

1 Department of Natural Resources

2

3 Adopted Permanent Rules Governing Aquatic Nuisance Control

4

5 Rules as Adopted

6 AQUATIC PLANT MANAGEMENT AND AQUATIC NUISANCE CONTROL

7 6280.0100 DEFINITIONS.

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

10 Subp. 2. **Aquatic macrophytes.** "Aquatic macrophytes" means
11 vascular nonwoody plants, either submerged, floating leafed,
12 floating, or emergent plants growing in water.

13 Subp. 2a. **Aquatic plant management.** "Aquatic plant
14 management" means activities which are intended to alter aquatic
15 plant populations (either reduce or enhance) by means of
16 herbicides, biological agents, mechanical devices, or physical
17 alteration. This includes the transplanting or seeding of
18 aquatic macrophytes.

19 Subp. 2b. **Aquatic plant management permit or APM permit.**
20 "Aquatic plant management permit" or "APM permit" means a permit
21 issued by the commissioner authorizing aquatic plant management
22 or aquatic nuisance control activities.

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

27 Subp. 3a. **Automated untended aquatic plant control device.**
28 "Automated untended aquatic plant control device" means a device
29 for destroying aquatic macrophytes that may be remotely operated
30 or placed on a timer and is capable of being operated without
31 the assistance of an operator.

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

1 [For text of subps 5 to 7, see M.R.]

2 Subp. 8. **Label and labeling.** "Label and labeling" has the
3 meaning given in Minnesota Statutes, section 18B.01,
4 subdivisions 13 and 14.

5 [For text of subps 9 and 10, see M.R.]

6 Subp. 11. **Ordinary high water level.** "Ordinary high water
7 level" has the meaning given in Minnesota Statutes, section
8 103G.005, subdivision 14.

9 Subp. 12. **Pesticide.** "Pesticide" has the meaning given by
10 Minnesota Statutes, section 18B.01, subdivision 18.

11 Subp. 13. **Public waters.** "Public waters" means those
12 waters of the state defined as public waters by Minnesota
13 Statutes, section 103G.005, subdivision 15, and inventoried
14 pursuant to Laws 1979, chapter 199, and Minnesota Statutes,
15 section 103G.201.

16 Subp. 14. **Storm water retention ponds.** "Storm water
17 retention ponds" means those bodies of public water, usually
18 less than ten acres in size, lying within home rule charter or
19 statutory cities or towns and are specifically managed for the
20 primary public value of retaining storm water.

21 Subp. 15. [See repealer.]

22 6280.0250 STANDARDS FOR AQUATIC PLANT MANAGEMENT PERMIT ISSUANCE.

23 Subpart 1. **Actions not requiring permit.** Unless otherwise
24 required in subpart 2, an APM permit is not required for items A
25 to F:

26 A. cutting or pulling aquatic macrophytes for the
27 purpose of constructing shooting and observation blinds in
28 amounts sufficient for that purpose;

29 B. gathering aquatic macrophytes or plant parts,
30 other than wild rice and American lotus, for personal use only
31 and not for resale;

32 C. cutting or pulling submerged aquatic macrophytes
33 in order to maintain a site for swimming or boat docking not to
34 extend along more than 50 feet of the owner's shoreline or
35 one-half the length of the owner's total shoreline, whichever is

1 less, and that does not exceed 2,500 square feet in area, except
2 that a boat channel extending to open water, not to exceed 15
3 feet in width, may be maintained. The boating channel is
4 included in the maximum shoreline feet allowed. Cutting or
5 pulling may only be done under the following conditions:

6 (1) by hand or with power-operated cutters,
7 rakes, or similar equipment that does not significantly alter
8 the course, current, or cross-section of the lake bottom.
9 Draglines, bulldozers, hydraulic jets, suction dredges,
10 automated untended aquatic plant control ~~services~~ devices, or
11 other power-operated earth-moving equipment may not be used;

12 (2) cutting or pulling takes place in the same
13 location each year unless an APM permit has been obtained
14 authorizing a change in location; and

15 (3) aquatic macrophytes that have been cut or
16 pulled must immediately and permanently be removed from the
17 water;

18 D. destroying aquatic macrophytes incidental to
19 activities authorized by a department permit for work in public
20 waters as provided by Minnesota Statutes, section 103G.245, or
21 by a license permitting the passage of utilities over public
22 lands and waters as provided by parts 6135.0100 to 6135.1800 and
23 Minnesota Statutes, section 84.415;

24 E. cutting or pulling purple loosestrife (*Lythrum*
25 *salicaria*); and

26 F. cutting or pulling water lilies and water shield
27 or submerged vegetation to obtain a channel extending to open
28 water, provided that:

29 (1) the channel is no more than 15 feet wide and
30 takes the most direct route to open water;

31 (2) the channel is maintained by cutting or
32 pulling; and

33 (3) the channel remains in the same location from
34 year to year.

35 Subp. 2. Actions requiring a permit. Except as provided
36 in subpart 1, an APM permit is required to:

1 A. apply pesticides below the ordinary high water
2 level of public waters to control:

3 (1) snails that carry swimmer's itch, or leeches;

4 (2) dense growths of aquatic macrophytes that
5 interfere with watercraft use, swimming, or other traditional
6 recreational uses;

7 (3) excessive filamentous algae;

8 (4) excessive plankton algae blooms; and

9 (5) purple loosestrife (*Lythrum salicaria*),

10 except for state and county noncommercial aquatic pesticide
11 applicators, controlling purple loosestrife as part of
12 rights-of-way maintenance, when the public waters are within the
13 rights-of-way;

14 B. physically remove from or transplant into public
15 waters any aquatic plants or a bog of any size whether
16 free-floating or lodged in an area other than its original
17 location;

18 C. destroy emergent aquatic macrophytes in public
19 waters;

20 D. destroy water lilies and water shield in public
21 waters except as provided in subpart 1, item F;

22 E. install and or operate an automated untended
23 aquatic plant control device for each property where the device
24 is intended for operation, except that a permit of three years'
25 duration may be issued when:

26 (1) the site to be controlled extends along no
27 more than 50 feet of the owner's shoreline or one-half the
28 length of the owner's total shoreline, whichever is less, and
29 the site does not exceed 2,500 square feet in area; and

30 (2) the site to be controlled does not contain
31 emergent or floating-leaf aquatic macrophytes; or

32 F. create a channel extending to open water through
33 emergent vegetation by cutting or pulling. The permit shall be
34 of continuing duration provided that:

35 (1) the channel is no more than 15 feet wide and
36 takes the most direct route to open water;

1 (2) the channel is maintained by cutting or
2 pulling;

3 (3) the channel remains in the same location from
4 year to year; and

5 (4) the permit is not transferable.

6 Subp. 3. Justification required for issuance of permits.
7 Permits for the destruction of emergent and floating-leaf
8 aquatic macrophytes including wild rice, bulrush, cattail, water
9 lilies, and ~~similar~~ other vegetation will not be issued unless
10 the commissioner determines sufficient justification exists.
11 The commissioner will balance the reasonable needs of riparian
12 owners to gain access and use public water against the need to
13 protect emergent and floating-leaf aquatic macrophytes so that
14 the integrity and value of the aquatic macrophyte community is
15 maintained.

16 Subp. 4. Prohibitions. An APM permit will not be issued
17 for the following purposes:

18 A. to place plastic mats, plastic sheets, filter
19 fabric, or similar materials on the bed of public waters to
20 destroy or prevent the growth of aquatic macrophytes;

21 B. to improve the appearance of undeveloped
22 shoreline;

23 C. for esthetic purposes alone on developed
24 shoreline;

25 D. for the control of aquatic macrophytes in areas
26 posted or designated by the commissioner as scientific and
27 natural areas or for the protection of lotus (*Nelumbo lutea*) or
28 other kinds of aquatic macrophytes and animals;

29 E. for pesticide control of aquatic macrophytes in
30 natural environment lakes established pursuant to part
31 6120.3000;

32 F. for pesticide control of aquatic macrophytes in
33 watercourses or portions of watercourses classified as wild as
34 defined under either the Minnesota or federal Wild and Scenic
35 Rivers Acts as provided in Minnesota Statutes, section 103F.325,
36 and Public Law Number 90-542 (1968), United States Code, title

1 16, sections 1271 to 1287, as amended;

2 G. to destroy aquatic macrophytes within a posted
3 fish spawning area; or

4 H. to destroy or prevent the growth of aquatic plants
5 or invertebrate life in public waters by means not authorized
6 under parts 6280.0100 to 6280.1100.

7 Subp. 5. Pesticide treatment of drinking water. The
8 commissioner shall not issue an APM permit for pesticide
9 treatment of waters used by humans for drinking unless approval
10 is obtained from the Minnesota Department of Health.

11 6280.0350 AQUATIC PLANT MANAGEMENT PRACTICES.

12 Subpart 1. Inspection, supervision, and monitoring. Items
13 A and B apply to the inspection, supervision, and monitoring of
14 permitted aquatic plant management activities.

15 A. Supervision by a department employee will be
16 required, unless waived, for initial lakewide treatment of
17 excessive algae blooms and may be periodically required for
18 treatments by experienced groups.

19 B. Field inspection will be made at the discretion of
20 the commissioner in cases of new applications for pesticide
21 treatment or mechanical control. Field inspection of other
22 previously permitted areas will also be required at intervals to
23 evaluate conditions and the need for continued control measures.

24 Subp. 2. Lake vegetation management plan (LVMP). When a
25 lake vegetation management plan approved by the commissioner has
26 been developed, APM permits will be issued according to the
27 guidelines of the plan.

28 Subp. 3. Mechanical control. Items A to C apply to
29 conditions for mechanical control of aquatic macrophytes.

30 A. A person who cuts or pulls aquatic macrophytes
31 must immediately and permanently remove the vegetation from the
32 water and dispose of it above the ordinary high water level of
33 any public water.

34 B. Organized lakewide cutting and removal programs
35 are restricted to a maximum area not to exceed 50 percent of the

1 total littoral area as determined by the commissioner.

2 C. Applications for lakewide or baywide mechanical
3 control of aquatic macrophytes must include a written statement
4 of the plan and a map showing proposed areas to be controlled.
5 The commissioner may reduce the littoral area proposed for
6 harvest. An application for mechanical control of aquatic
7 macrophytes must include the name, address, signature, and
8 location on the lake of all property owners whose shoreline will
9 be controlled.

10 Subp. 4. Pesticide control of aquatic macrophytes. Except
11 as otherwise specified in this part, items A and B apply to
12 pesticide control of aquatic macrophytes.

13 A. On all public waters and watercourses, the lesser
14 of 15 percent of the littoral area or a maximum of 100 feet of
15 shoreline per site belonging to an individual riparian property
16 owner may be treated for control of submerged vegetation. These
17 limitations do not apply in the circumstances described in
18 subitems (1) to (3).

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

23 (2) Larger percentages of the littoral area shall
24 be treated at the discretion of the commissioner when authorized
25 by permits issued prior to 1976.

26 (3) On stormwater retention ponds, treatment may
27 occur on up to five acres or one-half the surface area of the
28 pond, whichever is less.

29 B. Applications from riparian property owners'
30 associations for large area or baywide treatment must include a
31 written statement of the plan and a map showing areas proposed
32 to be treated. The commissioner may reduce the amount of
33 littoral area which the applicant proposes to control. Any
34 application for treatment must include the names, addresses,
35 location on lake, and signatures of all property owners whose
36 shorelines will be treated. Signatures must be obtained every

1 three years or when there is a change of property ownership.

2 Subp. 5. Control of algae. An application for proposed

3 lakewide control of algae must be accompanied by dated

4 signatures from a majority of the riparian property owners

5 stating that they are in favor of the proposed treatment.

6 Signatures must be obtained every three years or when there is a

7 change in property ownership.

8 Subp. 6. Treatment notice. The holder of an APM permit or

9 the holder's agent must give notice of the proposed date of

10 treatment to all persons specified on the permit. The

11 notification must be received prior to beginning any work under

12 the permit. Failure to give notice is grounds for revocation of

13 any existing permit or refusal to issue future permits.

14 6280.0450 PERMIT APPLICATION, FEES, AND ANNUAL REPORT.

15 Subpart 1. Application process. Application for an APM

16 permit for any body of public waters may be made by a riparian

17 owner, a lessee, an easement holder, or by owners of a fee,

18 leasehold, or interest to riparian lands to that body of water

19 or by the representative of a group of riparian owners.

20 Application for an APM permit must be made on forms provided by

21 the commissioner and must be submitted to the address specified

22 in the instructions. All information requested on the

23 application form must be provided.

24 Subp. 2. Deadline for permit application. Applications

25 for permits to control submerged or floating aquatic macrophytes

26 with pesticides will not be accepted after August 1 annually,

27 unless the commissioner determines that sufficient justification

28 exists for late season pesticide treatment.

29 Subp. 3. Duration of permits. Unless otherwise noted, an

30 APM permit is only valid for one growing season and expires on

31 September 1 of the year it was issued.

32 Subp. 4. APM permit application fees. Items A to C apply

33 to APM permit fees.

34 A. When application is made to control two or more

35 nuisance conditions, only the larger fee applies. A permit

1 application fee, in the form of a check or money order payable
2 to the Minnesota Department of Natural Resources, must accompany
3 each permit application when required by the following fee
4 schedule:

5 (1) to control aquatic macrophytes by pesticide
6 means, to install and operate an automatic untended aquatic
7 plant control device, or to control emergent or floating-leaf
8 aquatic macrophytes by mechanical means: \$20 for each
9 contiguous parcel of shoreline owned by an owner, up to a
10 maximum of \$200;

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

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

20 (4) to transplant aquatic macrophytes or bog into
21 public waters: no charge;

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

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

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

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

34 C. The fee is refundable only when the application is
35 withdrawn, prior to issuance of the permit, or the commissioner
36 determines that the activity does not require a permit.

1 Subp. 5. Fees for state and federal agencies. The fees
2 set forth in this part will not be required of any state agency
3 as defined in Minnesota Statutes, section 15.01, or of any
4 federal agency.

5 Subp. 6. Annual report. The holder of a commercial
6 aquatic plant harvester's permit, commercial aquatic pest
7 control license, or APM permit must, no later than December 31
8 of each year, report to the commissioner, on the forms provided,
9 information on permitted operations requested. Failure to
10 report will be grounds for refusing to issue such permits in the
11 future.

12 Subp. 7. Regulations of other programs apply. APM permits
13 issued as provided by this part may not be construed to
14 supersede the requirements of shoreland conservation ordinances,
15 flood plain management ordinances, lake management plans and
16 programs, wild and scenic river plans and programs, or other
17 pertinent ordinances and regulations.

18 6280.0600 APPROVAL OF PESTICIDES AND METHODS USED FOR AQUATIC
19 PLANT MANAGEMENT OR AQUATIC NUISANCE CONTROL.

20 Subpart 1. Pesticides must be labeled for use in aquatic
21 sites. Pesticides used to control aquatic macrophytes or algae
22 in public waters must be registered by the United States
23 Environmental Protection Agency (EPA) and the Minnesota
24 Department of Agriculture (MDA), including pesticides registered
25 pursuant to the Federal Insecticide, Fungicide, and Rodenticide
26 Act (FIFRA), United States Code, title 7, sections 136c
27 (experimental use permit), 136p (emergency exemption), and 136v
28 (special local need), and must be approved for use in aquatic
29 sites by the EPA and by the commissioner in consultation with
30 the MDA.

31 Subp. 2. Instructions and precautions of pesticides must
32 be followed. Pesticides must be applied according to the label
33 and labeling provided by the manufacturer and other water use
34 restrictions imposed by the department or the MDA.
35 Pesticide-treated areas must be posted with signs provided by

1 the department bearing the permit number; the name of pesticide
2 used; the date of treatment; and dates on which water from the
3 treated area may be safely used for swimming, fishing, and other
4 uses, as specified on the product label or by the department.
5 The department, in consultation with the MDA, may require water
6 use restrictions in addition to those on the product label. The
7 permittee or agent is responsible for the placement and removal
8 of required signs. The treatment area must be posted in such a
9 way that people entering from any direction can see the signs,
10 or as otherwise prescribed in the permit.

11 Subp. 3. Pesticide control of aquatic macrophytes in
12 watercourses. Pesticides may be used to control aquatic
13 macrophytes in flowing waters, provided that the vegetation is
14 present to such a degree that it impedes the flow of water and
15 that the flow rate will not carry the pesticide beyond the
16 treatment area during the period of water use restriction
17 specified on the pesticide label. The pesticide to be used must
18 be labeled for use in flowing water.

19 6280.0700 COMMERCIAL APPLICATORS AND OPERATORS.

20 Subpart 1. Pesticide applicators. A person or firm may
21 not apply pesticides of any kind for hire for aquatic plant
22 management or aquatic nuisance control on public waters unless a
23 commercial aquatic pest control license has been obtained from
24 the Minnesota Department of Agriculture.

25 Subp. 2. Commercial aquatic plant harvesters. A person or
26 firm may not cut, pull, or harvest aquatic macrophytes on public
27 waters for hire without first obtaining a commercial aquatic
28 plant harvester's permit issued by the department. Issuance of
29 a commercial aquatic plant harvester's permit is contingent upon
30 determination by the commissioner that the applicant has
31 adequate equipment and knowledge to properly harvest aquatic
32 macrophytes in public waters. This subpart does not apply to
33 persons or firms using power-operated earth-moving equipment in
34 public waters under terms of permits issued by the department
35 for work in the bed of public waters as provided by Minnesota

1 Statutes, section 103G.245, or by a license permitting the
2 passage of utilities over public lands and waters as provided by
3 Minnesota Statutes, section 84.415. Persons or firms that use
4 aquatic vegetation cutting and harvesting equipment must
5 thoroughly inspect, remove, and properly dispose of plant parts
6 from the equipment before transporting it to another body of
7 water.

8 6280.0900 AMENDMENTS AND REVOCATION.

9 Subpart 1. Amendments and revocation. The commissioner
10 may amend or revoke any commercial aquatic plant harvester's
11 permit or APM permit without prior notice whenever it has been
12 determined that it is necessary to protect the interests of the
13 public, to protect human life, or to protect fish, wildlife, and
14 native plants or for violation of the terms and conditions of
15 APM permits, this chapter, or other applicable laws or rules.

16 Subp. 2. Amendments by request. The commissioner may
17 amend a commercial aquatic plant harvester permit or an APM
18 permit upon request from the permittee if the amendment
19 maintains adequate protection for interests of the public, human
20 life, and fish, wildlife, and native plants.

21 6280.1000 VARIANCE.

22 Subpart 1. Variance. Provisions of this chapter may be
23 waived under special circumstances when deemed necessary by the
24 commissioner for the protection and preservation of the natural
25 resources of the state.

26 Subp. 2. Lake vegetation management plan (LVMP). This
27 chapter may be modified or waived in accordance with a lake
28 vegetation management plan approved by the commissioner.

29 6280.1100 REVIEW AND APPEAL OF PERMIT DECISION.

30 Subpart 1. Commissioner's review. If an APM permit is
31 granted with conditions or is denied, the applicant may file
32 with the commissioner, ~~within 30 days of the date of permit~~
33 ~~issuance or denial,~~ a written request for review. The
34 commissioner shall review the permit application and render a

1 decision within 15 days of the request for review. ~~If written~~
2 ~~request for review is not submitted within 30 days, the permit~~
3 ~~decision becomes final and no further appeal is allowed.~~

4 Subp. 2. Contested case hearing. If the applicant wishes
5 to appeal the decision of the commissioner after review under
6 subpart 1, the applicant may file with the commissioner, ~~within~~
7 ~~30 days of the commissioner's decision,~~ a written request for a
8 contested case hearing under Minnesota Statutes, chapter 14. ~~If~~
9 ~~written request for a contested case hearing is not submitted~~
10 ~~within 30 days, the permit decision becomes final.~~

11 6280.1200 PENALTY.

12 The destruction of aquatic macrophytes in public waters
13 without an APM permit issued pursuant to parts 6280.0100 to
14 6280.1100 or in violation of the terms of such a permit is a
15 misdemeanor.

16 REPEALER. Minnesota Rules, parts 6280.0100, subpart 15;
17 6280.0200; 6280.0300; 6280.0400; and 6280.0500, are repealed.