

CHAPTER 103G

WATERS OF THE STATE

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103G.201 PUBLIC WATERS INVENTORY.

(a) The commissioner shall prepare a public waters inventory map of each county that shows the waters of this state that are designated as public waters under the public waters inventory and classification procedures prescribed under Laws 1979, chapter 199. The public waters inventory map for each county must be filed with the auditor of the county.

(b) The commissioner is authorized to revise the list of public waters established under Laws 1979, chapter 199, to reclassify those types 3, 4, and 5 wetlands previously identified as public waters wetlands under Laws 1979, chapter 199, as public waters or as wetlands under section 103G.005, subdivision 19. The commissioner may only reclassify public waters wetlands as public waters if:

(1) they are assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221;

(2) they are classified as lacustrine wetlands or deepwater habitats according to Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition); or

(3) the state or federal government has become titleholder to any of the beds or shores of the public waters wetlands, subsequent to the preparation of the public waters inventory map filed with the auditor of the county, pursuant to paragraph (a), and the responsible state or federal agency declares that the water is necessary for the purposes of the public ownership.

(c) The commissioner must provide notice of the reclassification to the local government unit, the county board, the watershed district, if one exists for the area, and the soil and water conservation district. Within 60 days of receiving notice from the commissioner, a party required to receive the notice may provide a resolution stating objections to the reclassification. If the commissioner receives an objection from a party required to receive the notice, the reclassification is not effective. If the commissioner does not receive an objection from a party required to receive the notice, the reclassification of a wetland under paragraph (b) is effective 60 days after the notice is received by all of the parties.

(d) The commissioner shall give priority to the reclassification of public waters wetlands that are or have the potential to be affected by public works projects.

(e) The commissioner may revise the public waters inventory map and list of each county:

(1) to reflect the changes authorized in paragraph (b); and

(2) as needed, to:

(i) correct errors in the original inventory;

(ii) add or subtract trout stream tributaries within sections that contain a designated trout stream following written notice to the landowner;

(iii) add depleted quarries, and sand and gravel pits, when the body of water exceeds 50 acres and the shoreland has been zoned for residential development; and

(iv) add or subtract public waters that have been created or eliminated as a requirement of a permit authorized by the commissioner under section 103G.245.

History: 2005 c 138 s 1

103G.2372 ENFORCEMENT.

Subdivision 1. **Commissioner of natural resources.** (a) The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting ground water quantity, wetlands, and public waters. 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 ground water quantity, a wetland, or public waters.

(b) In the order, or by separate order, the commissioner, conservation officer, or peace officer may require restoration or replacement of the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters. Restoration or replacement orders may be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located by the commissioner of natural resources, conservation officers, or peace officers as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded. Notwithstanding section 386.77, the agency shall pay the applicable filing fee for any document filed under this section.

[For text of subs 2 and 3, see M.S.2004]

History: 2005 c 138 s 2

103G.245 WORK IN PUBLIC WATERS.

[For text of subs 1 to 3, see M.S.2004]

Subd. 4. **Structures in or adjacent to public waters.** (a) The following definitions apply to this subdivision:

(1) "boathouse" means a structure or watercraft that is moored by spuds, cables, ropes, anchors, or chains that may be intended for habitation and has walls, a roof, and either an open well for boats or a floor from wall to wall and does not include watercraft that are designed and operated as motorboats; and

(2) "motorboat" means a watercraft that is designed for and is capable of navigation on the water and that has an adequately sized external or internal mechanical propulsion system for the type of watercraft.

(b) The commissioner, subject to the approval of the county board, may grant and prescribe terms and conditions for granting public waters work permits to establish, construct, maintain, and control wharves, docks, piers, levees, breakwaters, basins, canals, and hangars in or adjacent to public waters of the state, except within the corporate limits of a municipality.

(c) Boathouses are prohibited on public waters of Minnesota, except as allowed by paragraph (d).

(d) The commissioner may issue a public waters work permit for boathouses, when approved by the local governmental unit and:

(1) only in areas of historic use for the structures, as determined by the commissioner, and where the boathouse was in existence on public waters prior to January 1, 1997; or

(2) where the boathouse serves as a public service structure within a permitted commercial marina.

(e) A boathouse in existence on public waters prior to January 1, 1997, may be repaired or replaced, provided that the repairs or replacement are consistent with the permit issued by the commissioner under paragraph (d).

[For text of subs 5 to 12, see M.S.2004]

History: 2005 c 138 s 3

103G.251 INVESTIGATION OF ACTIVITIES WITHOUT PERMIT.

[For text of subd 1, see M.S.2004]

Subd. 2. **Findings and order.** (a) With or without a public hearing, the commissioner may make findings and issue orders related to activities being conducted without a permit that affect waters of the state as otherwise authorized under this chapter.

(b) A copy of the findings and order must be served on the person to whom the order is issued.

(c) If the commissioner issues the findings and order without a hearing, the person to whom the order is issued may file a demand for a hearing with the commissioner. The demand for a hearing must be accompanied by the bond as provided in section 103G.311, subdivision 6, and the hearing must be held in the same manner and with the same requirements as a hearing held under section 103G.311, subdivision 5. The demand for a hearing and bond must be filed by 30 days after the person is served with a copy of the commissioner's order.

(d) The hearing must be conducted as a contested case hearing under chapter 14.

(e) If the person to whom the order is addressed does not demand a hearing or demands a hearing but fails to file the required bond:

(1) the commissioner's order becomes final at the end of 30 days after the person is served with the order; and

(2) the person may not appeal the order.

(f) An order of the commissioner may be recorded or filed by the commissioner in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded.

History: 2005 c 138 s 4

103G.271 APPROPRIATION AND USE OF WATERS.

[For text of subs 1 to 4a, see M.S.2004]

Subd. 5. **Prohibition on once-through water use permits.** (a) Except as provided in paragraph (c), the commissioner may not, after December 31, 1990, issue a water use permit to increase the volume of appropriation from a groundwater source for a once-through cooling system using in excess of 5,000,000 gallons annually.

(b) Except as provided in paragraph (c), once-through system water use permits using in excess of 5,000,000 gallons annually, must be terminated by the commissioner by the end of their design life but not later than December 31, 2010, unless the discharge is into a public water basin within a nature preserve approved by the commissioner and established prior to January 1, 2001. Existing once-through systems must not be expanded and are required to convert to water efficient alternatives within the design life of existing equipment.

(c) Notwithstanding paragraphs (a) and (b), the commissioner, with the approval of the commissioners of health and the Pollution Control Agency, may issue once-through system water use permits on an annual basis for aquifer storage and recovery systems that return all once-through system water to the source aquifer. Water use permit processing fees in subdivision 6, paragraph (a), apply to all water withdrawals under this paragraph, including any reuse of water returned to the source aquifer.

[For text of subd 5a, see M.S.2004]

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 schedule of fees in this subdivision for each water use permit in force at any time during the year. The schedule is as follows, with the stated fee in each clause applied to the total amount appropriated:

- (1) \$101 for amounts not exceeding 50,000,000 gallons per year;
- (2) \$3 per 1,000,000 gallons for amounts greater than 50,000,000 gallons but less than 100,000,000 gallons per year;
- (3) \$3.50 per 1,000,000 gallons for amounts greater than 100,000,000 gallons but less than 150,000,000 gallons per year;
- (4) \$4 per 1,000,000 gallons for amounts greater than 150,000,000 gallons but less than 200,000,000 gallons per year;
- (5) \$4.50 per 1,000,000 gallons for amounts greater than 200,000,000 gallons but less than 250,000,000 gallons per year;
- (6) \$5 per 1,000,000 gallons for amounts greater than 250,000,000 gallons but less than 300,000,000 gallons per year;
- (7) \$5.50 per 1,000,000 gallons for amounts greater than 300,000,000 gallons but less than 350,000,000 gallons per year;
- (8) \$6 per 1,000,000 gallons for amounts greater than 350,000,000 gallons but less than 400,000,000 gallons per year;
- (9) \$6.50 per 1,000,000 gallons for amounts greater than 400,000,000 gallons but less than 450,000,000 gallons per year;
- (10) \$7 per 1,000,000 gallons for amounts greater than 450,000,000 gallons but less than 500,000,000 gallons per year; and
- (11) \$7.50 per 1,000,000 gallons for amounts greater than 500,000,000 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, \$150 per 1,000,000 gallons; and
- (2) for all other users, \$300 per 1,000,000 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 \$100.

(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 \$250,000 per year;
- (2) the fee for other entities for any permitted use may not exceed:
 - (i) \$50,000 per year for an entity holding three or fewer permits;
 - (ii) \$75,000 per year for an entity holding four or five permits;
 - (iii) \$250,000 per year for an entity holding more than five permits;
- (3) the fee for agricultural irrigation may not exceed \$750 per year;
- (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; and

(5) no fee is required for a project involving the appropriation of surface water to prevent flood damage or to remove flood waters during a period of flooding, as determined by the commissioner.

(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 \$20 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) A surcharge of \$20 per million gallons in addition to the fee prescribed in paragraph (a) shall be applied to the volume of water used in June, July, and August that exceeds the volume of water used in January for municipal water use, irrigation of golf courses, and landscape irrigation.

[For text of subds 6a and 7, see M.S.2004]

History: 2005 c 89 s 1; 1Sp2005 c 1 art 2 s 121

103G.301 GENERAL PERMIT APPLICATION PROCEDURES.

[For text of subd 1, see M.S.2004]

Subd. 2. **Permit application fees.** (a) A permit application fee to defray the costs of receiving, recording, and processing the application must be paid for a permit authorized under this chapter and for each request to amend or transfer an existing permit.

(b) The fee to apply for a permit to appropriate water, a permit to construct or repair a dam that is subject to dam safety inspection, or a state general permit or to apply for the state water bank program is \$150. The application fee for a permit to work in public waters or to divert waters for mining must be at least \$150, but not more than \$1,000, according to a schedule of fees adopted under section 16A.1285.

[For text of subds 3 to 7, see M.S.2004]

History: 2005 c 138 s 5; 1Sp2005 c 1 art 2 s 122

103G.615 PERMITS TO HARVEST OR DESTROY AQUATIC PLANTS.

[For text of subd 1, see M.S.2004]

Subd. 2. **Fees.** (a) The commissioner shall establish a fee schedule for permits to control or harvest aquatic plants other than wild rice. The fees must be set by rule, and section 16A.1283 does not apply. The fees may not exceed \$750 per permit based upon the cost of receiving, processing, analyzing, and issuing the permit, and additional costs incurred after the application to inspect and monitor the activities authorized by the permit, and enforce aquatic plant management rules and permit requirements.

(b) The fee for a permit for the control of rooted aquatic vegetation is \$35 for each contiguous parcel of shoreline owned by an owner. This fee may not be charged for permits issued in connection with purple loosestrife control or lakewide Eurasian water milfoil control programs.

(c) A fee may not be charged to the state or a federal governmental agency applying for a permit.

(d) The money received for the permits under this subdivision shall be deposited in the treasury and credited to the water recreation account.

[For text of subds 3 to 7, see M.S.2004]

History: 1Sp2005 c 1 art 2 s 123