

Last summer, during the flooding in June, our highway department became concerned about possible flooding of town roads if certain private dams were to give way. This has also led to a concern about the location of future dams. Who has jurisdiction over dams to ensure that they do not pose a hazard to public property?

Dams in Vermont which are capable of impounding 500,000 cubic feet or more of water or other liquid are generally under the jurisdiction of the Agency of Natural Resources (ANR). However, a dam capable of generating electrical energy for public use falls under the Public Service Board (PSB). And if a dam serves as “an integral and exclusive part” of an agricultural enterprise, it must be permitted by the appropriate Natural Resources Conservation district.

If a person wished to build a dam with capacity of 500,000 cubic feet or more, he or she must apply in writing to the State for the applicable permit. He or she must also give notice to the governing bodies of the municipalities that will be affected. The application must provide the information prescribed in 10 V.S.A. § 1083. Upon receipt of the application, the state agency must provide notice to “all persons interested.” (That term is defined in 10 V.S.A. § 1080.)

If the proposed structure falls under the jurisdiction of the PSB, the PSB *must* conduct a public hearing. However, if it falls under the ANR, the ANR *must* conduct a hearing if petitioned for by 25 or more people, or, ANR *may* hold a hearing on its own motion. The purpose of the hearing is to determine whether the project serves the public good and provides adequately for public safety. 10 V.S.A. § 1085. The “public good” is determined by the process and criteria in 10 V.S.A. § 1086. Hearings must be held in a municipality in the vicinity of the proposed dam and must be noticed by posting and publication. 10 V.S.A. § 1085.

Any dam requiring a permit, no matter which agency has primary jurisdiction, must be reviewed by the Department of Fish and Wildlife. The Department shall report its findings to the appropriate agency prior to hearings or meetings concerning the dam. 10 V.S.A. §§ 1081-1082, 1083a-1084.

Following the required reviews and hearings, the state agency must determine whether the project will serve the “public good [which] means the greatest benefit of the people of the state,” based upon the criteria in 10 V.S.A. § 1086(a). If the agency approves the project, it shall issue a permit which may impose any necessary conditions. Whether the project is approved or disapproved, the agency must send copies of its order to the applicant and to interested parties. 10 V.S.A. § 1086. Appeals of decisions and orders of the ANR are made to the Water Resources Board, while appeals from PSB are to the Supreme Court. 10 V.S.A. § 1099. Finally, applications and construction are subject to review and/or supervision by a registered engineer. 10 V.S.A. §§ 1087, 1089, 1090.

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