

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, including 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; 105.415*

History: *8 SR 533; L 1986 c 386 art 1 s 19; 17 SR 1279; 25 SR 143; 27 SR 529*

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