

CHAPTER 6116

DEPARTMENT OF NATURAL RESOURCES

WATER AERATION SYSTEMS

6116.0010 DEFINITIONS.
 6116.0020 PERMIT.
 6116.0030 APPLICATION FOR PERMIT.
 6116.0040 PERMIT CONDITIONS

6116.0050 MARKING REQUIREMENTS AND
 PUBLICATION OF NOTICE OF
 OPERATION.
 6116.0060 WAIVER.
 6116.0070 APPEAL.

6116.0010 DEFINITIONS.

Subpart 1. **Scope.** For purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Aeration system.** "Aeration system" means a bubbler, water circulation, or similar system used to increase dissolved oxygen or maintain open water. The purpose of the system includes, but is not limited to:

- A. preventing fish winterkill;
- B. keeping areas free of ice to aid navigation, keeping mooring facilities open, or protecting structures in the water from ice damage;
- C. maintaining open water for captive waterfowl;
- D. rehabilitating lake water quality by methods such as destratification and hypolimnetic aeration; and
- E. protecting shoreline from damage due to ice expansion.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Department of Natural Resources, or a duly authorized representative.

Subp. 4. **Management plan.** A plan approved by the commissioner that specifies actions related to water aeration systems.

Subp. 5. **Protected waters.** "Protected waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 105.37, subdivision 14, or 105.391, subdivision 1.

Subp. 6. **Public access.** "Public access" means any designated public access or any public riparian lands where public access to the protected water is not prohibited.

Subp. 7. **Structure.** "Structure" means any building, footing, foundation, slab, roof, boathouse, deck, wall, or any other object extending over, anchored, or permanently attached to the bed or bank of a protected water.

Statutory Authority: *MS s 378.22 subd 5*

History: *13 SR 1235*

6116.0020 PERMIT.

Subpart 1. **Required.** All aeration systems installed and operated in protected waters require a permit issued by the commissioner of the Department of Natural Resources, unless the system is used exclusively for and is no larger than the minimum size adequate to keep dams, structures, or mooring areas free of ice. No permit issued pursuant to this part shall be construed to satisfy the need for permits required by other governmental entities.

Subp. 2. **Issuance prohibited.** No aeration permit shall be issued:

A. for the purpose of attracting or delaying the migration of wild waterfowl, except for waterfowl management practices approved by the United States Fish and Wildlife Service or the Minnesota Department of Natural Resources, Division of Fish and Wildlife;

B. for protected waters designated for wildlife management under Minnesota Statutes, section 97A.101, subdivision 2, unless the aeration system is included as part of the management plan;

C. for protected waters proposed by the commissioner for designation for wildlife management purposes under Minnesota Statutes, section 97A.101, subdivision 2, until the designation process is terminated or completed;

D. for protected waters designated as scientific and natural areas under Minnesota Statutes, section 84.033; or

E. for protected waters without a management plan, unless:

(1) the protected waters are designated for use under a fish farm or hatchery license issued by the commissioner; or

(2) the protected waters do not have public access.

Subp. 3. Winter operation. An aeration permit shall not be issued for winter operation of a system where the diffusers are placed in a configuration where more than one open water area is created during ordinary winter weather unless:

A. there is no public access; and

B. the permittee owns all land riparian to the protected water, or all of the possessory rights to the land riparian to the protected water, or has leased all access rights to the protected water; or

C. the commissioner has first determined that such a system will provide substantial benefit to the lake resource.

Statutory Authority: *MS s 378.22 subd 5*

History: *13 SR 1235*

6116.0030 APPLICATION FOR PERMIT.

Subpart 1. Term. No permit shall be issued for a period of more than one year.

Subp. 2. Criteria for granting a permit. The commissioner shall grant a permit for an aeration system when the commissioner concludes that:

A. operation of a system will result in substantial benefit to the lake resource; and

B. the objectives of the system are compatible with natural resources management and public safety goals for the body of water.

Subp. 3. Form contents. Applications for permits shall be submitted on forms provided by the commissioner and shall include:

A. the reason the system is needed;

B. a description of the system, including but not limited to location, size, and number of devices to be used;

C. a sketch of the proposed system, indicating the compass direction "north," location on the lake, roads in the vicinity, pertinent fire numbers, noteworthy landmarks, and enough detail so the system can be located for inspection, and emergency access, shall accompany all new applications;

D. the proposed operating schedule; and

E. further information the commissioner needs in order to assess the need for and effectiveness of the proposed aeration system.

Subp. 4. Private hatchery or fish farm license holders. Beginning March 1, 1989, a private fish farm or hatchery license may contain authorization for the operation of aeration systems on protected waters without public access if the licensee owns all riparian land or all of the possessory rights to the riparian lands. A private hatchery or fish farm license application requesting authorization for aeration system operation shall be subject to the same review as the aeration permit application. The license application shall include:

A. the legal description and Division of Waters inventory number of each water body;

B. location of the aeration system in each water body;

C. enough detail so the systems can be located for inspection and emergency access; and

D. a signed statement attesting that the requirements of this subpart are met.

Subp. 5. Public input. Upon receipt of a new application for installation and operation of an aeration system on protected waters with public access the commissioner shall issue public notice and may conduct a public meeting to assist in deciding whether to issue, deny, or modify a permit. Reissuance of permits for existing permitted aeration systems does not require a public meeting, however, upon request of 25 or more residents of the state a public meeting will be held.

Subp. 6. **Applicants.** The applicant shall be a governmental entity such as a county, city, town, watershed district, or lake improvement district; or a private person, group, or entity.

Subp. 7. **Financial responsibility.** All permittees, except those permittees operating an aeration system in protected waters without public access, where the permittee owns all land riparian to the protected water, or all of the possessory rights to the land riparian to the protected water, or has leased all access rights to the protected water, and state agencies subject to the State Tort Claims Act or municipalities subject to the Municipal Tort Claims Act, must provide proof that the permittee is financially able to meet any liability that should arise from the presence or operation of the system. This shall be done by:

A. posting a bond for \$500,000; or

B. providing a certificate of insurance for the current period of operation. An insurance policy of \$500,000 (minimum) combined single limit general liability coverage must be in effect while the system is in operation during all times any portion of the lake is ice-covered. An insurance binder is adequate until a certificate is issued, at which time the certificate must be delivered to the appropriate regional fisheries manager.

Statutory Authority: *MS s 378.22 subd 5*

History: *13 SR 1235*

6116.0040 PERMIT CONDITIONS.

Subpart 1. **Objective.** The commissioner may include conditions the commissioner considers reasonable and necessary for the design, installation, and operation of the system, and provisions for monitoring the system and its effects by the permittee or the commissioner.

Subp. 2. **Workshops.** Permittees shall attend workshops to be held at designated locations throughout the state as determined by the commissioner. New permittees shall attend a workshop before initial start-up of systems.

Subp. 3. **Inspections.** The permittee shall allow the inspection of the aeration system by the commissioner or a designee at all reasonable times. Each aeration system shall be inspected by the permittee often enough to ensure that the requirements of this part and conditions of the permit are met at all times. All deficiencies shall be promptly corrected. The permittee must inspect the aeration system not less than once every seven days.

Subp. 4. **Aeration periods.** The start-up and stopping dates for aerating during periods of ice cover shall be determined by the regional fisheries manager and shall be specified in the permit. No aeration system will be operated during the period of ice formation until sufficient ice has formed so that marking requirements can be safely met, unless the permittee has posted the approximate area of the open water before ice formation by using signs placed on buoys or posts driven into the lake bottom or by other methods approved by the commissioner.

Subp. 5. **Hold harmless.** Permittee agrees to assume the entire responsibility and liability for all damages or injury to all persons and to all property arising out of, resulting from, or in any manner connected with the design, construction, installation, operation, maintenance, supervision, or inspection of the permitted aeration system. Permittee agrees to indemnify, defend, and hold harmless the state of Minnesota, its agents and employees, from all claims, damages, or injury except those arising from the state's own negligence to the extent authorized by Minnesota Statutes, section 3.736, the Minnesota Tort Claims Act. This indemnity agreement includes, but is not limited to, claims that the permittee was negligent or otherwise liable for allowing, designing, constructing, installing, operating, inspecting, maintaining, supervising, or approving the permitted aeration system, or failing to do so.

Subp. 6. **Revocations.** The commissioner may revoke a permit without prior notice whenever, in the commissioner's opinion, revocation is necessary to protect human life or natural resources.

Statutory Authority: *MS s 378.22 subd 5*

History: *13 SR 1235*

6116.0050 WATER AERATION SYSTEMS

394

6116.0050 MARKING REQUIREMENTS AND PUBLICATION OF NOTICE OF OPERATION.

Permittees shall post signs and publish notice of operation as required by Minnesota Statutes, section 378.22.

Statutory Authority: *MS s 378.22 subd 5*

History: *13 SR 1235*

6116.0060 WAIVER.

The commissioner may waive any provision of parts 6116.0010 to 6116.0040, when there is:

A. an emergency involving either:

- (1) an unanticipated winterkill of a desirable fish population; or
- (2) ice movement causing property damage; and

B. acceptable alternative means of meeting the provisions of parts 6116.0020 to 6116.0040 have been provided by the applicant.

Statutory Authority: *MS s 378.22 subd 5*

History: *13 SR 1235*

6116.0070 APPEAL.

The terms, conditions, denial, or revocation of any permit issued pursuant to parts 6116.0010 to 6116.0060 may, within 30 days of receipt of written notice, be appealed to the commissioner by filing a written request for review. If written request is not submitted within 30 days, the permit decision becomes final.

Statutory Authority: *MS s 378.22 subd 5*

History: *13 SR 1235*