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1 Department of Natural Resources

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3 Adopted Permanent Rules Relating to Permit Requirements for

4 Water Aeration Systems

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6 Rules as Adopted

7 6116.0010 DEFINITIONS.

8 Subpart 1. Scope. For purposes of this chapter, the

9 following terms have the meanings given them.

10 Subp. 2. Aeration system. "Aeration system" means a

11 bubbler, water circulation, or similar system used to increase

12 dissolved oxygen or maintain open water. The purpose of the

13 system includes, but is not limited to:

14 A. preventing fish winterkill;

15 B. keeping areas free of ice to aid navigation,

16 keeping mooring facilities open, or protecting structures in the

17 water from ice damage;

18 C. maintaining open water for captive waterfowl;

19 D. rehabilitating lake water quality by methods such

20 as destratification and hypolimnetic aeration; and

21 E. protecting shoreline from damage due to ice

22 expansion.

23 Subp. 3. Commissioner. "Commissioner" means the

24 commissioner of the Department of Natural Resources, or a duly

25 authorized representative.

26 Subp. 4. Management plan. A plan approved by the

27 commissioner that specifies actions related to water aeration

28 systems.

29 Subp. 5. Protected waters. "Protected waters" means those

30 waters of the state identified as public waters or wetlands

31 under Minnesota Statutes, section 105.37, subdivision 14, or

32 105.391, subdivision 1.

33 Subp. 6. Public access. "Public access" means any

34 designated public access or any public riparian lands where

35 public access to the protected water is not prohibited.

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

5 6116.0020 PERMIT.

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

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

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

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

25 C. for protected waters proposed by the commissioner
26 for designation for wildlife management purposes under Minnesota
27 Statutes, section 97A.01, subdivision 2, until the designation
28 process is terminated or completed;

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

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

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

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

3 Subp. 3. Winter operation. An aeration permit shall not
4 be issued for winter operation of a system where the diffusers
5 are placed in a configuration where more than one open water
6 area is created during ordinary winter weather, ~~except that the~~
7 ~~system may be specifically allowed when~~ unless:

- 8 A. there is no public access; and
- 9 B. the permittee owns all land riparian to the
10 protected water, or all of the possessory rights to the land
11 riparian to the protected water, or has leased all access rights
12 to the protected water; or
- 13 C. the commissioner has first determined that ~~it~~ such
14 a system will provide substantial benefit to the lake resource.

15 6116.0030 APPLICATION FOR PERMIT.

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

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

- 21 A. operation of a system will result in substantial
22 benefit to the lake resource; and
- 23 B. the objectives of the system are compatible with
24 natural resources management and public safety goals for the
25 body of water.

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

- 29 A. the reason the system is needed;
- 30 B. a description of the system, including but not
31 limited to location, size, and number of devices to be used;
- 32 C. a sketch of the proposed system, indicating the
33 compass direction "north," location on the lake, roads in the
34 vicinity, pertinent fire numbers, noteworthy landmarks, and
35 enough detail so the system can be located for inspection, and

1 emergency access, shall accompany all new applications;

2 D. the proposed operating schedule; and

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

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

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

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

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

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

23 Subp. 4 5. Public input. Upon receipt of a new
24 application for installation and operation of an aeration system
25 on protected waters with public access the commissioner shall
26 issue public notice and may conduct a public meeting to assist
27 in deciding whether to issue, deny, or modify a permit.

28 Reissuance of permits for existing permitted aeration systems
29 does not require a public meeting, however, upon request of 25
30 or more residents of the state a public meeting will be held.

31 Subp. 5 6. Applicants. The applicant shall be a
32 governmental entity such as a county, city, town, watershed
33 district, or lake improvement district; or a private person,
34 group, or entity.

35 Subp. 6 7. Financial responsibility. All permittees,
36 except those permittees operating an aeration system in

1 protected waters without public access, where the permittee owns
2 all land riparian to the protected water, or all of the
3 possessory rights to the land riparian to the protected water,
4 or has leased all access rights to the protected water, and
5 state agencies subject to the State Tort Claims Act or
6 municipalities subject to the Muncipal Tort Claims Act, must
7 provide proof that the permittee is financially able to meet any
8 liability that should arise from the presence or operation of
9 the system. This shall be done by:

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

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

19 6116.0040 PERMIT CONDITIONS.

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

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

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

1 once every seven days.

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

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

27 Subp. 6. Revocations. The commissioner may revoke a
28 permit without prior notice whenever, in the commissioner's
29 opinion, revocation is necessary ~~to protect the interests of the~~
30 ~~public,~~ to protect human life or natural resources, ~~or for~~
31 ~~violation of this part or any permit issued hereunder.~~

32 6116.0050 MARKING REQUIREMENTS AND PUBLICATION OF NOTICE OF
33 OPERATION.

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

1 6116.0060 WAIVER.

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

4 A. an emergency involving either:

5 (1) an unanticipated winterkill of a desirable
6 fish population; or

7 (2) ice movement causing property damage; and

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

11 6116.0070 APPEAL.

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