

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

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

(d) redeposition of excavated materials, consisting of inorganic materials free from pollutants, into public waters shall only be permitted when it will result in improvement of natural conditions of public waters for the public benefit and will not result in sedimentation, obstruction of navigation, or a loss of fish or wildlife habitat. Separate permit provisions 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; 105.415*

**History:** *8 SR 533; L 1985 c 172 s 80; L 1985 1Sp16 art 2 s 19; 25 SR 143; 27 SR 529*

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