

**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 into 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 14.386; 103G.315; L 2000 c 382 s 20*

**History:** *25 SR 143; 27 SR 529*

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