.1971]

Subd. 4. Data and report. The engineer shall prepare and submit the following data and report:

(a) A complete map of the drainage system or improvement drawn to scale, showing thereon (1) the termini and course of each drain and whether open or tile, and the location of all other proposed improvements; (2) the location and situation of the outlet; (3) the watershed of the drainage system and the sub-watershed of main branches, if any, together with the location of existing highway bridges and culverts; (4) all lands and properties affected, together with the names of the owners thereof so far as known; (5) public streets, highways and railways affected; (6) the outlines of any lake basin, wetland and public body of water affected; (7) such other physical characteristics of the watershed as may appear necessary for the understanding thereof.

(b) A profile of all lines of ditch proposed showing graphically, the elevation of the ground and gradient at each 100-foot station, the station number at each section line and at each property line, whether open or tiled, the size of tile and the bottom width and side slope of open ditch sections, and such other information as may appear necessary for the understanding thereof.

(c) Plans for all private bridges and culverts proposed to be constructed by and as a part of the ditch system, together with plans for all other works and items of construction necessary for the completion of the drainage system or improvement. A list showing the required minimum hydraulic capacity of all bridges and culverts at all railway and highway open ditch crossings and at other prospective open ditch crossings where bridges and culverts are

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not specified to be constructed as a part of the ditch, together with plans and estimates of the cost of highway bridges and culverts required for the information of the viewers in determining benefits and damages.

(d) A tabular statement showing the number of cubic yards of tile on each tile line with the average depth thereof, and all bridges, culverts, works and other construction items required by the plans for the completion of the system, together with the estimated unit cost of each of said items and a summary of the total cost thereof. Such summary shall include an estimate of the cost of fully completing the system, including supervision and other costs thereof.

(e) The acreage which will be required and taken as right of way upon each government lot and 40-acre tract or fraction thereof under separate ownership required for right of way for any open ditch.

(f) Specifications for drain tile shall require that all drain tile used shall comply with the requirements of the American Society for Testing Materials standard specifications for drain tile, except where the depths to which the drains are to be laid or the conditions of the soil, in the opinion of the engineer, require tile of a special and higher quality.

(g) When more economical construction will result, the engineer may recommend that the work be divided into sections and let separately, and that open and tile work or tile and labor thereon be let separately, and the time and manner so far as practicable in which the whole work or any section thereof shall be done.

(h) Such other detail and information as shall appear requisite to fully inform the board or court of the practicability and necessity of the proposed improvements shall be made available including a comprehensive examination of all requirements of section 106.021, together with his recommendations thereon.

[1973 c 479 s 15]

[For text of subs. 5 to 8, see M.S.1971]

106.131 Authority of commissioner; commissioner's report

Upon the filing of the engineer's report, a complete copy thereof shall be transmitted to the commissioner by the auditor or clerk.

The commissioner shall examine the same and within 30 days make his report thereon to the board or court. If he finds the report incomplete and not in accordance with the provisions of this chapter, he shall so report. If he approves the same as being an acceptable plan for the drainage of the lands affected, he shall so state. If he does not approve the plan, he shall file his recommendations for changes deemed advisable, or, if in his opinion, the proposed system or improvement is not of public benefit or utility based upon the requirements or criteria required to be considered by section 106.021, he shall so report. If a soil survey appears advisable, he shall so advise, and in such event the engineer shall make the soil survey and report thereon before the final hearing. The commissioner's report shall be directed to the board or court and shall be filed with the auditor or clerk.

No notice shall issue for the final hearing until the commissioner's report shall be filed.

[1973 c 479 s 16]

106.201 Order establishing

Subdivision 1. Dismissal. If it shall appear that the benefits are not more than the total cost, including damages awarded, or that the proposed system will not be of public benefit and utility, or that the same is not practicable, or that the system does not comply with requirements of section 106.021, the board or court shall so find and the petition shall be dismissed.

Subd. 2. Establishment. If the board or court shall find that the engineer's and viewers' reports have been made and all other proceedings in the

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matter had in accordance with law, that the estimated benefits are greater than the total estimated cost, including damages, that the damages and benefits have been duly determined, that the proposed drainage system will be of public utility and benefit, and will promote the public health, that the proposed system is practicable, and that such reports as made or amended are complete, just and correct, and comply with requirements of section 106.021, then the board or court shall by order containing such findings, establish the drainage improvement as reported or amended, and adopt and confirm the viewers' report as made or amended.

[1973 c 479 s 17]

106.221 Contract and bond

[For text of subd. 1, see M.S.1971]

Subd. 2. Changes during construction. The contract shall give the engineer the right, with the consent of the board or court, to modify his reports, plans and specifications as the work proceeds and as circumstances may require. It shall provide that the increased cost resulting from such changes will be paid by the county to the contractor at not to exceed the price for like work in the contract. No change shall be made that will substantially impair the usefulness of any part of the drainage system or substantially alter its original character or increase its total cost by more than ten percent of the total original contract price. In no event shall any change be made that will cause the cost to exceed the total estimated benefits found by the board or court, or will cause any detrimental effects to the public interest as set forth in section 106.021.

[1973 c 479 s 18]

106.631 Appeals

Subdivision 1. Grounds for appeal. Any party aggrieved thereby, may appeal to the district court from an order of the board or court made in any proceeding and entered upon its record determining any of the following matters:

- (1) The amount of benefits determined;
- (2) The amount of damages allowed;
- (3) Relative to the allowance of fees or expenses in any proceeding;
- (4) The sufficiency of the order in meeting the requirements of section 106.021, and any criteria promulgated pursuant thereto.

[1973 c 479 s 19]

[For text of subds. 2 to 6, see M.S.1971]

CHAPTER 110. DAMS; LAKE WATER LEVELS

110.121 to 110.126 Repealed.

110.121 [Repealed, 1973 c 702 s 26]

110.122 [Repealed, 1973 c 702 s 26]

110.123 [Repealed, 1973 c 702 s 26]

110.124 [Repealed, 1973 c 702 s 26]

110.125 [Repealed, 1973 c 702 s 26]

110.126 [Repealed, 1973 c 702 s 26]