

1 Department of Natural Resources

2 Adopted Permanent Rules Relating to Public Waters Work Permits

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ADMINISTRATIVE
HEARINGS

3 6115.0150 PURPOSE AND STATUTORY AUTHORITY.

4 The purpose of parts 6115.0150 to 6115.0280 is to provide for the orderly and
5 consistent review of permit applications in order to conserve and utilize the water
6 resources of the state in the best interest of its people. In deciding whether to issue
7 permits, the department is guided by the policies and requirements declared in
8 Minnesota Statutes, sections 103A.201, 103A.208, 103F.101, 103F.105, 103F.205, 103F.351,
9 103G.297, 103G.305, and 116D.04.

10 The proposed development must also be consistent with the goals and objectives of
11 applicable federal, state, and local environmental quality programs and policies,
12 including but not limited to shoreland management, floodplain management, water
13 surface use management, boat and water safety, wild and scenic rivers management,
14 water quality management, recreational or wilderness management, critical areas
15 management, scientific and natural areas management, and protected species
16 management.

17 6115.0160 SCOPE.

18 To achieve the purpose declared in part 6115.0150, parts 6115.0160 to 6115.0280 set
19 forth minimum standards and criteria for the review, issuance, and denial of permits for
20 proposed projects affecting public waters. Permits are required for any activity affecting
21 the course, current, or cross-section of public waters unless specifically exempted within
22 parts 6115.0160 to 6115.0280.

23 These standards and criteria apply to the public waterbasins, public watercourses,
24 and public water wetlands identified on public water inventory maps authorized by
25 Minnesota Statutes, section 103G.201. The designation of waters of the state as public
26 waters does not grant the public additional rights or grant right of access to the waters,

6115.0160

Approved by Revisor CKM

1 diminish the right of ownership or usage of the beds underlying the designated public
2 waters, affect state law forbidding trespass on private lands, or require the
3 commissioner to acquire access to the designated public waters under Minnesota
4 Statutes, section 97A.141.

5 These standards and criteria apply to any and all work that will cause or result in the
6 alteration of the course, current, or cross-section of public waters except for the
7 following:

8 A. utility crossings of public waters that are regulated under Minnesota Statutes,
9 section 84.415, and rules adopted thereunder;

10 B. planting, destruction, and control of aquatic vegetation that is regulated under
11 Minnesota Statutes, section 103G.615, and rules adopted thereunder;

12 C. water aeration systems that are regulated under Minnesota Statutes, section
13 103G.611, and rules adopted thereunder;

14 D. watercraft, buoys, or other structures that are regulated under Minnesota
15 Statutes, section 86B.111, 86B.211, or 86B.401, and rules adopted thereunder; or

16 E. water appropriations that are regulated under Minnesota Statutes, section
17 103G.271, and rules adopted thereunder.

18 **6115.0170 DEFINITIONS.**

19 Subpart 1. **Certain terms.** For the purposes of parts 6115.0150 to 6115.0280, certain
20 terms or words used are interpreted as follows: the word "shall" is mandatory, not
21 permissive. All distances unless otherwise specified are measured horizontally.

22 [For text of subp 2, see M.R. 1999]

23 Subp. 3. **Beds of public waters.** "Beds of public waters" means all portions of public
24 waters located below the ordinary high water level.

25 Subp. 3a. **Boat storage structure.** "Boat storage structure" means a structure that is

1 supported on the bed of a public water and has walls, a roof, and either an open well for
2 boats or a floor from wall to wall.

3 Subp. 3b. **Boathouse.** "Boathouse" means a floating structure that is moored by spuds,
4 cables, ropes, anchors, or chains; may be intended for habitation; and has walls, a roof,
5 and either an open well for boats or a floor from wall to wall. Boathouse does not
6 include a houseboat or boat storage structure.

7 [For text of subps 4 to 6, see M.R. 1999]

8 Subp. 7. **Dock.** "Dock" means a narrow platform or structure extending waterward
9 from the shoreline intended for ingress and egress for moored watercraft or seaplanes or
10 to provide access to deeper water for swimming, fishing, or other water-oriented
11 recreational activities.

12 Subp. 8. **Drainage.** "Drainage" means any method for removing or diverting waters
13 from public ~~waters~~ waterbasins or public water wetlands. The methods include, but are
14 not limited to, excavation of an open ditch, installation of subsurface drainage tile,
15 filling, diking, or pumping.

16 [For text of subp 9, see M.R. 1999]

17 Subp. 9a. **Ecology of the waters.** "Ecology of the waters" means the natural aquatic
18 environment, including organisms, physical characteristics, and interactions between
19 and among the organisms and their surroundings.

20 Subp. 9b. **Energy exchanger.** "Energy exchanger" means a structure designed for
21 placement on the bed or excavated into the bed of public waters for the purpose of
22 exchanging energy for heating or cooling and includes accompanying hoses or lines
23 connecting the energy exchange components.

24 [For text of subps 10 to 12, see M.R. 1999]

25 Subp. 13. **Floating structure.** "Floating structure" means any structure, except for
26 boathouses, watercraft, and seaplanes, that is supported entirely by its own buoyancy

1 and can be removed from public waters before winter freeze-up by skidding intact or by
2 disassembly with hand tools.

3 [For text of subps 14 to 16, see M.R. 1999]

4 Subp. 16a. **Houseboat.** "Houseboat" means a motorboat that has either a pontoon or a
5 flat-bottomed hull configuration and a permanent enclosed superstructure that houses,
6 at a minimum, built-in sleeping, cooking, and toilet facilities.

7 Subp. 16b. **Ice ridge.** "Ice ridge" means a linear mound of lakebed materials pushed
8 up onto the lakeshore by the action of ice.

9 [For text of subps 17 and 18, see M.R. 1999]

10 Subp. 18a. **Local government unit.** "Local government unit" has the meaning given in
11 part 8420.0110, subpart 30.

12 Subp. 18b. **Local origin.** "Local origin" means a source for live plant materials and
13 their propagules that is limited to areas of the same region where the plant materials are
14 proposed to be planted, not to exceed 200 miles from where the plant materials are
15 proposed to be planted.

16 [For text of subp 19, see M.R. 1999]

17 Subp. 20. **Marina.** "Marina" means either an inland or offshore commercial mooring
18 facility for the concentrated mooring of seven or more watercraft or seaplanes wherein
19 commercial ancillary services common to marinas are provided.

20 [For text of subps 21 to 23, see M.R. 1999]

21 Subp. 23a. **Mooring facility.** "Mooring facility" means a concentrated area intended
22 solely for the mooring or containment of seven or more watercraft or seaplanes by
23 docks, mooring buoys, or other means.

24 Subp. 23b. **Native plants.** "Native plants" means indigenous plant species growing in
25 an ecological classification system province or a major watershed in Minnesota prior to
26 European settlement.

1 Subp. 24. **Offshore.** "Offshore" means the area waterward of the ordinary high water
2 level of a public water.

3 Subp. 25. **Ordinary high water level.** "Ordinary high water level" means the
4 boundary of public waters as defined in Minnesota Statutes, section 103G.005,
5 subdivision 14.

6 Subp. 26. [See repealer.]

7 Subp. 26a. **Permit.** "Permit" means a public waters work permit required under
8 Minnesota Statutes, section 103G.245.

9 [For text of subps 27 to 30, see M.R. 1999]

10 Subp. 30a. **Project.** "Project" means a specific plan, contiguous activity, proposal, or
11 design necessary to accomplish a goal. As used in parts 6115.0150 to 6115.0280, a project
12 may not be split into components or phases for the sole purpose of gaining an
13 exemption from permit requirements.

14 Subp. 31. **Public water or public waters.** "Public water" or "public waters" means
15 those waters of the state identified under Minnesota Statutes, section 103G.005,
16 subdivision 15 or 15a, or 103G.201.

17 Subp. 31a. **Public water wetlands.** "Public water wetlands" means those public
18 waters of the state identified as public water wetlands under Minnesota Statutes, section
19 103G.005, subdivision 15a, or 103G.201, as shown on the public water inventory maps.

20 Subp. 31b. **Public waterbasins.** "Public waterbasins" means those public waters of the
21 state identified as public waterbasins under Minnesota Statutes, section 103G.005,
22 subdivision 15, clauses (1) to (8), or 103G.201, as shown on the public water inventory
23 maps. Public waterbasins includes public water wetlands reclassified as public waters
24 according to the procedures in Minnesota Statutes, section 103G.201.

25 Subp. 31c. **Public watercourse.** "Public watercourse" means those public waters of the
26 state identified as natural and altered natural watercourses under Minnesota Statutes,

1 section 103G.005, subdivision 15, clauses (9) and (10), or 103G.201, as shown on the
2 public water inventory maps.

3 Subp. 31d. **Public waters inventory or protected waters inventory.** "Public waters
4 inventory" or "protected waters inventory" means the map prepared by the
5 commissioner on file with the auditor of a county under Minnesota Statutes, section
6 103G.201.

7 Subp. 31e. **Public waters work permit.** "Public waters work permit" means a permit
8 issued by the commissioner under Minnesota Statutes, section 103G.245.

9 [For text of subps 32 to 35, see M.R. 1999]

10 Subp. 36. [See repealer.]

11 Subp. 36a. **Shoreline zone.** "Shoreline zone" means an area immediately waterward
12 of the ordinary high water level that may include the littoral area of a water body.

13 Subp. 37. **Structure.** "Structure" means any building, footing, foundation, slab, roof,
14 boathouse, deck, wall, dock, bridge, culvert, or any other object extending over or
15 under, anchored to, or attached to the bed or bank of a public water.

16 [For text of subps 38 and 39, see M.R. 1999]

17 Subp. 40. **Temporary structure.** "Temporary structure" means any dock, floating
18 structure, watercraft lift, watercraft canopy, or other structure that can be removed from
19 public waters by skidding intact or by disassembly with hand tools.

20 [For text of subps 41 and 42, see M.R. 1999]

21 Subp. 42a. **Watercraft canopy.** "Watercraft canopy" means a structure or device with
22 a fabric covered roof and without walls or a floor that is placed on the bed of a public
23 water, is designed to shelter watercraft, and is designed and constructed so that all
24 components may be removed from the lake or stream bed on a seasonal basis by
25 skidding intact or by disassembly with hand tools.

26 Subp. 42b. **Watercraft lift.** "Watercraft lift" means a structure or device without walls

1 that is placed on the bed of a public water, is designed to lift watercraft above the level
2 of the public water when not in use, and is designed and constructed so that all
3 components may be removed from the lake or stream bed on a seasonal basis by
4 skidding intact or by disassembly with hand tools. A watercraft lift may be designed to
5 include a fabric covered roof.

6 [For text of subp 43, see M.R. 1999]

7 **6115.0190 FILLING INTO PUBLIC WATERS.**

8 [For text of subps 1 and 2, see M.R. 1999]

9 Subp. 3. **Prohibited placement.** Placement is prohibited in the following cases:

10 [For text of items A to D, see M.R. 1999]

11 E. to dispose of rock, sand, gravel, or any other solid material resulting from
12 activities carried out above the ordinary high water level;

13 F. to construct a roadway or pathway, or create or improve land accesses from
14 peripheral shorelands to islands, or to facilitate land transportation across the waters;
15 however, when a project is proposed by a federal, state, or local government agency and
16 this provision would prevent or restrict the project, or create a major conflict with other
17 public purposes or interests, the commissioner may waive this provision if:

18 (1) there is no other feasible and practical alternative to the project that would
19 have less environmental impact; and

20 (2) the public need for the project rules out the no-build alternative; or

21 G. filling posted fish spawning areas.

22 Subp. 4. **No permit required.** No permit is required for the following activities unless
23 prohibited under subpart 3:

24 A. to install a beach sand blanket if:

25 (1) the sand or gravel layer does not exceed six inches in thickness, 50 feet in

1 width along the shoreline, or one-half the width of the lot, whichever is less, and does
2 not extend more than ten feet waterward of the ordinary high water level;

3 (2) the beach sand blanket does not cover emergent vegetation, unless
4 authorized by an aquatic plant management permit; and

5 (3) local watershed district and local zoning officials are given at least seven
6 days notice by the landowner;

7 B. for one additional installation of a sand or gravel layer subsequent to an initial
8 installation at the same location and not exceeding the same amounts and dimensions
9 allowed under item A; or

10 C. to place fill in a public watercourse having a total drainage area, at its mouth, of
11 five square miles or less, if the watercourse is not an officially designated trout stream
12 and the placement of fill does not result in:

13 (1) any diversions of water from the drainage area;

14 (2) any impoundment of waters by damming the watercourse; or

15 (3) any actions that would result in erosion and cause sedimentation of
16 downstream waters as determined by the county or local soil and water conservation
17 district.

18 Subp. 5. **Permits required.** Permits are required for the placement of fill in public
19 waters, except as provided under subparts 3 and 4, and a project must meet all of the
20 following requirements:

21 A. the project does not exceed more than a minimum encroachment, change, or
22 damage to the environment, particularly the ecology of the waters;

23 [For text of items B to D, see M.R. 1999]

24 E. the proposed project represents the minimal impact solution to a specific need
25 with respect to all other reasonable alternatives;

1 [For text of item F, see M.R. 1999]

2 G. adverse effects on the physical or biological character of the waters are subject
3 to feasible and practical measures to mitigate the effects;

4 H. the proposed filling is consistent with applicable floodplain, shoreland, and
5 wild and scenic rivers management standards and ordinances for the waters involved;
6 and

7 I. the proposed filling is consistent with water and related land management plans
8 and programs of local and regional governments, provided such plans and programs
9 are consistent with state plans and programs.

10 **6115.0191 SPECIFIC STANDARDS; FILLING.**

11 [For text of subpart 1, see M.R. 1999]

12 Subp. 2. [See repealer.]

13 [For text of subp 3, see M.R. 1999]

14 Subp. 4. **Shoreline lost by erosion.** Permits for filling to recover shoreland lost by
15 erosion or other natural forces shall be granted if:

16 A. the loss of shoreline is a threat to health and safety through the impending loss
17 or damage to existing shoreline developments; or

18 B. the loss of shoreline has occurred as a result of changes in water level or flow
19 conditions caused by artificial manipulation of flows or levels of the waters involved
20 within a period of not more than five years prior to the date when an application for
21 filling is submitted.

22 The requirements of items A and B do not preclude the issuance of permits to recover
23 up to 400 square feet of eroded area or to place riprap materials or use other structural
24 means for protection of the shoreline to prevent continuous erosion.

25 Subp. 5. **Port development or improvement.** Filling necessary for port development

1 or improvement is allowed only on those waters that are under the jurisdiction of
2 established port authorities subject to the following:

3 A. no filling is allowed to extend beyond the limits of federally established harbor
4 lines, or when no harbor line has been established, beyond the maximum distance
5 waterward which could be attained without obstructing navigational use of the waters;

6 B. the proposed development is part of a comprehensive port development plan
7 that has been approved by the commissioner; and

8 C. adverse effects of the proposed filling on the physical and biological character of
9 the area are subject to mitigation measures approved by the commissioner.

10 [For text of subp 6, see M.R. 1999]

11 Subp. 7. **Trout streams.** Filling in trout streams officially designated by the
12 commissioner is allowed only if:

13 [For text of items A and B, see M.R. 1999]

14 [For text of subp 8, see M.R. 1999]

15 **6115.0200 EXCAVATION OF PUBLIC WATERS.**

16 [For text of subpart 1, see M.R. 1999]

17 Subp. 2. **Scope.** Excavation as used in this part includes any activity that results in the
18 displacement or removal of bottom materials or the widening, deepening, straightening,
19 realigning, or extending of public waters. It may involve proposals for excavations
20 landward or waterward from the ordinary high water level.

21 Subp. 3. **Prohibited excavation.** Excavation is prohibited in the following cases:

22 [For text of items A and B, see M.R. 1999]

23 C. when the proposed excavation will be detrimental to significant fish and
24 wildlife habitat and there are no feasible, practical, or ecologically acceptable means to
25 mitigate the effects;

1 D. when the proposed excavation will take threatened or endangered species listed
2 in chapter 6134 without authorization by the commissioner according to parts 6212.1800
3 to 6212.2300;

4 [For text of items E to H, see M.R. 1999]

5 Subp. 4. **No permit required.** No permit for excavation is required for the following
6 activities unless prohibited in subpart 3:

7 A. for excavations in a public watercourse having a total drainage area, at its
8 mouth, of five square miles or less, if the watercourse is not an officially designated
9 trout stream and the excavation will not result in:

10 (1) any diversions of water from the drainage area;

11 (2) any impoundment of waters by damming the watercourse; or

12 (3) any actions that would result in erosion and cause sedimentation of
13 downstream waters as determined by the county or local soil and water conservation
14 district;

15 B. to remove debris such as trees, logs, stumps, and trash provided such removal
16 does not alter the original alignment, slope, or cross-section of the waters; or

17 C. for repair of a public drainage system lawfully established under Minnesota
18 Statutes, chapters 103D and 103E, and sponsored by the public drainage authority
19 consistent with the definition of "repair" in Minnesota Statutes, section 103E.701,
20 subdivision 1.

21 Subp. 5. **Permits required.** Permits are required for the excavation and removal of
22 any materials from public waters or any excavations extending into or out of public
23 waters, except as provided in subparts 3 and 4, and a project is subject to the following
24 general criteria:

25 A. the project is reasonable and practical based upon geologic and hydrologic
26 conditions, including but not limited to:

1 [For text of subitems (1) to (3), see M.R. 1999]

2 (4) protection of the water body from increased seepage, pollution, and other
3 hydrologic impacts;

4 B. the disposal of excavated materials is subject to the following requirements:

5 (1) the disposal of any excavated materials containing pollutants is subject to
6 requirements of Minnesota Statutes, chapter 115; and

7 (2) the most acceptable means of disposing of clean materials, free from
8 pollutants, that are excavated from public waters listed in order of preference are:

9 (a) complete removal of excavated materials from the waters and disposal or
10 reuse for other purposes outside of the floodplain;

11 (b) deposition in stable on-land disposal sites located above the ordinary high
12 water level and outside of floodway districts established under local ordinance.
13 Provisions must be included for sodding, seeding, or otherwise properly stabilizing
14 these materials;

15 (c) temporary deposition along shorelines or within floodplains by
16 stockpiling materials for subsequent removal to areas outside of any public waters and
17 outside of established floodplain districts provided that: any stockpile materials are
18 removed within one year of stockpiling; and the stockpile is constructed so that any
19 materials or waters entering or leaving the stockpile are controlled to prevent any
20 introduction of sediment into the environment surrounding the stockpile;

21 (d) redeposition of excavated materials, consisting of inorganic materials free
22 from pollutants, into public waters shall only be permitted when it will result in
23 improvement of natural conditions of public waters for the public benefit and will not
24 result in sedimentation, obstruction of navigation, or a loss of fish or wildlife habitat.
25 Separate permit provisions are required for redeposition of excavated materials subject
26 to the standards and criteria of subparts 2 to 5; and

1 (e) determination of the public benefit served by redeposition of excavated
2 materials is based on the value to the public of redeposited materials in order to protect
3 shorelines from the damaging effects of erosion due to winds and waves when there are
4 no other feasible, practical, and ecologically acceptable means to protect the shoreline;
5 or create or improve habitat areas for fish and wildlife; or mitigate or enhance the
6 physical and biological environment within public waters when mitigative or
7 enhancement measures are required as a condition of a permitted activity within the
8 waters involved and there are no other feasible, practical, and ecologically acceptable
9 mitigative measures;

10 C. the proposed project represents the "minimal impact" solution to a specific need
11 with respect to all other reasonable alternatives and does not exceed more than a
12 minimum encroachment, change, or damage to the environment, particularly the
13 ecology of the waters;

14 D. the excavation is limited to the minimum dimensions necessary for achieving
15 the desired purpose;

16 E. when excavation is proposed in a public water that is perched on an impervious
17 stratum, soil borings show that the proposed excavation will not rupture the impervious
18 stratum;

19 F. the biological character of the waters and surrounding shorelines is affected to
20 the minimum degree feasible and practical;

21 G. adverse effects on the physical or biological character of the waters are subject
22 to feasible and practical measures to mitigate the effects;

23 H. the water supply, navigational, and drainage characteristics of the waters is
24 protected to ensure that the interests of the public and of private riparian landowners
25 are not adversely affected by the proposed excavation;

26 I. the proposed excavation is consistent with applicable floodplain, shoreland, and
27 wild and scenic rivers management standards and ordinances for the waters involved;

1 J. the proposed excavation is consistent with plans and management programs of
2 local and regional governments, provided that such plans are consistent with state plans
3 and programs; and

4 K. for harbors, boat slips, and other mooring facilities, the excavation is
5 appropriately sized to provide a single mooring space for each riparian lot to be served.
6 The number of mooring spaces to be provided shall generally be the amount of natural
7 shoreline to be served divided by the lot requirements of the local land use control
8 authority and the state shoreland management standards.

9 **6115.0201 SPECIFIC STANDARDS; EXCAVATION.**

10 [For text of subps 1 to 4, see M.R. 1999]

11 **Subp. 5. Harbors and boat slips.**

12 [For text of items A to D, see M.R. 1999]

13 E. Excavations for development of inland harbors shall be limited to those waters
14 described in item C and shall meet the following additional requirements:

15 [For text of subitems 1 and 2, see M.R. 1999]

16 (3) Additional requirements applicable to specific types of harbors. Private
17 inland harbors serving two or more single family residential riparian lots shall, if
18 practical, be located along the mutual boundary of properties to be served.

19 Private inland harbors for proposed multifamily or cluster developments, residential
20 planned unit developments, or for resorts, campgrounds, or other commercial purposes.
21 The development plan shall be approved by the local governmental unit. The permit
22 shall be of the title-registration type including a provision that the individual waterfront
23 lots in the development have priority rights to the available mooring spaces thus
24 obviating issuance of future permits for individual harbors for these lots. The harbor
25 shall be appropriately sized, consistent with the number of watercraft to be served. For
26 residential and commercial planned unit developments, the number of mooring spaces
27 to be permitted shall be consistent with part 6120.3800.

1 Public inland harbor projects must be justified by:

2 (a) a public need for the proposed inland harbor established by local
3 governmental resolution specifying public interests to be enhanced;

4 (b) the harbor shall be appropriately sized consistent with the demand for
5 mooring facilities in the area and the number of watercraft to be served;

6 (c) the harbor shall be available for use by the general public; and

7 (d) the harbor may extend more than 200 feet inland provided the plans
8 minimize the total length by which the ~~protected~~ public water is proposed to be
9 extended in keeping with the number of watercraft to be served and the topography.

10 [For text of subps 6 and 7, see M.R. 1999]

11 **6115.0210 STRUCTURES IN PUBLIC WATERS.**

12 [For text of subps 1 and 2, see M.R. 1999]

13 Subp. 3. **Prohibited placement of structures.** Placement of structures, temporary
14 structures, and floating structures is prohibited when the structure, temporary structure,
15 or floating structure:

16 A. will obstruct navigation or create a water safety hazard;

17 B. will be detrimental to significant fish and wildlife habitat. Construction is
18 prohibited in posted fish spawning areas;

19 C. is designed or intended to be used for human habitation or as a boat storage
20 structure;

21 D. is designed or intended to include walls, a roof, or sewage facilities; or

22 E. will take threatened or endangered species listed in chapter 6134 without
23 authorization by the commissioner according to parts 6212.1800 to 6212.2300.

24 Subp. 4. **No permit required.** No permit is required for the following activities,
25 unless prohibited under subpart 3:

1 A. to construct, reconstruct, or install a dock, floating or temporary structure,
2 watercraft lift, or mooring facility if:

3 (1) the structure or mooring facility will not constitute a hazard to navigation or
4 public health, safety, and welfare, as determined by the commissioner;

5 (2) the structure will allow the free flow of water beneath it;

6 (3) the structure or mooring facility is not used or intended to be used as a
7 marina;

8 (4) the structure or mooring facility is consistent with or allowed under local
9 land use controls, as determined by the local government land use authority;

10 (5) the length of the structure is limited to that necessary to accomplish its
11 intended use, including reaching navigable water depths;

12 (6) the structure, other than a watercraft lift or watercraft canopy, is not more
13 than eight feet in width and is not combined with other similar structures so as to create
14 a larger structure; and

15 (7) docks placed on rock filled cribs are located only on waters where the bed is
16 predominantly bedrock, which is incapable of accepting pilings;

17 B. to construct or reconstruct a boat launching ramp if:

18 (1) privately owned ramps do not exceed 12 feet in width and do not extend
19 more than ten feet beyond the shoreline or into water more than four feet in depth,
20 whichever is less. Excavations five cubic yards or less, and placement of up to five cubic
21 yards of crushed rock, gravel, clean sand, or small stone are allowed to provide a stable
22 base or maintain use of the ramp;

23 (2) publicly owned ramps do not exceed 36 feet in width and do not extend
24 more than 30 feet waterward of the shoreline or into water more than four feet in depth,
25 whichever is less. Excavations of 200 cubic yards or less, and placement of up to 80 cubic

1 yards of crushed rock, gravel, clean sand, or small stone are allowed to provide a stable
2 base or maintain use of the ramp. The use of coffer dams constructed of metal sheet
3 piling or other portable materials is allowed to construct and maintain public boat
4 launching ramps if all materials are completely removed from public waters within 30
5 days of completion of the project;

6 (3) the ramp is constructed of gravel, natural rock, concrete, steel matting, or
7 other durable inorganic material not exceeding seven inches in thickness; and

8 (4) the ramp is not located on a federally designated wild and scenic river; or

9 C. to remove structures or other waterway obstructions if:

10 (1) the original cross-section and bed conditions are restored insofar as
11 practicable;

12 (2) the structure is completely removed including any footings or pilings that
13 obstruct navigation;

14 (3) the structure is not located on an officially designated trout stream; and

15 (4) the structure does not function as a water level control device.

16 Subp. 5. **Permits required; criteria.** Permits are required for the construction,
17 reconstruction, repair, or relocation of any structure or mooring facility on or in public
18 waters, except as provided under subparts 3 and 4, and a project must meet the
19 following general criteria:

20 A. the proposed project must represent the minimal impact solution to a specific
21 need with respect to all other reasonable alternatives;

22 B. the project does not exceed more than a minimum encroachment, change, or
23 damage to the environment, particularly the ecology of the waters;

24 C. the proposed structure is consistent with applicable floodplain, shoreland, and
25 wild and scenic rivers management standards and ordinances for the waters involved;

1 D. adverse effects on the physical or biological character of the waters are subject
2 to feasible and practical measures to mitigate the effects;

3 E. the proposed structure is consistent with water and related land management
4 plans and programs of local and regional governments, provided these plans and
5 programs are consistent with state plans and programs; and

6 F. except for mooring facilities and boat ramps, all new structures have a
7 title-registered permit, unless a public agency or local governmental unit accepts
8 responsibility for future maintenance or removal.

9 **6115.0211 SPECIFIC STANDARDS; STRUCTURES.**

10 [For text of subpart 1, see M.R. 1999]

11 Subp. 2. [See repealer.]

12 Subp. 3. **Wharves.** A permit is required for the construction or reconstruction of all
13 wharves. The following order of preference for construction types shall be utilized:
14 bulkheaded shoreline, inland slip with bulkheaded sidewalls, and wharf projecting into
15 public waters.

16 Wharves shall be approved if the structure:

17 A. is part of a designated port facility;

18 B. is consistent with local land use plans and ordinances;

19 C. does not extend further waterward than any existing wharves in the area or
20 beyond any established harbor line, whichever is less;

21 D. is of the minimum practicable size; and

22 E. is not an obstruction to flood flows or longshore drift and is adequately
23 designed to resist the natural forces of ice, wind, and wave.

24 Subp. 4. **Breakwaters.** A permit is required for the construction or reconstruction of
25 all offshore breakwaters. These structures shall be approved if the following general
26 conditions and the additional listed specific conditions are met:

1 A. alternative dock or inland facilities are infeasible;

2 B. the structure is limited to those waters where:

3 (1) prevalent wind, wave, or current conditions along the shoreline are of a
4 magnitude and frequency that preclude the use and maintenance of docks to moor
5 watercraft. Determinations of magnitude and frequency that would inhibit the use of
6 docks is based on supporting facts including:

7 (a) the character of the water involved and its shoreline in relation to
8 exposure to severe wind, wave, or current actions and the configuration and area of the
9 water;

10 (b) the frequency of occurrence of storms producing severe winds and waves
11 based on climatological data for the area; and

12 (c) the average number of days during each month of the navigational season
13 when the shoreline is affected by severe wind, waves, or currents; and

14 (2) the conditions of the site and the number, type, or size of watercraft intended
15 to be moored would preclude the development and use of on-land facilities, such as
16 rollers, winch and track systems, sliderails, or other facilities that could be used to haul
17 watercraft out of the water for on-land storage;

18 C. the facility is adequate in relation to appropriate engineering factors, including
19 but not limited to those listed in part 6115.0201, subpart 5, item E, subitem (2), units (f)
20 to (n);

21 D. the plan is adequate in relation to the geologic and hydrologic factors listed in
22 part 6115.0201, subpart 5, item E, subitem (2), units (a) to (e);

23 E. the structure is designed in a compact fashion so as to blend in with the
24 surrounding shoreline and so that all mooring and maneuvering activities can be
25 normally confined to an area bounded by the property lines as extended into the public

1 waters while minimizing the surface area occupied in relation to the number of
2 watercraft to be served; and

3 F. the breakwaters do not exceed the minimum thickness necessary to withstand
4 the anticipated forces consistent with maintenance requirements and are faced with an
5 adequate layer of natural rock riprap of appropriate size and gradation.

6 Subp. 4a. **Mooring facilities.** Except as provided in part 6115.0210, subpart 4, item A,
7 a permit is required for the construction of all offshore mooring facilities. A mooring
8 facility shall be approved if the following general conditions and the additional listed
9 specific criteria are met:

10 A. the mooring facility is designed in a compact fashion so as to blend in with the
11 surrounding shoreline and so that all mooring and maneuvering activities can be
12 normally confined to an area bounded by the property lines as extended into public
13 waters while minimizing the surface area occupied in relation to the number of
14 watercraft to be served;

15 B. the mooring facility minimizes encroachment waterward of the ordinary high
16 water level; and

17 C. for docks or mooring facilities more than eight feet in width, the applicant
18 provides reasonable justification that the proposed width represents the minimal impact
19 solution to a specific need with respect to all reasonable alternatives;

20 D. offshore mooring facilities shall be approved, subject to the listed specific
21 conditions:

22 (1) private offshore mooring facilities not serving as marinas, if the mooring
23 facility is consistent with or allowed under local land use controls, as determined by the
24 local government land use authority;

25 (2) public offshore mooring facilities not serving as marinas, if:

1 (a) a local unit of government passes a resolution that specifies the public
2 interests to be benefited by the proposal;

3 (b) the mooring facility is appropriately sized consistent with the demand for
4 mooring facilities in the area and the number of watercraft to be served; and

5 (c) the mooring facility is available for use by the general public; and

6 (3) offshore marinas, if:

7 (a) the area is zoned for such use or the local government land use authority
8 grants a land use permit; and

9 (b) the marina is sized consistent with the demand for mooring facilities in
10 the area and the number of watercraft to be served.

11 **Subp. 5. Retaining walls and erosion and sedimentation control structures.** A
12 permit is required for the construction or reconstruction of all retaining walls and
13 erosion and sedimentation control structures that do not impound water. The
14 construction of retaining walls is discouraged because their appearance is generally not
15 consistent with the natural environment and their construction and maintenance cost is
16 generally greater than riprap.

17 The issuance of permits is contingent on the following conditions:

18 A. existing or expected erosion problems preclude the use of riprap shore
19 protection, there is a demonstrated need for direct shoreland docking, or the design is
20 consistent with existing uses in the area. Examples are: riverfront commercial-industrial
21 areas having existing structures of this nature, dense residential shoreland areas where
22 similar retaining walls are common, resorts where floating docks may be attached to
23 such a bulkhead, or where barges are utilized to transport equipment and supplies;

24 B. adequate engineering studies are performed of foundation conditions, tiebacks,
25 internal drainage, construction materials, and protection against flanking;

1 C. the facility is not an aesthetic intrusion upon the area and is consistent with all
2 applicable local, state, and federal management plans and programs for the water body;
3 and

4 D. encroachment below the ordinary high water level is held to the absolute
5 minimum necessary for construction.

6 Subp. 6. **Boat launching ramp.** A permit is required for the construction or
7 reconstruction of any boat launching ramp not covered under part 6115.0210, subpart 4,
8 item B, and shall be granted if:

9 A. the applicant demonstrates a need for a launching facility;

10 B. the proposed ramp is of the minimum dimensions necessary for launching of
11 watercraft;

12 C. the proposed ramp does not obstruct flowing water; and

13 D. construction does not necessitate alteration of shoreland that could result in
14 substantial erosion and sedimentation.

15 Subp. 6a. **Boathouses.** A permit is required for the construction, reconstruction,
16 relocation, removal, or repair of a boathouse. The permit shall be granted if the
17 following conditions are met:

18 A. the boathouse is located in an area of historic boathouse use. "Historic
19 boathouse use" shall be determined by the commissioner and shall be based on a review
20 of factual information such as photographs, local government comments, newspaper
21 accounts, or other relevant information;

22 B. the boathouse is approved by the local unit of government by means of a
23 resolution with supporting documentation that identifies the owner, length, width,
24 height, number of rooms, and sanitary facilities of the boathouse; and

25 C. the boathouse was located on public waters before January 1, 1997.

1 Subp. 6b. **Energy exchangers.** A permit is required for the construction,
2 reconstruction, relocation, or repair of energy exchangers located on the bed of a public
3 water. The permit shall be granted if the following general conditions and the additional
4 listed specific conditions are met:

5 A. there are no other feasible and practical alternative sites for the project that
6 would have less environmental impact;

7 B. a closed loop design is utilized;

8 C. the facility is designed in accordance with sound engineering practices;

9 D. the facility is not located in a designated trout stream or lake, a designated wild
10 and scenic river, or an outstanding resource value water as defined in part 7050.0180;

11 E. the facility is designed in a fashion and located so as not to cause a navigation
12 hazard;

13 F. the facility will not exceed more than a minimum encroachment, change, or
14 damage to the environment, particularly the ecology of the waters;

15 G. the facility will not take threatened or endangered species identified in chapter
16 6134 without authorization by the commissioner according to parts 6212.1800 to
17 6212.2300; and

18 H. the facility will not contain substances, if released into public waters, that
19 would be detrimental to water quality or plant or animal life forms; and

20 I. the construction, relocation, or reconstruction of privately owned structures shall
21 be permitted only when a federal, state, or local governmental agency accepts
22 responsibility for future maintenance of the facility or its removal in the event that the
23 private owner fails to maintain or abandons the facility.

24 Subp. 7. **Other facilities.** A permit is required for the construction, reconstruction,
25 relocation, removal, repair, and abandonment of all other offshore structures, boat

1 storage structures, cables other than utility crossings, pilings, or other structures not
2 covered by specific regulations.

3 A. Permits for structural repair, relocation, or modification, other than minor
4 maintenance work such as reroofing, painting of structures, or similar work, shall be
5 issued if all of the following conditions are met:

6 [For text of subitems (1) to (3), see M.R. 1999]

7 (4) the structure being repaired has appropriate permits from the local land use
8 or sanitary authority; and

9 (5) the degree of obstruction or structure size is not increased.

10 [For text of item B, see M.R. 1999]

11 C. The construction, relocation, or reconstruction of privately owned structures,
12 other than docks and mooring facilities, shall be permitted only when a governmental
13 agency or local unit of governmental accepts responsibility for future maintenance of
14 the structure or its removal.

15 [For text of subp 8, see M.R. 1999]

16 **6115.0215 RESTORATION OF PUBLIC WATERS.**

17 Subpart 1. **Goals.** It is the goal of the department to encourage the restoration of
18 public waters to:

19 A. improve and protect fish and wildlife habitat and the diversity of the habitat;

20 B. preserve the natural character of public waters and their shoreline zones;

21 C. encourage the use of natural materials for shoreline zone protection and
22 restoration;

23 D. limit the removal of natural materials from the beds of public waters; and

24 E. prevent erosion and siltation of public waters, while maintaining natural
25 processes.

1 Subp. 2. **Scope.** This part applies to placement, construction, reconstruction, repair,
2 relocation, abandonment, or other work needed to restore or protect public waters or to
3 removal of any materials, structure, fill, water level control, excavation, or drainage
4 device placed on or in public waters. For purposes of this part, "restoration" means the
5 repair, reconstruction, or recreation of essentially natural or native conditions of a public
6 water and its shoreline or banks. This part does not apply to restoration orders issued
7 by the commissioner consistent with part 6115.0255.

8 Subp. 3. **Prohibited work.** Public waters alteration, protection, or restoration work is
9 prohibited when the work:

10 A. is detrimental to ~~publicly owned habitats without obtaining the permission or~~
11 ~~rights of the interested owners~~ significant fish and wildlife habitat and there are no
12 feasible, practical, or ecologically acceptable means to mitigate the effects;

13 B. takes threatened or endangered species listed in chapter 6134 without
14 authorization by the commissioner according to parts 6212.1800 to 6212.2300;

15 C. obstructs navigation or creates a water safety hazard, as determined by the
16 commissioner;

17 D. violates the regulations of any local zoning authority or water management
18 agency;

19 E. results in the creation of land above the ordinary high water level that is not
20 deemed essential by the commissioner as part of the project;

21 F. uses materials that are not clean and free of pollutants, nutrients, and exotic
22 species sources;

23 G. manipulates water levels solely to satisfy private interests; or

24 H. will adversely impact public infrastructure, particularly roads and drainage
25 systems.

1 Subp. 4. **No permit required.** No permit is required for the following activities,
2 unless prohibited elsewhere in parts 6115.0150 to 6115.0280:

3 A. to perform bank or shoreline zone restoration work using willow wattles,
4 willow posts, brush mattresses, brush layering, fiber roll breakwaters, plant carpets,
5 root wads, and other natural materials installed by hand for the purpose of shoreline
6 zone restoration work, if:

7 (1) the project is approved by the commissioner and designed or reviewed by
8 the local soil and water conservation district or the local watershed district;

9 (2) the design does not interfere with navigation or other riparian uses of the
10 waterbody;

11 (3) the project is done during times of the year when it will not interfere with
12 fish spawning or the nesting of protected bird species;

13 (4) local origin native plant species, adapted for the site, are used;

14 (5) an aquatic plant management permit is obtained, when aquatic macrophytes
15 are used;

16 (6) the waterward encroachment is the minimum necessary for the purpose of
17 the project; and

18 (7) a maintenance plan is developed for the project and a copy submitted for
19 review to the department area fisheries office;

20 B. to remove or grade an ice ridge, if all of the following conditions are met:

21 (1) the ice ridge resulted from ice action within the last year;

22 (2) the project is either exempt from local permits or is authorized by issuance of
23 a local government permit;

24 (3) the total length of shoreline zone to be affected does not exceed 200 feet;

25 (4) all ice ridge material that is composed of muck, clay, or organic sediment is

1 deposited and stabilized at an upland site above the ordinary high water level of any
2 public water;

3 (5) all ice ridge material that is composed of sand or gravel is removed as
4 provided in subitem (4) or graded to conform to the original cross-section and
5 alignment of the lakebed, with a finished surface at or below the ordinary high water
6 level;

7 (6) no additional excavation or placement of fill material occurs on the site;

8 (7) all exposed areas are immediately stabilized as needed to prevent erosion
9 and sedimentation; and

10 (8) local zoning officials, the watershed district, if applicable, and the soil and
11 water conservation district are given seven days' prior notice;

12 C. to construct, reconstruct, or abandon a water level control structure on a public
13 watercourse with a contributing watershed of 300 acres or less, except on officially
14 designated trout streams, if the structure does not qualify as a dam under parts
15 6115.0300 to 6115.0520;

16 D. to excavate or place fill for the purpose of planting or collecting native aquatic
17 plants for restoration purposes, if the work is authorized by an aquatic plan
18 management permit; and

19 E. to install natural rock riprap and associated filter materials where there is a
20 demonstrated need to prevent erosion or to restore eroded shoreline, when there is a
21 demonstrated need for such work, except along the shores of Lake Superior and
22 officially designated trout streams, if:

23 (1) the rock is sized appropriately with the erosion potential of the wave or
24 current action of the particular water body, but in no case shall the rock average less
25 than six inches in diameter or more than 30 inches in diameter;

1 (2) the rock is placed so that it conforms to the natural alignment of the
2 shoreline zone;

3 (3) the finished slope, as measured on top of the rocks, is not steeper than three
4 to one (horizontal to vertical);

5 (4) no materials are placed more than six feet waterward of the ordinary high
6 water level, unless the commissioner determines that this dimension may be measured
7 from another point due to the particular nature of water levels of the public water;

8 (5) the total length of shoreline to be affected does not exceed 200 feet for public
9 waterbasins or public water wetlands or five times the width of the public watercourse
10 measured at bank full conditions;

11 (6) the riprap does not cover emergent vegetation, unless authorized by an
12 aquatic plant management permit;

13 (7) the riprap does not obstruct navigation or the flow of water;

14 (8) a filter, consisting of crushed rock, gravel, or suitable filter fabric material is
15 placed underneath the rock; and

16 (9) the rock and any filter material are free from organic material, soil, clay,
17 debris, trash, or any material that may cause siltation or pollute the waterbody.

18 Subp. 5. **Permit required; criteria.** A permit is required for the restoration of public
19 waters, except as provided under subpart 4, and shall be granted if all of the following
20 conditions are met:

21 A. the proposed project represents the minimal impact solution to a specific need
22 with respect to all other reasonable alternatives;

23 B. the proposed project is intended to achieve one or more of the following
24 purposes:

25 (1) improve navigational or recreational uses;

- 1 (2) improve or restore fish or wildlife habitat;
- 2 (3) expose sediment to remove or eliminate nutrients or contaminants;
- 3 (4) restore shorelines or watercourse channels to more natural conditions;
- 4 (5) improve or restore natural hydrologic conditions; or
- 5 (6) improve or restore water quality;

6 C. the project does not exceed more than a minimum encroachment, change, or
7 damage to the environment, particularly the ecology of the waters;

8 D. adverse effects of the proposed project on the physical or biological character of
9 the waters are avoided when possible and are subject to feasible and practical measures
10 to mitigate the effects;

11 E. the proposed project is consistent with applicable floodplain, shoreland, and
12 wild and scenic rivers management standards and ordinances for the waters involved;

13 F. the proposed project is consistent with water and related land management
14 plans and programs of local and regional governments, provided the plans and
15 programs are consistent with state plans and programs; and

16 G. projects that involve the placement of fill to recover shoreland lost by erosion or
17 other natural forces are subject to part 6115.0191, subpart 4, except that part 6115.0191,
18 subpart 4, does not preclude the issuance of a permit to place riprap materials or use
19 other structural and vegetative means for protection of the shoreline zone to prevent
20 continuing erosion.

21 **6115.0216 SPECIFIC STANDARDS; RESTORATION.**

22 Subpart 1. **In general.** In addition to compliance with the general standards in part
23 6115.0215, subparts 2 to 5, specific requirements apply to the activities described in
24 subparts 2 to 6.

25 Subp. 2. **Riprap shore protection.** The protection of shoreline from continued erosion
26 by placement of natural rock riprap along the shore shall be approved if:

1 A. the riprap materials are of sufficient size, quality, and thickness to withstand ice
2 and wave action. The riprap must be placed with a minimum amount of space between
3 the larger materials and the space between them must be filled with firmly seated
4 smaller rocks or gabion baskets to procure a uniform surface;

5 B. the site soils are capable of supporting riprap and a filter consisting of
6 well-graded gravel, crushed stone, or fabric is installed to prevent undercutting of the
7 riprap;

8 C. when site conditions warrant, the toe end of the riprap is installed in a trench
9 excavated into the bed of the public water to anchor the riprap from ice and wave
10 action, with all excavated materials either used to back fill behind the riprap or removed
11 from the bed of the public water;

12 D. the encroachment into the water is the minimum amount necessary to provide
13 protection and does not unduly interfere with the flow of water; and

14 E. adequate engineering studies are done to certify the adequacy of the design of
15 the riprap project, if deemed necessary by the area hydrologist.

16 Subp. 3. **Bioengineering projects.** The grading or filling of materials below the
17 ordinary high water level to facilitate the installation or use of willow wattles, willow
18 posts, brush mattresses, brush layering, fiber roll breakwaters, plant carpets, root
19 wads, and other natural materials for erosion protection and shoreline zone restoration
20 purposes shall be approved if:

21 A. the methods and materials used are designed in consultation with department
22 or local government staff experienced in the use of such materials;

23 B. excavation and fill placement needed in conjunction with bioengineering
24 projects are minimized and are subject to all requirements related to fill and excavation
25 in parts 6115.0190, 6115.0191, 6115.0200, and 6115.0201; and

26 C. a separate aquatic plant management permit is obtained whenever the project
27 involves planting aquatic plants other than willow and dogwood.

1 Subp. 4. **Structural erosion control projects.** Installation of rock gabions, A-jacks,
2 cable concrete, bendway weirs, interlocking concrete blocks, eddy rocks, deflectors,
3 gravel riffles, or other structural methods of erosion control or bank stabilization shall
4 be approved if:

5 A. adequate engineering studies are performed to determine the suitability for use
6 of any of these types of erosion control projects, as determined by the department;

7 B. the project is not an aesthetic intrusion upon the area and is consistent with all
8 applicable local, state, and federal management plans, programs, and ordinances
9 relating to the affected waterbody;

10 C. encroachment below the ordinary high water level is limited to the minimum
11 necessary for the construction project;

12 D. when the project involves the removal of aquatic plants, a separate aquatic plant
13 management permit is obtained;

14 E. the project does not adversely impact native plants, trees, or animals; and

15 F. any retaining wall complies with requirements for structures under parts
16 6115.0210 and 6115.0211.

17 Subp. 5. **Wave breaks.** Grading, filling, or excavation to install rock, silt fence, or any
18 other material or device designed solely for the purpose of protecting native aquatic
19 plants from wave or current action during their establishment shall be approved if:

20 A. the materials do not obstruct navigation or the flow of water;

21 B. the project is done in conjunction with an issued aquatic plant management
22 permit; and

23 C. temporary (less than two years) wave breaks are preferred over permanent
24 structures, which must also meet the requirements of parts 6115.0210 and 6115.0211.

25 Subp. 6. **Other erosion control projects.** Using a structure, material, fill, excavation,

1 or other technique that is not covered under subparts 2 to 5 and that is designed
2 primarily to control erosion of the shoreline zone or to restore the shoreline zone to a
3 more natural condition or altering the shoreline zone in any way that is not covered by
4 specific regulations shall be approved if:

5 A. the intended purpose of the project is reasonable with respect to all other
6 alternatives;

7 B. any method of erosion control that is not widely accepted as being effective is
8 used only as a temporary or experimental project, provided that the project sponsor
9 must totally repair the shoreline zone if the project proves to be unsuccessful within five
10 years. A public entity must be a cosponsor of the temporary or experimental project and
11 accept responsibility for maintenance, repair, and removal of the project;

12 C. the project complies with all other federal, state, and local regulations and
13 ordinances; and

14 D. the project adequately protects public safety and promotes the public welfare.

15 Subp. 7. **Contaminated site restoration projects.** Restoration of a site contaminated
16 with materials or water determined to be hazardous or toxic through a publicly funded
17 study or site cleanup process shall be approved if:

18 A. the study includes a discussion of alternative approaches to restore the
19 contaminated site; and

20 B. the commissioner, in consultation with the Minnesota Pollution Control Agency,
21 participated in either the development of the site restoration plan or study and concurs
22 with the site restoration plan or study recommendations or participated in the
23 development of the site restoration funding initiative and concurs with the funded
24 initiative.

25 **6115.0217 APPLICATION OF OTHER STANDARDS; RESTORATION.**

26 Unless otherwise specified in other parts, parts 6115.0215 and 6115.0216 apply to
27 projects proposed as part of any other activity or activities including, but not limited to:

6115.0217

- 1 A. filling, parts 6115.0190 to 6115.0192;
- 2 B. excavations, parts 6115.0200 to 6115.0202;
- 3 C. structures, parts 6115.0210 to 6115.0212;
- 4 D. water level controls, parts 6115.0220 to 6115.0222;
- 5 E. bridges and culverts, parts 6115.0230 to 6115.0232;
- 6 F. drainage of public waters, parts 6115.0270 to 6115.0272; and
- 7 G. alterations of public waters for mining, part 6115.0280.

8 **6115.0220 WATER LEVEL CONTROLS.**

9 Subpart 1. **Goals.** It is the goal of the department to manage public waters to:

- 10 A. maintain or restore natural flow and natural water level conditions to the
11 maximum feasible extent;
- 12 B. encourage the construction of small off-channel retarding structures for the
13 conservation of water in altered, natural waterbasins, consistent with any overall plans
14 for the affected watershed area; and
- 15 C. limit the artificial manipulation of water levels, except when the balance of
16 affected public interests clearly warrants the establishment of appropriate controls and
17 it is not proposed solely to satisfy private interests.

18 Subp. 2. **Scope.** The construction, repair, reconstruction, or abandonment of any
19 structure intended to impound, divert, or control the level or flow of public waters is
20 subject to the provisions of this part.

21 Subp. 3. **Prohibited water level control facilities.** Construction or reconstruction of
22 water level control facilities is prohibited when it is intended to manipulate water levels
23 solely to satisfy private interests.

24 Subp. 4. **No permit required.** No permit is required to construct, reconstruct, or
25 abandon a water level control structure on public watercourses with a contributing

1 watershed of 300 acres or less, except on officially designated trout streams, provided
2 the structure does not qualify as a dam under the rules for dam safety.

3 Subp. 5. **Permits required.** Permits are required for the construction, repair,
4 reconstruction, or abandonment of any water level control structure, except as provided
5 in subparts 3 and 4, and a project must meet the following general criteria:

6 A. the project will involve a minimum of encroachment, change, or damage to the
7 environment, including but not limited to fish and wildlife habitat, navigation, water
8 supply, storm water retention, and agricultural uses;

9 B. adverse effects on the physical or biological character of the waters are subject to
10 feasible and practical measures to mitigate the effects;

11 C. the proposed project is consistent with applicable floodplain, shoreland, and
12 wild and scenic rivers management standards and ordinances for the waters involved;

13 D. the proposed project is consistent with water and related land management
14 plans and programs of local and regional governments, provided such plans and
15 programs are consistent with state plans and programs;

16 E. the construction or reconstruction complies with parts 6115.0300 to 6115.0520
17 with respect to dam safety for the protection of human life and property;

18 F. the construction or reconstruction of water level control structures or changing
19 the level of an existing structure ~~affecting public waterbasins~~ shall be approved only to:

20 [For text of subitems (1) to (6), see M.R. 1999]

21 (7) establish, improve, or maintain the generation of hydroelectric power; or

22 (8) restore the existing control elevation to a historic natural water elevation if
23 detailed engineering surveys establish that the proposed control elevation does not
24 exceed the estimated natural control elevation; and

25 G. the construction or reconstruction of water level control structures or changing
26 the level of an existing structure on watercourses shall be approved only to:

- 1 (1) control and store flood waters;
- 2 (2) improve water-based recreation;
- 3 (3) create, improve, and maintain water supplies;
- 4 (4) establish, improve, or maintain the generation of hydroelectric power; or
- 5 (5) create, improve, or maintain aquatic habitat for fish and wildlife species.

6 **6115.0221 SPECIFIC STANDARDS; WATER LEVEL CONTROLS.**

7 Subpart 1. **Specific requirements.** In addition to the general standards in part
8 6115.0220, subparts 2 to 5, specific requirements for water level control structures shall
9 be met according to this part.

10 Subp. 2. **Permanent lake level control facilities.**

11 A. Permanent lake level control facilities shall be approved when the
12 commissioner initiates proceedings for the purpose of conserving or utilizing the water
13 resources of the state and assumes responsibility for operation and future maintenance,
14 or when all of the following conditions are met:

15 (1) the ordinary high water level and runout elevation of the water body have
16 been determined by a detailed engineering survey, or by order of the commissioner
17 following a public hearing;

18 (2) the proposed facilities are "reasonably consistent with natural conditions:"

19 (a) where a functioning outlet existed in a state of nature or for a long period
20 of time following lawful creation or alteration of an outlet by the activities of people or
21 animals, or cataclysmic events, the proposed outlet is at essentially the same control
22 elevation;

23 (b) where no natural or artificial outlet exists and the lake is for all practical
24 purposes "landlocked," the control elevation shall not be more than 1-1/2 feet below the
25 ordinary high water level, unless the commissioner finds that:

1 i. the control is necessary to prevent adverse impacts to the lake or
2 adjoining property;

3 ii. other reasonable or cost-effective alternatives are not available;

4 iii. natural resource or hydrologic conditions exist in the watershed that
5 would limit the potential for continuous discharge of excess waters from the lake; and

6 iv. the outlet and discharge of excess waters is addressed in an approved
7 water management plan under Minnesota Statutes, chapter 103B or 103D; and

8 (c) the commissioner may issue a permit to restore the existing control
9 elevation to a historic natural water elevation if detailed engineering surveys establish
10 that the proposed control elevation does not exceed the estimated natural control
11 elevation;

12 (3) the project is sponsored by a governmental unit, which assumes
13 responsibility for operation and future maintenance, except when:

14 (a) the majority of the riparian owners sign the permit application;

15 (b) appropriate easements or other property interests have been obtained
16 from all affected owners;

17 (c) a title-registration type permit is issued to the owner or owners of the
18 property upon which the proposed water level control structure will be located; and

19 (d) the structure will further public interests in navigation, propagation of
20 fish or wildlife, or other beneficial public uses of the water;

21 (4) justification has been made of the need in terms of public and private
22 interests and the available alternatives, including the impact on receiving waters and
23 public uses thereof, through a detailed hydrologic study; and

24 (5) a detailed plan is developed for operation and control including:

25 (a) manner and time of operation;

- 1 (b) frequency of maintenance;
- 2 (c) appropriate monitoring of water levels, water quality, and other factors;
- 3 and
- 4 (d) management of excess waters.

5 B. In addition to the requirements of item A, subitem (2), unit (b), if the proposed
6 control elevation is more than 1-1/2 feet below the ordinary high water level, the permit
7 applicant must serve a copy of the application on each county and municipality within
8 which any portion of the lake is located and the lake improvement district, if one exists.
9 The commissioner must not issue a permit to establish a control elevation more than
10 1-1/2 feet below the ordinary high water level of a lake if a county, municipality,
11 watershed district, or lake improvement district required to be served under this item or
12 Minnesota Statutes, section 103G.301, subdivision 6, files a written objection to the
13 issuance of the permit with the commissioner within 30 days after receiving a copy of
14 the application.

15 Subp. 3. **Fish and wildlife management.** Fish and wildlife management proposals
16 made pursuant to Minnesota Statutes, section 97A.101, or other appropriate authority
17 shall be approved when:

- 18 A. the public water has been designated for wildlife management purposes;
- 19 B. there is a specific water level management plan for the lake basin;
- 20 C. any drawdown of the lake is only temporary and the management plans include
21 a permanent facility for restoration of water levels following such drawdowns;
- 22 D. any alteration of a watercourse included in the plan follows the requirements
23 specified in part 6115.0201, subpart 7;
- 24 E. appropriate easements or fee title is obtained; and
- 25 F. specified management personnel are required to establish a lake level gauge and

1 keep a record of water levels with a specified frequency during seasons of active water
2 level manipulation and with a lesser frequency during all other open water seasons.

3 Subp. 4. **Certain landlocked waterbasins.** Plans for landlocked waterbasins less than
4 25 acres in surface area and contained completely within the municipal boundaries of a
5 single city shall be approved when:

6 A. a municipal drainage plan for the affected tributary watershed is prepared by a
7 qualified engineer or hydrologist and is approved by the affected watershed district and
8 the city;

9 B. the city has a field survey made of the waterbasin after consultation with the
10 department, including but not limited to:

11 (1) the elevation of the aquatic vegetation fringe;

12 (2) the elevation of the tree line and a description of the location, type, and size
13 of representative trees;

14 (3) groundwater elevations, if appropriate; and

15 (4) other information as requested by the department;

16 C. control elevations and associated physical parameters are approved by the
17 department and the city; and

18 D. the city holds a public hearing on the proposal and provides a transcript of the
19 proceedings to the department. Provision of a transcript may be waived by the
20 department.

21 Subp. 5. **Other controls.** Permits for the construction, reconstruction, and
22 abandonment of water level control structures not covered under subparts 2 to 4 shall
23 be issued if:

24 A. the need is established in terms of quantifiable benefits;

25 B. the structural design is done by a professional engineer or by a qualified

1 engineer of the Natural Resources Conservation Service or the Corps of Engineers and
2 includes the following considerations:

3 (1) gravity forces;

4 (2) hydrostatic pressure;

5 (3) uplift forces;

6 (4) overturning moment;

7 (5) resistance to sliding;

8 (6) ice pressures;

9 (7) earthquake forces;

10 (8) slope stability, including consolidation and pore pressures;

11 (9) seepage collection or prevention;

12 (10) foundation conditions, including appropriate borings and determination of
13 the strength of foundation materials;

14 (11) specifications for materials of construction and their placement or
15 installation;

16 (12) adequate construction inspection to assure conformance with design
17 assumptions; and

18 (13) adequacy of the cofferdam or diversion during construction, if any; and

19 C. adequate assurances are made for future maintenance of new water level
20 control structures:

21 (1) for water level control structures 25 feet or more in structural height or
22 having a maximum storage capacity of 50 acre-feet or more, permits shall be issued only
23 to governmental agencies, public utilities, or corporations having authority to construct
24 and maintain such projects, except that a title-registration type permit may be issued to

1 the owner or owners of the private property upon which the proposed water level
2 control structure will be located when the provisions of subpart 2, item A, subitem (3),
3 are met;

4 (2) for other water level control structures, title-registration type permits shall be
5 issued to the owner or owners of the private property upon which the water level
6 control structure will be located if the permit runs with the land and requires breaching
7 or removal if the structure ever falls into a state of disrepair or becomes unsafe; and

8 (3) periodic engineering inspections of authorized water level control structures
9 may be made by the department or its designee.

10 **6115.0230 BRIDGES AND CULVERTS, INTAKES AND OUTFALLS.**

11 [For text of subpart 1, see M.R. 1999]

12 Subp. 2. **Scope.** The construction or reconstruction of any bridge, culvert, intake,
13 outfall, or other crossing of public waters is subject to this part. Abandonment or
14 removal of all crossings and structures governed by this part requires a permit
15 according to part 6115.0211, subpart 8.

16 Subp. 3. **Prohibited crossings.** Crossings are prohibited when the project:

17 A. will obstruct navigation or create a water safety hazard;

18 B. will cause or contribute to significant increases in flood elevations and flood
19 damages either upstream or downstream;

20 C. involves extensive channelization above and beyond minor stream channel
21 realignments to improve hydraulic entrance or exit conditions, except when a separate
22 permit is obtained according to part 6115.0201, subpart 7;

23 D. will be detrimental to water quality or significant fish and wildlife habitat;

24 E. will take threatened or endangered species listed in chapter 6134 without
25 authorization by the commissioner according to parts 6212.1800 to 6212.2300; or

1 F. will provide private access to an island.

2 Subp. 4. **No permit required.** No permit is required to construct the following types
3 of crossings on public waters, unless prohibited in subpart 3:

4 A. to construct or reconstruct a bridge or culvert on a public watercourse with a
5 total drainage area, at its mouth, of five square miles or less, except on officially
6 designated trout streams;

7 B. to construct or reconstruct a low-water ford type crossing, if:

8 [For text of subitems (1) to (6), see M.R. 1999]

9 (7) the crossing is not placed on an officially designated trout stream, on a wild,
10 scenic, or recreational river, or on an officially designated canoe and boating route;

11 C. to construct or reconstruct a temporary bridge , if:

12 [For text of subitems (1) to (3), see M.R. 1999]

13 (4) the bridge is firmly anchored at one end and so constructed as to swing away
14 to allow flood waters to pass;

15 (5) the lowest portion of the bridge is at least three feet above the ordinary high
16 water level on navigable streams; and

17 (6) the bridge is consistent with state and local rules and regulations for
18 floodplain, shoreland, and wild, scenic, or recreational rivers management standards
19 and ordinances;

20 D. to maintain the hydraulic adequacy of any storm sewer or agricultural drain tile
21 outfall or ditch that has been functioning within the previous five years, if such work
22 does not alter the original course, current, or cross-section of the public waters; or

23 E. to install an agricultural drain tile outletting into public waters, if the bank is
24 restored to the original cross-section or contour and no permanent structure is placed
25 below the ordinary high water level, except for the drain tile.

1 Subp. 5. **Permits required.** Permits are required for the construction or reconstruction
2 of any bridge, culvert, intake, outfall, or other crossing of public waters, except as
3 provided in subparts 3 and 4, and a project must meet the following general criteria:

4 A. the project must not exceed more than a minimum encroachment, change, or
5 damage to the environment, particularly the ecology of the waters;

6 B. adverse effects on the physical or biological character of the waters are subject to
7 feasible and practical measures to mitigate the effects;

8 C. the proposed crossing is consistent with applicable floodplain, shoreland, and
9 wild and scenic rivers management standards and ordinances for the waters involved;

10 D. the proposed crossing is consistent with water and related land management
11 plans and programs of local and regional governments, provided such plans and
12 programs are consistent with state plans and programs; and

13 E. crossings of public waterbasins or public water wetlands are allowed only when
14 there is no feasible and practical alternative that does not require filling, excavating, or
15 the placement of a structure in public waters.

16 **6115.0231 SPECIFIC STANDARDS; BRIDGES, CULVERTS, INTAKES, AND**
17 **OUTFALLS.**

18 Subpart 1. **Specific requirements.** In addition to the general standards in part
19 6115.0230, subparts 2 to 5, specific requirements for bridges, culverts, intakes, outfalls,
20 and other crossings of public waters shall be met according to this part.

21 Subp. 2. **Bridges, culverts, and other crossings.** The construction, reconstruction, or
22 relocation of all bridges, culverts, or other crossings over public waters shall be
23 approved if all of the following criteria are met:

24 A. the hydraulic capacity of the structure is established by a competent technical
25 study. The sizing shall not be based solely on the size of existing upstream and
26 downstream structures. If a state or federal floodplain information study exists for the

1 area, or a United States Geological Survey gaging station is located nearby on the
2 stream, the hydraulics of the proposed bridge/culvert design must be consistent with
3 these data. The department may waive this requirement if:

4 (1) the department has performed a hydraulic study based upon available
5 information and reasonable assumptions;

6 (2) the department has made a field investigation of the project site; and

7 (3) the project will not cause flood-related damages or problems for upstream or
8 downstream interests;

9 B. new crossings and replacements of existing crossings comply with local
10 floodplain management ordinances, with provisions of part 6120.5700, subpart 4, item
11 A, and with the following:

12 (1) for new crossings, no approach fill for a crossing shall encroach upon a
13 community designated floodway. When a floodway has not been designated or when a
14 floodplain management ordinance has not been adopted, increases in flood stage in the
15 regional flood of up to one-half of one foot shall be approved if they will not materially
16 increase flood damage potential. Additional increases may be permitted if: a field
17 investigation and other available data indicate that no significant increase in flood
18 damage potential would occur upstream or downstream, and any increases in flood
19 stage are reflected in the floodplain boundaries and flood protection elevation adopted
20 in the local floodplain management ordinance;

21 (2) for replacement of existing crossings, if the existing crossing has a swellhead
22 of one-half of one foot or less for the regional flood, the replacement crossing shall
23 comply with the provisions for new crossings in subitem (1). If the existing crossing has
24 a swellhead of more than one-half of one foot for the regional flood, stage increases up
25 to the existing swellhead shall be allowed if field investigation and other available data
26 indicate that no significant flood damage potential exists upstream from the crossing

1 based on analysis of data submitted by the applicant. The swellhead for the replacement
2 crossing may exceed the existing swellhead if it complies with the provisions for new
3 crossings found in subitem (1); and

4 (3) the decks and approaches to bridges or culverts on major transportation
5 routes and on roads that provide access to development at urban densities shall be no
6 lower than two feet below the flood protection elevation as defined in part 6120.5700,
7 subpart 5, unless it can be shown that alternative routes or access can be provided
8 during the regional flood;

9 C. the structure provides for game fish movement, unless the structure is intended
10 to impede rough fish movement or the stream has negligible fisheries value;

11 D. the structure will not obstruct reasonable public navigation. For bridges over
12 public watercourses, three feet above the calculated 50-year flood stage ordinarily
13 satisfies navigational clearance requirements. For bridges over public waterbasins or
14 public water wetlands, and all culverts, three feet of clearance above the ordinary high
15 water level ordinarily satisfies navigational requirements;

16 E. any project proposed near an existing or proposed segment of the state trails
17 system should be consistent therewith; and

18 F. bridges and walkways to islands comply with the following:

19 (1) bridges and walkways over watercourses to islands must be designed to
20 cause negligible backwater effects during floods and must be securely anchored or
21 otherwise capable of withstanding the dynamic forces of flowing water, ice, and debris;
22 and

23 (2) permits for reconstruction of existing bridges or walkways over public
24 waterbasins and public water wetlands to islands that are intended to provide public
25 access shall be issued only if the existing crossing provides the only existing land access
26 to the island, there is existing development on the island, and the design provides for
27 any public navigational needs and is consistent with the natural surroundings.

1 Subp. 3. **Intakes and outfalls.** The construction, reconstruction, or relocation of all
2 water intake and sewer outfall structures placed in public waters shall be approved if all
3 of the following criteria are met:

4 A. adequate attention is given to methods of screening the structure from view as
5 much as possible from the surface of the public water through the use of existing
6 vegetation or new plantings;

7 B. the project is not detrimental to public values, including but not limited to fish
8 and wildlife habitat, navigation, water supply, water quality, or storm water retention;

9 C. no site conditions will require frequent future disruption of the beds of public
10 waters;

11 D. adequate precautions are planned during and after construction to prevent silt,
12 soil, and other suspended particles from being discharged into public waters;

13 E. adjacent to the intake structure, the banks and bed of the public water are
14 protected from erosion and scour by placement of suitable riprap shore protection;

15 F. the banks are revegetated by seeding and/or sodding;

16 G. the structure is designed by a professional engineer;

17 H. for intake structures, excavation is detailed in the application and on design
18 plans. When necessary, a water appropriation permit must be obtained from the
19 department prior to operation of the intake structure. An appropriate sized screen must
20 be used to prevent fish intake; and

21 I. outfall structure design:

22 (1) when necessary, incorporates a stilling-basin, surge-basin, energy dissipator,
23 or other device or devices to minimize disturbance and erosion of natural shoreline and
24 bed resulting from peak flows;

25 (2) when feasible, utilizes discharge to stormwater treatment ponds, ~~natural or~~

1 artificial stilling or sedimentation basins, or other devices for entrapment of floating
2 trash and litter, sand, silt, debris, and organic matter prior to discharge to public waters;
3 and

4 (3) when feasible, maximizes use of natural or artificial ponding areas to
5 provide water retention and storage for the reduction of peak flows into public waters.

6 **6115.0240 APPLICATION FOR PUBLIC WATERS WORK PERMITS.**

7 [For text of subpart 1, see M.R. 1999]

8 Subp. 2. **Who may apply.** Applications shall be submitted by the riparian owner of
9 the land on which a project is proposed, except:

10 A. a governmental agency, public utility, or corporation authorized by law to
11 conduct the project may apply if the property rights acquired or to be acquired are fully
12 described in the application;

13 B. a holder of appropriate property rights such as a lease or easement may apply if
14 the application is countersigned by the owner and accompanied by a copy of the lease
15 or other agreement. A permit shall be issued for the term of the lease only, subject to
16 cancellation prior to the termination date of the agreement if the agreement is canceled;
17 and

18 C. a prospective lessee of state-owned lands may apply for a permit in the
19 applicant's own name after requesting a lease from the departmental official responsible
20 for the affected lands. Both the lease request and the permit application shall be
21 processed concurrently with appropriate coordination.

22 Subp. 3. **Information required.** Pursuant to Minnesota Statutes, section 103G.305, an
23 application is complete when:

24 A. it includes all of the information specified in parts 6115.0150 to 6115.0280;

25 B. it is accompanied by appropriate photographs, maps, sketches, drawings, or
26 other plans that adequately describe the proposed project;

1 C. it includes a brief statement regarding the following points:

2 (1) anticipated changes in water and related land resources;

3 (2) unavoidable anticipated detrimental effects on the natural environment;

4 (3) alternatives to the proposed action;

5 (4) that the proposed project is reasonable and practical and will adequately
6 protect public safety and promote the public welfare; and

7 (5) a demonstration by the applicant that the proposed activity authorized by
8 part 6115.0190, subpart 5; 6115.0200, subpart 5; 6115.0210, subpart 5; 6115.0215, subpart
9 5; 6115.0220, subpart 5; 6115.0230, subpart 5; 6115.0270, subpart 4; or 6115.0280, subpart
10 4, complies with all the following principles in descending order of priority:

11 (a) avoids direct or indirect impacts to public waters that may destroy or
12 diminish the public waters;

13 (b) minimizes the impact to the public water by limiting the degree or
14 magnitude of the public water activity and its implementation;

15 (c) rectifies the impact by repairing, rehabilitating, or restoring the affected
16 public water;

17 (d) reduces or eliminates the impact to the public water over time by
18 preservation and maintenance operations; and

19 (e) for a major change in the ~~resource~~ public waters, replaces unavoidable
20 impacts to the public water by restoring degraded or impacted public waters having
21 equal or greater public value or, if public waters restoration opportunities are not
22 reasonably available, creating and protecting additional replacement water areas having
23 greater public value;

24 D. application fees are paid. Final permits shall not be issued until any field
25 inspection fees are paid; and

1 [For text of item E, see M.R. 1999]

2 [For text of subp 4, see M.R. 1999]

3 **6115.0250 PERMIT REVIEW.**

4 [For text of subpart 1, see M.R. 1999]

5 Subp. 1a. **Effect on environment and mitigation.** The commissioner may not issue a
6 permit that causes pollution, impairment, or destruction of the air, water, land, or other
7 natural resources so long as there is a feasible and prudent alternative consistent with
8 the reasonable requirements of the public health, safety, and welfare. If the
9 commissioner determines that a major change in public waters is justified and can be
10 authorized by parts 6115.0190, subpart 5; 6115.0200, subpart 5; 6115.0210, subpart 5;
11 6115.0215, subpart 5; 6115.0220, subpart 5; 6115.0230, subpart 5; 6115.0270, subpart 4; or
12 6115.0280, subpart 4, the permit must include provisions to compensate for the
13 detrimental aspects of the change. Compensation for the identified detrimental aspects
14 of the permitted project include:

15 A. restoring degraded or impacted public waters having equal or greater public
16 value;

17 B. creating or restoring additional replacement water areas having equal or greater
18 public value; or

19 C. any other measures approved by the commissioner that compensates for the
20 detrimental aspects of the change.

21 [For text of subp 2, see M.R. 1999]

22 Subp. 3. **Procedure upon decision.** The commissioner may grant permits, with or
23 without conditions, or deny them. In all cases, the applicant, the managers of the
24 watershed district, the board of supervisors of the soil and water conservation district,
25 or the mayor of the city may demand a hearing in the manner specified in Minnesota
26 Statutes, section 103G.311, within 30 days after receiving mailed notice outlining the

1 reasons for denying or modifying an application. Any hearing shall be conducted as a
2 contested case hearing before an administrative law judge from the independent Office
3 of Administrative Hearings according to Minnesota Statutes, chapter 14 and section
4 103G.311.

5 Subp. 4. **General permits.** The commissioner is authorized to issue general permits to
6 a governmental subdivision or to the general public for classes of activities having
7 minimal impact on public waters under which more than one activity may be conducted
8 with a single permit.

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

10 A. Public waters work permit applications submitted to the commissioner for
11 proposed projects in public water wetlands shall be granted if authorized by parts
12 6115.0190 to 6115.0232 or parts 6115.0270 to 6115.0280 and if the public water wetland is:

13 (1) assigned a shoreland classification;

14 (2) classified as lacustrine wetland or deepwater habitats according to the
15 document under item C; or

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

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

23 (1) granted, with or without conditions, if authorized by parts 6115.0190 to
24 6115.0232 or 6115.0270 to 6115.0280 and if the permit application complies with
25 provisions for sequencing under part 8420.0520, replacement provisions under parts
26 8420.0540 to 8420.0630, and wetland banking under part 8420.0720, subpart 2, or denied;

27 or

6115.0250

1 (2) waived pursuant to item D.

2 C. The following documents are incorporated by reference:

3 (1) Classification of Wetlands and Deepwater Habitats of the United States,
4 Lewis M. Cowardin et al., United States Department of the Interior, Fish and Wildlife
5 Service (1979); and

6 (2) Guidelines for Ordinary High Water Level (OHWL) Determinations, John
7 Scherek and Glen Yakel, Minnesota Department of Natural Resources, Division of
8 Waters (June 1993).

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

11 D. Public waters work permits in public water wetlands:

12 (1) notwithstanding parts 6115.0150 to 6115.0280, the authority of the
13 commissioner to require a permit for activities within public water wetlands is waived
14 to the local unit of government under chapter 8420 when the commissioner has received
15 notice or application from the landowner or project sponsor and when the
16 commissioner has provided the applicant or project sponsor and the local unit of
17 government a notice within 15 days of receipt of the notice or permit application that
18 the department will waive public waters work permit jurisdiction to the local unit of
19 government; or

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

22 (a) allowed under part 8420.0122, subparts 1 to 8 and 10;

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

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

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

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

10 (1) for projects that affect less than 10,000 square feet of public water wetlands,
11 upon receipt of a copy of the state, city, county, or town public road authority report
12 that is submitted to the Board of Water and Soil Resources in compliance with part
13 8420.0544, item D, except for projects in public water wetlands:

14 (a) assigned a shoreland classification;

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

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

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

1 (a) assigned a shoreland classification;

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

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

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

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

13 (1) public waterbasins;

14 (2) public water wetlands assigned a shoreland classification;

15 (3) public water wetlands classified as lacustrine wetlands or deepwater habitats
16 according to the document under item C; or

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

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

25 C. The classification of lacustrine wetlands and deepwater habitats found in

1 Classification of Wetlands and Deepwater Habitats of the United States, Lewis M.
2 Cowardin et al., United States Department of the Interior, Fish and Wildlife Service
3 (1979) is incorporated by reference. This document is available through the Minitex
4 interlibrary loan system and is not subject to frequent change.

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

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

13 (2) activities authorized by the public road authority having jurisdiction under
14 chapter 8420 for public road activities that are associated with the repair, rehabilitation,
15 reconstruction, or replacement of currently serviceable existing public roads when the
16 commissioner has notified the public road authority of the waiver within 15 working
17 days of receipt of a copy of the state, city, county, or town public road authority report
18 that is submitted to the Board of Water and Soil Resources in compliance with part
19 8420.0544, item D.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (4) the wetland impacts are subject to approval of a wetland replacement plan or
2 a no-loss or exemption determination by the local unit of government according to part
3 8420.0210, 8420.0220, or 8420.0230;

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

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

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

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

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

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

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

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

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

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

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

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

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

9 E. the plan addresses enforcement procedures;

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

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

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

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

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

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

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

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

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

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

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

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

14 **6115.0255 PUBLIC WATERS ENFORCEMENT PROCEDURES.**

15 Subpart 1. **Enforcement options.** Parts 6115.0150 to 6115.0280 may be enforced
16 through one or any combination of the following authorities:

17 A. criminal proceedings under Minnesota Statutes, section 103G.141, subdivision 1;

18 B. orders of the commissioner under Minnesota Statutes, sections 103G.251 and
19 103G.315; and

20 C. cease and desist orders, restoration orders, and replacement orders under
21 Minnesota Statutes, section 103G.2372.

22 The choice of enforcement authorities is dependent on the scope of the activity
23 conducted without a public waters work permit.

24 Subp. 2. **Enforcement authorities.** The commissioner, conservation officers, and other
25 peace officers may issue cease and desist orders and restoration and replacement orders
26 according to Minnesota Statutes, section 103G.2372.

1 Subp. 3. **Cease and desist orders.**

2 A. Cease and desist orders may be issued when the enforcement authority has
3 probable cause to believe that any activity is being or has been conducted in public
4 waters without a valid permit from the commissioner.

5 B. A cease and desist order must not be issued if a landowner has documentation
6 of a valid public waters work permit from the commissioner authorizing the work that
7 was done or if a landowner has documentation proving that no permit is required.

8 C. The cease and desist order shall direct a landowner to:

9 (1) stop all work, conduct no further work, and take immediate corrective action
10 to stabilize the site from imminent erosion or restore water flow if ordered by the
11 enforcement authority; and

12 (2) immediately submit a written project application form to the area
13 hydrologist.

14 D. The enforcement authority issuing a cease and desist order shall promptly
15 submit copies of the order to the commissioner.

16 E. The commissioner or agent shall review the evidence, including any evidence
17 produced by a landowner, inspect the site if necessary, and determine:

18 (1) whether the area in question is a public water;

19 (2) whether a public waters work permit is required; and

20 (3) whether a public waters work permit application should be submitted or
21 whether a restoration order or replacement order should be issued immediately, if it is
22 determined that a public waters work permit application submitted in response to the
23 cease and desist order would be denied in its entirety for being inconsistent with parts
24 6115.0150 to 6115.0280.

25 F. Pending a resolution of any criminal proceedings, if it is determined that the

1 activity does not require a permit or if a permit is issued, the commissioner or agent
2 shall request that the enforcement authority rescind the cease and desist order, pending
3 the outcome of any decision that is appealed, and notify the soil and water conservation
4 district, the commissioner, and the landowner. If the application is denied, the
5 commissioner shall immediately notify the soil and water conservation district, the
6 enforcement authority, and the landowner.

7 G. A cease and desist order must advise the landowner that violation of the order
8 is a misdemeanor.

9 **Subp. 4. Restoration and replacement orders.**

10 A. If the commissioner or agent, with the concurrence of the enforcement
11 authority, determines that restoration may not restore all the loss caused by the drain,
12 excavate, structure, or fill activity, the enforcement authority may order restoration, a
13 combination of restoration and replacement, or replacement rather than restoration.

14 B. The enforcement authority shall issue a restoration order or replacement order
15 if:

16 (1) a cease and desist order has been issued and the landowner has not
17 submitted a written project notification form to the area hydrologist within three weeks;
18 or

19 (2) the commissioner has denied a permit application, determined that a permit
20 application submitted for the activity subject to a cease and desist order would be
21 denied in its entirety for being inconsistent with parts 6115.0150 to 6115.0280, or
22 determined that some combination of restoration of the site and off-site restoration or
23 replacement is necessary.

24 C. Promptly upon being informed of the need, the commissioner or agent shall
25 inspect the site and prepare a plan for restoring the site. Restoration shall be ordered
26 unless the commissioner or agent, with the concurrence of the enforcement authority,

1 concludes that restoration would cause additional impairment or further degradation of
2 the public water. The commissioner or agent shall incorporate the restoration plan into a
3 restoration order and send it to the enforcement authority for service in person or by
4 certified mail to the landowner.

5 D. A restoration order must specify a date by which the landowner must restore
6 the public waters according to the commissioner's plan and obtain a certificate of
7 satisfactory restoration from the commissioner or agent.

8 E. A replacement order must specify a date by which the landowner must submit a
9 replacement plan to the commissioner and a subsequent date by which the landowner
10 must replace the public waters and obtain a certificate of satisfactory replacement from
11 the commissioner or agent.

12 F. A restoration or replacement order must advise the landowner that violation of
13 the order is a misdemeanor.

14 G. If, as part of a misdemeanor proceeding, the court orders restoration or
15 replacement, the commissioner or agent, with the concurrence of the enforcement
16 authority, shall determine which is appropriate, and if it is restoration, the method of
17 restoration. If the court orders replacement, the landowner must follow the replacement
18 plan ordered by the commissioner or agent.

19 H. If a landowner seeks approval of a public waters work permit after the
20 proposed project has already impacted the public water, the commissioner may require
21 the landowner to replace the impacted public water at a ratio not to exceed twice the
22 replacement ratio otherwise required.

23 **Subp. 5. Appeals of replacement and restoration orders.**

24 A. A landowner may appeal the terms and conditions of a restoration or
25 replacement order issued under subparts 2 to 4, to the commissioner, within 30 days of
26 receipt of written notice by filing a written request for review. If the written request is

1 not submitted within 30 days, the restoration or replacement order becomes final. The
2 commissioner shall review the request and supporting evidence and render a decision
3 within 60 days of the request for review.

4 B. If a landowner wishes to appeal the decision of the commissioner after review
5 under item A, the landowner must file a written request within 30 days for a contested
6 case hearing under Minnesota Statutes, chapter 14. The demand for hearing must be
7 accompanied by a bond as required under Minnesota Statutes, section 103G.311,
8 subdivision 6.

9 **6115.0260 STATUTORY REQUIREMENTS.**

10 Further provisions for the administration of parts 6115.0150 to 6115.0280 are found in
11 Minnesota Statutes, chapter 103G, including but not limited to sections 103G.135,
12 103G.141, 103G.241, 103G.251, 103G.295, 103G.301, 103G.305, 103G.311, and 103G.315.

13 **6115.0270 DRAINAGE OF PUBLIC WATERS.**

14 Subpart 1. **Goals.** It is the goal of the department to protect and preserve public
15 waterbasins and public water wetlands from damage or destruction by drainage.

16 Subp. 2. **Scope.** Parts 6115.0270 to 6115.0272 relate to the partial drainage or
17 temporary drawdown of public waterbasins and public water wetlands for all purposes
18 except mining of metallic or nonmetallic minerals which are subject to provisions of part
19 6115.0280.

20 Subp. 3. **Prohibited activity.** The permanent or total drainage of public waterbasins
21 and public water wetlands is prohibited.

22 Subp. 4. **Permits required.** A permit is required for the partial drainage or temporary
23 drawdown of public waterbasins and public water wetlands and shall be granted if all
24 of the following conditions are met:

25 A. the proposed project is intended to achieve one or more of the following
26 purposes:

6115.0270

- 1 (1) improve navigational or recreational uses;
- 2 (2) improve or restore fish or wildlife habitat;
- 3 (3) expose sediment in order to remove or eliminate nutrients or contaminants;
- 4 (4) alleviate flooding of agricultural lands caused by artificial obstruction of
- 5 downstream drainage or increased upstream discharge; or
- 6 (5) allow the mining of iron ore, taconite, copper, copper-nickel, or nickel under
- 7 Minnesota Statutes, section 103G.297;

8 B. the project will involve a minimum of encroachment, change, or damage to the
9 environment, including but not limited to fish and wildlife habitat, navigation, water
10 supply, water quality, and storm water retention;

11 C. adverse effects on the physical or biological character of the waters are subject to
12 feasible and practical measures to mitigate the effects;

13 D. the proposed project is consistent with applicable floodplain, shoreland, and
14 wild and scenic rivers management standards and ordinances for the waters involved;
15 and

16 E. the proposed project is consistent with water and related land management
17 plans and programs of local and regional governments, provided such plans and
18 programs are consistent with state plans and programs.

19 **6115.0271 SPECIFIC STANDARDS; DRAINAGE.**

20 In addition to compliance with the general standards in part 6115.0270, subparts 2 to
21 4, specific requirements for drainage or drawdown activities shall be met as follows:

22 A. the drainage or diversion of public waters for mining iron ore, taconite, copper,
23 copper-nickel, or nickel shall be approved only when all of the provisions of Minnesota
24 Statutes, section 103G.297 and part 6115.0280 have been met;

25 B. the drainage or diversion of public waters for mining all other metallic and

1 nonmetallic minerals shall be approved only when the public waters being drained are
2 replaced by public waters that will have equal or greater public value, subject to
3 provisions of part 6115.0280; and

4 C. all other drainage or diversion of public waters allowed in part 6115.0270,
5 subparts 2 to 4, shall be approved if all of the following specific criteria are met:

6 (1) for public waterbasins and public water wetlands, permits shall be issued
7 only to governmental agencies having the authority to undertake such projects. In
8 addition, a public need for the partial drainage or temporary drawdown shall be
9 established by specifying the public interests to be enhanced;

10 (2) written consent for the partial drainage or temporary drawdown of public
11 waterbasins and public water wetlands is obtained from all riparian owners;

12 (3) partial drainage or temporary drawdown of public waterbasins and public
13 water wetlands shall be approved only when the applicant has submitted data to
14 confirm:

15 (a) that the partial drainage will improve navigation or recreational uses;

16 (b) that the partial drainage will improve or restore fish and wildlife habitat;

17 or

18 (c) that agricultural lands have been flooded due to artificial obstruction of
19 downstream drainage or increased upstream discharge;

20 (4) any proposed temporary drawdown shall not exceed two years in duration
21 under normal climatic conditions;

22 (5) there are no feasible and practical means to attain the intended purpose
23 without drainage; and

24 (6) the proposal adequately protects public safety and promotes the public
25 welfare.

1 **6115.0280 ALTERATIONS OF PUBLIC WATERS FOR MINING.**

2 [For text of subps 1 and 2, see M.R. 1999]

3 Subp. 3. **Permits required for alterations of public waters.** Permits are required for
4 any alterations of public waters to facilitate mining of iron ore, taconite, copper,
5 copper-nickel, or nickel minerals or reclamation of mining areas provided that:

6 A. permits to mine are obtained when required by Minnesota Statutes, sections
7 93.44 to 93.51; and

8 B. permits for alterations in public waters shall be granted according to Minnesota
9 Statutes, section 103G.297. Applications for permits for alterations in public waters shall
10 include an analysis showing why underground mining without drainage, diversion, or
11 control of public waters is not feasible or economical.

12 Subp. 4. **Permit required for mining of certain minerals and peat.** Permits are
13 required for mining of nonmetallic minerals, peat, and other metallic minerals not
14 regulated in Minnesota Statutes, section 103G.297, or reclamation of mining areas and
15 shall be granted if the applicant provides evidence that:

16 [For text of items A to G, see M.R. 1999]

17 H. whenever public waterbasins and public water wetlands are allowed to be
18 drained to facilitate mining, and such drainage is justified and legally permitted,
19 compensation for the loss of the basin is provided for by either:

20 (1) immediate replacement of the public waterbasins and public water wetlands
21 with waters of equal or greater value; or

22 (2) submission of acceptable plans for the eventual replacement of the public
23 waterbasins and public water wetlands with waters of equal or greater value upon
24 cessation of mining activities; and

25 [For text of item I, see M.R. 1999]

1 [For text of subp 5, see M.R. 1999]

2 **TERM CHANGES.** The term "protected water" or "protected waters" shall be changed
3 to "public water" or "public waters" wherever it appears in Minnesota Rules, parts
4 6115.0150 to 6115.0280. The term "protected watercourse" shall be changed to "public
5 watercourse" wherever it appears in Minnesota Rules, parts 6115.0150 to 6115.0280. The
6 term "protected waterbasin" shall be changed to "public waterbasin" wherever it
7 appears in Minnesota Rules, parts 6115.0150 to 6115.0280.

8 **REPEALER.** Minnesota Rules, parts 6115.0170, subparts 26 and 36; 6115.0191, subpart 2;
9 and 6115.0211, subpart 2, are repealed.

10 ~~**EFFECTIVE DATE.** The amendments in Minnesota Rules, parts 6115.0150 to 6115.0280,
11 and the repealer are effective August 1, 2002.~~