

CHAPTER 103G

WATERS OF THE STATE

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103G.005 DEFINITIONS.

[For text of subs 1 to 6, see M.S.1990]

Subd. 6a. **Board.** "Board" means the board of water and soil resources.

[For text of subs 7 to 10, see M.S.1990]

Subd. 10a. **Local government unit.** "Local government unit" means:

- (1) outside of the seven-county metropolitan area, a city council or county board of commissioners; and
- (2) in the seven-county metropolitan area, a city council, a town board under section 368.01, or a watershed management organization under section 103B.211.

[For text of subs 11 to 13, see M.S.1990]

Subd. 13a. **Once-through system.** "Once-through system" means a space heating, ventilating, air conditioning (HVAC), or refrigeration system used for any type of temperature or humidity control application, utilizing groundwater, that circulates through the system and is then discharged without reusing it for a higher priority purpose.

[For text of subd 14, see M.S.1990]

Subd. 15. **Public waters.** (a) "Public waters" means:

- (1) waterbasins assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221, except wetlands less than 80 acres in size that are classified as natural environment lakes;
- (2) waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;
- (3) meandered lakes, excluding lakes that have been legally drained;
- (4) waterbasins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;
- (5) waterbasins designated as scientific and natural areas under section 84.033;
- (6) waterbasins located within and totally surrounded by publicly owned lands;
- (7) waterbasins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;
- (8) waterbasins where there is a publicly owned and controlled access that is intended to provide for public access to the waterbasin;
- (9) natural and altered watercourses with a total drainage area greater than two square miles;
- (10) natural and altered watercourses designated by the commissioner as trout streams; and

(11) public waters wetlands, unless the statute expressly states otherwise.

(b) Public waters are not determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

[For text of subs 16 and 17, see M.S.1990]

Subd. 17a. **Watershed.** "Watershed" means the 81 major watershed units delineated by the map, "State of Minnesota Watershed Boundaries - 1979."

Subd. 18. **Public waters wetlands.** "Public waters wetlands" means all types 3, 4, and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), not included within the definition of public waters, that are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas.

Subd. 19. **Wetlands.** (a) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

- (1) have a predominance of hydric soils;
- (2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- (3) under normal circumstances support a prevalence of such vegetation.

(b) Wetlands does not include public waters wetlands as defined in subdivision 18.

History: 1991 c 354 art 6 s 1-6; art 10 s 4

103G.127 PERMIT PROGRAM UNDER SECTION 404 OF THE FEDERAL CLEAN WATER ACT.

Notwithstanding any other law to the contrary, the commissioner may adopt rules establishing a permit program for regulating the discharge of dredged and fill material into the waters of the state as necessary to obtain approval from the United States Environmental Protection Agency to administer the permit program under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344. The rules may not be more restrictive than the program under section 404, or state law, if it is more restrictive than the federal program.

History: 1991 c 354 art 9 s 1

103G.141 PENALTIES.

Subdivision 1. **Misdemeanors.** Except as provided in subdivision 2, a person is guilty of a misdemeanor who:

(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 previously obtaining a permit from the commissioner, 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 of or in excess of authority granted under a permit 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 the project has been denied by the commissioner; or

(4) violates a provision of this chapter.

Subd. 2. **Violation of section 404 permits.** (a) Whenever the commissioner finds that a person is in violation of a condition or limitation set forth in a permit issued under the rules adopted by the commissioner under section 103G.127, the commissioner shall issue an order requiring the person to comply with the condition or limitation, or the commissioner shall bring a civil action in accordance with paragraph (b).

(b) The commissioner may commence a civil action for appropriate relief in district court, including a permanent or temporary injunction, for a violation for which the commissioner is authorized to issue a compliance order under paragraph (a). The court may restrain the violation and require compliance.

(c) A person who violates a condition or limitation in a permit issued by the commissioner under section 103G.127, and a person who violates an order issued by the commissioner under paragraph (a), is subject to a civil penalty not to exceed \$25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and other matters justice may require.

History: 1991 c 354 art 9 s 2

103G.221 DRAINAGE OF PUBLIC WATERS WETLANDS.

Subdivision 1. **Drainage of public waters wetlands generally prohibited without replacement.** Except as provided in subdivisions 2 and 3, public waters wetlands may not be drained, and a permit authorizing drainage of public waters wetlands may not be issued, unless the public waters wetlands to be drained are replaced by wetlands that will have equal or greater public value.

Subd. 2. [Repealed, 1991 c 354 art 10 s 12]

Subd. 3. [Repealed, 1991 c 354 art 10 s 12]

History: 1991 c 354 art 6 s 7

NOTE: Subdivisions 2 and 3 were also amended by Laws 1991, chapter 354, article 6, section 7, to read as follows:

"Subd. 2. **Drainage of public waters wetlands for cropland.** (a) Public waters wetlands that are lawful, feasible, and practical to drain and if drained would provide high quality cropland and that is the projected land use, as determined by the commissioner, may be drained without a permit and without replacement by wetlands of equal or greater public value if the commissioner does not choose, within 60 days of receiving an application for a permit to drain the public waters wetlands to:

- (1) place the public waters wetlands in the state water bank program under section 103F.601; or
- (2) acquire them in fee under section 97A.145.

(b) If the commissioner does not make the offer under paragraph (a), clause (1) or (2), to a person applying for a permit, the public waters wetlands may be drained without a permit.

Subd. 3. **Permit to drain public waters wetlands ten years after public waters designation.** (a) The owner of property underneath public waters wetlands on privately owned property may apply to the commissioner for a permit to drain the public waters wetlands after ten years from their original designation as public waters. After receiving the application, the commissioner shall review the status of the public waters wetlands and current conditions.

(b) If the commissioner finds that the status of the public waters wetlands and the current conditions make it likely that the economic or other benefits from agricultural use to the owner from drainage would exceed the public benefits of maintaining the public waters wetlands, the commissioner shall grant the application and issue a drainage permit.

(c) If the application is denied, the owner may not apply again for another ten years."

103G.222 REPLACEMENT OF WETLANDS.

(a) After the effective date of the rules adopted under section 103B.3355 or 103G.2242, whichever is later, wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value under either a replacement plan approved as provided in section 103G.2242 or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. Mining reclamation plans shall apply the same principles and standards for replacing wetlands by restoration or creation of wetland areas that are applicable to mitigation plans approved as provided in section 103G.2242.

(b) Replacement must be guided by the following principles in descending order of priority:

(1) avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;

(2) minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;

(3) rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;

(4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity; and

(5) compensating for the impact by replacing or providing substitute wetland resources or environments.

(c) If a wetland is located in a cultivated field, then replacement must be accomplished through restoration only without regard to the priority order in paragraph (b), provided that a deed restriction is placed on the altered wetland prohibiting nonagricultural use for at least ten years.

(d) Restoration and replacement of wetlands must be accomplished in accordance with the ecology of the landscape area affected.

(e) Replacement shall be within the same watershed or county as the impacted wetlands, as based on the wetland evaluation in section 103G.2242, subdivision 2, except that counties or watersheds in which 80 percent or more of the presettlement wetland acreage is intact may accomplish replacement in counties or watersheds in which 50 percent or more of the presettlement wetland acreage has been filled, drained, or otherwise degraded. Wetlands impacted by public transportation projects may be replaced statewide, provided they are approved by the commissioner under an established wetland banking system, or under the rules for wetland banking as provided for under section 103G.2242.

(f) For a wetland located on nonagricultural land, replacement must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland.

(g) For a wetland located on agricultural land, replacement must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland.

(h) Wetlands that are restored or created as a result of an approved replacement plan are subject to the provisions of this section for any subsequent drainage or filling.

History: 1991 c 354 art 6 s 8

103G.223 CALCAREOUS FENS.

Calcareous fens, as identified by the commissioner, may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, unless the commissioner, under an approved management plan, decides some alteration is necessary.

History: 1991 c 354 art 6 s 9

103G.2241 EXEMPTIONS.

Subdivision 1. **Exemptions.** (a) Subject to the conditions in paragraph (b), a replacement plan for wetlands is not required for:

(1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;

(2) activities in a wetland that is or has been enrolled in the federal conservation reserve program under United States Code, title 16, section 3831, that:

(i) was planted with annually seeded crops, was in a crop rotation seeding, or was required to be set aside to receive price support or payment under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the program; and

(ii) has not been restored with assistance from a public or private wetland restoration program;

(3) activities necessary to repair and maintain existing public or private drainage systems as long as wetlands that have been in existence for more than 20 years are not drained;

(4) activities in a wetland that has received a commenced drainage determination provided for by the federal Food Security Act of 1985, that was made to the county agricultural stabilization and conservation service office prior to September 19, 1988, and a ruling and any subsequent appeals or reviews have determined that drainage of the wetland had been commenced prior to December 23, 1985;

(5) activities exempted from federal regulation under United States Code, title 33, section 1344(f);

(6) activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clause (14), limited to when a new road crosses a wetland, and all of clause (26);

(7) activities in a type 1 wetland on agricultural land, as defined in United States Fish and Wildlife Circular No. 39 (1971 edition) except for bottomland hardwood type 1 wetlands;

(8) activities in a type 2 wetland that is two acres in size or less located on agricultural land;

(9) activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland;

(10) activities in a wetland created solely as a result of:

(i) beaver dam construction;

(ii) blockage of culverts through roadways maintained by a public or private entity;

(iii) actions by public entities that were taken for a purpose other than creating the wetland; or

(iv) any combination of (i) to (iii);

(11) placement, maintenance, repair, enhancement, or replacement of utility or utility-type service, including the transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications if:

(i) the impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and

(ii) the proposed project significantly modifies or alters less than one-half acre of wetlands;

(12) activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;

(13) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline;

(14) temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activities do not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters;

(15) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch or tile line; with filling avoided wherever possible; and there is no drainage of the wetland or public waters;

(16) activities associated with routine maintenance of existing public highways, roads, streets, and bridges, provided the activities do not result in additional intrusion into the wetland and do not result in the draining or filling, wholly or partially, of a wetland;

(17) emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and do not result in the draining or filling, wholly or partially, of a wetland;

(18) normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland;

(19) duck blinds;

(20) aquaculture activities, except building or altering of docks and activities involving the draining or filling, wholly or partially, of a wetland;

(21) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United State Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344;

(22) normal agricultural practices to control pests or weeds, defined by rule as either noxious or secondary weeds, in accordance with applicable requirements under state and federal law, including established best management practices;

(23) activities in a wetland that is on agricultural land annually enrolled in the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program;

(24) development projects and ditch improvement projects in the state that have received preliminary or final plat approval, or infrastructure that has been installed, or having local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. In the seven-county metropolitan area and in cities of the first and second class, plat approval must be preliminary as approved by the appropriate governing body.

(b) A person conducting an activity in a wetland under an exemption in paragraph (a) shall ensure that:

(1) appropriate erosion control measures are taken to prevent sedimentation of the water;

(2) the activity does not block fish passage in a watercourse; and

(3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.

History: 1991 c 354 art 6 s 10

103G.2242 WETLAND VALUE REPLACEMENT PLANS.

Subdivision 1. **Rules.** (a) By July 1, 1993, the board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section. These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values; may address the state establishment and administration of a wetland banking program for public and private projects, which may include provisions allowing monetary payment to the wetland banking program for alteration of wetlands on agricultural land; the methodology to be used in identifying and evaluating wetland functions; the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must con-

sider the impact on carbon balance described in the report required by Laws 1990, chapter 587, and include the planting of trees or shrubs.

(b) After the adoption of the rules, a replacement plan must be approved by a resolution of the governing body of the local government unit, consistent with the provisions of the rules.

(c) If the local government unit fails to apply the rules, the government unit is subject to penalty as determined by the board.

Subd. 2. Evaluation. Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a technical evaluation panel after an on-site inspection. The technical evaluation panel shall be composed of a technical professional employee of the board, a technical professional employee of the local soil and water conservation district or districts, and an engineer for the local government unit. The panel shall use the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989). The panel shall provide the wetland determination to the local government unit that must approve a replacement plan under this section, and may recommend approval or denial of the plan. The authority must consider and include the decision of the technical evaluation panel in their approval or denial of a plan.

Subd. 3. Replacement completion. Replacement of wetland values must be completed prior to or concurrent with the actual draining or filling of a wetland, or an irrevocable bank letter of credit or other security acceptable to the local government unit must be given to the local government unit to guarantee the successful completion of the replacement.

Subd. 4. Decision. Upon receiving and considering all required data, the local government unit approving a replacement plan must act on all applications for plan approval within 60 days.

Subd. 5. Processing fee. The local government unit may charge a processing fee of up to \$75.

Subd. 6. Notice of application. Within ten days of receiving an application for approval of a replacement plan under this section, a copy of the application must be submitted to the board for publication in the Environmental Quality Board Monitor and separate copies mailed to individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the managers of the watershed district, the board of county commissioners, the commissioner of agriculture, and the mayors of the cities within the area watershed. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected.

Subd. 7. Notice of decision. At least 30 days prior to the effective date of the approval or denial of a replacement plan under this section, a copy of the approval or denial must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to the applicant, the board, individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the managers of the watershed district, the board of county commissioners, the commissioner of agriculture, and the mayors of the cities within the area watershed.

Subd. 8. Public comment period. Before approval or denial of a replacement plan under this section, comments may be made by the public to the local government unit for a period of 30 days.

Subd. 9. Appeal. Appeal of the decision may be obtained by mailing a notice of appeal to the board within 30 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within 30 days, the decision becomes final. Appeal may be made by the wetland owner, by any of those to whom notice is required to be mailed under subdivision 7, or by 100 residents of the county in which a majority of the wetland is located. All appeals must be heard by the committee for dispute resolution of the board, and a decision made within 60 days of the appeal. The decision must be served by mail on the parties to the appeal, and is not subject to the provisions of

chapter 14. The decision must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

Subd. 10. Local requirements. The rules adopted under subdivision 1 shall allow for local government units to use their own notice and public comment procedures so long as the requirements of this section are satisfied.

Subd. 11. Wetland heritage advisory committee. The governor shall establish a wetland heritage advisory committee consisting of a balanced diversity of interests including agriculture, environmental, and sporting organizations, land development organizations, local government organizations, and other agencies. The committee must consist of nine members including the commissioner of agriculture, or a designee of the commissioner, the commissioner of natural resources, and seven members appointed by the governor. The governor's appointees must include one county commissioner, one representative each from a statewide sporting organization, a statewide conservation organization, an agricultural commodity group, one faculty member of an institution of higher education with expertise in the natural sciences, and one member each from two statewide farm organizations. The committee shall advise the board on the development of rules under this section and, after rule adoption, shall meet twice a year to review implementation of the program, to identify strengths and weaknesses, and to recommend changes to the rules and the law to improve the program.

Subd. 12. Replacement credits. No public or private wetland restoration, enhancement, or construction may be allowed for replacement unless specifically designated for replacement and paid for by the individual or organization performing the wetland restoration, enhancement, or construction, and is completed prior to any draining or filling of the wetland.

This subdivision does not apply to a wetland whose owner has paid back with interest the individual or organization restoring, enhancing, or constructing the wetland.

Subd. 13. Replacement wetland eligible for RIM. A wetland replaced under this section, in which the replacement is located on the wetland owner's land, is eligible for enrollment under section 103F.515 one year after the completion of replacement.

History: 1991 c 354 art 6 s 11

103G.225 STATE WETLANDS AND PUBLIC DRAINAGE SYSTEMS.

If the state owns public waters wetlands on or adjacent to existing public drainage systems, the state shall consider the use of the public waters wetlands as part of the drainage system. If the public waters wetlands interfere with or prevent the authorized functioning of the public drainage system, the state shall provide for necessary work to allow proper use and maintenance of the drainage system while still preserving the public waters wetlands.

History: 1991 c 354 art 6 s 12

103G.231 PROPERTY OWNER'S USE OF PUBLIC WATERS WETLANDS.

Subdivision 1. Agricultural use during drought. A property owner may use the bed of public waters wetlands for pasture or cropland during periods of drought if:

- (1) dikes, ditches, tile lines, or buildings are not constructed; and
- (2) the agricultural use does not result in the drainage of the public waters wetlands.

Subd. 2. Filling public waters wetlands for irrigation booms. A landowner may fill a public waters wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage.

Subd. 3. Peat mining. Peat mining, as defined in section 93.461, is permitted subject to the mine permit and reclamation requirements of sections 93.44 to 93.51, and the rules adopted under those restrictions, except as provided for in sections 84.035 and 84.036.

History: 1991 c 354 art 6 s 13; art 8 s 3

103G.235 RESTRICTIONS ON ACCESS TO PUBLIC WATERS WETLANDS.

To protect the public health or safety, local units of government may by ordinance restrict public access to public waters wetlands from municipality, county, or township roads that abut public waters wetlands.

History: 1991 c 354 art 6 s 14

103G.2364 PROPERTY OWNER'S USE OF WETLANDS.

(a) A property owner may use the bed of wetlands for pasture or cropland during periods of drought if:

- (1) dikes, ditches, tile lines, or buildings are not constructed; and
- (2) the agricultural use does not result in the drainage of the wetlands.

(b) A landowner may fill a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage.

History: 1991 c 354 art 6 s 15

103G.2365 CONTROL OF NOXIOUS WEEDS.

Noxious weeds, as defined in section 18.171, subdivision 5, must be controlled on wetlands as required in section 18.191.

History: 1991 c 354 art 6 s 16

103G.2369 INTERIM.

Subdivision 1. **Delineation.** The "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989) must be used in identifying and delineating wetlands.

Subd. 2. **Prohibited activities.** (a) Except as provided in subdivision 3, until July 1, 1993, a person may not drain, burn, or fill a wetland.

(b) Except as provided in subdivision 3, until July 1, 1993, a state agency or local unit of government may not issue a permit for an activity prohibited in paragraph (a) or for an activity that would include an activity prohibited in paragraph (a).

Subd. 3. **Exemptions.** The prohibitions in subdivision 2 do not apply to:

(1) activities exempted under, and conducted in accordance with, section 103G.2241;

(2) development projects and drainage system improvement projects that have received preliminary or final plat approval or for which infrastructure has been installed, or that have received site plan approval or a conditional use permit, within five years before January 1, 1992;

(3) activities for which the local soil and water conservation district or other local permitting authority certifies that any loss of wetland area resulting from the activity will be replaced; and

(4) a person who is enrolled or participating in a program listed in United States Code, title 16, section 3821, subsection (a), clauses (1) to (3).

Subd. 4. **Certification fee.** A soil and water conservation district or other local permitting authority may charge a fee of up to \$75 for a certification under subdivision 3, clause (3).

Subd. 5. **Enforcement.** This section must be enforced as provided in section 103G.2372.

History: 1991 c 354 art 7 s 1

NOTE: This section, as added by Laws 1991, chapter 354, article 7, section 1, is repealed effective July 1, 1993. See Laws 1991, chapter 354, article 7, section 2.

103G.237 COMPENSATION FOR LOSS OF PRIVATE USE.

Subdivision 1. **General.** A person whose replacement plan is not approved must be compensated as provided in this section. The person may drain or fill the wetland without an approved replacement plan if the person:

- (1) is eligible for compensation under subdivision 2;
- (2) applies for compensation in accordance with subdivision 3; and
- (3) does not receive the compensation required in subdivision 4 within 90 days after the application for compensation is received by the board.

Subd. 2. Eligibility. A person is eligible for compensation if:

- (1) the person applies for replacement plan approval under section 103G.2242;
- (2) the replacement plan is not approved or the plan conditions make the proposed use unworkable or not feasible;
- (3) the person appeals the disapproval of the plan;
- (4) the proposed use would otherwise be allowed under federal, state, and local laws, rules, ordinances, and other legal requirements;
- (5) the person has suffered or will suffer damages;
- (6) disallowing the proposed use will enhance the public value of the wetland; and
- (7) the person applies to the board for compensation.

Subd. 3. Application. An application for compensation must be made on forms prescribed by the board and include:

- (1) the location and public value of the wetland where the use was proposed;
- (2) a description and reason for the proposed wetland use; and
- (3) the objection to the replacement plan, if any.

Subd. 4. Compensation. The board shall award compensation in an amount equal to 50 percent of the average equalized estimated market value of agricultural property in the township as established by the commissioner of revenue at the time application for compensation is made.

History: 1991 c 354 art 6 s 17

103G.2372 ENFORCEMENT.

Subdivision 1. Commissioner of natural resources. The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting wetlands. The commissioner of natural resources, a conservation officer, or a peace officer may issue a cease and desist order to stop any illegal activity adversely affecting a wetland. In the order, or by separate order, the commissioner, conservation officer, or peace officer may require restoration or replacement of the wetland, as determined by the local soil and water conservation district.

Subd. 2. Misdemeanor. A violation of an order issued under subdivision 1 is a misdemeanor and must be prosecuted by the county attorney where the wetland is located or the illegal activity occurred.

Subd. 3. Restitution. The court may, as part of sentencing, require a person convicted under subdivision 2 to restore or replace the wetland, as determined by the local soil and water conservation district.

History: 1991 c 354 art 6 s 18

103G.2373 ANNUAL WETLANDS REPORT.

By January 1 of each year, the commissioner of natural resources and the board of water and soil resources shall jointly report to the committees of the legislature with jurisdiction over matters relating to agriculture, the environment, and natural resources on:

- (1) the status of implementation of state laws and programs relating to wetlands;
- (2) the quantity, quality, acreage, types, and public value of wetlands in the state; and
- (3) changes in the items in clause (2).

History: 1991 c 354 art 10 s 6

103G.271 APPROPRIATION AND USE OF WATERS.

[For text of subds 1 to 4, see M.S.1990]

Subd. 4a. Mt. Simon-Hinckley aquifer. (a) The commissioner may not issue new water use permits that will appropriate water from the Mt. Simon-Hinckley aquifer in a metropolitan county, as defined in section 473.121, subdivision 4, unless the appropriation is for potable water use, there are no feasible or practical alternatives to this source, and a water conservation plan is incorporated with the permit.

(b) The commissioner shall terminate all permits authorizing appropriation and use of water from the Mt. Simon-Hinckley aquifer for once-through systems in a metropolitan county, as defined in section 473.121, subdivision 4, by December 31, 1992.

[For text of subd 5, see M.S.1990]

Subd. 6. Water use permit processing fee. (a) Except as described in paragraphs (b) to (f), a water use permit processing fee must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

- (1) 0.05 cents per 1,000 gallons for the first 50,000,000 gallons per year;
- (2) 0.10 cents per 1,000 gallons for amounts greater than 50,000,000 gallons but less than 100,000,000 gallons per year;
- (3) 0.15 cents per 1,000 gallons for amounts greater than 100,000,000 gallons but less than 150,000,000 gallons per year; and
- (4) 0.20 cents per 1,000 gallons for amounts greater than 150,000,000 gallons but less than 200,000,000 gallons per year;
- (5) 0.25 cents per 1,000 gallons for amounts greater than 200,000,000 gallons but less than 250,000,000 gallons per year;
- (6) 0.30 cents per 1,000 gallons for amounts greater than 250,000,000 gallons but less than 300,000,000 gallons per year;
- (7) 0.35 cents per 1,000 gallons for amounts greater than 300,000,000 gallons but less than 350,000,000 gallons per year;
- (8) 0.40 cents per 1,000 gallons for amounts greater than 350,000,000 gallons but less than 400,000,000 gallons per year; and
- (9) 0.45 cents per 1,000 gallons for amounts greater than 400,000,000 gallons per year.

(b) For once-through cooling systems, a water use processing fee must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

- (1) for nonprofit corporations and school districts:
 - (i) 5.0 cents per 1,000 gallons until December 31, 1991;
 - (ii) 10.0 cents per 1,000 gallons from January 1, 1992, until December 31, 1996; and
 - (iii) 15.0 cents per 1,000 gallons after January 1, 1997; and
- (2) for all other users, 20 cents per 1,000 gallons.

(c) The fee is payable based on the amount of water appropriated during the year and, except as provided in paragraph (f), the minimum fee is \$50.

(d) For water use processing fees other than once-through cooling systems:

- (1) the fee for a city of the first class may not exceed \$175,000 per year;
- (2) the fee for other entities for any permitted use may not exceed:
 - (i) \$35,000 per year for an entity holding three or fewer permits;
 - (ii) \$50,000 per year for an entity holding four or five permits;
 - (iii) \$175,000 per year for an entity holding more than five permits;
- (3) the fee for agricultural irrigation may not exceed \$750 per year; and

(4) the fee for a municipality that furnishes electric service and cogenerates steam for home heating may not exceed \$10,000 for its permit for water use related to the cogeneration of electricity and steam.

(e) Failure to pay the fee is sufficient cause for revoking a permit. A penalty of two percent per month calculated from the original due date must be imposed on the unpaid balance of fees remaining 30 days after the sending of a second notice of fees due. A fee may not be imposed on an agency, as defined in section 16B.01, subdivision 2, or federal governmental agency holding a water appropriation permit.

(f) The minimum water use processing fee for a permit issued for irrigation of agricultural land is \$10 for years in which:

(1) there is no appropriation of water under the permit; or

(2) the permit is suspended for more than seven consecutive days between May 1 and October 1.

(g) For once-through systems fees payable after July 1, 1993, at least 50 percent of the fee deposited in the general fund shall be used for grants, loans, or other financial assistance as appropriated by the legislature to assist in financing retrofitting of permitted once-through systems until December 31, 1999. The commissioner shall adopt rules for determining eligibility and criteria for the issuance of grants, loans, or other financial assistance for retrofitting according to chapter 14, by July 1, 1993.

[For text of subd 7, see M.S.1990]

History: 1991 c 214 s 6; 1991 c 234 s 1; 1991 c 354 art 10 s 5

103G.301 GENERAL PERMIT APPLICATION PROCEDURES.

[For text of subds 1 to 5, see M.S.1990]

Subd. 5a. Town fees limited. Notwithstanding this section or any other law, no permit application or field inspection fee charged to a town in connection with the construction or alteration of a town road, bridge, or culvert shall exceed \$100.

[For text of subds 6 and 7, see M.S.1990]

History: 1991 c 298 art 4 s 1

103G.545 DAMS AND WATER LEVEL CONTROL IN COOK, LAKE, AND ST. LOUIS COUNTIES.

[For text of subd 1, see M.S.1990]

Subd. 2. Legislative approval required for control structures and water levels. Except as provided in this section, specific authority must be given by law after consideration by the legislature with regard to control structures or water levels within or bordering on the area of Cook, Lake, and St. Louis counties designated in the Act of Congress of July 10, 1930, United States Code, title 16, section 577, before:

(1) dams or additions to existing dams may be constructed in or across public waters;

(2) alteration of the natural water level or volume of flowage of public waters may be made; or

(3) an easement for flooding or overflowing or otherwise affecting state property adjacent to public waters may be granted.

[For text of subds 3 to 5, see M.S.1990]

History: 1991 c 199 art 1 s 18