

CHAPTER 6280
DEPARTMENT OF NATURAL RESOURCES
AQUATIC PLANTS AND NUISANCES

6280.0100	DEFINITIONS.	6280.0700	COMMERCIAL PESTICIDE AND MECHANICAL CONTROL.
6280.0250	STANDARDS FOR AQUATIC PLANT MANAGEMENT PERMIT ISSUANCE.	6280.0900	AUTHORITY TO AMEND AND REVOKE PERMITS.
6280.0350	AQUATIC PLANT CONTROL.	6280.1000	VARIANCE AND LAKE VEGETATION MANAGEMENT PLAN.
6280.0450	APM PERMIT REQUIREMENTS.	6280.1100	REVIEW AND APPEAL OF PERMIT DECISION.
6280.0550	COMMERCIAL HARVEST OF AQUATIC PLANTS.	6280.1200	PENALTY.
6280.0600	APPROVAL OF PESTICIDES AND METHODS USED FOR AQUATIC PLANT MANAGEMENT OR AQUATIC NUISANCE CONTROL.	6280.1300	STANDARDS FOR BLACK FLY CONTROL PERMITS.

6280.0100 DEFINITIONS.

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

Subp. 2. **Aquatic plant.** "Aquatic plant" means a plant naturally growing in water, saturated soils, or seasonally saturated soils, and includes algae, submersed, floating-leaf, floating, and emergent plants, and their root stalks, seeds, and other vegetative propagules.

Subp. 2a. **Aquatic plant management.** "Aquatic plant management" means activities intended to reduce, enhance, or otherwise alter aquatic plant populations by means of herbicides, biological agents, mechanical devices, physical alteration, or transplanting or seeding aquatic plants.

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.

Subp. 2c. **Aquatic plant management (APM)-related conviction.** "Aquatic plant management (APM)-related conviction" includes a conviction under:

- A. this chapter or Minnesota Statutes, section 103G.615 (permits to harvest or destroy aquatic plants);
- B. chapter 6115 (public water resources) or Minnesota Statutes, section 103G.245 (work in public waters), if the conviction is for work that resulted in the destruction of aquatic plants;
- C. chapter 8420 (wetland conservation) or Minnesota Statutes, section 103G.222 (replacement of wetlands); or
- D. any other applicable rules and statutes, if the conviction is for work that resulted in the destruction of aquatic plants.

Subp. 2d. **Aquatic plant management (APM)-related permit revocation.** "Aquatic plant management (APM)-related permit revocation" includes the revocation of an APM, commercial mechanical control, or commercial harvest permit.

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

Subp. 3a. **Automated aquatic plant control device.** "Automated aquatic plant control device" means a self-propelled device that is capable of destroying aquatic plants.

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

MINNESOTA RULES 2009

1033

AQUATIC PLANTS AND NUISANCES 6280.0100

Subp. 4a. **Commercial harvest.** "Commercial harvest" means taking aquatic plants for sale, for establishing stock to produce plants for sale, or for transferring to another person for sale or establishment of stock to produce plants for sale. "Sale" has the meaning given in Minnesota Statutes, section 97A.015, subdivision 44.

Subp. 4b. **Commercial harvest permit.** "Commercial harvest permit" means a permit issued by the commissioner authorizing commercial harvest of aquatic plants.

Subp. 4c. **Commercial mechanical control.** "Commercial mechanical control" means conducting mechanical control for financial or other material compensation.

Subp. 5. [Repealed, 33 SR 1721]

Subp. 5a. **Emergent aquatic plants.** "Emergent aquatic plants" means aquatic plants with lower portions that are rooted in hydric soils and typically below the water's surface and leaves, stems, and reproductive parts that are typically above the water's surface, including species in the genera *Scirpus*, *Typha*, and *Zizania*. Submersed and floating-leaf aquatic plants that have emergent fruits, flowers, or leaves are not included in this definition.

Subp. 6. **Excessive algae bloom.** "Excessive algae bloom" means that one or more 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 due to the algae bloom;
- C. floating mats or scums of plankton or filamentous 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 review by the commissioner of a proposed APM permit.

Subp. 7a. **Filamentous algae.** "Filamentous algae" means algae cells that form long visible chains, threads, or filaments, which intertwine and form a mat, generally growing near shore and sometimes growing on the bottom or on rooted aquatic plants. Macro-algae in the genera *Chara* or *Nitella* are not included in this definition.

Subp. 7b. **Floating-leaf aquatic plants.** "Floating-leaf aquatic plants" means aquatic plants that are rooted in the bottom and have their lower portions submersed in water and leaves that float on the surface of the water, including species in the genera *Nymphaea*, *Nuphar*, *Brasenia*, and *Nelumbo*. Species in the genera *Potamogeton*, *Callitriche*, and *Ranunculus*, which are submersed aquatic plants that may produce some floating leaves, are not included in this definition.

Subp. 7c. **Group APM permit.** A "group APM permit" is an APM permit that includes more than one riparian property owner or lessee or that authorizes control adjacent to more than one riparian property.

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 the surface area of a body of water where the depth is 15 feet or less.

Subp. 9a. **Mechanical control.** "Mechanical control" means cutting, pulling, raking, or otherwise removing or altering aquatic plants by physical means, including by hand and motorized or nonmotorized equipment. Incidental damage caused to aquatic plants by watercraft traveling to and from open water, commercial harvesting of aquatic plants, transplanting aquatic plants, moving a bog, and harvesting aquatic plants for personal use are not mechanical control.

Subp. 10. [Repealed, 33 SR 1721]

6280.0100 AQUATIC PLANTS AND NUISANCES

1034

Subp. 10a. **Offshore control.** "Offshore control" means mechanical or pesticide control that is done away from the shoreline and not for the purpose of providing a riparian property owner or lessee access to open water.

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

Subp. 11a. **Personal use.** "Personal use" means use of aquatic plants by an individual for purposes that do not include sale or transfer to another person for sale, as defined by Minnesota Statutes, section 97A.015, subdivision 44.

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

Subp. 12a. **Pesticide control.** "Pesticide control" means applying herbicides or other chemicals to control aquatic plants and nuisances.

Subp. 12b. **Plankton algae.** "Plankton algae" means microscopic, nonvascular, free-floating plants, generally growing near the water surface, which may form multicellular colonies or filaments, but not attached to a substrate.

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. [Repealed, 33 SR 1721]

Subp. 15. [Repealed, 21 SR 1406]

Subp. 16. **Submersed aquatic plants.** "Submersed aquatic plants" means aquatic plants that grow beneath the surface of the water, except for emergent flowers, fruits, and leaves, and may produce floating leaves but have mostly submersed leaves, including species in the genera *Potamogeton*, *Callitriche*, and *Ranunculus* and macro-algae in the genera *Chara* and *Nitella* and excluding plankton and filamentous algae.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83; 21 SR 1406; 33 SR 1721*

6280.0200 [Repealed, 21 SR 1406]

6280.0250 STANDARDS FOR AQUATIC PLANT MANAGEMENT PERMIT ISSUANCE.

Subpart 1. **Actions not requiring an APM or commercial harvest permit.** A person may conduct the activities listed in items A to H without an APM or commercial harvest permit, subject to restrictions in part 6280.0350, subpart 3. A person conducting activities under item C, E, F, or H must be an owner, lessee, or easement holder of land adjacent to the water where the activity is occurring or an agent of the owner, lessee, or easement holder:

A. cutting or pulling aquatic plants for the purpose of constructing shooting or observation blinds in amounts sufficient for those purposes;

B. harvesting aquatic plants or plant parts for personal use only;

C. except as provided for automated aquatic plant control devices in subpart 2, item D, mechanical control of submersed aquatic plants to maintain a site for swimming or boat docking not to extend along more than 50 feet or one-half the length of the owner's total shoreline, whichever is less, and not to exceed 2,500 square feet plus the area needed to extend a channel no wider than 15 feet to open water, provided the channel is included in the maximum shoreline feet allowed;

D. destroying aquatic plants 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. mechanical control of purple loosestrife (*Lythrum salicaria*);

F. skimming duckweed or filamentous algae off the surface of a water body;

G. mechanical or pesticide control of aquatic plants done as part of public road or utility crossing right-of-way maintenance by authorized government units or utility companies; and

H. mechanical control of floating-leaf aquatic plants 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. 1a. **Limits on APM activities without a permit.** Subpart 1 shall not be construed to allow taking or control of aquatic plants inconsistent with other provisions of law, including wild rice provisions under chapter 6284 and provisions for endangered, threatened, and of special concern species under chapter 6134. A person who receives an APM permit under this chapter may not conduct unpermitted aquatic plant control under subpart 1, item C or H, at the location and during the period covered by the permit.

Subp. 2. **Actions requiring an APM permit.** Except as provided in subpart 1, a person must have an APM permit for all aquatic plant management activities below the ordinary high water level in public waters, including:

A. mechanical and pesticide control of aquatic plants or nuisances;

B. transplanting aquatic plants in public waters;

C. relocating or removing a bog or portion thereof; and

D. installing or operating an automated aquatic plant control device.

Subp. 3. **Justification required for issuance of permits.** Permits for the control of emergent and floating-leaf aquatic plants will not be issued unless the commissioner determines sufficient justification exists. The commissioner will consider the relevant criteria in subpart 3a and balance the reasonable needs of riparian owners to gain access and use public water against the need to protect emergent and floating-leaf aquatic plants so that the integrity and value of the aquatic plant community is maintained.

Subp. 3a. **Criteria for issuing APM permits.** The commissioner may issue APM permits for public waters to provide riparian access, enhance recreational use, control invasive aquatic plants, manage water levels, and protect or improve habitat. The following criteria shall be considered to determine if an APM permit should be approved or denied and how much control or harvest to allow under an APM permit:

A. the presence of aquatic plants or nuisances that are interfering with a permit applicant's ability to use watercraft, swim, or engage in other traditional recreational uses;

B. the habitat, water quality, and erosion control value of the aquatic plants subject to the proposed permit;

C. the extent of shoreline development on the water body subject to the proposed permit and potential for aquatic plant control to result in cumulative impacts to habitat and water quality;

D. the presence of invasive aquatic plants in the proposed permit area;

E. whether the water body subject to the proposed permit is a wetland or a shallow lake or bay that naturally supports abundant aquatic plants;

F. the prevalence of soft bottom types that could result in turbidity or changes to the cross-section of the bottom if aquatic plants are disturbed or removed;

G. whether the proposed permit is consistent with a lake vegetation management plan under part 6280.1000, subpart 2, and shoreland conservation ordinances, lake management plans and programs, wild and scenic river plans, and other pertinent ordinances and regulations;

6280.0250 AQUATIC PLANTS AND NUISANCES

1036

H. whether the proposed permit is consistent with a variance issued to control invasive aquatic plants or protect or improve aquatic resources under part 6280.1000, subpart 1;

I. the presence of species designated as of special concern, threatened, or endangered under chapter 6134;

J. the presence of public land adjacent to the public water and the compatibility of the proposed permit with the management of the public land;

K. the presence of an excessive algae bloom; and

L. the presence of wild rice.

Subp. 4. **Prohibitions.** An APM or commercial harvest permit will not be issued:

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 plants;

B. to improve the appearance of undeveloped shoreline;

C. for esthetic purposes alone on developed shoreline;

D. for mechanical or pesticide control or commercial harvest of aquatic plants in areas posted or designated by the commissioner as scientific and natural areas under Minnesota Statutes, section 84.033, aquatic management areas under Minnesota Statutes, section 86A.07, or in areas designated for the protection of lotus (*Nelumbo lutea*) or other kinds of aquatic plants and animals;

E. for pesticide control of aquatic plants, except plankton and filamentous algae, in natural environment lakes established pursuant to part 6120.3000 or in waters adjacent to special protection lakes, bays, or districts established pursuant to part 6120.3200;

F. for pesticide control of aquatic plants 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 90-542 (1968), United States Code, title 16, sections 1271 to 1287, as amended; or

G. for mechanical or pesticide control or commercial harvest of aquatic plants within an area posted for fish spawning under Minnesota Statutes, section 97C.025.

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.

Subp. 6. **APM permit conditions.** The commissioner may specify conditions for APM permits to avoid or minimize harm to aquatic resources and conflict between public water users, including:

A. limits on the amount of control allowed, including limits on the percentage of the littoral area, shoreline length, and distance outward from the shoreline to be managed;

B. restrictions on the method and timing of control;

C. restrictions on the species of plants targeted by the control;

D. requirements for supervision of the control by the commissioner; and

E. requirements for public notice including posting at public water access sites, news releases or public notices in a local newspaper, public meetings, or other notice that would effectively inform users of the affected water.

Subp. 7. **Inspections.** The commissioner shall require field inspection of a proposed APM permit site prior to issuing a permit for:

A. properties with no previous permit history, unless the proposed control is for swimmer's itch;

B. properties where there has been a lapse in permit issuance or where ownership has changed;

C. requests for changes in treatment area, plant type controlled, or method of control;

D. requests for off-shore control or requests to control invasive aquatic plants to enhance growth of native aquatic plants; and

E. properties where there has been a shoreline restoration order that could be affected by aquatic plant control.

Statutory Authority: *MS s 103G.615*

History: *21 SR 1406; 33 SR 1721*

6280.0300 [Repealed, 21 SR 1406]

6280.0350 AQUATIC PLANT CONTROL.

Subpart 1. [Repealed, 33 SR 1721]

Subp. 1a. **Submersed aquatic plant control restrictions for riparian property owners and lessees.** The commissioner may issue an APM permit to a person who is an owner, lessee, or easement holder of land adjacent to a public water or to the agent of the owner, lessee, or easement holder to control submersed aquatic plants on up to 100 feet or one-half of the length of the person's shoreline, whichever is less, with the following exceptions:

A. for properties with less than 70 shoreline feet, up to 35 feet of shoreline may be controlled;

B. control may be allowed on more than 100 feet of shoreline owned or leased by resorts, commercial campgrounds, apartments, condominium complexes, townhouse associations, government units, and marinas; and

C. control may be allowed on up to the entire shoreline owned or leased by a person if the proposed method is selective for invasive aquatic plants.

Subp. 2. [Repealed, 33 SR 1721]

Subp. 2a. **Aquatic plant control in offshore areas.** The commissioner may issue an APM permit for offshore control subject to the provisions in subparts 3, item B, and 4.

Subp. 3. **Mechanical control restrictions.** Mechanical control of aquatic plants is subject to the following conditions:

A. a person who mechanically controls aquatic plants in a public water must immediately and permanently remove the vegetation from the water and dispose of it above the ordinary high water level;

B. permitted mechanical control may not exceed 50 percent of the total littoral area as determined by the commissioner, nor can the sum of permitted mechanical and pesticide control exceed 50 percent of the littoral area;

C. control methods may not excavate or substantially alter the course, current, or cross-section of public waters;

D. a person must conduct mechanical control in the same location each year unless the person obtains an APM permit authorizing a change in location;

E. a person may not place an automated aquatic plant control device in a public water unless the sticker provided with the APM permit is attached to the device, the person's dock, or another nearby location as described in the permit;

F. automated aquatic plant control devices may not be used if the bottom is predominantly soft sediment with an average depth of three inches or more; and

G. hydraulic jets and suction dredges may not be used.

Subp. 4. **Pesticide control restrictions.**

A. Pesticide control of aquatic plants in public waters may not exceed 15 percent of the littoral area, except that on waters that are 20 acres or less, pesticide control may be

6280.0350 AQUATIC PLANTS AND NUISANCES

1038

permitted on up to five acres or one-half the surface area of the pond, whichever is less. These limitations do not apply in the circumstances described in item B.

B. Larger percentages of the littoral area shall be treated at the discretion of the commissioner when authorized by permits issued prior to 1976. The waters affected by this provision are: Sunfish Lake in Dakota County; Cedar Island and Lost Lakes and Carson's and St. Louis Bays of Lake Minnetonka in Hennepin County; and Johanna, Owasso, Gervais, and McCarron Lakes in Ramsey County.

C. Item B expires five years after the effective date of this item. Before the expiration of item B, the commissioner shall develop a lake vegetation management plan as provided under part 6280.1000, subpart 2, for each of the waters listed in item B. The commissioner shall provide opportunities for the public to participate in the planning process, including a notice or news release in a local newspaper, at least one public meeting, and a 30-day comment period.

Subp. 5. [Repealed, 33 SR 1721]

Subp. 6. [Repealed, 33 SR 1721]

Statutory Authority: *MS s 103G.615*

History: *21 SR 1406; 33 SR 1721*

6280.0400 [Repealed, 21 SR 1406]**6280.0450 APM PERMIT REQUIREMENTS.**

Subpart 1. **Application process.** Application for an APM permit for a public water may be made by a riparian owner, a lessee, or an easement holder; by owners of a fee, leasehold, or interest to riparian lands to that body of water; or by a lake association or government agency. The commissioner shall deny a lessee's permit application if the owner of the leased shoreline is opposed to the proposed permit. 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. 1a. **Landowner approval.** Before issuing an APM permit, the commissioner shall require dated signatures of approval from all landowners whose shorelines will be treated, except that for lakewide control of algae, the commissioner shall require dated signatures of approval from a majority of landowners on the lake. The signatures may be provided in an electronic format.

Subp. 1b. **Landowner approval waiver.** The requirements for landowner approval in subpart 1a may be waived if the commissioner determines that aquatic plant control is necessary to protect aquatic habitat.

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

Subp. 3. **Duration of permits.** An APM permit is valid for only one growing season and expires on September 1 of the year it was issued, except as provided in this subpart:

A. an APM permit that is valid until September 1 of the third year after it is issued may be authorized for an automated aquatic plant control device if the site to be controlled does not exceed 2,500 square feet in area;

B. a continuous APM permit may be issued to control emergent vegetation to create a channel extending to open water if the following criteria are met:

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

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

(3) only mechanical control is used after the first year; and

MINNESOTA RULES 2009

1039

AQUATIC PLANTS AND NUISANCES 6280.0450

C. a permit to transplant aquatic plants may be issued for three years.

Subp. 3a. **APM permits not transferable.** A person may not transfer an APM permit to another person.

Subp. 3b. **Control notice.** The holder of an APM permit or the holder's agent must give notice of the proposed date of control to all persons specified on the permit. The notification must be received before any work begins under the permit. Failure to give notice is grounds for permit revocation under part 6280.0900, subpart 1a.

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 rooted aquatic vegetation by pesticide means, to install and operate an automatic untended aquatic plant control device, or to control emergent or floating-leaf rooted aquatic vegetation by mechanical means: \$35 for each contiguous parcel of shoreline owned by an owner, up to a maximum of \$750;

(2) except as provided under subitems (6) and (7), to control nonrooted aquatic vegetation by pesticide means: \$20 for each contiguous parcel of shoreline owned by an owner, up to a maximum of \$200;

(3) to control submerged rooted aquatic vegetation in an area larger than 2,500 square feet, by mechanical means: \$35 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 \$750;

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

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

(6) 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;

(7) 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

(8) to control purple loosestrife (*Lythrum salicaria*): 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 commissioner shall require a person who conducts activities under an APM permit, commercial mechanical control permit, or commercial aquatic pest control license to report, no later than December 31 of each year, on the forms provided, information on permitted operations. 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; L 2004 c 255 s 50*

History: *21 SR 1406; 29 SR 947; 33 SR 1721*

6280.0500 AQUATIC PLANTS AND NUISANCES

1040

6280.0500 [Repealed, 21 SR 1406]

6280.0550 COMMERCIAL HARVEST OF AQUATIC PLANTS.

Subpart 1. **Permit required.** A person must have a commercial harvest permit to commercially harvest aquatic plants from public waters, except for wild rice, which is regulated under chapter 6284 and Minnesota Statutes, chapter 84.

Subp. 2. **Commercial harvest permit application.** A person may apply for a commercial harvest permit on forms provided by the commissioner. An applicant for a permit to commercially harvest aquatic plants in waters with no public access must provide documentation of legal access to the waters requested on the permit, including contact information for the owner of the access. The commissioner shall require an applicant to complete an aquatic plant workshop before issuing a commercial harvest permit and may require follow-up workshops as needed to update permittees on new regulations or other relevant issues.

Subp. 3. **Commercial harvest permit conditions.** The commissioner may specify conditions for commercial harvest permits to avoid or minimize harm to aquatic resources, including restrictions on the amount and species of plants harvested, location and timing of harvest, and method of harvest. A commercial harvest permit is valid for one year and may not be transferred to another person.

Subp. 4. **Criteria for issuing commercial harvest permits.** The commissioner shall consider the relevant criteria in part 6280.0250, subpart 3a, when determining whether to approve or deny a commercial harvest permit. The commissioner shall deny a commercial harvest permit application in waters that are infested with prohibited or regulated invasive species under chapter 6216 and Minnesota Statutes, chapter 84D, unless it is feasible and practical to apply permit conditions that would prevent the spread of invasive species. The commissioner shall deny a commercial harvest permit application in waters where there is not enough information on the aquatic plant community to make an informed decision.

Subp. 5. **Annual report.** The commissioner shall require the holder of a commercial harvest permit to report, no later than December 31 of each year, on the forms provided, information on permitted operations. Failure to report is grounds for refusing to issue such permits in the future.

Statutory Authority: *MS s 103G.615*

History: *33 SR 1721*

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 plants 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 or approved by the commissioner 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. The treatment area must be posted for at least 24 hours

or the length of time of the longest water use restriction on the pesticide label, whichever is greater.

Subp. 3. **Pesticide control of aquatic plants in watercourses.** Pesticides may be used to control aquatic plants 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; 33 SR 1721*

6280.0700 COMMERCIAL PESTICIDE AND MECHANICAL CONTROL.

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 mechanical control.** A person or firm may not mechanically control aquatic plants on public waters for hire without first obtaining a commercial mechanical control permit issued by the commissioner. A person must complete an aquatic plant management workshop provided by the commissioner before conducting control activities under a commercial mechanical control permit. The commissioner may require follow-up workshops as needed to update permittees on new regulations or other relevant issues. 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 commissioner 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 mechanical control 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; 33 SR 1721*

6280.0800 [Repealed, 33 SR 1721]

6280.0900 AUTHORITY TO AMEND AND REVOKE PERMITS.

Subpart 1. **Amendments and revocation.** The commissioner may amend or revoke an APM permit or suspend aquatic plant management or commercial harvest activities 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.

Subp. 1a. **Permit revocation for violation of rules.**

A. A person who receives an APM-related conviction may be subject to an APM-related permit revocation. The commissioner shall consider the following criteria in determining whether to invoke an APM-related permit revocation:

- (1) the extent and number of violations leading to the conviction;
- (2) the extent and number of prior aquatic plant management-related convictions; and
- (3) the extent to which the person had received prior warnings regarding unlawful aquatic plant management activities.

B. A person who receives two separate APM-related convictions in a three-year period is subject to an APM-related permit revocation for one year from the date of the second conviction. A person who receives an APM-related conviction after being subject to an APM-related permit revocation is subject to an APM-related permit revocation for five years from the date of the conviction. The commissioner shall require a person who has had an APM-related permit revocation to participate in an aquatic plant management

6280.0900 AQUATIC PLANTS AND NUISANCES

1042

workshop before the person can receive an APM, commercial mechanical control, or commercial harvest permit. If the commissioner requires a person to participate in a workshop before receiving a permit, the commissioner shall make the workshop available so as not to delay the issuance of the permit. A person who is subject to an APM-related permit revocation may request review pursuant to part 6280.1100, subpart 1, during which time the revocation will be suspended until all administrative appeals are exhausted. The commissioner may overturn an APM-related permit revocation after review pursuant to part 6280.1100, subpart 1.

C. An APM-related conviction is considered to be separate from a prior APM-related conviction if it arises from a course of conduct that is separate from the conduct that resulted in the prior conviction.

Subp. 2. **Amendments by request.** The commissioner may amend a commercial mechanical control, APM, or commercial harvest 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; 33 SR 1721*

6280.1000 VARIANCE AND LAKE VEGETATION MANAGEMENT PLAN.Subpart 1. **Variance.**

A. The commissioner may issue APM permits with a variance from one or more of the provisions of parts 6280.0250, subpart 4, and 6280.0350, except that no variance may be issued for part 6280.0250, subpart 4, items B and C. Variances may be issued to control invasive aquatic plants, protect or improve aquatic resources, provide riparian access, or enhance recreational use on public waters. The commissioner shall make a determination that there are exceptional circumstances or special or unique conditions based on the criteria in items B and C before granting a variance to control native aquatic plants to provide riparian access or enhance recreational use.

B. The following criteria shall be considered to determine if a variance is justified to control invasive aquatic plants or protect or improve aquatic resources in public waters:

- (1) whether the variance has the potential to increase or protect native aquatic plants, improve water quality, or provide other ecological benefits;
- (2) whether the variance has the potential to prevent the spread of invasive aquatic plants;
- (3) whether the variance would further research or evaluation of invasive aquatic plant control; and
- (4) whether there is a feasible alternative to control invasive aquatic plants or improve aquatic resources.

C. The following criteria shall be considered to determine if a variance is justified to provide riparian access or enhance recreational opportunities on public waters:

- (1) the habitat, water quality, and erosion control value of the aquatic plants in the proposed permit area and the amount of aquatic habitat reduction that would occur under the proposed control;
- (2) the abundance of invasive aquatic plants in the proposed permit area;
- (3) the selectivity of the proposed control for invasive aquatic plants;
- (4) whether shoreline development is limited on the water subject to the proposed variance such that exceeding the individual property limits in part 6280.0350, subpart 1a, would not have potential to combine with other aquatic plant control to substantially reduce aquatic habitat or result in other undesirable ecological impacts;

(5) the presence of extensive mats of aquatic plants at the surface that substantially interfere with recreation in the proposed permit area, but only if this is not a natural condition of a shallow lake, shallow bay, or wetland;

(6) the compatibility of the proposed variance with the regulatory or management classification of the water and adjacent lands, including natural environment lakes, special protection districts, scientific and natural areas, wildlife management areas, aquatic management areas, designated wildlife lakes, and wild and scenic rivers;

(7) whether the variance, if granted, would alter the essential character of the public water; and

(8) whether there is a feasible alternative to provide riparian access or enhance recreational access.

D. The commissioner may require monitoring of aquatic plants, water quality, or other parameters as a condition of an APM permit that includes a variance.

E. The commissioner may require practical and feasible measures to mitigate the adverse effects on aquatic habitat as a condition of an APM permit that includes a variance. Mitigation measures may include reduction in the number or size of docks and other water-oriented structures, removal of shoreline riprap and retaining walls, restoration of natural riparian vegetation, and restoration of emergent and floating-leaf aquatic plants.

Subp. 2. Lake vegetation management plan (LVMP).

A. A lake vegetation management plan (LVMP) approved by the commissioner may authorize a variance from the provisions of this chapter, if permitted under subpart 1, item A, to control invasive species, protect or improve aquatic resources, provide riparian access, and enhance recreational use on public waters. The commissioner shall require an APM permit applicant to develop an LVMP before granting a variance if the proposed control proposes methods or actions that need to be evaluated to determine if the goals of the variance are met. If a public water has an LVMP approved by the commissioner, all APM permits within that public water shall be issued in accordance with the plan and APM permit applications that are inconsistent with the plan may be denied.

B. The commissioner shall provide the format for an LVMP. An LVMP must contain the following information before being approved by the commissioner:

(1) a description of the lake and its water quality including location, size, and clarity;

(2) a description of the aquatic plant community;

(3) a description of the public participation process used in developing the plan;

(4) a description of the problems addressed in the plan;

(5) a statement of the goal for management of aquatic plants;

(6) a description of the proposed actions to achieve the plan's goal and a map showing the location of proposed actions; and

(7) conditions of APM permits that would be issued as part of the plan, including identification of variances requested under subpart 1.

C. The commissioner shall require a monitoring plan for an LVMP if the plan proposes methods or actions that need to be evaluated to determine whether the plan's goals will be met.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83; 21 SR 1406; 33 SR 1721*

6280.1100 AQUATIC PLANTS AND NUISANCES

1044

6280.1100 REVIEW AND APPEAL OF PERMIT DECISION.

Subpart 1. **Commissioner's review.** If an APM, commercial mechanical control, or commercial harvest permit is granted with conditions, modified, denied, suspended, or revoked, the applicant may file with the commissioner a written request for review. The commissioner shall review the relevant information and render a decision within 15 working days of the request for review. The commissioner shall notify the applicant of the right to appeal the decision under subpart 2.

Subp. 2. **Contested case hearing.** An applicant requesting an appeal of the decision of the commissioner after review under subpart 1 shall 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; 33 SR 1721*

6280.1200 PENALTY.

Violation of this chapter or the terms of an APM, commercial mechanical control, or commercial harvest permit is a misdemeanor.

Statutory Authority: *MS s 103G.615*

History: *21 SR 1406; 33 SR 1721*

6280.1300 STANDARDS FOR BLACK FLY CONTROL PERMITS.

The commissioner may issue a permit to control black fly larvae in streams subject to the following conditions:

A. the permit applicant must collect adult black fly specimens from the area adjacent to the stream requested for treatment and larval black fly specimens from the stream to be treated and provide species identification to the commissioner. Permit conditions may require an applicant to provide specimens to a qualified person to verify the species identification;

B. only *Bacillus thuringiensis var. israelensis* (Bti) may be approved for control of black fly larvae. Permit conditions may include specifications to minimize impacts to nontarget species, including, but not limited to, the location and timing of treatments;

C. a permit applicant must monitor the treated area before and after the treatment. Permit conditions may include specifications on the type and number of samplers to be used, the timing of placement and removal of samplers, and the data that needs to be recorded;

D. control of black fly larvae is prohibited in designated trout streams listed in part 6264.0050, subpart 4, and may be prohibited in other waters to prevent detrimental impacts to nontarget organisms;

E. the permittee must submit a report on forms provided by the commissioner no later than January 31 of the year following the treatment; and

F. if a permittee fails to comply with permit conditions, the commissioner may deny future permit applications from that permittee or the entity represented by that permittee.

Statutory Authority: *MS s 103G.615*

History: *32 SR 724*