

CHAPTER 105

DIVISION OF WATERS, SOILS AND MINERALS

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105.01, 105.02 [Repealed, 1947 c 142 s 20]

105.04 to 105.12 [Repealed, 1947 c 142 s 20]

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WATER RESOURCES, CONSERVATION

105.37 DEFINITIONS. Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following words and terms, for the purposes of sections 105.37 to 105.55, shall have the meanings subjoined to them.

Subd. 2. "Commissioner" means the commissioner of natural resources of the state of Minnesota.

Subd. 3. "Division" means the division of waters, soils and minerals of the department of natural resources of the state of Minnesota.

Subd. 4. "Director" means the director of the division of waters, soils and minerals of the department of natural resources of the state of Minnesota.

Subd. 5. "Appropriating" includes but is not limited to "taking", regardless of the use to which the water is put.

Subd. 6. "Beneficial public purpose", in relation to waters of the state, includes but is not limited to any or all of the following purposes:

- (a) Water supply for municipal, industrial, agricultural, or other purposes;
- (b) Recharge of underground water strata;
- (c) Retention of water to prevent or reduce downstream flooding, thereby minimizing erosion and resultant property damage;
- (d) Entrapment and retention of nutrients and other materials which impair the quality of natural resources;
- (e) Recreational activities such as swimming, boating, fishing, and hunting;
- (f) Public navigation other than for recreational purposes;
- (g) Wildlife habitat such as fish spawning and rearing areas, waterfowl nesting and feeding areas, and areas for the rearing, feeding, and protection of other wildlife;
- (h) Areas designated as scientific and natural areas pursuant to section 84.033.

Subd. 7. "Waters of the state" means any waters, surface or underground, except those surface waters which are not confined but are spread and diffused over the land. "Waters of the state" includes all boundary and inland waters.

Subd. 8. "Abandon" means to give up the use and maintenance of the described structures or improvements to realty and to surrender the same to deterioration, without reference to any intent to surrender or relinquish title to or possessory interest in the real property constituting the site of the structures or improvements. "Abandoned" and "abandonment" have meanings consistent with this definition of "abandon".

[1947 c 142 s 1; 1967 c 905 s 5; 1969 c 1129 art 3 s 1; 1973 c 315 s 1-3; 1973 c 344 s 1]

105.38 DECLARATION OF POLICY. In order to conserve and utilize the water resources of the state in the best interests of the people of the state, and for the purpose of promoting the public health, safety and welfare, it is hereby declared to be the policy of the state:

(1) Subject to existing rights all waters of the state which serve a beneficial public purpose are public waters subject to the control of the state. The public character of water shall not be determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or on whether it is a body or stream of water which was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union. This section is not intended to affect determination of the ownership of the beds of lakes or streams.

(2) The state, to the extent provided by law from time to time, shall control the appropriation and use of surface and underground waters of the state.

(3) The state shall control and supervise, so far as practicable, any activity which changes or which will change the course, current, or cross-section of public waters, including but not limited to the construction, reconstruction, repair, removal, abandonment, the making of any other change, or the transfer of ownership of dams, reservoirs, control structures, and waterway obstructions in any of the public waters of the state.

[1947 c 142 s 2; 1957 c 502 s 1; 1973 c 315 s 4; 1973 c 344 s 2]

105.39 AUTHORITY AND POWER OF COMMISSIONER. Subdivision 1. **Water conservation program.** The commissioner shall devise and develop a general water resources conservation program for the state. The program shall contemplate the conservation, allocation, and development of all the waters of the state, surface and underground, for the best interests of the people. The commissioner shall be guided by such program in the issuance of permits for the use and appropriation of the waters of the state and the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs and other control structures, as provided by sections 105.37 to 105.55.

Subd. 2. **Surveys and investigations.** The commissioner is authorized to cause to be made all such surveys, maps, investigations and studies of the water resources and topography of the state as he may deem necessary to provide the information to formulate a program and carry out the provisions of sections 105.37 to 105.55.

Subd. 3. **Administration over waters and water power.** The commissioner shall have administration over the use, allocation and control of public waters, the establishment, maintenance and control of lake levels and water storage reservoirs, and the determination of the natural ordinary high water level of any public waters.

Subd. 4. **Power to acquire property; eminent domain.** The commissioner shall have the power to acquire title to any private property for any authorized purpose by purchase or by the exercise of the right of eminent domain; and the use of such property in the furtherance of lawful projects under sections 105.37 to 105.55 is hereby declared to be a public purpose. On request by the commissioner, the attorney general shall proceed to acquire the necessary title to private property for such use under the provisions of Minnesota Statutes 1945, Chapter 117.

Subd. 5. **Contracts.** The commissioner is authorized to approve contracts for all works under sections 105.37 to 105.55, to change the plans thereof when necessary, and to supervise, control, and accept the same when complete. He is further authorized to cause the same, together with expenses incurred in connection therewith, to be paid for out of any funds made available to the use of the commissioner.

Subd. 6. **Statewide water information system.** The commissioner in cooperation with other state agencies, including the Minnesota geologic survey, shall establish and maintain a statewide system to gather, process, and disseminate information on the availability, distribution, quality, and use of waters of the state. Each local, regional, and state governmental unit, its officers and employees shall cooperate with the commissioner in accomplishing the purpose of this subdivision.

[1947 c 142 s 3; 1973 c 315 s 5]

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105.40 DIRECTOR; QUALIFICATIONS, DUTIES. Subdivision 1. The director of the division of waters, soils and minerals of the department of natural resources shall be a registered professional engineer, skilled in hydraulics. Under the direction of the commissioner, he shall make the surveys and engineering investigations required by sections 105.37 to 105.55 and perform the following duties.

Subd. 2. A complete copy of all preliminary and final engineers' maps, plans and reports on all public ditches hereafter initiated in the state shall be filed in the office of the director by the respective county auditors or clerks of district court, and the director shall report thereon to the county boards of commissioners or judges of the district court, as required by the county and judicial ditch laws of this state.

Subd. 3. Upon request by any county board or judge of the district court or engineer on any public ditch, the director shall advise them relative to any engineering questions or problems arising in connection with any public ditch.

Subd. 4. When any field survey or investigation of any public ditch is deemed necessary by the director or is requested in writing by the county board or district judge, the director may make the same. If the field survey or investigation be made at the request of the board or judge, the expense thereof shall be reported to the board or court and paid by the county as are other ditch expenses.

Subd. 5. The director is authorized to prepare and publish run-off data and information as to the capacity of tile drains and open ditches within the state together with forms of specifications for drain tile, open ditches and ditch construction and standard procedural forms for public ditch proceedings, and to furnish the same to engineers and public officials for their advice and information.

Subd. 6. The director is authorized to investigate the methods employed in the manufacture of drain tile and the causes of any failures thereof, and to conduct research and experimentation for the purpose of improving the quality of drain tile. He may make inspections and tests of manufacturing processes and materials used and the resultant product in any manufacturing plant in the state where drain tile is made and sold to the general public. The director, or his authorized representative, shall have free access to all such manufacturing plants for the purpose of such inspections and tests, and the results thereof shall be made public for the information of officials concerned in public ditch proceedings, tile manufacturers and others interested in the use of drain tile.

Subd. 7. The director shall perform such engineering work as may be requested by the state water policy board, and shall appear in all hearings and proceedings before the state water policy board affecting waters within the state.

Subd. 8. The director shall cooperate with all agencies and departments of the state and federal government relating to projects or works of improvement affecting waters within the state and shall make recommendations to the agencies involved and to the governor as to the desirability, feasibility and practicability of such proposed projects and works of improvement.

Subd. 9. The director is authorized to purchase such technical and scientific equipment as may be necessary to perform the functions and discharge the duties of his office.

Subd. 10. No contract or agreement shall be made by any department or agency of the state or any municipality with the United States or any agency or department thereof, for the collection of basic data pertaining to surface or ground waters of the state without first securing the written approval of the director.

Subd. 11. The director is authorized to formulate rules and regulations so as to standardize the forms and sizes of maps, plats, drawings and specifications in public drainage proceedings and proceedings and undertakings pertaining to public waters of the state.

Subd. 12. All moneys appropriated to the commissioner of natural resources of the department of natural resources for the use of the division of waters, soils and minerals or the director thereof, to conduct hydrologic studies, shall remain available until expended.

Subd. 13. The director may appear for the state in any matter or proceeding affecting waters within the state, including boundary waters, for the purpose of furnishing hydrologic and hydraulic engineering advice and information in connection therewith.

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Subd. 14. The director, with the approval of the commissioner, may make cooperative agreements with and cooperate with any person, corporation or governmental authority for the purpose of effectuating the provisions of this section.

[1947 c 142 s 4; 1955 c 771 s 1; 1967 c 905 s 5; 1969 c 1129 art 3 s 1]

105.403 WATER AND RELATED LAND RESOURCES PLANS. The commissioner of natural resources, in cooperation with other state and federal agencies, regional development commissions, the metropolitan council, local governmental units, and citizens, shall prepare a statewide framework and assessment water and related land resources plan for presentation to the legislature by November 15, 1975, for its review and approval or disapproval. This plan shall relate each of the programs of the department of natural resources for specific aspects of water management to the others. The statewide plan shall include but not be limited to provisions for the following:

- (a) Regulation of improvements and land development by abutting landowners of the beds, banks, and shores of lakes, streams, watercourses, and marshes by permit or otherwise in order to preserve them for beneficial use;
- (b) Regulation of construction of improvements on and prevention of encroachments in the flood plains of the rivers, streams, lakes, and marshes of the state;
- (c) Reclamation or filling of wet and overflowed lands;
- (d) Repair, improvement, relocation, modification or consolidation in whole or in part of previously established public drainage systems within the state;
- (e) Preservation of wetland areas;
- (f) Management of game and fish resources as related to water resources;
- (g) Control of water weeds;
- (h) Control or alleviation of damages by flood waters;
- (i) Alteration of stream channels for conveyance of surface waters, navigation, and any other public purposes;
- (j) Diversion or changing of watercourses in whole or in part;
- (k) Regulation of the flow of streams and conservation of the waters thereof;
- (l) Regulation of lake water levels;
- (m) Maintenance of water supply for municipal, domestic, industrial, recreational, agricultural, aesthetic, wildlife, fishery, or other public use;
- (n) Sanitation and public health and regulation of uses of streams, ditches, or watercourses for the purpose of disposing of waste and maintaining water quality;
- (o) Preventive or remedial measures to control or alleviate land and soil erosion and siltation of watercourses or bodies of water affected thereby;
- (p) Regulation of uses of water surfaces.

[1974 c 558 s 1]

105.405 WATER SUPPLY MANAGEMENT. Subdivision 1. The commissioner shall develop and manage water resources to assure a supply adequate to meet long range seasonal requirements for domestic, municipal, industrial, agricultural, fish and wildlife, recreational, power, navigation, and quality control purposes from surface or ground water sources, or from a combination of these.

Subd. 2. No permit authorized by sections 105.37 to 105.55 nor any plan for which the commissioner's approval is required or permitted, involving a diversion of any waters of the state, surface or underground, to a place outside of this state shall be granted or approved until after a determination by the commissioner that the water remaining in this state will be adequate to meet the state's water resources needs during the specified life of the diversion project.

[1973 c 412 s 11]

105.41 APPROPRIATION AND USE OF WATERS. Subdivision 1. It shall be unlawful for the state, any person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state to appropriate or use any waters of the state, surface or underground, without the written permit of the commissioner, previously obtained upon written application therefor to the commissioner. Nothing in this section shall be construed to apply to the use of water for domestic purposes serving less than 25 persons.

Subd. 1a. The commissioner shall submit to the legislature by January 1, 1975, for its approval, proposed rules governing the allocation of waters among potential

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water users. These rules shall be based on the following priorities for appropriation and use of water:

First priority. Domestic water supply, excluding industrial and commercial uses of municipal water supply. Agricultural irrigation, involving consumption in excess of 10,000 gallons per day.

Second priority. Any use of water that involves consumption of less than 10,000 gallons of water per day. For purposes of this section "consumption" shall mean water withdrawn from a supply which is lost for immediate further use in the area.

Third priority. Power production, involving consumption in excess of 10,000 gallons per day.

Fourth priority. Industrial and commercial uses, involving consumption in excess of 10,000 gallons per day.

Fifth priority. Other uses, involving consumption in excess of 10,000 gallons per day.

Appropriation and use of surface water from streams during periods of flood flows and high water levels shall be encouraged subject to consideration of the purposes for use, quantities to be used, and the number of persons appropriating water.

Appropriation and use of surface water from lakes of less than 500 acres in surface area shall be discouraged.

Diversions of water from the state for use in other states or regions of the United States or Canada shall be discouraged, subject to the jurisdiction of the United States government.

No permit shall be issued under this section unless it is consistent with state, regional, and local water and related land resources management plans, provided that regional and local plans are consistent with statewide plans.

Subd. 1b. No permit shall be required for the appropriation and use of less than a minimum amount to be established by the commissioner by regulation. Permits for more than the minimum amount but less than an intermediate amount to be specified by the commissioner by regulation shall be processed and approved at the municipal, county, or regional level based on regulations to be established by the commissioner by January 1, 1977. The regulations shall include provisions for reporting to the commissioner the amounts of water appropriated pursuant to local permits.

Nothing in this section shall be construed to apply to the use of water for domestic purposes serving at any time less than 25 persons, and nothing in this subdivision shall apply to any beneficial uses and rights, outside the geographical limits of any municipality, in existence on July 1, 1937, or to any beneficial uses and rights, within the geographical limits of any municipality, in existence on July 1, 1959.

Subd. 2. It shall be unlawful for the owner of any installation for appropriating or using surface or underground water to increase the pumping capacity or make any major modification in such installation without the written permit of the commissioner previously obtained upon written application therefor to the commissioner.

The owner or person in charge of every installation for appropriating or using surface or underground water, whether or not under permit, shall file with the commissioner at such time as the commissioner determines necessary to the statewide water information system, a statement of the location thereof, its capacity, the purpose or purposes for which it is used, and such additional information that the commissioner may require, on forms provided by the commissioner.

Subd. 3. The commissioner may examine any installation which appropriates or uses surface or underground water, and the owner of such installation shall supply such information concerning such installation as the commissioner may require.

Subd. 4. It shall be unlawful for the state, any person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state to appropriate or use any waters of the state, surface or underground, without measuring and keeping a record of the quantity of water used or appropriated as herein provided. Each installation for appropriating or using

water shall be equipped with a device or employ a method to measure the quantity of water appropriated with reasonable accuracy. The commissioner's determination of the method to be used for measuring water quantity shall be based upon the quantity of water appropriated or used, the source of water, the method of appropriating or using water, and any other facts supplied to the commissioner.

Subd. 5. Records of the amount of water appropriated or used shall be recorded for each such installation and such readings and the total amount of water appropriated shall be reported annually to the commissioner of natural resources on or before February 15 of the following year upon forms to be supplied by the commissioner.

For the purpose of improving the state's water use data collection and dissemination system, there is established an annual water appropriation processing fee of \$5 for each water appropriation permit in force at any time during the year. The fee is payable regardless of the amount of water appropriated during the year. The fee shall be paid at the time of making the annual report required by this section. Failure to pay the fee is sufficient cause for revoking a permit. No fee may be imposed on any state agency, as defined in section 16.011, or federal governmental agency holding a water appropriation permit.

[1947 c 142 s 5; 1959 c 486 s 1; 1965 c 797 s 1; 1969 c 1129 art 3 s 1; 1973 c 211 s 2; 1973 c 315 s 6; 1974 c 558 s 2, 3]

105.42 PERMITS; WORK IN PUBLIC WATERS. Subdivision 1. It shall be unlawful for the state, any person, partnership, association, private or public corporation, county, municipality or other political subdivision of the state, to construct, reconstruct, remove, abandon, transfer ownership, or make any change in any reservoir, dam or waterway obstruction on any public water; or in any manner, to change or diminish the course, current or cross-section of any public waters, wholly or partly within the state, by any means, including but not limited to, filling, excavating, or placing of any materials in or on the beds of public waters, without a written permit from the commissioner previously obtained. Application for such permit shall be in writing to the commissioner on forms prescribed by him.

This section does not apply to any public drainage system lawfully established under the provisions of chapter 106 which does not substantially affect any natural watercourse or any lake basin which serves a beneficial public purpose.

The commissioner, subject to the approval of the county board, shall have power to grant permits under such terms and conditions as he shall prescribe, to establish, construct, maintain and control wharfs, docks, piers, levees, breakwaters, basins, canals and hangars in or adjacent to public waters of the state except within the corporate limits of cities.

Subd. 1a. The commissioner shall recommend by January 15, 1975, to the legislature a comprehensive law containing standards and criteria governing the issuance and denial of permits under this section. These standards and criteria shall relate to the diversion of water from other uses and changes in the level of public waters to insure that projects will be completed and maintained in a satisfactory manner. After November 15, 1975, a permit shall be granted under this section only when the project conforms to state, regional, and local water and related land resources management plans, and only when it will involve a minimum of encroachment, change, or damage to the environment, particularly the ecology of the waterway. In those instances where a major change in the resource is justified, permits shall include provisions to compensate for the detrimental aspects of the change.

In unincorporated areas and, after January 1, 1976, in incorporated areas, permits that will involve excavation in the beds of public waters shall be granted only where the area in which the excavation will take place is covered by a shoreland conservation ordinance approved by the commissioner and only where the work to be authorized is consistent with the shoreland conservation ordinance. Each permit that will involve excavation in the public waters shall include provisions governing the deposition of spoil materials.

No permit affecting flood waters shall be granted except where the area covered by the permit is governed by a flood plain management ordinance approved by the commissioner and the conduct authorized by the permit is consistent with the flood plain management ordinance, provided that the commissioner has determined that sufficient information is available for the adoption of a flood plain ordinance. No permit involving the control of flood waters by structural means, such as dams, dikes, levees, and channel improvements, shall be granted until

after the commissioner has given due consideration to all other flood damage reduction alternatives. In developing his policy with regard to placing emergency levees along the banks of public waters under flood emergency conditions, the commissioner shall consult and cooperate with the office of emergency services.

No permit that will involve a change in the level of public waters shall be granted unless the shoreland adjacent to the waters to be changed is governed by a shoreland conservation ordinance approved by the commissioner and the change in water level is consistent with that shoreland conservation ordinance. Standards and procedures for use in deciding the level of a particular lake must insure that the rights of all persons are protected when lake levels are changed and shall include provisions for providing technical advice to all persons involved, for establishing alternatives to assist local agencies in resolving water level conflicts, and mechanics necessary to provide for local resolution of water problems within the state guidelines.

Subd. 2. Nothing in this section shall prevent the owner of any dam, reservoir, control structure, or waterway obstruction from instituting repairs which are immediately necessary in case of emergency. However, the owner shall notify the commissioner at once of the emergency and of the emergency repairs being instituted and, as soon as practicable, shall apply for a permit for the emergency repairs and any necessary permanent repairs. Nothing in this section shall apply to routine maintenance, not affecting the safety of the structures.

In case of an emergency where the commissioner declares that repairs or remedial action is immediately necessary to safeguard life and property, the repairs shall be started immediately by the owner.

Subd. 3. The owner of any dam, reservoir, control structure, or waterway obstruction constructed before a permit was required by law shall maintain and operate all such dams, reservoirs, control structures, and waterway obstructions in a manner approved by the commissioner and in accordance with any rules and regulations promulgated by the commissioner in the manner prescribed by chapter 15.

[1947 c 142 s 6; 1973 c 315 s 7; 1973 c 344 s 3; 1973 c 123 art 5 s 7; 1974 c 428 s 5; 1974 c 558 s 4]

105.43 APPLICATION FOR ESTABLISHMENT OF LAKE LEVELS. Application for authority to establish and maintain levels on any public water and applications to establish the natural ordinary high water level of any body of public water may be made to the commissioner by any public body or authority or by a majority of the riparian owners thereon; or, for the purpose of conserving or utilizing the water resources of the state, the commissioner may initiate proceedings therefor.

[1947 c 142 s 7; 1973 c 315 s 8]

105.44 PROCEDURE UPON APPLICATION. Subdivision 1. **Permit.** Each application for a permit required by sections 105.37 to 105.55 shall be accompanied by maps, plans, and specifications describing the proposed appropriation and use of waters, or the changes, additions, repairs or abandonment proposed to be made, or the public water affected, and such other data as the commissioner may require. This data may include but not be limited to a statement of the effect the actions proposed in the permit application will have on the environment, such as: (a) changes in water and related land resources which are anticipated; (b) unavoidable but anticipated detrimental effects; (c) alternatives to the actions proposed in the permit. If the proposed activity, for which the permit is requested, is within a city, or town, or is within or affects a watershed district, a copy of the application together with maps, plans and specifications shall be served on the secretary of the board of managers of the district and on the chief executive officer of the city or town. Proof of such service shall be included with the application and filed with the commissioner.

Subd. 1a. **Excavation charges.** The commissioner shall impose charges for the excavation of minerals from the beds of public waters, as provided in chapter 93.

Subd. 2. **Authority.** The commissioner is authorized to receive applications for permits and to grant the same, with or without conditions, or refuse the same as hereinafter set forth. Provided, that if the proposed activity for which the permit is requested is within a city or town, or is within or affects a watershed district the

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commissioner may secure the written recommendation of the managers of said district or the chief executive officer of the city, or town, before granting or refusing the permit. Said managers or chief executive officers shall file their recommendation within a reasonable time after receipt of a copy of the application for permit.

Subd. 3. Waiver of hearing. The commissioner in his discretion may waive hearing on any application and make his order granting or refusing such application. In such case, if any application be granted, with or without conditions, or be refused, the applicant, the managers of the watershed district, or the chief executive officer of the city or town may within 30 days after mailed notice thereof file with the commissioner a demand for hearing on the application. The application shall thereupon be fully heard on notice as hereinafter provided, and determined the same as though no previous order had been made. If no demand for hearing be made, the order shall become final at the expiration of 30 days after mailed notice thereof to the applicant, managers of the watershed district, or the chief executive officer of the city or town, and no appeal of the order may be taken to the district court.

Subd. 4. Time. The commissioner shall act upon all applications within 20 days after the application and all required data is filed in his office; either waiving hearing and making an order thereon or directing hearing thereon.

Subd. 5. Notice. The notice of hearing on any application shall recite the date, place and time fixed by the commissioner for the public hearing thereon and shall show the waters affected, the levels sought to be established or any control structures proposed. The notice shall be published by the commissioner at the expense of the applicant or, if the proceeding is initiated by the commissioner in the absence of an applicant, at the expense of the commissioner, once each week for two successive weeks prior to the day of hearing in a legal newspaper published in the county in which a part or all of the affected waters are located. Notice shall also be mailed by the commissioner to the county auditor and the chief executive official of any municipality or watershed district affected.

Subd. 6. Hearing. The hearings shall be public and shall be conducted by the commissioner or a referee appointed by him. All affected persons shall have an opportunity to be heard. All testimony shall be taken under oath and the right of cross-examination shall be accorded. The commissioner shall provide a stenographer to take testimony and a record of the testimony and all proceedings at the hearing shall be taken and preserved. The commissioner shall not be bound by judicial rules of evidence or of pleading and procedure. Except where a public hearing is demanded by a public authority which is not the applicant, the applicant shall pay the following: (1) Costs of the stenographic record and transcript, (2) Rental expenses, if any, of the place of hearing, (3) Costs of publication of orders made by the commissioner.

Where the public hearing is demanded by a public authority which is not the applicant, the public authority making the demand shall pay the costs and expenses listed above. An applicant filing a demand for a public hearing shall execute and file a corporate surety bond or equivalent security to the state of Minnesota, to be approved by the commissioner, and in an amount and form fixed by the commissioner. The bond or security shall be conditioned for the payment of all costs and expenses of the public hearing if the commissioner's action taken pursuant to subdivision 2 is affirmed without modification. No bond or security is required of a public authority which demands a public hearing. The commissioner, in his discretion, may waive the requirement for a bond or other security.

Subd. 7. Witnesses; contempt. The commissioner may subpoena and compel the attendance of witnesses and the production of all books and documents material to the purposes of the hearing. Disobedience of every such subpoena, or refusal to be sworn, or to answer as a witness, shall be punishable as a contempt in like manner as a contempt of the district court on complaint of the commissioner before the district court of the county where such disobedience or refusal occurred.

Subd. 8. Permit to irrigate agricultural land. When an application for permit to irrigate agricultural land from public waters is made, a general statement in the application of the purpose of the proposed use of public waters and the acreage to be irrigated shall be sufficient compliance with the requirements of subdivision 1 with respect to maps, plans and specifications, unless the commissioner reasonably may require additional specified information within ten days of the

filing of the application. In any such case the commissioner shall make his order granting the application unless he finds after hearing that granting thereof would be against the public interest or would deprive another than the applicant of the share of public water which such other has requested and to which he is entitled. In the case of an application for permit to irrigate agricultural land, failure of the commissioner to act thereon by granting or denial or other hearing thereon within 30 days after filing of the application, or in case the commissioner has reasonably required additional specified information than that given in the application within 20 days after the filing of such additional information, shall be deemed an order granting the application.

Subd. 9. Limitations on permits. Except as otherwise expressly provided by law, every permit issued by the commissioner of natural resources under the provisions of Minnesota Statutes 1949, Sections 105.37 to 105.55, or any amendment thereof, shall be subject to the following:

(1) Cancellation by the commissioner at any time if deemed necessary by him for any cause for the protection of the public interests;

(2) Such further conditions respecting the term of the permit or the cancellation thereof as the commissioner may prescribe and insert in the permit;

(3) All applicable provisions of law existing at the time of the issuance of the permit or thereafter enacted by the legislature;

(4) Any applications granted under subdivision 8, or deemed granted under the provisions thereof, shall likewise be subject to the foregoing provisions of this subdivision, and shall be subject also to cancellation by the commissioner upon the recommendation of the supervisors of the soil and water conservation district wherein the land to be irrigated is located.

Subd. 10. Permit fees. Each application for a permit authorized by sections 105.37 to 105.64, shall be accompanied by a permit application fee in the amount of \$15 to defray the costs of receiving, recording, and processing the application.

The commissioner may charge an additional field inspection fee of not less than \$25 for each permit applied for under sections 105.37 to 105.64. The commissioner shall establish pursuant to rules and regulations adopted in the manner provided by chapter 15, a schedule for field inspection fees which shall include actual costs related to field inspection such as investigations of the area affected by the proposed activity, analysis of the proposed activity, consultant services, and subsequent monitoring, if any, of the activity authorized by the permit.

Except as provided below, the commissioner may not issue a permit until all fees required by this section relating to the issuance of a permit have been paid. The time limits prescribed by section 105.44, subdivision 4, do not apply to an application for which the appropriate fee has not been paid. Field inspection fees relating to monitoring of an activity authorized by a permit may be charged and collected as necessary at any time after the issuance of the permit. No permit application or field inspection fee may be refunded for any reason, even if the application is denied or withdrawn. No permit application or field inspection fee may be imposed on any state agency, as defined in section 16.011, or federal governmental agency applying for a permit.

[1947 c 142 s 8; 1951 c 334 s 1; 1961 c 488 s 1-3; 1969 c 637 s 1; 1969 c 706 s 1-3; 1969 c 1129 art 3 s 1; 1973 c 123 art 5 s 7; 1973 c 211 s 3; 1973 c 315 s 9-12; 1974 c 558 s 5]

105.45 PERMITS AND ORDERS OF COMMISSIONER; NOTICE. The commissioner shall make findings of fact upon all issues necessary for determination of the applications heard by him. All orders made by the commissioner shall be based upon findings of fact made on substantial evidence. He may cause investigations to be made, and in such event the facts disclosed thereby shall be put in evidence at the hearing or any adjournment thereof.

If the commissioner concludes that the plans of the applicant are reasonable, practical, and will adequately protect public safety and promote the public welfare, he shall grant the permit, and, if that be in issue, fix the control levels of public waters accordingly. In all other cases the commissioner shall reject the application or he may require such modification of the plan as he deems proper to protect the public interest. In all permit applications the applicant has the burden of proving that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare.

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In granting a permit the commissioner may include therein such terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state.

Notice of all orders made after hearing shall be given by publication of the order once each week for two successive weeks in a legal newspaper in the county where the hearing was held, and by mailing copies of the order to all parties who entered an appearance at such hearing.

The commissioner shall make his order pursuant to hearing within 60 days after the completion of the hearing.

[1947 c 142 s 9; 1973 c 315 s 13]

105.46 TIME LIMIT. The commissioner shall fix the time within which all construction authorized in the permit must be completed, or within which the appropriation or use of water must be made, which time shall not exceed five years from the date of the permit. Such time may be thereafter extended by the commissioner for good cause shown. Permits granted in connection with the mining, transporting, concentration or shipment of taconite as defined in Minnesota Statutes 1945, Section 93.20, and permits granted in connection with the mining, production or beneficiation of copper, copper-nickel or nickel, shall be irrevocable for the term thereof without the consent of the permittee, except for breach or non-performance of any condition of the permit by the permittee and the commissioner may allow and prescribe therein such time as he deems reasonable, regardless of the limitations of time contained in this section, for the commencement or completion of any construction or operations under such permit, or the exercising of the rights granted thereunder, or may extend such time, for cause shown, upon the application of the permittee.

[1947 c 142 s 10; 1967 c 566 s 1]

105.461 ORDERS TO RESTORE. As a part of any order granting or denying a permit, whether or not a hearing has been held, the commissioner may order the applicant to take any action necessary to restore the public waters or beds thereof to the condition existing before unlawful activities, if any, were undertaken by the applicant. This restoration may include, but not be limited to, filling beds unlawfully dredged, removing fill unlawfully placed, or restoring water unlawfully appropriated.

[1973 c 315 s 14]

105.462 INVESTIGATIONS; ORDERS WITHOUT A PERMIT APPLICATION. When the commissioner determines that the public interest so requires, he may investigate on his own motion any activities being conducted in relation to public waters without a permit as required by sections 105.37 to 105.55. With or without a public hearing the commissioner may make findings and issue orders as otherwise may be issued pursuant to sections 105.37 to 105.55. A copy of his findings and order shall be served upon the person to whom the order is issued.

[1973 c 315 s 15]

105.463 CONTRACTOR'S RESPONSIBILITY. It is unlawful for any agent, servant, or employee of another to undertake work for which a permit is required pursuant to section 98.48, subdivision 9, chapter 105, or section 106.021, unless a copy of the permit authorizing such work is posted on or near the premises upon which such work is conducted. The violation of this section constitutes a separate and independent offense from any other provided by sections 105.37 to 105.55.

[1973 c 315 s 16]

105.47 APPEALS. Except where otherwise prohibited, any party in interest may appeal from any determination of the commissioner to the district court of the county in which the project is wholly or partly located, at any time within 30 days after notice of the commissioner's order. Notice by publication shall be sufficient.

The appellant shall serve the notice of appeal on the commissioner and on the attorney for any adverse party who appears of record in the proceeding. The notice of appeal with proof of service thereof shall be filed with the clerk of the court to which such appeal is taken within five days after the service thereof; thereupon the district court shall have jurisdiction over the appeal. The notice of appeal

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shall set forth the order appealed from and the grounds upon which the appeal is taken.

When an appeal is taken from any order of the commissioner under the provisions of sections 105.37 to 105.55, the commissioner shall forthwith cause to be made a certified transcript of all proceedings had and of all pleadings, exhibits and files and all testimony taken or offered before him upon which said order is based, and shall file the same with the clerk of the district court where the appeal is pending.

Upon such appeal being perfected, it may be brought on for trial as other civil actions, and shall then be tried by the court without a jury, and determined upon the record. At such trial the findings of fact made by the commissioner shall be prima facie evidence of the matters therein stated, and his orders shall be deemed prima facie reasonable. If the court shall determine that the order appealed from is lawful and reasonable, it shall be affirmed. If the court finds that the order appealed from is unjust, unreasonable, or not supported by the evidence, it shall make such order to take the place of the order appealed from as is justified by the record before it.

Any person aggrieved may appeal to the supreme court from the judgment of the district court made therein as in a civil action, except that the appeal must be taken within 30 days from date of the entry of such judgment.

The pendency of any such appeal shall not stay the operation of the order of the commissioner, but the district court or the supreme court in their discretion may suspend the operation of the commissioner's order pending a determination of the appeal; provided the appellant shall file an appropriate bond approved by the court conditioned that he shall answer for all damages caused by the delay in the enforcement of the commissioner's order.

[1947 c 142 s 11; 1973 c 315 s 17]

105.475 STREAM MAINTENANCE PROGRAM. Subdivision 1. **Findings.** In recognition of recurrent problems created by debris and rubble accumulation in streams in Minnesota, the legislature finds that the removal of debris and rubble for the purpose of cleaning up stream beds and floodplains of streams is of benefit to the public health, safety, and welfare.

Subd. 2. **Establishment; commissioner's duties.** In furtherance of the finding set forth in subdivision 1, the commissioner of natural resources shall establish and supervise a stream maintenance program which shall include grants in aid to participating counties. Money granted by the commissioner shall be apportioned according to the relative severity of the maintenance problem, the date of application for the grant, and the availability of funds. In no case may the amount granted to a county by the commissioner exceed 75 percent of the total cost of a stream maintenance project. The stream maintenance work shall be performed by the county or under county supervision. The commissioner may grant money for the following work: Cutting and removal of brush and dead or down trees, and removal of large rocks and other debris such as concrete, asphalt, or scrap material. No money may be granted for excavation or filling or for work performed before an application is filed.

Subd. 3. **Application.** A county desiring to participate in the stream maintenance program shall complete and submit to the commissioner an application for the proposed work on forms provided by the commissioner. Unless waived by the commissioner, the county shall submit the following information with its application:

- (a) A map of the county showing the stream for which maintenance is desired, and the specific reaches of the stream to be maintained;
- (b) Photographs showing the nature and extent of the maintenance problem;
- (c) A resolution by the county board of commissioners requesting participation in the program and agreeing to provide at least 25 percent of the cost of the maintenance project.

Subd. 4. **Contract.** Upon approving a stream maintenance project, the commissioner shall contract with the county for performance of work necessary to the stream maintenance project. The contract may provide that the county share of the cost of the project may be paid in the form of services provided by the county.

Subd. 5. **County matching funds.** Any county may appropriate from its gen-

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eral revenue fund sufficient funds to match the grants in aid authorized in this section.

[1973 c 434 s 1]

105.48 DAM CONSTRUCTION AND MAINTENANCE BY STATE. The commissioner, in order to improve navigation, protect and improve domestic water supply, protect and preserve fish and other wild life, protect the public interest in the shore and shore lines of public waters, and promote public health, shall have power to construct, maintain, and operate all necessary dikes, dams and other structures necessary to maintain such uniform water levels as may be established under sections 105.37 to 105.55.

For the purposes of sections 105.37 to 105.55 the commissioner is authorized to acquire lands or any necessary interest therein by purchase, gift or condemnation.

All dams owned by the state or erected upon lands owned or controlled by the state shall be maintained under the direction of the commissioner and the same shall be operated under his direction and control.

The commissioner is authorized to accept from local governmental and civic agencies or persons funds for the purpose of constructing, maintaining, or operating dams and control structures or acquiring the lands required therefor.

[1947 c 142 s 12]

105.482 DAMS; REPAIR, RECONSTRUCTION; GRANTS. Subdivision 1. **Purpose.** The public health, safety, and welfare is promoted by the orderly repair and restoration of dams serving the public interest. In furtherance of this objective, it is the purpose of this section to facilitate the repair and restoration of dams owned by the state and local governmental units.

Subd. 2. **Definition.** For the purposes of this section, the term "local governmental unit" means a county or city, or two or more of these units acting jointly.

Subd. 3. **Commissioner's duties.** From money appropriated for the following purposes from time to time, the commissioner of natural resources may repair or reconstruct state owned dams and may grant aid to local governmental units to repair or reconstruct dams owned by local governmental units. No grant to a local governmental unit shall exceed the amount contributed to the project by the local governmental unit from funds raised locally exclusive of federal grants.

Subd. 4. **Procedures.** The commissioner shall repair or reconstruct a state owned dam or make a grant to a local governmental unit only after making an investigation of the dam. A local governmental unit desiring a grant for the repair or reconstruction of a dam shall apply for the grant on forms supplied by the commissioner. The commissioner shall consider all relevant factors, including but not limited to the following in determining whether to repair or reconstruct a state owned dam or to make a grant to a local governmental unit: (a) the age and type of construction of the dam; (b) the use of the dam for water supply, flood control, navigation, recreation, wildlife management, scenic, or other purpose related to public health, safety, and welfare; (c) the consequences of abandonment, removal, or alteration of the dam; (d) prospective future uses of the dam; and (e) the relative importance of the dam to the statewide water resource program. Upon his own initiative or at the request of a governmental unit applying for a grant, the commissioner may hold a public hearing on the proposed repair or reconstruction in the manner provided in section 105.44, after giving the same notice as required for such a hearing. If the hearing is held at the request of a governmental unit, the costs of publishing notice and of taking and preparing the stenographic record shall be paid by the governmental unit. To receive a grant the local governmental unit shall enter into an agreement with the commissioner giving assurance that the governmental unit will operate and maintain the dam in a safe condition for the benefit of the public and shall agree to such other conditions as the commissioner deems reasonable.

Subd. 5. **Limitations.** If the cost of repair or reconstruction of a state owned dam or a grant to a local governmental unit is less than \$25,000, the commissioner may direct that the state owned dam be repaired or reconstructed or that a grant be made to repair or reconstruct a dam owned by a local governmental unit without the approval of the state executive council. If the cost of repair or reconstruction of a state owned dam, or a grant to a local governmental unit is \$25,000 or more but less than \$50,000, the expenditure shall be made only with the approval of the state executive council. If the cost of repair or reconstruction of a state owned dam or

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a grant to a local governmental unit is \$50,000 or more, the commissioner may recommend the project to the legislature for its consideration and action, except in the following emergency situations. With the approval of the executive council, the commissioner may direct that a state owned dam be repaired or reconstructed or a grant be made to a local governmental unit where he determines that an emergency condition exists and that there is danger that life will be lost or that substantial property losses will be suffered if such action is not promptly taken.

Subd. 6. **Commissioner's order to repair or reconstruct a dam.** If for any reason a local governmental unit fails to repair or remove a dam when ordered to do so by the commissioner pursuant to section 105.52, the commissioner may repair or remove the dam. In so doing the commissioner shall proceed as follows. After a hearing as provided in section 105.44, on the failure of the local governmental unit to repair or remove the dam, the commissioner shall make findings relating to the matter, specifying the failure of the local governmental unit to act, and shall by order assume and possess the powers of the legislative authority of the local governmental unit in regard to the repair or removal of dams. Thereafter the commissioner has the same powers, insofar as applicable to the repair or removal of dams, as the commissioner of administration and pollution control agency have in the construction, installation, maintenance, or operation of a municipal disposal system, or part thereof, or issuing bonds and levying taxes therefor, pursuant to section 115.48.

[1973 c 123 art 5 s 7; 1973 c 344 s 4]

105.484 LAKE IMPROVEMENTS; GRANTS IN AID; PRIORITIES. The commissioner of natural resources with the assistance of the pollution control agency and the state planning agency shall make an assessment of the need for particular kinds of lake improvements including improvements related to pollution problems, high or low water levels, and any other resource management considerations and to develop by January 1, 1975, criteria for allocating state aid funds among proposed projects. Where these relate to control of or studies of sources and effects of wastes per se, any grant funds for such work shall be under the pollution control agency directly or subject to the pollution control agency priority system. Provisions shall be included to insure that any federal program of aid to local lake improvement projects serves to reduce the local share of project costs rather than reducing only the state's share.

[1974 c 558 s 7]

105.485 REGULATION OF SHORELAND DEVELOPMENT. Subdivision 1. **Purpose.** In furtherance of the policies declared in section 105.38, and chapter 116, it is in the interest of the public health, safety, and welfare to provide guidance for the wise development of shorelands of public waters and thus preserve and enhance the quality of surface waters, preserve the economic and natural environmental values of shorelands, and provide for the wise utilization of water and related land resources of the state.

Subd. 2. **Definitions.** For the purposes of this section the terms defined in this section have the meanings given them: (a) "Shoreland" means land located within the following distances from the ordinary high water elevation of public waters: (1) Land within 1,000 feet from the normal high watermark of a lake, pond, or flowage; and (2) land within 300 feet of a river or stream or the landward side of flood plain delineated by ordinance on such a river or stream, whichever is greater. (b) "Unincorporated area" means the area outside a city. (c) "Municipality" means a city.

Subd. 3. **Commissioner's duties.** Before April 1, 1974, the commissioner of natural resources shall promulgate, in the manner provided in chapter 15, model standards and criteria, other than a model ordinance, for the subdivision, use, and development of shoreland in municipalities, which standards and criteria shall include but not be limited to those listed below in regard to unincorporated areas. Before July 1, 1970, the commissioner of natural resources shall promulgate, in the manner provided in chapter 15, model standards and criteria for the subdivision, use, and development of shoreland in unincorporated areas, including but not limited to the following: (a) The area of a lot and length of water frontage suitable for a building site; (b) the placement of structures in relation to shorelines and roads; (c) the placement and construction of sanitary and waste disposal facilities; (d) designation of types of land uses; (e) changes in bottom con-

tours of adjacent public waters; (f) preservation of natural shorelands through the restriction of land uses; (g) variances from the minimum standards and criteria; and (h) a model ordinance. The following agencies shall provide such information and advice as may be necessary to the preparation of the rules and regulations, or amendments thereto: The state departments of agriculture, economic development, and health; the state planning agency; the pollution control agency; the state soil and water conservation commission; and the Minnesota historical society. In addition to other requirements of chapter 15, the model standards and ordinance promulgated pursuant to this section, or amendments thereto, shall not be filed with the secretary of state unless approved by the executive officer of the state board of health and the director of the pollution control agency.

Subd. 4. Failure of county to act; commissioner's duties; enforcement. If a county fails to adopt a shoreland conservation ordinance by July 1, 1972, or if the commissioner of natural resources, at any time after July 1, 1972, after notice and hearing as provided in section 105.44, finds that a county has adopted a shoreland conservation ordinance which fails to meet the minimum standards established pursuant to this section, the commissioner shall adapt the model ordinance to the county. The commissioner shall hold at least one public hearing on the proposed ordinance in the manner provided in section 394.26, after giving notice as provided in section 394.26. This ordinance is effective for the county on the date and in accordance with such regulations relating to compliance as the commissioner shall prescribe. The ordinance shall be enforced as provided in section 394.37. The penalties provided in section 394.37, apply to violations of the ordinance so adapted by the commissioner.

Subd. 5. Costs. The cost incurred by the commissioner in adapting the model ordinance to the county pursuant to subdivision 4 shall be paid by the county upon the submission to the county of an itemized statement of these costs by the commissioner. If the county fails to pay these costs within 90 days after the commissioner's statement is received, the commissioner may file a copy of the statement of these costs with the county auditor of the county for collection by special tax levy. The county auditor, upon receiving a statement from the commissioner, shall include the amount of the state's claim in the tax levy for general revenue purposes of the county. This additional tax shall be levied in excess of any limitation as to rate or amount, but shall not cause the amount of other taxes which are subject to any limitation to be reduced in any amount whatsoever. Upon completion of the tax settlement following this levy, the county treasurer shall remit the amount due to the state to the commissioner for deposit in the state treasury.

Subd. 6. Municipal shoreland management. Before April 1, 1974, each municipality having shoreland within its corporate limits shall submit to the commissioner, for his review, any ordinances, rules, or regulations affecting the use and development of its shorelands. The commissioner shall review the ordinances, rules, or regulations and determine whether they are in substantial compliance with municipal shoreland management standards and criteria promulgated pursuant to subdivision 3. In making his review the commissioner also shall consider any feature unique to the municipal shoreland in question, including but not limited to the characteristics of the waters which may be affected by development, storm sewer facilities, and sanitary and waste disposal facilities in existence at the time of the commissioner's review. If the commissioner determines that the ordinances, rules, or regulations of a municipality do not substantially comply with the state standards and criteria for municipal shoreland management, he shall so notify the municipality and shall indicate to the municipality the changes which are necessary to bring the ordinances, rules, or regulations into substantial compliance with state standards and criteria. Within one year after receiving this notice from the commissioner, the municipality shall make the changes necessary to bring the ordinances, rules, or regulations into substantial compliance with state standards and criteria. If a municipality has no ordinance, rule, or regulation affecting the use and development of shoreland on April 1, 1974, it shall adopt such an ordinance, rule, or regulation complying with state standards and criteria for municipal shoreland management, before July 1, 1975. If (a) a municipality has no ordinance, rule, or regulation affecting the use and development of shoreland on April 1, 1974, and fails to adopt such an ordinance by July 1, 1975, or if (b) the corporate boundaries of the municipality are expanded to include shorelands not previously included within the municipal boundaries and the municipality fails to adopt such an ordinance within one year after including the shorelands

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within its municipal boundaries, or if (c) the commissioner determines that a municipal shoreland management ordinance does not substantially comply with the state standards and criteria for municipal shoreland management and that the municipality has failed to make the necessary changes within one year after receiving notice of noncompliance, the commissioner may adopt an ordinance, rules, or regulations for the municipality in the following manner. The commissioner shall hold at least one public hearing on the proposed ordinance, rules, or regulations in the manner provided in section 462.357, after giving notice as provided in section 462.357. The ordinance, rules, or regulations are effective for the municipality on the date and in accordance with such regulations relating to compliance as the commissioner shall prescribe. The ordinance shall be enforced as provided in section 462.362. The penalties provided in section 462.362 apply to violations of the ordinances, rules, or regulations adopted for the municipality by the commissioner. The costs incurred by the commissioner in adopting the ordinances, rules, or regulations for the municipality shall be paid by the municipality and collected from the municipality in the same manner as such costs are paid by a county and collected from a county pursuant to subdivision 5; and any tax levied to pay the costs shall be levied in excess of any limitation as to rate or amount, but shall not cause the amount of other taxes which are subject to any limitation to be reduced in any amount whatsoever.

Subd. 7. **Municipal use of land other than shoreland.** Municipal planning and land use controls for land other than shoreland in the vicinity of shoreland shall be, to the maximum extent practical, compatible with planning and land use controls for shoreland adopted pursuant to subdivision 6.

Subd. 8. **Extent of authority of municipality.** Nothing in Laws 1973, Chapter 379 shall be construed to prohibit a municipality from adopting and enforcing ordinances, rules, or regulations affecting the use and development of shoreland which are more restrictive than the state standards and criteria.

[1969 c 777 s 1; 1969 c 1129 art 3 s 1; 1973 c 123 art 5 s 7; 1973 c 379 s 1-3, 5]

105.49 COOPERATION WITH OTHER AGENCIES. The commissioner may cooperate and enter into agreements with the United States government, any department of the state of Minnesota, or any state or country adjacent to the state of Minnesota for the purpose of effecting any of the provisions of sections 105.37 to 105.55. He may cooperate with any department of the government of the United States in the execution of surveys within the state.

Personnel of the pollution control agency, the health department, and county and municipal governments shall cooperate with the commissioner in monitoring and enforcing water permits. It shall be the duty of all county attorneys, sheriffs, and other peace officers and other officers having authority to take all action to the extent of their authority, respectively, that may be necessary or proper for the enforcement of any of the provisions, regulations, standards, orders, or permits specified in sections 105.37 to 105.55.

[1947 c 142 s 13; 1974 c 558 s 6]

105.50 COMMISSIONER TO APPEAR FOR STATE. The commissioner may appear, represent and act for the state in any matter relating to any application to be made to the federal government relating to waters within the state or the use thereof; and he may do and perform such acts in connection therewith as he deems proper to protect the interests of the people of the state consistent with the provisions of sections 105.37 to 105.55.

[1947 c 142 s 14]

105.51 WELLS; CONTROL, REPORTS BY DRILLERS. Subdivision 1. For the conservation of the underground water supplies of the state, the commissioner is authorized to require the owners of wells, especially flowing artesian wells, to prevent waste.

Subd. 2. Every person, firm or corporation who shall provide the means of appropriating ground water by drilling, boring, or otherwise shall file a verified statement with the director of the division of waters containing the log of the materials and water encountered in connection therewith, together with all water pumping tests relating thereto. Such statements shall be confidential and be used only by the division for scientific study, the result of which may be public information. The commissioner may exclude from the requirement to

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file such statements those whose operations are of a type which would not yield significant scientific information.

Subd. 3. It shall be unlawful for the owner of any well having a casing six inches or more in inside diameter to abandon such well, or to cover or otherwise render the same inaccessible for inspection, or to permanently remove the pumps therefrom without notifying the commissioner of natural resources and complying with his recommendations relating thereto. The commissioner may make such recommendations and impose such conditions as he may find advisable in the public interest. The commissioner or his authorized agent shall be granted access at any reasonable time to inspect the site of any such well that has been abandoned, or for which notice of abandonment has been given under this subdivision.

[1947 c 142 s 15; 1955 c 523 s 1; 1965 c 797 s 2; 1969 c 1129 art 3 s 1; 1973 c 315 s 18]

105.52 EXAMINATION AND REPAIR OF DAMS AND RESERVOIRS. Upon complaint or upon his own initiative, the commissioner is authorized to examine any reservoir, dam, control structure, or waterway obstruction. If the commissioner determines that additional engineering investigations are necessary in order to determine the safety of the dam, reservoir, control structure, or waterway obstruction and the nature and extent of the necessary repairs or alterations, he shall notify the owner thereof to cause such investigations to be made at the owner's expense and filed with the commissioner for his use in determining the condition of the structures and the need for the repair, alteration or removal thereof. If the commissioner determines that such reservoir, dam, control structure, or waterway obstruction is unsafe or needs repair or alteration, he shall notify the owner thereof to repair, alter, or remove the same as the exigencies of the case may require, and shall issue an order to that effect in the same manner and subject to the same conditions as if the owner had made application for permit for the said repairs, alterations, or removal. The engineering investigations or the work of repair, alteration, or removal shall be commenced and completed within such reasonable time as may be prescribed by the commissioner.

[1947 c 142 s 16; 1973 c 344 s 5]

105.53 APPLICATION. Sections 105.37 to 105.55 shall not in any way supersede or amend the provisions of Minnesota Statutes 1945, Sections 92.45 and 110.13.

Nothing in sections 105.37 to 105.55 shall apply to dams, reservoirs or control works in existence on and prior to July 1, 1937, except as may be necessary to protect the health and safety of the people of the state.

[1947 c 142 s 17]

105.54 [Repealed, 1973 c 315 s 20]

105.541 PENALTIES. Whoever does any of the following is guilty of a misdemeanor:

(1) Undertakes or procures another to undertake an alteration in the course, current, or cross-section of public waters or appropriates waters of the state without a permit from the commissioner previously obtained regardless of whether the commissioner would have granted a permit had an application been filed;

(2) Undertakes or procures another to undertake an alteration in the course, current, or cross-section of public waters or appropriates waters of the state in violation or in excess of authority granted pursuant to a permit duly issued by the commissioner, regardless of whether an application had been filed for permission to perform the act involved, or whether the act involved would have been permitted had a proper application been filed;

(3) Undertakes or procures another to undertake an alteration in the course, current, or cross-section of public waters or appropriates waters of the state after a permit to undertake such project has been denied by the commissioner;

(4) Violates any other provision of chapter 105.

[1973 c 315 s 19]

105.55 COMMISSIONER'S ORDERS, ENFORCEMENT. Upon application of the commissioner, the district court of any county in which the project is wholly or partially located, may by injunction, enforce the compliance with, or restrain the violation of, any order of the commissioner made pursuant to sections 105.37 to 105.55, or restrain the violation of sections 105.37 to 105.55.

[1947 c 142 s 19]

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105.60 [Repealed, 1969 c 350 s 1]

105.61 [Repealed, 1969 c 350 s 1]

105.62 [Repealed, 1969 c 350 s 1]

DAM AND WATER CONTROLS

105.63 TRANSFER OF CUSTODY OF CERTAIN DAM AND WATER CONTROLS TO STATE AGENCY. Subdivision 1. Upon application by resolution of the governing body of any governmental subdivision of the state having authority to maintain and operate dams or other control works affecting public waters, the commissioner of natural resources, hereinafter called the commissioner, with the approval of the executive council, may transfer to such subdivision the custody of any such dam or other water control works belonging to the state and under the supervision or control of the commissioner in any case where he shall determine that the transfer will be in furtherance of the best interests of the public. Such transfer shall be made by order of the commissioner upon such terms and conditions as he shall prescribe respecting maintenance and operation of the project. In connection with such transfer the commissioner may convey to the transferee by deed or other appropriate instrument in the name of the state any lands, easements, or other property of the state pertaining to the project, subject to such conditions and reservations as he may deem proper. A duplicate of every order, conveyance, or other instrument executed by the commissioner in connection with a transfer shall be filed with the commissioner of finance.

Subd. 2. A transfer may be made hereunder with or without payment of money consideration to the state, as may be agreed upon between the commissioner and the transferee. Any amounts received on account of such consideration shall be paid into the general fund.

[1949 c 571 s 1; 1969 c 399 s 49; 1969 c 1129 art 3 s 1; 1973 c 492 s 14]

WATER DRAINAGE OR DIVERSION

105.64 DRAINAGE OR DIVERSION OF WATER TO FACILITATE MINING. Subdivision 1. The commissioner of natural resources may grant permits for the drainage, diversion, control, or use of any waters under his jurisdiction when necessary for the mining of iron ore, taconite, copper, copper-nickel or nickel, wherever situated, as herein provided.

Subd. 2. Application for such permit shall be made to the commissioner in such form as he shall prescribe by the owner of the iron ore, taconite, copper, copper-nickel or nickel deposits affected or by the owner of the right to mine the same. Except as otherwise herein provided, all matters pertaining to such application, to the proceedings thereon, and to any permit issued thereon shall be governed by the provisions of sections 105.37 to 105.55 relating to applications and permits affecting waters, so far as applicable.

Subd. 3. A permit shall be granted hereunder only upon determination by the commissioner of the following conditions:

(1) That the proposed drainage, diversion, control, or use of waters will be necessary for the mining of substantial deposits of iron ore, taconite, copper, copper-nickel or nickel, and that no other feasible and economical method therefor is reasonably available;

(2) That the proposed drainage, diversion, control, or use of waters will not substantially impair the interests of the public in lands or waters or the substantial beneficial public use thereof except as expressly authorized in the permit, and will not endanger public health or safety;

(3) That the proposed mining operations will be in the public interest, and that the public benefits resulting therefrom will be sufficient to warrant the proposed drainage, diversion, or control of waters.

Subd. 4. In any case where the operations authorized by a permit hereunder may affect any public or private property not owned by the permittee, before proceeding with such operations, he shall acquire all rights or easements necessary therefor, shall pay or furnish security for the payment of all damages to such property that may result therefrom, and shall furnish such evidence of compliance with the provisions hereof as the commissioner may require. Neither the state nor any of its officers, agents, or employees shall incur any liability on account of the issuance of a permit hereunder or on account of any act or omission of the permittee, his agents or servants, under or in connection with any such permit.

Subd. 5. Notwithstanding any other limitations prescribed by law, every permit hereunder shall be granted for such term as the commissioner shall find necessary for the completion of the proposed mining operations, and he may allow and prescribe in the permit such time as he deems reasonable for the commencement or completion of any operations or construction under the permit or the exercise of the rights granted thereby. The original term of the permit or the time allowed for the performance of any condition thereof may be extended by the commissioner for good cause shown upon application of the permittee. In any permit issued hereunder the commissioner may prescribe such conditions as he deems necessary and practicable for restoration of the waters affected to their former condition after completion of the mining operations or after expiration or cancelation of the permit, and may prescribe such other conditions as he deems necessary for protection of the public health, safety, and welfare, and may require the permittee to furnish a bond to the state, in such form and amount as the commissioner deems appropriate, as security for compliance with the conditions of the permit and all applicable provisions of law.

Subd. 6. Every permit issued hereunder shall be irrevocable for the term thereof and for any extension of such term except as follows:

(1) A permit may be modified or canceled by the commissioner at the request or with the consent of the permittee upon such conditions as the commissioner deems necessary for protection of the public interests;

(2) Subject to appeal in the manner provided by sections 105.37 to 105.55, a permit may be modified or canceled by the commissioner in case of any breach of the terms or conditions thereof or in case of any violation of law pertaining thereto by the permittee, his agents or servants, or in case the commissioner finds such modification or cancelation necessary to protect the public health or safety, or to protect the public interests in lands or waters against substantial injury resulting in any manner or to any extent not expressly authorized by the permit, or to prevent substantial injury to persons or property resulting in any manner or to any extent not so authorized, upon at least 30 days written notice to the permittee, stating the grounds of the proposed modification or cancelation and giving the permittee an opportunity to be heard thereon;

(3) By written order to the permittee the commissioner may forthwith suspend operations under a permit if he finds it necessary in an emergency to protect the public health or safety or to protect public interests in lands or waters against imminent danger of substantial injury in any manner or to any extent not expressly authorized by the permit, or to protect persons or property against such danger, and may require the permittee to take any measures necessary to prevent or remedy such injury; provided, that no such order shall be in effect for more than 30 days from the date thereof without giving the permittee at least ten days' written notice of such order and an opportunity to be heard thereon.

Subd. 7. This section shall not amend, supersede, or repeal any existing law, but shall be supplementary thereto.

[1949 c 599 s 1, 4; 1967 c 566 s 2, 3, 4; 1969 c 1129 art 3 s 1]

WATER RESOURCES BOARD

105.71 WATER RESOURCES BOARD. Subdivision 1. There is hereby established to serve as an agency of the state a board to be known as the Minnesota Water Resources Board to perform such functions and duties as shall be prescribed by law. The board shall be composed of three members who are conversant with water problems and conditions within the watersheds of this state and who are not officers or employees of the state, the federal government or any political subdivisions thereof, to be appointed by the governor with the advice and consent of the senate. Such members shall first be appointed for the following terms: one for two years, one for four years, and one for six years, and thereafter their successors shall be appointed for a term of six years. The membership of said board may be increased by the governor to five members. The additional members shall serve for three and five year terms, respectively, and shall have the same qualifications and be appointed in the same manner as the members of the original board.

The board shall keep a record of its official actions, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the discharge of its duties and the exercise of its functions.

Subd. 2. The state board may employ such technical and professional personnel and such other agents and employees, permanent or temporary, as it may re-

quire, and shall determine their qualifications, duties, and compensation. It shall have authority to prescribe the powers and duties of its officers and employees.

Upon request of the board for the purpose of carrying out any of its functions, the supervising officer of any state agency, or any state institution of learning, shall, in so far as it may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the state board from the staff or personnel of the agency or institution of learning, and make such special reports, surveys or studies as the state board may request.

Subd. 3. The board shall designate its chairman, and may annually from time to time change such designation.

A majority of the board shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for a determination.

The members of the state board shall receive \$35 per day for each day while engaged in the discharge of their official duties, and shall be reimbursed for all expenses including traveling expenses necessarily incurred.

In connection with their duties as members of the board, the board shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted.

The commissioner of administration shall provide and make available within the department of natural resources suitable and adequate office facilities and space for the board. The legislative auditor shall annually audit the books of the board if funds and personnel permit.

[1955 c 664 s 1; 1957 c 97 s 1; 1957 c 915 s 1; 1969 c 1129 art 3 s 1; 1971 c 661 s 3; 1978 c 492 s 14]

105.72 DECLARATION OF POLICY. The code of water law of Minnesota is contained in numerous statutes enacted from time to time, which must be considered as a whole to effect a systematic administration of water policy for the public welfare. Seeming contradictions in these laws when applied in a specific proceeding create a need for a forum where the conflicting aspects of public interest involved can be presented and by consideration of the whole body of water law the controlling policy can be determined and apparent inconsistencies resolved.

[1957 c 740 s 1]

105.73 DEFINITIONS. Unless the context clearly indicates a different meaning is intended, the following terms for the purposes of this chapter shall be given the meanings ascribed to them in this section.

Board—Minnesota water resources board.

Proceeding—Any procedure under any of the laws enumerated in section 105.74 however administrative discretion or duty thereunder may be invoked in any instance.

Agency—Any state officer, board, commission, bureau, division, or agency, other than a court, exercising duty or authority under any of the laws enumerated in section 105.74.

Court—The court means the district court or a judge thereof before whom the proceedings are pending.

Question of water policy—Where use, disposal, pollution, or conservation of water is a purpose, incident, or factor in a proceeding, the question or questions of state water law and policy involved, including either (a) determination of the governing policy of state law in the proceeding, resolving apparent inconsistencies between different statutes, (b) the proper application of that policy to facts in the proceeding when application is a matter of administrative discretion, or both (a) and (b).

[1957 c 740 s 2; 1959 c 438 s 1]

105.74 ADDITIONAL DUTIES OF BOARD. In addition to duties elsewhere prescribed, the board has the function defined in sections 105.72 to 105.79 when the decision of the agency in a proceeding involves a question of water policy in one or more of the areas of water conservation, water pollution, preservation and management of wildlife, drainage, soil conservation, public recreation, forest management, and municipal planning under any of the following: Minnesota Statutes,

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Sections 84.57, 97.48 (subdivision 13), 105.41, 105.42, 105.43, 105.44, 105.64, 106.021, 106.671, 115.04, 115.05, and Chapter 110.

[1957 c 740 s 3; 1959 c 438 s 2; 1969 c 6 s 20]

105.75 PETITION FOR INTERVENTION. Subdivision 1. The board's intervention is invoked by a petition addressed to it for referral of a question of water policy involved in the proceeding. The petition must identify the proceeding in which it is made and state the grounds for referral generally but in sufficient detail to inform interested parties of the nature of the questions proposed to be presented to the board and the public importance thereof.

Subd. 2. This petition can be made by the applicant in the proceeding, by any party thereto, the governor, the agency, the commissioner or director of any division in the department of natural resources, the head of any other department of state, any bureau or division of the federal government a function of which includes a concern in the proceeding, and any organization or group of persons of appropriate purpose, or person, the board deems representative of any substantial segment of the state or peculiarly able to present evidence bearing on the public interest. The petition signed by the petitioner's attorney or verified by the petitioner, or on behalf of the petitioner by any of its officers, shall be filed in duplicate, one counterpart with the board, the other with the agency.

Subd. 3. The intervention of the board can be invoked by this petition in any proceeding at any time after the proceeding is initiated and before the agency's order is made.

[1957 c 740 s 4; 1959 c 438 s 3; 1969 c 1129 art 3 s 1]

105.751 COURT REFERRALS. The court may refer any procedure before it under any of the laws enumerated in Minnesota Statutes, Section 105.74, to the board. This referral may be used in both original and appellate matters; it may be invoked by a petition of the court directed to the board. Any party to the procedure may request the court to refer the matter to the board. Upon receipt of a petition for referral the board shall proceed under the provisions of Minnesota Statutes, Sections 105.72 to 105.79.

[1959 c 438 s 4]

105.76 PETITION ABATES PROCEEDING UNTIL BOARD ACTS. A filed petition abates the proceeding until there is a recommendation by the board or until sixty days have elapsed after conclusion of hearing before the board, whichever is earlier, unless the agency makes a finding in writing with a statement of reasons that the public interest requires immediate action by it. In all cases the board or its staff according to its rules decides whether the petition and the record made before the agency show an important question of water policy. If the decision on that question is negative it refuses to intervene, and the proceeding continues in the agency as though the petition had not been made; if the decision is affirmative and the board believes its intervention in the public interest is justified, it consents to intervene. Consent is shown by a brief statement in general terms of the questions of public policy it will consider.

[1957 c 740 s 5]

105.77 HEARING, DETERMINATION. As a petition is filed the board proceeds with all reasonable dispatch to hear, determine, and make its recommendations on the questions it has consented to consider. The hearings are so conducted that the board may be fully informed about all aspects of the public interest in those questions, to the end that its recommendation will state an impartial, scientific, and fully considered judgment. The recommendation of the board is its decision on the question of water policy considered by it; the ultimate question to which the board's recommendation is directed in all cases is the proper course of action to be followed by the agency in the proceeding in relation to questions of water policy considered by the board. The decision of the board is in the form of a written recommendation to the agency; it must recite controlling facts in sufficient detail to apprise the parties, the agency, and a reviewing court of the basis and reason therefor. In the proceeding and upon any judicial review the recommendation is evidence. A copy, certified, is competent evidence of the recommendation.

[1957 c 740 s 6]

105.78 CONSENT, NOTICE AND PROCEDURE. When a consent, notice, or recommendation is made by the board a copy is filed with the agency, and such filing

is notice thereof. The board's rules may provide for a notice, in addition to such filing by mail, posting, publication, or otherwise which it deems will practically give information to parties and interested persons of its actions. For the purposes of carrying out the provisions of sections 105.72 to 105.79 the chairman of the board, or any member thereof, has the power to subpoena witnesses, to administer oaths and to compel the production of books, records and other evidence. Disobedience of any such subpoena, or refusal to be sworn, or to answer as a witness, shall be punishable as a contempt of the district court on complaint of the board, or any member thereof, before the district court of the county where such disobedience or refusal occurred. Witnesses receive the same fees and mileage as in civil actions. All persons are sworn before testifying and the right to examine or cross-examine is the same as in civil actions. All hearings are public, conducted by the board or any authorized member thereof, and all affected persons have the opportunity to be heard. The board provides a stenographer to take the testimony and all proceedings at the hearings are recorded and preserved. All hearings are conducted insofar as practicable in the same manner as civil actions. It is proper for the divisions of state government and the agencies thereof to adopt opposite positions in respect to the matter before the board when full advocacy will assist to disclose the public interest.

[1957 c 740 s 7]

105.79 FINDINGS BY BOARD. Within sixty days of the close of any hearing the board makes its findings and recommendations based solely on the evidence adduced at the public hearing. Hearings may be continued from time to time as the situation may require.

[1957 c 740 s 8]

IMPOUNDING AND DIVERSION OF DRAINAGE SYSTEM WATERS

105.81 PETITION; BOND; INVESTIGATION; REPORT; HEARING; ORDER. For the purpose of conserving and making more adequate use of our water resources, any person, public or municipal corporation, governmental subdivision, the state or any of its departments or agencies, the commissioner of natural resources and the United States or any of its agencies, may petition the county board in the case of a system lying wholly within one county or the district court in the case of a drainage system affecting two or more counties for the installation of dams or other control works in said ditches to impound or divert waters for any beneficial use. Said petition shall contain the location of the installation, plans and specifications for the proposed structure, and a map of the areas likely to be affected by the impoundment or diversion. The petitioner shall agree to be responsible for the cost of installation and construction of the structure. Upon filing of the petition, the petitioners shall file a bond as provided in sections 106.041 and 106.051. No bond shall be required if the petition is filed by the state, any of its departments or agencies, the commissioner of natural resources, the United States or any of its agencies, and cities. Said petition shall also be accompanied by a permit from the commissioner of natural resources as required in sections 105.41 and 105.42.

On receipt of the petition, bond, and permit, if required, the board or court shall appoint an engineer to investigate the effect of the proposed installation and file a report of his findings. Upon filing of the engineer's report, notice shall be given and a public hearing held as provided in section 106.101. If at this hearing it appears from the engineer's report and other evidence presented that such installation will be of a public or private benefit and that it will not impair the utility of the ditch or deprive affected land owners of the benefit thereof, the board or court shall issue a permit authorizing its installation. Before the petitioner shall install or construct any impoundment or diversion, he shall obtain such rights of way and flowage easements from all owners of land to be affected thereby.

The order of the court modifying the ditch system shall provide that all construction and subsequent maintenance and repairs of the ditch modification shall be done and performed by the petitioner without any cost to the owners of lands and properties previously within the drainage system.

[1963 c 817 s 1; 1969 c 1129 art 3 s 1; 1973 c 123 art 5 s 7]