

CHAPTER 6280

DEPARTMENT OF NATURAL RESOURCES

AQUATIC NUISANCE CONTROL

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6280.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Aquatic macrophytes.** "Aquatic macrophytes" means rooted plants, either submerged, floating leafed, or emergent, and floating or floating leaf plants growing in public waters.

Subp. 3. **Aquatic nuisance.** "Aquatic nuisance" means the presence of leeches, snails that carry swimmer's itch, or any growth of aquatic vegetation or algae in such numbers or such abundance as to interfere with boating, swimming, or other aquatic recreation or beneficial water use.

Subp. 4. **Bog.** "Bog" means a mat, either attached to or resting on the bottom or floating, that is normally made up of dead organic matter held together by various types of living plants.

Subp. 5. **Dense growth of submerged vegetation.** "Dense growth of submerged vegetation" means that a condition exists where the vegetation occurs at 90 percent or more of sampling stations within a proposed treatment area and has an average recovery of three or more, when percent occurrence and average recovery are determined according to the method described by Jessen and Lound in Game Investigational Report No. 6, Minnesota Department of Conservation (1962), the original filed in the Office of the Director of Fish and Wildlife, Saint Paul, Minnesota.

Subp. 6. **Excessive algae bloom.** "Excessive algae bloom" means that some or all of the following conditions are present:

- A. algae population is dominated by blue-green algae;
- B. secchi disc reading is typically two feet or less;
- C. floating mats or scums of algae have accumulated on the downwind shore; or
- D. decomposition of accumulated algae has occurred releasing a blue-green pigment and causing an offensive odor.

Subp. 7. **Field inspection.** "Field inspection" means an on-site determination by department personnel of relevant characteristics of a proposed treatment area.

Subp. 8. **Label registration.** "Label registration" means the application rate and site where a pesticide can be applied, vegetation it will control, and other important information that is contained on a pesticide's label. To use a pesticide in a manner inconsistent with its label is a violation of state and federal law.

Subp. 9. **Littoral area.** "Littoral area" means any part of a body of water 15 feet deep or less.

Subp. 10. **Monitoring.** "Monitoring" means assessment by the commissioner of the status, progress, or efficacy of activities authorized by permit and observation of control operations being done under permit.

Subp. 11. **Ordinary high water level.** "Ordinary high water level" has the meaning given in Minnesota Statutes, section 103G.005.

Subp. 12. **Pesticide.** "Pesticide" means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate a pest, and a substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

Subp. 13. **Public waters.** "Public waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 103G.005.

Subp. 14. **Storm water retention ponds.** "Storm water retention ponds" means those bodies of public water, usually less than ten acres in size, lying within home rule charter or statutory cities or towns and that have as a principal public value the retention of storm water.

Subp. 15. **Viable.** "Viable" means that any plant or plant part is capable of taking root or living when introduced into another body of water.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83*

6280.0200 AQUATIC NUISANCE CONTROL PERMITS.

Subpart 1. **Application process.** Application for an aquatic nuisance control permit for any body of public waters may be made by a riparian owner to that body of water or by the representative of a group of riparian owners. Application for an aquatic nuisance control permit must be made on forms provided by the commissioner and must be submitted to the address specified in the instructions. All information requested on the application form must be provided.

Subp. 2. **Requirements.** An aquatic nuisance control permit is required to:

- A. apply pesticides to public waters;
 - B. mechanically remove from or transplant into public waters any aquatic plants or a bog of any size whether free-floating or lodged in an area other than its original location;
 - C. destroy emergent aquatic vegetation in public waters, except as provided by subpart 3;
 - D. destroy aquatic vegetation within a posted fish spawning area;
 - E. use a machine that mechanically sifts lake bottom material from public waters;
- or

F. destroy or prevent the growth of aquatic plants or invertebrate life in public waters by other means except as provided by subpart 3.

Subp. 3. **Actions not requiring a permit.** Unless otherwise required by subpart 2, an aquatic nuisance control permit is not required for items A to E.

A. Cutting or pulling aquatic plants for the purpose of constructing shooting and observation blinds in amounts sufficient for that purpose.

B. Gathering aquatic plants or plant parts, other than wild rice and American lotus, for personal use only.

C. Cutting or pulling submerged and floating-leaf aquatic vegetation in order to maintain a site for swimming or boat docking not to extend along more than 50 feet of the owner's shoreline or one-half the length of the owner's total shoreline, whichever is less, and that does not exceed 2,500 square feet in area, except that a boat channel extending to open water, not to exceed 15 feet in width, may be maintained. The boating channel is included in the maximum shoreline feet allowed. Cutting or pulling may only be done under the following conditions:

(1) with power-operated cutters, rakes, or similar equipment that does not significantly alter the course, current, or cross-section of the lake bottom. Draglines, bulldozers, hydraulic jets, suction dredges, or other power-operated earth-moving equipment may not be used;

(2) cutting or pulling takes place in the same location each year unless an aquatic nuisance control permit has been obtained authorizing a change in location; and

(3) aquatic plants that have been cut or pulled must immediately and permanently be removed from the water.

D. Destroying aquatic vegetation incidental to soil removal or water removal authorized by a department permit for work in public waters as provided by Minnesota Statutes, section 103G.245.

E. Cutting or pulling purple loosestrife (*lythrum salicaria*) does not require a permit.

Subp. 4. **Deadline for permit application.** Applications for permits to control submerged or floating aquatic vegetation with pesticides will not be accepted after August 1 annually, unless the commissioner determines that sufficient justification exists for late-season pesticide treatment.

Subp. 5. **Regulations of other programs apply.** Aquatic nuisance control permits issued as provided by this part may not be construed to supersede the requirements of shoreland conservation ordinances, floodplain management ordinances, lake management plans and programs, wild and scenic river plans and programs, or pertinent local ordinances and regulations.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83*

6280.0300 PROHIBITED AQUATIC PLANT CONTROL ACTIVITIES FOR AQUATIC NUISANCE PERMITS.

Aquatic nuisance permits will not be issued for the following purposes:

A. placing plastic mats or plastic sheets or similar materials on the bed of public waters to destroy or prevent the growth of aquatic vegetation;

B. to improve the appearance of undeveloped shoreline;

C. for esthetic purposes alone; and

D. for the control of aquatic vegetation in areas posted or designated by the commissioner as scientific and natural areas or for the protection of lotus (*Nelumbo lutea*) or other kinds of aquatic plants and animals.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83*

6280.0400 STANDARDS FOR ISSUING AQUATIC NUISANCE CONTROL PERMITS.

Subpart 1. **Standards for issuance of permits.** Aquatic nuisance control permits may be issued to applicants requesting control of:

A. snails that carry swimmer's itch, or leeches;

B. aquatic nuisance conditions at established public swimming beaches;

C. dense growths of submerged vegetation or floating bog that interfere with watercraft use or swimming;

D. excessive filamentous algae;

E. excessive algae blooms;

F. aquatic nuisance conditions created by floating bogs; and

G. purple loosestrife (*lythrum salicaria*).

Subp. 2. **Justification required for issuance of permits.** Permits for the destruction of emergent and floating-leaf vegetation including wild rice, bulrush, water lilies, and other vegetation will not be issued unless the commissioner determines sufficient justification exists.

Subp. 3. **Mechanical control.** The provisions in items A to C apply to conditions for mechanical control of aquatic vegetation.

A. A person who cuts or pulls aquatic vegetation must immediately and permanently remove the vegetation from the water and dispose of it above the ordinary high water level of any public water and not on marsh or bog areas.

B. Organized lakewide cutting and removal programs are restricted to a maximum area not to exceed 50 percent of the total littoral area as determined by the commissioner. Devices that sift debris and vegetation from shallow water areas may not be used unless no other method of mechanical control, as determined by the commissioner, is possible in that location.

C. Applications for lakewide or baywide mechanical control of aquatic macrophytes must include a written statement of the plan and a map showing proposed areas to be

controlled. The commissioner may reduce the littoral area proposed for harvest. An application for mechanical control of aquatic macrophytes must include the name, address, and location on the lake of all property owners whose shoreline will be controlled.

Subp. 4. Pesticide control of aquatic vegetation in water courses. Permits may be issued for pesticide control of aquatic vegetation in flowing waters, provided that nuisance vegetation is present to such a degree that it impedes the flow of water and that the flow rate will not carry the pesticide beyond the treatment area during the period of water use restriction specified on the pesticide label. The pesticide to be used must have label registration for use in flowing water.

Subp. 5. Chemical control of aquatic macrophytes. Except as otherwise specified in this part, items A to D apply to the pesticide control of aquatic macrophytes.

A. On all lakes and watercourses outside or partially outside a home rule charter or statutory city or a town, the lesser of ten percent of the littoral area or 100 feet of shoreline per site belonging to an individual riparian property owner may be treated. On all lakes or watercourses entirely within a home rule charter or statutory city or a town, the lesser of 15 percent of the littoral area or 100 feet of shoreline per site belonging to an individual riparian property owner may be treated. These limitations do not apply in the circumstances described in sub-items (1) to (4).

(1) For resorts, apartments, condominium complexes, public swimming beaches, and marinas, the commissioner must make an individual determination, taking into consideration the total impact on the protected water.

(2) Larger percentages of the littoral area may be treated at the discretion of the commissioner when authorized by previous aquatic nuisance control permits.

(3) For riparian property owners' associations, watershed districts, lake-improvement districts, municipalities, or similar entities, or for bay-wide vegetation control programs on lakes that have distinct bays, only the percentage limitation on littoral area applies. Treatment areas may be distributed along the shore at the applicant's discretion, provided that spawning areas and protected plants may not be treated.

(4) On storm water retention ponds, treatment may occur on up to five acres or one-half the surface area of the pond, whichever is less.

B. Applications from riparian property owners' associations for large area or bay-wide treatment must include a written statement of the plan and a map showing areas proposed to be treated. The commissioner may reduce the amount of littoral area which the applicant proposes to control. Any application for treatment must include the names, addresses, location on lake, and signatures of all property owners whose shorelines will be treated. A notarized statement signed by an officer of a sponsoring riparian property owners' association or similar organization, listing all properties whose shoreline will be treated, may be substituted for signatures.

C. Waterfowl feeding and resting areas established as provided by Minnesota Statutes, sections 97A.095 and 97A.101, and lakes designated as waterfowl feeding and resting areas, natural environment lakes established pursuant to part 6120.3000, or wildlife management lakes may not be treated for control of submerged vegetation.

D. Watercourses or portions of watercourses classified as wild as defined under either the Minnesota or federal Wild and Scenic Rivers Acts as provided by Minnesota Statutes, section 103F.325, and Public Law Number 90-542, United States Code, title 16, section 1271 et seq., as amended, may not be treated.

Subp. 6. Control of algae. An application for proposed lakewide control of algae must be accompanied by evidence that a majority of the riparian property owners are in favor of the proposed treatment.

Subp. 7. Pesticide treatment of drinking water. The commissioner may not issue a permit for pesticide treatment of waters used by humans for drinking unless approval is obtained from the Minnesota Department of Health.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83*

6280.0500 AQUATIC NUISANCE CONTROL PERMIT FEES.

Subpart 1. **Permit application fees.** The provisions in items A to C apply to aquatic nuisance control permit fees.

A. When application is made to control two or more nuisance conditions, only the larger fee applies. A permit application fee, in the form of a check or money order payable to the State Treasurer, must accompany each permit application when required by the following fee schedule:

(1) to control rooted vegetation by chemical means: \$20 plus 40 cents per shoreline foot of the proposed treatment area, up to a maximum of \$200;

(2) to control emergent vegetation, or to control submerged or floating-leaf aquatic vegetation in an area larger than 2,500 square feet, by mechanical control: \$20 for the first acre or portion of an acre and \$2 for each additional acre or portion to be controlled, up to a maximum of \$200;

(3) to gather or harvest aquatic plants or plant parts other than wild rice, for sale purposes: no charge;

(4) to transplant aquatic plants or bog into protected waters: no charge;

(5) to control chara, filamentous algae, snails that carry swimmer's itch, or leeches, singly or in combination: \$4 per 100 shoreline feet or portion proposed to be treated, up to a maximum of \$200;

(6) to control algae by lakewide application of copper sulfate or other approved algicide: \$20 plus 40 cents per acre to be treated, up to a maximum of \$200; and

(7) to control purple loosestrife (*lythrum salicaria*) by chemical means: no charge.

B. If the fee does not accompany the application, the applicant will be notified and no action will be taken on the application until the fee is received.

C. The fee is not refundable, whether the application is permitted, modified, denied, or withdrawn, unless the commissioner determines that the activity does not require a permit.

Subp. 2. **Fees for inspection, supervision, and monitoring.** The provisions in items A to C apply to fees for the inspection, supervision, and monitoring of aquatic nuisance control programs.

A. If field inspection, supervision, or monitoring is required as a permit condition, the applicant or permittee will be charged \$60, provided the commissioner has notified the applicant of the potential fee and the applicant has chosen to continue the application. There will be only one inspection fee per application. Inspection fees are not refundable for any reason.

B. Supervision by a department employee will be required, unless waived, for initial lakewide treatment of excessive algae blooms by inexperienced permittees and may be periodically required for treatments by experienced groups.

C. Field inspections will be made in cases of new applications for pesticide treatment or mechanical control of areas one acre or larger. Field inspection of other previously permitted areas will also be required at intervals to evaluate conditions and the need for continued control measures.

Subp. 3. **Fees for state and federal agencies.** The fees set forth by this part will not be required of any state agency as defined in Minnesota Statutes, section 15.01, or of any federal agency.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83*

6280.0600 APPROVAL OF PESTICIDES AND METHODS USED FOR AQUATIC NUISANCE CONTROL.

Subpart 1. **Chemicals must be registered as aquatic herbicides or algicides.** Only chemicals registered with the United States Environmental Protection Agency (EPA) as aquatic herbicides or algicides and registered with the Minnesota Department of Agriculture, and approved for use in public waters by the commissioner, may be used for chemical

control of aquatic vegetation or algae in public waters. Permits may be granted for experimental use of unregistered chemicals and methods in a bona fide experimental program under an experimental use permit from the EPA, the Minnesota Department of Agriculture, and the commissioner.

Subp. 2. Instructions and precautions of pesticides must be followed. Pesticides must be applied according to the label registration rates provided by the manufacturer and other restrictions imposed by the department. Pesticide-treated areas must be posted with signs provided by the department bearing the permit number; the name of pesticide used; the date of treatment; and dates on which water from the treated area may be safely used for swimming, fishing, and other uses, as specified on the product label or by the department. When differences in instructions exist, the department recommendations must be followed. The permittee or agent is responsible for the placement and removal of required signs. The treatment area must be posted in such a way that people entering from any direction can see the signs, or as otherwise prescribed in the permit.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83*

6280.0700 COMMERCIAL APPLICATORS AND OPERATORS.

Subpart 1. Pesticide applicators. A person or firm may not apply pesticides of any kind for hire for aquatic nuisance control on protected waters unless a commercial pesticide applicator's license has been obtained from the Minnesota Department of Agriculture. A pesticide applicator's license must be endorsed by the department before pesticides may be applied under an aquatic nuisance control permit.

Subp. 2. Nonchemical operators. A person or firm may not cut, pull, or remove aquatic vegetation by nonchemical methods on public waters for hire without first obtaining an aquatic operator's permit issued by the department. Issuance of an aquatic operator's permit is contingent upon determination by the commissioner that the applicant has adequate equipment and knowledge to properly control aquatic vegetation in public waters. This subpart does not apply to persons or firms using power-operated earth-moving equipment in public waters under terms of permits issued by the department for work in the bed of public waters as provided by Minnesota Statutes, section 103G.245. Persons or firms that use aquatic vegetation cutting and harvesting equipment must thoroughly remove and properly dispose of all viable residual plants and viable plant parts from the equipment before transporting it to another body of water.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83*

6280.0800 ANNUAL REPORTS AND TREATMENT NOTICES.

Subpart 1. Annual report. The holder of an aquatic operator's permit, commercial pesticide applicator's license, or aquatic nuisance control permit must, no later than November 15 of each year, report to the commissioner, on the forms provided, information on aquatic nuisance control operations requested. Failure to report will be grounds for refusing to issue such permits in the future.

Subp. 2. Treatment notice. Holders of aquatic nuisance control permits or their agents must give notice of the proposed date of treatment to all persons specified on the permit. The notification must be received prior to beginning any work under the permit. Failure to give notice is grounds for revocation of any existing permit or refusal to issue future permits. Notification is not required for mechanical control of vegetation where no permit is required.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83*

6280.0900 REVOCATION.

The commissioner may revoke any aquatic operator's permit, aquatic endorsement of a commercial pesticide applicator's license, or aquatic nuisance control permit without prior notice whenever it has been determined that it is necessary to protect the interests of the pub-

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lic, to protect human life, or to protect fish and wildlife, or for violation of the terms and conditions of permits, this chapter, or other applicable laws or rules.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83*

6280.1000 VARIANCE.

Provisions of this chapter may be waived under special circumstances when deemed necessary by the commissioner for the protection and preservation of the natural resources of the state.

Statutory Authority: *MS s 103G.615*

History: *18 SR 83*

6280.1100 APPEAL OF PERMIT DETERMINATION.

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

Statutory Authority: *MS s 103G.615*

History: *18 SR 83*