

CHAPTER 6115
DEPARTMENT OF NATURAL RESOURCES
PUBLIC WATER RESOURCES

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PERMIT, INSPECTION, AND MONITORING FEES

6115.0010 STATUTORY AUTHORITY.

The commissioner of natural resources is authorized by Minnesota Statutes, section 105.44, subdivision 10, to establish fee schedules for permit applications, field inspections, and monitoring, with regard to permits required by Minnesota Statutes, chapter 105.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

6115.0020 SCOPE.

The fees established in parts 6115.0010 to 6115.0100 shall not be imposed on any state or federal agency.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

6115.0030 DEFINITIONS.

Words used in parts 6115.0010 to 6115.0100 have the meanings normally ascribed to them except:

A. "Appropriation of water," "waters of the state," and "public waters" have the meanings given by Minnesota Statutes, section 105.37.

B. "Field inspection" means an on-site determination of relevant characteristics of the area involved in or affected by the proposed or permitted project.

C. "Monitoring" means checking on the status or progress of activities authorized by permit, and checking and inspecting special aspects of proposed permit applications, during construction, implementation, or after completion of permitted activities.

D. "Division" means the Division of Waters, Department of Natural Resources.

E. "Commissioner" means the commissioner of natural resources or the commissioner's authorized representative.

F. "Project cost" means the total cost of all materials, services, equipment purchase or rental, and labor expended for the portion of the project proposed in the permit application which are directly governed by protected waters permit rules, parts 6115.0150 to 6115.0280.

G. "Protected waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, sections 105.37, subdivisions 14 and 15, and 105.391, subdivision 1.

H. "Ordinary high water mark" means the boundary of protected waters as defined in Minnesota Statutes, section 105.37, subdivision 16.

I. "Shoreline" means:

(1) for water bodies other than watercourses, the lateral measurement along the contour of the ordinary high water mark; and

(2) for watercourses, the top of the bank of the channel (coincides with ordinary high water mark as defined in Minnesota Statutes, section 105.37, subdivision 16).

J. "State agency" has the meaning given in Minnesota Statutes, section 16B.01, subdivision 2.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

6115.0040 [Repealed, 10 SR 236]

6115.0050 [Repealed, 10 SR 236]

6115.0060 PERMIT FEES APPLICATIONS.

Subpart 1. Fee. A permit application fee of \$75 shall accompany permit applications submitted under Minnesota Statutes, section 105.41, appropriation and use of water, Minnesota Statutes, section 105.535, relating to dams, and Minnesota Statutes, section 105.391, relating to water bank.

Subp. 2. Protected waters; fee. The permit application fee for works affecting protected waters, authorized under Minnesota Statutes, sections 105.42 and 105.64, shall be based on estimated project cost, the amount of material deposited in or removed from the protected waters, and the amount of shoreline affected by the project. The commissioner shall make the final determination of project costs used to calculate the permit application fee. The permit application fee shall be the greater of the fees calculated from the following parameter schedules, but not less than \$75 nor more than \$500:

A. Project cost parameter. If the project cost is greater than \$7,500, the fee shall be one percent of the project cost. If a dispute arises between the commissioner and a permit applicant over project cost, the commissioner may require the permit applicant to submit a project cost estimate prepared by a registered professional engineer, contractor, planning consultant, or other qualified professional entity.

B. Shoreline affected parameter. If the project affects more than 100 feet of shoreline, the fee shall be 75 cents per foot of shoreline affected. For channel excavation projects, the shoreline affected is the difference in length in feet between the existing channel and the proposed channel.

C. Fill-excavation parameter. If the project requires more than 100 cubic yards of fill or excavation, the fee shall be 75 cents per cubic yard of material filled or excavated. For channel excavation projects, the volume in cubic yards is only that material filled or excavated in existing protected waters.

D. The permit application fee for protection of shoreline from erosion by placement of riprap and to recover shoreland lost by erosion or other natural forces, shall be limited to \$75.

Subp. 3. Failure to remit. If the permit application fee does not accompany the application, the applicant will be so notified. If no fee is received within 30 days from mailing of the written notice, the commissioner shall consider the application withdrawn and no further action shall be taken on it unless the applicant submits a new application accompanied by the minimum fee.

Subp. 4. Multiple applications. If a project requires several permit applications, the permit application fee must accompany each application. Projects that involve a combination of work that results in both the alteration of protected waters and the use of waters of the state, shall be required to submit only one permit application and one set of fees. The type of permit application to be used and the fees to be charged shall be determined by the ultimate purpose of the project.

Subp. 5. Nonrefundable. The permit application fee is not returnable, whether the application is permitted, modified, or denied, unless the commissioner determines the activity does not require a permit.

Subp. 6. Applications after commencement. The permit application fee for permit applications filed after the work applied for has been partially or wholly completed, except for emergency work provided for in existing permit rules and policies, shall be double the amount that would have been charged if a timely application had been filed. In the case of a belated permit application, the permit application fee shall accompany the application or the commissioner shall proceed to issue a restoration order under Minnesota Statutes, section 105.461.

Subp. 7. Fees following a hearing. If a hearing is demanded, and if the outcome of the hearing is a decision to issue a permit, payment of all required fees must precede issuance. The fee charged will be based on the schedules contained in this part regardless of whether a permit application has been filed.

Subp. 8. Form of payment. Payment of all fees covered by parts 6115.0010 to 6115.0030, 6115.0060, 6115.0080 to 6115.0100, and 6115.0130 shall be made by check or money order payable to the Minnesota Department of Natural Resources. Cash cannot be accepted.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236; 13 SR 2825*

6115.0065 AMENDMENT AND TRANSFER FEE.

Each request by a permittee to amend or transfer an existing permit shall be accompanied by a \$75 fee, unless exempted under part 6115.0120. Any amendment initiated by the department is exempt from fees. Projects that involve a combination of transfer and amendment requests shall only be required to pay the \$75 fee.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236; 13 SR 2825*

6115.0070 [Repealed, 10 SR 236]

6115.0080 FIELD INSPECTION FEES.

Subpart 1. [Repealed, 13 SR 2825]

Subp. 2. Computation. If a field inspection is conducted, field inspection fees shall be charged only for: (1) projects requiring an environmental assessment worksheet (EAW) or environmental impact statement (EIS) pursuant to Minnesota Statutes, chapter 116D and the environmental review program rules, parts 4410.0200 to 4410.6500. Projects that do not require a mandatory environmental assessment worksheet (EAW) or environmental impact statement (EIS) under parts 4410.4300 and 4410.4400, at the time the permit application is made, shall not be charged field inspection fees; (2) projects undertaken without a permit or application as required by Minnesota Statutes, sections 105.37 to 105.64; or (3) projects undertaken in excess of limitations established in an issued permit.

The fee charged will be the actual cost of the field inspection, but shall not be less than \$100. Examples of field inspection costs are:

A. state salaries, including fringe benefits and overhead, (travel and inspection time of state employees multiplied by actual hourly rates);

B. transportation to and from inspection site, laboratories and other documented travel sites, based on current Department of Administration rates or rates specified in applicable bargaining unit agreements;

C. expense of purchase, rental, or repair of special equipment and supplies;

D. living expenses away from home, based on current Department of Administration rates or rates specified in applicable bargaining unit agreements;

E. inspection and consultant services contracted for by the state; and

F. laboratory expenses and analysis of data.

Subp. 2a. Dams and water level controls. Field inspection fees shall not be charged for any dam subject to parts 6115.0300 to 6115.0520. Such dams are subject to the inspection fee requirements of part 6115.0520. Field inspection fees for all other water level control structures shall be charged pursuant to parts 6115.0010 to 6115.0130.

Subp. 3. [Repealed by amendment, 10 SR 236]

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236; 13 SR 2825*

6115.0090 FEES FOR MONITORING ACTIVITIES.

If the project requires an environmental assessment worksheet (EAW) or environmental impact statement (EIS) pursuant to Minnesota Statutes, chapter 116D, and parts 4410.0200 to 4410.6500, the commissioner shall charge an additional fee for monitoring subject to the following:

A. Where the commissioner determines that a permitted activity requires monitoring of water or related land resources, the permit shall specify the procedures and scope of such monitoring. Actual costs of the monitoring shall be paid by the permittee in accordance with procedures set forth in the permit.

B. When the commissioner determines after the permit is issued, that there is a need for monitoring, the commissioner shall notify the permittee in writing of the nature of and reasons for the monitoring, and after opportunity for hearing, shall modify the permit accordingly. The actual costs of the monitoring shall be paid by the permittee.

Actual costs incurred and charged by the state are determined in the same manner as prescribed for field inspections.

The commissioner may allow the permittee to provide the monitoring service or employ a consultant for that purpose, subject to the right of the commissioner to charge for state costs related to private monitoring, including the costs of periodically monitoring the monitor.

Fees for monitoring activities shall not be charged for any dam subject to parts 6115.0300 to 6115.0520.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

6115.0100 [Repealed, 10 SR 236]

6115.0110 ANNUAL WATER APPROPRIATION PROCESSING FEE.

Subpart 1. **In general.** An annual water appropriation processing fee shall be submitted for each water appropriation permit in force at any time during the year. The fees are required whether or not the permittee appropriated or used any water as authorized by permit during the year.

Subp. 2. **Fee schedule.** The fee shall be based on the following schedule:

A. for irrigation permits, \$15 for the first permitted 160 acres or portion thereof, and \$25 for each additional permitted 160 acres or portion thereof;

B. for all other permits, \$5 for each permitted 10,000,000 gallons or portion thereof;

C. the annual water appropriation processing fee shall not exceed a total fee of \$500 per permit.

Subp. 3. **Billing and payment.** A notice of the fees owed will be mailed to the permittee, with the reporting forms, by the commissioner.

The fee, with accompanying report, for the calendar year's appropriation or use of water, shall be sent to the commissioner no later than February 15 of the following year.

Failure to pay the fee shall be sufficient cause for terminating a permit 30 days following written notice by the commissioner.

The effective date of this part is August 1, 1985.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

6115.0120 WATER APPROPRIATION PROCESSING FEE EXEMPTIONS.

The following water appropriation permit actions are exempt from amendment or transfer fees:

- A. a change in mailing address;
- B. a change of authorized agent when land ownership has not changed;
- C. an assignment of a permit within the immediate family;
- D. a change in pump location on surface water sources for the same operation;
- E. an addition of a new well that replaces an old well for the same permitted operation and is completed at a similar depth in the same aquifer;
- F. a decrease in the permitted pumping rate, amount of water authorized, or irrigated acreage;
- G. an increase in the permitted pumping rate within ten percent;
- H. an increase in the permitted appropriation within ten percent of the annual authorization for nonirrigation permits; or
- I. an increase of less than 30 acres in the number of permitted irrigated acres.

Any amendments or transfers that exceed the exemptions in items A to I require a processing fee under part 6115.0065.

Statutory Authority: *MS s 105.44 subd 10*

History: *13 SR 2825*

FEES FOR UNDERGROUND GAS OR LIQUID STORAGE

6115.0130 FEE SCHEDULE FOR UNDERGROUND STORAGE OF GAS OR LIQUID IN NATURAL FORMATIONS.

Subpart 1. **In general.** This schedule is established pursuant to Minnesota Statutes, section 84.58, subdivision 8. It provides for payment of permit application fees and additional fees for processing and analyzing the application, and issuing the permit. It also includes fees for the inspection and monitoring of activities authorized by the permit.

Subp. 2. **Permit application fee.** A permit application fee of \$30, check or money order, payable to the state treasurer, shall accompany each permit application for underground storage of gas or liquid.

If the fee does not accompany the application, the applicant will be so notified, and there will be no further action taken on the application until the fee is submitted.

Subp. 3. **Additional fees.** The applicant or permittee shall pay the actual costs of field inspection and monitoring as follows.

A. When a field inspection is conducted, the costs charged will be the sum of: salaries (inspection time of state employees multiplied by actual hourly rates); transportation to and from inspection site, based on current state Department of Administration rates; fair rental for any special equipment and supplies; and inspection and consultant services contracted for by the state.

B. When the commissioner determines that a permitted activity requires monitoring of water or related land resources, the permit shall specify the procedures and scope of such monitoring. Actual costs of the monitoring, whether conducted by state personnel or by consultants hired by the state, shall be paid by the permittee in accordance with procedures in the permit.

When the commissioner determines after the permit is issued that there is a need for monitoring, the commissioner shall notify the permittee in writing of the nature of and reasons for the monitoring, and after opportunity for hearing, shall modify the permit accordingly. The actual costs of monitoring shall be paid by the permittee.

The commissioner may allow the permittee to provide monitoring services, or employ a consultant for that purpose, subject to the right of the commissioner to charge for state costs related to private monitoring, including the costs of periodically monitoring the monitor.

Subp. 4. **Refund of fees.** The permit application fee for a permit application shall not be refunded for any reason, even if the application is denied or withdrawn.

Subp. 5. **Billing and payment of fees.** The commissioner shall submit an itemized bill to the applicant or permittee for all additional fees. Fees are payable within 30 days of receipt; failure to pay is grounds for suspending the permit or for taking other legal actions as re-

quired. In the case of an applicant, a permit shall not be issued until all fees owed have been paid.

Statutory Authority: *MS s 105.44 subd 10*

History: *10 SR 236*

STANDARDS AND CRITERIA FOR GRANTING PERMITS TO CHANGE THE COURSE, CURRENT, OR CROSS-SECTION OF PROTECTED WATERS

6115.0150 PURPOSE AND STATUTORY AUTHORITY.

The purpose of parts 6115.0150 to 6115.0280 is to provide for the orderly and consistent review of permit applications in order to conserve and utilize the water resources of the state in the best interest of its people. In deciding whether to issue permits, the department shall be guided by the policies and requirements declared in Minnesota Statutes, sections 104.01, 104.25, 104.32, 105.38, 105.42, 105.64, and 116D.04.

The proposed development must also be consistent with the goals and objectives of applicable federal, state, and local environmental quality programs and policies including but not limited to shoreland management, floodplain management, water surface use management, boat and water safety, wild and scenic rivers management, water quality management, recreational or wilderness management, critical areas management, scientific and natural areas management, and protected species management.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0160 SCOPE.

To achieve the purpose declared in part 6115.0150 these rules set forth minimum standards and criteria for the review, issuance, and denial of permits for proposed projects affecting protected waters. Permits shall be required for any activity affecting the course, current, or cross-section of protected waters unless specifically exempted within these rules.

These standards and criteria apply to any and all work which will cause or result in the alteration of the course, current, or cross-section of protected waters except for the following:

A. utility crossings of protected waters which are regulated under Minnesota Statutes, section 84.415 and rules promulgated thereunder; or

B. destruction and control of aquatic vegetation which is regulated under Minnesota Statutes, section 84.092, subdivision 11 and rules promulgated thereunder.

Statutory Authority: *MS s 105.415*

History: *8 SR 533; L 1986 c 386 art 4 s 11*

6115.0170 DEFINITIONS.

Subpart 1. **Certain terms.** For the purposes of parts 6115.0150 to 6115.0280, certain terms or words used herein shall be interpreted as follows: the word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.

Subp. 2. **Alteration.** "Alteration" means any activity that will change or diminish the course, current, or cross-section of protected waters.

Subp. 3. **Beds of protected waters.** "Beds of protected waters" means all portions of protected waters located below the ordinary high water mark.

Subp. 4. **Breakwater.** "Breakwater" means an offshore structure intended to protect a shore area, harbor, or marina from wave and current action, erosion, or sedimentation.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of natural resources.

Subp. 6. **Department.** "Department" means the Department of Natural Resources.

Subp. 7. **Dock.** "Dock" means a narrow platform extending waterward from the shoreline intended for ingress and egress for moored watercraft or to provide access to deeper water for swimming, fishing, or other water-oriented recreational activities.

Subp. 8. **Drainage.** "Drainage" means any method for removing or diverting waters from protected waterbasins or wetlands. Such methods shall include, but are not limited to,

excavation of an open ditch, installation of subsurface drainage tile, filling, diking, or pumping.

Subp. 9. **Drawdown.** "Drawdown" means a temporary lowering of water levels, for a maximum duration of two years.

Subp. 10. **Excavation.** "Excavation" means the displacement or removal of the sediment or other materials from the beds of protected waters by means of hydraulic suction or mechanical operations.

Subp. 11. **Fill.** "Fill" means any material placed or intended to be placed on the bed or bank of any protected water.

Subp. 12. **Filter.** "Filter" means a transitional layer of gravel, small stone, or fabric between the fine material of an embankment and riprap shore protection materials.

Subp. 13. **Floating structure.** "Floating structure" means any houseboat, mooring or navigational buoy, swimming or diving platform, water ski jump, watercraft, or other structure supported entirely by its own buoyancy which is not permanently anchored by means of pilings, foundations, gabion baskets, or other materials incapable of removal by nonmechanized means.

Subp. 14. **Floodplain.** "Floodplain" means the areas adjoining a watercourse which has been or hereafter may be covered by the regional flood.

Subp. 15. **Floodway.** "Floodway" means the channel of the watercourse and those portions of the adjoining floodplains which are reasonably required to carry and discharge the regional flood.

Subp. 16. **Harbor.** "Harbor" means either an inland or offshore area protected from waves which is intended for the mooring of watercraft.

Subp. 17. **Inland boat slip.** "Inland boat slip" means an inland excavation generally having a uniform width which serves as a protective area for launching and mooring of a single watercraft.

Subp. 18. **Inland excavation.** "Inland excavation" means any excavation intended to extend the cross-section of protected waters landward of the natural or preexisting shoreline.

Subp. 19. **Low-water ford type crossing.** "Low-water ford type crossing" means a stream crossing which conforms to the natural cross-section of the stream and utilizes the placement of a suitable substrate to allow vehicular passage without confining the stream flow within culverts or other hydraulic enclosures.

Subp. 20. **Marina.** "Marina" means either an inland or offshore structure for the concentrated mooring of five or more watercraft wherein facilities are provided for ancillary services such as boat mooring, storage, fueling, launching, mechanical repairs, sanitary pump-out, and restaurant services.

Subp. 21. **Maximum.** "Maximum," with respect to storage capacity, refers to the most severe design condition, including surcharge (floodwater storage).

Subp. 22. **Mining activity.** "Mining activity" means the construction, reconstruction, repair, relocation, expansion, or removal of any facility for the extraction, stockpiling, storage, disposal, or reclamation of metallic or nonmetallic minerals. Facilities include all mine pits, quarries, stockpiles, tailings basins, and any structures which drain or divert protected waters to allow mining. Ancillary facilities such as access roads, bridges, culverts, and water level control structures are not mining activities.

Subp. 23. **Mooring.** "Mooring" means any containment of free-floating watercraft that provides a fixed fastening for the craft.

Subp. 24. **Offshore.** "Offshore" means the area waterward of the ordinary high water mark of a protected water.

Subp. 25. **Ordinary high water mark.** "Ordinary high water mark" means the boundary of protected waters as defined in Minnesota Statutes, section 105.37, subdivision 16.

Subp. 26. **Permanent dock.** "Permanent dock" means any dock other than seasonal docks and wharves as defined by this part.

Subp. 27. **Port.** "Port" means a water transportation complex established and operated under the jurisdiction of a port authority pursuant to Minnesota Statutes, chapter 458.

Subp. 28. **Port facility.** "Port facility" means any facility useful in the maintenance and operation of a port. Facilities include, but are not limited to, transportation facilities, terminal and storage facilities, floating and handling equipment, power stations, and other facilities necessary for the maintenance and operation of a port.

Subp. 29. **Principal spillway.** "Principal spillway" means a spillway designed to convey water from an impoundment at release rates established for the structure.

Subp. 30. **Professional engineer.** "Professional engineer" means an engineer registered to practice in Minnesota.

Subp. 31. **Protected waters.** "Protected waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 105.37, subdivision 14 or 15, or 105.391, subdivision 1.

Subp. 32. **Reconstruction.** "Reconstruction" means the rebuilding or renovation of an existing structure, where the cost of such work will exceed 50 percent of the replacement cost.

Subp. 33. **Regional flood.** "Regional flood" means the flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval.

Subp. 34. **Retaining walls.** "Retaining walls" means vertical or nearly vertical structures constructed of mortar-rubble masonry, handlaid rock or stone, vertical timber pilings, horizontal timber planks with piling supports, sheet pilings, poured concrete, concrete blocks, or other durable materials and constructed approximately parallel to the shoreline.

Subp. 35. **Riprap shore protection.** "Riprap shore protection" means coarse stones, boulders, cobbles, artificially broken rock or concrete, or brick materials laid loosely or within gabion baskets against the slope of the existing bank of a protected water.

Subp. 36. **Seasonal dock.** "Seasonal dock" means a dock so designed and constructed that it may be removed from the lake or stream bed on a seasonal basis. All components such as supports, decking, and footings must be capable of removal by nonmechanized means.

Subp. 37. **Structure.** "Structure" means any building, footing, foundation, slab, roof, boathouse, deck, wall, or any other object extending over, anchored, or permanently attached to the bed or bank of a protected water.

Subp. 38. **Structural height.** "Structural height" means the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe of the control structure or from the lowest elevation of the outside limit of the control structure, if it is not across a stream channel or watercourse, to the maximum storage elevation.

Subp. 39. **Swellhead.** "Swellhead" means the difference between the headwater elevation necessary to pass the regional flood through the proposed structure and the tail water elevation below the structure.

Subp. 40. **Temporary structure.** "Temporary structure" means any seasonal dock or floating structure that can be removed from protected waters before winter freeze-up.

Subp. 41. **Watercourse.** "Watercourse" means any channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods water may leave the confining beds and banks but under low and normal flows water is confined within the channel. A watercourse may be perennial or intermittent.

Subp. 42. **Water level control structure.** "Water level control structure" means any structure which impounds or regulates the water surface elevation or flow of protected waters, including dams regulated under the provisions of parts 6115.0300 to 6115.0520.

Subp. 43. **Wharf.** "Wharf" means a permanent structure constructed into navigable waters as a part of a port facility for berthing or mooring commercial watercraft, or for transferring cargo to and from watercraft in an industrial or commercial enterprise, or for loading or unloading passengers from commercial watercraft, or for the operation of a port facility.

Statutory Authority: *MS s 105.415*

History: 8 SR 533

6115.0180 [Repealed by amendment, 8 SR 533]

6115.0190 FILLING INTO PROTECTED WATERS.

Subpart 1. **Goals.** It is the goal of the department to limit the placement of any fill material into protected waters in order to:

- A. minimize encroachment, change, or damage to the environment;
- B. regulate the quantity and quality of fill and the purposes for which filling may be allowed based upon the capabilities of the waters to assimilate the material; and
- C. maintain consistency with floodplain, shoreland, and wild and scenic rivers management standards and ordinances.

Subp. 2. **Scope.** Filling as used in this part involves placement of unconfined or loosely confined materials in protected waters.

Subp. 3. **Nonpermitted placement.** Placement shall not be permitted in the following cases:

- A. to achieve vegetation control;
- B. to create upland areas, except where expressly provided herein;
- C. to stabilize beds of protected waters which cannot support fill materials because of excessive depths of muck, steep bank, bed slope, or other conditions;
- D. to stabilize or impound the site of active springs;
- E. to dispose of rock, sand, gravel, or any other solid material resulting from activities carried out above the ordinary high water mark;
- F. to construct a roadway or pathway, or create or improve land accesses from peripheral shorelands to islands, or to facilitate land transportation across the waters; however, where a project is proposed by a federal, state, or local government agency and this provision would prevent or restrict the project, or create a major conflict with other public purposes or interests, the commissioner may waive this provision provided:

(1) there is no other feasible and practical alternative to the project that would have less environmental impact; and

(2) that the public need for the project rules out the no-build alternative;

- G. filling of posted fish spawning areas is prohibited.

Subp. 4. **No permit required.** No permit shall be required for the following activities unless prohibited under subpart 3:

A. To install a beach sand blanket provided the sand or gravel layer does not exceed six inches in thickness, 50 feet in width along the shoreline, or one-half the width of the lot, whichever is less, and does not extend more than ten feet waterward of the ordinary high water mark, provided local watershed district and local zoning officials are given at least seven days notice by the landowner.

B. For one additional installation of a sand or gravel layer subsequent to an initial installation at the same location and not exceeding the same amounts and dimensions allowed under item A.

C. To install riprap shore protection, except along the shores of Lake Superior and officially designated trout streams, provided the riprap materials consist of natural rock having an average size of 12 inches or larger in its smallest dimension, and conform with the natural alignment of the shoreline, with a minimum finished slope not steeper than 3:1 horizontal:vertical, no materials are placed more than five feet waterward of the ordinary high water mark, and the material does not obstruct the flow of water.

D. To place fill in a protected watercourse having a total drainage area, at its mouth, of five square miles or less, provided that the watercourse is not an officially designated trout stream and the placement of fill shall not result in:

- (1) any diversions of water from the drainage area;
- (2) any impoundment of waters by damming the watercourse;
- (3) any actions which would result in erosion and cause sedimentation of downstream waters as determined by the county or local soil and water conservation district.

Subp. 5. **Permits required.** Permits shall be required for the placement of fill in protected waters, except as provided under subparts 3 and 4, and shall meet all of the following requirements:

A. the project will involve a minimum of encroachment, change, or damage to the environment, including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention;

B. the fill consists of clean inorganic material that is free of pollutants and nutrients;

C. the existence of a stable, supporting foundation is established by appropriate means, including soil boring data where deemed necessary by the commissioner;

D. where erosion protection is deemed necessary by the commissioner, the site conditions and fill material are capable of being stabilized by an approved erosion control method such as riprap, retaining wall, or other method which is consistent with existing land uses on the affected protected water;

E. the proposed project must represent the minimal impact solution to a specific need with respect to all other reasonable alternatives;

F. the size, shape, depths, shoreline, and bottom character and topography, and susceptibility of the beds of protected waters to actions of wind, waves, and currents are such that the fill will be stable;

G. adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects;

H. the proposed filling must be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved;

I. the proposed filling must be consistent with water and related land management plans and programs of local and regional governments provided such plans and programs are consistent with state plans and programs.

Statutory Authority: *MS s 105.415*

History: 8 SR 533

6115.0191 SPECIFIC STANDARDS.

Subpart 1. In general. In addition to compliance with the general standards in part 6115.0190, subparts 2 to 5, specific requirements for certain activities shall be met as follows.

Subp. 2. Riprap shore protection. The protection of shoreline from continued erosion by placement of natural rock riprap along the shore shall be permitted provided:

A. The riprap materials are of sufficient size, quality, and thickness to withstand ice and wave action. The riprap shall be placed with a minimum amount of space between the larger materials and the space between them shall be filled with firmly seated smaller rocks or gabion baskets to procure a uniform surface.

B. The site soils are capable of supporting riprap and a filter consisting of well-graded gravel, crushed stone, or fabric is installed to prevent undercutting of the riprap.

C. The encroachment into the water is the minimum amount necessary to provide protection and does not unduly interfere with the flow of water.

Subp. 3. Navigational access. Filling to gain navigational access to waters shall be permitted only where access to navigable depths cannot be reasonably attained by utilizing a dock, the excavation of an offshore access channel, or other alternatives which would result in less environmental impact.

Fill for navigational access shall not extend beyond the edge of open water, shall not exceed side slopes greater than 2:1 horizontal:vertical, shall not exceed a maximum width of 15 feet at the base of the fill, and shall not extend to a water depth greater than four feet.

Subp. 4. Shoreline lost by erosion. Applications for filling to recover shoreland lost by erosion or other natural forces shall be permitted only where:

A. the loss of shoreline is a threat to health and safety through the impending loss or damage to existing shoreline developments;

B. the loss of shoreline has occurred as a result of changes in water level or flow conditions caused by artificial manipulation of flows or levels of the waters involved within a period of not more than five years prior to the date when an application for filling is submitted.

The requirements of items A and B shall not preclude the issuance of permits to place riprap materials or use other structural means for protection of the shoreline to prevent continuous erosion.

Subp. 5. Port development or improvement. Filling necessary for port development or improvement shall be allowed only on those waters which are under the jurisdiction of established port authorities subject to the following:

A. no filling shall be allowed to extend beyond the limits of federally established harbor lines, or where no harbor line has been established, beyond the maximum distance waterward which could be attained without obstructing navigational use of the waters;

B. the proposed development must be part of a comprehensive port development plan which has been approved by the commissioner; and

C. adverse effects of the proposed filling on the physical and biological character of the area shall be subject to mitigation measures approved by the commissioner.

Subp. 6. Fish and wildlife habitat. Filling to restore or improve fish and wildlife habitat, except for filling in designated trout streams, shall be permitted provided plans are submitted showing the nature and degree of habitat to be benefited, and the project will not create other adverse effects such as flooding, erosion, sedimentation, or navigational obstructions.

Subp. 7. Trout streams. Filling in trout streams officially designated by the commissioner shall be allowed only if:

A. the amount, method of placement, and location of the fill will not result in increased water temperatures, excessive sedimentation in the stream, or destruction of fish habitat; and

B. there is no other feasible or practical alternative other than filling.

Subp. 8. Other purposes. Filling for other purposes not specifically listed shall be subject to the general standards in part 6115.0190, subparts 2 to 5 and submission of information to show that:

A. the intended purpose of the fill is reasonable with respect to all other alternatives and there are no feasible and practical means to attain the intended purpose without filling; and

B. the proposal will adequately protect public safety and promote the public welfare.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0192 RELATIONSHIP TO STANDARDS AND CRITERIA FOR OTHER ACTIVITIES INVOLVING CHANGES IN COURSE, CURRENT, OR CROSS-SECTION.

Unless otherwise specified in other parts, parts 6115.0190 and 6115.0191 shall apply to filling proposed as part of any other activity or activities including but not limited to: Excavations parts 6115.0200 to 6115.0202, Structures parts 6115.0210 to 6115.0212, Water level controls parts 6115.0220 to 6115.0222, Bridges and culverts parts 6115.0230 to 6115.0232, Drainage of protected waters parts 6115.0270 to 6115.0272, and Alterations of protected waters for mining part 6115.0280.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0200 EXCAVATION OF PROTECTED WATERS.

Subpart 1. Goals. It is the goal of the department to limit the excavation of materials from the beds of protected waters in order to:

A. preserve the natural character of protected waters and their shorelands, in order to minimize encroachment, change, or damage to the environment, particularly the ecosystem of the waters;

B. regulate the nature, degree, and purpose of excavations so that excavations will be compatible with the capability of the waters to assimilate the excavation; and

C. control the deposition of materials excavated from protected waters and protect and preserve the waters and adjacent lands from sedimentation and other adverse physical and biological effects.

Subp. 2. **Scope.** Excavation as used in this rule includes any activity which results in the displacement or removal of bottom materials or the widening, deepening, straightening, re-aligning, or extending of protected waters. It may involve proposals for excavations landward or waterward from the ordinary high water mark.

Subp. 3. **Nonpermitted excavation.** Excavation shall not be permitted in the following cases:

A. where it is intended to gain access to navigable water depths when such access can be reasonably attained by alternative means which would result in less environmental impact;

B. where inland excavation is intended to extend riparian rights to nonriparian lands, or to promote the subdivision and development of nonriparian lands;

C. where the proposed excavation will be detrimental to significant fish and wild-life habitat, or protected vegetation and there are no feasible, practical, or ecologically acceptable means to mitigate the effects;

D. to control or eliminate vegetation for the development of beach areas;

E. where it is intended to provide fill materials for development purposes except as provided under part 6115.0280;

F. where the excavation would not provide an effective solution to a problem because of recurrent sedimentation and there are feasible and practical alternative solutions which do not require excavation;

G. unless the excavation project includes provisions for acceptable disposal of excavated materials as provided in these rules; or

H. where the excavation would cause increased seepage of water which would lower the water level of protected waters and result in subsurface drainage.

Subp. 4. **No permit required.** No permit for excavation shall be required for the following activities unless prohibited in subpart 3:

A. for excavations in a protected watercourse having a total drainage area, at its mouth, of five square miles or less, provided that the watercourse is not an officially designated trout stream and the excavation will not result in:

(1) any diversions of water from the drainage area;

(2) any impoundment of waters by damming the watercourse;

(3) any actions which would result in erosion and cause sedimentation of downstream waters as determined by the county or local soil and water conservation district;

B. to remove debris such as trees, logs, stumps, and trash provided such removal does not alter the original alignment, slope, or cross-section of the waters;

C. for repair of a public drainage system lawfully established pursuant to Minnesota Statutes, chapters 106A and 112 consistent with the definition of "repair" set forth in Minnesota Statutes, section 106A.701, subdivision 1.

Subp. 5. **Permits required.** Permits shall be required for the excavation and removal of any materials from protected waters or any excavations extending into or out of protected waters, except as provided in subparts 3 and 4, and shall be subject to the following general criteria:

A. The project must be reasonable and practical based upon geologic and hydrologic conditions including but not limited to:

(1) quantity and quality of local drainage at the site;

(2) type of sediment/soil strata and underground formations in the vicinity;

(3) life expectancy of the excavation with respect to bedload, longshore drift, and siltation patterns in the project vicinity; and

(4) protection of the water body from increased seepage, pollution, and other hydrologic impacts.

B. The disposal of excavated materials shall be subject to the following requirements:

(1) The disposal of any excavated materials containing pollutants shall be subject to requirements of Minnesota Statutes, chapter 115.

(2) The most acceptable means of disposing of clean materials, free from pollutants, which are excavated from protected waters listed in order of preference are:

(a) Complete removal of excavated materials from the waters and disposal or reuse for other purposes outside of the floodplain.

(b) Deposition in stable on-land disposal sites located above the ordinary high water mark and outside of floodway districts established under local ordinance. Provisions must be included for sodding, seeding, or otherwise properly stabilizing these materials.

(c) Temporary deposition along shorelines or within floodplains by stockpiling materials for subsequent removal to areas outside of any protected waters and outside of established floodplain districts provided that: any stockpile materials are removed within one year of stockpiling; and the stockpile is constructed so that any materials or waters entering or leaving the stockpile are controlled to prevent any introduction of sediment into the environment surrounding the stockpile.

(d) Redeposition of excavated materials, consisting of inorganic materials free from pollutants, into protected waters shall only be permitted when it will result in improvement of natural conditions of protected waters for the public benefit and will not result in sedimentation, obstruction of navigation, or a loss of fish or wildlife habitat. Separate permit provisions shall be required for redeposition of excavated materials subject to the standards and criteria of subparts 2 to 5.

(e) Determination of the public benefit served by redeposition of excavated materials shall be based on the value to the public of redeposited materials in order to protect shorelines from the damaging effects of erosion due to winds and waves when there are no other feasible, practical, and ecologically acceptable means to protect the shoreline; or create or improve habitat areas for fish and wildlife; or mitigate or enhance the physical and biological environment within protected waters when mitigative or enhancement measures are required as a condition of a permitted activity within the waters involved and there are no other feasible, practical, and ecologically acceptable mitigative measures.

C. The proposed project must represent the "minimal impact" solution to a specific need with respect to all other reasonable alternatives.

D. The excavation must be limited to the minimum dimensions necessary for achieving the desired purpose.

E. Where excavation is proposed in a protected water that is perched on an impervious stratum, soil borings must show that the proposed excavation will not rupture the impervious stratum.

F. The biological character of the waters and surrounding shorelines shall be affected to the minimum degree feasible and practical.

G. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

H. The water supply, navigational, and drainage characteristics of the waters shall be protected to ensure that the interests of the public and of private riparian landowners are not adversely affected by the proposed excavation.

I. The proposed excavation shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

J. The proposed excavation shall be consistent with plans and management programs of local and regional governments provided that such plans are consistent with state plans and programs.

K. For harbors, boat slips, and other mooring facilities, the excavation shall be appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline

to be served divided by the lot requirements of the local land use control authority and the state shoreland management standards.

Statutory Authority: *MS s 105.415*

History: *8 SR 533; L 1985 c 172 s 80; 1Sp1985 c 16 art 2 s 19*

6115.0201 SPECIFIC STANDARDS.

Subpart 1. In general. In addition to compliance with the general standards in part 6115.0200, subparts 2 to 5, specific requirements shall be met for the activities described in subparts 2 to 7.

Subp. 2. Excavations for beach development. The existing site conditions will not provide a suitable beach using a sand blanket alone. When the proposal includes the installation of a beach sand blanket, the area to be excavated shall be consistent with the criteria for filling under part 6115.0190, subparts 2 to 5. The depth of excavation needed to reach a suitable beach stratum shall be the minimum depth necessary considering anticipated site maintenance and reasonable water depths for a beach.

Subp. 3. Waterbasin excavations. Excavations for improvement or enhancement of hydrologic and biologic conditions in all, or large portions of waterbasins:

A. A public need for the excavation has been established by local governmental resolution specifying the public interests to be improved or enhanced, except where the project is state sponsored.

B. The proposed project is intended to achieve one or more of the following public purposes:

- (1) to improve navigation, swimming, and other recreational uses;
- (2) to reduce winter fish-kill potential;
- (3) sediment removal to eliminate a source of nutrients and/or contaminants.

C. The proposed excavation is part of an overall improvement or enhancement project based upon adequate background and field test data for which a comprehensive plan is submitted at the time of application detailing all of the following:

(1) Objectives to be accomplished, and an analysis of any alternative means considered to meet the objectives and the rationale for selecting excavation.

(2) Sufficient soil boring and bottom sampling data to evaluate sediment quality and bottom "seal" conditions. Where excavation is proposed on a waterbasin that is perched on an impervious stratum, soil borings must show that the proposed excavation will not rupture the impervious stratum.

(3) The methods, uses, and locations to be employed in excavating and disposing of excavated material consistent with the provisions of parts 6115.0190 to 6115.0192.

(4) Existing water quality data and provision for future water quality monitoring including any water returned to the waterbasin during the removal of excavated materials.

(5) A timetable which indicates anticipated yearly excavation areas and volumes of materials to be removed, plus the selected disposal methods, uses, and deposition locations for each excavation period.

(6) A detailed description of proposed excavation and disposal equipment and facilities, including, where applicable, the length of discharge pipe purchased or available for the project and the pumping characteristics of the equipment.

Subp. 4. Excavations for navigation-related purposes. Excavations for navigation-related purposes:

A. Access channels from shorelines for recreational craft. Excavations for accesses from shorelines to reach navigable depths shall not be allowed if access could reasonably be obtained through use of a dock to reach navigable depths, and prevalent wind, wave, and current conditions would not impair reasonable access to reach navigable depths.

When shoreline conditions and wind, wave, and current conditions preclude access to navigable depths, excavations for navigational access shall be allowed provided the access channel shall not exceed four feet in depth, more than 15 feet in bottom width, and will not extend to an offshore water depth greater than four feet.

B. Other navigational channels. Excavations shall be limited to the minimum depth and width necessary to allow reasonable use of anticipated watercraft.

Excavations to provide maintenance of navigational channel projects shall be limited to the length, width, and depth dimensions of the original channel.

Subp. 5. **Harbors and boat slips.** Harbors and boat slips:

A. Excavations for development of offshore or inland harbors or boat slips for the mooring of more than 25 watercraft or watercraft larger than 20 feet in length shall be restricted to those waters which have the following characteristics:

(1) waterbasins having areas of 1,000 acres or more;

(2) watercourses which are used for commercial or industrial navigational purposes.

B. Excavations for development of offshore harbors serving fewer than 25 watercraft shall be limited to those water areas where the location of the proposed offshore harbor would not create unreasonable obstructions to public use and navigation on the water involved. Unreasonable obstructions include any development which would result in threats to public health, safety, or welfare.

C. Excavations for development of private inland harbors or boat slips serving fewer than 25 watercraft or watercraft less than 20 feet in length shall be limited to those waters where:

(1) Prevalent wind, wave, or current conditions along the shoreline where excavation is proposed are of a magnitude and frequency which precludes the use and maintenance of docks to moor watercraft. Determinations of magnitude and frequency which would inhibit use of docks shall be based on supporting facts including:

(a) the character of the water involved and its shoreline in relation to exposure to severe wind, wave, or current actions and the configuration and area of the water;

(b) the frequency of occurrence of storms producing severe winds and waves based on climatological data for the area; and

(c) the average number of days during each month of the navigational season when the shoreline is affected by severe winds, waves, or currents;

(2) The presence of lake bed and bank conditions would preclude the use and maintenance of docks and the conditions of the site and the number, type, or size of watercraft intended to be moored would preclude the development and use of on-land facilities, such as rollers, winch and track systems, sliderails, or other facilities which could be used to haul watercraft out of the water for on-land storage; or

(3) The proposed site is located in an area of the water body where offshore mooring or excavations or extensive dock development would create unreasonable obstructions to public use and navigation of the water body.

D. The width and length of boat slips shall not exceed 150 percent of the width and length of the anticipated watercraft and all authorized boat slips shall be oriented to maximize the degree of wave protection.

E. Excavations for development of inland harbors shall be limited to those waters described in item C and shall meet the following additional requirements:

(1) Requirements applicable to all commercial and industrial inland harbors:

(a) The mooring area of the harbor shall be compactly shaped in order to minimize the surface area excavated in relation to the number of mooring spaces to be provided and shall be located at an adequate distance from the shoreline to provide wave protection and prevent breakthrough.

(b) No branch or connecting channels shall be permitted extending laterally outward from authorized inland excavations.

(c) If practical, a "dogleg" shall be incorporated in the approach channel located between the mooring area and the shoreline to minimize visual impact from the water body and promote wave dissipation.

(d) The excavation shall not extend more than 200 feet inland from the protected water unless evidence is provided to show that greater distances are required because of the dimensions of the watercraft to be moored.

(e) The methods, use, and deposition locations to be employed in disposing of excavated materials shall be consistent with the provisions of part 6115.0200, subpart 5, item B.

(2) An application for a permit shall contain plans, maps, and supporting data regarding proposed excavation site soil borings, ground water levels and characteristics, water quality, topography, drainage, and vegetation which shall substantiate that the proposed project must be reasonable and practical based upon geologic and hydrologic conditions including:

- (a) quantity and quality of stream flow and local drainage at the proposed project site;
- (b) water stagnancy problems including the capability of being flushed or drained;
- (c) interference with stream flow or longshore drift;
- (d) type of soil strata and underground formations in the project vicinity;
- (e) protection of the water body itself in terms of reduced water supply, increased seepage or drainage, pollution, increased flooding, and other adverse hydrological impacts;
- (f) adequate entrance openings;
- (g) ample turning radius;
- (h) adequate depth and size for the anticipated watercraft usage;
- (i) adequate reduction of wave heights in mooring areas;
- (j) proper harbor shape to reduce wave resonance;
- (k) need for and feasibility of maintenance dredging;
- (l) adequate height of perimeter wall;
- (m) need for wave absorbers within the harbor; and
- (n) bank stabilization by appropriate erosion control measures.

(3) Additional requirements applicable to specific types of harbors. Private inland harbors serving two or more single family residential riparian lots shall, if practical, be located along the mutual boundary of properties to be served.

Private inland harbors for proposed multifamily or cluster developments, residential planned unit developments, or for resorts, campgrounds, or other commercial purposes. The development plan shall be approved by the local governmental unit. The permit shall be of the title-registration type including a provision that the individual waterfront lots in the development have priority rights to the available mooring spaces thus obviating issuance of future permits for individual harbors for these lots. The harbor shall be appropriately sized, consistent with the number of watercraft to be served with the number of mooring spaces not to exceed one mooring space for each riparian unit served or each rental cabin or campsite unit plus consideration of use by transient watercraft.

Public inland harbor projects must be justified by:

- (a) a public need for the proposed inland harbor established by local governmental resolution specifying public interests to be enhanced;
- (b) the harbor shall be appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served;
- (c) the harbor shall be available for use by the general public; and
- (d) the harbor may extend more than 200 feet inland provided the plans minimize the total length by which the protected water is proposed to be extended in keeping with the number of watercraft to be served and the topography.

Subp. 6. Excavations for fish and wildlife habitat improvement. Excavation to restore or improve fish and wildlife habitat require plans showing the nature and degree of habitat to be benefited, and information showing that the project will not create other adverse effects such as flooding, erosion, sedimentation, or navigational obstructions.

Excavations in trout streams officially designated by the commissioner shall be allowed only if:

A. the amount, method, and location of the excavation will not result in increased water temperatures, cause excessive sedimentation in the stream, or destruction of fish habitat; and

B. there is no other feasible or practical alternative other than excavation.

Subp. 7. **Excavations in protected watercourses.** Except as noted in part 6115.0200, subpart 4, a permit shall be required for any excavation in a protected watercourse and shall be subject to the following specific requirements in addition to the general requirements of part 6115.0200, subparts 2 to 5:

A. The watercourse capacity shall be sufficient to adequately convey normal runoff.

B. The watercourse bottom gradients shall be such that normal low flow velocities are nonerosive and the sideslopes shall be graded such that bank slumping is not a hazard. Where excavation will result in excessive bank erosion, energy dissipation structures, channel and bank protection, or other engineering measures shall be required.

C. The outlet shall be adequate in that it:

(1) sufficiently conveys the discharge waters from the area proposed for excavation;

(2) does not produce substantial increases in downstream overbank flooding; and

(3) does not produce downstream erosion hazards as a result of the watercourse excavation.

D. When projects involve widening or straightening which alters the watercourse banks, all sideslopes which contribute direct surface runoff into the authorized altered watercourse, and a strip of land along both sides of the watercourse, one rod wide or to the top of the spoil bank, whichever is the greater, shall be seeded and maintained in permanent grasses. No mowing of this grassed strip shall be allowed until after July 31 of each year.

E. The alignment and slope of the excavated channel shall be such as to provide a smooth transition between the existing and the excavated channel.

F. Disposal of excavated material from channel excavation shall be consistent with part 6115.0200, subpart 5, except where the original channel is allowed to be filled as part of the project.

G. No significant increase in flood damages will be permitted. Floodwater retardance structures may be required to minimize any increase in flood damage.

H. The applicant shall submit the names and addresses of landowners located immediately upstream, downstream, and adjacent to any proposed watercourse alteration resulting from excavation. In addition, the applicant shall submit the names and addresses of other landowners and occupants that the commissioner, after reviewing the plans for the proposed excavation, believes will have a substantial interest in the channel change or will be substantially affected by the watercourse alteration.

I. The preferred alternative to widening, deepening, or straightening a watercourse for control of flood waters is the construction of water impoundment structures in upstream areas. Where impoundments are infeasible, impractical, or would result in adverse effects on health and safety or greater adverse environmental effects, the preferred alternative is the construction of flood bypass channels to convey high velocity flood flows.

Excavations in protected watercourses for flood management purposes shall be allowed only where an upstream impoundment or a flood bypass channel is infeasible or impractical or excavation is the least damaging environmentally.

Excavations for widening, deepening, or straightening portions of watercourses shall be based on flood management plans which provide details on the relationship of the proposed excavation to management of flood flows for the entire watercourse and shall be consistent with state standards and state approved local standards for floodplain management including maximum use of nonstructural measures where feasible and practical.

J. Excavations shall be limited to the minimum extent necessary to facilitate construction of the road crossing and shall include provisions for adequate riprap or other bank protection measures to protect altered banks from erosion.

K. Excavations for construction of sediment traps or settling basins to control sedimentation and water quality shall be based on plans approved by the Pollution Control Agency or the local soil and water conservation district and shall be consistent with any state and local standards, regulations, and requirements.

L. Watercourse channel excavations to restore or improve fish and wildlife habitat shall require plans showing the nature and degree of habitat to be benefited, and information showing that the project will not create other adverse effects such as flooding, erosion, sedimentation, or navigational obstructions.

M. Watercourse channel excavations in trout streams officially designated by the commissioner shall only be allowed if:

(1) the amount, method, and location of the channel excavation will not result in increased water temperatures, cause excessive sedimentation in the stream, or destruction of fish habitat; and

(2) there is no other feasible or practical alternative other than channel excavation.

N. The straightening or realignment of a watercourse with a total drainage area, at its mouth, greater than five square miles shall only be permitted where the project will not result in increased downstream flooding, erosion, or sedimentation. Where it is proposed to straighten or realign a watercourse with a total drainage area, at its mouth, greater than five square miles, the applicant may be required to submit appropriate hydraulic data. Such data may include:

(1) contributing watershed above the project;

(2) data for the flood of record;

(3) maximum observed high water level;

(4) flow data, based on the best available technology as follows:

(a) existing and proposed time of concentration;

(b) existing and proposed stage downstream;

(c) existing and proposed mean velocity downstream;

(5) certification that the data was prepared by a registered professional engineer.

O. The alteration of watercourses by straightening or realigning channels to facilitate adjacent land use shall be allowed only if the applicant provides evidence:

(1) that the alteration is reasonable, practical, and will adequately protect public safety and welfare; and

(2) that the alteration will involve a minimum of encroachment, change, or damage to the environment, particularly to the ecological system of the waterway.

P. All other proposals for excavations in protected watercourses shall meet the general requirements of part 6115.0200, subparts 2 to 5 and the specific requirements of subparts 2 to 6 of this part and shall require submission of supporting evidence as provided in subpart 7, items N and O of this part.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0202 RELATIONSHIP TO STANDARDS AND CRITERIA FOR OTHER ACTIVITIES INVOLVING CHANGES IN COURSE, CURRENT, OR CROSS-SECTION.

Unless otherwise specified in other parts, parts 6115.0200 and 6115.0201 shall apply to excavations proposed as part of any other activity or activities including but not limited to: filling, parts 6115.0190 to 6115.0192; structures, parts 6115.0210 to 6115.0212; water level controls, parts 6115.0220 to 6115.0222; bridges and culverts, parts 6115.0230 to 6115.0232; drainage of protected waters, parts 6115.0270 to 6115.0272; and alterations of protected waters for mining, part 6115.0280.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0210 STRUCTURES IN PROTECTED WATERS.

Subpart 1. **Goals.** It is the goal of the department to limit the occupation of protected waters by offshore navigational facilities, retaining walls, and other structures in order to:

- A. preserve the natural character of protected waters and their shorelands;
- B. provide a balance between the protection and utilization of protected waters;

and

C. encourage the removal of existing structures which do not serve the public interest from the beds of protected waters at the earliest practicable date.

Subp. 2. **Scope.** This part applies to the placement, construction, reconstruction, repair, relocation, abandonment, or removal of any structure placed on or in protected waters.

Subp. 3. **Placement of structures not permitted.** Placement of structures shall not be permitted where the structure:

- A. Will obstruct navigation or create a water safety hazard.
- B. Will be detrimental to significant fish and wildlife habitat, or protected vegetation. Construction is prohibited in posted fish spawning areas.
- C. Is designed or intended to be used for human habitation or as a boathouse.
- D. Is designed or intended to include walls, a roof, or sewage facilities.

Subp. 4. **No permit required.** No permit shall be required for the following activities, unless prohibited under subpart 3:

A. To construct, reconstruct, or install a seasonal dock or floating structure provided:

- (1) the structure will not constitute a hazard to navigation or public health, safety, and welfare, as determined by the commissioner;
- (2) the structure will not include fuel-handling facilities;
- (3) the structure will allow the free flow of water beneath it; and
- (4) the structure is not used or intended to be used as a marina.

B. To construct or reconstruct a permanent dock on wood pilings or rock filled cribs on lakes provided:

- (1) the dock is a single lineal structure with no appurtenances;
- (2) only one dock is installed per riparian lot;
- (3) the structure shall not exceed six feet in width nor exceed 50 feet in length, or extend to a depth greater than four feet, whichever is less;
- (4) the structure shall comply with the requirements of item A, subitems (2), (3), and (4);

(5) for a permanent dock on wood pilings, the surface area of the lake is equal to or greater than 500 acres;

(6) for a permanent dock on rock filled cribs, the surface area of the lake is equal to or greater than 2,500 acres; and

(7) structures using rock filled cribs shall only be placed where the lake bed is predominantly bedrock which is incapable of supporting wood pilings and shall utilize intermittently spaced cribs which allow unrestricted circulation of water beneath the dock.

C. To construct or reconstruct a boat launching ramp provided:

(1) Privately owned ramps shall not exceed 12 feet in width, and extend more than ten feet beyond the ordinary high water mark or into water more than four feet in depth, whichever is less. Excavations five cubic yards or less, and placement of up to five cubic yards of crushed rock, gravel, clean sand, or small stone shall be allowed in order to provide a stable base or maintain use of the ramp.

(2) Publicly owned ramps shall not exceed 24 feet in width and extend more than 20 feet waterward of the shoreline or into water more than four feet in depth, whichever is less. Excavations of 60 cubic yards or less, and placement of up to 30 cubic yards of crushed rock, gravel, clean sand, or small stone shall be allowed in order to provide a stable base or maintain use of the ramp.

(3) The ramp shall be constructed of gravel, natural rock, concrete, steel matting, or other durable inorganic material not exceeding six inches in thickness.

D. Remove structures or other waterway obstructions provided:

- (1) the original cross-section and bed conditions shall be restored insofar as practicable;
- (2) the structure shall be completely removed including any footings or pilings which obstruct navigation;
- (3) the structure is not located on an officially designated trout stream;
- (4) the structure does not function as a water level control device.

Subp. 5. **Permits required; criteria.** Permits shall be required for the construction, reconstruction, repair, or relocation of any structure on or in protected waters, except as provided under subparts 3 and 4, and shall meet the following general criteria:

A. The proposed project must represent the minimal impact solution to a specific need with respect to all other reasonable alternatives.

B. The project will involve a minimum of encroachment, change, or damage to the environment, including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention.

C. The proposed structure shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

D. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

E. The proposed structure shall be consistent with water and related land management plans and programs of local and regional governments, provided these plans and programs are consistent with state plans and programs.

F. Except for docks and boat ramps, all new structures shall have a title-registered permit, unless a public agency or local governmental unit accepts responsibility for future maintenance or removal.

Statutory Authority: *MS s 105.415*

History: 8 SR 533

6115.0211 SPECIFIC STANDARDS.

Subpart 1. **In general.** In addition to compliance with the general standards in part 6115.0210, subparts 2 to 5, specific requirements shall apply to the activities described in subparts 2 to 8.

Subp. 2. **Docks.** Except as provided in part 6115.0210, subpart 3, item B, a permit shall be required for the construction or reconstruction of any dock and shall be granted provided:

A. Similarly situated docks in the vicinity have not experienced maintenance difficulty and the use of a seasonal dock is precluded because:

- (1) long fetches would subject seasonal docks to damaging storm wave conditions;
- (2) bottom conditions such as bedrock or an extremely gradual offshore slope would preclude the use of seasonal dock stringers; or
- (3) the number of public and private users is so great the seasonal docking equipment would not provide adequate stability.

B. Piling docks shall be preferred in all cases unless the depth to bedrock is too shallow to allow the driving of piles, in which case rock crib docks may be authorized.

C. The docks shall extend waterward only to a navigable depth, generally considered to be no greater than four feet.

D. The dock shall not exceed six feet in width.

Subp. 3. **Wharves.** A permit shall be required for the construction or reconstruction of all wharves. The following order of preference for construction types shall be utilized: bulkheaded shoreline, inland slip with bulkheaded sidewalls, wharf projecting into protected waters.

Wharves shall be permitted provided the structure:

- A. is part of a designated port facility;

- B. is consistent with local land use plans and ordinances;
- C. does not extend further waterward than any existing wharves in the area or beyond any established harbor line, whichever is less;
- D. size is the minimum practicable; and
- E. is not an obstruction to flood flows or longshore drift and is adequately designed to resist the natural forces of ice, wind, and wave.

Subp. 4. **Breakwaters and marinas.** A permit shall be required for the construction or reconstruction of all offshore breakwaters and marinas. These structures shall be permitted provided the following general conditions and the additional listed specific conditions are met:

- A. Alternative dock or inland facilities are infeasible.
- B. The facility shall be adequate in relation to appropriate engineering factors including but not limited to those listed in part 6115.0201, subpart 5, item E, subitem (2), units (f) to (n).
- C. The plan shall be adequate in relation to the geologic and hydrologic factors listed in part 6115.0201, subpart 5, item E, subitem (2), units (a) to (e).
- D. The size and shape shall be designed in a compact fashion so as to blend in with the surrounding shoreline while minimizing the surface area occupied in relation to the number of watercraft to be served.
- E. The breakwaters shall not exceed the minimum thickness necessary to withstand the anticipated forces consistent with maintenance requirements and shall be faced with an adequate layer of natural rock riprap of appropriate size and gradation.
- F. The following types of offshore structures shall be permitted, subject to the listed specific conditions:

(1) Private offshore structures serving several contiguous riparian lots; provided:

- (a) The site shall meet the standards of subpart 2 for a dock.
- (b) The structure shall minimize encroachment waterward of the ordinary high water mark.
- (c) The total length of the structure shall be appropriately sized to provide a single mooring space for each riparian lot served.

(2) Private offshore structures for proposed multifamily or cluster or residential planned unit developments; provided:

- (a) The structure shall minimize encroachment waterward of the ordinary high water mark and its total length shall be appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline to be served divided by the lot frontage requirements of the local land use control authority.
- (b) The development plan shall be approved by the local land use control authority.

(3) Private offshore structures for resorts, campgrounds, or similar enterprises; provided:

- (a) The structure shall minimize encroachment waterward of the ordinary high water mark and its total length shall be appropriately sized to provide one mooring space for each rental cabin or campsite unit plus a reasonable number of mooring spaces for transient watercraft.
- (b) The development plan shall be approved by the local land use control authority.

(4) Public offshore structure projects; provided:

- (a) A local unit of government shall pass a resolution which specifies the public interests to be benefited by the proposal.
- (b) The structure shall be appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served.
- (c) The structure shall be available for use by the general public.

(d) The development plans shall minimize the waterward encroachment of the facilities.

(5) Offshore marinas; provided:

(a) The area shall be zoned for such use or local government shall grant a land use permit.

(b) The proposed marina shall minimize encroachment waterward of the ordinary high water mark.

(c) The marina shall be sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served.

Subp. 5. Retaining walls and erosion and sedimentation control structures. A permit shall be required for the construction or reconstruction of all retaining walls and erosion and sedimentation control structures that do not impound water. The construction of retaining walls shall be discouraged because their appearance is generally not consistent with the natural environment and their construction and maintenance cost is generally greater than riprap.

The issuance of permits shall be contingent on the following conditions:

A. Existing or expected erosion problems shall preclude the use of riprap shore protection, or there shall be a demonstrated need for direct shoreland docking; or

B. Design shall be consistent with existing uses in the area. Examples are: river-front commercial-industrial areas having existing structures of this nature, dense residential shoreland areas where similar retaining walls are common, resorts where floating docks may be attached to such a bulkhead, or where barges are utilized to transport equipment and supplies; and

C. Adequate engineering studies shall be performed of foundation conditions, tie-backs, internal drainage, construction materials, and protection against flanking; and

D. The facility shall not be an aesthetic intrusion upon the area and is consistent with all applicable local, state, and federal management plans and programs for the water body; and

E. Encroachment below the ordinary high water mark shall be held to the absolute minimum necessary for construction.

Subp. 6. Boat launching ramp. A permit shall be required for the construction or reconstruction of any boat launching ramp not covered under part 6115.0210, subpart 4, item C, and shall be granted provided:

A. the applicant shall demonstrate a need for a launching facility;

B. the proposed ramp shall be of the minimum dimensions necessary for launching of watercraft;

C. the proposed ramp shall not obstruct flowing water; and

D. construction shall not necessitate alteration of shoreland which could result in substantial erosion and sedimentation.

Subp. 7. Other facilities. A permit shall be required for the construction, reconstruction, relocation, removal, repair, and abandonment of all other offshore structures, cables other than utility crossings, pilings, or other facilities not covered by specific regulations:

A. Permits for structural repair, relocation, or modification, other than minor maintenance work such as reroofing, painting of structures or similar work, shall be issued provided all of the following conditions are met:

(1) the applicant demonstrates a need for the work;

(2) the cost of the work will not exceed 50 percent of the replacement cost of the structure;

(3) the degree of permanence of the structure will not be materially increased by virtue of constructing a new foundation or replacing the majority of the structure above the foundation;

(4) the structure being repaired has appropriate permits from the local land use or sanitary authority;

(5) the degree of obstruction or structure size is not increased.

B. Permits for construction, relocation, or reconstruction of publicly owned structures shall be issued where:

- (1) public need is documented and outweighs adverse environmental impact;
- (2) the site is adequately protected from the forces of ice and wave pressures;

and

(3) the proposed construction is of sound design and is not necessarily obtrusive or visually incompatible with the natural surroundings.

C. The construction, relocation, or reconstruction of privately owned structures shall be permitted only when a governmental agency or local governmental unit accepts responsibility for future maintenance of the structure or its removal.

Subp. 8. Removal of structures. Where the commissioner has determined that a structure is no longer functional, constitutes a public nuisance or a hazard to navigation, or poses a threat to public health or safety, the structure shall be removed from protected waters under the applicable provisions of these rules. Except as provided under part 6115.0210, subpart 4, item D, a permit is required for the removal or abandonment of all existing waterway obstructions including boathouses, bridges, culverts, pilings, piers, and docks. Permits shall be issued provided:

A. the original cross-section and bed conditions will be restored insofar as practicable;

B. adequate provisions are made to mitigate any side effects resulting from removal, such as restoration of wave or current forces; and

C. no portion of the structure remains which would obstruct or impair navigation, interfere with the passage of flood waters, or contribute to erosion and sedimentation.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0212 RELATIONSHIP TO STANDARDS AND CRITERIA FOR OTHER ACTIVITIES INVOLVING CHANGES IN COURSE, CURRENT, OR CROSS-SECTION.

Unless otherwise specified in other parts, parts 6115.0210 and 6115.0211 shall apply to structures proposed as part of any other activity or activities including but not limited to: filling, parts 6115.0190 to 6115.0192; excavations, parts 6115.0200 to 6115.0202; water level controls, parts 6115.0220 to 6115.0222; bridges and culverts, parts 6115.0230 to 6115.0232; drainage of protected waters, parts 6115.0270 to 6115.0272; and alterations of protected waters for mining, part 6115.0280.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0220 WATER LEVEL CONTROLS.

Subpart 1. Goals. It is the goal of the department to manage protected waters in order to:

A. maintain natural flow and natural water level conditions to the maximum feasible extent;

B. encourage the construction of small upstream retarding structures for the conservation of water in natural waterbasins and watercourses, consistent with any overall plans for the affected watershed area; and

C. limit the artificial manipulation of water levels except where the balance of affected public interests clearly warrants the establishment of appropriate controls and it is not proposed solely to satisfy private interests.

Subp. 2. Scope. The construction, repair, reconstruction, or abandonment of any structure intended to impound, divert, or control the level or flow of protected waters shall be subject to the provisions of this part.

Subp. 3. Nonallowed water level control facilities. Construction or reconstruction of water level control facilities shall not be allowed where it is intended to manipulate water levels solely to satisfy private interests.

Subp. 4. No permit required. No permit shall be required to construct, reconstruct, or abandon a water level control structure on protected watercourses with a contributing wa-

tershed of 300 acres or less, except on officially designated trout streams, provided the structure does not qualify as a dam under the rules for dam safety.

Subp. 5. **Permits required.** Permits shall be required for the construction, repair, reconstruction, or abandonment of any water level control structure except as provided in subparts 3 and 4, and shall meet the following general criteria:

A. The project will involve a minimum of encroachment, change, or damage to the environment including but not limited to fish and wildlife habitat, navigation, water supply, storm water retention, and agricultural uses.

B. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

C. The proposed project shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

D. The proposed project shall be consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs.

E. The construction or reconstruction shall comply with the requirements of parts 6115.0300 to 6115.0520 with respect to dam safety for the protection of human life and property.

F. The construction or reconstruction of water level control structures or changing the level of an existing structure may be permitted to:

- (1) control and store flood waters;
- (2) maintain low flows for instream flow or water level protection;
- (3) manage water quality, including the prevention or control of erosion and sedimentation;
- (4) improve water-based recreation;
- (5) create, improve, and maintain water supplies;
- (6) create, improve, or maintain aquatic habitat for fish and wildlife species;
- (7) establish, improve, or maintain the generation of hydroelectric power.

Statutory Authority: *MS s 105.415*

History: 8 SR 533

6115.0221 SPECIFIC STANDARDS.

In addition to the general standards in part 6115.0220, subparts 2 to 5, specific requirements for water level control structures shall be met as follows:

A. Permanent lake level control facilities shall be approved when the commissioner initiates proceedings for the purpose of conserving or utilizing the water resources of the state and assumes responsibility for operation and future maintenance, or when all of the following conditions are met:

(1) The ordinary high water mark and runoff elevation of the water body have been determined by a detailed engineering survey, or by order of the commissioner following a public hearing;

(2) The proposed facilities shall be "reasonably consistent with natural conditions:"

(a) Where a functioning outlet existed in a state of nature or for a long period of time following lawful creation or alteration of an outlet by the activities of people or animals, or cataclysmic events, the proposed outlet is at essentially the same control elevation;

(b) Where no natural or artificial outlet exists and the lake is for all practical purposes "landlocked," the control elevation shall not be more than 1-1/2 feet below the ordinary high water mark;

(3) The project is sponsored by a governmental unit which assumes responsibility for operation and future maintenance, except where:

- (a) the majority of the riparian owners sign the permit application;
- (b) appropriate easements or other property interests have been obtained from all affected owners;

(c) a title-registration type permit shall be issued to the owner or owners of the property upon which the proposed water level control structure will be located; and

(d) the structure will further public interests in navigation, propagation of fish or wildlife, or other beneficial public uses of the water;

(4) Justification has been made of the need in terms of public and private interests and the available alternatives, including the impact on receiving waters and public uses thereof, through a detailed hydrologic study; and

(5) A detailed plan is developed for operation and control including:

(a) manner and time of operation;

(b) frequency of maintenance;

(c) appropriate monitoring of water levels, water quality, and other factors;

(d) management of excess waters.

B. Fish and wildlife management proposals made pursuant to Minnesota Statutes, section 97A.101, or other appropriate authority shall be approved where:

(1) The protected water has been designated for wildlife management purposes.

(2) There is a specific water level management plan for the lake basin.

(3) Any drawdown of the lake is only temporary and the management plans include a permanent facility for restoration of water levels following such drawdowns.

(4) Any alteration of a watercourse included in the plan follows the requirements specified in part 6115.0201, subpart 7.

(5) Appropriate easements or fee title have been obtained.

(6) Specified management personnel are required to establish a lake level gauge and keep a record of water levels with a specified frequency during seasons of active water level manipulation and with a lesser frequency during all other open water seasons.

C. Plans for landlocked waterbasins less than 25 acres in surface area and contained completely within the municipal boundaries of a single city shall be approved where:

(1) A municipal drainage plan for the affected tributary watershed is prepared by a qualified engineer or hydrologist and is approved by the affected watershed district and the city.

(2) The city has a field survey made of the waterbasin after consultation with the department including but not limited to:

(a) the elevation of the aquatic vegetation fringe;

(b) the elevation of the tree line and a description of the location, type, and size of representative trees;

(c) groundwater elevations, if appropriate;

(d) other information as requested by the department.

(3) Control elevations and associated physical parameters are approved by the department and the city.

(4) The city holds a public hearing on the proposal and provides a transcript of the proceedings to the department. Provision of a transcript may be waived by the department.

D. Permits for the construction, reconstruction, and abandonment of all other water level control structures shall be issued provided:

(1) The need is established in terms of quantifiable benefits.

(2) The structural design shall be done by a professional engineer or by a qualified engineer of the Soil Conservation Service or the Corps of Engineers and must include the following considerations:

(a) gravity forces;

(b) hydrostatic pressure;

(c) uplift forces;

(d) overturning moment;

- (e) resistance to sliding;
 - (f) ice pressures;
 - (g) earthquake forces;
 - (h) slope stability including consolidation and pore pressures;
 - (i) seepage collection or prevention;
 - (j) foundation conditions including appropriate borings and determination of the strength of foundation materials;
 - (k) specifications for materials of construction and their placement or installation;
 - (l) adequate construction inspection to assure conformance with design assumptions; and
 - (m) adequacy of the cofferdam or diversion during construction, if any.
- (3) Adequate assurances shall be made for future maintenance of new water level control structures:

(a) For water level control structures 25 feet or more in structural height or having a maximum storage capacity of 50 acre-feet or more, permits will be issued only to governmental agencies, public utilities, or corporations having authority to construct and maintain such projects, except that a title-registration type permit may be issued to the owner or owners of the private property upon which the proposed water level control structure will be located where the provisions of item A, subitem (3) are met.

(b) For other water level control structures, title-registration type permits may be issued to the owner or owners of the private property upon which the water level control structure will be located which shall run with the land and require breaching or removal if it ever falls into a state of disrepair or becomes unsafe.

(c) Periodic engineering inspections of authorized water level control structures may be made by the department or its designee.

Statutory Authority: *MS s 105.415*

History: *8 SR 533; L 1986 c 386 art 1 s 19; 17 SR 1279*

6115.0222 RELATIONSHIP TO STANDARDS AND CRITERIA FOR OTHER ACTIVITIES INVOLVING CHANGES IN COURSE, CURRENT, OR CROSS-SECTION.

Unless otherwise specified in other parts, parts 6115.0220 and 6115.0221 shall apply to water level control structures proposed as part of any other activity or activities including but not limited to: filling, parts 6115.0190 to 6115.0192; excavations, parts 6115.0200 to 6115.0202; structures, parts 6115.0210 to 6115.0212; bridges and culverts, parts 6115.0230 to 6115.0232; drainage of protected waters, parts 6115.0270 to 6115.0272; and alterations of protected waters for mining, part 6115.0280.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0230 BRIDGES AND CULVERTS, INTAKES AND OUTFALLS.

Subpart 1. Goals. It is the goal of the department to allow crossings of protected waters, including the construction of water intake and sewer outfall structures in protected waters, only when less detrimental alternatives are unavailable or unreasonable, and where such facilities adequately protect public health, safety, and welfare.

Subp. 2. Scope. The construction or reconstruction of any bridge, culvert, intake, outfall, or other crossing of protected waters shall be subject to the provisions of this part. Abandonment or removal of all crossings and structures governed by this part shall require a permit pursuant to 6115.0211, subpart 8.

Subp. 3. Nonpermitted crossings. Crossings shall not be permitted where the project:

- A. will obstruct navigation or create a water safety hazard;
- B. will cause or contribute to significant increases in flood elevations and flood damages either upstream or downstream;

C. would involve extensive channelization above and beyond minor stream channel realignments to improve hydraulic entrance or exit conditions, except where a separate permit is obtained pursuant to part 6115.0201, subpart 7; or

D. will be detrimental to water quality, or significant fish and wildlife habitat, or protected vegetation.

Subp. 4. **No permit required.** No permit shall be required to construct the following types of crossings on protected waters, unless prohibited in subpart 3:

A. To construct or reconstruct a bridge or culvert on a protected watercourse with a total drainage area, at its mouth, of five square miles or less, except on officially designated trout streams.

B. To construct or reconstruct a low-water ford type crossing provided that:

(1) the stream bed is capable of supporting the crossing without the use of pilings, culverts, dredging, or other special site preparation;

(2) the water depth does not exceed two feet under normal summer flow conditions;

(3) the crossing conforms to the natural cross-section of the stream channel and does not reduce or restrict normal low-water flows;

(4) the original stream bank at the site does not exceed four feet in height;

(5) the crossing is constructed of gravel, natural rock, concrete, steel matting, or other durable inorganic material not exceeding one foot in thickness;

(6) the approach is graded to a finished slope not steeper than 5:1 horizontal:vertical, and all graded banks are seeded or mulched to prevent erosion and sedimentation; and

(7) the crossing is not placed on an officially designated trout stream, on a wild, scenic, or recreational river or on an officially designated canoe and boating route.

C. To construct or reconstruct a temporary bridge provided that:

(1) the stream bank is capable of supporting the bridge without the use of foundations, pilings, culverts, excavation, or other special site preparation;

(2) nothing is placed in the bed of the stream;

(3) the bridge is designed and constructed so that it can be removed for maintenance and flood damage prevention;

(4) the bridge is firmly anchored at one end and so constructed as to swing away in order to allow flood waters to pass;

(5) the lowest portion of the bridge shall be at least three feet above the ordinary high water mark on navigable streams; and

(6) the bridge is consistent with state and local rules and regulations for floodplain, shoreland, and wild, scenic, or recreational rivers management standards and ordinances.

D. To maintain the hydraulic adequacy of any storm sewer or agricultural drain tile outfall or ditch which has been functioning within the previous five years if such work does not alter the original course, current, or cross-section of the protected waters.

E. To install an agricultural drain tile outletting into protected waters provided the bank is restored to the original cross-section or contour, and no permanent structure is placed below the ordinary high water mark, except for the drain tile.

Subp. 5. **Permits required.** Permits shall be required for the construction or reconstruction of any bridge, culvert, intake, outfall, or other crossing of protected waters except as provided in subparts 3 and 4, and shall meet the following general criteria:

A. The project will involve a minimum of encroachment, change, or damage to the environment including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention.

B. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

C. The proposed crossing shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

D. The proposed crossing shall be consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs.

E. Crossings of protected waterbasins or wetlands shall be allowed only where there is no feasible and practical alternative which does not require filling, excavating, or the placement of a structure in protected waters.

Statutory Authority: *MS s 105.415*

History: 8 SR 533

6115.0231 SPECIFIC STANDARDS.

In addition to the general standards in part 6115.0230, subparts 2 to 5, specific requirements for bridges, culverts, intakes, outfalls, and other crossings of protected waters shall be met as follows:

A. The construction, reconstruction, or relocation of all bridges, culverts, or other crossings over protected waters shall be permitted provided all of the following criteria are met:

(1) The hydraulic capacity of the structure must be established by a competent technical study. The sizing shall not be based solely on the size of existing upstream and downstream structures. If a state or federal floodplain information study exists for the area, or a United States Geological Survey gaging station is located nearby on the stream, the hydraulics of the proposed bridge/culvert design must be consistent with these data. The department may waive this requirement if:

(a) the department has performed a hydraulic study based upon available information and reasonable assumptions;

(b) the department has made a field investigation of the project site;

(c) the project will not cause flood-related damages or problems for upstream or downstream interests.

(2) New crossings and replacements of existing crossings must comply with local floodplain management ordinances and with provisions of part 6120.5700, subpart 4, item A.

(a) New crossings. No approach fill for a crossing can encroach upon a community designated floodway.

Where a floodway has not been designated or where a floodplain management ordinance has not been adopted, increases in flood stage in the regional flood of up to one-half of one foot shall be permitted if they will not materially increase flood damage potential. Additional increases may be permitted if: a field investigation and other available data indicate that no significant increase in flood damage potential would occur upstream or downstream, and any increases in flood stage are reflected in the floodplain boundaries and flood protection elevation adopted in the local floodplain management ordinance.

(b) Replacement of existing crossings. If the existing crossing has a swellhead of one-half of one foot or less for the regional flood, the replacement crossing shall comply with the provisions for new crossings in unit (a).

If the existing crossing has a swellhead of more than one-half of one foot for the regional flood, stage increases up to the existing swellhead may be allowed provided field investigation and other available data indicate that no significant flood damage potential exists upstream from the crossing based on analysis of data submitted by the applicant. The swellhead for the replacement crossing may exceed the existing swellhead if it complies with the provisions for new crossings found in unit (a).

(c) The decks and approaches to bridges or culverts on major transportation routes and on roads that provide access to development at urban densities shall be no lower than two feet below the flood protection elevation as defined in part 6120.5700, subpart 5 unless it can be shown that alternative routes or access can be provided during the regional flood.

(3) The structure shall provide for game fish movement, unless the structure is intended to impede rough fish movement or the stream has negligible fisheries value.

(4) The structure will not obstruct reasonable public navigation. For bridges over protected watercourses, three feet above the calculated 50-year flood stage will ordinarily satisfy navigational clearance requirements. For bridges over protected waterbasins or wetlands, and all culverts, three feet of clearance above the ordinary high water mark will ordinarily satisfy navigational requirements.

(5) Any project proposed near an existing or proposed segment of the state trails system should be consistent therewith.

(6) Footbridges and walkways:

(a) Over watercourses. Must be designed to cause negligible backwater effects during floods. Must be securely anchored or otherwise capable of withstanding the dynamic forces of flowing water, ice, and debris. Approaches must not be raised above the adjacent floodplain lands.

(b) New walkways across any portion of protected waters to provide private access to an island will be prohibited. Permits for reconstruction of existing walkways or for the construction of new walkways intended to provide public access will be issued only if: the walkway provides the only existing access to the island; there is existing development thereon; the design will provide for any public navigational needs and is consistent with the natural surroundings.

B. The construction, reconstruction, or relocation of all water intake and sewer outfall structures placed in protected waters shall be permitted provided all of the following criteria are met:

(1) Adequate attention is given to methods of screening the structure from view as much as possible from the surface of the protected water through the use of existing vegetation or new plantings.

(2) The project is not detrimental to public values including but not limited to fish and wildlife habitat, navigation, water supply, water quality, or storm water retention.

(3) No site conditions will require frequent future disruption of the beds of protected waters.

(4) Adequate precautions must be planned during and after construction to prevent silt, soil, and other suspended particles from being discharged into protected waters.

(5) Adjacent to the intake structure, the banks and bed of the protected water must be protected from erosion and scour by placement of suitable riprap shore protection.

(6) The banks must be revegetated by seeding and/or sodding.

(7) The structure must be designed by a professional engineer.

(8) Intake structures: Excavation must be detailed in the application and on design plans. Where necessary, a water appropriation permit must be obtained from the department prior to operation. An appropriate sized screen must be used to prevent fish intake.

(9) Outfall structure design shall:

(a) where necessary, incorporate a stilling-basin, surge-basin, energy dissipator, or other device or devices to minimize disturbance and erosion of natural shoreline and bed resulting from peak flows;

(b) where feasible, utilize discharge to natural wetlands, natural or artificial stilling or sedimentation basins, or other devices for entrapment of sand, silt, debris, and organic matter;

(c) where feasible, maximize use of natural or artificial ponding areas to provide water retention and storage for the reduction of peak flows into protected waters.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0232 RELATIONSHIP TO STANDARDS AND CRITERIA FOR OTHER ACTIVITIES INVOLVING CHANGES IN COURSE, CURRENT, OR CROSS-SECTION.

Unless otherwise specified in other parts, parts 6115.0230 and 6115.0231 shall apply to bridges and culverts proposed as part of any other activity or activities including but not limited to: filling, parts 6115.0190 to 6115.0192; excavations, parts 6115.0200 to 6115.0202;

structures, parts 6115.0210 to 6115.0212; water level controls, parts 6115.0220 to 6115.0222; drainage of protected waters, parts 6115.0270 to 6115.0272; and alterations of protected waters for mining, part 6115.0280.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0240 APPLICATION FOR PROTECTED WATERS PERMITS.

Subpart 1. **Forms and submission.** All applications pursuant to parts 6115.0150 to 6115.0280 shall be made on forms prepared by the department and submitted to the regional office for the area where the majority of the proposed project is located.

Subp. 2. **Who may apply.** Applications shall be submitted by the riparian owner of the land on which a project is proposed, except:

A. A governmental agency, public utility, or corporation authorized by law to conduct the project may apply if the property rights acquired or to be acquired are fully described in the application.

B. A holder of appropriate property rights such as a lease or easement may apply provided that the application is countersigned by the owner and accompanied by a copy of the lease or other agreement. A permit may be issued for the term of the lease only, subject to cancellation prior to the termination date of the agreement if the agreement is canceled.

C. A prospective lessee of state-owned lands may apply for a permit in the applicant's own name after requesting a lease from the departmental official responsible for the affected lands. Both the lease request and the permit application will be processed concurrently with appropriate coordination.

Subp. 3. **Information required.** Pursuant to Minnesota Statutes, section 105.44, subdivision 4, an application shall be considered complete when:

A. It includes all of the information specified in the appropriate section or sections of these standards.

B. It is accompanied by appropriate photographs, maps, sketches, drawings, or other plans which adequately describe the proposed project.

C. It includes a brief statement regarding the following points:

- (1) anticipated changes in water and related land resources;
- (2) unavoidable anticipated detrimental effects on the natural environment;
- (3) alternatives to the proposed action.

D. Application fees have been paid. Note that final permits cannot be issued until any field inspection fees are paid.

E. Proof of service of a copy of the application and accompanying documents on the mayor of the city or the secretary of the board of the district is included with the application if the project is within or affects a city, watershed district, or soil and water conservation district.

Subp. 4. **Fees.** All applications shall be accompanied by an application fee as required by part 6115.0060. An additional fee may be charged for field inspections conducted by department personnel in the course of review subject to the provisions of part 6115.0080.

Statutory Authority: *MS s 105.415*

History: *8 SR 533; 17 SR 1279*

6115.0250 PERMIT REVIEW.

Subpart 1. **Field inspection.** The department may conduct field investigations to determine a project's nature, scope, and impact on water and related land resources. The department shall determine which applications must be investigated and such inspections shall be made in a timely fashion.

Subp. 2. **Coordination with other agencies.** Nothing in these standards is intended to supersede or rescind the laws, rules, regulations, standards, and criteria of other federal, state, regional, or local governmental subdivisions with the authority to regulate work in the beds or on the shorelands of protected waters. The issuance of a permit shall not confer upon

an applicant the approval of any other unit of government for the proposed project. The department shall coordinate the review with other units of government having jurisdiction in such matters.

Subp. 3. **Procedure upon decision.** The commissioner may grant permits, with or without conditions, or deny them. In all cases, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city may demand a hearing in the manner specified in Minnesota Statutes, section 105.44, subdivision 3, within 30 days after receiving mailed notice outlining the reasons for denying or modifying an application. Any hearing shall be conducted as a contested case hearing before an administrative law judge from the independent Office of Administrative Hearings in accordance with Minnesota Statutes, chapter 14 and sections 105.44 and 105.45.

Statutory Authority: *MS s 105.415*

History: *8 SR 533; L 1984 c 640 s 32*

6115.0260 STATUTORY REQUIREMENTS.

Further provisions for the administration of these rules are found in Minnesota Statutes, chapter 105, including but not limited to sections 105.44 to 105.463, 105.541, and 105.55.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0270 DRAINAGE OF PROTECTED WATERS.

Subpart 1. **Goals.** It is the goal of the department to protect and preserve protected waterbasins and wetlands from damage or destruction by drainage.

Subp. 2. **Scope.** Parts 6115.0270 to 6115.0272 relate to the partial drainage or temporary drawdown of protected waterbasins and wetlands for all purposes except mining of metallic or nonmetallic minerals which are subject to provisions of part 6115.0280.

Subp. 3. **Nonpermitted activity.** Except as provided in Minnesota Statutes, section 105.391, subdivision 3, the permanent or total drainage of protected waterbasins and wetlands shall not be permitted.

Subp. 4. **Permits required.** A permit shall be required for the partial drainage or temporary drawdown of protected waterbasins and wetlands and shall be granted provided all of the following conditions are met:

A. The proposed project is intended to achieve one or more of the following purposes:

- (1) improve navigational or recreational uses;
- (2) improve or restore fish or wildlife habitat;
- (3) expose sediment in order to remove or eliminate nutrients or contaminants;
- (4) alleviate flooding of agricultural lands caused by artificial obstruction of downstream drainage or increased upstream discharge;
- (5) allow the mining of iron ore, taconite, copper, copper-nickel, or nickel under the provisions of Minnesota Statutes, section 105.64.

B. The project will involve a minimum of encroachment, change, or damage to the environment including but not limited to fish and wildlife habitat, navigation, water supply, water quality, and storm water retention.

C. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

D. The proposed project shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

E. The proposed project shall be consistent with water and related land management plans and programs of local and regional governments provided such plans and programs are consistent with state plans and programs.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0271 SPECIFIC STANDARDS.

In addition to compliance with the general standards in 6115.0270, subparts 2 to 4, specific requirements for drainage or drawdown activities shall be met as follows:

A. The drainage or diversion of protected waters for mining iron ore, taconite, copper, copper-nickel, or nickel shall be permitted only where all of the provisions of Minnesota Statutes, section 105.64 and part 6115.0280 have been met.

B. The drainage or diversion of protected waters for mining all other metallic and nonmetallic minerals shall be permitted only when the protected waters being drained are replaced by protected waters which will have equal or greater public value, subject to provisions of part 6115.0280.

C. All other drainage or diversion of protected waters allowed in part 6115.0270, subparts 2 to 4 shall be permitted provided all of the following specific criteria are met:

(1) For protected waterbasins, permits will be issued only to governmental agencies having the authority to undertake such projects. In addition, a public need for the partial drainage or temporary drawdown shall be established by specifying the public interests to be enhanced.

(2) Written consent for the partial drainage or temporary drawdown of protected waterbasins and wetlands has been obtained from all riparian owners.

(3) Partial drainage or temporary drawdown of protected waterbasins and wetlands shall be permitted only where the applicant has submitted data to confirm:

(a) that the partial drainage will improve navigation or recreational uses;

(b) that the partial drainage will improve or restore fish and wildlife habitat; or

(c) that agricultural lands have been flooded due to artificial obstruction of downstream drainage or increased upstream discharge.

(4) Any proposed temporary drawdown shall not exceed two years in duration under normal climatic conditions.

(5) There are no feasible and practical means to attain the intended purpose without drainage.

(6) The proposal will adequately protect public safety and promote the public welfare.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0272 RELATIONSHIP TO STANDARDS AND CRITERIA FOR OTHER ACTIVITIES INVOLVING CHANGES IN COURSE, CURRENT, OR CROSS-SECTION.

Unless otherwise specified in other parts, parts 6115.0270 and 6115.0271 shall apply to drainage activities proposed as part of any other activity or activities including but not limited to: filling, parts 6115.0190 to 6115.0192; excavations, parts 6115.0200 to 6115.0202; structures, parts 6115.0210 to 6115.0212; water level controls, parts 6115.0220 to 6115.0222; and bridges and culverts, parts 6115.0230 to 6115.0232.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

6115.0280 ALTERATIONS OF PROTECTED WATERS FOR MINING.

Subpart 1. Goals. It is the goal of the department to ensure that alterations of protected waters for mining or reclamation of mining areas will minimize adverse environmental effects, preserve water resources to the maximum extent feasible and practical, and encourage the planning of future land and water utilization while at the same time promoting the orderly development of mining and the use of sound mining practices.

Subp. 2. Scope. Mining activities which may involve alterations of protected waters include the mining of metallic minerals including but not limited to iron ore, taconite, copper, copper-nickel, nickel, cobalt, and gold; and the mining of nonmetallic minerals including but not limited to sand and gravel, stone, clay, marl, oil, gas, and coal; and the mining of peat.

Subp. 3. Permits required for alterations of protected waters. Permits shall be required for any alterations of protected waters to facilitate mining of iron ore, taconite, copper, copper-nickel, or nickel minerals or reclamation of mining areas provided that:

A. Permits to mine shall be obtained when required by Minnesota Statutes, section 93.44 to 93.51.

B. Permits for alterations in protected waters shall be granted in accordance with provisions of Minnesota Statutes, section 105.64. Applications for permits for alterations in protected waters shall include an analysis showing why underground mining without drainage, diversion, or control of protected waters is not feasible or economical.

Subp. 4. Permit required for mining of certain minerals and peat. Permits shall be required for mining of nonmetallic minerals, peat, and other metallic minerals not regulated in Minnesota Statutes, section 105.64, or reclamation of mining areas provided that the applicant provides evidence that:

A. there is no other feasible and practical location for the proposed mining activity;

B. there is no other feasible or economical method to mine except by draining, diverting, or controlling the protected waters;

C. the proposed alteration of protected waters is necessary and no other feasible and economical method for it is reasonably available;

D. the proposed alteration of protected waters will not substantially impair the interests of the public in lands or waters or the substantial beneficial public use thereof, except as expressly authorized in the permit, and will not endanger public health or safety;

E. the proposed mining operations will be in the public interest and that the public benefits resulting from it will be sufficient to warrant the proposed alteration of protected waters;

F. the activities represent the minimal impact solution with respect to watershed modifications, watercourse diversions or changes, drainage, runoff and seepage management, and avoidance of major adverse changes in the ecosystem of protected waters having substantial public value;

G. Whenever protected watercourses must be diverted or changed to facilitate mining, the design and construction of the diversion or change shall provide for:

(1) maintenance of adequate flows and levels in order to protect instream flows and prevent downstream flooding;

(2) measures to prevent bank erosion and sedimentation in order to protect water quality; and

(3) details on the location, relocation, and utilization of the watercourse after cessation of mining;

H. whenever protected waterbasins are allowed to be drained to facilitate mining, and such drainage is justified and legally permitted, compensation for the loss of the basin must be provided for by either:

(1) immediate replacement of the protected basin with waters of equal or greater value; or

(2) submission of acceptable plans for the eventual replacement of the protected basin with waters of equal or greater value upon cessation of mining activities; and

I. whenever a water impoundment is necessary and justified to facilitate mining, the design, construction, operation, and maintenance of the impoundment structure shall:

(1) meet the applicable requirements of parts 6115.0300 to 6115.0520 pertaining to dam safety;

(2) provide hydrologic and hydraulic measures to ensure that any protected waters downstream of the impoundment area are adequately protected with respect to maintenance of water quantity and quality and prevention of flooding; and

(3) include plans detailing the disposition and utilization of the impoundment area after cessation of mining activities,

Subp. 5. Compensatory measures for detrimental aspects of mining. Whenever metallic, nonmetallic, and peat mining activities in the beds of protected waters will result in

detrimental effects on the physical and biological character of protected waters, measures to compensate for the detrimental aspects shall be required in the permit conditions.

Statutory Authority: *MS s 105.415*

History: *8 SR 533*

DAMS

6115.0300 PURPOSE AND STATUTORY AUTHORITY.

The purpose of these rules is to regulate the construction and enlargement of dams, as well as the repair, alteration, maintenance, operation, transfer of ownership, and abandonment, in such a manner as to best provide for public health, safety, and welfare. In the application of these parts, the department shall be guided by the policies and requirements declared in Minnesota Statutes, chapters 105 and 116D.

The rules are pursuant to Laws of Minnesota 1978, chapter 779, section 8, and are intended to be consistent with the goals and objectives of applicable federal and state environmental quality programs and policies including, but not limited to, mineland reclamation, and the management of: shorelands, floodplains, water surface use, boat and water safety, wild and scenic rivers, critical areas, recreational or wilderness areas, scientific and natural areas, and protected vegetative species.

To achieve this purpose, the commissioner hereby sets forth minimum standards and criteria for dam classification and identification of hazards to health, safety, and welfare and for permits for dam projects for water and waste impoundments and for ordering repairs.

Statutory Authority: *MS s 105.535*

6115.0310 SCOPE.

These parts shall apply to all dams defined in part 6115.0320 unless excluded in other sections of the rules. They are supplementary and complimentary to the rules which establish standards and criteria for granting permits to change the course, current, or cross-section of public waters (parts 6115.0150 to 6115.0210, 6115.230, and 6115.0240 to 6115.0260).

Where these parts conflict with other appropriate rules and requirements, the most restrictive provision shall apply.

All provisions of part 6115.0220 are superseded by these parts as they relate to dams as defined herein, except the section relating to water level controls.

Statutory Authority: *MS s 105.535*

6115.0320 DEFINITIONS.

Subpart 1. Scope. For the purposes of these parts, certain terms used herein shall be interpreted as follows. These definitions are in addition to those contained in part 6115.0170, except where the same word is contained in both lists of definitions in which case the definitions in these parts shall apply in respect to dam safety administration.

Subp. 2. Alteration. "Alteration" means any activity which will affect the safety of a dam and/or which will result in a change in the course, current, or cross-section of public waters.

Subp. 3. Commissioner. "Commissioner" means the commissioner of the Department of Natural Resources and any duly authorized representative.

Subp. 4. Cost. "Cost" includes labor and materials; preliminary investigations and surveys; construction plant properly chargeable to the project; excluding costs of right-of-way, detached powerhouses, electrical generating machinery, and roads and railroads affording access to the project.

Subp. 5. Dam. "Dam" means any artificial barrier, together with appurtenant works, which does or may impound water and/or waste materials containing water except:

A. dams which are less than 25 feet in height and have storage capacity at maximum storage elevation of less than 50 acre-feet, which shall be exempt from dam safety permit requirements if they do not have potential for loss of life resulting from failure or misoperation;

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B. any artificial barrier which is not in excess of six feet in height regardless of storage capacity or which has a storage capacity not in excess of 15 acre-feet regardless of height;

C. underground or elevated tanks to store water and/or waste;

D. any artificial barrier constructed solely for the purpose of containment of sewage or biological treatment of wastewater which is under the jurisdiction of the Minnesota Pollution Control Agency;

E. United States owned dams;

F. dikes and levees constructed for flood control purposes to divert flood waters and which are not intended to act as impoundment structures.

This does not preclude the need for any permits from the commissioner which may be required under applicable provisions of parts 6115.0200 to 6115.0260 as further explained in part 6115.0340.

Subp. 6. **Enlargement.** "Enlargement" means any change which may raise the maximum storage elevation of the dam.

Subp. 7. **Height.** "Height" means the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe of the dam or from the lowest elevation of the outside limit of the dam, if it is not across a stream channel or watercourse, to the maximum storage elevation.

Subp. 8. **Maintenance.** "Maintenance" means any work which will not result in a change in the hydraulic capacity of the structure or entail any changes in the structural character of the dam.

Subp. 9. **Maximum storage elevation.** "Maximum storage elevation" means the highest elevation to which water or waste materials can be effectively stored behind the dam on either a temporary or permanent basis, whichever is greater.

Subp. 10. **Owner.** "Owner" means the owner or lessee of the property to which the dam is attached, unless the dam is sponsored by a governmental agency which will be responsible for operation and maintenance of the dam, in which case that sponsoring agency shall be considered the owner.

Subp. 11. **Repair.** "Repair" means any work which will change the hydraulic capacity of the structure or entail any changes in the structural character of a dam.

Subp. 12. **Shall.** "Shall" is mandatory and not permissive.

Subp. 13. **Surface.** "Surface" shall be determined by multiplying total dam length by average height.

Subp. 14. **Total dam length.** "Total dam length" means the maximum horizontal distance between the outer limits of all artificial containment structures, including any artificially constructed dike, which are essential to containment, but does not include the length of emergency spillways which are located outside the abutments of the dam.

Statutory Authority: *MS s 105.535*

6115.0330 SEVERABILITY.

The provisions of these rules shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

Statutory Authority: *MS s 105.535*

6115.0340 CLASSIFICATION OF DAMS.

All existing and proposed dams shall be classified by the commissioner into the following three hazard classes: those dams where failure, misoperation, or other occurrences or conditions would probably result in:

A. Class I: any loss of life or serious hazard, or damage to health, main highways, high-value industrial or commercial properties, major public utilities, or serious direct or indirect, economic loss to the public;

B. Class II: possible health hazard or probable loss of high-value property, damage to secondary highways, railroads or other public utilities, or limited direct or indirect economic loss to the public other than that described in Class III; and

C. Class III: property losses restricted mainly to rural buildings and local county and township roads which are an essential part of the rural transportation system serving the area involved.

Any dam whose failure, misoperation, or other occurrences or conditions would result only in damages to the owner and would not otherwise affect public health, safety, and welfare as described in Classes I, II, and III, shall not be subject to this hazard classification. A dam which is not classified as a hazard Class I, II, or III dam, and those which are not included in the definition of dam at part 6115.0230, subpart 5, definition of dam, shall be subject to applicable provisions of parts 6115.0200 to 6115.0260, and shall not be subject to these dam safety rules. Changes in development in the vicinity of the dam may result in future reclassification.

Statutory Authority: *MS s 105.535*

6115.0350 GENERAL PROCEDURES FOR ALTERATION, REPAIR, OR REMOVAL OF A DAM.

Subpart 1. **Application.** Before commencing action, the owner shall make a separate application for each existing dam proposed to be changed upon forms provided by the commissioner, except as provided in subpart 2 for emergencies. The application shall contain:

- A. name and address of owner(s);
- B. proposed changes;
- C. maps, plans, and specifications which set forth pertinent details including location, type, dimensions, and storage capacity; and
- D. proposed date of start and completion of construction.

A filing fee of \$15 shall accompany the application in the form of a check or money order payable to the state treasurer.

Subp. 2. **Emergency work.** Emergency work:

A. Actions by the owner. Where immediate action is necessary for public health, safety, and welfare, repairs may be started, but the owner shall notify the commissioner at once. As soon as practicable, the owner shall apply for a permit for the emergency necessary permanent repairs.

B. Commissioner's actions. Where necessary to protect public health, safety, and welfare, if the condition of any dam or impoundment is imminently dangerous to the safety or life or property or imminent floods threaten the safety of a dam or impoundment, the commissioner may, in an emergency, require and enforce lowering or completely emptying of the water level from the impoundment and taking any other steps essential to safeguard life and property.

Subp. 3. **Removal.** Before commencing removal, the owner shall comply with the application requirements of subpart 1. After removal, the owner shall submit evidence as to the manner in which the work was performed and the conditions obtained after the removal. The commissioner shall inspect to determine that a sufficient portion of the dam has been removed to eliminate the hazard directly attributable to the presence of the dam.

Statutory Authority: *MS s 105.535*

6115.0360 INSPECTIONS.

Subpart 1. **Hazard classification.** The commissioner shall make initial inspections of each dam in the state to determine the appropriate hazard classification or exemption according to criteria in part 6115.0340.

Subp. 2. **Dam safety.** The commissioner shall make an initial detailed systematic technical inspection and evaluations of every Class I, II, or III dam in order to assess the general safety conditions including:

A. a review and analysis of available data on the design, construction, and operation;

B. a visual inspection of the dam and downstream and upstream areas:

(1) an examination of significant structural, geotechnical, hydraulic, and hydrologic features including, where applicable, electrical and mechanical equipment for the operation of control facilities;

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(2) evidence of leakage, erosion, seepage, slope instability, undue settlement, displacement, tilting, cracking, deterioration, and improper functioning of drains and relief wells; and

(3) adequacy and quality of maintenance and operating equipment and procedures;

C. a report on general condition including, when possible, an assessment of storage capacity, hydraulic and hydrologic capabilities, structural stabilities, and any other conditions which constitute a hazard based upon current prudent design considering the size and hazard class of the dam.

The safety evaluations involve constraints on water control such as blocked entrances, restrictions on operation of spillway and outlet gates, if any, inadequate energy dissipators or restrictive channel conditions, significant reduction in impoundment capacity by sediment deposits and for waste impoundments, the material balance. Where essential design data are lacking, evaluations of watershed characteristics, rainfall, and impoundment records may be used to evaluate effects of the dam.

The report shall determine the need for emergency measures or actions; corrective actions relating to design, construction, and operation; and additional detailed studies, investigations, and analyses.

Subp. 3. **Timing.** Subject to the availability of staff and funds:

A. The commissioner shall make initial inspections of all Class I, II, and III dams as soon as reasonably possible based on the degree of hazard involved.

B. After the initial detailed inspections, the commissioner shall make periodic inspections of dams based on the following schedule: Class I dams, at least one time every year; Class II dams, at least one time every two years; and Class III dams, at least one time every four years. The commissioner shall utilize the services of governmental agencies to the maximum extent feasible to provide for periodic inspections.

Subp. 4. **Reports on inspections.** Upon completion of each inspection, the commissioner shall notify the owner of the dam, in writing, of the results of the inspection and if the dam needs corrective action, the commissioner shall order such action.

Statutory Authority: *MS s 105.535*

6115.0370 TRANSFER OF DAM OWNERSHIP.

The owner shall not transfer the ownership of any Class I or II dam without a permit from the commissioner. For Class III dams, the owner, or the party to whom a dam is transferred, shall apply to the commissioner for a permit for the transfer of ownership within 30 days after the ownership changes. Permits shall be issued based on evaluation of the hazard class, the conditions, and the financial capabilities of the transferee.

No state agency or political subdivision may purchase or accept as a gift any privately owned dam subject to department permit requirements until after compliance with the commissioner and legislative action provided in Minnesota Statutes, section 105.521.

Statutory Authority: *MS s 105.535*

6115.0380 OPERATION AND MAINTENANCE.

Subpart 1. **Responsibilities.** The owner shall operate and maintain the dam. Regulation of maintenance and operation for public health, safety, and welfare is vested with the commissioner.

Subp. 2. **Reports and records.** Owners may be required to keep records and report on maintenance, operation, staffing, and engineering and geologic investigations and any other data necessary to protect the public health, safety, and welfare. In addition, the owner shall fully and promptly advise the commissioner of any unusual or alarming circumstance or occurrence affecting the dam.

Statutory Authority: *MS s 105.535*

6115.0390 TERMINATION OF OPERATIONS AND PERPETUAL MAINTENANCE.

Subpart 1. **Owner's duty.** Unless the dam is removed, the owner shall perpetually maintain the dam and appurtenances so as to ensure the integrity of the structure.

Subp. 2. Financial responsibility. The commissioner may impose such requirements as may be necessary prior to the ultimate termination of the owner's operation to ensure that the owner will be financially responsible for carrying out the activities required for perpetual maintenance, and that adequate funding will exist.

Subp. 3. Plans for termination. In respect to dams utilized for waste disposal, the owner shall prepare and submit to the commissioner plans for termination of operations and perpetual maintenance which will address the owner's plans for both an unanticipated or premature termination of operations and for the ultimate intended termination of operations. The plans for termination of operations and perpetual maintenance shall, at a minimum, address the following issues, where applicable:

- A. perpetual maintenance and safety of the dam including adequate monitoring programs;
- B. disposal and treatment of ponded and channeled waters;
- C. monitoring and mitigation of surface water and groundwater pollution;
- D. silt, sedimentation, and erosion control; and
- E. vegetation and landscaping.

Statutory Authority: *MS s 105.535*

6115.0400 REPORTS TO LEGISLATURE ON PUBLICLY OWNED DAMS.

As required by Laws of Minnesota 1978, chapter 779, section 7 (Minnesota Statutes, section 105.482), the commissioner shall make an annual report to the legislature on the status of dams owned by the state or local governmental units which shall include recommendations for action including any requests for state share or matching funds for grants-in-aid to local governments.

Statutory Authority: *MS s 105.535*

6115.0410 NEW DAMS OR ENLARGEMENTS.

Subpart 1. Waivers for Class III dams. For Class III dams which are sponsored by a governmental agency which will be responsible for operation and maintenance or for which the design, construction supervision, and inspection is performed by a federal agency, the commissioner may waive certain details of the required submittals, provided that the federal agency will furnish the commissioner with adequate facts on the design and construction inspection to allow the commissioner to adequately evaluate the permit and approvals.

Subp. 2. Permit application. A separate application, including a preliminary report for each new dam or each dam proposed to be enlarged, shall be filed with the commissioner upon forms provided by the commissioner which shall contain the following:

- A. name and address of the owner(s) or prospective owner;
- B. purpose;
- C. location, type, size, and height of the dam; and
- D. storage capacity of the impoundment.

For waste impoundment dams, the permit application shall include facts necessary for the issuance of a permit which extends throughout the life of the impoundment project.

Subp. 3. Preliminary report. The preliminary report shall consist of:

- A. A general statement setting forth the effect on the environment.
- B. Maps showing the location of county, township, and section lines; the outline of the impoundments; the location of state, county, and township roads; the locations of utilities, e.g. pipelines, transmission, telegraph, and telephone lines; the topography; and other structure or facilities including dwellings affected by the proposed dam. State, county, and USGS maps and aerial photographs may be used for this purpose.
- C. A written report of surface conditions, i.e. geology, topography, which is based on a field examination by the applicant's engineer and other qualified personnel.
- D. Typical cross-sections of the dam accurately showing elevations, proposed impoundment levels, and top width.
- E. Logs of borings in the foundation and in the borrow areas, and results of seismic and resistivity subsurface investigations, when they are readily available.

F. Preliminary design assumptions, operational aspects, tentative conclusions, and references. The design assumptions shall pertain to such hydrologic features as drainage area, rainfall data, runoff, inflow, area-capacity-elevation data, and flood routing, in addition to structural, geologic, and geotechnical assumptions.

G. A preliminary cost estimate.

H. Where applicable, future plans on ultimate project size including dams and impoundments.

I. A general description of all other activities and elements related to and part of the total dam project, such as operational plans and details of smaller dams, dikes, diversions, reclaim water facilities, and other facility and utility lines including pipelines, roads, and railroads. The report shall identify each element or activity of the total dam project which would require a permit under the provisions of parts 6115.0150 to 6115.0260.

Subp. 4. **Filing fees.** Each application for a permit must include a \$15 fee in the form of a check or money order payable to the state treasurer.

Subp. 5. **Professional engineer's requirements.** The applicant must engage professional engineer(s) registered in the state of Minnesota or acting solely as officers or employees of the United States as provided in Minnesota Statutes, section 326.13, clause (3), who are proficient in dam engineering to prepare the engineering documents, plans, and specifications, to inspect the construction, or enlargement, and to establish operation and maintenance procedures for the structure.

Subp. 6. **Final design requirements.** Upon acceptance and agreement by the commissioner of the preliminary report, the applicant shall submit to the commissioner, for approval, a final design report, together with plans and specifications and the initial inspection fee. The final design report shall include, but is not limited to, the following:

A. general description of the project, such as its service life, production rates, required storage and area(s); geological considerations such as physiography, topography, geology, seismicity, groundwater conditions, and maps; hydrologic studies such as physical features, climatology, design, storm and design flood characteristics, flood routing, water-material balance, free-board requirements, dam-break flood; geotechnical information, such as rock-soil sampling and logging, geophysical investigations, field and lab testing, instrumentation data; considerations of construction materials and their properties, such as quantities required, borrow and aggregate locations and volumes, field and lab work and investigations, concrete, waste materials generation and placement techniques, investigation of the stored waste materials such as generations, transportation, mechanical/chemical/special testing, disposal practice;

B. analytical determinations, such as seepage and underseepage studies, stability, deformation and settlement analysis; analytical and design details of facilities, such as dam, foundation, impoundment, abutments, spillways (for the purpose of these rules, spillway means any facility appurtenant to the dam available to discharge excess water and/or waste from the impoundment) or decant facilities, diversions, outlet works, instrumentation; operational aspects, such as impoundment operating criteria, initial filling criteria, responsibility and coordination, emergency procedures and warning systems: air, water, and solid pollution controls, sedimentation, and erosion controls: operational and postoperational maintenance and abandonment considerations; surveillance and inspection programs; and

C. a detailed cost estimate.

Subp. 7. **Plans and specifications.** Plans shall consist of a bound portfolio of the drawings with all sheets being of the same size, and shall be of such scale that specifications can be drafted, and construction accomplished. Specifications shall contain:

A. general provisions, specifying the rights, duties, responsibilities of the owner, designer, contractor; the prescribed order of work;

B. technical provisions describing approved work methods, equipment materials, and desired end results; and

C. special conditions.

Subp. 8. **Permit standards.** Approval or denial shall be based on the potential hazards to the health, safety, and welfare of the public and the environment including probable future development of the area downstream or upstream. The applicant may be required to take

measures to reduce risks, and the commissioner shall furnish information and recommendations to local governments for present and future land use controls to minimize risks to downstream areas.

The commissioner shall determine if the proposal is adequate with respect to:

A. For Class I, a showing of lack of other suitable feasible and practical alternative sites, and economic hardship which would have a major adverse effect on population and socioeconomic base of the area affected.

B. For Class II, a showing of lack of other suitable feasible and practical alternative sites and that the dam will benefit the population or socioeconomic base of the area involved.

C. The need in terms of quantifiable benefits.

D. The stability of the dam, foundation, abutments, and impoundment under all conditions of construction and operation, including consideration of liquefaction, shear, or seepage failure, overturning, sliding, overstressing and excessive deformation, under all loading conditions including earthquake. This determination must be based on current, prudent engineering practice, and the degree of conservatism employed must depend on hazards.

E. Discharge and/or storage capacity capable of handling the design flood based on current, prudent engineering practice and the hazard classification.

F. Compliance with prudent, current environmental practice throughout its existence.

Subp. 9. Work inspection and construction reports. Work inspection and construction reports:

A. Conformity with approved designs, plans, and specifications.

(1) The permittee shall be responsible for providing adequate controls of construction and operation activities and for the development of data in the ordinary course of those activities on design, construction, and operation assumptions. The owner may engage a professional engineer to operate and inspect the construction, but the designer should also periodically monitor construction.

(2) All construction shall be carried out in accordance with the approved design, plans, and specifications. No alteration, modification, or addition to the approved designs, plans, and specifications that could adversely affect the safety or environmental impact of the dam shall be made by the permittee without prior permission of the commissioner. Such approvals shall be provided, if a proper margin of safety is maintained, as rapidly as possible to preclude interference with construction work schedules. Emergency short-term revisions may be made by the permittee followed by prompt notice to the commissioner. Records of alterations, modifications, or additions to the approved design, plans, and specifications, for which written approval of the commissioner was not required shall be submitted with the construction report as provided in item C.

(3) The commissioner shall make inspections for the purpose of securing conformity with approved designs, plans, and specifications and shall require the owner to perform, at the permittee's expense, work or tests as found necessary to disclose sufficient information to determine if there is conformity.

(4) If, at any time as work progresses, the commissioner finds that changes are necessary to protect health, safety, welfare, and the environment, the commissioner shall order the owner to revise designs, plans, and specifications.

(5) At the commissioner's discretion, the commissioner may observe and approve foundation preparation and may approve construction material placement on an intermittent or continuing basis when field conditions dictate. The commissioner shall be notified at least three days in advance of start of construction.

B. Permanent markers. At least one permanent marker for vertical and horizontal control shall be established in the natural ground by the permittee in the vicinity of each dam so as to be accessible and protected against disturbance throughout its existence. The permanent marker for vertical control must be based upon datum and degree of accuracy based upon considerations of the hazards involved and the size of the dam, as specified by the commissioner.

The permittee shall submit the locations of these permanent markers plotted on the best available maps or plans within time limits prescribed in the permit.

C. Construction report. The permittee may be required to submit monthly reports on construction observation and quality control, when construction is complex or hazardous, including: daily construction documentation; foundation preparation and treatment, quality control tests; records and summaries of actual tests of foundation and construction materials, cutoff trench, grouting, etc; instrumentation installation and maintenance of records and readings; geologic mapping, if any, of exposed foundations; of logs of drill holes and other exploration features, if any, completed during construction; review and evaluation of disclosed field conditions by the designer; and any other items which may be pertinent to a construction quality assurance program.

Subp. 10. **As-built plans and data.** Immediately upon completion of construction the permittee shall file supplementary drawings or descriptions of the dam as actually constructed, or any other items which may be of permanent value bearing on the adequacy and permanency of the dam. In enlargements the data need apply only to the new work.

Subp. 11. **Statement of completion and affidavit of cost.** Within 90 days following completion of construction, the permittee shall notify the commissioner, by certified mail, including a statement of the designer or professional engineer in charge of construction inspection that to the best of knowledge the dam was completed in accordance with the approved designs, plans, and specifications and any revisions thereof.

As soon as practicable thereafter, the permittee shall file an affidavit stating the actual cost in detail or that the permittee is unable to report the actual cost stating the reasons therefor. In the latter event the commissioner shall make at the owner's expense an appraisal of the cost of construction or enlargement and determine what further fee, if any, is required. If a further fee is required, the commissioner shall notify the owner by certified mail of the amount within 15 days including notice that permittee may appear within 60 days thereafter to protest the amount of the fee, in whole or in part and the sufficiency of the appraisal upon which such determination was based.

Subp. 12. **Issuance of impoundment approval.** Impoundment approvals may be necessary for Class I and Class II dams to allow adequate time for inspection before actual impoundment begins.

The type, location, hazard involved, and the purpose served by the dam will be considered in respect to the degree and nature of impoundment approval needed. Certain waste disposal dams which will not be constructed to maximum storage elevation in five years will require a series of impoundment approvals for various stages of construction.

Pending issuance of an impoundment approval (or reissuance in the event of termination) where required the owner of the dam shall not, through action or inaction, allow an impoundment.

The impoundment approval shall contain such terms and conditions as the commissioner may prescribe.

The commissioner may also revoke or amend the terms and conditions of any approval.

Subp. 13. **Performance reports.** The permittee may be required in the case of complex or hazardous dams to submit yearly a performance report detailing the instrumentation data and analysis and interpretation of these data as they relate to the safety of the dam and design assumptions. The frequency of submission may be modified if field conditions so dictate.

Statutory Authority: *MS s 105.535*

History: *17 SR 1279*

6115.0420 LEGAL CLAIMS.

Any permit shall be permissive only and shall not be construed as estopping or limiting any legal claims of persons other than the state against the permittee, or as estopping or limiting any legal claims of the state against the permittee for violation of any of the terms or conditions of the permit.

Statutory Authority: *MS s 105.535*

6115.0430 LIABILITY OF OWNER AND PERMITTEE.

Nothing in these parts shall be construed to relieve an owner of a dam or permittee of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam.

Statutory Authority: *MS s 105.535*

6115.0440 OWNER'S RIGHTS.

Nothing in these parts shall be construed to deprive any owner of such recourse to the courts.

Statutory Authority: *MS s 105.535*

6115.0450 INSPECTIONS.

Owners of dams shall allow the commissioner prompt access to and inspection of all records, plants, structures, facilities, and operations at all reasonable times. Entry is subject to reasonable compliance with the owner's safety rules and avoidance of unreasonable impairment of or interference with construction and operation. Inspection shall be limited to testing and observing rather than supervising and shall not relieve the owner from the full responsibility of providing adequate inspection and supervision.

Statutory Authority: *MS s 105.535*

6115.0460 COMPLIANCE WITH OTHER LAWS.

The owner of a dam shall comply with all other state and federal laws and regulations and shall obtain such other permits as may be required including particularly any laws and rules regarding mineland reclamation.

Statutory Authority: *MS s 105.535*

6115.0470 ACQUISITION OF PROPERTY.

Where activities authorized by a permit involve the rights or interests of any other persons, or of any public interests, the permittee, before proceeding, shall acquire all necessary interests or permissions, including paying the costs of the alteration, relocation, or replacement of any publicly owned facility.

Statutory Authority: *MS s 105.535*

6115.0480 ASSIGNMENT OF PERMITS.

Permits may be assigned in whole or in part only if the commissioner is notified and approves the assignment in writing. Provisions of the permit shall extend to and bind the successors in authority of the commissioner and the legally assigned successors in interest of the permittee.

Statutory Authority: *MS s 105.535*

6115.0490 WARNING SYSTEMS AND EMERGENCY PROCEDURES.

Class I dam owners shall prepare and file for approval a contingency plan for notifying any persons whose lives, property, or health may be endangered by failure, misoperation, or other circumstances or occurrence affecting the dam, identifying most practical and expeditious means for warning considering the time factor involved based on the proximity of the dam to affected parties. If there is no feasible or practical means to provide for adequate evacuation warning in sufficient time if a catastrophe occurs the owner shall be responsible for notifying affected downstream property owners of that fact.

Statutory Authority: *MS s 105.535*

6115.0500 PERMIT AND HEARING PROCEDURES.

Parts 6115.0300 to 6115.0520 are subject to the permit and public hearing provisions of Minnesota Statutes, sections 105.44 to 105.462 and 105.64, including:

A. The commissioner must act on permit applications within 30 days of the time that all required data and fees are filed in the commissioner's office.

B. The commissioner may cancel or modify a permit at any time if the commissioner deems it necessary for any cause for the protection of the public interests.

C. Whether or not a dam is under permit, on determining that it is unsafe or needs repair or alteration, the commissioner shall notify the owner to repair, alter, or remove the dam as the exigencies of the case may require.

D. An order requiring immediate action is effective on the date thereof, but shall not be in effect for more than 30 days from that date unless the permittee is on the same date mailed written notice of the order which includes notice of a Minnesota Statutes, section 105.44, public hearing on a date not more than 30 days from the date of the notice.

E. If at any time during construction of a project, the commissioner finds that the work is not being done in conformance with approved designs, plans, and specifications, except as provided in part 6115.0410, subpart 9, item A, subitem (2), the commissioner shall notify the permittee and shall order immediate compliance and may order that no further work be done until such compliance has been effected and approved.

F. If the permittee fails to comply with approved designs, plans, and specifications or if conditions are revealed which will not permit the construction of a safe dam, the permit may be revoked.

G. Initiating any work by the permittee, authorized in an issued permit or approval, constitutes acceptance of all terms and conditions contained therein.

Statutory Authority: *MS s 105.535*

History: *17 SR 1279*

6115.0510 REQUIRED INFORMATION AND WAIVERS.

When necessary to assess the safety of a dam or proposed project, the applicant or owner may be required to submit additional information at personal expense. Whenever information or conditions required by these parts is unnecessary, the commissioner shall waive those provisions and shall allow appropriate revisions to make the requirements less burdensome.

Statutory Authority: *MS s 105.535*

History: *17 SR 1279*

6115.0520 INSPECTION FEES.

Subpart 1. **Exemption.** No inspection fee shall be charged for dams owned or sponsored by a governmental agency or for any Class III dam for which the design, construction supervision, and inspection is provided by a federal agency.

Subp. 2. **Fee schedule.** The initial fee required by part 6115.0410, subpart 6 shall be based on the following formula and no fees pursuant to parts 6115.0010 to 6115.0040 shall be charged:

A. for the first \$100,000 of estimated cost (as defined in part 6115.0320, that portion of engineering evaluations and studies relating to safety which is also part of the final design report performed for the applicant which were included with environmental assessment worksheets and with environmental impact statements required by law shall be subtracted provided that the applicant provides a notarized detailed accounting of expenditures), a rate of 2-1/2 percent;

B. for the next \$400,000, 1-1/2 percent;

C. for the next \$500,000, one percent;

D. one-half of one percent of all costs in excess of \$1,000,000; and

E. if the final total cost exceeds the estimate, the difference as provided in part 6115.0410, subpart 11.

For dams which will not be constructed to maximum storage elevation within five years of the date construction begins (such as dams for storage of mining waste materials) computation will be based on applicant's work schedule outlining proposed staging and a certified estimate of costs based on staging and a certified estimate of costs based on staging intervals not exceeding five years in duration. At the end of each stage, or at intervals not exceeding five years in duration, until completion, the applicant shall file an affidavit of actual costs for each stage or interval not exceeding five years. Whenever the actual costs exceeds the estimate the applicant shall pay the difference.

Subp. 3. **Periodic fees.** Periodic fees shall be charged to owners for each year and inspection is made pursuant to part 6115.0360, subpart 3, of \$30 per dam plus an additional fee based on surface (as defined in part 6115.0320) of \$0.01 per square foot for the first 1,000 and \$0.001 for each square foot in excess of 1,000, payable on or before the end of the state fiscal year, June 30.

Subp. 4. **Annual records.** The commissioner shall keep annual records of inspection costs which shall be provided upon request of any applicant who paid inspection fees.

Statutory Authority: *MS s 105.535*

WATER APPROPRIATION AND USE PERMITS

6115.0600 POLICY.

The purpose of these parts is to provide for the orderly and consistent review of permit applications for appropriation and use of waters of the state in order to conserve and utilize the water resources of the state in the public interest. In the application of these parts, the Department of Natural Resources shall be guided by the policies and requirements declared in Minnesota Statutes, chapters 105 and 116D.

Any appropriation must be consistent with laws and rules of federal, state, and local governments.

Statutory Authority: *MS s 105.535*

6115.0610 PURPOSE AND STATUTORY AUTHORITY.

These parts set forth minimum standards and criteria pertaining to the regulation, conservation, and allocation of the water resources of the state, including the review, issuance, and denial of water appropriation applications and the modification, suspension, or termination of existing permits.

Further provisions for the administration of these parts are found in Minnesota Statutes, chapter 105. Permits for water appropriation for mining shall be in agreement with provisions of Minnesota Statutes, section 105.64.

Statutory Authority: *MS s 105.535*

6115.0620 SCOPE.

Permits shall be required for, and these parts shall apply to, any appropriation of waters of the state, except for the following:

A. Appropriation of water for domestic uses serving less than 25 persons for general residential purposes.

B. Test pumping of a groundwater source.

C. Withdrawal for any use at a rate not to exceed 10,000 gallons per day and totaling no more than 1,000,000 gallons per year.

D. Agricultural field tile or open ditch drainage systems, including pumping, to remove water from crop lands. This shall not preclude the need for compliance with Minnesota Statutes, chapter 106A and for permits for changes in course, current, or cross-section of public waters in the event that the agricultural drainage system adversely affects public waters. Adverse effects on public waters may include partial or complete drainage of public waters, high water or flooding conditions on surrounding lands, and accelerated erosion and sedimentation.

E. Reuse and discharge of waters resulting from an appropriation of waters of the state for which a permit has been granted, subject to applicable laws, and rules of other state and federal governmental agencies.

Statutory Authority: *MS s 105.535*

History: *L 1985 c 172*

6115.0630 DEFINITIONS.

Subpart 1. **Scope; shall.** For the purpose of these rules, the terms or words defined in this part have the meanings given therein, except where the context clearly indicates otherwise. The word "shall" is mandatory, not permissive.

Subp. 2. **Aquifer.** "Aquifer" means any water-bearing bed or stratum of earth or rock capable of yielding groundwater in sufficient quantities that can be extracted.

Subp. 3. **Appropriation.** "Appropriation" shall have the meaning prescribed in Minnesota Statutes, section 105.37, subdivision 5, "appropriation includes but is not limited to taking, regardless of the use to which the water is put."

Subp. 4. **Artesian aquifer or confined aquifer.** "Artesian aquifer" or "confined aquifer" means a water body or aquifer overlain by a layer of material of less permeability than the aquifer. The water is under sufficient pressure so that when it is penetrated by a well, the water will rise above the top of the aquifer. A flowing artesian condition exists when the water flow is at or above the land surface.

Subp. 5. **Basin.** "Basin" means a depression capable of containing water which may be filled or partly filled with waters of the state. It may be a natural, altered, or artificial depression.

Subp. 6. **Commissioner.** "Commissioner" refers to the commissioner of the Department of Natural Resources or the commissioner's authorized representative.

Subp. 7. **Consumptive use or consumption.** "Consumptive use" or "consumption" refers to water withdrawn and not directly returned to the same waters as the source for immediate further use in the area.

Subp. 8. **Division.** "Division" means the Division of Waters, Department of Natural Resources.

Subp. 9. **Domestic use.** "Domestic use" means use for general household purposes for human needs such as cooking, cleaning, drinking, washing, and waste disposal, and uses for on-farm livestock watering excluding commercial livestock operations which use more than 10,000 gallons per day and 1,000,000 gallons per year.

Subp. 10. **Dug pit.** "Dug pit" means an artificial excavation such as sump, trench, pond, water hole, or other basin constructed for the purpose of intercepting and capturing surface and ground water, and often involving groundwater under water table or unconfined conditions.

Subp. 11. **Groundwater.** "Groundwater" means subsurface water in the saturated zone. The saturated zone may contain water under atmospheric pressure (water table condition), or greater than atmospheric pressure (artesian condition).

Subp. 12. **Protected flow.** "Protected flow" is defined as the amount of water required in the watercourse to accommodate instream needs such as water-based recreation, navigation, aesthetics, fish and wildlife habitat, water quality, and needs by downstream higher priority users located in reasonable proximity to the site of appropriation.

Subp. 13. **Protection elevation.** "Protection elevation" is defined as the water level of the basin necessary to maintain fish and wildlife habitat, existing uses of the surface of the basin by the public and riparian landowners, and other values which must be preserved in the public interest.

Subp. 14. **Public water supply.** "Public water supply" refers to the various supplies of water used primarily for domestic supply purposes and obtained from a source or sources by a municipality, a water district, a person, or corporation where water is delivered through a common distribution system, as further defined in Minnesota Statutes, section 144.382, subdivision 4.

Subp. 15. **Safe yield for water table condition.** "Safe yield for water table condition" means the amount of groundwater that can be withdrawn from an aquifer system without degrading the quality of water in the aquifer and without allowing the long term average withdrawal to exceed the available long term average recharge to the aquifer system based on representative climatic conditions.

Subp. 16. **Safe yield for artesian condition.** "Safe yield for artesian condition" means the amount of groundwater that can be withdrawn from an aquifer system without degrading the quality of water in the aquifer and without the progressive decline in water pressures and levels to a degree which will result in a change from artesian condition to water table condition.

Subp. 17. **Water table aquifer or unconfined aquifer.** "Water table aquifer" or "unconfined aquifer" means an aquifer where groundwater is under atmospheric pressure.

Subp. 18. **Waters of the state.** "Waters of the state" means any waters, surface or underground, except those surface waters which are not confined but are spread and diffused over the land. "Waters of the state" includes all boundary and inland waters (Minnesota Statutes, section 105.37, subdivision 7).

Subp. 19. **Watercourse.** "Watercourse" means any natural, altered, or artificial channel having definable beds and banks capable of conducting confined runoff from adjacent lands (Minnesota Statutes, section 105.37, subdivisions 10, 11, and 12).

Subp. 20. **Well.** "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed where the intended use is for the location, diversion, or acquisition of groundwater (Minnesota Statutes, section 156A.02, subdivision 1).

Statutory Authority: *MS s 105.535*

6115.0640 COORDINATION WITH OTHER AGENCIES.

Nothing in these parts is intended to supersede or rescind the laws, rules, regulations, standards, and criteria of other international, federal, state, regional, or local governmental subdivisions with the authority to regulate the appropriation of waters of the state. The issuance of a permit shall not confer upon an applicant the approval of any other unit of government for the proposed project. The department shall coordinate the review of permit applications with other units of government having jurisdiction in such matters.

Statutory Authority: *MS s 105.535*

6115.0650 SEVERABILITY.

The provisions of these rules shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof, shall not make void any other paragraph, subparagraph, subdivision, or any other part.

Statutory Authority: *MS s 105.535*

6115.0660 APPLICATION FOR PERMIT.

Subpart 1. **Requirement.** Applications shall be submitted for each surface or ground water source from which water is proposed to be appropriated. A separate application shall be required for the following:

A. for each distribution system if the water is used in more than one common distribution system;

B. for each well(s) completed in different aquifers if groundwater is to be appropriated from separate wells completed in more than one aquifer; and

C. for each basin or watercourse involved if surface water is to be appropriated from several different basins or watercourses.

Subp. 2. **Evidence of ownership.** The applicant must provide written evidence of ownership, or control of, or a license to use, the land overlying the groundwater source or abutting the surface water source from which water will be appropriated.

Subp. 3. **Information required.** All applicants shall submit the following information when it is reasonably available. Additional submittals may be required as prescribed in parts 6115.0680 to 6115.0720 and where deemed necessary by the commissioner in order to adequately evaluate the applications:

A. A completed application on forms supplied by the commissioner.

B. The required application fee (Minnesota Statutes, section 105.44, subdivision 10).

C. Aerial photographs, maps, sketches, detailed plat, topographic maps, or other descriptive data sufficient to show:

(1) the location of the area of use;

(2) the outline of the property owned, or controlled by the applicant in proximity to the area of use;

(3) the location of the proposed point of appropriation such as well(s) location, stream bank pump(s) or the location of other facilities for appropriation of water;

(4) if ground water is involved, the location of test hole borings which have been drilled on the property from which the appropriation will be made.

D. Signed statement that copies of the application and accompanying documents have been sent to the mayor of the city, secretary of the board of supervisors of the soil and water conservation district, or the secretary of the board of managers of the watershed district

if the proposed project is within a city or within or affects a watershed district or soil and water conservation district or a city (Minnesota Statutes, section 105.44, subdivision 1).

E. Statement of justification supporting the reasonableness and practicality of use with respect to adequacy of the water source, amounts of use, and purposes, including available facts on:

(1) hydrology and hydraulics of the water sources involved, including for surface waters the applicant's analysis of the effect of proposed withdrawals on levels and flows and anticipated impacts, if any, on instream flow or lake level conditions to the extent that such facts are not already available to the commissioner;

(2) proposed pumping schedule including rates, times, and duration;

(3) amounts of water to be appropriated on a maximum daily, monthly, and annual basis;

(4) means, methods, and techniques of appropriation;

(5) alternative sources of water or methods which were considered, to attain the appropriation objective and why the particular alternative proposed in the application was selected.

F. Information on any water storage facilities and capabilities and any proposed reuse and conservation practices.

G. Application for use of surface water shall include the following additional data:

(1) A contingency plan which describes the alternatives the applicant will utilize if at any time appropriation is restricted to meet instream flow needs or to protect the level of a basin. The contingency plan shall be feasible, reasonable, and practical; otherwise the applicant shall submit as part of the application a written statement agreeing in such case to withstand the results of no appropriation (Minnesota Statutes, section 105.417, subdivision 5).

(2) For appropriation from natural basins or natural watercourses, facts to show that reasonable alternatives for appropriating water have been considered including use of water appropriated during high flows and levels and stored for later use and the use of ground water.

(3) For basins less than 500 acres in surface area the applicant shall notify all riparian landowners and provide the commissioner with a list of all landowners notified; attempt to obtain a signed statement from as many riparian landowners as the applicant is able to obtain stating their support to the proposed appropriation; and provide an accounting of number of signatures of riparian owners the applicant is unable to obtain (Minnesota Statutes, section 105.417, subdivision 3, clause (c)).

H. Application for use of groundwater, except for agricultural irrigation (part 6115.0680) shall include the following data:

(1) test hole logs (if any) and water well record(s);

(2) hydrologic test data; and

(3) hydrologic studies, if the above data are insufficient to allow the commissioner to properly assess the capability of the aquifer system in the area of withdrawal or are inadequate to allow assessment of the effects of the proposed appropriation on the water resource and on nearby wells.

Subp. 4. **Waiver.** Whenever information required by parts 6115.0660 and 6115.0680 to 6115.0720 is unnecessary or inapplicable, the commissioner shall waive those requirements.

Statutory Authority: *MS s 105.415*

6115.0670 COMMISSIONER'S ACTIONS ON PERMIT APPLICATIONS.

Subpart 1. **In general.** Upon receipt of the information required from the applicant under parts 6115.0660 and 6115.0680 to 6115.0720, where applicable, the commissioner shall take action on the application as follows.

Subp. 2. **Review and analysis of data.** Review and analysis of data:

A. The commissioner shall consider the following factors, as applicable:

(1) the location and nature of the area involved and the type of appropriation and its impact on the availability, distribution, and condition of water and related land resources in the area involved;

(2) the hydrology and hydraulics of the water resources involved and the capability of the resources to sustain the proposed appropriation based on existing and probable future use;

(3) the probable effects on the environment including anticipated changes in the resources, unavoidable detrimental effects, and alternatives to the proposed appropriation;

(4) the relationship, consistency, and compliance with existing federal, state, and local laws, rules, legal requirements, and water management plans;

(5) the public health, safety, and welfare served or impacted by the proposed appropriation;

(6) the quantity, quality, and timing of any waters returned after use and the impact on the receiving waters involved;

(7) the efficiency of use and intended application of water conservation practices;

(8) the comments of local and regional units of government, federal and state agencies, private persons, and other affected or interested parties;

(9) the adequacy of state water resources availability when diversions of any waters of the state to any place outside of the state are proposed;

(10) the economic benefits of the proposed appropriation based on supporting data when supplied by the applicant.

B. The commissioner shall further consider the following factors for appropriation from watercourses:

(1) historic streamflow records, and where streamflow records are not available, estimates based on available information on the watershed, climatic factors, runoff, and other pertinent data;

(2) physical characteristics such as discharge, depth, and temperature, and an analysis of the hydrologic characteristics of the watershed;

(3) aquatic system of the watercourse, riparian vegetation, and existing fish and wildlife management within the watercourse;

(4) frequency of occurrence of high and low flows;

(5) feasibility and practicability of off-stream storage of high flows for use in providing water supply during periods of normal low flows, when supply is limited by existing and anticipated use.

C. The commissioner shall further consider the following factors for appropriation from basins:

(1) total volume of water within the basin;

(2) slope of the littoral zone;

(3) available facts on historic water levels of the basin and other relevant hydrologic factors;

(4) cumulative long-range ecological effects of the proposed appropriation;

(5) natural and artificial controls which affect the water levels of the basin.

D. The commissioner shall further consider the following factors for appropriation of groundwater:

(1) type and thickness of the aquifer;

(2) subsurface area of the aquifer;

(3) area of influence of the proposed well(s);

(4) existing water levels in the aquifer and projected water levels due to the proposed appropriation;

(5) other hydrologic and hydraulic characteristics of the aquifer involved; and

(6) probable interference with neighboring wells.

Subp. 3. **Decision on applications.** The commissioner is authorized to grant permits, with or without conditions, or deny them. In all cases, the applicant, the managers of the wa-

tershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city may demand a hearing in the manner specified in Minnesota Statutes, section 105.44, subdivision 3, within 30 days after receiving mailed notice outlining the reasons for denying or modifying an application.

Decisions by the commissioner are further subject to the administrative provisions of Minnesota Statutes, sections 105.44 to 105.463 and 105.64. These sections include information and requirements on procedure, authority, timing of actions, fees, notice, investigations, violations and penalties, and special provisions regarding mining operations.

Based on these statutory requirements and other applicable provisions of Minnesota Statutes, chapter 105, the commissioner shall make decisions as follows:

A. No permit shall be granted if:

(1) for application involving diversion of any waters of the state, surface or ground water, to a place outside the state, the remaining waters in the state will not be adequate to meet the state water resources needs during the specified life of the diversion (Minnesota Statutes, section 105.405, subdivision 2);

(2) there is no conflict between competing users but the quantity of available waters of the state, in the area involved, are inadequate to provide the amounts of water proposed to be appropriated;

(3) the appropriation is not reasonable, practical, and does not adequately protect public safety and promote the public welfare (Minnesota Statutes, section 105.45);

(4) the appropriation is not consistent with approved state, regional, and local water and related land resources management plans, provided that regional and local plans are consistent with statewide plans (Minnesota Statutes, section 105.41, subdivision 1a);

(5) there is an unresolved conflict between competing users for the waters involved and the conflict has not been resolved pursuant to provision of part 6115.0740.

B. Approval of any surface water appropriation application shall be further subject to the following:

(1) For all watercourses, proposals for appropriation during periods of flood flows and high water levels shall be given first consideration unless this is not practical, reasonable, or feasible (Minnesota Statutes, section 105.41, subdivision 1a).

(2) For natural and altered watercourses, except for drainage ditches established under Minnesota Statutes, chapter 106A, consumptive appropriation may be limited consistent with Minnesota Statutes, section 105.417, subdivision 2, provided that adequate data are available to set such limits for watercourses. Where protected flow is designated by the commissioner, no appropriation shall be allowed when the flow is below that protected flow.

(3) Permits to appropriate water for any purpose from streams designated trout streams by rule, pursuant to Minnesota Statutes, section 97C.021, shall be limited to temporary appropriations when not in conflict with the special designation, such as during periods of high flows or high water levels (Minnesota Statutes, section 105.417, subdivision 4).

(4) For natural and altered basins the commissioner shall:

(a) Establish a protection elevation below which no appropriation shall be allowed (Minnesota Statutes, section 105.417, subdivision 3, clause (b)).

(b) Limit the collective maximum annual withdrawals to not exceed a total volume of water amounting to one-half acre-foot per acre of surface water basin based on Minnesota Department of Natural Resources Bulletin No. 25, *An Inventory of Minnesota Lakes.* The actual collective annual allocation may be considerably less than the maximum. This limitation is as provided by Minnesota Statutes, section 105.417, subdivision 3, clause (a).

(c) For natural and altered basins less than 500 acres, an application shall not be approved if the commissioner determines that the proposed appropriation would lower the water level in the basin to an extent which would deprive the public and riparian property owners of reasonable use of and access to the water.

(5) The establishment of protection elevation and limitation on maximum withdrawals contained in units (a) and (b), shall not apply to artificial and altered basins

constructed primarily for the purpose of storing high waters and flood flows as water conservation or contingency flow alternatives when such alternatives are approved by the commissioner.

(6) Protected flows and protection elevations shall be established for the purposes as defined in part 6115.0630 and shall be based on available information considered in subpart 2, items B and C. For new applications the proposed establishment of protected flows or protection elevations shall be part of the permit process outlined in subpart 3 including opportunity for public hearing. Existing permittees who will be affected by the proposed establishment of protected flows or protection elevations shall be notified of such proposals and shall be provided opportunity for public hearing before modification of their permits based on the procedures outlined in part 6115.0750, subpart 5, item B. Upon the submission of data set forth in part 6115.0670, subpart 2, item A or B for the specified watercourse segment or basin by a state agency agreeing to pay the costs of any necessary public hearings, the commissioner shall establish requested protected flows and elevations.

C. Approval of appropriation from ground water shall be further subject to the following:

(1) The amounts and timing of water appropriated shall be limited to the safe yield of the aquifer to the maximum extent feasible and practical.

(2) If the commissioner determines, based on substantial evidence, that a direct relationship of ground and surface waters exists such that there would be adverse impact on the surface waters through reduction of flows or levels below protected flows or protection elevations the amount and timing of the proposed appropriation from ground water shall be limited.

(3) Appropriation of ground water shall not be approved or shall be issued on a conditional basis in those instances where sufficient hydrologic data are not available to allow the commissioner to adequately determine the effects of the proposed appropriation. If a conditional appropriation is allowed, the commissioner shall make further approval, modification, or denial when sufficient hydrologic data are available.

(4) The commissioner shall limit the use of dug pits for appropriating water when such pits are so located that they may reasonably be expected to affect protected flows of watercourses or protection elevations of basins.

Subp. 4. **Waiver.** The commissioner shall waive any of the provisions of subpart 3 if it is determined that conditions are such that implementation of a provision would be unnecessary or inapplicable or if an applicant provides sufficient evidence to show just cause why such provision would not be reasonable, practical, or in the public interest. In the event the commissioner does not grant an applicant's request for waiver the applicant may demand a hearing.

Subp. 5. **Specific types of appropriation and use.** Additional requirements and decisions governing agricultural irrigation, public water supplies, dewatering, water level maintenance, and mining are also contained in parts 6115.0680 to 6115.0720.

Statutory Authority: *MS s 105.415*

History: *L 1985 c 172; L 1991 c 259 s 23*

6115.0680 ADDITIONAL REQUIREMENTS AND CONDITIONS FOR AGRICULTURAL IRRIGATION.

Subpart 1. **Additional application information.** For ground water appropriation, the applicant must submit to the commissioner the following data in addition to the requirements of part 6115.0660:

A. If the application is for use of groundwater from an aquifer system for which adequate groundwater availability data are available and therefore is designated by the commissioner as a Class A application, (Minnesota Statutes, section 105.416, subdivision 1):

(1) copies of test hole log(s) to identify the aquifer the proposed well will penetrate;

(2) copies of the water well record(s) and production test data;

(3) additional aquifer test data as may be required by the commissioner if the test holes, water well records, and production test data are insufficient to allow the commis-

sioner to properly assess the capability of the aquifer system in the area of withdrawal, or are inadequate to allow assessment of the effects of the proposed appropriation on other nearby wells.

B. If the application is for use of groundwater from an aquifer system for which inadequate groundwater availability data are available and therefore is designated by the commissioner as a Class B application, (Minnesota Statutes, section 105.416, subdivision 1) the applicant shall supply the following additional information as required by Minnesota Statutes, section 105.416, subdivision 2, including:

(1) copies of test hole log(s) to identify the aquifer the proposed well will penetrate;

(2) copies of water well record(s) and production test data;

(3) the anticipated groundwater quality in terms of the measures of quality commonly specified for the proposed water use, when existing data indicate the water supply is not suitable for irrigation;

(4) the location of each domestic well, for which information is readily available, located within the area of influence or within 1-1/2 mile radius of the proposed irrigation well, whichever is less;

(5) readily available information from water well records, reports, studies, and field measurements regarding the domestic wells within the area of influence or a 1-1/2 mile radius of the proposed irrigation well whichever is less, such as:

(a) owner's name, address, and phone number;

(b) depth of well in feet;

(c) diameter of well and casing type (concrete curb, steel, wooden, clay tile, etc.);

(d) nonpumping water level (in feet) below land surface;

(e) age of well (when constructed);

(f) type of pump (shallow-jet, deep well jet, submersible reciprocating, etc.) and rate of discharge; and

(g) length of drop pipe in well;

(6) results of a pumping test of the aquifer system as required in Minnesota Statutes, section 105.416, subdivision 3, clause (e).

(7) The commissioner shall in any specific application, waive any of the requirements of subitems (1) to (6), when the necessary data are already available, as required in Minnesota Statutes, section 105.416, subdivision 2.

Subp. 2. Commissioner's actions. The commissioner shall analyze and evaluate applications based on facts supplied by the applicant pursuant to parts 6115.0660 and subpart 1 of this part. Decisions shall be subject to the applicable procedures outlined in part 6115.0670 and based on recommendations of the soil and water conservation district, soil surveys, and other available data on soil characteristics relating to soil suitability for agricultural irrigation and adequacy of existing or proposed soil and water conservation measures in order to protect water quality and prevent erosion and sedimentation.

The commissioner shall determine the amount of water allowed to be used under the above paragraph based on:

A. Acreage of lands involved.

B. Climatic characteristics of the area involved.

C. Dominant soil types of the acreage to be irrigated and major crops to be irrigated.

D. Best available technology, methodology, and crop-water use requirement information including, but not limited to, Irrigation Guide for Minnesota, Soil Conservation Service, U.S. Department of Agriculture, Saint Paul, Minnesota, 1976.

E. When adequate data on soil moisture and local climatic conditions are available for the area, the commissioner may in cooperation with irrigators and agricultural experts establish an irrigation scheduling system to provide for improved conservation of water.

F. For irrigation from surface water, where stream flow or lake level records are unavailable or when available records indicate that flows or levels during the irrigation sea-

son would be inadequate if all potential riparian landowners would use the water for irrigation, the amount of appropriation shall be limited to no more than one-half acre-foot per acre of riparian land owned or controlled by the applicant except for appropriation for wild rice paddies as is provided in item G, Riparian lands for the purpose of these rules shall be those 40-acre tracts or government lots, or portions thereof, that directly abut a basin or watercourse. This provision shall apply until a protected flow or protection elevation has been established in accordance with part 6115.0670, subpart 3, item B.

G. The amount of appropriation for wild rice paddies shall be based on consideration of climatic characteristics of the area and the best available technology relating to amounts of water needed to raise wild rice.

Statutory Authority: *MS s 105.415*

6115.0690 ADDITIONAL REQUIREMENTS AND CONDITIONS FOR PUBLIC WATER SUPPLIES.

Subpart 1. **Additional application information.** The applicant shall be required to submit to the commissioner all or portions of the following data in addition to the requirements of part 6115.0660:

- A. the number of domestic users;
- B. reasonable projection of population growth;
- C. the number and type of industrial and commercial users of the public water supply system;
- D. the amount of water to be supplied to domestic, industrial, and commercial users respectively;
- E. other users by type of use and amount to be used from the public water supply system such as golf courses, recreational lake level maintenance, water transferred to other supply systems;
- F. information regarding the quantity of the appropriated water to be used in distribution and waste water treatment facilities, not including volume of actual waste water; and
- G. details on emergency plans for water shortage periods outlining public information programs, priorities for limitations of discretionary water use, and alternate sources of public water supplies.

Subp. 2. **Commissioner's actions.** The commissioner shall allow the appropriation of water for public water supply systems based on evaluation and analysis of the data submitted by the applicant under provisions of parts 6115.0660 and subpart 1 of this part and the procedures outlined in part 6115.0670 and subject to subpart 3.

Subp. 3. **Other requirements.** Appropriation permits issued to public water supply authorities shall be subject to requirements of Minnesota Statutes, section 105.418, relating to critical water deficiency periods and restriction of nonessential uses.

Statutory Authority: *MS s 105.415*

6115.0700 ADDITIONAL REQUIREMENTS AND CONDITIONS FOR WATER LEVEL MAINTENANCE FOR BASINS.

Subpart 1. **Additional application information.** For water appropriation applications for the purpose of establishing and maintaining water levels for basins the applicant shall submit the following data in addition to the requirements of part 6115.0660:

- A. information on the basin and proposed source of supply or source of discharge, including facts indicating how the water will be appropriated and discharged and the proximity of the basin to the proposed source of supply or source of discharge; and
- B. information on the design of any discharge facility into or out of the basin.

Subp. 2. **Commissioner's actions.** The commissioner shall evaluate and make decisions on applications based on facts supplied by the applicant and subject to the applicable procedures outlined in part 6115.0670 and the following determinations:

- A. effects on public welfare of the proposed appropriation;
- B. the proposed appropriation is reasonable, practical, technically feasible, and effectively accomplishes its purpose;

C. the proposed appropriation will have minimal or no detrimental effect on the basin, the proposed source of supply, or the receiving water and property of riparian owners;

D. the quality of the water of the basin or the receiving water source will not be detrimentally impaired by the appropriation; and

E. the proposed appropriation is consistent with part 6115.0221, item A, subitem (2), public waters permits rules.

Statutory Authority: *MS s 105.415*

6115.0710 ADDITIONAL REQUIREMENTS AND CONDITIONS FOR DEWATERING.

Dewatering, which involves appropriation of water from ground or surface water sources for purpose of removing excess water, shall be subject to water appropriation permit requirements, unless otherwise exempted by these parts. The commissioner shall evaluate and make decisions on such application based on applicable provisions of parts 6115.0660 and 6115.0670 and the following additional requirements:

A. The applicant must show there is a reasonable necessity for such dewatering and the proposal is practical.

B. The applicant must show that the excess water can be discharged without adversely affecting the public interest in the receiving waters, and that the carrying capacity of the outlet to which waters are discharged is adequate.

C. The proposed dewatering is not prohibited by any existing law.

Statutory Authority: *MS s 105.415*

6115.0720 ADDITIONAL REQUIREMENTS AND CONDITIONS FOR MINING AND PROCESSING OF METALLIC MINERALS AND PEAT.

Subpart 1. **Additional application information.** All applicants for permits for mining and processing of metallic minerals and peat must provide the following information in addition to the requirements of Minnesota Statutes, section 105.64 and part 6115.0660:

A. all plans and specifications regarding withdrawal, use, storage, and disposal of waters of the state;

B. details of the rates, volumes, and source of water to be appropriated and consumed in the processing, including all losses such as uncontrolled seepage, evaporation, plant losses, and discharge volumes;

C. criteria used in estimating the proposed appropriation, distribution, and discharge based on climatic averages and extremes;

D. details of the sources, rates, and volumes of water released from the mining operations involved;

E. details of the hydrologic and hydraulic impacts and effects of the operation on the watershed(s) including changes in basins, watercourses, and groundwater systems.

Subp. 2. **Commissioner's actions.** The commissioner shall analyze, evaluate, and make decisions on appropriations for mining and processing of metallic minerals based on facts submitted by the applicant pursuant to subpart 1 and part 6115.0660, subject to the conditions outlined in part 6115.0670 and the following considerations:

A. The commissioner shall direct the applicant to utilize available surplus water from preexisting mining operations or facilities, whether owned or controlled by the applicant or others, whenever feasible and practical unless justification is provided on why such practice should not be allowed. If the commissioner finds that an existing permittee has available unused water, for which there is inadequate justification, the commissioner, after notice and opportunity for hearing, shall amend the existing permit to promote better utilization of the water.

B. The commissioner shall base the allocation of water on consideration of the legal requirements for water quality, the impact of the appropriation on those requirements, and the following order of priorities of water supply sources located within reasonable distance to the mining or processing site:

(1) runoff from the mining areas;

- (2) water from active mine pits and tailing basins when such water is not utilized for other purposes or operations;
- (3) water from existing mining operation reservoirs where such water is not utilized for other purposes or operations;
- (4) water from other mining and processing operations;
- (5) water from inactive mine pits;
- (6) water from streams appropriated during periods of high flows;
- (7) water from groundwater sources;
- (8) water collected and stored behind off-stream impoundments;
- (9) water collected and stored behind impoundments on streams; and
- (10) water from natural basins greater than 500 acres in size.

C. If the disposal of excess water is necessary and if any mining operation in the area has caused or will cause a substantial reduction in watercourse flow, the commissioner shall where feasible and practical require the permittee to discharge excess water in a manner that would restore the flow. Such action shall consider the existing and anticipated use of excess water by higher priority users and must be in compliance with appropriate rules of the Minnesota Pollution Control Agency.

Statutory Authority: *MS s 105.415*

6115.0730 WELL INTERFERENCE PROBLEMS INVOLVING APPROPRIATION.

Subpart 1. For new applications. If the commissioner determines that an adequate supply of water is available and that the proposed project is reasonable and practical as determined based on parts 6115.0670 and 6115.0680 to 6115.0720, but that there is a probable interference with public water supply well(s) and private domestic well(s) which may result in reducing the water levels beyond the reach of those wells, the following procedures shall apply:

A. The applicant shall be responsible for obtaining and providing to the commissioner, available information including depth, diameter, nonpumping and pumping levels, quality, and well construction details for all domestic and public water supply wells located within the area of influence of the proposed appropriation well.

B. The commissioner may require aquifer tests or other field tests to be conducted.

C. The commissioner shall determine the probable interference with the domestic and public water supply wells based on theoretic computations using available information regarding the aquifer characteristics obtained from aquifer tests and/or from hydrologic studies, and the probable effects of lowering the water levels in the domestic and public water supply wells due to the proposed appropriation in the area. For public supply wells only the probable interference with that portion which is used for domestic water supply is considered.

D. The commissioner shall provide the prospective appropriator with an evaluation of the nature and degree of effect of the appropriation on the water levels of the domestic well(s) and public water supply well(s).

E. The commissioner shall not issue the permit until the applicant agrees to exercise any of the following options within 30 days after written notification by the commissioner:

(1) accept a modification or restriction of the permit application to provide for an adequate domestic water supply; or

(2) submit a written agreement signed by the applicant and all parties identified under item C as having probable interference. Such agreement shall outline the measures that will be taken to ensure maintenance of water supplies to such identified parties to the extent that would have existed absent the proposed appropriation. In cases where no agreement can be reached, the commissioner shall implement the settlement procedure identified in item D.

Subp. 2. For existing permits. If complaints are made to the commissioner by private domestic well owner(s) or public water supply authority regarding the effects of a water appropriation on the domestic water supplies, the following procedures shall be followed:

A. The commissioner shall provide complaint forms to the parties making the complaint, thereafter referred to as "complainant."

B. Upon receipt of the completed complaint forms the commissioner shall notify the permittee, the applicable watershed district, and the soil and water conservation district and any other governmental agency or person who may be affected or has expressed interest in the complaint.

C. The commissioner shall investigate and assess the complaint by:

(1) Analyzing and evaluating the submitted complaint forms, hydrologic facts and characteristics of the water supply systems involved.

(2) Requesting additional facts from the complainant(s) and the permittee when necessary. In order to assure that available data on domestic well(s) are provided, the complainant shall cooperate with the permittee in providing such facts as may be available and allowing the commissioner access to obtain necessary available facts. If the complainant does not cooperate in providing available facts or allowing the commissioner access to the domestic well(s), the commissioner shall dismiss the complaint.

(3) Conducting, if necessary, a field investigation.

(4) Additional hydrologic tests and evaluation shall be required if hydrologic information is unavailable or inadequate to make a determination of necessary facts in the matter. For irrigation appropriations, the timing and conduct of such tests shall be in accordance with the provision of Minnesota Statutes, section 105.41, subdivision 1a relating to modifying or restricting appropriation for irrigation.

(5) In evaluating the probable influence of the water appropriation on the domestic well(s) and public water supply well(s) the commissioner shall consider whether the domestic well(s) provides a dependable water supply while meeting the appropriate health requirements for the existing use of the affected well. For public water supply wells only the probable interference with that portion which is used for domestic water supply is considered.

D. Where adverse effects on the domestic well(s) are substantiated, the commissioner shall notify the permittee of the facts and findings of that complaint evaluation. In the event that the commissioner determines that the domestic water supply is endangered the commissioner shall, pursuant to part 6115.0750, subpart 7, unless a temporary solution is worked out, restrict or cancel the appropriation until such time as a decision has been made by either negotiation, settlement, or hearing.

E. The permittee shall within 30 days after written notification by the commissioner take appropriate action by exercising any of the following options:

(1) Requesting the commissioner to modify or restrict the permit in order to provide for an adequate domestic water supply.

(2) Negotiating a reasonable agreement with the affected well owner(s). If no agreement is reached, the settlement procedure outlined in subpart 4 shall apply; or

(3) Requesting a public hearing.

Subp. 3. New domestic wells installed after appropriation permits have been issued. In the event that new domestic wells, exempt from permit requirements, are installed in area of adequate ground water supplies where permits have been issued for appropriation the following shall apply:

A. It shall be the responsibility of the prospective new domestic well owner to ensure that the new domestic well will be constructed at adequate depth so that it will provide an adequate domestic water supply which will not be limited by the permitted appropriation.

B. Holders of valid permits for appropriation of water in areas where adequate water supplies are available shall not be responsible for well interference problems, involving new domestic wells exempt from permit, when such exempt domestic wells are installed subsequent to authorized appropriation.

Subp. 4. Settlement. If the applicant or permittee and the complainant(s) have been unable to negotiate a reasonable agreement pursuant to subparts 1, item E and 2, item E, the following procedure shall be implemented:

A. The applicant or permittee shall submit to the complainant a notarized written offer including a statement that the complainant must respond in writing to the commissioner

within ten days from the receipt of the offer either accepting the offer or explaining why it is rejected. The offer must be submitted to the complainant with a copy to the commissioner within 40 days after the receipt of the written notification provided in subparts 1, item E and 2, item E, based on the following:

(1) If an existing domestic well provides an adequate domestic water supply which meets state health standards, and such well no longer serves as an adequate supply because of the proposed or permitted appropriation in the vicinity the applicant or permittee shall be responsible for all costs necessary to provide an adequate supply with the same quality and quantity as prior to the applicant's or permittee's interference.

(2) If an existing well provides an adequate domestic water supply but does not meet state health standards and such well would no longer serve as an adequate supply because of the proposed or permitted appropriation in the vicinity, the applicant or permittee shall be responsible for that portion of costs of providing an adequate water supply, but shall not be responsible for those costs necessary to bring the domestic well(s) to state health standards.

B. The complainant shall, within ten days from the receipt of the notarized written offer, respond to the commissioner in writing either accepting the offer or making argument on why the offer is not reasonable. If no response is received from the complainant, within the time limit, the commissioner shall dismiss the complaint.

C. If the offer is not accepted, the commissioner shall make a decision based on the written offer and arguments and available facts, within ten days as follows:

(1) that the applicant or permittee has submitted a reasonable offer, the commissioner shall issue or continue the permit involved;

(2) that the applicant or permittee has not submitted a reasonable offer, the commissioner, after notice and opportunity for hearing, shall deny, modify, or terminate the permit involved;

(3) that there is a need for a public hearing in which case it is ordered.

Statutory Authority: *MS s 105.415*

6115.0740 WATER USE CONFLICTS.

Subpart 1. **Conflict defined.** For the purpose of these rules a conflict occurs where the available supply of waters of the state in a given area is limited to the extent that there are competing demands among existing and proposed users which exceed the reasonably available waters. Existing and proposed appropriations could in this situation endanger the supply of waters of the state so that the public health, safety, and welfare would be impaired.

Subp. 2. **Procedure.** Whenever the total withdrawals and uses of ground or surface waters would exceed the available supply based on established resource protection limits, including protection elevations and protected flows for surface water and safe yields for groundwater, resulting in a conflict among proposed users and existing legal users the following shall apply:

A. In no case shall a permittee be considered to have established a right of use or appropriation by obtaining a permit.

B. The commissioner shall analyze and evaluate the following:

(1) the reasonableness for use of water by the proposed and existing users;

(2) the water use practices by the proposed and existing users to determine if the proposed and existing users are or would be using water in the most efficient manner in order to reduce the amount of water required;

(3) the possible alternative sources of water supply available to determine if there are feasible and practical means to provide water to satisfy the reasonable needs of proposed and existing users.

C. If conflicts can be resolved by modifying the appropriation of the proposed and existing users, the commissioner shall do so.

D. If conflicts cannot be resolved through modification of proposed and existing permits the commissioner shall base the decision regarding issuance of new applications and retention, modification, or termination of existing permits on the basis of existing priorities of use established by the legislature as follows:

(1) If the unresolved conflict involves users who are or would be in the same priority class, the commissioner shall require the proposed users and existing permitted users to develop and submit a plan which will provide for proportionate distribution of the limited water available among all users in the same priority class. The commissioner shall withhold consideration of new applications and shall, if the existing permitted appropriations endanger the supply of waters of the state, suspend or limit existing permits until a plan is approved by the commissioner.

The plan must include proposals for allocating the water which address the following: possible reduction in the amounts of appropriation so that each user would receive a proportionate amount of water for use; and possible restrictions in the timing of withdrawals so that each user would be allowed to withdraw a proportionate share of water for use over certain periods of time.

If the commissioner approves the proposed plan, new permits will be issued and existing permits will be amended in accordance with that plan.

If the commissioner determines that the proposed plan is not practical or reasonable, the commissioner shall develop a new plan or modify the proposed plan to provide proportionate share of water among the users involved. The commissioner shall issue new permits and amend existing permits based on that plan.

(2) If the unresolved conflict involves users who are or would be in a different priority class the available water supply shall be allocated to existing and proposed users based on the relative priority of use. Highest priority users shall be satisfied first. Any remaining available water supply shall be allocated to the next succeeding priority users, until no further water is available. Users in the same priority class shall be offered the same options as provided in subitem (1).

Subp. 3. **Notice and hearing.** All actions by the commissioner shall be made after notice and opportunity for public hearing.

Statutory Authority: *MS s 105.415*

6115.0750 PROVISIONS AND CONDITIONS OF WATER APPROPRIATION PERMITS.

Subpart 1. **In general.** Water appropriation permits shall include the following provisions and conditions, unless otherwise required by law.

Subp. 2. **Term of permits.** Permits shall be issued for temporary or for long-term appropriation.

Temporary permits involve a one-time, limited life, not more than 12 months, non-recurring appropriation of waters of the state, such as for highway construction, exploratory drilling for minerals, hydrostatic testing of pipelines and other short-term projects. Requested time extensions shall be permitted, but in no case shall the total length of time the permit remains in force exceed two years.

Long-term permits will remain in effect subject to applicable permit provisions and conditions of the permit, the law, and these parts, provided that in cases where the permittee is not the landowner of record, the term of the permit shall be the same as that of the property rights or license held.

Subp. 3. **Monitoring.** Monitoring:

A. All permittees shall measure and keep monthly and yearly records of the quantity of water used or appropriated at the point of taking from each source under permit.

B. Each installation for appropriating or using water shall be equipped with a device or employ a method to measure the quantity of water appropriated to within ten percent of actual withdrawal.

The commissioner shall determine the method to be used for measuring water appropriated based on: the quantity of water appropriated or used; the source and location of the appropriation; the method of appropriating or using water; other facts supplied by the permittee.

The commissioner shall require flow meters to be used whenever the rate of appropriation is greater than 1,500 gallons per minute, unless the permittee can show justification why flow meters cannot practically be used or are not necessary considering the factors con-

tained in the two preceding paragraphs. Such justification must be supported by facts which indicate the technical difficulties which would be encountered if flow meters were required.

C. For surface water appropriations, where applicable, the permittee shall measure flows or levels in the watercourse or basin at a specific gauge designated by the commissioner and located within the area of appropriation. The commissioner shall require permittees to pay necessary costs of establishing and maintaining such gages as provided in parts 6115.0010 to 6115.0100, rules for permit fees.

For groundwater appropriation, the commissioner, based on availability of hydrologic data on the aquifer involved, frequency and rate of pumping, and probability of conflict or well interference, shall require the permittee to measure and keep records of the water levels in each production well at reasonable times prescribed in the permit. Observation wells may be required as a condition of the permit to better evaluate hydrologic conditions and effects in areas where hydrologic data are unavailable, where probable conflict or well interference problems may occur and where such wells are required by law.

Subp. 4. **Reporting.** Annual calendar year monthly records of the amount of water appropriated or used and the water level measurements shall be recorded for each installation. Such readings and the total amount of water appropriated and used shall be reported annually to the commissioner, on or before February 15 of the following year upon forms to be supplied by the commissioner unless otherwise specified in the permit.

Such records shall be submitted with an annual water appropriation processing fee as required by Minnesota Statutes, section 105.41, subdivision 5, for each permit whether or not any water was appropriated during the year.

Additional information shall be required such as acreage irrigated, identification of water disposal sites, and amount of water discharged, when necessary for the statewide water information system (Minnesota Statutes, section 105.41, subdivision 2).

Failure to report and pay the fee shall be sufficient cause for terminating a permit 30 days following written notice by the commissioner of the violation of the permit.

No fee is required from any state agency as defined in Minnesota Statutes, section 16B.01, subdivision 2, or any federal agency.

Subp. 5. **Amendments to permits.** Amendments to permits:

A. Major modification of any water appropriation permit shall not be made before obtaining the written permission from the commissioner. Major modification includes changes such as substantial increase or decrease in the rate and quantity of water withdrawn, any change in source of appropriation or substantial change in the amount of land irrigated, when applicable.

Request for amendment can be made by letter or on forms supplied by the commissioner. New applications shall be required when there are changes in the source of supply, the purpose of appropriation, or when the proposed increases in rates and amounts of water would probably create conflict or well interference.

Requests for amendments shall be reviewed as if they were for a new application, subject to provisions of parts 6115.0600 to 6115.0800.

B. Pursuant to authority in Minnesota Statutes, section 105.44, subdivision 9, the commissioner may modify or amend any existing permits based on the following procedures and the criteria in parts 6115.0670 to 6115.0720, where applicable.

The commissioner shall notify the permittee of the intent to amend the permit. The notice will include details on modifications to be implemented by the permittee and the timing to complete the modifications.

The permittee shall respond within 30 days from receipt of the notice. Such response period shall be thereafter extended by the commissioner for good cause shown.

If no response is received in 30 days and no extension of response time is authorized by the commissioner, the proposed amendments shall be made.

The commissioner based on the permittee's response and the criteria established in these rules shall either modify the proposed amendment or adopt the original proposed amendment.

C. All amendments and modifications are made after notice and opportunity for hearing.

Subp. 6. **Transfers or assignments of permits.** If the property involving a water appropriation permit is sold, transferred, or assigned to another person, the permit may be transferred to the transferee without the necessity of reapplication, subject to the following.

The transferee shall, within 90 days after date of property sale, transfer, or assignment, or within a longer period of time allowed by the commissioner for good cause shown, submit written notification to the commissioner stating the intention to continue the appropriation as stated in the permit. If the transferee intends to make major modifications to the existing permit, a new application shall be required subject to the provisions of subpart 5.

No permit is assigned except with the written consent of the commissioner.

Subp. 7. **Limitations on permits.** All permits issued by the commissioner since 1949 are subject to the provisions of Minnesota Statutes, section 105.44, subdivision 9, relating to cancellation and conditions of permits and Minnesota Statutes, section 105.45, relating to terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state.

The commissioner, subject to the terms and conditions of such existing permits, may modify, restrict, or cancel an existing appropriation or use until such time as a decision has been reached by either negotiation, settlement, or after a public hearing. If a permit does not contain a provision which restricts appropriation or use for the protection of safety or welfare of the people of the state the commissioner cannot modify or restrict an existing appropriation until opportunity is provided for a public hearing and where ordered a public hearing has been completed.

Subp. 8. **Terminations.** Permits shall be terminated under the following:

- A. Request by the permittee.
- B. When any of its provisions are violated.
- C. When the permittee sells, transfers, or assigns the property described in the permit and the transferee does not wish to continue appropriating.
- D. Upon finding that the permittee has violated the provisions of any applicable laws and rules.
- E. Where the permittee has not for five consecutive years, from the date of issuance of the permit, appropriated the water. Such time shall be extended by the commissioner for good cause shown.
- F. When the lease or contract for deed is forfeited or canceled.
- G. Permits for agricultural irrigation shall be subject to termination by the commissioner upon justifiable recommendation of the supervisors of the soil and water conservation district, wherein the land irrigated is located, regarding the inadequacy of the soil and water conservation measures.
- H. When the commissioner deems it necessary for the conservation of the water resources of the state or in the interest of public health, safety, and welfare.
- I. When the commissioner deems it necessary pursuant to parts 6115.0730 and 6115.0740.

J. Any action pursuant to items B and D to I shall be subject to appropriate notice and opportunity for hearing, except as provided in subpart 7.

K. In the case of permits for mining issued in conjunction with Minnesota Statutes, section 105.64, procedures for termination shall be subject to provisions of Minnesota Statutes, section 105.64, subdivision 6.

Statutory Authority: *MS s 105.415*

6115.0760 LOCAL PERMITS.

The commissioner, pursuant to Minnesota Statutes, section 105.41, subdivision 1b, shall delegate to municipal, county, or regional level of government the authority to process and approve permit applications for the appropriation and use of waters of the state in amounts of more than 10,000 gallons per day and more than 1,000,000 gallons per year, but less than 3,600,000 million gallons per year. Such delegation shall be made at the municipal, county, or regional level which means a governmental entity, or several governmental enti-

ties in combination, having authority or jurisdiction over areas of geographical extent beyond the limits of a single county, or a watershed district. The delegation by the commissioner shall be subject to the following requirements:

A. The authorized unit of government has established an administrative process which includes provisions for establishing a water appropriation management planning process consistent with part 6115.0810.

B. The review and approval of applications are consistent with the applicable provisions of these parts.

C. A formalized agreement is made and signed by the commissioner and the appropriate municipal, county, or regional level authority involved.

D. Copies of all applications and records of local actions on applications are provided to the commissioner upon receipt and action.

E. Records of water appropriation amounts and the processing fee shall be submitted by the permittee to the commissioner as required by part 6115.0750, subparts 3 and 4, and Minnesota Statutes, section 105.41, subdivision 5.

Statutory Authority: *MS s 105.415*

6115.0770 WATER CONSERVATION.

In order to maintain water conservation practices in the water appropriation and use regulatory program it is necessary that existing and proposed appropriators and users of waters of the state employ the best available means and practices based on economic considerations for assuring wise use and development of the waters of the state in the most practical and feasible manner possible to promote the efficient use of waters.

Based on data submitted by applicants and permittees and current information on best available water conservation technology and practice the commissioner, in cooperation with the owners of water supply systems, may analyze the water use practices and procedures and may require a more efficient use of water to be employed by the permittee or applicant, subject to notice and opportunity for hearing.

Statutory Authority: *MS s 105.415*

6115.0780 ABANDONMENT OF WELLS.

The permittee shall notify the commissioner prior to abandoning, removing, covering, plugging, or filling the well or wells by means of which a water appropriation was made. The commissioner shall require abandonment procedures and methods consistent with the Minnesota Department of Health rules, parts 4725.2300 to 4725.3200.

Statutory Authority: *MS s 105.415*

6115.0790 FIELD INVESTIGATIONS.

In order to fully evaluate water appropriations, the commissioner shall conduct field investigations to determine the nature and scope of the appropriation and the impact it has or will have on water and related land resources. Such field inspection shall be made in a timely fashion and shall be coordinated with one or more of the following divisions of the department: enforcement, fish and wildlife, forestry, minerals, lands, and parks and recreation. A fee shall be charged for field inspections subject to rules for permit fees, part 6115.0080.

Statutory Authority: *MS s 105.415*

6115.0800 INFORMATION ON APPROPRIATION PERMIT LAWS.

The applicants or existing permittees shall, upon request to the commissioner, be furnished copies of applicable portions of the law or synopsis, where they exist, relating to their proposed or existing appropriation.

Statutory Authority: *MS s 105.415*

6115.0810 WATER APPROPRIATION AND USE MANAGEMENT PLANS.

Subpart 1. In general. In order to address the provisions of Minnesota Statutes, sections 105.403, 105.405, and 105.41, subdivision 1a, the commissioner, in cooperation with other state and federal agencies, regional commissions and authorities, local governments

and citizens, establishes the following process for the preparation and implementation of the elements of any state, regional, and local plan relating to water appropriation and use.

Subp. 2. Criteria and procedures. Since the availability, distribution, and utilization of waters of the state and the character and use of related land resources vary considerably throughout the state, a comprehensive water appropriation management planning process must be based on these considerations and according to the following principles and procedures:

A. Water appropriation management plans should be prepared for specific definable areas of the state on consideration of:

(1) The hydrologic and physical characteristics of the water and related land resources for which a management plan is necessary. The area must be of sufficient size and areal extent so that the interrelationship of geohydrologic and climatic factors can be adequately defined and managed.

(2) The determination by the commissioner of the need for establishment of a water appropriation management plan for the waters of the state within a specific definable area based on:

(a) areas where development of the waters of the state is, or is likely to, increase considerably within the next five to ten years;

(b) areas where severe water availability problems exist or are soon likely to exist;

(c) areas where there are adequate facts and available geohydrologic data relating to the availability, distribution, and use of the waters of the state and where there is local interest in establishing water appropriation management plans.

B. Upon establishment of the need for a water appropriation management plan pursuant to item A, the commissioner shall establish a management planning process including procedures, a public participation process, and development of a planning team consisting of representatives of the department, permittees, any other interested, concerned, and involved government or citizen group listed in subpart 1 to review and cooperate in preparation of the plan.

Subp. 3. General requirements and contents of plans. Every water appropriation plan should, at a minimum, include:

A. An evaluation of the amount and dependability of information on the hydrologic systems of the area and the adequacy of the information to provide necessary facts on the amounts of water which can be reasonably withdrawn from the waters of the state in the area without creating major environmental problems or diminishing the long-term seasonal supply of water for various purposes. This will provide essential background information for establishing protected flows and protection elevations, part 6115.0670, subpart 3, item B, subitem (6).

B. An evaluation of data on stream quality and flows, lake water quality and levels, groundwater quality and levels, and climatic factors. This will provide essential data useful to the applicant and the commissioner in permit application considerations, parts 6115.0660 to 6115.0720.

C. An evaluation of present and anticipated future use of waters and lands and the amounts and distribution of use within the area. This will facilitate the determinations necessary under part 6115.0670, subpart 2, item A, subitem (2).

D. An evaluation of the problems and concerns relating to use of the waters within the area.

E. Water conservation alternatives and methods and procedures for dealing with water shortages or excesses during periods of deficient or excess water. See parts 6115.0660, subpart 3, item F; 6115.0690, subpart 1, item G; and subpart 2 of this part.

F. Considerations of the relationship of the water appropriation and use management plan to other water resources programs of the state, such as floodplain management, shoreland management, water surface use management, water quality management, soil and water conservation management, and agricultural land management.

Statutory Authority: *MS s 105.415*

LAKE IMPROVEMENT DISTRICTS

6115.0900 PURPOSE.

In order to provide for the orderly establishment of lake improvement districts in a manner that will preserve and protect the lakes of Minnesota and increase and enhance the use and enjoyment of these lakes, the commissioner of the Department of Natural Resources does hereby provide guidelines, criteria, and standards for establishment of lake improvement districts by counties, cities, and towns, as authorized by Minnesota Statutes, sections 378.41 to 378.56 and 459.20, in furtherance of the policies declared in Minnesota Statutes.

These rules establish minimum guidelines, criteria, and requirements relating to:

A. procedures by which proposed lake improvement districts shall be reviewed prior to establishment;

B. standards and criteria which all proposed lake improvement districts shall meet before establishment, modification, or termination.

Statutory Authority: *MS s 378.41*

6115.0910 SCOPE.

These parts shall apply to all existing and proposed lake improvement districts. These parts shall not apply to lake conservation districts established by special legislation of the Minnesota state legislature.

Statutory Authority: *MS s 378.41*

6115.0920 DEFINITIONS.

Subpart 1. **Shall.** For the purpose of these parts, certain terms or words used herein shall be interpreted as follows: the word "shall" is mandatory, not permissive.

Subp. 2. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Department of Natural Resources or authorized representative.

Subp. 4. **Direct drainage basin.** "Direct drainage basin" means that portion of a lake's total watershed which is not drained to an upstream water basin, as defined herein. The determination of size and physical limits of a lake's direct drainage basin shall be made by the commissioner.

Subp. 5. **District boundaries.** "District boundaries" means, for the purpose of these parts, the territorial boundaries of a lake improvement district. All lands and waters within the direct drainage basin, as defined herein, shall be included within the district boundaries, except those exclusions for which written approval is obtained from the commissioner. The boundaries shall include a sufficient amount of the lake's watershed and related land to develop and implement feasible solutions to the problems the district intends to address. The boundaries shall also include all lands and waters which can reasonably be considered adversely affected by the proposed programs, plans, or actions of the lake improvement district.

Subp. 6. **Lake.** "Lake" means, for the purpose of these parts, any public water basin identified and classified in the shoreland management ordinances of the local county or municipal unit of government.

Subp. 7. **Lake improvement district.** "Lake improvement district" means a district formed around a lake in accordance with Minnesota Statutes, chapter 378. A lake improvement district is a local unit of government established by resolution of appropriate county boards and/or city governing bodies, or by the commissioner, for the implementation of defined lake management projects and for the assessment of the costs thereof.

Subp. 8. **Natural hydrologic boundaries.** "Natural hydrologic boundaries" means the boundaries of a lake's direct drainage basin, as defined herein.

Subp. 9. **Resident.** "Resident" means a person 18 years of age or older who meets the residency requirements of Minnesota Statutes, section 200.031.

Subp. 10. **Resident owner.** "Resident owner" means a Minnesota resident who is the owner of land or the contract purchaser of land within the boundaries of a lake improvement district.

Subp. 11. **Water basin.** "Water basin" means an enclosed basin normally partly or completely filled with water. The water basin may have inlet and outlet streams, it may have only an inlet or outlet, or it may be completely enclosed.

Subp. 12. **Watershed.** "Watershed" means the entire surface drainage area that contributes water to a lake.

Statutory Authority: *MS s 378.41*

History: *17 SR 1279*

6115.0930 SEVERABILITY.

The provision of these rules shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

Statutory Authority: *MS s 378.41*

6115.0940 GOALS FOR LAKE IMPROVEMENT DISTRICTS.

Proposals for the establishment of lake improvement districts shall be evaluated according to the degree to which they promote the following goals:

- A. lake protection and rehabilitation;
- B. protection and enhancement of environmental values by preventing degradation of fish and wildlife habitat, surface and ground water quality, natural beauty and unique scientific values, recreational values, and the quality of life generally;
- C. preservation of the public rights in the public waters of the state and to provide the public use of the lake consistent with the preservation of environmental values;
- D. ensuring local involvement in the project and a commitment to future lake management;
- E. conformity with federal, state, regional, and local laws, rules, and water and related land management policies; and
- F. fair and objective resolution of conflicts between competing lake related interests in and around the district.

Statutory Authority: *MS s 378.41*

6115.0950 ELIGIBILITY FOR LAKE IMPROVEMENT DISTRICTS.

The types of lake improvements in items A to H are eligible for the creation of a lake improvement district:

- A. studying the sources of and solutions to lake problems;
- B. preserving and improving water quality by means of water and related land management, excluding land use zoning authority; and in-lake water treatment;
- C. sedimentation and siltation control;
- D. shoreline erosion control;
- E. aquatic nuisance control;
- F. preserving and improving fish and wildlife habitat;
- G. preserving and improving recreational potential of the lake; and
- H. any other purposes approved by the county board pursuant to Minnesota Statutes, section 378.51, subdivision 3.

Statutory Authority: *MS s 378.41*

6115.0960 CRITERIA AND STANDARDS FOR ESTABLISHMENT OF LAKE IMPROVEMENT DISTRICTS.

Subpart 1. **In general.** Proposals for the establishment of lake improvement districts shall be evaluated based on the extent to which they demonstrate the following.

Subp. 2. **Local need for district.** The proposal shall demonstrate the need for the district and why another unit of government with similar powers, or a voluntary lake association, cannot or will not satisfactorily accomplish the district's proposed purposes.

Subp. 3. **Appropriateness of proposed boundaries.** The proposed boundaries shall be consistent with district boundaries as defined in part 6115.0920. The proposed boundaries

shall include all lands and waters within the lake's direct drainage basin, unless justification is provided for including a lesser area and approved in writing by the commissioner. The proposed boundaries shall include a sufficient amount of the lake's watershed and related land to develop and implement feasible solutions to the identified problems. The proposed boundaries shall include those lands and waters which can reasonably be considered adversely affected by the proposed actions of the district. The proposed boundaries shall be delineated so as to provide appropriate public representation and the equitable distribution of benefits and levying of costs.

Subp. 4. Appropriateness of proposed purposes. The proposed purposes shall be consistent with existing state, federal, regional, and local laws, policies, objectives, and plans pertaining to water and related land management, fish and wildlife habitat, surface and ground water quality, natural beauty and unique scientific values, economic and recreation values, and the quality of life. The proposed purposes shall be consistent with the public rights in the public waters of the state. When a district is proposed for the purpose of conducting a feasibility study of the sources of and solutions to lake problems, the proposal shall demonstrate an understanding that subsequent lake restoration measures may require modification of the district's boundaries and statement of purposes, pursuant to part 6115.0980, subpart 1, and Minnesota Statutes, section 378.55.

Subp. 5. Technical feasibility of proposed plans and programs. The proposal shall demonstrate the technical feasibility of the proposed plans and programs, or provide for the determination of technical feasibility.

Subp. 6. Adequacy of proposed means of financing. The proposal shall demonstrate capability of raising sufficient funds to meet district purposes, to ensure continuity of district operations, and to meet the requirements of these parts.

Subp. 7. Adequacy of procedures for planning, decision-making, and public involvement. The proposal shall assure consideration of the interests of concerned citizens both within and outside the boundaries of the proposed district. The proposal shall include the identification of varying and often conflicting interests regarding water and related land management in and around the proposed district, and procedures to assure the consideration of such diverse interests so that decisions are made in the best overall interests of fairness and public health, safety, and welfare.

Subp. 8. Public access. The proposed plan shall provide for public access when adequate public access consistent with size of the lake, the extent of public interest in using the lake, and the combined uses of the lake is unavailable. Service charges may not be imposed on the use of a public access if other units of government cost share the acquisition, development, or maintenance of the public access.

Subp. 9. Adequacy of long-range monitoring of environmental effects of district programs. The proposed plan shall demonstrate an understanding of potential environmental effects of the proposed district plans and programs, and provide for a long-range monitoring of such effects.

Subp. 10. Coordination with other special purpose districts. The proposal shall demonstrate how the proposed district programs will be coordinated with existing special purpose districts formed for water and related land management. Examples of such units of government are watershed districts, sanitary districts, drainage and conservancy districts, lake conservation districts, and soil and water conservation districts. Lake improvement districts shall not be established where a special purpose unit of government for water and related land management exists which can implement the purposes of the proposed lake improvement district, unless written approval is acquired from such unit of government or from the commissioner. The proposal should demonstrate efforts in good faith to resolve at the local level any conflicts between an existing special purpose district and the proposed lake improvement district.

Statutory Authority: *MS s 378.41*

6115.0970 CREATION OF LAKE IMPROVEMENT DISTRICT.

Subpart 1. Petition or county board document. A county board document proposing the creation of, or a petition to create, a lake improvement district shall contain the following elements:

A. A written statement of lake problems and objectives.

B. The proposed type or types of water and related land resource management programs to be undertaken by the proposed district. This shall include a detailed statement of intended studies, management programs, remedial actions, and construction projects.

C. A statement of the means by which the programs will be financed.

D. A map showing the boundaries of the proposed lake improvement district. The map shall show the number and location of permanent homes and seasonal dwellings in the district. The scale of the map, and basic geographical information, such as range, township, and section numbers, shall be clearly indicated on the map.

E. The number of directors proposed for the district.

F. Copies of local ordinances which regulate use of the lake or any public access.

G. Any information indicating the degree of local interest and commitment to future management.

H. The identification of any lands and waters which may be adversely affected by the implementation of district purposes, and a preliminary assessment of these adverse effects.

I. A statement outlining the adequacy and ownership of public accesses, including public lands and beaches.

J. An estimate of the total equalized valuation of the property within the district.

K. Any other information demonstrating accordance with the criteria and standards for establishment as contained in part 6115.0960.

Subp. 2. Submission of petition or resolution. Initial submittal of petition or resolution to county board, the commissioner, and the agency for:

A. Creation by petition. No later than five days after the official filing of a petition for the establishment of a lake improvement district with the county board, the citizens or organization sponsoring the petition shall provide a certified copy of the petition to the commissioner and the agency. This is necessary in order to facilitate preliminary review of the proposed district boundaries prior to the notification of the public hearing.

B. Creation by resolution. At least 40 days prior to the public hearing, the county board shall provide a certified copy of the document containing the information required by this part to the commissioner and the agency. This is necessary to facilitate preliminary review of the proposed district boundaries prior to notification of the public hearing.

Subp. 3. Notification of public hearing. At least 21 days prior to the public hearing, the county board shall give notice of the public hearing to the commissioner and the agency, and make a reasonable attempt to notify every resident and every resident owner within the proposed district of the pending resolution or petition and the public hearing. A reasonable attempt to notify shall consist of mailing notice to the last known address of each landowner within the proposed district, publication of notice in two successive issues of a newspaper widely circulated in the proposed district, and posting notice in public buildings and several leading commercial establishments in or near the proposed district, as appropriate and reasonable. All local and regional units of government, special purpose districts, and development commissions within and adjacent to the boundaries of the proposed district shall be given notice of the public hearing. All corporations and utilities owning real estate or corporate property within the proposed district shall be given notice of the public hearing.

As part of the notification procedure, a statement shall accompany the notice setting forth the following:

A. a description of the proposed purposes, programs, funding, and boundaries of the proposed district, and the name proposed for the district;

B. the time and place of the public hearing; and

C. the following paragraph shall be included:

“The establishment of the proposed lake improvement district requires review by the commissioner of natural resources and the approval of the (as appropriate) county board(s) (and/ or city governing body). Concerned citizens may submit evidence at a public hearing to be held prior to the passage of any resolution establishing the proposed lake improvement district. Concerned citizens may also submit evidence and opinions to the commissioner of

natural resources. A copy of the petition (or document, as appropriate) for the establishment of the lake improvement district is available for public review at the (as appropriate) county courthouse (or other appropriate public building; give address and telephone number where interested citizens can review the document)."

If the establishment of the lake improvement district is proposed by the county board pursuant to subpart 2, item B and Minnesota Statutes, section 378.42, the following paragraph shall be included in the notice of the public hearing:

"Citizens may call for a referendum on the question of whether or not to establish a lake improvement district by filing a petition requesting such a referendum. The petition shall be signed by 25 percent of the land owners within the territory of the proposed district, who are Minnesota residents. Upon receipt of such a petition prior to the effective date of creation of the district, the county board shall hold the creation in abeyance pending the referendum vote of all qualified voters residing within the boundaries of the proposed district."

Subp. 4. Public review of petition or resolution. The county board shall make the petition or document containing the information required by this part available for review by concerned citizens, at the county courthouse or other appropriate public building.

Subp. 5. Review by commissioner and agency. Upon receipt of a copy of the petition or document, the commissioner shall:

A. Review the petition or document and any evidence presented by the agency or concerned citizens pertaining to the establishment of the proposed district. This review shall include an evaluation of the statement of district purposes and its relation to existing laws, rules, and regulations, units of government, water and related land management programs and policies. The proposed district boundaries shall be examined to assess their consistency with these parts. When one or more of the stated purposes of the proposed district relate to pollution control, this review shall be conducted with the assistance of the agency.

B. Prepare an advisory report stating findings as to whether the proposed lake improvement district should be established. The commissioner shall set forth in the report any matters pertaining to the district which should be further investigated and evaluated. On determining that the establishment of the proposed district is not in the public interest, the commissioner shall so report the specific reasons and inadequacies. The commissioner may request additional time for review of the proposed district in such cases where additional time can be shown to be necessary for proper evaluation. The commissioner's report may contain reports by the agency.

Subp. 6. Request for continuance or postponement of hearing. The county board may grant requests by citizens, the commissioner, or the agency for postponement or continuance of the public hearing to a time more than 30 days after receipt of the petition and verification of the signatures thereon. Such requests may be granted if the county board determines that the additional time requested is appropriate and reasonable in order for the requesting organization or citizens to adequately prepare for the public hearing, and consistent with the goals of promptness and fairness in the proceedings.

Subp. 7. Advisory report. The commissioner's advisory report shall be publicly read into the record at the public hearing.

Subp. 8. Modification of findings. The commissioner may modify findings based on evidence presented during and subsequent to the public hearing.

Subp. 9. Formal meeting to approve or disapprove district. No sooner than ten days but within 30 days following the holding of the public hearing, the county board shall formally convene to approve or disapprove the establishment of the proposed lake improvement district. At least ten working days' notice shall be given to the commissioner of the time and place where the board will formally convene for this purpose. If the commissioner or the commissioner's representative does not appear, any modifications of the commissioner's advisory report shall be publicly read into the record.

Statutory Authority: *MS s 378.41*

History: *17 SR 1279*

6115.0980 ADMINISTRATION OF LAKE IMPROVEMENT DISTRICTS.

Subpart 1. Modification. No program, remedial action, project, or change of district boundaries which is not specified in the resolution creating a lake improvement district may

be undertaken, except by modifying the appropriate items listed in part 6115.0970, subpart 1, items A to E.

For an established district, any of the items listed in part 6115.0970, subpart 1, items A to E may be modified by petition to or resolution by the county board, in the same manner that a district is created.

Subp. 2. Legal responsibilities and liabilities of lake improvement districts. Nothing in these parts shall be construed to relieve a lake improvement district of the legal duties, obligations, or liabilities incident to the programs, plans, or actions of the district.

The lake improvement district shall assume all legal risks and liabilities, including those for damages or any injury to persons or property, arising from the construction, operation, maintenance, alteration, or abandonment of its programs, plans, or actions.

In the event of termination of the district, or failure of the district to meet its obligations, these responsibilities and liabilities shall fall upon the unit or units of government which established the lake improvement district.

Subp. 3. Limited state liabilities. The establishment of a lake improvement district shall not impose any liability upon the state of Minnesota, its officers, employees, agents, or consultants, for any damage or injury to any persons or property resulting from the activities of the lake improvement district.

Subp. 4. Rights of lake improvement districts. Nothing in these parts shall be construed to deprive any lake improvement district of such recourse to the courts as it may be entitled to under the laws of this state.

Subp. 5. Inspections. The commissioner shall be given prompt access to and inspection of all records, structures, facilities, and operations at all reasonable times as may be necessary to monitor compliance with the terms of existing permit and to ensure protection of the public health, safety, and welfare. The commissioner's inspections shall not relieve the lake improvement district from the full responsibility of providing adequate inspection and supervision for all programs and projects undertaken by the district.

Subp. 6. Compliance with other laws and water management policies. Lake improvement districts shall conform to federal, state, regional, and local laws, rules, and fish and wildlife, water, and related land management policies. Lake improvement districts shall obtain all necessary permits, as required by law, prior to implementing district purposes and programs.

Subp. 7. Compliance by preexisting lake improvement districts. Within one year following promulgation of these parts, lake improvement districts in existence prior to the promulgation of these rules shall submit to their county board and to the commissioner a certified copy of a document containing the information required by part 6115.0970. This document shall also contain a report on the past and current activities and financial condition of the district.

The commissioner shall review the document and prepare an advisory report stating findings as to whether the district is consistent with these parts. The report may contain such recommendations as the commissioner determines is necessary to bring the district into compliance with these parts.

Within 60 days following the official filing of the commissioner's report with the county board, the board shall formally convene to consider the report. The county board shall give ten working days' notice to the commissioner of the time and place where it will convene to consider the commissioner's report. If the commissioner or the commissioner's representative does not appear, the report shall be publicly read into the record.

Statutory Authority: *MS s 378.41*

History: *17 SR 1279*

PUBLIC WATERS DESIGNATION AND CLASSIFICATION

6115.1000 STATUTORY AUTHORITY; EFFECTIVE DATE.

These parts are of no effect and null and void unless they are authorized and made valid and enforceable by an act of the 1976 Minnesota legislature establishing an accelerated pro-

gram of inventorying, classifying, and designating waters of this state, and prescribing these parts by making specific reference to them. These parts are effective on March 26, 1976, and shall remain in effect for each county until the designation and classification of public waters in that county pursuant to the act and these parts has been completed. Any procedure specified herein shall be modified as necessary so as not to conflict with the language of the act.

Statutory Authority: *MS s 84.415*

6115.1010 PURPOSE.

These parts supplement the above-referenced act by providing additional procedures and criteria for the identification and classification of public waters.

These parts also provide interim guidelines for making public waters determinations as the need arises prior to completion of the process described in the act.

Statutory Authority: *MS s 105.391*

6115.1020 DESIGNATION OF WATER BASINS AND WATERCOURSES AS PUBLIC WATERS.

Only those surface waters of the state which are confined may be considered for designation as public waters. There are two types of confining containers: water basins and watercourses. The definitions of the two types relate only to their ability to contain confined waters. The determination of whether or not the confined waters are public waters is based on the criteria in Minnesota Statutes, sections 105.37, subdivision 6, and 105.38, and on the further delineation of those criteria in these parts.

Statutory Authority: *MS s 105.391*

6115.1030 DEFINITION OF WATER BASIN.

An enclosed basin normally filled or partly filled with water may be defined as a water basin. The water basin may have inlet and outlet streams, it may have only an inlet or outlet, or it may be completely enclosed.

All water basins have a natural fluctuation in water levels. Water basins with intermittent surface water inflow and little groundwater inflow fluctuate through great ranges in levels from very low to extremely high. Other water basins which have perennial streams as inlets and outlets may fluctuate within a narrow range. Water basins which receive a major portion of their water supply from groundwater, springs, and seeps will generally have fairly uniform levels as long as the groundwater supply to the basin remains somewhat constant.

Water basins may include all natural enclosed depressions which have substantial banks normally containing water and which are discernible on aerial photographs taken during normal conditions. This includes all bodies of water, except streams, which are shown within the meander lines on plats of the general lake office surveys.

Water basins constantly undergo changes in size, depth, and shape. The rate and type of change in a given water basin is dependent upon several factors including: the climatic and topographic conditions; the nature of the soil or rock materials which underlie the water basin and cover the basin watershed; the biological environment; the physical configuration; and the nature and extent of artificial and natural drainage within the watershed of the water basin.

Statutory Authority: *MS s 105.391*

6115.1040 DEFINITION OF WATERCOURSE.

There are three kinds of watercourses:

A. natural watercourses may be defined as any natural channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods water may leave the confining beds and banks, but under low and normal flows water is confined within the channel. A watercourse may be intermittent or perennial. Natural, as defined herein, means in a state provided by nature without deepening, straightening, or widening.

B. an altered natural watercourse is a former natural watercourse which has been affected by human-made changes resulting in straightening, deepening, and widening of the original channel. Altered natural watercourses have been altered as the result of legally au-

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thorized changes under provisions of Minnesota Statutes, chapter 106A, public drainage laws, or prior applicable laws, or as the result of private actions without any public drainage procedures.

C. an artificial watercourse is a watercourse which has been artificially constructed by humans where there was no previous natural watercourse.

Statutory Authority: *MS s 105.391*

History: *L 1985 c 172; 17 SR 1279*

6115.1050 WETLANDS DEFINED.

Wetlands types referred to in these parts are as described in Circular 39, Wetlands of the United States, published by the United States Department of Interior.

Statutory Authority: *MS s 105.391*

6115.1060 PUBLIC WATERS; WATER BASINS AND WATERCOURSES.

Subpart 1. **Mandatory designation.** The following water basins shall be public waters:

A. all water basins which have been classified as public waters under the Shoreland Management Act (Minnesota Statutes, section 105.485) and which have been specified as public waters under county and municipal shoreland zoning ordinances, subject to a determination that such water basin is not permanently dry or has not reverted to wetland type 1 or 2;

B. all meandered lakes, except those which have been legally drained;

C. all water basins designated by the commissioner for management for a specific purpose pursuant to applicable laws, for example, trout lakes; and

D. all water basins located within and surrounded by publicly owned lands, including, but not limited to state parks, scientific and natural areas, and wildlife management areas.

Subp. 2. **Water basins subject to additional criteria.** The following water basins not listed in subpart 1 may be public waters, subject to application of the statutory criteria of Minnesota Statutes, sections 105.37, subdivision 6 and 105.38, as further explained in part 6115.1150:

A. in unincorporated areas, water basins greater than ten acres in area, excluding type 1 and type 2 wetlands;

B. in incorporated areas, water basins of any size;

C. any water basin which a county or municipality asks to be considered for designation as public waters; and

D. any water basin which the private owners of all the land around the basin ask to be considered for designation as public waters.

Subp. 3. **Watercourses as public waters.** Any watercourse may be public waters which fits the criteria of Minnesota Statutes, sections 105.37, subdivision 6, and 105.38, as further explained in part 6115.1150.

Statutory Authority: *MS s 105.391*

6115.1070 INVENTORY AND DESIGNATION OF WATER BASINS AS PUBLIC WATERS.

Subpart 1. **Preliminary designation procedures.** The commissioner, using an analysis of the data on file and a review and analysis of aerial photos, shall make preliminary evaluations of those water basins which may be considered for inclusion as public waters within each county.

The commissioner will prepare maps for each county showing the location of all water basins in each county originally inventoried in Bulletin 25, An Inventory of Minnesota Lakes published in 1968 by the Division of Waters, Soils and Minerals, and the location of any other water basins of any size in incorporated areas and of ten acres or more in unincorporated areas not listed in the bulletin but determined from the most recent available detailed aerial photographs of the county, not taken during a period of flooding, or drought. The use of the photos is only to determine if a basin exists and not to prove the basin is public waters solely on the photographic data.

The commissioner shall designate on the map, as a preliminary evaluation, those water basins which are considered to be public waters, utilizing the criteria specified in part 6115.1150. This preliminary designation will be supported by explanations of the basis for making the designation of each water basin as public waters. A listing of those basins, a map showing their general location in the county, and an explanation of the reason for the preliminary selection of the water basin as public waters will be submitted to those local governmental agencies with jurisdiction in the area where the water basin is located for their review, analysis, and comment. Local governments may add any water basin for consideration, regardless of the size of the water basin.

Subp. 2. County review; field investigations. Where the county disagrees with the preliminary designation of the commissioner, the commissioner shall undertake discussions with the county in order to resolve differences. Where necessary, the commissioner may initiate a detailed field investigation.

A field investigation, when necessary, may be made by the Department of Natural Resources with full cooperation and consultation with local governmental authorities and any of their designated representatives in order to assure maximum input from the local governmental authorities and to allow maximum discussion and interchange of facts regarding the area involved, utilizing the criteria specified in part 6115.1150.

At a minimum, the commissioner shall seek assistance in making field investigations from the following:

- A. counties and other local governmental agencies and their representatives;
- B. soil and water conservation districts;
- C. watershed districts, if there are any organized districts, located in the area where the water basins are situated;
- D. any U.S. governmental agencies which may be willing to assist in the field investigation in a fact-finding capacity; and
- E. affected property owners and parties who may wish to contribute technical expertise.

Subp. 3. Further procedures. The commissioner shall make maximum efforts to resolve any problems involving designations after completion of field investigations. Further procedures for designating water basins as public waters are specified in the act prescribing these parts.

Statutory Authority: *MS s 105.391*

History: *17 SR 1279*

6115.1080 INVENTORY, DESIGNATION, AND CLASSIFICATION OF WATERCOURSES AS PUBLIC WATERS.

Subpart 1. Access to maps. The commissioner will furnish each county with copies of the latest available U.S. Geological Survey topographic (quadrangle) maps for use in making a preliminary designation and classification of watercourses which may be public waters within the county. Counties may use any other available maps and information in making the inventory. It is recommended that counties enter into agreements with soil and water conservation districts and watershed districts, where existent, in order to expedite the inventory and provide maximum local assistance and cooperation.

Subp. 2. Use of maps by counties. It is recommended that counties use, as official work maps, the U.S. Geological Survey topographic (quadrangle) maps of the county, and where such maps are not available, the use of similar scale aerial photographic blue-line prints. These maps and prints form the best available base for showing the location and extent of the various watercourses. It should be noted that the maps may not and often will not contain all of the watercourses, especially since the maps were prepared at various times and some are quite old.

The commissioner will furnish each county with reproducible county maps at a scale of one inch equals one mile for use as an official designation map for final watercourse designation and classification.

Each county shall indicate on the official map the location of all watercourses, natural, altered, and artificial as defined in parts 6115.1020 to 6115.1050.

Counties shall include the location and extent of all these watercourses and identify them as to their character by using the following map symbol along the watercourse extent: natural watercourses, solid lines; altered natural watercourses, dashed lines; artificial watercourses, dotted lines.

Each county shall indicate on the official map the name of the natural watercourse or the number and designation of the altered natural or artificial watercourse.

Subp. 3. Preliminary designation by county. The county shall designate on the map, as a preliminary evaluation, those watercourses which it considers to be public waters, utilizing the criteria specified in parts 6115.1060 and 6115.1150. The county shall classify each public watercourse as to the degree of regulation which shall apply to each watercourse. The criteria for each class, and the degree of regulation which the commissioner shall apply to each class, are as follows:

A. Class I public watercourses. Natural watercourses serving as major drainage outlets, or major tributaries to those outlets, which are capable of serving a number of beneficial public purposes. Examples include the Rainy River, Mississippi River, Red River, Root River, Blue Earth River and the Rum River. Smaller natural watercourses serving specific values such as trout streams and scenic watercourses. Examples might include: Nine Mile Creek, Hennepin County; Minnehaha Creek, Hennepin County; Baptism River, Lake County; and Spring Creek, Goodhue County. Permits shall be required under Minnesota Statutes, section 105.42, for all activities which change the course, current, or cross-section of Class I public watercourses and under Minnesota Statutes, section 84.415, for all utility crossings thereof.

B. Class II public watercourses. Natural watercourses serving as tributaries of Class I watercourses which are often perennial streams serving more than one beneficial public purpose. Permits shall be required under Minnesota Statutes, section 105.42, for all activities which change the course, current, or cross-section of Class II public watercourses and under Minnesota Statutes, section 84.415, for all utility crossings thereof.

C. Class III public watercourses. Smaller natural watercourses and altered natural watercourses not constructed under Minnesota Statutes, chapter 106A, which are often intermittent streams serving at least one beneficial public purpose.

Permits shall not be required under Minnesota Statutes, section 84.415. Nor shall permits be required under Minnesota Statutes, section 105.42, except for the following types of activities on Class III public watercourses:

(1) any activity which would require widening, deepening, or straightening of a Class I or II public watercourse as a result of the change in the Class III public watercourse;

(2) construction of any dam 20 feet or more in structural height as measured vertically from the lowest point of the foundation surface to the top of the dam and/or impounding 50 acre-feet or more of water at maximum storage capacity (based on the national dam inspection program);

(3) any diversion of water from a Class III public watercourse into a different watershed which is not part of the same drainage basin;

(4) any lowering of the streambed elevation which would result in an overfall of two feet or more in elevation of a channelization project when there is no provision for erosion control structures to prevent headward erosion.

D. Class IV watercourses. These shall include any watercourses in existence at the time of inventory which are artificial watercourses and altered natural watercourses, constructed under the provisions of Minnesota Statutes, chapter 106A, or prior laws, or as the result of private actions without any public drainage proceedings.

Permits shall not be required under Minnesota Statutes, section 84.415. Nor shall permits be required under Minnesota Statutes, section 105.42, except for the following types of actions on Class IV watercourses:

(1) any activity which would require widening, deepening, or straightening of a Class I or II public watercourse as a result of the change in the Class IV public watercourse;

(2) construction of any dam 20 feet or more in structural height as measured vertically from the lowest point of the foundation surface to the top of the dam and/or impounding 50 acre-feet or more of water at maximum storage capacity (based on the national dam inspection program);

(3) any diversion of water from a Class IV public watercourse into a different watershed which is not part of the same drainage basin; and

(4) any lowering of the streambed elevation which would result in an overfall of two feet or more in elevation of a channelization project when there is no provision for erosion control structures to prevent headward erosion.

Counties shall indicate on the official designation map their preliminary classification of watercourses as to Class I, II, III, or IV.

Upon completion of the preliminary classification of watercourses delineated by the county, the county will submit the preliminary inventory and classification to the commissioner by indicating the classification review, evaluation, and comment.

Subp. 4. Commissioner review. Where the commissioner disagrees with the preliminary designations and classifications of the county, the commissioner shall undertake discussions with the county in order to resolve differences. The commissioner may initiate field investigations of the sort described in part 6115.1070, subpart 2.

Subp. 5. Further procedures. The commissioner shall make maximum efforts to resolve any problems involving designations and classifications after completion of discussions and field investigations. Further procedures for designating watercourses as public waters and classifying them are specified in the act prescribing these parts.

Statutory Authority: *MS s 105.391*

History: *L 1985 c 172; 17 SR 1279*

6115.1090 INTERIM PROCEDURES AND CRITERIA FOR MAKING PUBLIC WATERS DETERMINATIONS.

Subpart 1. Purpose. In order to provide a systematic transition from the present method for dealing with determinations of public waters and the program for statewide delineation on a county-by-county basis, it is necessary that interim procedures for classifying public waters be adopted. It is intended that these procedures be especially applicable in the agricultural areas of the state and where, because of the need for agricultural land drainage, there are major problems involving these waters.

Subp. 2. Procedure. Any person contemplating a change in the course, current, or cross-section of a water basin or watercourse which may be one of the kinds described in part 6115.1060 shall consult with the nearest regional office of the Department of Natural Resources to find out if it is public waters, or ask county or municipal officials to contact the department for him or her. Except during periods when climatic conditions prevent adequate field investigations, the commissioner shall have not to exceed 60 days from the date of request by the party or county or municipality to determine whether or not the basin is public waters, and if the determination is not made within that time, then the water basin is not public waters for purposes of the particular change contemplated by the particular party, or the watercourse is Class III, or is Class IV if it is a part of a legal drainage system.

Subp. 3. Criteria. The commissioner's interim criteria for determining whether or not a water basin or watercourse is a public water are those specified in part 6115.1060. The criteria for classifying watercourses are those specified in part 6115.1080, subpart 3.

Statutory Authority: *MS s 105.391*

History: *17 SR 1279*

6115.1100 INTERIM CRITERIA FOR COMMISSIONER'S PERMITS FOR PUBLIC DRAINAGE PROJECTS.

Subpart 1. New projects. A drainage project undertaken under the authority of Minnesota Statutes, chapter 106A or 112 which will alter the course, current, or cross-section of a water basin whose status as public waters or not public waters has not yet been determined pursuant to part 6115.1070, or which will alter the course, current, or cross-section of a watercourse whose status and classification have not yet been determined pursuant to part

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6115.1080, may be limited by the commissioner's authority under Minnesota Statutes, sections 105.42 and 106A.011, only if the waters to be affected are determined to be public waters pursuant to 6115.1090 and then only if the project will substantially affect such waters. "Substantially affect" means partly or wholly drain a water basin; channelize a natural water-course.

Subp. 2. **Repairs and improvements.** Normal repairs and improvements in existing legal drainage systems undertaken under the authority of Minnesota Statutes, section 106A.701 or 106A.215, or chapter 112, should not involve any requirements for regulation by the commissioner except for substantial effects similar to those for new projects as set forth in subpart 1.

Statutory Authority: *MS s 105.391*

History: *L 1985 c 172 s 2,24,80; 1Sp1985 c 16 art 2 s 19*

6115.1150 [Repealed by amendment, L 1979 c 199]

STATE WATER BANK PROGRAM

6115.1200 STATUTORY AUTHORITY AND PURPOSE.

These parts are promulgated under the authority of Minnesota Statutes, sections 105.392, subdivision 2, and 105.415. Their purpose is to implement and make specific the state water bank program and the indemnification process established by Minnesota Statutes, section 105.391, subdivision 3, for the purpose of compensating farmers for not converting certain kinds of wetlands to cropland.

Statutory Authority: *MS s 105.392 subd 2; 105.415*

6115.1210 DEFINITIONS.

Subpart 1. **Adjacent land.** "Adjacent land" means any lands abutting a basin that is eligible for inclusion in the state water bank program.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Natural Resources or designated agents.

Subp. 3. **Drain.** "Drain" means to conduct drainage activities that will remove or reduce the surface water from the basin. Acts constituting draining include, but are not limited to pumping, lowering the outlet, enlarging the outlet, tiling, or reducing the amount of water entering the basin. (Drainage does not include temporary water level reduction for conservation purposes.)

Subp. 4. **Fair market value.** "Fair market value" is an estimate of a property's value based upon standard and accepted land appraisal methods. The appraisal for eligible wetlands will estimate the potential value of the area as agricultural cropland less the cost of drainage.

Subp. 5. **Less than 50 acres in area.** "Less than 50 acres in area" means the area of a plane bounded by the ordinary high water mark which is a mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the vegetation changes from predominantly aquatic to predominantly terrestrial.

Subp. 6. **Professional soil classifier.** "Professional soil classifier" is a person who qualifies as a professional soil classifier on the basis of criteria specified by the Minnesota Association of Professional Soil Classifiers. The requirements are a bachelor of science degree in soil science or adequate credits (15 semester or 23 quarter hours) in soil science, and four years of field experience in mapping soils.

Subp. 7. **Public waters.** "Public waters" for the purposes of these rules means waters of the state so designated in a county by the process described in Minnesota Statutes, section 105.391, and those waters that have been determined to be public waters or navigable waters by the district court or if appealed, by the state or federal supreme court.

Statutory Authority: *MS s 105.392 subd 2; 105.415*

History: *17 SR 1279*

6115.1220 PROCEDURES.

Subpart 1. **Permit applications.** Application for a permit to drain basins that are potentially eligible for compensation from the department because of being declared public waters

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shall be made on such forms as the commissioner may provide and shall include all data specified by the form and any required application fees.

The applicant shall include the following information to enable the commissioner to determine the feasibility, practicality, and lawfulness of the proposed drainage:

- A. a statement by the owner that there are no burdens on the property or agreements which drainage would violate;
- B. a demonstration by the owner that the right to use the outlet can be obtained;
- C. a description of the proposed drainage project;
- D. a demonstration of the project costs, showing how the costs were estimated, together with an explanation of why the investment would be profitable; and
- E. a statement by a professional soil classifier that the basin would be high quality cropland. The determination shall be based on the following criteria. The kinds of soils that will that will qualify as high quality cropland are based on the following method arranged from best to poorest.

| Rating Value | Soil Properties |
|--------------|--|
| 1. | Loamy or clayey mineral soils (loamy or clayey average particle size in the control section.) |
| 2. | Deep organic soils (Typic subgroups,) and shallow organic soils with a loamy or clayey substratum (Terric subgroups with loamy or clayey particle size.) |
| 3. | Shallow organic soils with a sandy or gravelly substratus (Terric subgroups with sandy or sandy skeletal particle size.) |
| 4. | Sandy or gravelly mineral soils (Aquents, aquepts, and Aquolls with sandy or sandy skeletal average particle size in the control section.) |
| 5. | Other soils (mostly soils with limnic materials dominating the control section.) |

Growing degree days (GDD) will be used as a climatic parameter to use for accessing soil quality. The groups from best to poorest are:

| Rating Value | Climate Parameter |
|--------------|--------------------|
| 1. | More than 4400 GDD |
| 2. | 3400 – 4400 GDD |
| 4. | Less than 3400 GDD |

The following counties fall within the individual climate parameters:
More than 4400 GDD

| | | |
|------------|---------------|------------|
| Anoka | Lac Qui Parle | Rice |
| Big Stone | Le Sueur | Rock |
| Blue Earth | Lincoln | Scott |
| Brown | Lyon | Sibley |
| Carver | McLeod | Steele |
| Chippewa | Martin | Stevens |
| Cottonwood | Meeker | Swift |
| Dakota | Mower | Traverse |
| Dodge | Murray | Wabasha |
| Faribault | Nicollet | Waseca |
| Fillmore | Nobles | Washington |

| | | |
|-----------|-----------|-----------------|
| Freeborn | Olmsted | Watowan |
| Goodhue | Pipestone | Wilkin |
| Hennepin | Ramsey | Winona |
| Houston | Redwood | Wright |
| Jackson | Renville | Yellow Medicine |
| Kandiyohi | | |

3400 – 4400 GDD

| | | |
|------------|-------------------|------------|
| Aitkin | Hubbard | Otter Tail |
| Becker | Isanti | Pennington |
| Beltrami | Itasca | Pine |
| Benton | Kanabec | Polk |
| Carlton | Kittson | Pope |
| Cass | Koochiching | Red Lake |
| Chisago | Lake of the Woods | Roseau |
| Clay | Mahnomen | Sherburne |
| Clearwater | Marshall | Stearns |
| Crow Wing | Mille Lacs | Todd |
| Douglas | Morrison | Wadena |
| Grant | Norman | |

Less than 3400 GDD

| | | |
|------|------|-----------|
| Cook | Lake | St. Louis |
|------|------|-----------|

To arrive at a value, an index is determined by multiplying the soil property rating by the GDD rating. A value of four or less shall be considered high quality cropland.

The determination of soil properties shall be done by a professional soil classifier with at least one observation of soil properties to depths of 50 inches for each ten acres of the wetland. Points of observations should be located systematically in the wetland, recorded on a map, and a log of soil made for each observation. The information shall be included with the permit application.

Subp. 2. **Eligible water basins.** If the public water basin is eligible for compensation the commissioner shall mail to the applicant, within 60 days of receipt of an application for a permit to drain, the various choices of indemnification, to include:

A. An offer:

- (1) to place the basin in the state water bank program, together with a sample water bank agreement;
- (2) to acquire the basin and such interest as is necessary to make entry upon the acquired area available to the public;
- (3) to acquire an easement in the nature of a conservation restriction as described by Minnesota Statutes, sections 84.64 and 84.65, together with a sample of such an easement; or
- (4) to acquire a lease on the basin, together with a sample lease agreement.

B. A statement:

- (1) If such be the case, that the wetland appears to be eligible for the federal water bank program and who the landowner should contact. The state program, however, does not incur any obligations on the federal program and if the landowner chooses to select this option the landowner will be subject to the federal program's priorities and procedures.
- (2) That the landowner may suggest any other appropriate indemnification method, along with the proposed terms and conditions that the landowner would like to have included.
- (3) That the landowner and commissioner may agree to include adjacent property in the terms of the agreements.
- (4) That the landowner may choose any one of the indemnification offers or any other method of indemnification that the commissioner will agree to.

C. An explanation of the balance of these procedures in order to establish the dollar amount of each offer as soon as the landowner specifies what adjacent land, if any, the landowner would like to have included.

Subp. 3. Ineligible areas. If the area is ineligible for compensation the commissioner will so inform the applicant and advise the applicant that a Minnesota Statutes, section 105.44 hearing on the issue of eligibility may be demanded.

Subp. 4. Right to drain basin. If within 60 days of receipt of an application for a permit to drain, the commissioner does not mail the landowner a choice of indemnification, the landowner is entitled to drain the basin.

Subp. 5. Adjacent land. Upon receipt of an offer of indemnification, the landowner shall inform the commissioner of the amount, if any, and location of adjacent land that the landowner would like to have included in the agreement, and what alternative, if any, methods of indemnification the landowner would like the commissioner to consider.

Subp. 6. Certification. Within 60 days of receiving the above information the commissioner shall complete an appraisal of the property and submit it to the Department of Administration for certification. If it is not so submitted within the 60-day period, the landowner may drain the basin.

Subp. 7. Negotiations. When an appraisal has been certified, the commissioner shall inform the landowner of the dollar amount of each offer, and begin negotiations. The outcome of the negotiations can be either;

A. the landowner accepts one of the offers made or agreed to by the commissioner;

B. the landowner places the basin in a federal water bank program;

C. the landowner signs a consent to condemnation pursuant to Minnesota Statutes, section 84.027, subdivision 9, specifying which of the methods of indemnification offered or agreed to by the commissioner that the landowner has selected; or

D. the landowner does none of the above, in which case the basin cannot be drained unless and until a new application for a permit to drain is submitted and the commissioner does not make an offer of indemnification.

Subp. 8. Sale of basin to commissioner. If the landowner chooses to sell the basin and access area to the commissioner the landowner shall obtain from the county board of commissioners the approval to sell the property as required by Minnesota Statutes, section 97A.145. The commissioner must be supplied with a copy of the board's resolution and if the county board refuses approval, the applicant must select from among those options not requiring county board approval. This procedure does not apply in those counties where blanket approval to sell the property to the state has been granted to those landowners who are eligible for compensation under Minnesota Statutes, section 105.391, subdivision 3.

Subp. 9. Recording and indexing documents. Water bank, lease, and easements obtained on an area shall be recorded and indexed in the office of the county recorder in the county where the basin lies.

Statutory Authority: *MS s 105.392 subd 2; 105.415*

History: *L 1986 c 386 art 1 s 28; 17 SR 1279*

6115.1230 EFFECTIVE DATE.

These parts apply to applications for permits to drain received after the water basin involved has been designated a public water pursuant to Minnesota Statutes, section 105.391, or has been identified as public waters or navigable waters by a district court or if appealed, by the state or federal supreme court.

Statutory Authority: *MS s 105.392 subd 2; 105.415*

6115.1240 PAYMENT RATES.

Subpart 1. Water bank program. Annual payment rates for the state water bank program will be determined by multiplying the fair market value of the water basin and any adjacent lands by five percent.

Subp. 2. Water basin and adjacent lands. Annual lease payments for the water basin and any adjacent lands will be based on a fair market rental rate.

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Subp. 3. **Easements.** Conservation restrictions in the form of easements will be established by an appraisal and their lengths will be subject to negotiation.

Subp. 4. **Other method of indemnification.** The rate for any other method of indemnification that is agreed to will be negotiated with the landowner and judged on its merits based upon the proposed restrictions and their relationship to the other payment rates.

Statutory Authority: *MS s 105.392 subd 2; 105.415*

6115.1250 TERMS FOR WATER BANK AND LEASE AGREEMENTS.

Subpart 1. **Agreement period and beginning date.** Agreement period and beginning date:

A. Eligible basins are placed in the state water bank program for a period of ten calendar years and under a lease agreement for, not to exceed, 20 calendar years.

B. The lease agreement is continuous and shall transfer with the property if ownership changes during the time of the lease agreement.

C. A water bank or lease agreement finalized during the current calendar year shall be effective January 1 of that year. Exception: in cases where compliance with the terms of agreement cannot be rendered during the current calendar year, the beginning date of the agreement shall be January 1 of the following year.

D. Water bank or lease payments for the first year of an agreement will be made as soon as possible after an agreement has been finalized. Payments for the duration of a water bank or lease agreement will be made on or about August 1 of each continuous year thereafter.

Subp. 2. **Terms.** Terms:

A. Waterbasins. In return for receipt of an annual payment the landowner must agree not to adopt any practice which would tend to defeat the purposes of the agreement. At a minimum, the designated basin may not be:

(1) Drained, burned, filled, clipped, or otherwise used in such a manner that would effect its wetland character. Exception: noxious weeds may be controlled by the landowner by spot clipping and spot spraying. If cutting is used the area should not be clipped closer than six inches so as to protect nesting wildlife.

(2) Harvested for agricultural purposes.

(3) Grazed.

(4) Used as a source of irrigation water.

(5) Used as a receptacle for draining other wetlands.

Exception: the commissioner may approve designated acreage to receive limited drainage waters if such use is in keeping with sound wetlands management and prescribed in a mutually agreed upon conservation plan.

B. Adjacent lands. On finding it desirable the commissioner may mutually agree with the landowner upon the amount and location of adjacent lands to include in the agreement. Up to one acre of adjacent land may be obtained for each acre of water basin. The commissioner may negotiate and outline a conservation plan for the water basin and adjacent lands. Upon signing the agreement, the landowner shall agree to effectuate the wetland conservation and development plan. Terms that may be included are:

(1) development of food and/or cover plots;

(2) specified planting and harvesting dates;

(3) areas desirable for permanent cover;

(4) habitat improvement methods such as: clearing, tilling, reestablishment of former wetlands or the creation of new wetlands, fencing to protect the area;

(5) advice on conservation and development practices; and

(6) any other mutually agreed upon practice that would effectuate wetland conservation and development.

Subp. 3. **Signatures.** The agreement shall be on forms provided by the commissioner and shall be signed by the owner of the designated acreage, and the commissioner.

Statutory Authority: *MS s 105.392 subd 2; 105.415*

History: 17 SR 1279

6115.1260 MODIFICATIONS OF WATER BANK AND LEASE AGREEMENTS.

Subpart 1. In general. The commissioner and the landowner may mutually agree to any modification of agreement terms that may be desirable to carry out the purposes of the program or facilitate its administration. Exception: no changes in payment rates for acreage under agreement is authorized during the term of the water bank or lease agreement.

Subp. 2. Change in ownership of lands underlying public waters. All landowners shall notify the commissioner of the sale of property that is covered by the water bank or lease agreement. Upon transfer of an individual's right and interest in lands subject to a water bank agreement during the agreement period, the former landowner forfeits all rights to further payments under the agreement and refunds to the state all payments received thereunder during that year of the transfer. Forfeiture of payments is not required for those participating in a lease agreement nor if the transferee of any such land agrees with the commissioner to assume all obligations of the former owner.

The new landowner may choose not to participate in the water bank program; however, any water declared public shall not be drained. If an alternative form of indemnification is desired, or if the new owner wishes to have payment rates adjusted on the existing water bank agreement, a permit application will have to be submitted to the commissioner to initiate the procedures in these parts. The requirement for soils information and borings shall be waived on those basins that have been determined eligible for the water bank program by previous permit applications.

When two or more farms are combined that share mutual public waters the landowner who is adding property shall have the option of adding the new property to the original agreement, continuing the former owners' agreement, or decide not to participate in the program and not be able to drain the basin.

When a transfer of ownership occurs on or before August 1 of the current calendar year and the new owner agrees to continue the former owner's obligation, payments due will be made to the new owner.

Subp. 3. Registration of modification. All modifications will be completed on amendment forms provided by the commissioner. Modifications will be noted on the original agreement and the original amendment forms will be retained by the commissioner.

Statutory Authority: *MS s 105.392 subd 2; 105.415*

History: *17 SR 1279*

6115.1270 AGREEMENT TERMINATIONS.

Subpart 1. Forfeit of rights to further payments. Upon termination of an agreement the landowner shall forfeit all rights to further payments.

Subp. 2. Termination by mutual consent. The commissioner may terminate any agreement with mutual consent of the landowner if the commissioner determines that termination would be in the public interest. If such be the case, no refund of payments made under the agreement is required.

Subp. 3. Refund of payments. The landowner must refund to the state all payments, partial or in full, received under the agreement upon any violation of the agreement terms during the time that the landowner has control of the property.

A. Subject to the commissioner's determination that the violation is material and of the nature that warrants termination of the agreement the landowner shall:

- (1) refund to the state all payments received;
- (2) forfeit all rights to further payments;
- (3) not be entitled to drain the affected basin; and

(4) not have the basin considered for a permit to drain or be allowed compensation under Minnesota Statutes, section 105.391, subdivision 3, until a transfer of ownership has taken place.

B. Subject to determining that the violation does not warrant termination of the agreement, the commissioner may require partial refunds or make payment adjustments as the commissioner deems appropriate.

Subp. 4. Termination action. The commissioner shall notify each party to the agreement of the termination:

- A. the reason for termination;
- B. the amount of payment refund due;
- C. that the landowner is no longer required to comply with the agreement terms and that the public waters cannot be drained; and
- D. that the landowner may challenge the termination by demanding a hearing under Minnesota Statutes, section 105.44.

Statutory Authority: *MS s 105.392 subd 2; 105.415*

History: *17 SR 1279*

6115.1280 EXTENSION OF WATER BANK OR LEASE AGREEMENT.

At the end of an agreement period the commissioner shall offer the landowner the landowner's choice of the five indemnification offers without requiring a new application for a permit to drain. The landowner has 60 days to notify the commissioner, in writing, if the landowner will be:

- A. continuing the former agreement terms, subject to any rate redetermination; or
- B. dissolving the former agreement; and
- C. changing to another form of indemnification; or
- D. deciding not to participate in the program with the knowledge that the basin cannot be drained.

If the landowner chooses to select another indemnification method, the choice must be specified in the landowner's notice to the commissioner.

If the notification of the landowner's intent to continue in the program is not given, the landowner will be required to submit an application for a permit to drain the basin to establish future eligibility to the water bank program.

Upon receipt of the landowner's choice, the commissioner shall conduct an appraisal to establish the fair market value of the property. Once completed, the agreement may be finalized.

Statutory Authority: *MS s 105.392 subd 2; 105.415*

History: *17 SR 1279*

AGRICULTURAL DIKE CONSTRUCTION ALONG THE RED RIVER OF THE NORTH AND BOIS DE SIOUX RIVERS

6115.1300 PURPOSE.

The purpose of these parts is to provide for the orderly and consistent review of permit applications to construct, relocate, rebuild, or alter agricultural dikes along the Red River of the North and Bois de Sioux Rivers in order to assure that the granting of such permits would be in the best interests of the people of Minnesota and North Dakota. These parts are mutually applicable in both states. The authority to establish these joint criteria is granted to the commissioner of Natural Resources in Minnesota Statutes, sections 105.42, 105.49, and 471.59 and to the North Dakota State Water Commission by Sections 61-02-24 and 61-16-15 of the North Dakota Century Code. The two states recognize that establishment of these parts governing the issuance, review, and denial of permits to construct, relocate, rebuild, or alter agricultural dikes along the boundary rivers is but the first step in the exercise of joint control over those activities which could contribute to an increased flood potential of these rivers. The two states further recognize the need to exercise this joint control in that water management decisions which appear logical in a local or statewide context may have negative interstate and international impacts.

These parts are being established at this time because there is a current need to provide a basis for the review of existing, unauthorized agricultural dikes and permit applications for the construction of additional agricultural dikes along the boundary waters. Local land owners view such dikes as interim solutions to local flood problems.

Statutory Authority: *MS s 105.415; 105.49; 471.59*

6115.1310 SCOPE.

These parts governing the review, issuance, and denial of permits to construct, relocate, rebuild, or alter agricultural dikes along the boundary rivers pertain to all such dikes located

within the floodplains of the Red River of the North and the Bois de Sioux Rivers. Floodplain areas of the Red River of the North are defined by Appendix O, Volume 8, of the Souris–Red–Rainy Basins Comprehensive Study as Red River of the North Main Stem Regional Floodplain Area, and the floodplain of the Bois de Sioux River is defined by the U.S. Geological Survey one percent chance of recurrence area flood quadrangles. These rules apply to dikes constructed on tributaries within the floodplains of these boundary rivers. These parts shall be superseded by local authority adoption of commissioner approved floodplain ordinances which include agricultural diking provisions as conditional uses.

Statutory Authority: *MS s 105.415; 105.49; 471.59*

6115.1320 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of these parts certain terms or words used herein shall be interpreted as follows.

Subp. 2. **Boundary rivers.** “Boundary rivers” means the Red River of the North and the Bois de Sioux River as they form a natural boundary between the states of Minnesota and North Dakota.

Subp. 3. **Dike.** “Dike” means an embankment constructed of earth and/or other suitable materials to protect agricultural lands.

Subp. 4. **Farmstead.** “Farmstead” means a farm dwelling and/or associated farm buildings.

Subp. 5. **Flood frequency.** “Flood frequency” means the average frequency, statistically determined, for which it is expected that a specific flood stage or discharge may be equalled or exceeded. This frequency is usually expressed as having a probability of occurring, on the average, once within a specified number of years.

Subp. 6. **Flood waters.** “Flood waters” means those waters which temporarily inundate normally dry areas adjoining a watercourse. This inundation results from an overflow of the watercourse caused by excessive amounts of rainfall and/or snowmelt which exceed its capacity.

Subp. 7. **Public waters.** “Public waters” means all natural and altered natural watercourses with a total drainage area greater than two square miles, except that trout streams officially designated by the commissioner shall be public regardless of the size of their drainage area.

Subp. 8. **Watercourse.** “Watercourse” means a channel in which a flow of water occurs either continuously or intermittently in a definite direction. The term applies to either natural or artificially constructed channels.

Statutory Authority: *MS s 105.415; 105.49; 471.59*

6115.1330 SEVERABILITY.

The provisions of these rules shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

Statutory Authority: *MS s 105.415; 105.49; 471.59*

6115.1340 DESIGN CRITERIA.

Subpart 1. **Dike setbacks and elevation.** Dikes are to be constructed at a location and elevation so as not to cause an increase in elevation of the 100–year frequency flood of more than one–half foot at any point along the river. Calculation of the effects of the dikes shall be based on an assumed equal degree of encroachment along the opposite side of the river. If mutual agreement has been reached between persons on both sides of the river, dikes on one side may utilize up to the entire increase in flood elevation allowable. In all instances the applicants maintain the liability for damages resulting from any and all activities.

Subp. 2. **Dike dimensions.** Dike top width shall not be less than six feet. Side slopes shall not be steeper than 3:1, except where slope stability analysis and slope erosion control can justify steeper slopes. No organic soil or material shall be allowed in the foundation of the fill of dikes.

Subp. 3. **Vegetative cover and riprap.** A protective cover of grasses shall be established on all exposed surfaces of the dike. Riprap shall be used where required for control of erosion.

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Subp. 4. **Interior drainage.** Dikes shall have provisions for interior drainage. The design shall include plans to handle the discharge from the drainage area based on drainage design requirements for the local area.

Statutory Authority: *MS s 105.415; 105.49; 471.59*

6115.1350 HYDROLOGIC DATA FOR DESIGN.

The North Dakota State Water Commission and the Minnesota Department of Natural Resources shall provide the discharges and corresponding elevations of the various frequency floods (and other available flood data), in relation to known historic floods, for use in dike design.

Statutory Authority: *MS s 105.415; 105.49; 471.59*

6115.1360 DIKES ACROSS NATURAL WATERWAYS AND LEGAL DRAINS.

Dikes shall not be constructed across public waters or watercourses without permit from the commissioner of natural resources, under Minnesota Statutes, section 105.42. Dikes constructed across legal drains or public ditch systems shall require the approval of the appropriate local authority (watershed district, county, city, etc.).

Statutory Authority: *MS s 105.415; 105.49; 471.59*

6115.1370 FARMSTEAD DIKING.

Within an existing dike system, ring dikes around individual farmsteads shall not require dike permits if they are not provided with tiebacks to existing roadways or dikes. Ring dikes provided with tiebacks shall be considered part of the overall dike system and will be required to secure diking permits. Outside the dike system there shall be no limitations on tiebacks of dikes around farmsteads. However, appropriate authorization must be obtained from the local land use authority consistent with adopted codes or ordinances.

Statutory Authority: *MS s 105.415; 105.49; 471.59*

6115.1380 PERMIT APPLICATION.

Subpart 1. **Forms; plans and specifications.** All applications submitted by the owner to construct, to relocate, rebuild, or alter dikes shall be made on forms provided by the commissioner and shall be accompanied by two complete sets of plans and specifications. Such plans and specifications shall include the following:

A. a general location map with a minimum scale of 1" = 800' showing the following: location of the dike with respect to the watercourse; location of field inlets to provide for internal drainage; and location of legal drains and natural channels tributary to the main river channel;

B. detailed cross-sections of the dike showing elevation, in relation to mean sea level, and side slopes; and

C. other data as deemed appropriate by the commissioner to properly evaluate the application for permit.

Subp. 2. **Cross-sections.** After review of the information required above and other available data, the state agency to which the application is made shall determine the location and number of required cross-sections of the river channel and overland areas. These locations shall be provided to the applicant who shall then provide the required cross-section data. The applicant shall undertake and agree to pay the expenses incurred in securing these cross-sections.

Subp. 3. **Joint permit applications.** Joint permit applications involving two or more landowners or a permit application on behalf of two or more landowners will be accepted by the state agencies. These permit applications, taken together, must meet the above rules.

Subp. 4. **Joint administration.** A copy of each application for a permit shall be forwarded by the state agency receiving the initial application to the other state for comment and recommendation before final approval is granted. If no response is received within 30 days, the commissioner shall process the permit without such comments or recommendations.

Subp. 5. **Permit revocation.** The applicant shall provide for certification by a registered land surveyor, engineer, or other qualified person or agency that the finished dike eleva-

tions are not higher than those approved by the commissioner. The permit will be revoked for failure to provide this certification. The permit may be revoked for failure to construct the dike in accordance with the plans and specifications submitted. Structural alteration of the dike without permission of the appropriate state agency will also result in having the permit revoked.

Subp. 6. Reconstruction; maintenance. Reconstruction of any authorized dike may be performed after notification to the commissioner of the repair needed. Permittee shall again certify the repair concurrent with this section. The maintenance of dikes must include periodic removal of woody vegetation (for example, trees and shrubs) which may become established on the embankment.

Subp. 7. General administration. All applicants for permit to construct dikes shall be subject to the provisions of parts 6115.0240 to 6115.0260.

Statutory Authority: *MS s 105.415; 105.49; 471.59*

6115.1390 EXCEPTION TO CRITERIA.

Under special circumstances, exceptions to the dike rules may be authorized on an individual basis but they must have the concurrent approval of the North Dakota state engineer, local water management board in North Dakota, Minnesota Department of Natural Resources, and local watershed district in Minnesota. Factors that will be considered include but shall not be limited to dike setback line, location of farmsteads, property lines, existing roads, stream velocity, environmental effects, and acquisition of flowage rights. Request for exceptions must be accompanied by a plan satisfactory to all agencies.

Statutory Authority: *MS s 105.415; 105.49; 471.59*

6115.1400 APPLICATION OF RULES TO EXISTING DIKES.

These parts shall apply to all unauthorized dikes constructed in the past for the protection of those agricultural lands located within the floodplains of the Red River of the North and the Bois de Sioux, as defined in part 6115.1310. Exceptions are farmstead dikes if they meet the provisions of part 6115.1370.

The commissioner shall have the authority to order removal, modification, or reconstruction of dikes not conforming to these parts.

Statutory Authority: *MS s 105.415; 105.49; 471.59*