

CHAPTER 6280
DEPARTMENT OF NATURAL RESOURCES
AQUATIC PLANTS AND NUISANCES

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6280.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Aquatic macrophytes.** "Aquatic macrophytes" means vascular nonwoody plants, either submerged, floating leafed, floating, or emergent plants growing in water.

Subp. 2a. **Aquatic plant management.** "Aquatic plant management" means activities which are intended to alter aquatic plant populations (either reduce or enhance) by means of herbicides, biological agents, mechanical devices, or physical alteration. This includes the transplanting or seeding of aquatic macrophytes.

Subp. 2b. **Aquatic plant management permit or APM permit.** "Aquatic plant management permit" or "APM permit" means a permit issued by the commissioner authorizing aquatic plant management or aquatic nuisance control activities.

Subp. 3. **Aquatic nuisance.** "Aquatic nuisance" means the presence of leeches, snails that carry swimmer's itch, or algae in such numbers or such abundance as to interfere with boating, swimming, or other aquatic recreation or beneficial water use.

Subp. 3a. **Automated untended aquatic plant control device.** "Automated untended aquatic plant control device" means a device for destroying aquatic macrophytes that may be remotely operated or placed on a timer and is capable of being operated without the assistance of an operator.

Subp. 4. **Bog.** "Bog" means an aquatic mat, either attached to or resting on the bottom or floating, that is normally made up of dead organic matter held together by various types of living plants.

Subp. 5. **Dense growth of submerged vegetation.** "Dense growth of submerged vegetation" means that a condition exists where the vegetation occurs at 90 percent or more of sampling stations within a proposed treatment area and has an average recovery of three or more, when percent occurrence and average recovery are determined according to the method described by Jessen and Lound in Game Investigational Report No. 6, Minnesota Department of Conservation (1962), the original filed in the Office of the Director of Fish and Wildlife, Saint Paul, Minnesota.

Subp. 6. **Excessive algae bloom.** "Excessive algae bloom" means that some or all of the following conditions are present:

- A. algae population is dominated by blue-green algae;
- B. secchi disc reading is typically two feet or less;
- C. floating mats or scums of algae have accumulated on the downwind shore; or
- D. decomposition of accumulated algae has occurred releasing a blue-green pigment and causing an offensive odor.

Subp. 7. **Field inspection.** "Field inspection" means an on-site determination by department personnel of relevant characteristics of a proposed treatment area.

Subp. 8. **Label and labeling.** "Label and labeling" has the meaning given in Minnesota Statutes, section 18B.01, subdivisions 13 and 14.

Subp. 9. **Littoral area.** "Littoral area" means any part of a body of water 15 feet deep or less.

Subp. 10. **Monitoring.** "Monitoring" means assessment by the commissioner of the status, progress, or efficacy of activities authorized by permit and observation of control operations being done under permit.

Subp. 11. **Ordinary high water level.** "Ordinary high water level" has the meaning given in Minnesota Statutes, section 103G.005, subdivision 14.

Subp. 12. **Pesticide.** "Pesticide" has the meaning given by Minnesota Statutes, section 18B.01, subdivision 18.

Subp. 13. **Public waters.** "Public waters" means those waters of the state defined as public waters by Minnesota Statutes, section 103G.005, subdivision 15, and inventoried pursuant to Laws 1979, chapter 199, and Minnesota Statutes, section 103G.201.

Subp. 14. **Storm water retention ponds.** "Storm water retention ponds" means those bodies of public water, usually less than ten acres in size, lying within home rule charter or statutory cities or towns and are specifically managed for the primary public value of retaining storm water.

Subp. 15. [Repealed, 21 SR 1406]

Statutory Authority: *MS s 103G.615*

History: *18 SR 83; 21 SR 1406*

6280.0200 [Repealed, 21 SR 1406]

6280.0250 STANDARDS FOR AQUATIC PLANT MANAGEMENT PERMIT ISSUANCE.

Subpart 1. **Actions not requiring permit.** Unless otherwise required in subpart 2, an APM permit is not required for items A to F:

A. cutting or pulling aquatic macrophytes for the purpose of constructing shooting and observation blinds in amounts sufficient for that purpose;

B. gathering aquatic macrophytes or plant parts, other than wild rice and American lotus, for personal use only and not for resale;

C. cutting or pulling submerged aquatic macrophytes in order to maintain a site for swimming or boat docking not to extend along more than 50 feet of the owner's shoreline or one-half the length of the owner's total shoreline, whichever is less, and that does not exceed 2,500 square feet in area, except that a boat channel extending to open water, not to exceed 15 feet in width, may be maintained. The boating channel is included in the maximum shoreline feet allowed. Cutting or pulling may only be done under the following conditions:

(1) by hand or with power-operated cutters, rakes, or similar equipment that does not significantly alter the course, current, or cross-section of the lake bottom. Draglines, bulldozers, hydraulic jets, suction dredges, automated untended aquatic plant control devices, or other power-operated earth-moving equipment may not be used;

(2) cutting or pulling takes place in the same location each year unless an APM permit has been obtained authorizing a change in location; and

(3) aquatic macrophytes that have been cut or pulled must immediately and permanently be removed from the water;

D. destroying aquatic macrophytes incidental to activities authorized by a department permit for work in public waters as provided by Minnesota Statutes, section 103G.245, or by a license permitting the passage of utilities over public lands and waters as provided by parts 6135.0100 to 6135.1800 and Minnesota Statutes, section 84.415;

E. cutting or pulling purple loosestrife (*Lythrum salicaria*); and

F. cutting or pulling water lilies and water shield or submerged vegetation to obtain a channel extending to open water, provided that:

(1) the channel is no more than 15 feet wide and takes the most direct route to open water;

(2) the channel is maintained by cutting or pulling; and

(3) the channel remains in the same location from year to year.

Subp. 2. **Actions requiring a permit.** Except as provided in subpart 1, an APM permit is required to:

A. apply pesticides below the ordinary high water level of public waters to control:

- (1) snails that carry swimmer's itch, or leeches;
- (2) dense growths of aquatic macrophytes that interfere with watercraft use, swimming, or other traditional recreational uses;
- (3) excessive filamentous algae;
- (4) excessive plankton algae blooms; and
- (5) purple loosestrife (*Lythrum salicaria*), except for state and county non-commercial aquatic pesticide applicators, controlling purple loosestrife as part of rights-of-way maintenance, when the public waters are within the rights-of-way;

B. physically remove from or transplant into public waters any aquatic plants or a bog of any size whether free-floating or lodged in an area other than its original location;

C. destroy emergent aquatic macrophytes in public waters;

D. destroy water lilies and water shield in public waters except as provided in subpart 1, item F;

E. install or operate an automated untended aquatic plant control device for each property where the device is intended for operation, except that a permit of three years' duration may be issued when:

- (1) the site to be controlled extends along no more than 50 feet of the owner's shoreline or one-half the length of the owner's total shoreline, whichever is less, and the site does not exceed 2,500 square feet in area; and

- (2) the site to be controlled does not contain emergent or floating-leaf aquatic macrophytes; or

F. create a channel extending to open water through emergent vegetation by cutting or pulling. The permit shall be of continuing duration provided that:

- (1) the channel is no more than 15 feet wide and takes the most direct route to open water;

- (2) the channel is maintained by cutting or pulling;

- (3) the channel remains in the same location from year to year; and

- (4) the permit is not transferable.

Subp. 3. Justification required for issuance of permits. Permits for the destruction of emergent and floating-leaf aquatic macrophytes including wild rice, bulrush, cattail, water lilies, and other vegetation will not be issued unless the commissioner determines sufficient justification exists. The commissioner will balance the reasonable needs of riparian owners to gain access and use public water against the need to protect emergent and floating-leaf aquatic macrophytes so that the integrity and value of the aquatic macrophyte community is maintained.

Subp. 4. Prohibitions. An APM permit will not be issued for the following purposes:

A. to place plastic mats, plastic sheets, filter fabric, or similar materials on the bed of public waters to destroy or prevent the growth of aquatic macrophytes;

B. to improve the appearance of undeveloped shoreline;

C. for esthetic purposes alone on developed shoreline;

D. for the control of aquatic macrophytes in areas posted or designated by the commissioner as scientific and natural areas or for the protection of lotus (*Nelumbo lutea*) or other kinds of aquatic macrophytes and animals;

E. for pesticide control of aquatic macrophytes in natural environment lakes established pursuant to part 6120.3000;

F. for pesticide control of aquatic macrophytes in watercourses or portions of watercourses classified as wild as defined under either the Minnesota or federal Wild and Scenic Rivers Acts as provided in Minnesota Statutes, section 103F.325, and Public Law Number 90-542 (1968), United States Code, title 16, sections 1271 to 1287, as amended;

G. to destroy aquatic macrophytes within a posted fish spawning area; or

H. to destroy or prevent the growth of aquatic plants or invertebrate life in public waters by means not authorized under parts 6280.0100 to 6280.1100.

Subp. 5. **Pesticide treatment of drinking water.** The commissioner shall not issue an APM permit for pesticide treatment of waters used by humans for drinking unless approval is obtained from the Minnesota Department of Health.

Statutory Authority: *MS s 103G.615*

History: *21 SR 1406*

6280.0300 [Repealed, 21 SR 1406]

6280.0350 AQUATIC PLANT MANAGEMENT PRACTICES.

Subpart 1. **Inspection, supervision, and monitoring.** Items A and B apply to the inspection, supervision, and monitoring of permitted aquatic plant management activities.

A. Supervision by a department employee will be required, unless waived, for initial lakewide treatment of excessive algae blooms and may be periodically required for treatments by experienced groups.

B. Field inspection will be made at the discretion of the commissioner in cases of new applications for pesticide treatment or mechanical control. Field inspection of other previously permitted areas will also be required at intervals to evaluate conditions and the need for continued control measures.

Subp. 2. **Lake vegetation management plan (LVMP).** When a lake vegetation management plan approved by the commissioner has been developed, APM permits will be issued according to the guidelines of the plan.

Subp. 3. **Mechanical control.** Items A to C apply to conditions for mechanical control of aquatic macrophytes.

A. A person who cuts or pulls aquatic macrophytes must immediately and permanently remove the vegetation from the water and dispose of it above the ordinary high water level of any public water.

B. Organized lakewide cutting and removal programs are restricted to a maximum area not to exceed 50 percent of the total littoral area as determined by the commissioner.

C. Applications for lakewide or baywide mechanical control of aquatic macrophytes must include a written statement of the plan and a map showing proposed areas to be controlled. The commissioner may reduce the littoral area proposed for harvest. An application for mechanical control of aquatic macrophytes must include the name, address, signature, and location on the lake of all property owners whose shoreline will be controlled.

Subp. 4. **Pesticide control of aquatic macrophytes.** Except as otherwise specified in this part, items A and B apply to pesticide control of aquatic macrophytes.

A. On all public waters and watercourses, the lesser of 15 percent of the littoral area or a maximum of 100 feet of shoreline per site belonging to an individual riparian property owner may be treated for control of submerged vegetation. These limitations do not apply in the circumstances described in subitems (1) to (3).

(1) For resorts, apartments, condominium complexes, public swimming beaches, and marinas, the commissioner must make an individual determination, taking into consideration the total impact on the protected water.

(2) Larger percentages of the littoral area shall be treated at the discretion of the commissioner when authorized by permits issued prior to 1976.

(3) On stormwater retention ponds, treatment may occur on up to five acres or one-half the surface area of the pond, whichever is less.

B. Applications from riparian property owners' associations for large area or baywide treatment must include a written statement of the plan and a map showing areas proposed to be treated. The commissioner may reduce the amount of littoral area which the applicant proposes to control. Any application for treatment must include the names, addresses, location on lake, and signatures of all property owners whose shorelines will be treated. Signatures must be obtained every three years or when there is a change of property ownership.

Subp. 5. **Control of algae.** An application for proposed lakewide control of algae must be accompanied by dated signatures from a majority of the riparian property owners stating that they are in favor of the proposed treatment. Signatures must be obtained every three years or when there is a change in property ownership.

Subp. 6. **Treatment notice.** The holder of an APM permit or the holder's agent must give notice of the proposed date of treatment to all persons specified on the permit. The notification must be received prior to beginning any work under the permit. Failure to give notice is grounds for revocation of any existing permit or refusal to issue future permits.

Statutory Authority: *MS s 103G.615*

History: *21 SR 1406*

6280.0400 [Repealed, 21 SR 1406]

6280.0450 PERMIT APPLICATION, FEES, AND ANNUAL REPORT.

Subpart 1. **Application process.** Application for an APM permit for any body of public waters may be made by a riparian owner, a lessee, an easement holder, or by owners of a fee, leasehold, or interest to riparian lands to that body of water or by the representative of a group of riparian owners. Application for an APM permit must be made on forms provided by the commissioner and must be submitted to the address specified in the instructions. All information requested on the application form must be provided.

Subp. 2. **Deadline for permit application.** Applications for permits to control submerged or floating aquatic macrophytes with pesticides will not be accepted after August 1 annually, unless the commissioner determines that sufficient justification exists for late season pesticide treatment.

Subp. 3. **Duration of permits.** Unless otherwise noted, an APM permit is only valid for one growing season and expires on September 1 of the year it was issued.

Subp. 4. **APM permit application fees.** Items A to C apply to APM permit fees.

A. When application is made to control two or more nuisance conditions, only the larger fee applies. A permit application fee, in the form of a check or money order payable to the Minnesota Department of Natural Resources, must accompany each permit application when required by the following fee schedule:

(1) to control aquatic macrophytes by pesticide means, to install and operate an automatic untended aquatic plant control device, or to control emergent or floating-leaf aquatic macrophytes by mechanical means: \$20 for each contiguous parcel of shoreline owned by an owner, up to a maximum of \$200;

(2) to control submerged aquatic macrophytes in an area larger than 2,500 square feet, by mechanical means: \$20 for the first acre or portion of an acre and \$2 for each additional acre or portion of an acre to be controlled, up to a maximum of \$200;

(3) to gather or harvest aquatic macrophytes or plant parts, other than wild rice, for sale purposes: no charge;

(4) to transplant aquatic macrophytes or bog into public waters: no charge;

(5) to control chara, filamentous algae, snails that carry swimmer's itch, or leeches, singly or in combination: \$4 per 100 shoreline feet or portion proposed to be treated, up to a maximum of \$200;

(6) to control algae by lakewide application of copper sulfate or other approved algicide: \$20 plus 40 cents per acre to be treated, up to a maximum of \$200; and

(7) to control purple loosestrife (*Lythrum salicaria*) by chemical means: no charge.

B. If the fee does not accompany the application, the applicant will be notified and no action will be taken on the application until the fee is received.

C. The fee is refundable only when the application is withdrawn, prior to issuance of the permit, or the commissioner determines that the activity does not require a permit.

Subp. 5. **Fees for state and federal agencies.** The fees set forth in this part will not be required of any state agency as defined in Minnesota Statutes, section 15.01, or of any federal agency.

Subp. 6. **Annual report.** The holder of a commercial aquatic plant harvester's permit, commercial aquatic pest control license, or APM permit must, no later than December 31 of each year, report to the commissioner, on the forms provided, information on permitted operations requested. Failure to report will be grounds for refusing to issue such permits in the future.

Subp. 7. **Regulations of other programs apply.** APM permits issued as provided by this part may not be construed to supersede the requirements of shoreland conservation ordinances, flood plain management ordinances, lake management plans and programs, wild and scenic river plans and programs, or other pertinent ordinances and regulations.

Statutory Authority: *MS s 103G.615*

History: *21 SR 1406*

6280.0500 [Repealed, 21 SR 1406]

6280.0600 APPROVAL OF PESTICIDES AND METHODS USED FOR AQUATIC PLANT MANAGEMENT OR AQUATIC NUISANCE CONTROL.

Subpart 1. **Pesticides must be labeled for use in aquatic sites.** Pesticides used to control aquatic macrophytes or algae in public waters must be registered by the United States Environmental Protection Agency (EPA) and the Minnesota Department of Agriculture (MDA), including pesticides registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), United States Code, title 7, sections 136c (experimental use permit), 136p (emergency exemption), and 136v (special local need), and must be approved for use in aquatic sites by the EPA and by the commissioner in consultation with the MDA.

Subp. 2. **Instructions and precautions of pesticides must be followed.** Pesticides must be applied according to the label and labeling provided by the manufacturer and other water use restrictions imposed by the department or the MDA. Pesticide-treated areas must be posted with signs provided by the department bearing the permit number; the name of pesticide used; the date of treatment; and dates on which water from the treated area may be safely used for swimming, fishing, and other uses, as specified on the product label or by the department. The department, in consultation with the MDA, may require water use restrictions in addition to those on the product label. The permittee or agent is responsible for the placement and removal of required signs. The treatment area must be posted in such a way that people entering from any direction can see the signs, or as otherwise prescribed in the permit.

Subp. 3. **Pesticide control of aquatic macrophytes in watercourses.** Pesticides may be used to control aquatic macrophytes in flowing waters, provided that the vegetation is present to such a degree that it impedes the flow of water and that the flow rate will not carry the pesticide beyond the treatment area during the period of water use restriction specified on the pesticide label. The pesticide to be used must be labeled for use in flowing water.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83; 21 SR 1406*

6280.0700 COMMERCIAL APPLICATORS AND OPERATORS.

Subpart 1. **Pesticide applicators.** A person or firm may not apply pesticides of any kind for hire for aquatic plant management or aquatic nuisance control on public waters unless a commercial aquatic pest control license has been obtained from the Minnesota Department of Agriculture.

Subp. 2. **Commercial aquatic plant harvesters.** A person or firm may not cut, pull, or harvest aquatic macrophytes on public waters for hire without first obtaining a commercial aquatic plant harvester's permit issued by the department. Issuance of a commercial aquatic plant harvester's permit is contingent upon determination by the commissioner that the applicant has adequate equipment and knowledge to properly harvest aquatic macrophytes in public waters. This subpart does not apply to persons or firms using power-operated earth-moving equipment in public waters under terms of permits issued by the department for work in the bed of public waters as provided by Minnesota Statutes, section 103G.245, or by a license permitting the passage of utilities over public lands and waters as provided by Minnesota Statutes, section 84.415. Persons or firms that use aquatic vegetation cutting and harvesting equipment must thoroughly inspect, remove, and properly dispose of plant parts from the equipment before transporting it to another body of water.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83; 21 SR 1406*

6280.0800 ANNUAL REPORTS AND TREATMENT NOTICES.

Subpart 1. **Annual report.** The holder of an aquatic operator's permit, commercial pesticide applicator's license, or aquatic nuisance control permit must, no later than November 15 of each year, report to the commissioner, on the forms provided, information on aquatic nuisance control operations requested. Failure to report will be grounds for refusing to issue such permits in the future.

Subp. 2. **Treatment notice.** Holders of aquatic nuisance control permits or their agents must give notice of the proposed date of treatment to all persons specified on the permit. The notification must be received prior to beginning any work under the permit. Failure to give notice is grounds for revocation of any existing permit or refusal to issue future permits. Notification is not required for mechanical control of vegetation where no permit is required.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83*

6280.0900 AMENDMENTS AND REVOCATION.

Subpart 1. **Amendments and revocation.** The commissioner may amend or revoke any commercial aquatic plant harvester's permit or APM permit without prior notice whenever it has been determined that it is necessary to protect the interests of the public, to protect human life, or to protect fish, wildlife, and native plants or for violation of the terms and conditions of APM permits, this chapter, or other applicable laws or rules.

Subp. 2. **Amendments by request.** The commissioner may amend a commercial aquatic plant harvester permit or an APM permit upon request from the permittee if the amendment maintains adequate protection for interests of the public, human life, and fish, wildlife, and native plants.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83; 21 SR 1406*

6280.1000 VARIANCE.

Subpart 1. **Variance.** Provisions of this chapter may be waived under special circumstances when deemed necessary by the commissioner for the protection and preservation of the natural resources of the state.

Subp. 2. **Lake vegetation management plan (LVMP).** This chapter may be modified or waived in accordance with a lake vegetation management plan approved by the commissioner.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83; 21 SR 1406*

6280.1100 REVIEW AND APPEAL OF PERMIT DECISION.

Subpart 1. **Commissioner's review.** If an APM permit is granted with conditions or is denied, the applicant may file with the commissioner a written request for review. The commissioner shall review the permit application and render a decision within 15 days of the request for review.

Subp. 2. **Contested case hearing.** If the applicant wishes to appeal the decision of the commissioner after review under subpart 1, the applicant may file with the commissioner a written request for a contested case hearing under Minnesota Statutes, chapter 14.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83; 21 SR 1406*

6280.1200 PENALTY.

The destruction of aquatic macrophytes in public waters without an APM permit issued pursuant to parts 6280.0100 to 6280.1100 or in violation of the terms of such a permit is a misdemeanor.

Statutory Authority: *MS s 103G.615*

History: *21 SR 1406*