CHAPTER 6115
DEPARTMENT OF NATURAL RESOURCES
PUBLIC WATER RESOURCES

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 is 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 103G 315*

History: *27 SR 529*

6115.0160 SCOPE.

To achieve the purpose declared in part 6115 0150, parts 6115.0160 to 6115 0280 set forth minimum standards and criteria for the review, issuance, and denial of permits for proposed projects affecting public waters Permits are required for any activity affecting the course, current, or cross-section of public waters unless specifically exempted within parts 6115 0160 to 6115 0280

These standards and criteria apply to the public waterbasms, public watercourses, and public water wetlands identified on public water inventory maps authorized by Minnesota Statutes, section 103G 201 The designation of waters of the state as public waters does not grant the public additional rights or grant right of access to the waters, diminish the right of ownership or usage of the beds underlying the designated public waters, affect state law forbidding trespass on private lands, or require the commissioner to acquire access to the designated public waters under Minnesota Statutes, section 97A 141

These standards and criteria apply to any and all work that 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 that are regulated under Mmnesota 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 103G 315*

History: *27 SR 529*

6115.0170 DEFINITIONS.

Subpart 1 **Certain terms.** For the purposes of parts 6115 0150 to 6115 0280, certain terms or words used are interpreted as follows the word "shall" is mandatory, not permissive All distances unless otherwise specified are measured horizontally.

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. **Boat storage structure.** "Boat storage structure"means a structure that is supported on the bed of a public water and has walls, a roof, and either an open well for boats or a floor from wall to wall

Subp 3b **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 or boat storage structure

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 or structure extending waterward from the shoreline intended for ingress and egress for moored watercraft or seaplanes or to provide access to deeper water for swimming, fishing, or other water-oriented recreational activities

Subp 8. **Drainage.** "Dramage" means any method for removing or diverting waters from public waterbasins or public water wetlands The methods 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. 9a **Ecology of the waters.** "Ecology of the waters" means the natural aquatic environment, includmg organisms, physical characteristics, and interactions between and among the organisms and their surroundings

Subp 9b **Energy exchanger.** "Energy exchanger" means a structure designed for placement on the bed or excavated mto the bed of public waters for the purpose of exchanging energy for heatmg or cooling and includes accompanying hoses or lines connecting the energy exchange components.

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 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 structure, except for boathouses, watercraft, and seaplanes, that is supported entirely by its own buoyancy and can be removed from public waters before winter freeze-up by skidding intact or by disassembly with hand tools

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 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

Subp 16b. **Ice ridge.** "Ice ridge" means a linear mound of lakebed materials pushed up onto the lakeshore by the action of ice

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 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

Subp 18b **Local origin.** "Local origin" means a source for live plant materials and their propagules that is limited to areas of the same region where the plant materials are proposed to be planted, not to exceed 200 miles from where the plant materials are proposed to be planted.

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 commercial mooring facility for the concentrated mooring of seven or more watercraft or seaplanes wherein commercial ancillary services common to marinas are provided

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 public 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. 23a **Mooring facility.** "Mooring facility" means a concentrated area intended solely for the mooring or containment of seven or more watercraft or seaplanes by docks, mooring buoys, or other means

Subp 23b **Native plants.** "Native plants" means indigenous plant species growing in an ecological classification system province or a major watershed in Minnesota prior to European settlement

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

Subp 26 [Repealed, 27 SR 529]

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

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

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

Subp 31b **Public waterbasins.** "Public waterbasins" means those public waters of the state identified as public waterbasins under Minnesota Statutes, section 103G.005, subdivision 15, clauses (1) to (8), or 103G 201, as shown on the public water inventory maps Public waterbasins includes public water wetlands reclassified as public waters according to the procedures in Minnesota Statutes, section 103G 201

Subp 31c **Public watercourse.** "Public watercourse" means those public waters of the state identified as natural and altered natural watercourses under Minnesota Statutes, section 103G 005, subdivision 15, clauses (9) and (10), or 103G 201, as shown on the public water inventory maps

Subp. 31d. **Public waters inventory or protected waters inventory.** "Public waters inventory" or "protected waters inventory" means the map prepared by the commissioner on file with the auditor of a county under Minnesota Statutes, section 103G 201.

Subp. 31e **Public waters work permit.** "Public waters work permit" means a permit issued by the commissioner under Minnesota Statutes, section 103G.245

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 public water

Subp 36 [Repealed, 27 SR 529]

Subp 36a **Shoreline zone.** "Shoreline zone" means an area immediately waterward of the ordinary high water level that may include the littoral area of a water body

Subp 37 **Structure.** "Structure" means any building, footing, foundation, slab, roof, boathouse, deck, wall, dock, bridge, culvert, or any other object extending over or under, anchored to, or attached to the bed or bank of a public 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 dock, floating structure, watercraft lift, watercraft canopy, or other structure that can be removed from public waters by skidding intact or by disassembly with hand tools

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 public waters, including dams regulated under the provisions of parts 6115 0300 to 6115 0520.

Subp 42a **Watercraft canopy.** "Watercraft canopy" means a structure or device with a fabric covered roof and without walls or a floor that is placed on the bed of a public water, is designed to shelter watercraft, and is designed and constructed so that all components may be removed from the lake or stream bed on a seasonal basis by skidding intact or by disassembly with hand tools

Subp 42b **Watercraft lift.** "Watercraft lift" means a structure or device without walls that is placed on the bed of a public water, is designed to lift watercraft above the level of the public water when not in use, and is designed and constructed so that all components may be removed from the lake or stream bed on a seasonal basis by skidding intact or by disassembly with hand tools A watercraft lift may be designed to include a fabric covered roof

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 103G 315*

History: *27 SR 529*

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

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 pubhc waters.

Subp 3 **Prohibited placement.** Placement is prohibited in the following cases.

A. to achieve vegetation control,

B to create upland areas, except where expressly provided herein,

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,

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 level,

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, when 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 pubhc purposes or interests, the commissioner may waive this provision if·

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

(2) the public need for the project rules out the no-build alternative, or

G filling posted fish spawning areas.

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

A to install a beach sand blanket if:

(1) 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,

(2) the beach sand blanket does not cover emergent vegetation, unless authorized by an aquatic plant management permit, and

(3) 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, or

C to place fill m a pubhc watercourse havmg a total drainage area, at its mouth, of five square miles or less, if the watercourse is not an officially designated trout stream and the placement of fill does not result m:

(1) any diversions of water from the dramage area,

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

(3) any actions that 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 are required for the placement of fill in public waters, except as provided under subparts 3 and 4, and a project must meet all of the following requirements

A. the project does not exceed more than a minimum encroachment, change, or damage to the environment, particularly the ecology of the waters,

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 public water,

E the proposed project represents 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 public 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 are subject to feasible and practical measures to mitigate the effects,

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

I the proposed filling is 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 103G 315*

History: *27 SR 529*

6115.0191 SPECIFIC STANDARDS; FILLING.

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 [Repealed, 27 SR 529]

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.** Permits for filling to recover shoreland lost by erosion or other natural forces shall be granted if.

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

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 do not preclude the issuance of permits to recover up to 400 square feet of eroded area or 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 is allowed only on those waters that are under the jurisdiction of established port authorities subject to the following

A no filling is allowed to extend beyond the limits of federally established harbor lines, or when 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 is part of a comprehensive port development plan that has been approved by the commissioner, and

C. adverse effects of the proposed filling on the physical and biological character of the area are 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 is 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 103G 315*

History: *27 SR 529*

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,

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 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 part includes any activity that 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. **Prohibited excavation.** Excavation is prohibited 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 when the proposed excavation will be detrimental to significant fish and wildlife habitat and there are no feasible, practical, or ecologically acceptable means to mitigate the effects,

D when the proposed excavation will take threatened or endangered species listed in chapter 6134 without authorization by the commissioner according to parts 6212 1800 to 6212 2300,

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 public waters and result in subsurface drainage

Subp 4 **No permit required.** No permit for excavation is 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, if 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, or

(3) any actions that 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, or

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

Subp 5 **Permits required.** Permits are 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 a project is subject to the following general criteria.

A the project is 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 is subject to the following requirements

(1) the disposal of any excavated materials containing pollutants is subject to requirements of Minnesota Statutes, chapter 115; and

(2) the most acceptable means of disposing of clean materials, free from pollutants, that are excavated from public 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 m 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 are required for redeposition of excavated materials subject to the standards and criteria of subparts 2 to 5; and

(e) determination of the public benefit served by redeposition of excavated materials is 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,

C the proposed project represents the "minimal impact" solution to a specific need with respect to all other reasonable alternatives and does not exceed more than a minimum encroachment, change, or damage to the environment, particularly the ecology of the waters,

D the excavation is limited to the minimum dimensions necessary for achieving the desired purpose,

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

F the biological character of the waters and surrounding shorelines is affected to the minimum degree feasible and practical,

G adverse effects on the physical or biological character of the waters are subject to feasible and practical measures to mitigate the effects,

H the water supply, navigational, and drainage characteristics of the waters is 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 is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved;

J. the proposed excavation is consistent with plans and management programs of local and regional governments, provided that such plans are consistent with state plans and programs, and

K. for harbors, boat slips, and other mooring facilities, the excavation is 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 103G.315*

History: *27 SR 529*

6115.0201 SPECIFIC STANDARDS; EXCAVATION.

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, shiprails, 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 public 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. For residential and commercial planned unit developments, the number of mooring spaces to be permitted shall be consistent with part 6120 3800

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 public 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 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

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 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.

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 dramage 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 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 103G 315*

History: *27 SR 529*

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.

Subp 3. **Prohibited placement of structures.** Placement of structures, temporary structures, and floating structures is prohibited when the structure, temporary structure, or floating structure.

A will obstruct navigation or create a water safety hazard,

B will be detrimental to significant fish and wildlife habitat Construction is prohibited in posted fish spawning areas,

C is designed or intended to be used for human habitation or as a boat storage structure,

D. is designed or intended to include walls, a roof, or sewage facilities, or

E will take threatened or endangered species listed in chapter 6134 without authorization by the commissioner according to parts 6212 1800 to 6212 2300.

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

A to construct, reconstruct, or install a dock, floating or temporary structure, watercraft lift, or mooring facility if

(1) the structure or mooring facility will not constitute a hazard to navigation or public health, safety, and welfare, as determined by the commissioner,

(2) the structure will allow the free flow of water beneath it,

(3) the structure or moormg facility is not used or intended to be used as a marina,

(4) the structure or mooring facility is consistent with or allowed under local land use controls, as determined by the local government land use authority,

(5) the length of the structure is limited to that necessary to accomplish its intended use, including reaching navigable water depths,

(6) the structure, other than a watercraft lift or watercraft canopy, is not more than eight feet in width and is not combined with other similar structures so as to create a larger structure, and

(7) docks placed on rock filled cribs are located only on waters where the bed is predominantly bedrock, which is incapable of accepting pilings,

B to construct or reconstruct a boat launching ramp if:

(1) privately owned ramps do not exceed 12 feet in width and do not extend more than ten feet beyond the shoreline 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 are allowed to provide a stable base or maintain use of the ramp,

(2) publicly owned ramps do not exceed 36 feet in width and do not extend more than 30 feet waterward of the shoreline or into water more than four feet in depth, whichever is less Excavations of 200 cubic yards or less, and placement of up to 80 cubic yards of crushed rock, gravel, clean sand, or small stone are allowed to provide a stable base or maintain use of the ramp The use of coffer dams constructed of metal sheet piling or other portable materials is allowed to construct and maintain public boat launching ramps if all materials are completely removed from public waters within 30 days of completion of the project,

(3) the ramp is constructed of gravel, natural rock, concrete, steel matting, or other durable inorganic material not exceeding seven inches in thickness, and

(4) the ramp is not located on a federally designated wild and scenic river, or

C. to remove structures or other waterway obstructions if

(1) the original cross-section and bed conditions are restored insofar as practicable,

(2) the structure is completely removed including any footings or pilings that obstruct navigation;

(3) the structure is not located on an officially designated trout stream, and

(4) the structure does not function as a water level control device.

Subp 5 **Permits required; criteria.** Permits are required for the construction, reconstruction, repair, or relocation of any structure or mooring facility on or in public waters, except as provided under subparts 3 and 4, and a project must 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 does not exceed more than a minimum encroachment, change, or damage to the environment, particularly the ecology of the waters,

C. the proposed structure is 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 are subject to feasible and practical measures to mitigate the effects,

E the proposed structure is 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, and

F except for mooring facilities and boat ramps, all new structures have a title-registered permit, unless a public agency or local governmental unit accepts responsibility for future maintenance or removal

Statutory Authority: *MS s 103G 315*

History: *27 SR 529*

6115.0211 SPECIFIC STANDARDS; STRUCTURES.

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 3 to 8

Subp 2 [Repealed, 27 SR 529]

Subp 3. **Wharves.** A permit is 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, and wharf projecting into public waters.

Wharves shall be approved if 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 is of the minimum practicable size, 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.** A permit is required for the construction or reconstruction of all offshore breakwaters. These structures shall be approved if the following general conditions and the additional listed specific conditions are met

A. alternative dock or inland facilities are infeasible,

B. the structure is limited to those waters where·

(1) prevalent wind, wave, or current conditions along the shoreline are of a magnitude and frequency that preclude the use and maintenance of docks to moor watercraft. Determinations of magnitude and frequency that would inhibit the use of docks is 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 wind, waves, or currents, and

(2) 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 that could be used to haul watercraft out of the water for on-land storage,

C the facility is 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),

D. the plan is adequate in relation to the geologic and hydrologic factors listed in part 6115 0201, subpart 5, item E, subitem (2), units (a) to (e),

E the structure is designed in a compact fashion so as to blend in with the surrounding shoreline and so that all mooring and maneuvering activities can be normally confined to an area bounded by the property lines as extended into the public waters while minimizing the surface area occupied in relation to the number of watercraft to be served, and

F the breakwaters do not exceed the minimum thickness necessary to withstand the anticipated forces consistent with maintenance requirements and are faced with an adequate layer of natural rock riprap of appropriate size and gradation

Subp 4a **Mooring facilities.** Except as provided in part 6115 0210, subpart 4, item A, a permit is required for the construction of all offshore mooring facilities A mooring facihty shall be approved if the following general conditions and the additional listed specific criteria are met

A. the mooring facihty is designed in a compact fashion so as to blend in with the surrounding shoreline and so that all mooring and maneuvering activities can be normally confined to an area bounded by the property lines as extended into public waters while minimizing the surface area occupied in relation to the number of watercraft to be served;

B. the mooring facility minimizes encroachment waterward of the ordinary high water level, and

C. for docks or mooring facilities more than eight feet in width, the applicant provides reasonable justification that the proposed width represents the minimal impact solution to a specific need with respect to all reasonable alternatives,

D offshore mooring facilities shall be approved, subject to the listed specific conditions

(1) private offshore moormg facilities not serving as marinas, if the mooring facility is consistent with or allowed under local land use controls, as determined by the local government land use authority,

(2) pubhc offshore mooring facilities not serving as marinas, if

(a) a local unit of government passes a resolution that specifies the public interests to be benefited by the proposal,

(b) the mooring facility is appropriately sized consistent with the demand for moormg facilities in the area and the number of watercraft to be served; and

(c) the mooring facihty is available for use by the general public, and

(3) offshore marinas, if:

(a) the area is zoned for such use or the local government land use authority grants a land use permit, and

(b) the marina is 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 is required for the construction or reconstruction of all retaming walls and erosion and sedimentation control structures that do not impound water The construction of retaining walls is discouraged because their appearance is generally not consistent with the natural environment and their construction and mamtenance cost is generally greater than riprap.

The issuance of permits is contingent on the following conditions·

A existing or expected erosion problems preclude the use of riprap shore protection, there is a demonstrated need for direct shoreland docking, or the design is consistent with existing uses in the area Examples are riverfront commercial-industrial areas having existing structures of this nature, dense residential shoreland areas where similar retainmg walls are common, resorts where floating docks may be attached to such a bulkhead, or where barges are utilized to transport equipment and supplies,

B adequate engineermg studies are performed of foundation conditions, tiebacks, internal drainage, construction materials, and protection against flanking,

C. the facility is not an aesthetic intrusion upon the area and is consistent with all apphcable local, state, and federal management plans and programs for the water body, and

D encroachment below the ordinary high water level is held to the absolute minimum necessary for construction

Subp 6 **Boat launching ramp.** A permit is required for the construction or reconstruction of any boat launching ramp not covered under part 6115 0210, subpart 4, item B, and shall be granted if

A. the applicant demonstrates a need for a launching facility;

B the proposed ramp is of the minimum dimensions necessary for launching of watercraft,

C. the proposed ramp does not obstruct flowing water, and

D construction does not necessitate alteration of shoreland that could result in substantial erosion and sedimentation

Subp 6a **Boathouses.** A permit is required for the construction, reconstruction, relocation, removal, or repair of a boathouse. The permit shall be granted 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 shall 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, and

C the boathouse was located on public waters before January 1, 1997

Subp 6b **Energy exchangers.** A permit is required for the construction, reconstruction, relocation, or repair of energy exchangers located on the bed of a public water The permit shall be granted if the following general conditions and the additional listed specific conditions are met

A there are no other feasible and practical alternative sites for the project that would have less environmental impact,

B a closed loop design is utilized,

C the facility is designed in accordance with sound engineering practices,

D. the facility is not located in a designated trout stream or lake, a designated wild and scenic river, or an outstanding resource value water as defined in part 7050 0180,

E the facility is designed in a fashion and located so as not to cause a navigation hazard,

F the facility will not exceed more than a minimum encroachment, change, or damage to the environment, particularly the ecology of the waters;

G the facility will not take threatened or endangered species identified in chapter 6134 without authorization by the commissioner according to parts 6212.1800 to 6212 2300,

H the facility will not contain substances, if released into public waters, that would be detrimental to water quality or plant or animal life forms, and

I the construction, relocation, or reconstruction of privately owned structures shall be permitted only when a federal, state, or local governmental agency accepts responsibility for future maintenance of the facility or its removal in the event that the private owner fails to maintain or abandons the facility

Subp. 7 **Other facilities.** A permit is required for the construction, reconstruction, relocation, removal, repair, and abandonment of all other offshore structures, boat storage structures, cables other than utility crossings, pilings, or other structures 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 if 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, and

(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, other than docks and mooring facilities, shall be permitted only when a governmental agency or local unit of governmental 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 public waters under the applicable provisions of these rules Except as provided under part 6115 0210, subpart 4, item C, 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 103G 315*

History: *27 SR 529*

6115.0215 RESTORATION OF PUBLIC WATERS.

Subpart 1 **Goals.** It is the goal of the department to encourage the restoration of public waters to

A. improve and protect fish and wildlife habitat and the diversity of the habitat,

B preserve the natural character of public waters and their shoreline zones,

C encourage the use of natural materials for shoreline zone protection and restoration,

D limit the removal of natural materials from the beds of public waters, and

E prevent erosion and siltation of public waters, while maintaining natural processes

Subp 2 **Scope.** This part applies to placement, construction, reconstruction, repair, relocation, abandonment, or other work needed to restore or protect public waters or to removal of any materials, structure, fill, water level control, excavation, or drainage device placed on or in public waters For purposes of this part, "restoration" means the repair, reconstruction, or recreation of essentially natural or native conditions of a public water and its shoreline or banks This part does not apply to restoration orders issued by the commissioner consistent with part 6115.0255

Subp 3. **Prohibited work.** Public waters alteration, protection, or restoration work is prohibited when the work

A is detrimental to significant fish and wildlife habitat and there are no feasible, practical, or ecologically acceptable means to mitigate the effects,

B takes threatened or endangered species listed in chapter 6134 without authorization by the commissioner according to parts 6212 1800 to 6212 2300,

C obstructs navigation or creates a water safety hazard, as determined by the commissioner,

D violates the regulations of any local zoning authority or water management agency,

E results in the creation of land above the ordinary high water level that is not deemed essential by the commissioner as part of the project,

F uses materials that are not clean and free of pollutants, nutrients, and exotic species sources,

G manipulates water levels solely to satisfy private interests, or

H. will adversely impact public infrastructure, particularly roads and dramage systems

Subp 4. **No permit required.** No permit is required for the following activities, unless prohibited elsewhere in parts 6115 0150 to 6115 0280

A. to perform bank or shoreline zone restoration work usmg willow wattles, willow posts, brush mattressing, brush layering, fiber roll breakwaters, plant carpets, root wads, and other natural materials installed by hand for the purpose of shoreline zone restoration work, if·

(1) the project is approved by the commissioner and designed or reviewed by the local soil and water conservation district or the local watershed district,

(2) the design does not interfere with navigation or other riparian uses of the waterbody,

(3) the project is done during times of the year when it will not interfere with fish spawning or the nesting of protected bird species,

(4) local origin native plant species, adapted for the site, are used,

(5) an aquatic plant management permit is obtamed, when aquatic macrophytes are used,

(6) the waterward encroachment is the minimum necessary for the purpose of the project, and

(7) a maintenance plan is developed for the project and a copy submitted for review to the department area fisheries office,

B to remove or grade an ice ridge, if all of the following conditions are met

(1) the ice ridge resulted from ice action within the last year,

(2) the project is either exempt from local permits or is authorized by issuance of a local government permit,

(3) the total length of shoreline zone to be affected does not exceed 200 feet,

(4) all ice ridge material that is composed of muck, clay, or organic sediment is deposited and stabilized at an upland site above the ordinary high water level of any public water,

(5) all ice ridge material that is composed of sand or gravel is removed as provided in subitem (4) or graded to conform to the original cross-section and alignment of the lakebed, with a finished surface at or below the ordinary high water level;

(6) no additional excavation or placement of fill material occurs on the site,

(7) all exposed areas are immediately stabilized as needed to prevent erosion and sedimentation, and

(8) local zoning officials, the watershed district, if apphcable, and the soil and water conservation district are given seven days' prior notice;

C to construct, reconstruct, or abandon a water level control structure on a pubhc watercourse with a contributing watershed of 300 acres or less, except on officially designated trout streams, if the structure does not qualify as a dam under parts 6115.0300 to 6115 0520;

D to excavate or place fill for the purpose of planting or collecting native aquatic plants for restoration purposes, if the work is authorized by an aquatic plan management permit, and

E to install natural rock riprap and associated filter materials where there is a demonstrated need to prevent erosion or to restore eroded shoreline, when there is a demonstrated need for such work, except along the shores of Lake Superior and officially designated trout streams, if

(1) the rock is sized appropriately with the erosion potential of the wave or current action of the particular water body, but in no case shall the rock average less than six inches in diameter or more than 30 inches in diameter;

(2) the rock is placed so that it conforms to the natural alignment of the shoreline zone,

(3) the finished slope, as measured on top of the rocks, is not steeper than three to one (horizontal to vertical),

(4) no materials are placed more than six feet waterward of the ordinary high water level, unless the commissioner determines that this dimension may be measured from another point due to the particular nature of water levels of the public water,

(5) the total length of shoreline to be affected does not exceed 200 feet for public waterbasins or public water wetlands or five times the width of the public watercourse measured at bank full conditions,

(6) the riprap does not cover emergent vegetation, unless authorized by an aquatic plant management permit,

(7) the riprap does not obstruct navigation or the flow of water,

(8) a filter, consisting of crushed rock, gravel, or suitable filter fabric material is placed underneath the rock, and

(9) the rock and any filter material are free from organic material, soil, clay, debris, trash, or any material that may cause siltation or pollute the waterbody

Subp 5. **Permit required; criteria.** A permit is required for the restoration of public waters, except as provided under subpart 4, and shall be granted if all of the following conditions are met.

A the proposed project represents the minimal impact solution to a specific need with respect to all other reasonable alternatives,

B 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 to remove or eliminate nutrients or contaminants,

(4) restore shorelines or watercourse channels to more natural conditions,

(5) improve or restore natural hydrologic conditions, or

(6) improve or restore water quality,

C. the project does not exceed more than a minimum encroachment, change, or damage to the environment, particularly the ecology of the waters,

D adverse effects of the proposed project on the physical or biological character of the waters are avoided when possible and are subject to feasible and practical measures to mitigate the effects,

E the proposed project is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved;

F the proposed project is consistent with water and related land management plans and programs of local and regional governments, provided the plans and programs are consistent with state plans and programs, and

G. projects that involve the placement of fill to recover shoreland lost by erosion or other natural forces are subject to part 6115 0191, subpart 4, except that part 6115.0191, subpart 4, does not preclude the issuance of a permit to place riprap materials or use other structural and vegetative means for protection of the shoreline zone to prevent continuing erosion

Statutory Authority: *MS s 103G 315*

History: *27 SR 529*

6115.0216 SPECIFIC STANDARDS; RESTORATION.

Subpart 1 **In general.** In addition to compliance with the general standards in part 6115 0215, subparts 2 to 5, specific requirements apply to the activities described in subparts 2 to 6

Subp 2 **Riprap shore protection.** The protection of shoreline from continued erosion by placement of natural rock riprap along the shore shall be approved if

A the riprap materials are of sufficient size, quality, and thickness to withstand ice and wave action The riprap must be placed with a minimum amount of space between the larger materials and the space between them must 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 when site conditions warrant, the toe end of the riprap is installed in a trench excavated into the bed of the public water to anchor the riprap from ice and wave action, with all excavated materials either used to back fill behind the riprap or removed from the bed of the public water,

D the encroachment into the water is the minimum amount necessary to provide protection and does not unduly interfere with the flow of water, and

E adequate engineering studies are done to certify the adequacy of the design of the riprap project, if deemed necessary by the area hydrologist.

Subp. 3 **Bioengineering projects.** The grading or filling of materials below the ordinary high water level to facilitate the installation or use of willow wattles, willow posts, brush mattressing, brush layering, fiber roll breakwaters, plant carpets, root wads, and other natural materials for erosion protection and shoreline zone restoration purposes shall be approved if:

A the methods and materials used are designed in consultation with department or local government staff experienced in the use of such materials,

B excavation and fill placement needed in conjunction with bioengineering projects are minimized and are subject to all requirements related to fill and excavation in parts 6115 0190, 6115 0191, 6115 0200, and 6115 0201, and

C a separate aquatic plant management permit is obtained whenever the project involves planting aquatic plants other than willow and dogwood.

Subp. 4 **Structural erosion control projects.** Installation of rock gabions, A-jacks, cable concrete, bendway weirs, interlocking concrete blocks, eddy rocks, deflectors, gravel riffles, or other structural methods of erosion control or bank stabilization shall be approved if

A. adequate engineering studies are performed to determine the suitability for use of any of these types of erosion control projects, as determined by the department,

B the project is not an aesthetic intrusion upon the area and is consistent with all applicable local, state, and federal management plans, programs, and ordinances relating to the affected waterbody,

C. encroachment below the ordinary high water level is limited to the minimum necessary for the construction project,

D. when the project involves the removal of aquatic plants, a separate aquatic plant management permit is obtained,

E. the project does not adversely impact native plants, trees, or animals, and

F any retaining wall complies with requirements for structures under parts 6115 0210 and 6115 0211

Subp 5 **Wave breaks.** Grading, filling, or excavation to install rock, silt fence, or any other material or device designed solely for the purpose of protectmg native aquatic plants from wave or current action durmg their establishment shall be approved if:

A the materials do not obstruct navigation or the flow of water,

B the project is done in conjunction with an issued aquatic plant management permit, and

C temporary (less than two years) wave breaks are preferred over permanent structures, which must also meet the requirements of parts 6115 0210 and 6115 0211

Subp. 6. **Other erosion control projects.** Using a structure, material, fill, excavation, or other technique that is not covered under subparts 2 to 5 and that is designed primarily to control erosion of the shoreline zone or to restore the shoreline zone to a more natural condition or altering the shorelme zone in any way that is not covered by specific regulations shall be approved if

A the intended purpose of the project is reasonable with respect to all other alternatives,

B. any method of erosion control that is not widely accepted as being effective is used only as a temporary or experimental project, provided that the project sponsor must totally repair the shoreline zone if the project proves to be unsuccessful within five years A public entity must be a cosponsor of the temporary or experimental project and accept responsibility for maintenance, repair, and removal of the project,

C the project complies with all other federal, state, and local regulations and ordinances, and

D the project adequately protects public safety and promotes the public welfare

Subp 7 **Contaminated site restoration projects.** Restoration of a site contaminated with materials or water determined to be hazardous or toxic through a publicly funded study or site cleanup process shall be approved if

A the study includes a discussion of alternative approaches to restore the contammated site, and

B the commissioner, in consultation with the Minnesota Pollution Control Agency, participated in either the development of the site restoration plan or study and concurs with the site restoration plan or study recommendations or participated in the development of the site restoration funding initiative and concurs with the funded initiative

Statutory Authority: *MS s 103G 315*

History: *27 SR 529*

6115.0217 APPLICATION OF OTHER STANDARDS; RESTORATION.

Unless otherwise specified in other parts, parts 6115 0215 and 6115.0216 apply to projects proposed as part of any other activity or activities including, but not limited to:

A. filling, parts 6115.0190 to 6115 0192,

B excavations, parts 6115 0200 to 6115 0202,

C structures, parts 6115.0210 to 6115 0212,

D water level controls, parts 6115.0220 to 6115 0222,

E. bridges and culverts, parts 6115 0230 to 6115 0232,

F. dramage of public waters, parts 6115.0270 to 6115 0272, and

G alterations of public waters for mining, part 6115 0280.

Statutory Authority: *MS s 103G 315*

History: *27 SR 529*

6115.0220 WATER LEVEL CONTROLS.

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

A maintain or restore natural flow and natural water level conditions to the maximum feasible extent,

B encourage the construction of small off-channel retarding structures for the conservation of water in altered, natural waterbasins, consistent with any overall plans for the affected watershed area, and

C limit the artificial manipulation of water levels, except when 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 public waters is subject to the provisions of this part

Subp 3. **Prohibited water level control facilities.** Construction or reconstruction of water level control facilities is prohibited when it is intended to manipulate water levels solely to satisfy private interests

Subp 4 **No permit required.** No permit is 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

Subp 5 **Permits required.** Permits are required for the construction, repair, reconstruction, or abandonment of any water level control structure, except as provided in subparts 3 and 4, and a project must 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 are subject to feasible and practical measures to mitigate the effects,

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

D the proposed project is 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 complies with 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 shall be approved only 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, or

(8) restore the existing control elevation to a historic natural water elevation if detailed engineering surveys establish that the proposed control elevation does not exceed the estimated natural control elevation; and

G the construction or reconstruction of water level control structures or changing the level of an existing structure on watercourses shall be approved only to

(1) control and store flood waters,

(2) improve water-based recreation,

(3) create, improve, and maintain water supplies,

(4) establish, improve, or maintain the generation of hydroelectric power; or

(5) create, improve, or maintain aquatic habitat for fish and wildlife species

Statutory Authority: *MS s 103G 315*

History: *27 SR 529*

6115.0221 SPECIFIC STANDARDS; WATER LEVEL CONTROLS.

Subpart 1 **Specific requirements.** In addition to the general standards in part 6115.0220, subparts 2 to 5, specific requirements for water level control structures shall be met according to this part

Subp 2. **Permanent lake level control facilities.**

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 are "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 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; and

(c) the commissioner may issue a permit to restore the existing control elevation to a historic natural water elevation if detailed engineering surveys establish that the proposed control elevation does not exceed the estimated natural control elevation,

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

(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 is 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; and

(d) management of excess waters

B In addition to the requirements of item A, subitem (2), unit (b), if the proposed control elevation is more than 1-1/2 feet below the ordinary high water level, the permit applicant must 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 The commissioner must 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 this item 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

Subp. 3 **Fish and wildlife management.** Fish and wildlife management proposals made pursuant to Minnesota Statutes, section 97A 101, or other appropriate authority shall be approved when

A the public water has been designated for wildlife management purposes,

B there is a specific water level management plan for the lake basin;

C any drawdown of the lake is only temporary and the management plans include a permanent facility for restoration of water levels following such drawdowns,

D any alteration of a watercourse included in the plan follows the requirements specified in part 6115.0201, subpart 7,

E appropriate easements or fee title is obtained; and

F 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

Subp 4 **Certain landlocked waterbasins.** 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 when

A 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,

B the city has a field survey made of the waterbasin after consultation with the department, including but not limited to.

(1) the elevation of the aquatic vegetation fringe;

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

(3) groundwater elevations, if appropriate, and

(4) other information as requested by the department,

C control elevations and associated physical parameters are approved by the department and the city, and

D 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

Subp 5 **Other controls.** Permits for the construction, reconstruction, and abandonment of water level control structures not covered under subparts 2 to 4 shall be issued if·

A the need is established in terms of quantifiable benefits;

B the structural design is done by a professional engineer or by a qualified engineer of the Natural Resources Conservation Service or the Corps of Engineers and includes the following considerations

(1) gravity forces;

(2) hydrostatic pressure;

(3) uplift forces,

(4) overturning moment,

(5) resistance to sliding,

(6) ice pressures,

(7) earthquake forces;

(8) slope stability, including consolidation and pore pressures,

(9) seepage collection or prevention;

(10) foundation conditions, includmg appropriate borings and determination of the strength of foundation materials,

(11) specifications for materials of construction and their placement or installation,

(12) adequate construction inspection to assure conformance with design assumptions, and

(13) adequacy of the cofferdam or diversion during construction, if any; and

C. adequate assurances are made for future maintenance of new water level control structures

(1) 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 shall 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 when the provisions of subpart 2, item A, subitem (3), are met,

(2) for other water level control structures, title-registration type permits shall be issued to the owner or owners of the private property upon which the water level control structure will be located if the permit runs with the land and requires breaching or removal if the structure ever falls into a state of disrepair or becomes unsafe; and

(3) periodic engineering inspections of authorized water level control structures may be made by the department or its designee

Statutory Authority: *MS s 103G 315*

History: *27 SR 529*

6115.0230 BRIDGES AND CULVERTS, INTAKES AND OUTFALLS.

Subpart 1 **Goals.** It is the goal of the department to allow crossings of public waters, includmg 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 crossmg of pubhc waters is subject to this part Abandonment or removal of all crossings and structures governed by this part requires a permit accordmg to part 6115 0211, subpart 8

Subp. 3. **Prohibited crossings.** Crossings are prohibited when 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 involves extensive channelization above and beyond minor stream channel realignments to improve hydraulic entrance or exit conditions, except when a separate permit is obtained according to part 6115 0201, subpart 7,

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

E will take threatened or endangered species listed in chapter 6134 without authorization by the commissioner according to parts 6212 1800 to 6212 2300, or

F will provide private access to an island.

Subp 4. **No permit required.** No permit is 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,

B to construct or reconstruct a low-water ford type crossmg, if:

(1) the stream bed is capable of supporting the crossmg 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 crossmg 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 crossmg 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, if

(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 m 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 to allow flood waters to pass,

(5) the lowest portion of the bridge is at least three feet above the ordinary high water level 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 that 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, or

E to install an agricultural drain tile outletting mto public waters, if the bank is restored to the original cross-section or contour and no permanent structure is placed below the ordinary high water level, except for the dram tile

Subp 5. **Permits required.** Permits are required for the construction or reconstruction of any bridge, culvert, intake, outfall, or other crossing of public waters, except as provided m subparts 3 and 4, and a project must meet the following general criteria

A the project must not exceed more than a minimum encroachment, change, or damage to the environment, particularly the ecology of the waters;

B adverse effects on the physical or biological character of the waters are subject to feasible and practical measures to mitigate the effects,

C the proposed crossing is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved;

D. the proposed crossing is 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, and

E crossings of public waterbasins or public water wetlands are allowed only when there is no feasible and practical alternative that does not require filling, excavating, or the placement of a structure in public waters

Statutory Authority: *MS s 103G 315*

History: *27 SR 529*

6115.0231 SPECIFIC STANDARDS; BRIDGES, CULVERTS, INTAKES, AND OUTFALLS.

Subpart 1 **Specific requirements.** 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 according to this part

Subp. 2 **Bridges, culverts, and other crossings.** The construction, reconstruction, or relocation of all bridges, culverts, or other crossings over public waters shall be approved if all of the following criteria are met

A the hydraulic capacity of the structure is 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

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

(2) the department has made a field investigation of the project site, and

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

B new crossings and replacements of existing crossings comply with local floodplain management ordinances, with provisions of part 6120 5700, subpart 4, item A, and with the following

(1) for new crossings, no approach fill for a crossing shall encroach upon a community designated floodway When a floodway has not been designated or when 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 approved 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,

(2) for 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 subitem (1) 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 shall be allowed if 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 subitem (1), and

(3) 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;

C. the structure provides for game fish movement, unless the structure is intended to impede rough fish movement or the stream has negligible fisheries value,

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

E any project proposed near an existing or proposed segment of the state trails system should be consistent therewith, and

F bridges and walkways to islands comply with the following

(1) bridges and walkways over watercourses to islands must be designed to cause negligible backwater effects during floods and must be securely anchored or otherwise capable of withstanding the dynamic forces of flowing water, ice, and debris, and

(2) permits for reconstruction of existing bridges or walkways over public waterbasins and public water wetlands to islands that are intended to provide public access shall be issued only if the existing crossing provides the only existing land access to the island, there is existing development on the island, and the design provides for any public navigational needs and is consistent with the natural surroundings

Subp. 3 **Intakes and outfalls.** The construction, reconstruction, or relocation of all water intake and sewer outfall structures placed in public waters shall be approved if all of the following criteria are met

A 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,

B 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,

C no site conditions will require frequent future disruption of the beds of public waters,

D. adequate precautions are planned during and after construction to prevent silt, soil, and other suspended particles from being discharged into public waters,

E. adjacent to the intake structure, the banks and bed of the public water are protected from erosion and scour by placement of suitable riprap shore protection,

F the banks are revegetated by seeding and/or sodding,

G the structure is designed by a professional engineer;

H for intake structures, excavation is detailed in the application and on design plans When necessary, a water appropriation permit must be obtained from the department prior to operation of the intake structure An appropriate sized screen must be used to prevent fish intake, and

I outfall structure design.

(1) when necessary, incorporates 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,

(2) when feasible, utilizes discharge to stormwater treatment ponds, artificial stilling or sedimentation basins, or other devices for entrapment of floating

trash and litter, sand, silt, debris, and organic matter prior to discharge to public waters, and

(3) when feasible, maximizes 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 103G 315*

History: *27 SR 529*

6115.0240 APPLICATION FOR PUBLIC WATERS WORK 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 if the application is countersigned by the owner and accompanied by a copy of the lease or other agreement A permit shall 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, and

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 shall be processed concurrently with appropriate coordination

Subp 3 **Information required.** Pursuant to Mmnesota Statutes, section 103G 305, an application is complete when

A. it includes all of the information specified in parts 6115 0150 to 6115 0280;

B it is accompanied by appropriate photographs, maps, sketches, drawings, or other plans that 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,

(4) that the proposed project is reasonable and practical and will adequately protect public safety and promote the public welfare, and

(5) a demonstration by the applicant that the proposed activity authorized by part 6115 0190, subpart 5, 6115 0200, subpart 5, 6115 0210, subpart 5, 6115.0215, subpart 5, 6115 0220, subpart 5, 6115 0230, subpart 5, 6115 0270, subpart 4, or 6115.0280, subpart 4, complies with all the following principles in descending order of priority

(a) avoids direct or indirect impacts to public waters that may destroy or diminish the public waters,

(b) minimizes the impact to the public water by limiting the degree or magnitude of the public water activity and its implementation,

(c) rectifies the impact by repairing, rehabilitating, or restoring the affected public water,

(d) reduces or eliminates the impact to the public water over time by preservation and maintenance operations; and

(e) for a major change in the public waters, replaces unavoidable impacts to the public water by restoring degraded or impacted public waters having equal or greater public value or, if public waters restoration opportunities are not

reasonably available, creating and protecting additional replacement water areas having greater public value,

D application fees are paid Final permits shall not be issued until any field inspection fees are paid, and

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 103G 315*

History: *27 SR 529*

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 1a **Effect on environment and mitigation.** The commissioner may not issue a permit that causes pollution, impairment, or destruction of the air, water, land, or other natural resources so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare If the commissioner determines that a major change in public waters is justified and can be authorized by parts 6115 0190, subpart 5, 6115 0200, subpart 5; 6115 0210, subpart 5, 6115.0215, subpart 5, 6115 0220, subpart 5, 6115.0230, subpart 5, 6115 0270, subpart 4, or 6115 0280, subpart 4, the permit must include provisions to compensate for the detrimental aspects of the change. Compensation for the identified detrimental aspects of the permitted project include:

A restoring degraded or impacted public waters having equal or greater public value,

B creating or restoring additional replacement water areas having equal or greater public value, or

C any other measures approved by the commissioner that compensates for the detrimental aspects of the change.

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 according to Minnesota Statutes, chapter 14 and section 103G 311

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 with a single permit

Subp. 5. **Public water wetland permit processing.**

A Public waters work permit applications submitted to the commissioner for proposed projects in public water wetlands shall be granted if authorized by parts 6115.0190 to 6115.0232 or parts 6115.0270 to 6115.0280 and if the public water wetland is

(1) assigned a shoreland classification,

(2) classified as lacustrine wetland or deepwater habitats according to the document under item C, or

(3) where the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and where the responsible state or federal agency declares that the water is necessary for purposes of public ownership.

B All other public waters work permit applications for proposed projects in public water wetlands shall be

(1) granted, with or without conditions, if authorized by parts 6115.0190 to 6115.0232 or 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, or denied, or

(2) waived pursuant to item D

C The following documents are incorporated by reference:

(1) 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), and

(2) Guidelines for Ordinary High Water Level (OHWL) Determinations, John Scherek and Glen Yakel, Minnesota Department of Natural Resources, Division of Waters (June 1993)

These documents are available through the Minitex interlibrary loan system and are not subject to frequent change

D Public waters work permits in public water wetlands

(1) notwithstanding parts 6115.0150 to 6115.0280, the authority of the commissioner to require a permit for activities within public water wetlands is waived to the local unit of government under chapter 8420 when the commissioner has received notice or application from the landowner or project sponsor and when the commissioner has provided the applicant or project sponsor and the local unit of government a notice within 15 days of receipt of the notice or permit application that the department will waive public waters work permit jurisdiction to the local unit of government, or

(2) the commissioner shall not waive the requirement for a public waters work permit in a public water wetland for activities

(a) allowed under part 8420.0122, subparts 1 to 8 and 10,

(b) in public water wetlands assigned a shoreland classification,

(c) in public water wetlands classified as lacustrine wetland or deepwater habitats according to the document under item C, or

(d) in public water wetlands where the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and where the responsible state or federal agency declares that the water is necessary for purposes of public ownership

E. Notwithstanding parts 6115 0150 to 6115 0280, the authority of the commissioner to require a permit for public road activities that are associated with the repair, rehabilitation, reconstruction, or replacement of currently serviceable existing public roads is waived to the public road authority under chapter 8420

(1) for projects that affect less than 10,000 square feet of public water wetlands, 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 0544, item D, except for projects in public water wetlands

(a) assigned a shoreland classification,

(b) classified as lacustrine wetland or deepwater habitats according to the document under item C, subitem (1), or

(c) when the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and when the responsible state or federal agency declares that the water is necessary for purposes of public ownership, or

(2) for projects that affect 10,000 square feet or more of public water wetlands, when the commissioner has provided the public road authority notice of the waiver within 15 days of 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 0544, item D, except for projects in public water wetlands

(a) assigned a shoreland classification,

(b) classified as lacustrine wetlands or deepwater habitats according to the document under item C, subitem (1), or

(c) when the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and when the responsible state or federal agency declares that the water is necessary for purposes of public ownership

Subp 6 **Wetland areas of public waters affected by public road permit projects.**

A For purposes of this subpart, "wetland areas of public waters" means areas that are contiguous with the ordinary high water level and that generally exhibit emergent vegetation within·

(1) public waterbasins,

(2) public water wetlands assigned a shoreland classification,

(3) public water wetlands classified as lacustrine wetlands or deepwater habitats according to the document under item C, or

(4) public water wetlands where the state or federal government has become titleholder to any of the beds or shores of the public water wetlands subsequent to the preparation of the public water inventory maps on file with the auditor of the county and where the responsible state or federal agency declares that the water is necessary for purposes of public ownership

B Public waters work permit applications submitted by a public road authority to the commissioner for proposed projects in wetland areas of public waters shall be granted if authorized by parts 6115 0190 to 6115 0232 or 6115 0270 to 6115 0280

C. 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. This document is available through the Minitex interlibrary loan system and is not subject to frequent change

D Notwithstanding parts 6115 0150 to 6115 0280, the authority of the commissioner to require a permit for public road activities in, on, or over wetland areas of public waters according to the document under item C is waived for

(1) all activities authorized by the local government unit under chapter 8420 when the commissioner has received notice or application from the public road authority and when the commissioner has notified the public road authority and the local unit of government of the waiver within 15 working days of receipt of the notice or application, or

(2) activities authorized by the public road authority having jurisdiction under chapter 8420 for public road activities that are associated with the repair, rehabilitation, reconstruction, or replacement of currently serviceable existing public roads when the commissioner has notified the public road authority of the waiver within 15 working days of 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 0544, item D

Subp 7 **Written agreements with local government units.**

A. For projects affecting both public waters and wetlands, the local government may, by written agreement with the commissioner, waive the requirement for a replacement plan or a no-loss or exemption determination if a public waters work permit is required and the commissioner includes provisions of Minnesota Statutes, sections 103A 201, 103B 3355, 103G 222, and 103G 2372, and rules adopted thereunder, in the public waters work permit

B The written agreement may be done on a project-by-project basis when:

(1) the agreement identifies the parties having authority to make the agreement and the proposed project subject to the agreement,

(2) the commissioner requires an individual public waters work permit for the proposed project,

(3) the majority of the proposed project impacts on public waters and wetlands are to public waters;

(4) the proposed wetland impacts are subject to approval of a wetland replacement plan or a no-loss or exemption determination by the local unit of government according to part 8420 0210, 8420 0220, or 8420.0230,

(5) the local government unit provides the commissioner with specific language addressing no-loss or exemption determinations or allowable wetland impacts and required wetland replacement for incorporation into the commissioner's public waters work permit, and

(6) the local government unit agrees to assist the commissioner should appeals be brought against the commissioner based on the language impacting the wetlands covered in the public waters work permit

C The written agreement may be done on a local unit of government basis, a watershed basis, a waterbody basis, or a project activity basis when.

(1) the written agreement identifies the parties having authority to enter into the agreement, the location of agreement application, and the scope of proposed activities subject to the agreement,

(2) the commissioner requires an individual public waters work permit for the proposed project,

(3) the majority of the proposed project impacts to public waters and wetlands are to public waters,

(4) the wetland impacts are subject to approval of a wetland replacement plan or a no-loss or exemption determination by the local unit of government according to part 8420 0210, 8420.0220, or 8420 0230,

(5) the local government unit provides the commissioner with specific language addressing no-loss or exemption determinations or allowable wetland impacts and required wetland replacement for incorporation into the commissioner's public waters work permit,

(6) the local government unit agrees to assist the commissioner should appeals be brought against the commissioner based on the language impacting the wetlands covered in the public waters work permit, and

(7) the agreement addresses enforcement procedures and procedures for the commissioner or the local government unit to terminate the written agreement

Subp 8 **Local plan implementation.** Notwithstanding parts 6115 0150 to 6115 0280, the commissioner may authorize alternative regulation of public waters activities that are specifically identified in a local plan, ordinance, or other similar written document approved by the commissioner and subject to the following

A the proposed activities are subject to the following principles in descending order of priority:

(1) avoid direct or indirect impacts to the public water that may destroy or diminish the public water,

(2) minimize the impact to the public water by limiting the degree or magnitude of the public water activity;

(3) rectify the impact by repairing, rehabilitating, or restoring the affected public water,

(4) reduce or eliminate the impact to the public water over time by preservation and maintenance operations, and

(5) replace unavoidable impacts to the public water when a major change in the resource is justified, by including provisions to compensate for the detrimental aspects of the change according to subpart 1a,

B the proposed activities, their dimensional standards, the criteria used to issue or deny applications, and allowable locations are identified in the local plan,

C adverse effects of the proposed activity on the physical and biological character of the area are subject to mitigation measures identified in the local plan,

D the proposed activities are consistent with locally adopted controls,

E the plan addresses enforcement procedures,

F the plan includes procedures for the commissioner to reassume the permit authorities in parts 6115 0150 to 6115 0280 upon notice, if determined necessary by the commissioner or plan sponsor,

G the local plan sponsor publishes a notice in the State Register identifying

(1) the local plan sponsor that is developing an alternative plan for regulation of public waters,

(2) the scope of activities and the location of the public waters impacted by the plan;

(3) the groups the local plan sponsor has been working with in the development of the plan,

(4) the name and address of the local plan sponsor who can be contacted for copies of the plan, and the name and address of the plan contact for the department, and

(5) a statement that the interested public has a time period of no less than 30 days in which to forward comments to the plan sponsor and the department plan contact for consideration before the plan sponsor submits the draft plan to the commissioner for approval,

H when considering whether the plan should be approved, the commissioner shall determine that

(1) the proposed plan, when not in conformity to parts 6115 0150 to 6115 0280, provides an explanation of how the proposed changes are justified,

(2) the public values provided by public waters subject to the plan are maintained or improved, and

(3) the proposed plan provides a mechanism for a periodic review of the plan contents and a procedure to revise the plan, if determined necessary by the commissioner and plan sponsor, or to terminate the plan upon notice being provided by either the plan sponsor or commissioner; and

I nothing in the review of local plans proposed under this part shall be construed as prohibiting or discouraging a local plan from creating standards that are more restrictive than parts 6115.0150 to 6115.0280

Statutory Authority: *MS s 103G.315*

History: *27 SR 529*

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 to believe that any activity is being or has been conducted in public waters 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 application form to the area hydrologist

D The enforcement authority issuing a cease and desist order shall promptly submit copies of the order to the commissioner.

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

(1) whether the area in question is a public water,

(2) whether a public waters work permit is required, and

(3) whether a public waters work permit application should be submitted or whether a restoration order or replacement order should be issued immediately, if it is determined that a public waters work permit application submitted in response to the cease and desist order would be denied in its entirety for being inconsistent with parts 6115 0150 to 6115 0280

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 commissioner, 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 must 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 may not restore all the loss caused by the drain, excavate, structure, or fill activity, the enforcement authority may order restoration, a combination of restoration and replacement, or replacement rather than restoration.

B The enforcement authority shall issue a restoration order or replacement order if

(1) a cease and desist order has been issued and 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, determined that a permit application submitted for the activity subject to a cease and desist order would be denied in its entirety for being inconsistent with parts 6115.0150 to 6115.0280, or determined that some combination of restoration of the site and off-site restoration or replacement is necessary

C Promptly upon being informed of the need, the commissioner or agent shall inspect the site and prepare a plan for restoring the site 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 mto 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 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 must 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, the commissioner may require the landowner to replace the impacted public water 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 under 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 The demand for hearing

must be accompanied by a bond as required under Minnesota Statutes, section 103G.311, subdivision 6.

Statutory Authority: *MS s 103G 315*

History: *27 SR 529*

6115.0260 STATUTORY REQUIREMENTS.

Further provisions for the administration of parts 6115 0150 to 6115 0280 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 103G 315*

History: *27 SR 529*

6115.0270 DRAINAGE OF PUBLIC WATERS.

Subpart 1. **Goals.** It is the goal of the department to protect and preserve public waterbasins and public water 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 water wetlands for all purposes except mining of metallic or nonmetallic minerals which are subject to provisions of part 6115 0280

Subp 3. **Prohibited activity.** The permanent or total dramage of public waterbasins and public water wetlands is prohibited

Subp 4 **Permits required.** A permit is required for the partial dramage or temporary drawdown of public waterbasins and public water wetlands and shall be granted if 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, or

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

B. the project will involve a minimum of encroachment, change, or damage to the environment, mcludmg 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 are subject to feasible and practical measures to mitigate the effects,

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

E the proposed project is 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 103G 315*

History: *27 SR 529*

6115.0271 SPECIFIC STANDARDS; DRAINAGE.

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 dramage or diversion of public waters for mining iron ore, taconite, copper, copper-mckel, or nickel shall be approved only when 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 approved only when the public waters being dramed are replaced by public waters that will have equal or greater public value, subject to provisions of part 6115 0280, and

C all other dramage or diversion of public waters allowed in part 6115 0270, subparts 2 to 4, shall be approved if all of the following specific criteria are met

(1) for pubhc waterbasms and public water wetlands, permits shall be issued only to governmental agencies having the authority to undertake such projects In addition, a pubhc 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 water wetlands is obtained from all riparian owners,

(3) partial drainage or temporary drawdown of pubhc waterbasms and pubhc water wetlands shall be approved only when 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 dramage 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 dramage, and

(6) the proposal adequately protects public safety and promotes the pubhc welfare

Statutory Authority: *MS s 103G 315*

History: *27 SR 529*

6115.0280 ALTERATIONS OF PUBLIC WATERS FOR MINING.

Subpart 1 **Goals.** It is the goal of the department to ensure that alterations of pubhc 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 pubhc waters include the mining of metallic minerals including but not limited to iron ore, tacomte, 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 are required for any alterations of pubhc waters to facilitate mining of iron ore, tacomte, copper, copper-mckel, or nickel minerals or reclamation of mining areas provided that

A permits to mine are obtained when required by Minnesota Statutes, sections 93 44 to 93 51; and

B permits for alterations in public waters shall be granted accordmg to Minnesota Statutes, section 103G 297 Applications for permits for alterations in public waters shall include an analysis showing why underground mining without dramage, diversion, or control of pubhc waters is not feasible or economical

Subp 4 **Permit required for mining of certain minerals and peat.** Permits are required for mining of nonmetallic minerals, peat, and other metallic minerals not regulated in Minnesota Statutes, section 103G 297, or reclamation of mining areas and shall be granted if 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 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, dramage, 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.

(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 public waterbasins and public water wetlands are allowed to be drained to facilitate mining, and such drainage is justified and legally permitted, compensation for the loss of the basin is provided for by either

(1) immediate replacement of the public waterbasins and public water wetlands with waters of equal or greater value, or

(2) submission of acceptable plans for the eventual replacement of the public waterbasins and public water wetlands 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 public 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 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 103G 315*

History: *27 SR 529*