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\*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders...

\*\*Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

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**NOTICE**

**How to Follow State Agency Rulemaking Action in the *State Register***

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION**. Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

**The PROPOSED RULES section contains:**

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

**The ADOPTED RULES section contains:**

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in late summer 1983. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the *1982 Reprint* due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
Issue 27-38, inclusive	

The listings are arranged in the same order as the table of contents of the *MCAR 1982 Reprint*.

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\*Published in *MCAR 1982 Reprint*



# PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
  2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
  3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Department of Natural Resources Waters Division

### Proposed Amendments to Rules Governing Permits for Making Changes in the Course, Current, or Cross-Section of Public Waters

#### Notice of Intent to Adopt Rule Amendments without a Hearing

Notice is hereby given that the State Department of Natural Resources is proposing to adopt the above entitled amendments without a public hearing. The Commissioner of Natural Resources has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow procedures set forth in Minn. Stat. §§ 14.21-14.28.

Changes are proposed to sections concerning fill, excavation, structures, dams, and bridges and culverts. New material covers the mining of metallic minerals and non-metallic minerals including sand and gravel and peat.

Persons interested shall have 30 days to submit comments on the proposed amendments. The proposed amendments may be modified prior to final adoption if modifications are supported by the data and views submitted to the Department of Natural Resources and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. The written request must be specific on which amendment(s) a hearing is desired. Identification of the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are desired. In the event a public hearing is required, the department will proceed according to the provisions of Minn. Stat. §§ 14.13-14.20.

Persons who wish to submit comments or written request for a public hearing, or persons who wish to receive a copy of this notice and/or a copy of the proposed amendments, should address their correspondence to:

David Milles  
Natural Resources  
DNR Box 32  
Centennial Office Building  
St. Paul, Minnesota 55155

The department's authority to adopt the rules is contained in Minn. Stat. § 105.415. A statement that describes the need for and reasonableness of each provision of the proposed amendments is available from the Department of Natural Resources upon request.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

Upon adoption of the final amendments without a public hearing, the proposed amendments, this notice, the statement of need and reasonableness, all written comments received, and the final amendments as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendments as proposed for adoption, should submit a written request to the above address.

Please be advised that Minn. Stat. chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minn. Stat. § 10A.01, subdivision 11 defines a lobbyist as any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

March 7, 1983.

Joseph N. Alexander  
Commissioner of Natural Resources

### STANDARDS AND CRITERIA FOR GRANTING PERMITS TO CHANGE THE COURSE, CURRENT, OR CROSS-SECTION OF PUBLIC PROTECTED WATERS

#### 6 MCAR § 1.5020 General provisions.

A. ~~General policy~~ Purpose. The purpose of ~~these rules~~ 6 MCAR §§ 1.5020-1.5028 is to provide for the orderly and consistent review of permit applications in order to conserve and utilize the water resources of the state in the best interest of its people. In deciding whether to issue permits, the department shall be guided by the policies and requirements declared in Minnesota Statutes, sections 104.01, 104.25, 104.32, 105.38, 105.42, 105.64, and 116d.04.

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

B. Scope. To achieve the ~~policies~~ purpose declared in 6 MCAR § ~~1.5020~~ A. these rules set forth minimum standards and criteria for the review, issuance, and denial of permits for proposed projects affecting public protected waters as detailed in the preceding table of contents. Permits shall be required for any activity affecting the course, current, or cross-section of protected waters unless specifically exempted within these rules.

C. Jurisdiction. These standards and criteria apply to any and all work which will cause or result in the alteration of the course, current, or cross-section of public protected waters except for the following:

1. utility crossings of public protected waters which are regulated under Minnesota Statutes, section 84.415 and rules promulgated thereunder; or
2. destruction and control of aquatic vegetation which is regulated under Minnesota Statutes, section 98.48, subdivision 9 and rules promulgated thereunder.
- ~~3. changes in the course, current, or cross section of public waters necessary for the mining of metallic and non-metallic minerals, sand and gravel, peat, coal, and marl. See Minnesota Statutes, section 105.64.~~

D. Definitions. For the purposes of ~~these rules~~ 6 MCAR §§ 1.5020-1.5028, certain terms of words used herein shall be interpreted as follows: the word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.

1. "Alteration" means any activity that will change or diminish the course, current, or cross-section of public protected waters.
2. "Beds of public protected waters" means all portions of public protected waters located below the ordinary high water mark.

3. "Breakwater" means an offshore structure protecting intended to protect a shore area, harbor, or marina from waves and current action, erosion, or sedimentation.

"Class I public watercourse" means a natural watercourse serving as the major drainage outlet or a major tributary of such an outlet, which is capable of serving a number of beneficial public purposes. Smaller natural watercourses serving specific values such as trout streams and scenic watercourses are also included.

"Class II public watercourse" means a natural watercourse serving as a tributary of a Class I watercourse. Class II public watercourses are often perennial streams serving more than one beneficial public purpose.

"Class III public watercourse" means a smaller natural watercourse or an altered natural watercourse not constructed under Minnesota Statutes, chapter 106 (and which are tributary to other Class I, II, or III watercourses), and which may be an intermittent stream serving at least one beneficial public purpose.

"Class IV watercourse" means any artificial watercourse or altered natural watercourse constructed under the provisions of Minnesota Statutes, chapter 106 or 112 or prior laws, or as the result of private actions without any public drainage proceedings (and which are tributary to a public drainage system).

4. "Commissioner" means the Commissioner of Natural Resources.

"Dam" means any artificial barrier or appurtenant works which does or may impound or divert water.

5. "Department" means the Department of Natural Resources.

6. "Dock" means a narrow platform extending waterward from the shoreline intended for ingress and egress for moored watercraft or to provide access to deeper water for swimming, fishing, or other water-oriented recreational activities.

7. "Drainage" means any method for removing or diverting waters from protected waterbasins or wetlands. Such methods shall include, but are not limited to, excavation of an open ditch, installation of subsurface drainage tile, filling, diking, or pumping.

8. "Drawdown" means a temporary lowering of water levels, for a maximum duration of two years.

"Dredge" 9. "Excavation" means the displacement or removal of the sediment or other materials from the beds of public protected waters by means of hydraulic suction or mechanical excavation operations.

"Emergency spillway" means a spillway designed to convey water in excess of that impounded for flood control or other beneficial purposes.

10. "Fill" means any material placed or intended to be placed on the bed or bank of any public protected water.

11. "Filter" means a transitional layer of gravel, small stone, or fabric between the fine material of an embankment and riprap shore protection materials. ~~The purposes of the filter are to (1) prevent fine embankment material from being pulled through the riprap materials, (2) distribute the weight of the overlying riprap to prevent settlement, and (3) to provide relief of hydrostatic pressures inside the embankment.~~

12. "Floating structure" means any houseboat, mooring or navigational buoy, swimming or diving platform, water ski jump, watercraft, or other structure supported entirely by its own buoyancy which is not permanently anchored by means of pilings, foundations, gabion baskets, or other materials incapable of removal by nonmechanized means.

13. "Floodplain" means the areas adjoining a watercourse which has been or hereafter may be covered by the regional flood.

14. "Floodway" means the channel of the watercourse and those portions of the adjoining flood plains which are reasonably required to carry and discharge the regional flood.

15. "Harbor" means either an inland or offshore area protected from waves which is intended for the mooring of watercraft.

16. "Inland boat slip" means an inland excavation generally having a uniform width which serves as a protective area for launching and mooring of a single watercraft.

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17. "Inland excavation" means any excavation intended to extend the cross-section of public protected waters landward of the natural or preexisting shoreline.

18. "Low-water ford type crossing" means a stream crossing which conforms to the natural cross-section of the stream and utilizes the placement of a suitable substrate to allow vehicular passage without confining the stream flow within culverts or other hydraulic enclosures.

19. "Marina" means either an inland or offshore ~~area~~ structure for the concentrated mooring of five (5) or more watercraft wherein facilities are provided for ~~any or all of the following~~ ancillary services: such as boat mooring, storage, fueling, launching, mechanical repairs, sanitary pumpout, and restaurant services.

20. "Maximum," with respect to storage capacity, refers to the most severe design condition, including surcharge (floodwater storage).

21. "Mining activity" means the construction, reconstruction, repair, relocation, expansion, or removal of any facility for the extraction, stockpiling, storage, disposal, or reclamation of metallic or nonmetallic minerals. Facilities include all mine pits, quarries, stockpiles, tailings basins, and any structures which drain or divert protected waters to allow mining. Ancillary facilities such as access roads, bridges, culverts, and water level control structures are not mining activities.

22. "Mooring" means any containment of free-floating watercraft that provides a fixed fastening for the craft.

~~"Natural watercourse" means any watercourse in a state provided by nature without artificial straightening, deepening, or widening. See "watercourse" as hereinafter defined.~~

23. "Offshore" means the area waterward of the ordinary high water mark of a public protected water.

24. "Ordinary high water mark" for purposes of these regulations means an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water mark shall be considered to be the elevation of the top of the bank of the channel (Re: NR 85 (e) (6) MCAR § 1.0085 (e)). For reservoirs and flowages the ordinary high water mark shall be the operating elevation of the normal summer pool means the boundary of protected waters as defined in Minnesota Statutes, section 105.37, subdivision 16.

25. "Permanent dock" means any dock other than seasonal docks and wharves as hereinafter defined by this rule.

26. "Port" means a water transportation complex established and operated under the jurisdiction of a port authority pursuant to Minnesota Statutes, chapter 458.

27. "Port facility" means any facility useful in the maintenance and operation of a port. Facilities include, but are not limited to, transportation facilities, terminal and storage facilities, floating and handling equipment, power stations, and other facilities necessary for the maintenance and operation of a port.

28. "Principal spillway" means a spillway designed to convey water from an impoundment at release rates established for the structure.

~~"Probable maximum flood" means the most severe flood with respect to peak flow that may be expected from a combination of the most critical meteorological and hydrological conditions that are reasonably possible in the drainage basin.~~

29. "Professional engineer" means an engineer registered to practice in Minnesota.

~~Public 30. "Protected waters" means any waters of the state which serve a material beneficial public purpose as defined in Minnesota Statutes, section 105.37, subdivision 6 those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 105.37, subdivision 14 or 15, or 105.391, subdivision 1.~~

31. "Reconstruction" means the rebuilding or renovation of an existing structure, where the cost of such work will exceed 50 percent of the replacement cost of a ~~dam or 50 percent of the assessed value of other structures.~~

32. "Regional flood" means the flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval (~~Re: NR 85 (e) (6) MCAR Section 1.0085 (e) ).~~

33. "Retaining walls" means vertical or nearly-vertical ~~alongshore~~ structures constructed of mortar-rubble masonry, handlaid rock or stone, vertical timber pilings, horizontal timber planks with piling supports, sheet pilings, poured concrete, concrete blocks, or other durable materials and constructed approximately parallel to the shoreline.

34. "Riprap shore protection" means coarse stones, boulders, cobbles, ~~or~~ artificially broken rock ~~fragments~~ or

## PROPOSED RULES

concrete, or brick materials, laid loosely or within gabion baskets against the basal slope of the existing bank of a public protected water.

35. "Seasonal dock" means a dock so designed and constructed that it may be removed from the lake or stream bed on a seasonal basis. All components such as supports, decking, and footings must be capable of removal by nonmechanized means.

~~"Spillway" means a channel available to discharge excess water from a reservoir.~~

~~"Standard project flood" means the flood that may be expected from the most severe combination of meteorological and hydrological conditions that is considered reasonably characteristic of the geographical area in which the drainage basin is located, excluding extremely rare combinations. Such floods are intended as practicable expressions of the degree of protection that should be sought in the design of flood control works, the failure of which might be disastrous (Re: NR 85 (e) (6 MCAR § 1.0085 (e) ).~~

36. "Structure" means any building, footing, foundation, slab, roof, boathouse, deck, wall, ~~dam~~, or any other object extending over, anchored, or permanently attached to the bed or bank of a public protected water. These rules shall not pertain to floating structures such as houseboats, mooring and navigation bouys, swimming and diving platforms, water ski jumps, and watercraft, provided such floating structures are not permanently anchored by means of pilings, foundations, gabion baskets, or other materials which are not capable of removal by non-mechanical means.

37. "Structural height" means the overall vertical distance from the lowest point of construction to the top of the dam including the foundation or cutoff but excluding driven sheet piling primarily intended for cutoff purposes natural bed of the stream or watercourse measured at the downstream toe of the control structure or from the lowest elevation of the outside limit of the control structure, if it is not across a stream channel or watercourse, to the maximum storage elevation.

38. "Swellhead" means the difference between the headwater elevation necessary to pass the regional flood through the proposed structure and the tailwater elevation below the structure.

39. "Temporary structure" means any seasonal dock or floating structure that can be removed from protected waters before winter freeze-up.

40. "Watercourse" means any channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods water may leave the confining beds and banks but under low and normal flows water is confined within the channel. A watercourse may be perennial or intermittent.

41. "Water level control structure" means any structure which impounds or regulates the water surface elevation or flow of protected waters, including dams regulated under the provisions of 6 MCAR §§ 1.5030-1.5034.

~~"Watercraft" means any contrivance used or designed for navigation on water other than a duck boat during the duck hunting season, a rice boat during the harvest season, or a seaplane.~~

42. "Wharf" means a permanent structure constructed into navigable waters as a part of a port facility for the sole purpose of berthing or mooring commercial watercraft, or for transferring cargo to and from watercraft in an industrial or commercial enterprise, or for loading or unloading passengers from commercial watercraft, or for the operation of a port facility.

~~E. Severability. The provisions of these regulations shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.~~

6 MCAR § 1.5021 Filling into public protected waters.

A. Policy Goals. It is the policy goal of the department to limit the placement of any fill material into public protected waters in order to preserve the natural character of public waters and their shorelands, and maintain suitable aquatic habitat for fish and wildlife.

1. Placement in conformance with these rules shall be permitted in the following cases:

a. ~~Development of beach areas.~~

b. Protection of shoreline from continued erosion by placement of riprap materials.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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- e. Recovery of shoreland lost by erosion or other natural forces which has occurred within the last five years.
- e. Limited filling to allow raising of previous development constructed at too low an elevation.
- e. Provide navigational access from riparian properties, where such access cannot be gained by alternative

means.:

1. minimize encroachment, change, or damage to the environment;
2. regulate the quantity and quality of fill and the purposes for which filling may be allowed based upon the capabilities of the waters to assimilate the material; and
3. maintain consistency with floodplain, shoreland, and wild and scenic rivers management standards and ordinances.

### B. General standards.

1. Scope. Filling as used in this rule involves placement of unconfined or loosely confined materials in protected waters.
2. Placement shall not be permitted in the following cases:
  - a. to achieve vegetation control;
  - b. to create upland areas for development or subdivision, except where expressly provided herein;
  - c. to stabilize lake and stream beds of protected waters which cannot support fill materials (e.g. because of excessive depths of muck, steep bank, or bed slope, etc.) or other conditions;
  - d. to stabilize areas or impound the site of flowing water, active springs, or subject to substantial wave action, drift, sedimentation, or other disruptive forces;
  - e. to dispose of rock, sand, gravel, or any other solid material resulting from activities carried out above the ordinary high water mark;
  - f. to construct a roadway or pathway, or create or improve land accesses from peripheral shorelands to islands, or to facilitate land transportation across the waters; however, where a project is proposed by a federal, state, or local government agency and this provision would prevent or restrict the project, or create a major conflict with other public purposes or interests, the commissioner may waive this provision provided:
    - (1) there is no other feasible and practical alternative to the project that would have less environmental impact; and
    - (2) that the public need for the project rules out the no-build alternative.
  - g. filling of posted fish spawning areas is prohibited.
3. No permit shall be required for the following activities unless prohibited under 2.:

### B. Beach sand blankets.

#### 1. Permitted uses: No permit shall be required

- a. To install a beach sand blanket provided the conditions of 6 MCAR § 1.5021 D. are met and the sand and/or gravel layer does not exceed six (6) inches in thickness, 50 feet in width along the shoreline, or one-half the width of the lot, whichever is less, and does not extend more than ten (10) feet waterward of the ordinary high water mark, provided local watershed district and county local zoning officials are given at least seven (7) days notice by the landowner.
- b. For one additional installation of a sand or gravel layer subsequent to an initial installation at the same location and not exceeding the same amounts and dimensions allowed under a.

2. Permits: A permit shall be required for any other beach sand blanket and shall be granted provided the conditions of 6 MCAR § 1.5021 D. are met.

### C. Riprap shore protection.

1. General standards: The protection of shoreline from continued erosion by placement of natural rock riprap along the shore shall be permitted provided the following general standards and the conditions of 6 MCAR § 1.5021 D. are met:
  - a. The riprap materials are of sufficient size, quality, and thickness to withstand ice and wave action. The riprap

shall be placed with a minimum amount of space between the larger materials and the space between them shall be filled with firmly seated smaller rocks or gabion baskets to procure a uniform surface.

~~b. The site soils are capable of supporting riprap and a filter consisting of well-graded gravel, crushed gravel, crushed stone, or fabric is installed to prevent undercutting of the riprap.~~

~~e. The encroachment into the water is the minimum amount necessary to provide protection and does not unduly interfere with the flow of water.~~

~~2. Permitted uses: c. To install riprap shore protection, except along the shores of Lake Superior and officially designated trout streams, no permit shall be required where provided the riprap materials consist of natural rock having an average size of 12 inches or larger in its smallest dimension, and conform with the natural alignment of the shoreline, with a minimum finished slope not steeper than 3:1 horizontal:vertical, and no materials are placed more than five (5) feet waterward of the ordinary high water mark, and the material does not obstruct the flow of water.~~

~~3. Permits: A permit shall be required for any other riprap shore protection and shall be granted provided the conditions of 6 MCAR § 1.5021 C.1. and 6 MCAR § 1.5021 D. are met.~~

~~d. To place fill in a protected watercourse having a total drainage area, at its mouth, of five square miles or less, provided that the watercourse is not an officially designated trout stream and the placement of fill shall not result in:~~

~~(1) any diversions of water from the drainage area:~~

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

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

~~4. Permits shall be required for the placement of fill in protected waters, except as provided under 2. and 3., and shall meet all of the following requirements:~~

~~D. Other filling. A permit shall be required for all other filling and shall be granted provided:~~

~~1. The project is not unduly detrimental to the public purposes listed in Minnesota Statutes, section 105.37, subdivision 6; a. The project will involve a minimum of encroachment, change, or damage to the environment, including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention. Filling of posted fish spawning areas is prohibited.~~

~~2. b. The fill consists of clean inorganic material that is free of pollutants and nutrients.~~

~~3. c. The existence of a stable, supporting foundation is established by appropriate means, including soil boring data where deemed necessary by the commissioner.~~

~~4. d. Where erosion protection is deemed necessary by the commissioner, the site conditions and fill material are capable of being stabilized by an approved erosion control method (such as riprap, retaining wall, etc.) or other method which is consistent with existing land uses on the affected public protected water.~~

~~e. The proposed project must represent the minimal impact solution to a specific need with respect to all other reasonable alternatives.~~

~~f. The size, shape, depths, shoreline, and bottom character and topography, and susceptibility of the beds of protected waters to actions of wind, waves, and currents are such that the fill will be stable.~~

~~g. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.~~

~~h. The proposed filling must be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.~~

~~i. The proposed filling must be consistent with water and related land management plans and programs of local and regional governments provided such plans and programs are consistent with state plans and programs.~~

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C. Specific standards. In addition to compliance with the general standards in B. specific requirements for certain activities shall be met as follows:

1. Riprap shore protection. The protection of shoreline from continued erosion by placement of natural rock riprap along the shore shall be permitted provided:

a. The riprap materials are of sufficient size, quality, and thickness to withstand ice and wave action. The riprap shall be placed with a minimum amount of space between the larger materials and the space between them shall be filled with firmly seated smaller rocks or bagion baskets to procure a uniform surface.

b. The site soils are capable of supporting riprap and a filter consisting of well-graded gravel, crushed stone, or fabric is installed to prevent undercutting of the riprap.

c. The encroachment into the water is the minimum amount necessary to provide protection and does not unduly interfere with the flow of water.

2. Navigational access.

a. Filling to gain navigational access to waters shall be permitted only where access to navigable depths cannot be reasonably attained by utilizing a dock, the excavation of an offshore access channel, or other alternatives which would result in less environmental impact.

b. Fill for navigational access shall not extend beyond the edge of open water, shall not exceed side slopes greater than 2:1 horizontal:vertical, shall not exceed a maximum width of 15 feet at the base of the fill, and shall not extend to a water depth greater than four feet.

3. Shoreline lost by erosion. Applications for filling to recover shoreland lost by erosion or other natural forces shall be permitted only where:

a. The loss of shoreline is a threat to health and safety through the impending loss or damage to existing shoreline developments.

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

c. The requirements of a. and b. shall not preclude the issuance of permits to place riprap materials or use other structural means for protection of the shoreline to prevent continuous erosion.

4. Filling necessary for port development or improvement shall be allowed only on those waters which are under the jurisdiction of established port authorities subject to the following:

a. no filling shall be allowed to extend beyond the limits of federally established harbor lines, or where no harbor line has been established, beyond the maximum distance waterward which could be attained without obstructing navigational use of the waters;

b. the proposed development must be part of a comprehensive port development plan which has been approved by the commissioner; and

c. adverse effects of the proposed filling on the physical and biological character of the area shall be subject to mitigation measures approved by the commissioner.

5. Filling to restore or improve fish and wildlife habitat, except for filling in designated trout streams, shall be permitted provided:

a. plans are submitted showing the nature and degree of habitat to be benefited; and

b. the project will not create other adverse effects such as flooding, erosion, sedimentation, or navigational obstructions.

6. Filling in trout streams officially designated by the commissioner shall be allowed only if:

a. the amount, method of placement, and location of the fill will not result in increased water temperatures, excessive sedimentation in the stream, or destruction of fish habitat; and



b. there is no other feasible or practical alternative other than filling.

7. Filling for other purposes not specifically listed shall be subject to the general standards in B. and submission of information to show that:

a. the intended purpose of the fill is reasonable with respect to all other alternatives and there are no feasible and practical means to attain the intended purpose without filling; and

b. the proposal will adequately protect public safety and promote the public welfare.

D. Relationship to standards and criteria for other activities involving changes in course, current, or cross-section. Unless otherwise specified in other rules, the provisions of this rule shall apply to filling proposed as part of any other activity or activities including but not limited to: Excavations 6 MCAR § 1.5022, Structures 6 MCAR § 1.5023, Water level controls 6 MCAR § 1.5024, Bridges and culverts 6 MCAR § 1.5025, Drainage of protected waters 6 MCAR § 1.5026, and Alternations of protected waters for mining 6 MCAR § 1.5027.

**6 MCAR § 1.5022 Excavation of ~~public~~ protected waters.**

A. ~~Policy and general restrictions~~ Goals. It is the policy goal of the department to ~~discourage~~ limit the excavation of materials from the beds of ~~public~~ protected waters in order to:

1. Preserve the natural character of ~~public~~ protected waters and their shorelands, and maintain suitable aquatic habitat for fish and wildlife in order to minimize encroachment, change, or damage to the environment, particularly the ecosystem of the waters.

2. Regulate the nature, degree, and purpose of excavations so that excavations will be compatible with the capability of the waters to assimilate the excavation.

3. Control the deposition of materials excavated from protected waters and protect and preserve the waters and adjacent lands from sedimentation and other adverse physical and biological effects.

B. General standards.

1. Excavation as used in this rule includes any activity which results in the displacement or removal of bottom materials or the widening, deepening, straightening, realigning, or extending of protected waters. It may involve proposals for excavations landward or waterward from the ordinary high water mark.

2. Excavation shall not be permitted provided the conditions of 6 MCAR § 1.5022 B., C., and D. are met, except in the following cases:

~~1-~~ a. where it is intended to gain access to navigable water depths when such access can be reasonably attained by utilizing a temporary or permanent dock; alternative means which would result in less environmental impact;

~~2-~~ b. where inland excavation is intended solely to extend riparian rights to nonriparian lands, or to promote the subdivision and development of nonriparian lands;

~~3-~~ c. where the proposed excavation will be detrimental to significant fish and wildlife habitat, or protected vegetation; and there are no feasible, practical, or ecologically acceptable means to mitigate the effects;

d. to control or eliminate vegetation for the development of beach areas;

e. where it is intended to provide fill materials for development purposes except as provided under 6 MCAR § 1.5027;

f. where the excavation would not provide an effective solution to a problem because of recurrent sedimentation and there are feasible and practical alternative solutions which do not require excavation;

g. unless the excavation project includes provisions for acceptable disposal of excavated materials as provided in these rules; or

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h. where the excavation would cause increased seepage of water which would lower the water level of protected waters and result in subsurface drainage.

3. No permit for excavation shall be required for the following activities unless prohibited in 2.

a. For excavations in a protected watercourse having a total drainage area, at its mouth, of five square miles or less, provided that the watercourse is not an officially designated trout stream and the excavation will not result in:

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

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

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

b. To remove debris such as trees, logs, stumps, and trash provided such removal does not alter the original alignment, slope, or cross-section of the waters.

c. For repair of a public drainage system lawfully established pursuant to Minnesota Statutes, chapters 106 and 112 consistent with the definition of "repair" set forth in Minnesota Statutes, section 106.471, subdivision 1.

### B. Dredging.

4. General standards: A permit 4. Permits shall be required for all dredging the excavation and removal of any materials from protected waters or any excavations extending into or out of protected waters, except as provided in 2. and 3., and shall be subject to the following general standards criteria:

a. The project must be adequate in relation to appropriate reasonable and practical based upon geologic and hydrologic factors conditions including but not limited to:

(1) quantity and quality of local drainage at the site;

(2) type of sediment/soil strata and underground formations in the vicinity;

(3) life expectancy of the dredging excavation with respect to bedload, long-shore drift, and siltation patterns in the project vicinity; and

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

b. The disposal of excavated materials shall be subject to the following requirements:

(1) The disposal of any excavated materials containing pollutants shall be subject to requirements of Minnesota Statutes, chapter 115.

(2) The most acceptable means of disposing of clean materials, free from pollutants, which are excavated from protected waters listed in order of preference are:

(a) Complete removal of excavated materials from the waters and disposal or reuse for other purposes outside of the floodplain.

b. Adequate and (b) Deposition in stable on-land spoil disposal sites located above the ordinary high water mark and outside of floodway districts must be available for containment of dredged spoils, and project plans must include established under local ordinance. Provisions must be included for sodding, seeding, or otherwise properly protecting stabilizing these spoils. Dredge spoils may be placed below the ordinary high water mark only when the department determines that one or more beneficial public purposes will be enhanced materials.

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

(d) Redeposition of excavated materials, consisting of inorganic materials free from pollutants, into protected waters shall only be permitted when it will result in improvement of natural conditions of protected waters for the public benefit and will not result in sedimentation, obstruction of navigation, or a loss of fish or wildlife habitat. Separate permit provisions shall be required for redeposition of excavated materials subject to the standards and criteria of B.

(e) Determination of the public benefit served by redeposition of excavated materials shall be based on the

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value to the public of redeposited materials in order to protect shorelines from the damaging effects of erosion due to winds and waves when there are no other feasible, practical, and ecologically acceptable means to protect the shoreline; or create or improve habitat areas for fish and wildlife; or mitigate or enhance the physical and biological environment within protected waters when mitigative or enhancement measures are required as a condition of a permitted activity within the waters involved and there are no other feasible, practical, and ecologically acceptable mitigative measures.

c. The proposed project must represent the "minimal impact" solution to a specific need with respect to all other reasonable alternatives ~~such as weed removal without dredging, beach sanding, excavation above the bed of public water, less extensive dredging in another area of the public water, or management of an alternate water body for the intended purpose.~~

d. The dredging excavation must be limited to the minimum dimensions necessary for achieving the desired purpose.

e. Where excavation is proposed ~~on~~ in a protected water body that is perched on an impervious stratum, soil borings must show that the proposed excavation will not rupture the impervious stratum.

~~2. Additional specific standards: The following categories of dredging projects shall be permitted, subject to the following specific restrictions:~~

f. The biological character of the waters and surrounding shorelines shall be affected to the minimum degree feasible and practical.

g. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

h. The water supply, navigational, and drainage characteristics of the waters shall be protected to ensure that the interests of the public and of private riparian landowners are not adversely affected by the proposed excavation.

i. The proposed excavation shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

j. The proposed excavation shall be consistent with plans and management programs of local and regional governments provided that such plans are consistent with state plans and programs.

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

C. Specific standards. In addition to compliance with the general standards in B. specific requirements shall be met for the following activities:

~~a.~~ 1. Excavations for beach development:

(1) a. The existing site conditions will not provide a suitable beach using a sand blanket alone.

(2) b. When the proposal includes the installation of a beach sand blanket the area to be ~~dredged~~ excavated shall be consistent with the ~~general dimensions authorized~~ criteria for beach sanding filling under 6 MCAR § 1.5021 B.

(3) c. The depth of dredging excavation needed to reach a suitable beach stratum shall ~~not~~ be excessive the minimum depth necessary considering anticipated site maintenance and ~~desired~~ reasonable water depths for a beach.

~~b. Public waters serving commercial or recreational navigation or access to existing boat harbors.~~

(1) ~~The dredging shall be confined to the recognized navigational channel(s) in the area of the length, width, and depth dimensions of the original boat harbor.~~

(2) ~~The channel or harbor shall not be maintained to a depth or width greater than the minimum necessary to allow reasonable navigational use by the anticipated watercraft.~~

~~e. Lake improvement:~~

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(1) The dredging shall be limited to the removal of accumulated sediment or rock debris where such materials constitute an impairment to the use of a common navigational corridor, impede reasonable access, or where it is intended to create open areas in aquatic vegetation to improve fish or wildlife habitat; or

(2) Large scale lake dredging shall be permitted where:

2. Excavations for improvement or enhancement of hydrologic and biologic conditions in all, or large portions of waterbasins.

a. A public need for the excavation has been established by local governmental resolution specifying the public interests to be improved or enhanced, except where the project is state sponsored.

(a) b. The proposed project is intended to achieve one or more of the following public purposes:

(i) (1) to improve navigation, swimming, and other recreational uses;

(ii) (2) to reduce winter fish-kill potential;

(iii) (3) sediment removal to eliminate a source of nutrients and/or contaminants.

(b) A public need for the dredging has been established by local governmental resolution specifying the public interests to be enhanced.

(c) c. The proposed dredging excavation is part of an overall lake restoration improvement or enhancement project based upon adequate background and field test data for which a comprehensive lake restoration plan is submitted at the time of application detailing all of the following:

(i) (1) Objectives to be accomplished, and an analysis of any alternative means considered to meet the objectives and the rationale for selecting excavation.

(ii) (2) Sufficient soil boring and bottom sampling data to evaluate sediment quality and bottom "seal" conditions. Where excavation is proposed on a water basin that is perched on an impervious stratum, soil borings must show that the proposed excavation will not rupture the impervious stratum.

(iii) Location of spoil disposal sites

(3) The methods, uses, and locations to be employed in excavating and disposing of excavated material consistent with the provisions of 6 MCAR § 1.5021.

(iv) (4) Existing water quality data and provision for future water quality monitoring of both lake water and return including any water returned to the waterbasin during the removal of excavated materials.

(v) (5) A timetable which indicates anticipated yearly dredging excavation areas and volumes of materials to be removed, plus the selected spoil disposal site(s) methods, uses, and deposition locations for any given dredging each excavation period.

(vi) (6) A detailed description of proposed dredging excavation and disposal equipment and discharge facilities, including, where applicable, the length of discharge pipe purchased or available for the project and the pumping characteristics of the dredging equipment.

C. Inland excavations connected to public waters.

1. General standards: A permit shall be required for all excavations which extend the cross-section of public waters landward of the ordinary high-water mark subject to the following restrictions:

a. The applicant must establish either of the following:

(1) Where a private inland boat slip or harbor is proposed, the applicant's entire shoreline shall be subject to wind and wave conditions of a magnitude occurring with an expected average frequency of at least once each year or possess lakebed conditions which would preclude the use of a temporary or permanent dock; or

(2) Where a commercial or public marina or harbor is proposed, there shall be adequate existing demand in the area to support an inland marina or harbor without creating user conflicts.

b. The facility shall be adequate in relation to appropriate engineering factors including but not limited to:

(1) Adequate entrance openings;

(2) Ample turning radius;

(3) Adequate depth and size for the anticipated watercraft usage;

- (4) Adequate reduction of wave heights in mooring areas;
- (5) Proper harbor shape to reduce wave resonance;
- (6) Need for and feasibility of maintenance dredging;
- (7) Adequate height of perimeter wall;
- (8) Need for wave absorbers within the harbor;
- (9) Bank stabilization by an appropriate erosion control measure; and
- (10) Location of the mooring area of the harbor at an adequate distance from the shoreline for wave protection and to prevent breakthrough.

e. The development plan shall be adequate in relation to appropriate geologic and hydrologic factors including but not limited to:

- (1) Quantity and quality of stream flow and local drainage at the proposed project site;
- (2) Water stagnancy problems including the capability of being flushed or drained;
- (3) Interference with stream flow or longshore drift;
- (4) Type of soil strata and underground formations in the project vicinity; and
- (5) Protection of the water body itself in terms of reduced water supply, increased seepage or drainage, pollution, increased flooding, and other adverse hydrologic impacts.

3. Excavations for navigation related purposes.

a. Access channels from shorelines for recreational craft.

(1) Excavations for accesses from shorelines to reach navigable depths shall not be allowed if:

- (a) access could reasonably be obtained through use of a dock to reach navigable depths; and
- (b) prevalent wind, wave, and current conditions would not impair reasonable access to reach navigable depths.

(2) When shoreline conditions and wind, wave, and current conditions preclude access to navigable depths, excavations for navigational access shall be allowed provided the access channel shall not exceed four feet in depth, more than 15 feet in bottom width, and will not extend to an offshore water depth greater than four feet.

b. Other navigational channels:

(1) Excavations shall be limited to the minimum depth and width necessary to allow reasonable use of anticipated watercraft.

(2) Excavations to provide maintenance of navigational channel projects shall be limited to the length, width, and depth dimensions of the original channel.

4. Harbors and boat slips.

a. Excavations for development of offshore or inland harbors or boat slips for the mooring of more than 25 watercraft or watercraft larger than 20 feet in length shall be restricted to those waters which have the following characteristics:

- (1) waterbasins having areas of 1,000 acres or more;
- (2) watercourses which are used for commercial or industrial navigational purposes.

b. Excavations for development of offshore harbors serving fewer than 25 watercraft shall be limited to those water areas where the location of the proposed offshore harbor would not create unreasonable obstructions to public use and

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navigation on the water involved. Unreasonable obstructions include any development which would result in threats to public health, safety, or welfare.

c. Excavations for development of private inland harbors or boat slips serving fewer than 25 watercraft or watercraft less than 20 feet in length shall be limited to those waters where:

(1) Prevalent wind, wave, or current conditions along the shoreline where excavation is proposed are of a magnitude and frequency which precludes the use and maintenance of docks to moor watercraft. Determinations of magnitude and frequency which would inhibit use of docks shall be based on supporting facts including:

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

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

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

(2) The presence of lake bed and bank conditions would preclude the use and maintenance of docks and the conditions of the site and the number, type, or size of watercraft intended to be moored would preclude the development and use of on-land facilities, such as rollers, winch and track systems, sliderails, or other facilities which could be used to haul watercraft out of the water for on-land storage; or

(3) The proposed site is located in an area of the water body where offshore mooring or excavations or extensive dock development would create unreasonable obstructions to public use and navigation of the water body.

d. The width and length of boat slips shall not exceed 150 percent of the width and length of the anticipated watercraft and all authorized boat slips shall be oriented to maximize the degree of wave protection.

e. Excavations for development of inland harbors shall be limited to those waters described in C.4.c. and shall meet the following additional requirements:

(1) Requirements applicable to all commercial and industrial inland harbors:

~~d.~~ (a) The mooring area of the harbor shall be compactly shaped in order to minimize the surface area excavated in relation to the number of mooring spaces to be provided and shall be located at an adequate distance from the shoreline to provide wave protection and prevent breakthrough.

~~e.~~ (b) No branch or connecting channels shall be permitted extending laterally outward from authorized inland excavations.

~~f.~~ (c) If practical, a "dogleg" shall be incorporated in the approach channel located between the mooring area and the shoreline to minimize visual impact from the water body and promote wave dissipation.

~~g.~~ Suitable onland disposal shall be utilized for containment of excavated materials without erosion into public waters.

~~h.~~ Unless specifically prohibited, (d) The excavation shall not extend more than 200 feet inland from the public protected water unless evidence is provided to show that greater distances are required because of the dimensions of the watercraft to be moored.

(e) The methods, use, and deposition locations to be employed in disposing of excavated materials shall be consistent with the provisions of B.4.b.

(2) An application for a permit shall contain plans, maps, and supporting data including but not limited to proposed excavation site soil borings, ground water levels and characteristics, water quality, topography, drainage, and vegetation which shall substantiate that the proposed project must be reasonable and practical based upon geologic and hydrologic conditions including:

(a) quantity and quality of stream flow and local drainage at the proposed project site;

(b) water stagnancy problems including the capability of being flushed or drained;

(c) interference with stream flow or longshore drift;

- (d) type of soil strata and underground formations in the project vicinity;
- (e) protection of the water body itself in terms of reduced water supply, increased seepage or drainage, pollution, increased flooding, and other adverse hydrological impacts;
- (f) adequate entrance openings;
- (g) ample turning radius;
- (h) adequate depth and size for the anticipated watercraft usage;
- (i) adequate reduction of wave heights in mooring areas;
- (j) proper harbor shape to reduce wave resonance;
- (k) need for and feasibility of maintenance dredging;
- (l) adequate height of perimeter wall;
- (m) need for wave absorbers within the harbor; and
- (n) bank stabilization by appropriate erosion control measures.

2. **Additional specific requirements:** The following types of inland excavations shall be subject to the following specific restrictions:

- a. **Private riparian boat slips for inland mooring purposes:**
  - (1) ~~Watercraft size shall be sufficiently great that a temporary dock or other seasonal mooring structure cannot reasonably be utilized along the subject shoreline for mooring of the riparian owner's watercraft.~~
  - (2) ~~The width and length of the slip shall not exceed 150 percent of the width and length of the anticipated watercraft.~~
  - (3) Authorized boat slips shall be oriented to maximize the degree of wave protection Additional requirements applicable to specific types of harbors.
- b. (a) Private inland harbors serving ~~one~~ two or more single family residential riparian lots:

  - (1) ~~The harbor shall be appropriately sized to provide a single mooring space for each riparian lot served; and~~
  - (2) ~~If practical, the facility shall, if practical, be located along the mutual boundary of properties to be served.~~

- e. (b) Private inland harbors for proposed multi-family or cluster developments, ~~or for residential planned unit developments, or for resorts, campgrounds, or other commercial purposes:~~
  - (1) ~~The harbor shall be appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline to be served divided by the lot requirements of the local land use control authority;~~
  - (2) ~~The development plan shall be approved by the local governmental unit; and~~
  - (3) (2) The permit shall be of the title-registration type including a provision that the individual waterfront lots in the development have priority rights to the available mooring spaces thus obviating issuance of future permits for individual harbors for these lots; and
- d. ~~Inland harbors for private resorts, campgrounds, or similar enterprises:~~
  - (1) (3) The harbor shall be appropriately sized to accommodate, consistent with the number of watercraft to be served with the number of mooring spaces not to exceed one mooring space for each riparian unit served or each rental cabin or campsite unit plus a reasonable number of mooring spaces for consideration of use by transient watercraft; and.
  - (2) ~~The permit shall be of the title registration type to assure harbor maintenance and usage in the event of future property sale or subdivision.~~

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e- (c) Public inland harbor projects must be justified by:

- (1) a public need for the proposed inland harbor ~~shall be~~ established by local governmental resolution specifying public interests to be enhanced-;
- (2) the harbor shall be appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served-;
- (3) the harbor shall be available for use by the general public-; and
- (4) the harbor may extend more than 200 feet inland provided the plans minimize the total length by which the ~~public~~ protected water is proposed to be extended in keeping with the number of watercraft to be served and the topography.

f. Inland marinas:

- ~~(1) The marina may extend more than 200 feet inland from the public water, where appropriate deed covenants will preclude any future subdivision of the tract upon which the marina is located.~~
- ~~(2) The area shall be zoned specifically for such use or local government shall grant a land use permit.~~
- ~~(3) The plans shall minimize the width of the marina parallel to the shoreline consistent with the number of watercraft to be served and the site topography.~~
- ~~(4) The harbor shall be appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served.~~
- ~~(5) The permit shall be of the title registration type in the case of privately owned land to assure proper maintenance of the facility.~~

g- Private inland boat slips for access to on land boathouses:

- ~~(1) Under the circumstances of the proposed site, mechanical systems such as rollers, winch and track systems, sliderails, etc., which are normally used to hoist watercraft out of the water, must be impractical, and~~
- ~~(2) The slip shall be no more than 25 feet long and is not wider than 150 percent of the width of the anticipated watercraft.~~

D. Alterations of natural watercourses:

5. Excavations for fish and wildlife habitat improvement.

a. Excavation to restore or improve fish and wildlife habitat require:

- (1) plans showing the nature and degree of habitat to be benefited; and
- (2) information showing that the project will not create other adverse effects such as flooding, erosion, sedimentation, or navigational obstructions.

b. Excavations in trout streams officially designated by the commissioner shall be allowed only if:

- (1) the amount, method, and location of the excavation will not result in increased water temperatures, cause excessive sedimentation in the stream, or destruction of fish habitat; and
- (2) there is no other feasible or practical alternative other than excavation.

6. Excavations in protected watercourses.

~~4- General standards:~~ Except as noted in ~~6 MCAR § 1.5022 D.2. B.3.,~~ a permit shall be required for any ~~alteration of excavation in a natural~~ protected watercourse and shall be subject to the following specific requirements in addition to the general requirements of B.:

- a. The ~~altered~~ watercourse capacity shall be sufficient to adequately convey normal runoff.
- b. The ~~altered~~ watercourse bottom gradients shall be such that normal low flow velocities are nonerosive and the sideslopes shall be graded such that bank slumping is not a hazard. Where excavation will result in excessive bank erosion, energy dissipation structures, channel and bank protection, or other engineering measures shall be required.
- c. The outlet shall be adequate in that it:
  - (1) sufficiently conveys the discharge waters from the area proposed for ~~alterations-~~ excavation;
  - (2) does not produce substantial increases in downstream overbank flooding-; and



(3) does not produce downstream erosion hazards as a result of the watercourse ~~alterations~~ excavation.

d. ~~To protect the altered~~ When projects involve widening or straightening which alters the watercourse banks, all sideslopes which contribute direct surface runoff into the authorized altered watercourse, and a strip of land along both sides of the watercourse, one rod wide or to the top of the spoil bank, whichever is the greater, shall be seeded and maintained in permanent grasses. No mowing of this grassed strip shall be allowed until after July 31 of each year.

e. ~~Class I and Class II public watercourses: Alterations of Class I and Class II public watercourses may be permitted, provided the proposed project will enhance at least one of the beneficial public purposes identified in Minnesota Statutes, section 105.37, subdivision 6, and does not cause undue detriment to all other beneficial public purposes presently served by the watercourse.~~

f. ~~Class III public watercourses: Where the county board of commissioners has not assumed administrative responsibility pursuant to Minnesota Statutes, section 105.42, subdivision 1a, alterations of Class III public watercourses shall be permitted upon demonstration that the project accomplishes a reasonable objective and that no feasible and prudent alternatives are available.~~

2. Exceptions:

a. No permit shall be required to remove debris such as trees, logs, stumps, and trash deposited by flood waters, provided such debris removal does not alter the original alignment, slope, or cross section of the channel.

b. No permit shall be required for the alteration of Class IV watercourses and of Class III watercourses where the county board of commissioners has assumed administrative responsibility pursuant to Minnesota Statutes, section 105.42, subdivision 1a, except in the following cases:

(1) Any activity which would require widening, deepening, or straightening of a Class I or II public watercourse as a result of the change in the Class IV or county administered Class III watercourse.

(2) Any diversion of water from a Class III or IV watercourse into a different watershed which is not a part of the same drainage basin.

(3) Any lowering of the streambed elevation which would result in an overfall of two feet or more in elevation of a channelization project when there is no provision for erosion control structures to prevent headward erosion.

(4) Construction of any dam 20 feet or more in structural height and/or impounding 50 acre feet or more of water at maximum storage capacity.

e. Pursuant to Minnesota Statutes, section 105.42, subdivision 1, no permit shall be required for chapter 106 drainage projects which do not substantially affect public waters.

The alignment and slope of the excavated channel shall be such as to provide a smooth transition between the existing and the excavated channel.

f. Disposal of excavated material from channel excavation shall be consistent with B.4., except where the original channel is allowed to be filled as part of the project.

g. No significant increase in flood damages will be permitted. Floodwater retardance structures may be required to minimize any increase in flood damage.

h. The applicant shall submit the names and addresses of landowners located immediately upstream, downstream, and adjacent to any proposed watercourse alteration resulting from excavation. In addition, the applicant shall submit the names and addresses of other landowners and occupants that the commissioner, after reviewing the plans for the proposed excavation, believes will have a substantial interest in the channel change or will be substantially affected by the watercourse alteration.

i. The preferred alternative to widening, deepening, or straightening a watercourse for control of flood waters is the construction of water impoundment structures in upstream areas. Where impoundments are infeasible, impractical, or would result in adverse effects on health and safety or greater adverse environmental effects, the preferred alternative is the construction of flood bypass channels to convey high velocity flood flows.

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(1) Excavations in protected watercourses for flood management purposes shall be allowed only where an upstream impoundment or a flood bypass channel is infeasible or impractical or excavation is the least damaging environmentally.

(2) Excavations for widening, deepening, or straightening portions of watercourses shall be based on flood management plans which provide details on the relationship of the proposed excavation to management of flood flows for the entire watercourse and shall be consistent with state standards and state approved local standards for floodplain management including maximum use of nonstructural measures where feasible and practical.

j. Excavations shall be limited to the minimum extent necessary to facilitate construction of the road crossing and shall include provisions for adequate riprap or other bank protection measures to protect altered banks from erosion.

k. Excavations for construction of sediment traps or settling basins to control sedimentation and water quality shall be based on plans approved by the Pollution Control Agency or the local soil and water conservation districts and shall be consistent with any state and local standards, regulations, and requirements.

l. Watercourse channel excavations to restore or improve fish and wildlife habitat shall require:

(1) plans showing the nature and degree of habitat to be benefited; and

(2) information showing that the project will not create other adverse effects such as flooding, erosion, sedimentation, or navigational obstructions.

m. Watercourse channel excavations in trout streams officially designated by the commissioner shall only be allowed if:

(1) the amount, method, and location of the channel excavation will not result in increased water temperatures, cause excessive sedimentation in the stream, or destruction of fish habitat; and

(2) there is no other feasible or practical alternative other than channel excavation.

n. The straightening or realignment of a watercourse with a total drainage area, at its mouth, greater than five square miles shall only be permitted where the project will not result in increased downstream flooding, erosion, or sedimentation. Where it is proposed to straighten or realign a watercourse with a total drainage area, at its mouth, greater than five square miles, the applicant may be required to submit appropriate hydraulic data. Such data may include, but are not limited to:

(1) contributing watershed above the project;

(2) data for the flood of record;

(3) maximum observed high water level;

(4) flow data, based on the best available technology as follows:

(a) existing and proposed time of concentration;

(b) existing and proposed stage downstream;

(c) existing and proposed mean velocity downstream;

(5) certification that the data was prepared by a registered professional engineer.

o. The alteration of watercourses by straightening or realigning channels to facilitate adjacent land use shall be allowed only if the applicant provides evidence:

(1) that the alteration is reasonable, practical, and will adequately protect public safety and welfare; and

(2) that the alteration will involve a minimum of encroachment, change, or damage to the environment, particularly to the ecological system of the waterway.

p. All other proposals for excavations in protected watercourses shall meet the general requirements of B. and the specific requirements of C.1.-5. and shall require submission of supporting evidence as provided in C.6.n. and o.

D. Relationship to standards and criteria for other activities involving changes in course, current, or cross-section. Unless otherwise specified in other rules the provisions of this rule shall apply to excavations proposed as part of any other activity or

activities including but not limited to: Filling 6 MCAR § 1.5021, Structures 6 MCAR § 1.5023, Water level controls 6 MCAR § 1.5024, Bridges and culverts 6 MCAR § 1.5025, Drainage of protected waters 6 MCAR § 1.5026, and Alterations of protected waters for mining 6 MCAR § 1.5027.

**6 MCAR § 1.5023 Structures in ~~public~~ protected waters.**

A. ~~Policy and general requirements~~ Goals. It is the policy goal of the department to ~~discourage~~ limit the waterward occupation of ~~the beds of public~~ protected waters by offshore navigational facilities, retaining walls, and other structures in order to:

1. preserve the natural character of public protected waters and their shorelands; and;
2. provide a balance between the protection and utilization of public protected waters; and to
3. encourage the removal of existing waterway obstructions structures which do not serve the public interest from the beds of public protected waters at the earliest practicable date.

**B. General standards.**

1. This rule applies to the placement, construction, reconstruction, repair, relocation, abandonment, or removal of any structure placed on or in protected waters.

~~1.~~ 2. Placement of structures in public waters shall not be permitted where the structure:

a. ~~Is intended to gain access to navigable water depths where such access can be reasonably attained by alternative means.~~

b. ~~Will obstruct navigation and/or~~ or create a water safety hazard.

e. b. Will be detrimental to significant fish and wildlife habitat, or protected vegetation. Construction is prohibited in posted fish spawning areas.

c. Is designed or intended to be used for human habitation or as a boathouse.

d. Is designed or intended to include walls, a roof, or sewage facilities.

3. No permit shall be required for the following activities, unless prohibited under 2.:

a. To construct, reconstruct, or install a seasonal dock or floating structure provided:

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

(2) the structure will not include fuel-handling facilities;

(3) the structure will allow the free flow of water beneath it; and

(4) the structure is not used or intended to be used as a marina.

2. ~~Except for docks and boat ramps, all new structures shall have a title registered permit (or public agency or local governmental unit accepts responsibility for future maintenance or removal).~~

**B. Permanent docks.**

~~1. Permitted uses: No permit shall be required b.~~ To construct or reconstruct a permanent dock on wood pilings ~~where the site is subject to unusual physical conditions which would preclude the use of a seasonal dock, and~~ or rock filled cribs on lakes provided:

(1) the dock is a single lineal structure with no appurtenances;

(2) only one dock is installed per riparian lot;

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(3) the dock will structure shall not exceed six feet in width nor exceed 50 feet in length, or extend to a depth greater than four (4) feet, whichever is less;

(4) the structure shall comply with the requirements of 3.a.(2), (3), and (4) above;

(5) for a permanent dock on wood pilings, the surface area of the lake is equal to or greater than 500 acres;

(6) for a permanent dock on rock filled cribs, the surface area of the lake is equal or greater than 2,500 acres; and

(7) structures using rock filled cribs shall only be placed where the lakebed is predominantly bedrock which is incapable of supporting wood pilings and shall utilize intermittently spaced cribs which allow unrestricted circulation of water beneath the dock.

c. To construct or reconstruct a boat launching ramp provided:

(1) Privately owned ramps shall not exceed 12 feet in width, and extend more than ten feet beyond the ordinary high water mark or into water more than four feet in depth, whichever is less. Excavations five cubic yards or less, and placement of up to five cubic yards of crushed rock, gravel, clean sand, or small stone shall be allowed in order to provide a stable base or maintain use of the ramp.

(2) Publicly owned ramps shall not exceed 24 feet in width and extend more than 20 feet waterward of the shoreline or into water more than four feet in depth, whichever is less. Excavations of 60 cubic yards or less, and placement of up to 30 cubic yards or crushed rock, gravel, clean sand, or small stone shall be allowed in order to provide a stable base or maintain use of the ramp.

(3) The ramp shall be constructed of gravel, natural rock, concrete, steel matting, or other durable inorganic material not exceeding six inches in thickness.

d. Remove structures or other waterway obstructions provided:

(1) the original cross-section and bed conditions shall be restored insofar as practicable;

(2) the structure shall be completely removed including any footings or pilings which obstruct navigation;

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

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

4. Permits shall be required for the construction, reconstruction, repair, or relocation of any structure on or in protected waters, except as provided under B.2. and 3. above, and shall meet the following general criteria:

a. The proposed project must represent the minimal impact solution to a specific need with respect to all other reasonable alternatives.

b. The project will involve a minimum of encroachment, change, or damage to the environment, including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention.

c. The proposed structure shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

d. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

e. The proposed structure shall be consistent with water and related land management plans and programs of local and regional governments, provided these plans and programs are consistent with state plans and programs.

f. Except for docks and boat ramps, all new structures shall have a title-registered permit, unless a public agency or local governmental unit accepts responsibility for future maintenance or removal.

C. Specific standards. In addition to compliance with the general standards in B., specific requirements shall apply to the following activities:

2- Permit: 1. Docks. Except as provided in B.2.b., a permit shall be required for the construction or reconstruction of any other permanent dock and shall be granted provided:

a. Similarly situated ~~permanent~~ docks in the vicinity have not experienced maintenance difficulty ~~or~~ and the use of a seasonal dock is precluded because:

(1) long fetches would subject seasonal docks to damaging storm wave conditions;

(2) bottom conditions such as bedrock or an extremely gradual offshore slope would preclude the use of seasonal dock stringers; or

(3) the number of public and private users (~~private and/or public~~) are is so great the seasonal docking equipment would not provide adequate stability.

b. Piling docks shall be ~~used~~ preferred in all cases unless the depth to bedrock is too shallow to allow the driving of piles, in which case rock crib docks may be authorized.

c. The docks shall extend ~~lakeward~~ waterward only to a navigable depth, ~~(generally considered to be no greater than four (4) feet).~~

d. The dock shall not exceed six feet in width.

~~C. 2. Wharves.~~

~~1. a.~~ A permit shall be required for the construction or reconstruction of all wharves. The following order of preference for construction types shall be utilized:

~~a. (1) bulkheaded shoreline;~~

~~b. (2) inland slip with bulkheaded sidewalls;~~

~~c. (3) wharf projecting into public protected waters.~~

~~2. Permit:~~ b. Wharves shall be permitted provided the structure:

~~a. (1) is the only reasonable alternative for loading or unloading a specific cargo;~~ part of a designated port facility;

~~b. (2) is consistent with local land use controls, plans and ordinances;~~

~~c. (3) does not extend further waterward than any existing wharves in the area or beyond any established harbor line, whichever is less;~~

~~d. (4) size is the minimum practicable and the purpose is not to increase the amount of land available for waterfront development; and~~

~~e. Plans prohibit buildings or shelters on the deck, other than superstructures needed for cargo handling;~~

~~f. (5) is not an obstruction to flood flows or longshore drift and is adequately designed to resist the natural forces of ice, wind, and wave.~~

~~D. Offshore breakwaters, harbors, and marinas.~~

~~1. General standards:~~ 3. A permit shall be required for the construction or reconstruction of all offshore breakwaters, harbors, and marinas ~~consistent with the requirements of 6 MCAR § 1.5023 A.~~ Such These structures shall be permitted provided the following general conditions and the additional listed specific conditions are met:

a. Alternative dock or inland facilities are infeasible.

b. The facility shall be adequate in relation to appropriate engineering factors including but not limited to: those listed in 6 MCAR § 1.5022 C.4.e.(2)(f)-(m).

~~(1) Adequate entrance openings;~~

~~(2) Ample turning radius;~~

~~(3) Adequate depth and size for the anticipated watercraft usage;~~

~~(4) Adequate reduction of wave heights in mooring areas;~~

~~(5) Proper harbor shape to reduce wave resonance;~~

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- (6) Necessity for and feasibility of maintenance dredging;
- (7) Adequate breakwater foundation conditions;
- (8) Need for wave absorbers within the harbor;
- (9) Adequate structural strength to withstand the pressures of wind, wave, and ice;
- (10) Proper orientation of breakwaters to achieve maximum wave attenuation, without causing additional sedimentation or erosion problems; and
- (11) Proper materials selection and placement preclude transmission of wave energy into mooring areas while adequately resisting erosive forces.

c. The plan shall be adequate in relation to appropriate geologic and hydrologic factors including but not limited to: those listed in 6 MCAR § 1.5022 C.4.e.(2)(a)-(e).

- (1) Quantity and quality of streamflow and local drainage at the proposed project site;
- (2) Water stagnancy problems including the capability of being flushed or drained;
- (3) Interference with streamflow or longshore drift;
- (4) Type of soil strata and underground formations in the project vicinity; and
- (5) Protection of the water body itself in terms of reduced water supply, increased seepage or drainage, pollution, increased flooding, and other hydrologic impacts.

d. The size and shape shall be designed in a compact fashion so as to blend in with the surrounding shoreline while minimizing the surface area occupied in relation to the number of watercraft to be served.

e. The breakwaters shall not exceed the minimum thickness necessary to withstand the anticipated forces consistent with maintenance requirements and shall be faced with an adequate layer of natural rock riprap of appropriate size and gradation.

2. ~~Additional specific conditions:~~ f. The following types of offshore structures shall be permitted, subject to the listed specific conditions:

a. (1) Private offshore ~~harbors~~ structures serving several contiguous riparian lots; provided:

- (1) (a) The site shall meet the standards of ~~6 MCAR § 1.5023 A. and B. C.1.~~ for a permanent dock.
- (2) (b) The breakwater structure shall minimize encroachment waterward of the ordinary high water mark.
- (3) (c) The total length of the breakwater structure shall be appropriately sized to provide a single mooring space for each riparian lot served.

b. (2) Private offshore ~~harbors~~ structures for proposed multi-family or cluster or residential planned unit developments; provided:

- (1) (a) The breakwater structure shall minimize encroachment waterward of the ordinary high water mark and its total length shall be appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline to be served divided by the lot frontage requirements of the local land use control authority.
- (2) (b) The development plan shall be approved by the local land use control authority.

c. (3) Private offshore ~~harbors~~ structures for resorts, campgrounds, or similar enterprises; provided:

- (1) (a) The breakwater structure shall minimize encroachment waterward of the ordinary high water mark and its total length shall be appropriately sized to provide one mooring space for each rental cabin or campsite unit plus a reasonable number of mooring spaces for transient watercraft.
- (2) (b) The development plan shall be approved by the local land use control authority.

d. (4) Public offshore ~~harbor~~ structure projects; provided:

- (1) (a) A local unit of government shall pass a resolution which specifies the public interests to be benefited by the proposal.
- (2) (b) The harbor structure shall be appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served.
- (3) (c) The harbor structure shall be available for use by the general public.

(4) (d) The development plans shall minimize the waterward encroachment of the facilities.

e. (5) Offshore marinas; provided:

(1) (a) The area shall be zoned for such use or local government shall grant a land use permit.

(2) (b) The proposed marina shall minimize encroachment waterward of the ordinary high water mark.

(3) (c) The marina shall be sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served.

**E. Retaining walls.**

1. ~~General standards:~~ 4. A permit shall be required for the construction or reconstruction of all retaining walls ~~which should~~ and erosion and sedimentation control structures that do not impound water. The construction of retaining walls shall be discouraged because their appearance is generally not consistent with the natural environment and their construction and maintenance cost is generally greater than riprap.

2. ~~Permit:~~ The issuance of permits shall be contingent on ~~all of~~ the following conditions:

a. Existing or expected erosion problems shall preclude the use of riprap shore protection, or there shall be a demonstrated need for direct shoreland docking; or

b. Design shall be consistent with existing uses in the area. Examples are: riverfront ~~commercial/industrial~~ commercial-industrial areas having existing structures of this nature, dense residential shoreland areas where similar retaining walls are common, resorts where floating docks may be attached to such a bulkhead, or where barges are utilized to transport equipment and supplies; and

c. Adequate engineering studies shall be performed of foundation conditions, tiebacks, internal drainage, construction materials, and protection against flanking; and

d. The facility shall not be an aesthetic intrusion upon the area and is consistent with all applicable local, state, and federal management plans and programs for the water body; and

e. Encroachment below the ordinary high water mark shall be held to the absolute minimum necessary for construction.

**F. Other waterway obstructions.** A permit shall be required for the construction, reconstruction, relocation, removal, and abandonment of all other offshore structures, cables other than utility crossings, pilings, or other facilities not covered by specific regulations:

1. ~~Repair:~~ Permits for structural repair or modification (not including minor maintenance work such as reroofing, painting, etc.) of structures shall be issued provided all of the following conditions are met:

a. Applicant shall demonstrate a need for such work.

b. Cost shall not exceed 50 percent of assessed value.

c. The degree of permanence of the structure shall not be materially increased by virtue of constructing a new foundation, replacing the majority of the structure above the foundation, etc.

d. The structure being repaired shall not be in violation of local land use or sanitary regulations.

e. Degree of obstruction or structure size shall not be increased.

2. ~~New structures:~~ Permits for new publicly sponsored or relocation of existing structures shall be issued where:

a. Public need is documented and outweighs adverse environmental impact.

b. The site is adequately protected from the forces of ice and wave pressures.

c. The proposed construction is of sound design and is not unnecessarily obtrusive or visually incompatible with the natural surroundings.

d. A governmental agency or local governmental unit accepts responsibility for future maintenance of the structure or its removal.

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### C. Boat launching ramps.

~~1. Permitted uses:~~ No permit shall be required to construct a boat launching ramp provided:

- ~~a. The site is capable of supporting a ramp without the use of pilings, dredging, or other special site preparation.~~
- ~~b. The ramp shall not exceed 12 feet in width, and extend more than ten (10) feet beyond the ordinary high water mark or into water more than four (4) feet in depth, whichever is less.~~
- ~~c. The ramp shall be constructed of gravel, natural rock, concrete, steel matting, or other durable nonorganic material not exceeding six (6) inches in thickness.~~

~~2. Permit:~~ 5. A permit shall be ~~granted~~ required for the construction or reconstruction of any ~~other~~ boat launching ramp not covered under B.3.c., and shall be granted provided:

- a. the applicant shall demonstrate a need for a launching facility;
- b. the proposed ramp shall be of the minimum dimensions necessary for launching of watercraft;
- c. the proposed ramp shall not obstruct flowing water; and
- d. construction shall not necessitate alteration of shoreland which could result in substantial erosion and sedimentation.

6. A permit shall be required for the construction, reconstruction, relocation, removal, repair, and abandonment of all other offshore structures, cables other than utility crossings, pilings, or other facilities not covered by specific regulations:

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

- (1) the applicant demonstrates a need for the work;
- (2) the cost of the work will not exceed 50 percent of the replacement cost of the structure;
- (3) the degree of permanence of the structure will not be materially increased by virtue of constructing a new foundation or replacing the majority of the structure above the foundation;
- (4) the structure being repaired has appropriate permits from the local land use or sanitary authority;
- (5) the degree of obstruction or structure size is not increased.

b. Permits for construction, relocation, or reconstruction of publicly-owned structures shall be issued where:

- (1) public need is documented and outweighs adverse environmental impact;
- (2) the site is adequately protected from the forces of ice and wave pressures; and
- (3) the proposed construction is of sound design and is not necessarily obtrusive or visually incompatible with the natural surroundings.

c. The construction, relocation, or reconstruction of privately-owned structures shall be permitted only when a governmental agency or local governmental unit accepts responsibility for future maintenance of the structure or its removal.

~~H. Removal or abandonment.~~ 7. Where the commissioner has determined that a structure is no longer functional, constitutes a public nuisance or a hazard to navigation, or poses a threat to public health or safety, the structure shall be removed from protected waters under the applicable provisions of these rules. Except as provided under B.3.d., a permit is required for the removal or abandonment of all existing waterway obstructions including boathouses, bridges, culverts, pilings, piers, and docks. However, when such work is to be accomplished by simple hand tool methods, the requirement for a permit may be waived. Permits shall be issued provided:

- ~~1. a.~~ the original cross-section and bed conditions shall will be restored insofar as practicable;
- ~~2. The structure shall be completely removed including any footings or pilings which obstruct navigation.~~
- ~~3. b.~~ adequate provisions shall be are made to mitigate any side effects resulting from removal, such as restoration of wave or current forces; and
- c. no portion of the structure remains which would obstruct or impair navigation, interfere with the passage of flood waters, or contribute to erosion and sedimentation.

D. Relationship to standards and criteria for other activities involving changes in course, current, or cross-section.



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Unless otherwise specified in other rules, the provisions of this rule shall apply to structures proposed as part of any other activity or activities including but not limited to: Filling 6 MCAR § 1.5021, Excavations 6 MCAR § 1.5022, Water level controls 6 MCAR § 1.5024, Bridges and culverts 6 MCAR § 1.5025, Drainage of protected waters 6 MCAR § 1.5026, and Alterations of protected waters for mining 6 MCAR § 1.5027.

### 6 MCAR § 1.5024 Water level controls ~~and dam construction or reconstruction.~~

A. Policy Goals. It is the ~~policy goal~~ policy goal of the department to manage ~~lake resources~~ protected waters in order to:

1. maintain natural flow and natural water level conditions to the maximum feasible extent ~~and to~~;
2. encourage the construction of small upstream retarding ~~dams or~~ structures for the conservation of water in natural water basins and watercourses, consistent with any overall plans for the affected watershed area. ~~The department shall oppose;~~ and
3. limit the artificial manipulation of water levels except where the balance of affected public interests clearly warrants the establishment of appropriate controls and it is not proposed solely to satisfy private interests.

### B. General standards.

1. Scope. The construction, repair, reconstruction, or abandonment of any structure intended to impound, divert, or control the level or flow of protected waters shall be subject to the provisions of this rule.

2. Construction or reconstruction of water level control facilities shall not be allowed where it is intended to manipulate water levels solely to satisfy private interests.

3. No permit shall be required to construct, reconstruct, or abandon a water level control structure on protected watercourses with a contributing watershed of 300 acres or less, except on officially designated trout streams, provided the structure does not qualify as a dam under the rules for dam safety.

4. Permits shall be required for the construction, repair, reconstruction, or abandonment of any water level control structure except as provided in 2. and 3., and shall meet the following general criteria:

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

b. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

c. The proposed project shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

d. The proposed project shall be consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs.

e. The construction or reconstruction shall comply with the requirements of 6 MCAR §§ 1.5030-1.5034 with respect to dam safety for the protection of human life and property.

f. The construction or reconstruction of ~~dams~~ water level control structures or changing the level of an existing structure may be permitted to:

- ~~1-~~ (1) control and store flood waters;
- ~~2-~~ (2) maintain low flows- for instream flow or water level protection;
- ~~3-~~ (3) manage water quality, including the prevention and/or control of erosion and sedimentation;
- ~~4-~~ (4) improve water-based recreation;
- ~~5-~~ (5) create, improve, and maintain water supplies;

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- 6- (6) create, improve, or maintain aquatic habitat for fish and wildlife species;
- (7) establish, improve, or maintain the generation of hydroelectric power.

5. The commissioner shall require the owner or operator of any water level control structure, reservoir, or waterway obstruction within protected waters, constructed before a permit was required by law, to secure approval from the commissioner of the manner by which the structure is to be operated and maintained whenever the commissioner finds that such operation and maintenance approval is necessary in the public interest after there is either:

a. verified and supported complaints by the public or governmental agencies that the existing or proposed operation and maintenance is or would be detrimental to public health, safety, and welfare or environmental protection with respect to problems of flooding, instream flows, water quality, fish and wildlife, or violations of land use regulations, requirements, and standards for lands abutting the protected waters involved; or

b. notification to the commissioner by the owner or operator of the intent to make any of the following changes in the operation or maintenance of the structure:

(1) proposed new uses or reuse of the structure for any purpose after the use of the structure has been discontinued for at least one year; or

(2) proposed changes or alterations in the operation of the structure which would affect water levels, flows, or water quality in protected waters.

6. The owner or operator of any water level control structure, reservoir, or waterway obstruction within protected waters, constructed before a permit was required by law, shall comply with the following provisions when notified by the commissioner that approval is required for operation and maintenance of the structure:

a. The owner or operator shall submit plans, specifications, and information on the structure including:

(1) An explanation of the purposes for which the structure is operated or intended to be operated.

(2) Available data on the past history of use and operation of the structure and any evidence of easements or other rights which exist or would be obtained.

(3) Engineering details on the structural features and characteristics of the structure which involve the existing or proposed operation of the structure including but not limited to any gates, sluiceways, penstocks, turbines, waterwheels, or other mechanical devices employed or to be employed in the operation of the structure.

(4) Available information on the hydraulic and hydrologic characteristics of the structure and the area upstream and downstream of the structure which is affected by the structure including any available information on flows, water levels, and water quality.

(5) Available information on the physical condition of the structure including engineering data on original construction, any reconstruction or repairs and the dates of original construction and subsequent reconstruction or repairs.

(6) If the structure contains features or is intended to contain features which allow or would allow manipulations of water levels, details shall be provided on the methods, frequency, time, duration of operation, and any existing or proposed operating plans.

(7) Such other available or attainable information on hydraulic, hydrologic, or geologic characteristics as the commissioner may deem necessary in order to assess the impacts or effects of the structure and its operation.

b. After receipt of all supporting facts and available information required by 5. and 6.a., the commissioner shall review the existing or proposed operational and maintenance aspects of the structure and shall grant approval of the operation and maintenance provided that:

(1) The operation and maintenance does not or will not result in destruction or significant impairment of the protected waters with respect to:

(a) the ecosystem of the protected waters including quantity and quality effects;

(b) potential threats to life or property due to flooding and overflow of upstream and downstream lands unless allowed by easement or other legal means including acquisition of flooded property;

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(c) maintenance of adequate water flows and levels for upstream and downstream higher priority users particularly for public domestic water supplies.

(2) The existing or proposed operation and maintenance is or will be consistent with applicable state and local land use standards, regulations, and requirements including floodplain, shoreland, and wild and scenic rivers management standards and ordinances.

(3) The existing or proposed operation and maintenance does not or will not result in significant decreased public use of the surface of the protected waters affected by the structure including existing uses for fishing, hunting, or navigation.

(4) The existing or proposed operation and maintenance will comply, when applicable, with the requirements of 6 MCAR §§ 1.5030-1.5034 relating to dam safety.

c. If the commissioner determines that the existing or proposed operation and maintenance will be detrimental to public health, safety, and welfare or the ecosystem of the protected waters based on provisions of 6.b., the commissioner shall not approve the manner of operation and maintenance of the structure until the operation and maintenance is modified to meet the provisions.

C. Specific standards. In addition to the general standards in B., specific requirements for water level control structures shall be met as follows:

B. Permit requirements. A permit shall be required for the construction, reconstruction, and abandonment of a dam or changing the level of an existing structure for the following projects:

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

a. The ordinary high water mark and runout elevation of the water body have been determined by a detailed engineering survey, or by order of the commissioner following a public hearing;

b. The proposed facilities shall be "reasonably consistent with natural conditions":

(1) Where a functioning outlet existed in a state of nature or for a long period of time following lawful creation or alteration of an outlet by the activities of man or animals, or cataclysmic events, the proposed outlet is at essentially the same control elevation;

(2) Where no natural or artificial outlet exists and the lake is for all practical purposes "landlocked," the control elevation shall not be more than ~~4.5~~ 1-1/2 feet below the ordinary high water mark;

c. The project is sponsored by a local governmental unit which assumes responsibility for operation and future maintenance, except that title registration type permits may be issued where:

(1) the majority of the riparian owners sign the permit application;

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

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

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

d. Justification has been made of the need in terms of public and private interests and the available alternatives, including the impact on receiving waters and public uses thereof, through a detailed hydrologic study; and

e. A detailed plan is developed for operation and control including:

(1) manner and time of operation;

(2) frequency of maintenance;

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(3) appropriate monitoring ~~(of water levels, water quality, etc.)~~ and other factors;

(4) management of excess waters.

2. Fish and wildlife management proposals made pursuant to Minnesota Statutes, section 97.48, subdivision 11, or other appropriate authority shall be approved where:

a. The ~~public~~ protected water has been designated for wildlife management purposes.

b. There is a specific water level management plan for the lake basin.

c. Any drawdown of the lake is only temporary and the management plans include a permanent facility for restoration of water levels following such drawdowns.

d. Any alteration of a ~~natural~~ watercourse included in the plan is ~~minimal~~ and follows the requirements specified in 6 MCAR § 1.5022 ~~D~~ C.6.

e. Appropriate easements or fee title have been obtained ~~for the construction area and the lakeshore~~.

f. Specified management personnel are required to establish a lake level gauge and keep a record of water levels with a specified frequency during seasons of active water level manipulation and with a lesser frequency during all other open water seasons.

3. Plans for landlocked water basins less than 25 acres in surface area and contained completely within the municipal boundaries of a single city shall be approved where:

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

b. The city has a field survey made of the water basin after consultation with the department including but not limited to:

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

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

(3) groundwater elevations, if appropriate-;

(4) other information as requested by the department.

c. Control elevations and associated physical parameters are approved by the department and the city.

d. The city holds a public hearing on the proposal and provides a transcript of the proceedings to the department. Provision of a transcript may be waived by the department.

4. ~~Other dam construction or reconstruction:~~

~~a. Permitted uses: No permit shall be required to construct, reconstruct, or abandon a dam with a contributing watershed of 300 acres or less, provided:~~

~~(1) Structural height shall not exceed 20 feet.~~

~~(2) Storage capacity shall not exceed 50 acre feet.~~

~~(3) The land(s) occupied by the dam and its associated reservoir shall be in common ownership.~~

~~b. Permit: A permit shall be required. Permits for the construction, reconstruction, and abandonment of all other dams and water level control structures shall be issued provided:~~

~~(1) a. The need is established in terms of quantifiable benefits.~~

~~(2) New dams shall be adequate in relation to the following factors:~~

~~(a) The hydraulic capacity of the spillway(s) must be established by a competent technical study performed by a professional engineer or by a qualified engineer of the U.S. Soil Conservation Service or the U.S. Corps of Engineers and must be adequate:~~

~~(i) For the probable maximum flood, where failure may cause loss of human life and serious damage to homes, industrial and commercial buildings, important public utilities, main highways, or railroads;~~

~~(ii) For the standard project flood, in predominantly rural or agricultural areas where failure may damage isolated homes, main highways or minor railroads, or cause interruption of use or service of relatively important public utilities;~~

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(iii) For the regional flood, in rural or agricultural areas where failure may damage farm buildings, agricultural land, or township or county roads;

(iv) For such other floods as may be specified in the procedures of Federal agencies such as the Corps of Engineers or the Soil Conservation Service for analysis of a structure in its risk category; and

(v) The estimation of the magnitude of the design flood must include the anticipated effects of the development of the tributary watershed area expected over the project life and the assessment of the risks involved must be based upon anticipated development in the floodplain.

(b) The department may require preparation of an inundation map of the area which would be inundated in the event of dam failure for a structure with a height of 20 feet or more, or a maximum storage capacity of more than 50 acre feet. It shall be prepared by a professional engineer showing areas where human life would be endangered and areas subject to serious damage to homes, commercial and industrial buildings, public utilities, and transportation facilities. Where failure may endanger human life, the map shall include a feasibility report on floodplain evacuation, emergency warning systems, or other techniques to eliminate this risk factor.

(c) An emergency spillway is installed unless the hydraulic capacity of the principal spillway is increased to the capacity that would be required for the combination of principal and emergency spillways.

(d) A mechanism for drawing down the water surface to facilitate repairs and maintenance work is installed.

(e) The height of all portions of the dam and associated dikes or other facilities not designed to withstand overtopping must include appropriate freeboard above the maximum storage capacity for wind and wave conditions and to provide a safety factor.

(f) Earthen emergency spillways and the upstream and downstream faces of earthen dams must be adequately riprapped, sodded, or seeded to prevent erosion.

(g) The storage pool must provide adequate space to store sediment from upstream over the project life without detracting from the public purposes served.

(h) An adequate stilling basin or other means of controlling downstream erosion is installed.

(i) A stage discharge curve must be developed for the watercourse immediately below the dam to ascertain whether or not the dam capacity is reduced due to backwater effects.

(j) Information as to the extent, configuration, and capacity of the reservoir at various pool stages is provided.

(3) b. The structural design shall be done by a professional engineer or by a qualified engineer of the Soil Conservation Service or the Corps of Engineers and must include the following considerations:

(a) (1) gravity forces;

(b) (2) hydrostatic pressure;

(c) (3) uplift forces;

(d) (4) overturning moment;

(e) (5) resistance to sliding;

(f) (6) ice pressures;

(g) (7) earthquake forces;

(h) (8) slope stability including consolidation and pore pressures;

(i) (9) seepage collection or prevention;

(j) (10) foundation conditions including appropriate borings and determination of the strength of foundation materials;

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

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

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~~(m)~~ (13) adequacy of the cofferdam or diversion during construction, if any.

(4) c. Adequate assurances shall be made for future maintenance of new ~~dams~~ water level control structures:

~~(a)~~ (1) For ~~dams~~ 20 water level control structures 25 feet or more in structural height or having a maximum storage capacity of 50 acre-feet or more, permits will be issued only to governmental agencies, public utilities, or corporations having authority to construct and maintain such projects, except that a title-registration type permit may be issued to the owner or owners of the private property upon which the proposed ~~dam~~ water level control structure will be located if an authorized governmental sponsor assumes maintenance responsibility where the provisions of C.I.c. are met.

~~(b)~~ (2) For other ~~dams~~ water level control structures, title-registration permits may be issued to the owner or owners of the private property upon which the ~~dam~~ water level control structure will be located which shall run with the land and require breaching or removal if it ever falls into a state of disrepair or becomes unsafe.

~~(e)~~ (3) Periodic engineering inspections of authorized ~~dams~~ water level control structures may be made by the department or its designee.

D. Relationship to standards and criteria for other activities involving changes in course, current, or cross-section. Unless otherwise specified in other rules the provisions of this rule shall apply to water level control structures proposed as part of any other activity or activities including but not limited to: Filling 6 MCAR § 1.5021, Excavations 6 MCAR § 1.5022, Structures 6 MCAR § 1.5023, Bridges and culverts 6 MCAR § 1.5025, Drainage of protected waters 6 MCAR § 1.5026, and Alterations of protected waters for mining 6 MCAR § 1.5027.

6 MCAR § 1.5025 Bridges and culverts, ~~watermain and sewer crossings~~, intakes and outfalls.

A. Policy Goals. It is the policy goal of the department to allow crossings of public protected waters, including the construction of water intake and sewer outfall structures in public protected waters, only when less detrimental alternatives are unavailable or unreasonable, and where such facilities adequately protect public health, safety, and welfare.

### B. General standards.

1. Scope. The construction or reconstruction of any bridge, culvert, intake, outfall, or other crossing of protected waters shall be subject to the provisions of this rule. Abandonment or removal of all crossings and structures governed by this rule shall require a permit pursuant to 6 MCAR § 1.5023 C.7.

~~Such~~ 2. Crossings shall not be permitted where the project:

~~1-~~ a. Will obstruct navigation or create a water safety hazard.

~~2-~~ b. Will cause or contribute to significant increases in flood elevations and flood damages either upstream or downstream.

~~3-~~ c. Would involve extensive channelization above and beyond minor stream channel realignments to improve hydraulic ~~entrance/exit~~ entrance or exit conditions, except where a separate permit is obtained pursuant to 6 MCAR § 1.5022 ~~D- C.6.~~; or

~~4-~~ d. Will be detrimental to water quality, ~~and/or~~ or significant fish and wildlife habitat, or protected vegetation.

~~Abandonment or removal of all crossings and structures governed by this section shall require a permit pursuant to 6 MCAR § 1.5023 H.~~

### ~~B-~~ Bridge and culvert installations.

~~1-~~ Permitted uses: 3. No permit shall be required to construct a low water ford type crossing or place a temporary bridge over public the following types of crossings on protected waters provided all of the following conditions are met, unless prohibited in 2.:

a. To construct or reconstruct a bridge or culvert on a protected watercourse with a total drainage area, at its mouth, of five square miles or less, except on officially designated trout streams.

~~a-~~ b. To construct or reconstruct a low-water ford type crossings crossing provided that:

(1) the stream bed is capable of supporting the crossing without the use of pilings, culverts, dredging, or other special site preparation;

(2) the water depth does not exceed ~~2~~ two feet under normal summer flow conditions;

(3) the crossing conforms to the natural cross-section of the stream channel and does not reduce or restrict normal low-water flows;

(4) the original stream bank at the site does not exceed four ~~(4)~~ feet in height-;

(5) the crossing is constructed of gravel, natural rock, concrete, steel matting, or other durable inorganic material not exceeding one ~~(1)~~ foot in thickness-;

(6) the approach is graded to a finished slope not steeper than 5:1 horizontal:vertical, and all graded banks are seeded or mulched to prevent erosion and sedimentation-; and

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

~~b.~~ c. To construct or reconstruct a temporary ~~bridges~~ bridge provided that:

(1) The stream bank is capable of supporting the bridge without the use of foundations, pilings, culverts, excavation, or other special site preparation-;

(2) Nothing is placed in the bed of the stream-;

(3) The bridge is designed and constructed so that it can be removed for maintenance and flood damage prevention-;

(4) The bridge is firmly anchored at one end and so constructed as to swing away in order to allow flood waters to pass-;

(5) The lowest portion of the bridge shall be at least three ~~(3)~~ feet above ~~normal summer streamflow.~~ the ordinary high water mark on navigable streams; and

(6) The bridge is consistent with state and local rules and regulations for floodplain, shoreland, and wild, scenic, or recreational rivers management standards and ordinances.

d. To maintain the hydraulic adequacy of any storm sewer or agricultural drain tile outfall or ditch which has been functioning within the previous five years if such work does not alter the original course, current, or cross-section of the protected waters.

e. To install an agricultural drain tile outletting into protected waters provided:

(1) the bank is restored to original cross-section or contour; and

(2) no permanent structure is placed below the ordinary high water mark, except for the drain tile.

4. Permits shall be required for the construction or reconstruction of any bridge, culvert, intake, outfall, or other crossing of protected waters except as provided in 2. and 3. above, and shall meet the following general criteria:

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

b. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

c. The proposed crossing shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

d. The proposed crossing shall be consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs.

e. Crossings of protected waterbasins or wetlands shall be allowed only where there is no feasible and practical alternative which does not require filling, excavating, or the placement of a structure in protected waters.

C. Specific standards. In addition to the general standards in B., specific requirements for bridges, culverts, intakes, outfalls, and other crossings of protected waters shall be met as follows:

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~~2. Permit: A permit shall be required for 1. The construction, reconstruction, or relocation of all other bridges, culverts, or other crossings over public protected waters. Except as noted below in 6 MCAR § 1.5025 relating to sewer and watermain crossings, crossings shall be permitted provided all of the following criteria are met:~~

a. The hydraulic capacity of the structure must be established by a competent technical study. The sizing shall not be based solely on the size of existing upstream and downstream structures. If a state or federal floodplain information study exists for the area, or a U.S. Geological Survey gaging station is located nearby on the stream, the hydraulics of the proposed bridge/culvert design must be consistent with these data. ~~If acquisition of the study by the applicant would cause undue hardship and would be unreasonable under the circumstances,~~ The department may waive ~~the~~ this requirement if:

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

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

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

b. New crossings and replacements of existing crossings must comply with local floodplain management ordinances and with provisions of NR 87 (d) (1) (6 MCAR § 1.0087 (d) (1)).

(1) New crossings:

(a) No approach fill for a crossing can encroach upon a community designated floodway.

(b) Where a floodway has not been designated or where a floodplain management ordinance has not been adopted, increases in flood stage in the regional flood of up to ~~5~~ one-half of one foot shall be permitted if they will not materially increase flood damage potential. Additional increases may be permitted if:

(i) a field investigation and other available data indicate that no significant increase in flood damage potential would occur upstream or downstream-, and

(ii) any increases in flood stage are reflected in the floodplain boundaries and flood protection elevation adopted in the local floodplain management ordinance.

(2) Replacement of existing crossings:

(a) If the existing crossing has a swellhead of ~~0.5 feet~~ one-half of one foot or less for the regional flood, the replacement crossing shall comply with the provisions for new crossings (~~6 MCAR § 1.5025 B.2.b.(1)~~) in C.1.b.(1).

(b) If the existing crossing has a swellhead of more than ~~0.5 feet~~ one-half of one foot for the regional flood, stage increases up to the existing swellhead may be allowed provided field investigation and other available data indicate that no significant flood damage potential exists upstream from the crossing based on analysis of data submitted by the applicant. The swellhead for the replacement crossing may exceed the existing swellhead if it complies with the provisions for new crossings found in ~~(i) and (ii) of 6 MCAR § 1.5025 B.1.b.(1)(b)~~ C.1.b.(1) (b).

(3) The decks and approaches to bridges or culverts on major transportation routes and on roads that provide access to development at urban densities shall be no lower than two feet below the flood protection elevation as defined in NR 87 (e) (6 MCAR § 1.0087 (e) ) unless it can be shown that alternative routes or access can be provided during the regional flood.

c. The structure shall provide for game fish movement, unless the structure is intended to impede rough fish movement or the stream has negligible fisheries value.

d. The structure will not obstruct reasonable public navigation. For bridges over protected watercourses, three ~~(3)~~ feet above the calculated 50-year flood stage; ~~in keeping with Federal Highway Administration standards,~~ will ordinarily satisfy navigational clearance requirements. For bridges over protected waterbasins or wetlands, and all culverts, three ~~(3)~~ feet of clearance above the ordinary high water mark will ordinarily satisfy navigational requirements.

e. Any project proposed near an existing or proposed segment of the state trails system should be consistent therewith.

f. Footbridges and walkways:

(1) Over watercourses:

(a) ~~Should~~ Must be designed to cause negligible backwater effects during floods.

(b) ~~Should~~ Must be securely anchored or otherwise capable of withstanding the dynamic forces of flowing water, ice, and debris.

(c) Approaches ~~should~~ must not be raised above the adjacent floodplain lands.



(2) New walkways across any portion of a ~~lakebed~~ protected waters to provide private access to an island will be prohibited. Permits for reconstruction of existing walkways or for the construction of new walkways intended to provide public access will be issued only if:

- (a) The walkway provides the only existing access to the island.
- (b) There is existing development thereon.
- (c) The design will provide for any public navigational needs and is consistent with the natural surroundings.

~~C. Watermain and sewer crossings. A permit shall be required for the construction, reconstruction, or relocation of all watermain and sewer crossings. They shall be issued provided:~~

- ~~1. No site condition will cause frequent future disruption of the beds.~~
- ~~2. No alignment alternative is possible which would eliminate the crossing. The selection of an alignment shall consider the preservation of lakes, streams, wetlands, recreation lands, and other natural areas.~~
- ~~3. Minimum depth of cover is two feet.~~
- ~~4. Bed and banks must be restored as nearly as practicable to the original cross section, alignment, and grade.~~
- ~~5. Banks must be revegetated by seeding and/or sodding.~~
- ~~6. The project must be designed by a professional engineer.~~
- ~~7. Pipe and pipe bedding/support specifications for sanitary sewer and force main crossings shall be submitted to the department for approval. Construction plans and specifications shall be prepared by a professional engineer.~~

~~B. Intakes and outfalls.~~

~~1. Permitted uses: No permit shall be required to maintain the hydraulic adequacy of any storm sewer or agricultural drain tile outfall or ditch which has been functioning within the previous five (5) years if such work does not alter the original course, current, or cross section of the public waters.~~

~~2. Permit: A permit shall be required for The construction, reconstruction, or relocation of all other water intake and sewer outfall structures placed in public protected waters. ~~It shall be issued where~~ shall be permitted provided all of the following criteria are met:~~

- a. Adequate attention is given to methods of screening the structure from view as much as possible from the surface of the public protected water through the use of existing vegetation and/or new plantings.
- b. The project is not detrimental to public values including but not limited to fish and wildlife habitat, navigation, water supply, ~~and~~ water quality, or storm water retention.
- c. No site conditions will require frequent future disruption of the beds of public protected waters.
- d. Adequate precautions must be planned during and after construction to prevent silt, soil, and other suspended particles from being discharged into public protected waters.
- e. Adjacent to the intake structure, the banks and bed of the public protected water must be protected from erosion and scour by placement of suitable riprap shore protection.
- f. The banks must be revegetated by seeding and/or sodding.
- g. The structure must be designed by a professional engineer.
- h. Intake structures:
  - (1) ~~Dredging or~~ Excavation must be detailed in the application and on design plans.
  - (2) Where necessary, a water appropriation permit must be obtained from ~~DNR~~ the department prior to operation.
  - (3) An appropriate sized screen must be used to prevent fish intake.
- i. Outfall structure design shall:

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(1) Where necessary, incorporate a stilling-basin, surge-basin, energy dissipator, or other ~~device(s)~~ device or devices to minimize disturbance and erosion of natural shoreline and bed resulting from peak flows.

(2) Where feasible, utilize discharge to natural wetlands, natural or artificial stilling or sedimentation basins, or other devices for entrapment ~~(and possible future removal)~~ of sand, silt, debris, and organic matter.

(3) where feasible, maximize use of natural ~~and/or~~ or artificial ponding areas to provide water retention and storage for the reduction of peak flows into ~~public~~ protected waters.

D. Relationship to standards and criteria for other activities involving changes in course, current, or cross-section. Unless otherwise specified in other rules the provisions of this rule shall apply to bridges and culverts proposed as part of any other activity or activities including but not limited to: Filling 6 MCAR § 1.5021, Excavations, 6 MCAR § 1.5022, Structures 6 MCAR § 1.5023, Water level controls 6 MCAR § 1.5024, Drainage of protected waters 6 MCAR § 1.5026, and Alterations of protected waters for mining 6 MCAR § 1.5027.

### 6 MCAR § 1.5026 Drainage of protected waters.

A. Goals. It is the goal of the department to protect and preserve protected waterbasins and wetlands from damage or destruction by drainage.

#### B. General standards.

1. Scope. This rule relates to the partial drainage or temporary drawdown of protected waterbasins and wetlands for all purposes except mining of metallic or nonmetallic minerals which are subject to provisions of 6 MCAR § 1.5027.

2. Except as provided in Minnesota Statutes, section 105.391, subdivision 3, the permanent or total drainage of protected waterbasins and wetlands shall not be permitted.

3. A permit shall be required for the partial drainage or temporary drawdown of protected waterbasins and wetlands and shall be granted provided all of the following conditions are met:

a. The proposed project is intended to achieve one or more of the following purposes:

(1) improve navigational or recreational uses;

(2) improve or restore fish or wildlife habitat;

(3) expose sediment in order to remove or eliminate nutrients or contaminants;

(4) alleviate flooding of agricultural lands caused by artificial obstruction of downstream drainage or increased upstream discharge;

(5) allow the mining of iron ore, taconite, copper, copper-nickel, or nickel under the provisions of Minnesota Statutes, section 105.64.

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

c. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

d. The proposed project shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

e. The proposed project shall be consistent with water and related land management plans and programs of local and regional governments provided such plans and programs are consistent with state plans and programs.

C. Specific standards. In addition to compliance with the general standards in B., specific requirements for drainage or drawdown activities shall be met as follows:

1. The drainage or diversion of protected waters for mining iron ore, taconite, copper, copper-nickel, or nickel shall be permitted only where all of the provisions of Minnesota Statutes, section 105.64 and 6 MCAR § 1.5027 have been met.

2. The drainage or diversion of protected waters for mining all other metallic and nonmetallic minerals shall be permitted only when the protected waters being drained are replaced by protected waters which will have equal or greater public value, subject to provisions of 6 MCAR § 1.5027.

3. All other drainage or diversion of protected waters allowed in B. shall be permitted provided all of the following specific criteria are met:

a. For protected waterbasins, permits will be issued only to governmental agencies having the authority to undertake such projects. In addition, a public need for the partial drainage or temporary drawdown shall be established by specifying the public interests to be enhanced.

b. Written consent for the partial drainage or temporary drawdown of protected waterbasins and wetlands has been obtained from all riparian owners.

c. Partial drainage or temporary drawdown of protected waterbasins and wetlands shall be permitted only where the applicant has submitted data to confirm:

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

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

(3) that agricultural lands have been flooded due to artificial obstruction of downstream drainage or increased upstream discharge.

d. Any proposed temporary drawdown shall not exceed two years in duration under normal climatic conditions.

e. There are no feasible and practical means to attain the intended purpose without drainage.

f. The proposal will adequately protect public safety and promote the public welfare.

D. Relationship to standards and criteria for other activities involving changes in course, current, or cross-section. Unless otherwise specified in other rules the provisions of this rule shall apply to drainage activities proposed as part of any other activity or activities including but not limited to: Filling 6 MCAR § 1.5021, Excavations 6 MCAR § 1.5022, Structures 6 MCAR § 1.5023, Water level controls 6 MCAR § 1.5024, and Bridges and culverts 6 MCAR § 1.5025.

6 MCAR § 1.5027 Alterations of protected waters for mining.

A. Goals. It is the goal of the department to ensure that alterations of protected waters for mining or reclamation of mining areas will minimize adverse environmental effects, preserve water resources to the maximum extent feasible and practical, and encourage the planning of future land and water utilization while at the same time promoting the orderly development of mining and the use of sound mining practices.

B. Standards and criteria.

1. Scope. Mining activities which may involve alterations of protected waters include the mining of metallic minerals including but not limited to iron ore, taconite, copper, copper-nickel, nickel, cobalt, and gold; and the mining of nonmetallic minerals including but not limited to sand and gravel, stone, clay, marl, oil, gas, and coal; and the mining of peat.

2. Permits shall be required for any alterations of protected waters to facilitate mining of iron ore, taconite, copper, copper-nickel, or nickel minerals or reclamation of mining areas provided that:

a. Permits to mine shall be obtained when required by Minnesota Statutes, section 93.44 to 93.51.

b. Permits for alterations in protected waters shall be granted in accordance with provisions of Minnesota Statutes, section 105.64. Applications for permits for alterations in protected waters shall include an analysis showing why underground mining without drainage, diversion, or control of protected waters is not feasible or economical.

3. Permits shall be required for mining of nonmetallic minerals, peat, and other metallic minerals not regulated in Minnesota Statutes, section 105.64, or reclamation of mining areas provided that the applicant provides evidence that:

a. There is no other feasible and practical location for the proposed mining activity;

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## PROPOSED RULES

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b. There is no other feasible or economical method to mine except by draining, diverting, or controlling the protected waters;

c. The proposed alteration of protected waters is necessary and no other feasible and economical method for it is reasonably available;

d. The proposed alteration of protected waters will not substantially impair the interests of the public in lands or waters or the substantial beneficial public use thereof, except as expressly authorized in the permit, and will not endanger public health or safety;

e. The proposed mining operations will be in the public interest and that the public benefits resulting from it will be sufficient to warrant the proposed alteration of protected waters;

f. The activities represent the minimal impact solution with respect to watershed modifications, watercourse diversions or changes, drainage, runoff and seepage management, and avoidance of major adverse changes in the ecosystem of protected waters having substantial public value;

g. Whenever protected watercourses must be diverted or changed to facilitate mining, the design and construction of the diversion or change shall provide for:

(1) Maintenance of adequate flows and levels in order to protect instream flows and prevent downstream flooding;

(2) Measures to prevent bank erosion and sedimentation in order to protect water quality; and

(3) Details on the location, relocation, and utilization of the watercourse after cessation of mining;

h. Whenever protected waterbasins are allowed to be drained to facilitate mining, and such drainage is justified and legally permitted, compensation for the loss of the basin must be provided for by either:

(1) Immediate replacement of the protected basin with waters of equal or greater value; or

(2) Submission of acceptable plans for the eventual replacement of the protected basin with waters of equal or greater value upon cessation of mining activities; and

i. Whenever a water impoundment is necessary and justified to facilitate mining, the design, construction, operation, and maintenance of the impoundment structure shall:

(1) Meet the applicable requirements of 6 MCAR §§ 1.5030-1.5034 pertaining to dam safety;

(2) Provide hydrologic and hydraulic measures to ensure that any protected waters downstream of the impoundment area are adequately protected with respect to maintenance of water quantity and quality and prevention of flooding; and

(3) Include plans detailing the disposition and utilization of the impoundment area after cessation of mining activities.

4. Whenever metallic, nonmetallic, and peat mining activities in the beds of protected waters will result in detrimental effects on the physical and biological character of protected waters, measures to compensate for the detrimental aspects shall be required in the permit conditions.

### 6 MCAR § 1.5028 General administration.

A. Application for ~~water resource~~ protected waters permits. All applications pursuant to 6 MCAR §§ 1.5020 ~~to 1.5025-1.5027~~ shall be made on forms prepared by the department and submitted to the regional office for the area where the majority of the proposed project is located.

1. Who may apply: Applications shall be submitted by the riparian owner of the ~~land(s)~~ land on which a project is proposed, except:

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

b. A holder of appropriate property rights such as a lease or easement may apply provided that the application is countersigned by the owner and accompanied by a copy of the lease or other agreement. A permit may be issued for the term of the lease only, subject to cancellation prior to the termination date of the agreement if the agreement is cancelled.

c. A prospective lessee of state-owned lands may apply for a permit in his own name after he has requested a lease from the departmental official responsible for the affected lands. Both the lease request and the permit application will be processed concurrently with appropriate coordination.

2. Information required: Pursuant to Minnesota Statutes, section 105.44, subdivision 4, an application shall be considered complete when:

- a. It includes all of the information specified in the appropriate ~~section(s)~~ section or sections of these standards.
- b. It is accompanied by appropriate photographs, maps, sketches, drawings, or other plans which adequately describe the proposed project.
- c. It includes a brief statement regarding the following points:
  - (1) Anticipated changes in water and related land resources.
  - (2) Unavoidable anticipated detrimental effects on the natural environment.
  - (3) Alternatives to the proposed action.
- d. Application fees have been paid. Note that final permits cannot be issued until any field inspection fees are paid.
- e. Proof of service of a copy of the application and accompanying documents on the mayor of the city or the secretary of the board of the district is included with the application if the project is within or affects a city, watershed district, or soil and water conservation district.

3. Fees: All applications shall be accompanied by an application fee as required by 6 MCAR § 1.5000 E.1. An additional fee may be charged for field inspections conducted by department personnel in the course of review subject to the provisions of 6 MCAR §§ 1.5000 G.1.-1.5000 G.5.

**B. Permit review.**

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

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

3. Procedure upon decision: The commissioner ~~is authorized to~~ may grant permits, with or without conditions, or deny them. In all cases, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city may demand a hearing in the manner specified in Minnesota Statutes, section 105.44, subdivision 3, within 30 days after receiving mailed notice outlining the reasons for denying or modifying an application. Any hearing shall be conducted as a contested case hearing before a ~~referee appointed by~~ hearing examiner from the independent State Hearing Examiners Office of Administrative Hearings in accordance with Minnesota Statutes, chapter 15 and sections 105.44 and 105.45.

C. Statutory requirements. Further provisions for the administration of these rules are found in Minnesota Statutes, chapter 105, including but not limited to sections 105.44 ~~through~~ 10 105.463, 105.541, and 105.55.

## **Minnesota Public Utilities Commission**

### **Proposed Rule Governing Schedule Changes of Common Carriers**

#### **Notice of Intent to Adopt Rule without a Public Hearing**

Notice is hereby given that the Minnesota Public Utilities Commission (the commission) proposes to adopt the above-entitled

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rule without a public hearing. The commission has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21-14.36 (1982).

Persons interested in this rule shall have 30 days to submit comments on the proposed rule. The proposed rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes sections 14.13-14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Randall D. Young  
Executive Secretary  
Minnesota Public Utilities Commission  
780 American Center Building  
Kellogg & Robert Streets  
St. Paul, Minnesota 55101  
(612) 296-7526

Authority for the adoption of this rule is contained in Minnesota Statutes sections 216A.05 and 221.041, subd. 2. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Christopher K. Sandberg upon request at the above address or by telephone at (612) 296-2357.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written statement of such request to Mr. Sandberg.

A copy of the proposed rule is attached to this notice.

Copies of this notice and the proposed rule are available and may be obtained by contacting Mr. Sandberg.

Randall D. Young  
Executive Secretary

### **Rule as Proposed (all new material)**

#### **4 MCAR § 3.30039 Notice of schedule changes.**

A. Change in schedule. For purposes of this rule, "change in schedule" means a change in the time of arrival at or departure from a scheduled or flag stop.

B. Notice. A regular route common carrier that has been granted authority by order of the commission for a change in schedule for the intrastate transportation of passengers, or that anticipates a change in schedule for the intrastate transportation of passengers for which no prior state approval is needed under United States Code, title 49, section 11501 (e) (5) (1982), shall give 30 days notice of the change in schedule to the commission, and to the mayor or city clerk of each municipality affected by the change in schedule, and shall display a copy of the old and new schedules with the caption "notice of Change in Schedule on this Route" in boldface print in all buses, terminals, agencies, and flag stops serving the route.

# ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

## Department of Public Safety State Fire Marshal Division

### Adopted Rules Governing Amendments to the Uniform Fire Code

The rules proposed and published at *State Register*, Volume 7, Number 6, pages 166-173, August 9, 1982 (7 S.R. 166) are adopted with the following modifications:

#### Rules as Adopted

##### 11 MCAR § 1.5101 Purpose.

The purpose of 11 MCAR §§ 1.5101~~+~~~~5154~~ 1.5156 is to adopt uniform fire safety standards governing the maintenance of buildings and premises; regulate the storage, use, and handling of dangerous and hazardous materials, substances, and processes; and regulate the maintenance of adequate egress facilities.

##### 11 MCAR § 1.5102 Scope.

The scope of 11 MCAR §§ 1.5101~~+~~~~5154~~ 1.5156 is intended to be consistent with Minn. Stat. § 299F.011.

##### 11 MCAR § 1.5103 Rules and standards adopted by reference.

The Uniform Fire Code, as promulgated by the International Conference of Building Officials and the Western Fire Chiefs Association (Whittier, California, 1982) is incorporated by reference and hereby made part of Minnesota rules pursuant to statutory authority, subject to the alterations and amendments in 11 MCAR §§ 1.5104~~+~~~~5154~~ 1.5156.

##### 11 MCAR § 1.5119 Sec. 9.109 of the Uniform Fire Code; guest room defined.

In Sec. 9.109 of the Uniform Fire Code the following definition is added:

Sec. 9.109. GUEST ROOM shall mean a room used exclusively for living or sleeping purposes excluding storage rooms, laundry rooms, furnace rooms and similar common areas.

##### 11 MCAR § ~~1.5119~~ 1.5120 Sec. 9.115 of the Uniform Fire Code; mechanical code definition amended.

##### 11 MCAR § ~~1.5120~~ 1.5121 Sec. 9.115 of the Uniform Fire Code; municipality defined.

##### 11 MCAR § ~~1.5121~~ 1.5122 Sec. 9.117 of the Uniform Fire Code; Group I Occupancies defined.

##### 11 MCAR § ~~1.5122~~ 1.5123 Sec. 9.117 of the Uniform Fire Code; Group R Occupancies defined.

##### 11 MCAR § ~~1.5123~~ 1.5124 Sec. 9.121 of the Uniform Fire Code; state fire marshal defined.

##### 11 MCAR § ~~1.5124~~ 1.5125 Sec. 9.121 of the Uniform Fire Code; supervised living facility defined.

##### 11 MCAR § ~~1.5125~~ 1.5126 Sec. 10.207 of the Uniform Fire Code.

##### 11 MCAR § ~~1.5126~~ 1.5127 Sec. 10.301 of the Uniform Fire Code.

##### 11 MCAR § 1.5128 Sec. 10.307 of the Uniform Fire Code.

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## ADOPTED RULES

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Sec. 10.307, paragraph (a), of the Uniform Fire Code is amended to read:

Sec. 10.307. (a) Apartments and Hotels. An approved automatic fire alarm system shall be installed in the following occupancies:

1. Apartment houses three or more stories in height or containing more than 15 apartments.
2. Hotels either three stories or more in height or containing 20 or more guest rooms.

EXCEPTION: An alarm need not be installed in buildings not over two stories in height when all individual dwelling units are separated by at least one-hour fire-resistive occupancy separations, including attics and crawl spaces, and each individual dwelling unit has direct exit to a yard or public way.

The alarm system shall include provisions for smoke detection and manual operation in interior corridors and automatic detection in storage rooms, laundry rooms, furnace rooms and similar common areas.

11 MCAR § ~~4-5127~~ 1.5129 Sec. 10.309(g) of the Uniform Fire Code.

11 MCAR § ~~4-5128~~ 1.5130 Sec. 10.312 of the Uniform Fire Code.

11 MCAR § ~~4-5129~~ 1.5131 Table No. 10.312 of the Uniform Fire Code.

11 MCAR § ~~4-5130~~ 1.5132 Sec. 11.204 of the Uniform Fire Code.

11 MCAR § ~~4-5131~~ 1.5133 Sec. 11.210 added to the Uniform Fire Code.

A new section is added to the Uniform Fire code to read: Christmas Trees

Sec. 11.210. (a) The use or display of natural or resin bearing trees or decorations in Group I occupancies is prohibited.

(b) The use, display, or storage of natural or resin bearing trees without open flames or electric light decorations is permitted in schools, churches, hotels, and mercantile occupancies. See section 11.203 (c).

11 MCAR § ~~4-5132~~ 1.5134 Sec. 11.211 added to the Uniform Fire Code.

11 MCAR § ~~4-5133~~ 1.5135 Sec. 11.301 of the Uniform Fire Code.

11 MCAR § ~~4-5134~~ 1.5136 Sec. 11.302 of the Uniform Fire Code.

11 MCAR § ~~4-5135~~ 1.5137 Sec. 11.403 of the Uniform Fire Code.

11 MCAR § ~~4-5136~~ 1.5138 Sec. 12.101 of the Uniform Fire Code.

11 MCAR § ~~4-5137~~ 1.5139 Sec. 12.106 of the Uniform Fire Code.

11 MCAR § ~~4-5138~~ 1.5140 Sec. 12.109 of the Uniform Fire Code.

11 MCAR § ~~4-5139~~ 1.5141 Article 26 of the Uniform Fire Code.

11 MCAR § ~~4-5140~~ 1.5142 Sec. 26.101 of the Uniform Fire Code.

11 MCAR § ~~4-5141~~ 1.5143 Sec. 26.102 of the Uniform Fire Code.

11 MCAR § ~~4-5142~~ 1.5144 Sec. 26.103 of the Uniform Fire Code.

11 MCAR § ~~4-5143~~ 1.5145 Sec. 26.104 of the Uniform Fire Code.

11 MCAR § ~~4-5144~~ 1.5146 Sec. 49.101 of the Uniform Fire Code.

11 MCAR § ~~4-5145~~ 1.5147 Sec. 61.105 of the Uniform Fire Code.

11 MCAR § ~~4-5146~~ 1.5148 Sec. 74.101 of the Uniform Fire Code.

11 MCAR § ~~4-5147~~ 1.5149 Article 77 of the Uniform Fire Code.

11 MCAR § ~~4-5148~~ 1.5150 Sec. 79.101 of the Uniform Fire Code.

11 MCAR § ~~4-5149~~ 1.5151 Sec. 79.903 of the Uniform Fire Code.

11 MCAR § ~~4-5150~~ 1.5152 Sec. 79.903 of the Uniform Fire Code.

11 MCAR § ~~4-5151~~ 1.5153 Article 82 of the Uniform Fire Code.

11 MCAR § ~~4-5152~~ 1.5154 Rules for liquefied petroleum gases.

11 MCAR § ~~4-5153~~ 1.5155 Sec. 85.109 of the Uniform Fire Code.

11 MCAR § ~~4-5154~~ 1.5156 Amendments to the Appendixes of the Uniform Fire Code.



# SUPREME COURT

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## Decisions Filed Friday, March 25, 1983

### Compiled by Wayne Tschimperle, Clerk

81-588 *State of Minnesota v. Stephen Tyrone Saxton*, Appellant. Dakota County.

Defendant received a fair trial and evidence was sufficient to support his five convictions; however, three of his convictions must be vacated pursuant to Minn. Stat. § 609.04 (1982).

Two convictions affirmed; three convictions vacated. Peterson, J.

C0-82-357, C3-82-658 IN RE: Matter of Petition of Attorney Fees and Partial Reimbursement for Attorney Fees Pursuant to M.S. 176.081. David W. Mack, Relator, C0-82-357 v. City of Minneapolis, Self-Insured, and William L. Young, Relator, C3-82-658 v. Minneapolis Moline Company/White Farm Equipment Company, Self-Insured, and State Treasurer, Custodian of The Special Compensation Fund. Workers' Compensation Court of Appeals.

Under the terms of Minn. Stat. § 176.081, subd. 7 (1982), an employer is required to pay partial reimbursement to employee for excess attorney fees awarded under subdivision 2 of that section.

Under the terms of Minn. Stat. § 176.521, subds. 2, 2a (1982), the Workers' Compensation Court of Appeals is not required automatically to approve provisions of a settlement agreement relative to attorney fees.

Because the court of appeals failed to make adequate findings of fact to allow appellate review of its award of attorney fees, the cases will be remanded.

The provisions of Minn. Stat. § 176.081 (1982) do not violate the right to contract guaranteed by the due process clauses of the state and federal constitutions or the separation of powers clause of the state constitution.

Case No. C0-82-357 is reversed in part and remanded; Case No. C3-82-658 is affirmed in part and remanded. Peterson, J. Conc. in part, dis. in part, Todd, J. Dissenting, Yetka, J.

C1-82-657 *State of Minnesota v. Dale William Yungk*, Appellant. Washington County.

Evidence was sufficient to establish that defendant committed offense of burglary.

Affirmed. Peterson, J.

C2-82-1428 *Wayne Burton Pruszinske*, petitioner, v. *State of Minnesota, Commissioner of Highways, State Department of Public Safety*, Appellant. Carver County.

Commissioner of public safety did not abuse his discretion in refusing to issue limited driver's license to driver whose license had been canceled.

Reversed. Peterson, J.

C2-82-666 *St. Cloud Newspapers, Inc., and Don R. Casey, Its Editor*, Appellants, v. *District 742 Community Schools, et al.* Stearns County.

Gatherings of all members of a school board and district administrators for the purpose of providing the board members with background information concerning issues currently facing the educational system in general and the school district in particular, where the school board members take no official action to resolve specific problems of the school district, constitute "meetings" under the Minnesota Open Meeting Law.

The Minnesota Open Meeting Law is not unconstitutionally vague or overbroad.

A superintendent of schools is not subject to the penalties of the Minnesota Open Meeting Law.

Reversed and remanded. Scott, J. Conc. in part, dis. in part, Simonett and Kelley, JJ.

CX-81-1389, C2-82-263 In Re the Marriage of: *Michael Scott Weatherly*, petitioner, v. *Rhonda Jane Weatherly*, Appellant. Olmsted County.

The trial court erroneously applied the criteria in Minn. Stat. § 518.17, subd. 1 (1982) in awarding custody of the parties' 2-year-old son.

Reversed. Wahl, J. Took no part, Kelley, J.

CX-82-981 *Carol Johnson v. Toro Co. (self-insured)*, Relator, *Blue Cross and Blue Shield of Minnesota*, intervenor. Workers' Compensation Court of Appeals.

When an employee on temporary medical leave was expressly directed by her employer to come to the employment premises if

## SUPREME COURT

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she wished to receive a turkey customarily distributed by the employer to its employees shortly before Christmas, the injury she sustained in a fall in the employer's parking lot arose out of and in the course of employment.

Affirmed. Wahl, J. Dissenting, Peterson, J., Amdahl, C. J., Simonett and Coyne, JJ.

**C0-82-1069 State of Minnesota v. Paul Richard Nordstrom, Appellant. Olmsted County.**

A prior misdemeanor DWI conviction based on an uncounseled plea of guilty cannot be used to convert a subsequent DWI offense into a gross misdemeanor under 1982 Minn. Laws, ch. 423, § 4 (codified at Minn. Stat. § 169.121, subd. 3 (1982)) absent a valid waiver of counsel on the record.

The provisions of 1982 Minn. Laws, ch. 423, § 2 (codified at Minn. Stat. § 169.121, subd. 1 (1982)), which permit a police officer to make an arrest of a person upon probable cause for a violation of Minn. Stat. § 169.121 (1982) when the offense is not committed in the presence of the officer, do not deny equal protection of the laws to that person.

Order of trial court reversed in part, affirmed in part. Case remanded. Wahl, J.

**C7-81-1026 Stephanie Ponticas, et al., v. K.M.S. Investments, et al., Lakeview Realty, Inc. Hennepin County.**

An employer has the duty to exercise reasonable care in hiring individuals who, because of the nature of the employment, may pose a threat of injury to members of the public.

The employer's duty to exercise reasonable care in the hiring of employees who, if incompetent or unreliable, might pose risk of injury to members of the public with whom the employee may come in contact by reason of the employment, includes the making of a reasonable investigation of the employee's background.

The evidence sustains the jury's finding that employer of a person hired as an apartment complex caretaker and afforded access to tenants' apartments by a passkey was negligent in failing to make a reasonable investigation of the employee's background.

The breach of the employer's duty to make a reasonable investigation of the employee's background and work history was the proximate cause of injuries to the employer's tenants.

In a case alleging negligent hiring by an employer, the jury should not be instructed on superseding intervening cause.

Affirmed. Kelley, J. Dis. Scott and Wahl, JJ.

**C8-82-901 Leo R. Jansky v. Cold Spring Granite Company, self-insured, and State Treasurer, as Custodian of the Special Compensation Fund, Relator. Workers' Compensation Court of Appeals.**

The decision of the Workers' Compensation Court of Appeals directing that the employer receive reimbursement from the special compensation fund for compensation paid the employee for a 50 percent permanent partial disability of his whole body resulting from an occupational disease is remanded for reconsideration because of the absence of a finding, prerequisite to an award of such reimbursement, that the employee has suffered disability as a result of the disease which is substantially greater because of preexisting physical impairment than what would have resulted from the disease alone.

Remanded. Kelley, J.

**C7-82-467 In the Matter of the Petition for Disciplinary Action against William A. Peters, a Minnesota Lawyer. Supreme Court.**

Abandonment of a law practice by an attorney without notice to clients or without provision for their protection; gross neglect in handling or failing to handle civil cases in which the attorney was retained; failure to pay for contracted services, without having given written notice of lack of responsibility therefor; nonpayment of professionally-incurred indebtedness; and failure to cooperate with the disciplinary process justifies disbarment of the lawyer.

The Lawyers Professional Responsibility Board, under the facts of this case, was not under any duty to furnish respondent with counsel, and failure to so provide was not a denial of due process or equal protection.

In all other respects, respondent was not deprived of any procedural due process rights during the course of this disciplinary action.

Notwithstanding that disbarment is justified, that remedy will not now be imposed; but respondent is indefinitely suspended from the practice of law in order to provide him with an opportunity within designated time limits to demonstrate to the court he has complied with the sanctions imposed and is then competent to practice law.

Per Curiam.

**C4-82-555 Walter Tiemann, as parent and natural guardian of Sandra Tiemann and Walter Tiemann, individually, Appellants, v. Independent School District #740, et al., defendants and third-party plaintiffs, and American Gymnastics Supply Company, et al., third-party defendants. Stearns County.**

Affirmed in part, reversed in part, and remanded. Per Curiam.

# STATE CONTRACTS

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Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

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## Department of Administration Contract Management Division

### Notice of Request for Proposals for Court Reporting and Transcription Services

The Minnesota Department of Administration is acting as contracting agent for state departments and agencies that have a need for:

1. Court reporting services to provide an accurate and verbatim record of proceedings and depositions required by state and federal laws, and
2. Transcription services to prepare an accurate and verbatim typewritten record from proceedings recorded on single track or four track audio magnetic recording devices; such as 5" reel-to-reel tapes and standard cassette tapes.

All state agencies needing one or both of these services will be required to use the contracts resulting from this proposal. Some of the state agencies having a need for the services are the Attorney General's Office, Office of Administrative Hearings (Administrative Procedure Act and Workers' Compensation Law hearings), Department of Labor and Industry, Tax Court, Public Service Commission, and Environmental Quality Board.

It is unlikely that we will be soliciting additional proposals during fiscal year 1984.

Additional information on the requested services will be included in the Request for Proposal which will be sent to all persons or associations who ask to receive one. Persons or associations desiring to receive a Request for Proposal must request one by notifying Dennis Reek, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, telephone 612/341-7643, *no later than 4:30 p.m., April 22, 1983*. Final proposals must be *received* by the Contract Management Division of the Department of Administration by 4:30 p.m., Friday, April 29, 1983.

## Office of Administrative Hearings

### Notice of Request for Proposal for Hearing Examiner and Workers' Compensation Judge Services

The Minnesota Office of Administrative Hearings will be contracting with qualified attorneys to serve as hearing examiners and workers' compensation judges for fiscal year 1984, beginning July 1, 1983, and ending on June 30, 1984.

Attorneys must be admitted to practice law in the State of Minnesota at the time they apply. Remuneration for contractual hearing examiners and workers' compensation judges is \$40.00 per hour. Additional information on the requested services is detailed in the Request for Proposal which will be sent to all persons who ask to receive one. Persons desiring to receive a Request for Proposal must request one by notifying Duane R. Harves, Chief Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, telephone 612/341-7640, *no later than 4:30 p.m. on Friday, April 22, 1983*. Final proposals must be *received* by the Office of Administrative Hearings by 4:30 p.m. on Friday, April 29, 1983.

## Minnesota Historical Society

### Notice of Availability of Contract for Services for a Historic Preservation Survey

The Minnesota Historical Society requires the services of a qualified contractor or consultant to conduct and administer State Historic Preservation surveys of approximately seven (7) counties in West Central Minnesota and prepare nomination forms on significant properties identified during the survey for nomination to the National Register of Historic Places.

## STATE CONTRACTS

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The contractor or consultant must have demonstrated experience in:

- 1) identifying, locating and documenting historic standing structures
- 2) successfully having prepared a *National Register* form for property that has been placed on the *Register* within the last five (5) years.

The contract period is from May, 1983 through August, 1984. The estimated amount of the contract is \$32,000.00. For additional details relating to this project, qualified contractors or consultants should contact Gloria A. Thompson, Contract Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, MN 55101.

Qualified contractors or consultants should send proposals, resumes, and completed national register form to the Contract Officer no later than April 25, 1983.

## Minnesota Housing Finance Agency

### Notice of Request for Proposals for Services Related to the Medium Density Homeownership Program

Minnesota Housing Finance Agency is seeking a professional firm (contractor) to assist MHFA in the review of community association documents and operating budgets for developments selected under the Medium Density Homeownership Program. The contractor must have extensive experience working with condominium and homeowners associations and must be able to identify problems related to the documents. In addition, the contractor must have a working knowledge of the experience in the management of community associations.

The estimated \$2,500 contract amount may vary with the number and type of reviews performed.

Qualified firms should submit resume and qualifications to Kevin Filter, Minnesota Housing Finance Agency, 333 Sibley Street, Suite 200, St. Paul, MN 55101. Proposals will be accepted until April 18, 1983.

## Department of Transportation Surveying and Mapping

### Notice of Availability of Contract for Photogrammetric Services for Fiscal Year 1984 (July 1, 1983 to June 30, 1984)

The Minnesota Department of Transportation desires an aerial surveys firm to provide the following photogrammetric services conforming to Mn/DOT specifications:

1. Aerial Vertical Photography

Provide negatives taken by the contractor using a precision aerial camera. The negatives shall be suitable for printing photographs and transparencies and for use in the state's photogrammetric instruments for analytical aerial triangulation and map compilation. The state may call for the use of panchromatic, color negative or infrared color emulsions in obtaining the photography.

2. Aerial Oblique Photography

Provide negatives taken by the contractor suitable for printing photography for illustrative purposes.

3. Photographic Laboratory Services

Provide, from aerial negatives, rectified, ratioed and controlled photographic enlargements and mosaics, 9½" × 9½" diapositives on glass or film suitable for photogrammetric compilation of topographic mapping and screened photographic film positives from mosaic negatives.

4. Map Compilation

Provide map compilation by Wild A-10 Autograph or equivalent type instrument for the compilation of topographic maps or photogrammetric cross-sections.

Firms desiring consideration shall express their interest and submit their Federal Forms 254 and 255 on or before April 19, 1983.

This is not a request for proposal. Send your response to:

E. R. Larson  
Director of Surveying and Mapping  
Room 711  
Transportation Building  
St. Paul, Minnesota 55155

## City of Proctor

### Notice of Availability of Contract for Preliminary Engineering—Road and Bridge Construction

The City of Proctor requires the service of a consulting engineer with experience in road and bridge construction.

Proposed work includes:

- 1) Provide assistance to the City of Proctor in determining final route location and design of the project.
- 2) Prepare a location survey.
- 3) Prepare plans, specifications and estimates and other documentations as needed.
- 4) Perform all required services for right-of-way purchases.

A supplemental agreement to this contract may be negotiated to perform the following items of work:

- 1) Perform required on-site surveying, staking, reporting, inspections and related services through construction completion.
- 2) Prepare documentation necessary for FHWA final approval.

Firms desiring consideration shall express their interest and submit their current Federal Forms 254 and 255 by 4:00 p.m., Monday, April 11, 1983. Technical proposals will be requested from qualifying firms.

This is not a request for proposal. Send your response to:

Daniel P. Hoffman  
City Administrator  
200 Second Street  
Proctor, MN 55810  
(218) 628-1717

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## OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

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## Department of Health

### Application for Licensure for Basic Life Support Transportation Service

As of April 4, 1983, a complete application for basic life support transportation service was submitted by Orr Ambulance Service, Rt. 2, Box 57, Orr, Minnesota 55771.

Each municipality, county, community health service agency, and any other interested person wishing to comment on this application may submit comments to the Health Systems Agency of Western Lake Superior, 202 Ordean Building, 424 West Superior St., Duluth, MN. 55802, Attention: JoAnne Axtell, Executive Director.

The Western Lake Superior Health Systems Agency (HSA) will hold a public hearing in one of the municipalities in which service is to be provided. The HSA shall then recommend that the Commissioner of Health either grant or deny a license or

# OFFICIAL NOTICES

recommend that a modified license be granted. The HSA will make the recommendations and reasons available to any individual requesting them.

Within 30 days of the recommendation to the Commissioner of Health, the commissioner shall grant or deny a license to the applicant.

## Department of Natural Resources

### Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Polk County

#### Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minn. Stat. § 105.391, subd. 1 (1980) will be held in the McIntosh Municipal Building, McIntosh, MN, on April 12, 1983, commencing at 1:00 p.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Harley Shurson, 210 3rd St. NE, McIntosh, MN 56556, Department of Natural Resources representative Merlyn Wesloh, Route 5, Box 41A, Bemidji, MN 56601, and County Soil and Water Conservation District representative Albert Mandt, Jr., McIntosh, MN 56556.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is whether the following waters shall be designated public waters or wetlands pursuant to Minn. Stat. § 105.391 (1980) and the criteria contained in Minn. Stat. § 105.37, subs. 14 and 15 (1980). Please take notice that waters listed in para. A.2. may sometimes also be considered for designation, in the alternative, as wetlands.

#### A. PUBLIC WATERS

##### 1. Watercourses.

<u>Name</u>	<u>Section</u>	<u>From</u> <u>Township</u>	<u>Range</u>	<u>Section</u>	<u>To</u> <u>Township</u>	<u>Range</u>
None						

##### 2. Preliminarily designated under section 105.37, subs. 14(a)-14(h).

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
60-146: Unnamed	7;12	148 (Brandsvold;King)	40;41
60-316: Unnamed	35,36	147 (Garfield)	44
60-330: Unnamed	10	147 (Liberty)	45
60-398: Unnamed	10	147 (Liberty)	45
60-768: Unnamed	36	148 (Onstad)	45
60-769: Unnamed	21,22	148 (Godfrey)	44

#### B. WETLANDS

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
60-264: Unnamed	15	148 (Woodside)	43
60-388: Unnamed	17	148 (Woodside)	43
60-539: Unnamed	SW 6	148 (King)	41
60-552: Unnamed	27	148 (Brandsvold)	40
60-691: Unnamed	3,10	147 (Liberty)	45
60-756: Unnamed	29	149 (Tilden)	44
60-760: Unnamed	12,13	148 (Onstad)	45
60-763: Unnamed	10,21	148 (Onstad)	45
60-773: Unnamed	6,7;12	147 (Garfield;Liberty)	44;45
60-776: Unnamed	1;35,36	146;147 (Norman Co.;Garfield)	44

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69 (1982).

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minn. Stat. § 105.42, subd. 1 (1980). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minn. Stat. § 105.391, subds. 10 and 12 (1980).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to

David B. Milles  
DNR—Division of Waters  
Third Floor, Space Center Building  
444 Lafayette Road  
St. Paul, MN 55101  
Telephone: 612/297-2835.

March 18, 1983

Joseph N. Alexander, Commissioner  
Department of Natural Resources

## Department of Natural Resources

### Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Lake of the Woods County

#### Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minn. Stat. § 105.391, subd. 1 (1980) will be held in the Commissioner's Room, Court House, Baudette, MN, on April 13, 1983, commencing at 10:00 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative W. B. Mouw, Baudette, MN 56623, Department of Natural Resources representative Merlyn Wesloh, Route 5, Box 41A, Bemidji, MN 56601, and County Soil and Water Conservation District representative John Arnesen, Roosevelt, MN 56673.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is whether the following waters shall be designated public waters or wetlands pursuant to Minn. Stat. § 105.391 (1980) and the criteria contained in Minn. Stat. § 105.37, subds. 14 and 15 (1980). Please take notice that waters listed in para. A.2. may sometimes also be considered for designation, in the alternative, as wetlands.

#### A. PUBLIC WATERS

##### 1. Watercourses.

<u>Name</u>	<u>Section</u>	<u>From Township</u>	<u>Range</u>	<u>Section</u>	<u>To Township</u>	<u>Range</u>
Little Peppermint Creek	19	160	32	15	160	32
Hooper Creek	19	161	31	17	161	31
S. Br. Zippel Creek	33	162	33	10	162	33
Unnamed trib. to S. Br. Zipple Creek	27	162	33	22	162	33
Unnamed trib. to Williams Creek	18	161	33	5	161	33
Unnamed trib. to NBRR	32	159	31	4	158	31
E. Br. SC	24	160	30	10	160	30
Unnamed trib. to SC	16	160	30	10	160	30

## OFFICIAL NOTICES

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2. Preliminarily designated under section 105.37, subs. 14(a)-14(h).

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
None.			

### B. WETLANDS

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
None.			

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69 (1982).

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minn. Stat. § 105.42, subd. 1 (1980). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minn. Stat. § 105.391, subs. 10 and 12 (1980).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to

David B. Milles  
DNR—Division of Waters  
Third Floor, Space Center Building  
444 Lafayette Road  
St. Paul, MN 55101  
Telephone: 612/297-2835.

March 18, 1983

Joseph N. Alexander, Commissioner  
Department of Natural Resources

## Minnesota State Retirement System

### Regular Meeting, Board of Directors

A meeting of the Board of Directors, Minnesota State Retirement System, will be held on Wednesday, April 6, 1983, at 8:30 a.m., in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

## Pollution Control Agency Water Quality Division

### Behind-Schedule and Substandard Projects Lists

Minn. Stat. § 115.83 (1982) requires the Minnesota Pollution Control Agency ("agency") to issue an order incorporating lists of principal consulting engineers, contracting engineers, and principal contractors, who are responsible for behind-schedule or substandard municipal wastewater treatment projects, for publication in the *State Register*. A behind-schedule project is one which, due to failures of design or workmanship or other factors within the reasonable control of the contractor or engineer, the agency determines is more than 90 days behind schedule. A substandard project is one which, due to failures of design or workmanship or other factors within the reasonable control of the contractor or engineer, the agency determines does not accomplish the purpose for which it was designed or constructed.

In accordance with the statute, the agency has issued an order incorporating the following lists for publication in the *State Register*.

Sandra S. Gardebring  
Executive Director



**BEHIND SCHEDULE PROJECTS  
1982 FINAL LIST  
March 22, 1983**

<u>Firm</u>	<u>Municipality</u>	<u>Nature of Deficiency Days Behind Schedule</u>	<u>Project Description</u>
1) Jones Haugh & Smith Inc.	Blooming Prairie	185	Facilities Plan
	Claremont	426	Plans & Specifications
	Lyle	365	Infiltration/Inflow
2) McGhie and Betts, Inc.	Adams	310	Facilities Plan
	Elgin	191	Facilities Plan
3) Jack D. Salo, Inc.	Floodwood	509	Facilities Plan
4) Widseth Smith Nolting & Associates, Inc.	Erskine	791	Facilities Plan
	Gonvick	610	Facilities Plan
	Williams	579	Facilities Plan

**SUBSTANDARD PROJECTS  
1982 FINAL LIST  
March 22, 1983**

<u>Firm</u>	<u>Municipality</u>	<u>Nature of Deficiency Days Behind Schedule</u>	<u>Project Description</u>
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Entries withheld pending outcome of hearings.

**Department of Transportation**

**Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Distribution of Financial Assistance under the Public Transit Assistance Program**

Notice is hereby given that the State of Minnesota, Department of Transportation, is seeking information or opinions from sources outside the Department of Transportation in preparing to promulgate new and revised rules governing distribution of financial assistance under the public transit assistance program. The promulgation of these rules is authorized by Minnesota Statutes § 174.23, subds. 2 and 7, Minnesota Statutes § 174.24, subd. 3, and Minnesota Statutes § 174.245, subd. 2, which require the Department of Transportation to establish the procedures and standards for review and approval of applications for transit financial assistance, to define "total operating costs" as the term is used in carrying out the public transit assistance program, to establish uniform performance standards for private operators of regular route transit service in the Twin Cities metropolitan area transit taxing district, and to establish the procedures and standards for review and approval of applications for capital grant assistance.

The Department of Transportation requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Allan J. Schenkelberg, Acting Director  
Office of Transit  
Minnesota Department of Transportation  
820 Transportation Building  
St. Paul, Minnesota 55155

Oral statements will be received during regular business hours over the telephone at (612) 296-7590 or (612) 296-1610 and in person at the above address.

All statements of information and comment shall be accepted until May 9, 1983. Any written material received by the Department of Transportation shall become part of the record in the event that the rules are promulgated.

Richard P. Braun, Commissioner

STATE OF MINNESOTA

State Register and Public Documents Division  
117 University Avenue  
St. Paul, Minnesota 55155

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**FOR LEGISLATIVE NEWS**

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

**Briefly/Preview**—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

**Perspectives**—Publication about the Senate. Contact Senate Information Office.

**Weekly Wrap-Up**—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

**This Week**—weekly interim bulletin of the House. Contact House Information Office.

Legislative Reference Library  
Room 111 Capitol  
Interoffice