

**CHAPTER 6115**  
**DEPARTMENT OF NATURAL RESOURCES**  
**PUBLIC WATER RESOURCES**

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**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 103A.201, 103A 208, 103F 101, 103F 105, 103F 205, 103F 351, 103G 297, 103G 305, 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 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002.

**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 public waters. Permits shall be required for any activity affecting the course, current, or cross-section of public 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 public waters except for the following:

A. utility crossings of public waters which are regulated under Minnesota Statutes, section 84.415 and rules adopted thereunder,

B. planting, destruction, and control of aquatic vegetation that is regulated under Minnesota Statutes, section 103G 615 and rules adopted thereunder;

C. water aeration systems that are regulated under Minnesota Statutes, section 103G.611, and rules adopted thereunder,

D watercraft, buoys, or other structures that are regulated under Minnesota Statutes, section 86B.111, 86B.211, or 86B.401, and rules adopted thereunder; or

E water appropriations that are regulated under Minnesota Statutes, section 103G.271, and rules adopted thereunder

**Statutory Authority:** *MS s 14.386, L 2000 c 382 s.20*

**History:** 25 SR 143

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### 6115.0170 DEFINITIONS.

*[For text of subpart 1, see M.R.]*

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

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

Subp. 3a. **Boathouse.** "Boathouse" means a floating structure that is moored by spuds, cables, ropes, anchors, or chains, may be intended for habitation, and has walls, a roof, and either an open well for boats or a floor from wall to wall. Boathouse does not include a houseboat

*[For text of subps 4 to 7, see M.R.]*

Subp. 8. **Drainage.** "Drainage" means any method for removing or diverting waters from public waters or public waters wetlands. Such methods shall include, but are not limited to, excavation of an open ditch; installation of subsurface drainage tile; filling, diking, or pumping

*[For text of subp 9, see M.R.]*

Subp 10. **Excavation.** "Excavation" means the displacement or removal of the sediment or other materials from the beds of public 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 public.

*[For text of subps 12 to 16, see M.R.]*

Subp. 16a **Houseboat.** "Houseboat" means a motorboat that has either a pontoon or a flat-bottomed hull configuration and a permanent enclosed superstructure that houses, at a minimum, built-in sleeping, cooking, and toilet facilities.

*[For text of subp 17, see M.R.]*

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

Subp. 18a **Local government unit.** "Local government unit" has the meaning given in part 8420 0110, subpart 30

*[For text of subp. 19, see M.R.]*

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

*[For text of subp 21, see M.R.]*

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 public waters to allow mining. Ancillary facilities such as access roads, bridges, culverts, and water level control structures are not mining activities.

*[For text of subp 23, see M.R.]*

Subp 24 **Offshore.** "Offshore" means the area waterward of the ordinary high water level of a public water

Subp. 25 **Ordinary high water level.** "Ordinary high water level" means the boundary of public waters as defined in Minnesota Statutes, section 103G 005, subdivision 14.

*[For text of subp 26, see M.R.]*

Subp 26a. **Permit.** "Permit" means a public waters work permit required under Minnesota Statutes, section 103G 245

*[For text of subps 27 to 30, see M.R.]*

Subp. 30a. **Project.** "Project" means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal. As used in parts 6115 0150 to 6115.0280, a project may not be split into components or phases for the sole purpose of gaining an exemption from permit requirements

Subp. 31. **Public waters.** "Public waters" means those waters of the state identified as public waters or public waters wetlands under Minnesota Statutes, section 103G 005, subdivision 15 or 15a, or 103G 201

Subp. 31a **Public waters wetlands.** "Public waters wetlands" means those public waters of the state identified as public waters wetlands under Minnesota Statutes, section 103G.005, subdivision 15a, or 103G.201

*[For text of subps 32 to 34, see M.R.]*

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 public water

*[For text of subp 36, see M.R.]*

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

*[For text of subps 38 to 39, see M.R.]*

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

*[For text of subp 41, see M.R.]*

Subp 42 **Water level control structure.** "Water level control structure" means any structure which impounds or regulates the water surface elevation or flow of public waters, including dams regulated under the provisions of parts 6115 0300 to 6115 0520.

*[For text of subp 43, see M.R.]*

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** 25 SR 143

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

## 6115.0190 FILLING INTO PUBLIC WATERS.

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

*[For text of items A to C, see M.R.]*

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

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

*[For text of items A and B, see M.R.]*

C to stabilize beds of public waters which cannot support fill materials because of excessive depths of muck, steep bank, bed slope, or other conditions;

[For text of item D, see MR]

E To dispose of rock, sand, gravel, or any other solid material resulting from activities carried out above the ordinary high water level,

[For text of items F and G, see MR]

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 level, provided local watershed district and local zoning officials are given at least seven days notice by the landowner.

[For text of item B, see MR]

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 level, and the material does not obstruct the flow of water

D To place fill in a public 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:

[For text of subitems (1) to (3), see MR]

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

[For text of items A to C, see MR]

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 public water,

[For text of item E, see MR]

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

[For text of items G to I, see MR]

**Statutory Authority:** MS s 14.386, L 2000 c 382 s 20

**History:** 25 SR 143

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#### 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 public waters parts 6115.0270 to 6115.0272, and Alterations of public waters for mining part 6115.0280

**Statutory Authority:** MS.s 14.386, L 2000 c 382 s 20

**History:** 25 SR 143

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**6115.0200 EXCAVATION OF PUBLIC WATERS.**

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

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

*[For text of item B, see M.R.]*

C. control the deposition of materials excavated from public 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, realigning, or extending of public waters. It may involve proposals for excavations landward or waterward from the ordinary high water level.

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

*[For text of items A to G, see M.R.]*

H. where the excavation would cause increased seepage of water which would lower the water level of public 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 public 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.

*[For text of subitems (1) to (3), see M.R.]*

*[For text of item B, see M.R.]*

C for repair of a public drainage system lawfully established pursuant to Minnesota Statutes, chapters 103D and 103E, and sponsored by the public drainage authority consistent with the definition of "repair" set forth in Minnesota Statutes, section 103E.701, subdivision 1.

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

*[For text of item A, see M.R.]*

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

*[For text of subitem (1), see M.R.]*

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

*[For text of unit (a), see M.R.]*

(b) Deposition in stable on-land disposal sites located above the ordinary high water level 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 public 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 public waters shall only be permitted when it will

result in improvement of natural conditions of public 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 public 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.

*[For text of items C and D, see MR.]*

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

*[For text of items F to K, see MR.]*

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** 25 SR 143

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#### 6115.0201 SPECIFIC STANDARDS.

*[For text of subps 1 to 4, see MR.]*

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

*[For text of items A to D, see MR.]*

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:

*[For text of units (a) to (c), see MR.]*

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

*[For text of unit (e), see MR.]*

*[For text of subitem (2), see MR.]*

(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:

*[For text of units (a) to (c), see MR.]*

(d) the harbor may extend more than 200 feet inland provided the plans minimize the total length by which the public water is proposed to be extended in keeping with the number of watercraft to be served and the topography.

*[For text of subp 6, see MR]*

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

*[For text of items A to H, see MR]*

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 public 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 flood-plain management including maximum use of nonstructural measures where feasible and practical.

*[For text of items J to O, see MR.]*

P All other proposals for excavations in public 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 14.386, L 2000 c 382 s 20*

**History:** 25 SR 143

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#### **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 public waters, parts 6115.0270 to 6115.0272, and alterations of public waters for mining, part 6115.0280.

**Statutory Authority:** *MS s 14.386, L 2000 c 382 s 20*

**History:** 25 SR 143

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

#### **6115.0210 STRUCTURES IN PUBLIC WATERS.**

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

A. preserve the natural character of public waters and their shorelands,

B. provide a balance between the protection and utilization of public waters,  
and

C. encourage the removal of existing structures which do not serve the public interest from the beds of public 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 public waters

*[For text of subp 3, see MR ]*

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

*[For text of items A and B, see MR ]*

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 level 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

*[For text of subitems (2) and (3), see MR ]*

*[For text of item D, see MR ]*

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

*[For text of items A to F, see MR ]*

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

#### 6115.0211 SPECIFIC STANDARDS.

*[For text of subps 1, and 2, see MR ]*

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 public waters

Wharves shall be permitted provided the structure

*[For text of items A to E, see MR ]*

*[For text of subp 4, see MR.]*

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:

*[For text of items A to D, see MR ]*

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

*[For text of subp 6, see M.R.]*

Subp 6a **Boathouses.** A permit shall be required for the construction, reconstruction, relocation, removal, or repair of all boathouses. These activities shall be permitted only if the following conditions are met

A The boathouse is located in an area of historic boathouse use. "Historic boathouse use" shall be determined by the commissioner and be based on a review of factual information such as photographs, local government comments, newspaper accounts, or other relevant information

B The boathouse is approved by the local unit of government by means of a resolution with supporting documentation that identifies the owner, length, width, height, number of rooms, and sanitary facilities of the boathouse



C The boathouse was in existence on public waters before January 1, 1997.

*[For text of subp 7, see M.R.]*

**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 public 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:

*[For text of items A to C, see M.R.]*

**Statutory Authority:** *MS s 14 386; L 2000 c 382 s 20*

**History:** *25 SR 143*

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### 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 public waters, parts 6115.0270 to 6115.0272, and alterations of public waters for mining, part 6115.0280.

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

### 6115.0220 WATER LEVEL CONTROLS.

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

*[For text of items A to C, see M.R.]*

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

*[For text of subp 3, see M.R.]*

**Subp 4. No permit required.** No permit shall be required to construct, reconstruct, or abandon a water level control structure on public watercourses with a contributing watershed 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.

*[For text of subp 5, see M.R.]*

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

### 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 level and runout 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:"

*[For text of unit (a), see MR.]*

(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 level unless the commissioner finds that

i the control is necessary to prevent adverse impacts to the lake or adjoining property,

ii other reasonable or cost-effective alternatives are not available,

iii natural resource or hydrologic conditions exist in the watershed that would limit the potential for continuous discharge of excess waters from the lake, and

iv the outlet and discharge of excess waters is addressed in an approved water management plan under Minnesota Statutes, chapter 103B or 103D

(c) In addition to the requirements of unit (b), if the proposed control elevation is more than 1-1/2 feet below the ordinary high water level, the permit applicant shall serve a copy of the application on each county and municipality within which any portion of the lake is located and the lake improvement district, if one exists.

(d) The commissioner may not issue a permit to establish a control elevation more than 1-1/2 feet below the ordinary high water level of a lake if a county, municipality, watershed district, or lake improvement district required to be served under unit (c) or Minnesota Statutes, section 103G.301, subdivision 6, files a written objection to the issuance of the permit with the commissioner within 30 days after receiving a copy of the application.

*[For text of subitems (3) to (5), see MR]*

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

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

*[For text of subitems (2) to (6), see M.R.]*

*[For text of item C, see MR]*

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

*[For text of subitem (1), see MR]*

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

*[For text of units (a) to (m), see MR],*

*[For text of subitem (3), see MR]*

**Statutory Authority:** *MS s.14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE The temporary amendments adopted at 25-SR 143 are effective for two years and expire on July 31, 2002

### 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 public waters, parts 6115.0270 to 6115.0272, and alterations of public waters for mining, part 6115.0280

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

### 6115.0230 BRIDGES AND CULVERTS, INTAKES AND OUTFALLS.

Subpart 1 **Goals.** It is the goal of the department to allow crossings of public waters, including the construction of water intake and sewer outfall structures in public 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 public 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 part 6115.0211, subpart 8

*[For text of subp 3, see MR]*

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

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

*[For text of items B and C, see M.R.]*

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 public waters.

E To install an agricultural drain tile outletting into public 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 public waters except as provided in subparts 3 and 4, and shall meet the following general criteria

*[For text of items A to D, see MR]*

E Crossings of public 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 public waters.

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

### 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 public waters shall be met as follows

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

*[For text of subitems (1) to (3), see MR]*

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

[For text of subitem (5), see MR ]

(6) Footbridges and walkways

[For text of unit (a), see MR ]

(b) New walkways across any portion of public 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 public 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 public water through the use of existing vegetation or new plantings

[For text of subitem (2), see MR ]

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

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

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

[For text of subitems (6) to (8), see MR ]

(9) Outfall structure design shall:

[For text of units (a) and (b), see MR ]

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

**Statutory Authority:** MS s 14 386, L 2000 c 382 s 20

**History:** 25 SR 143

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

**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 public waters, parts 6115 0270 to 6115 0272, and alterations of public waters for mining, part 6115.0280

**Statutory Authority:** MS s 14 386, L 2000 c 382 s 20

**History:** 25 SR 143

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

**6115.0240 APPLICATION FOR PUBLIC WATERS PERMITS.**

[For text of subps 1 and 2, see MR ]

Subp 3 **Information required.** Pursuant to Minnesota Statutes, section 103G 305, an application shall be considered complete when:

*[For text of items A to E, see MR.]*

*[For text of subp 4, see MR.]*

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

**NOTE** The temporary amendments adopted at 25,SR 143 are effective for two years and expire on July 31, 2002

### 6115.0250 PERMIT REVIEW.

*[For text of subpart 1, see MR.]*

**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 public 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 103G.311, 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 section 103G 301.

**Subp 4 General permits.** The commissioner is authorized to issue general permits to a governmental subdivision or to the general public for classes of activities having minimal impact on public waters under which more than one activity may be conducted under a single permit

#### **Subp. 5. Public waters wetland permit processing.**

**A.** Public waters work permit applications submitted to the commissioner for proposed projects in public waters wetlands shall be permitted if authorized by parts 6115 0190 to 6115 0232 or parts 6115 0270 to 6115 0280 and if the permit application complies with provisions for sequencing under part 8420 0520, replacement provisions under parts 8420 0540 to 8420 0630, and wetland banking under part 8420 0720, subpart 2

**B** The classification of lacustrine wetlands and deepwater habitats found in Classification of Wetlands and Deepwater Habitats of the United States, Lewis M Cowardin et al., United States Department of the Interior, Fish and Wildlife Service (1979) is incorporated by reference. The document is available through the Minitex interlibrary loan system and is not subject to frequent change.

**C** The authority of the commissioner to require a permit for activities in, on, or over public waters wetlands not assigned a shoreland classification or not classified as lacustrine wetlands or deepwater habitats according to the document under item B is waived for all activities authorized by the local government unit having jurisdiction under chapter 8420 except for:

- (1) placement of fill to achieve aquatic vegetation control,
- (2) placement of fill in excess of 400 square feet to create upland areas for private development, except
  - (a) for placement of fill to construct a roadway or pathway,
  - (b) to create or improve land access from peripheral shorelands to islands, or
  - (c) to facilitate land transportation across public waters wetlands;
- (3) partial or permanent drainage,

(4) construction, modification, or removal of a water level control structure,

(5) activities allowed under part 8420 0122, subparts 1 to 8 and 10, or

(6) projects affecting lands owned and administered by the state

D. The authority of the commissioner to require a permit for activities in, on, or over public waters wetlands not assigned a shoreland classification or not classified as lacustrine wetlands or deepwater habitats according to the document under item B is waived for all activities authorized by the local government unit having jurisdiction under chapter 8420 when the commissioner has received notice or application from the landowner or project sponsor and when the commissioner has notified the applicant or project sponsor and the local unit of government within 15 working days of receipt of the notice or application

E. The authority of the commissioner to require a permit for public road activities in, on, or over public waters wetlands not assigned a shoreland classification or not classified as lacustrine wetlands or deepwater habitats according to the document under item B is waived upon receipt of a copy of the state, city, county, or town public road authority report that is submitted to the Board of Water and Soil Resources in compliance with part 8420 0540, subpart 5, item D.

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

#### **6115.0255 PUBLIC WATERS ENFORCEMENT PROCEDURES.**

Subpart 1. **Enforcement options.** Parts 6115 0150 to 6115.0280 may be enforced through one or any combination of the following authorities

A criminal proceedings under Minnesota Statutes, section 103G 141, subdivision 1,

B orders of the commissioner under Minnesota Statutes, sections 103G 251 and 103G.315, and

C cease and desist orders, restoration orders, and replacement orders, under Minnesota Statutes, section 103G 2372

The choice of enforcement authorities is dependent on the scope of the activity conducted without a public waters work permit.

Subp 2 **Enforcement authorities.** The commissioner, conservation officers, and other peace officers may issue cease and desist orders and restoration and replacement orders according to Minnesota Statutes, section 103G.2372

#### **Subp. 3. Cease and desist orders.**

A Cease and desist orders may be issued when the enforcement authority has probable cause that any activity is being or has been conducted in public waters or public waters wetlands without a valid permit from the commissioner

B A cease and desist order must not be issued if a landowner has documentation of a valid public waters work permit from the commissioner authorizing the work that was done or if a landowner has documentation proving that no permit is required

C The cease and desist order shall direct a landowner to

(1) stop all work, conduct no further work, and take immediate corrective action to stabilize the site from imminent erosion or restore water flow if ordered by the enforcement authority; and

(2) immediately submit a written project notification form to the area hydrologist.

D The enforcement authority issuing a cease and desist order shall promptly submit copies of the order to the Department of Natural Resources

E The commissioner or agent shall review the evidence produced by a landowner, inspect the site if necessary, and determine

- (1) if the area in question is a public water or public waters wetland,
- (2) if a public waters work permit is not required, and
- (3) if a public waters work permit application should be submitted or if a restoration order should be issued immediately

F. Pending a resolution of any criminal proceedings, if it is determined that the activity does not require a permit or if a permit is issued, the commissioner or agent shall request that the enforcement authority rescind the cease and desist order, pending the outcome of any decision that is appealed, and notify the soil and water conservation district, the Department of Natural Resources, and the landowner. If the application is denied, the commissioner shall immediately notify the soil and water conservation district, the enforcement authority, and the landowner.

G. A cease and desist order shall advise the landowner that violation of the order is a misdemeanor.

#### Subp 4 Restoration and replacement orders.

A. If the commissioner or agent, with the concurrence of the enforcement authority, determines that restoration will not restore all the loss caused by the drain, excavate, structure, or fill activity, the enforcement authority may order a combination of restoration and replacement or may order replacement rather than restoration.

B. The enforcement authority shall issue a restoration order or replacement order after a cease and desist order has been issued and

(1) the landowner has not submitted a written project notification form to the area hydrologist within three weeks, or

(2) the commissioner has denied a permit application.

C. Promptly upon being informed of the need, the commissioner or agent shall inspect the site and prepare a plan for restoring the site to its prealtered condition. Restoration shall be ordered unless the commissioner or agent, with the concurrence of the enforcement authority, concludes that restoration would cause additional impairment or further degradation of the public water. The commissioner or agent shall incorporate the restoration plan into a restoration order and send it to the enforcement authority for service in person or by certified mail to the landowner.

D. A restoration order must specify a date by which the landowner must restore the public waters or public waters wetlands according to the commissioner's plan and obtain a certificate of satisfactory restoration from the commissioner or agent.

E. A replacement order must specify a date by which the landowner must submit a replacement plan to the commissioner and a subsequent date by which the landowner must replace the public waters and obtain a certificate of satisfactory replacement from the commissioner or agent.

F. A restoration or replacement order shall advise the landowner that violation of the order is a misdemeanor.

G. If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the commissioner or agent, with the concurrence of the enforcement authority, shall determine which is appropriate, and if it is restoration, the method of restoration. If the court orders replacement, the landowner must follow the replacement plan ordered by the commissioner or agent.

H. If a landowner seeks approval of a public waters work permit after the proposed project has already impacted the public water or public waters wetland, the commissioner may require the landowner to replace the impacted public water or public waters wetland at a ratio not to exceed twice the replacement ratio otherwise required.

#### Subp 5. Appeals of replacement and restoration orders.

A. A landowner may appeal the terms and conditions of a restoration or replacement order issued pursuant to subparts 2 to 4, to the commissioner, within 30 days of receipt of written notice by filing a written request for review. If the written request is not submitted within 30 days, the restoration or replacement order becomes

final The commissioner shall review the request and supporting evidence and render a decision within 60 days of the request for review

B. If a landowner wishes to appeal the decision of the commissioner after review under item A, the landowner must file a written request within 30 days for a contested case hearing under Minnesota Statutes, chapter 14

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE This part, adopted at 25 SR 143, is effective for two years and expires on July 31, 2002

#### 6115.0260 STATUTORY REQUIREMENTS.

Further provisions for the administration of these rules are found in Minnesota Statutes, chapter 103G, including, but not limited to sections 103G 135, 103G 141, 103G 241, 103G.251, 103G 295, 103G 301, 103G 305, 103G 311, and 103G.315

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

#### 6115.0270 DRAINAGE OF PUBLIC WATERS.

Subpart 1 **Goals.** It is the goal of the department to protect and preserve public waterbasins and public waters 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 public waterbasins and public waters wetlands for all purposes except mining of metallic or nonmetallic minerals which are subject to provisions of part 6115.0280

Subp. 3 **Nonpermitted activity.** The permanent or total drainage of public waterbasins and public waters wetlands shall not be permitted.

Subp 4 **Permits required.** A permit shall be required for the partial drainage or temporary drawdown of public waterbasins and public waters 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

*[For text of subitems (1) to (4), see MR]*

(5) allow the mining of iron ore, taconite, copper, copper-nickel, or nickel under the provisions of Minnesota Statutes, section 103G.297

*[For text of items B to E, see MR]*

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

#### 6115.0271 SPECIFIC STANDARDS.

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

A. The drainage or diversion of public waters for mining iron ore, taconite, copper, copper-nickel, or nickel shall be permitted only where all of the provisions of Minnesota Statutes, section 103G.297 and part 6115.0280 have been met

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

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

(1) For public 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 public waterbasins and public waters wetlands has been obtained from all riparian owners

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

*[For text of units (a) to (c), see MR ]*

*[For text of subitems (4) to (6), see MR ]*

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002

### 6115.0280 ALTERATIONS OF PUBLIC WATERS FOR MINING.

Subpart 1 **Goals.** It is the goal of the department to ensure that alterations of public 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 public 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 public waters.** Permits shall be required for any alterations of public waters to facilitate mining of iron ore, taconite, copper, copper-nickel, or nickel minerals or reclamation of mining areas provided that

*[For text of item A, see MR ]*

B Permits for alterations in public waters shall be granted in accordance with provisions of Minnesota Statutes, section 103G 297 Applications for permits for alterations in public waters shall include an analysis showing why underground mining without drainage, diversion, or control of public 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 103G 297, or reclamation of mining areas provided that the applicant provides evidence that:

*[For text of item A, see MR ]*

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

C the proposed alteration of public waters is necessary and no other feasible and economical method for it is reasonably available,

D the proposed alteration of public 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 public 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 public waters having substantial public value,

G whenever public watercourses must be diverted or changed to facilitate mining, the design and construction of the diversion or change shall provide for  
*[For text of subitems (1) to (3), see MR]*

H. whenever public 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 public basin with waters of equal or greater value, or

(2) submission of acceptable plans for the eventual replacement of the public 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

*[For text of subitem (1), see MR]*

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

*[For text of subitem (3), see MR]*

Subp 5. **Compensatory measures for detrimental aspects of mining.** Whenever metallic, nonmetallic, and peat mining activities in the beds of public waters will result in detrimental effects on the physical and biological character of public waters, measures to compensate for the detrimental aspects shall be required in the permit conditions.

**Statutory Authority:** *MS s 14 386, L 2000 c 382 s 20*

**History:** *25 SR 143*

NOTE The temporary amendments adopted at 25 SR 143 are effective for two years and expire on July 31, 2002