

**6115.0250 PERMIT REVIEW.**

Subpart 1. **Field inspection.** The department may conduct field investigations to determine a project's nature, scope, and impact on water and related land resources. The department shall determine which applications must be investigated and such inspections shall be made in a timely fashion.

Subp. 1a. **Effect on environment and mitigation.** The commissioner may not issue a permit that causes pollution, impairment, or destruction of the air, water, land, or other natural resources so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare. If the commissioner determines that a major change in public waters is justified and can be authorized by parts 6115.0190, subpart 5; 6115.0200, subpart 5; 6115.0210, subpart 5; 6115.0215, subpart 5; 6115.0220, subpart 5; 6115.0230, subpart 5; 6115.0270, subpart 4; or 6115.0280, subpart 4, the permit must include provisions to compensate for the detrimental aspects of the change. Compensation for the identified detrimental aspects of the permitted project include:

- A. restoring degraded or impacted public waters having equal or greater public value;
- B. creating or restoring additional replacement water areas having equal or greater public value; or
- C. any other measures approved by the commissioner that compensates for the detrimental aspects of the change.

Subp. 2. **Coordination with other agencies.** Nothing in these standards is intended to supersede or rescind the laws, rules, regulations, standards, and criteria of other federal, state, regional, or local governmental subdivisions with the authority to regulate work in the beds or on the shorelands of public waters. The issuance of a permit shall not confer upon an applicant the approval of any other unit of government for the proposed project. The department shall coordinate the review with other units of government having jurisdiction in such matters.

Subp. 3. **Procedure upon decision.** The commissioner may grant permits, with or without conditions, or deny them. In all cases, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city may demand a hearing in the manner specified in Minnesota Statutes, section 103G.311, within 30 days after receiving mailed notice outlining the reasons for denying or modifying an application. Any hearing shall be conducted as a contested case hearing before an administrative law judge from the independent Office of Administrative Hearings according to Minnesota Statutes, chapter 14 and section 103G.311.

Subp. 4. **General permits.** The commissioner is authorized to issue general permits to a governmental subdivision or to the general public for classes of activities having minimal

impact on public waters under which more than one activity may be conducted with a single permit.

**Subp. 5. Public water wetland permit processing.**

A. Public waters work permit applications submitted to the commissioner for proposed projects in public water wetlands shall be granted if authorized by parts 6115.0190 to 6115.0232 or parts 6115.0270 to 6115.0280 and if the public water wetland is:

- (1) assigned a shoreland classification;
- (2) classified as lacustrine wetland or deepwater habitats according to the document under item C; or
- (3) where the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and where the responsible state or federal agency declares that the water is necessary for purposes of public ownership.

B. All other public waters work permit applications for proposed projects in public water wetlands shall be:

- (1) granted, with or without conditions, if authorized by parts 6115.0190 to 6115.0232 or 6115.0270 to 6115.0280 and if the permit application complies with provisions for sequencing under part 8420.0520, and replacement provisions under parts 8420.0522 to 8420.0544, 8420.0810, and 8420.0820, or denied; or
- (2) waived pursuant to item D.

C. The following documents are incorporated by reference:

- (1) Classification of Wetlands and Deepwater Habitats of the United States, Lewis M. Cowardin et al., United States Department of the Interior, Fish and Wildlife Service (1979); and
- (2) Guidelines for Ordinary High Water Level (OHWL) Determinations, John Scherek and Glen Yakel, Minnesota Department of Natural Resources, Division of Waters (June 1993).

These documents are available through the Minitex interlibrary loan system and are not subject to frequent change.

D. Public waters work permits in public water wetlands:

- (1) notwithstanding parts 6115.0150 to 6115.0280, the authority of the commissioner to require a permit for activities within public water wetlands is waived to the local unit of government under chapter 8420 when the commissioner has received notice or application from the landowner or project sponsor and when the commissioner has provided the applicant or project sponsor and the local unit of government a notice

within 15 days of receipt of the notice or permit application that the department will waive public waters work permit jurisdiction to the local unit of government; or

(2) the commissioner shall not waive the requirement for a public waters work permit in a public water wetland for activities:

(a) allowed under part 8420.0122, subparts 1 to 7 and 10;

(b) in public water wetlands assigned a shoreland classification;

(c) in public water wetlands classified as lacustrine wetland or deepwater habitats according to the document under item C; or

(d) in public water wetlands where the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and where the responsible state or federal agency declares that the water is necessary for purposes of public ownership.

E. Notwithstanding parts 6115.0150 to 6115.0280, the authority of the commissioner to require a permit for public road activities that are associated with the repair, rehabilitation, reconstruction, or replacement of currently serviceable existing public roads is waived to the public road authority under chapter 8420:

(1) for projects that affect less than 10,000 square feet of public water wetlands, upon receipt of a copy of the state, city, county, or town public road authority report that is submitted to the Board of Water and Soil Resources in compliance with part 8420.0544, item D, except for projects in public water wetlands:

(a) assigned a shoreland classification;

(b) classified as lacustrine wetland or deepwater habitats according to the document under item C, subitem (1); or

(c) when the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and when the responsible state or federal agency declares that the water is necessary for purposes of public ownership; or

(2) for projects that affect 10,000 square feet or more of public water wetlands, when the commissioner has provided the public road authority notice of the waiver within 15 days of receipt of a copy of the state, city, county, or town public road authority report that is submitted to the Board of Water and Soil Resources in compliance with part 8420.0544, item D, except for projects in public water wetlands:

(a) assigned a shoreland classification;

(b) classified as lacustrine wetlands or deepwater habitats according to the document under item C, subitem (1); or

(c) when the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and when the responsible state or federal agency declares that the water is necessary for purposes of public ownership.

**Subp. 6. Wetland areas of public waters affected by public road permit projects.**

A. For purposes of this subpart, "wetland areas of public waters" means areas that are contiguous with the ordinary high water level and that generally exhibit emergent vegetation within:

- (1) public waterbasins;
- (2) public water wetlands assigned a shoreland classification;
- (3) public water wetlands classified as lacustrine wetlands or deepwater habitats according to the document under item C; or

(4) public water wetlands where the state or federal government has become titleholder to any of the beds or shores of the public water wetlands subsequent to the preparation of the public water inventory maps on file with the auditor of the county and where the responsible state or federal agency declares that the water is necessary for purposes of public ownership.

B. Public waters work permit applications submitted by a public road authority to the commissioner for proposed projects in wetland areas of public waters shall be granted if authorized by parts 6115.0190 to 6115.0232 or 6115.0270 to 6115.0280.

C. The classification of lacustrine wetlands and deepwater habitats found in Classification of Wetlands and Deepwater Habitats of the United States, Lewis M. Cowardin et al., United States Department of the Interior, Fish and Wildlife Service (1979) is incorporated by reference. This document is available through the Minitex interlibrary loan system and is not subject to frequent change.

D. Notwithstanding parts 6115.0150 to 6115.0280, the authority of the commissioner to require a permit for public road activities in, on, or over wetland areas of public waters according to the document under item C is waived for:

- (1) all activities authorized by the local government unit under chapter 8420 when the commissioner has received notice or application from the public road authority and when the commissioner has notified the public road authority and the local unit of government of the waiver within 15 working days of receipt of the notice or application; or

(2) activities authorized by the public road authority having jurisdiction under chapter 8420 for public road activities that are associated with the repair, rehabilitation, reconstruction, or replacement of currently serviceable existing public roads when the commissioner has notified the public road authority of the waiver within 15 working days of receipt of a copy of the state, city, county, or town public road authority report that is submitted to the Board of Water and Soil Resources in compliance with part 8420.0544, item D.

**Subp. 7. Written agreements with local government units.**

A. For projects affecting both public waters and wetlands, the local government may, by written agreement with the commissioner, waive the requirement for a replacement plan or a no-loss or exemption determination if a public waters work permit is required and the commissioner includes provisions of Minnesota Statutes, sections 103A.201, 103B.3355, 103G.222, and 103G.2372, and rules adopted thereunder, in the public waters work permit.

B. The written agreement may be done on a project-by-project basis when:

(1) the agreement identifies the parties having authority to make the agreement and the proposed project subject to the agreement;

(2) the commissioner requires an individual public waters work permit for the proposed project;

(3) the majority of the proposed project impacts on public waters and wetlands are to public waters;

(4) the proposed wetland impacts are subject to approval of a wetland replacement plan or a no-loss or exemption determination by the local unit of government according to part 8420.0210, 8420.0220, or 8420.0230;

(5) the local government unit provides the commissioner with specific language addressing no-loss or exemption determinations or allowable wetland impacts and required wetland replacement for incorporation into the commissioner's public waters work permit; and

(6) the local government unit agrees to assist the commissioner should appeals be brought against the commissioner based on the language impacting the wetlands covered in the public waters work permit.

C. The written agreement may be done on a local unit of government basis, a watershed basis, a waterbody basis, or a project activity basis when:

(1) the written agreement identifies the parties having authority to enter into the agreement, the location of agreement application, and the scope of proposed activities subject to the agreement;

(2) the commissioner requires an individual public waters work permit for the proposed project;

(3) the majority of the proposed project impacts to public waters and wetlands are to public waters;

(4) the wetland impacts are subject to approval of a wetland replacement plan or a no-loss or exemption determination by the local unit of government according to part 8420.0210, 8420.0220, or 8420.0230;

(5) the local government unit provides the commissioner with specific language addressing no-loss or exemption determinations or allowable wetland impacts and required wetland replacement for incorporation into the commissioner's public waters work permit;

(6) the local government unit agrees to assist the commissioner should appeals be brought against the commissioner based on the language impacting the wetlands covered in the public waters work permit; and

(7) the agreement addresses enforcement procedures and procedures for the commissioner or the local government unit to terminate the written agreement.

Subp. 8. **Local plan implementation.** Notwithstanding parts 6115.0150 to 6115.0280, the commissioner may authorize alternative regulation of public waters activities that are specifically identified in a local plan, ordinance, or other similar written document approved by the commissioner and subject to the following:

A. the proposed activities are subject to the following principles in descending order of priority:

(1) avoid direct or indirect impacts to the public water that may destroy or diminish the public water;

(2) minimize the impact to the public water by limiting the degree or magnitude of the public water activity;

(3) rectify the impact by repairing, rehabilitating, or restoring the affected public water;

(4) reduce or eliminate the impact to the public water over time by preservation and maintenance operations; and

(5) replace unavoidable impacts to the public water when a major change in the resource is justified, by including provisions to compensate for the detrimental aspects of the change according to subpart 1a;

B. the proposed activities, their dimensional standards, the criteria used to issue or deny applications, and allowable locations are identified in the local plan;

C. adverse effects of the proposed activity on the physical and biological character of the area are subject to mitigation measures identified in the local plan;

D. the proposed activities are consistent with locally adopted controls;

E. the plan addresses enforcement procedures;

F. the plan includes procedures for the commissioner to reassume the permit authorities in parts 6115.0150 to 6115.0280 upon notice, if determined necessary by the commissioner or plan sponsor;

G. the local plan sponsor publishes a notice in the State Register identifying:

(1) the local plan sponsor that is developing an alternative plan for regulation of public waters;

(2) the scope of activities and the location of the public waters impacted by the plan;

(3) the groups the local plan sponsor has been working with in the development of the plan;

(4) the name and address of the local plan sponsor who can be contacted for copies of the plan, and the name and address of the plan contact for the department; and

(5) a statement that the interested public has a time period of no less than 30 days in which to forward comments to the plan sponsor and the department plan contact for consideration before the plan sponsor submits the draft plan to the commissioner for approval;

H. when considering whether the plan should be approved, the commissioner shall determine that:

(1) the proposed plan, when not in conformity to parts 6115.0150 to 6115.0280, provides an explanation of how the proposed changes are justified;

(2) the public values provided by public waters subject to the plan are maintained or improved; and

(3) the proposed plan provides a mechanism for a periodic review of the plan contents and a procedure to revise the plan, if determined necessary by the commissioner and plan sponsor, or to terminate the plan upon notice being provided by either the plan sponsor or commissioner; and

I. nothing in the review of local plans proposed under this part shall be construed as prohibiting or discouraging a local plan from creating standards that are more restrictive than parts 6115.0150 to 6115.0280.

**Statutory Authority:** *MS s 14.386; 103G.315; 105.415*

**History:** 8 SR 533; L 1984 c 640 s 32; 25 SR 143; 27 SR 529; 32 SR 281; 34 SR 145

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