

## Drainage and Waters

## CHAPTER 105

## DIVISION OF WATERS

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**105.01, 105.02** [Repealed, 1947 c 142 s 20]

**105.03** [Repealed, 1943 c 60 s 12]

**105.04 to 105.12** [Repealed, 1947 c 142 s 20]

**105.13 to 105.36** [Repealed, 1947 c 143 s 67]

**105.37 DEFINITIONS.** Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following words and terms, for the purposes of sections 105.37 to 105.55, shall have the meanings subjoined to them.

Subd. 2. "Commissioner" means the commissioner of conservation of the state of Minnesota.

Subd. 3. "Division" means the division of waters of the department of conservation of the state of Minnesota.

Subd. 4. "Director" means the director of the division of waters of the department of conservation of the state of Minnesota.

[1947 c 142 s 1]

**105.38 DECLARATION OF POLICY.** In order to conserve and utilize the water resources of the state in the best interests of the people of the state, and for the purpose of promoting the public safety and welfare, it is hereby declared to be the policy of the state (1) that subject to existing rights, all waters in streams and lakes wholly within the state and such portions of all boundary streams and lakes as lie within the state, which are capable of substantial beneficial public use, shall be public waters, and shall be subject to the control of the state, (2) the state, so far as practicable, shall control the appropriation and use of surface and underground waters of the state, and (3) the state shall control and supervise, so far as practicable, the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs, and all control structures in any of the public waters of the state.

[1947 c 142 s 2]

**105.39 AUTHORITY AND POWERS OF COMMISSIONER.** Subdivision 1. **Water conservation program.** The commissioner shall devise and develop a general water resources conservation program for the state. The program shall contemplate the conservation, allocation, and development of all the waters of the state, surface and underground, for the best interests of the people. The commissioner shall be guided by such program in the issuance of permits for the use and appropriation of the waters of the state and the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs and other control structures, as provided by sections 105.37 to 105.55.

Subd. 2. **Surveys and investigations.** The commissioner is authorized to cause to be made all such surveys, maps, investigations and studies of the water resources and topography of the state as he may deem necessary to provide the information to formulate a program and carry out the provisions of sections 105.37 to 105.55.

Subd. 3. **Administration over waters and water power.** The commissioner shall have administration over the use, allocation and control of public waters, the establishment, maintenance and control of lake levels and water storage reservoirs, and the determination of the natural ordinary high water level of any public waters.

Subd. 4. **Power to acquire property; eminent domain.** The commissioner shall have the power to acquire title to any private property for any authorized purpose by purchase or by the exercise of the right of eminent domain; and the use of such property in the furtherance of lawful projects under sections 105.37 to 105.55 is hereby declared to be a public purpose. On request by the commissioner, the attorney general shall proceed to acquire the necessary title to private property for such use under the provisions of Minnesota Statutes 1945, Chapter 117.

Subd. 5. **Contracts.** The commissioner is authorized to approve contracts for all works under sections 105.37 to 105.55, to change the plans thereof when necessary, and to supervise, control, and accept the same when complete. He is further authorized to cause the same, together with expenses incurred in connection therewith, to be paid for out of any funds made available to the use of the commissioner.

[1947 c 142 s 3]

**105.40 DUTIES OF DIRECTOR; QUALIFICATIONS.** The director of the division of waters of the department of conservation shall be a registered professional engineer, skilled in hydraulics. Under the direction of the commissioner, he shall make the surveys and engineering investigations required by sections 105.37 to 105.55 and perform the following duties.

A complete copy of all preliminary and final engineers' maps, plans and reports on all public ditches hereafter initiated in the state shall be filed in the office of the director by the respective county auditors or clerks of district court, and the director shall report thereon to the county boards of commissioners or judges of the district court, as required by the county and judicial ditch laws of this state.

Upon request by any county board or judge of the district court or engineer on any public ditch, the director shall advise them relative to any engineering questions or problems arising in connection with any public ditch.

When any field survey or investigation of any public ditch is deemed necessary by the director or is requested in writing by the county board or district judge, the director may make the same. If the field survey or investigation be made at the request of the board or judge, the expense thereof shall be reported to the board or court and paid by the county as are other ditch expenses.

The director is authorized to prepare and publish run-off data and information as to the capacity of tile drains and open ditches within the state together with forms of specifications for drain tile, open ditches and ditch construction and standard procedural forms for public ditch proceedings, and to furnish the same to engineers and public officials for their advice and information.

The director is authorized to investigate the methods employed in the manufacture of drain tile and the causes of any failures thereof, and to conduct research and experimentation for the purpose of improving the quality of drain tile. He may make inspections and tests of manufacturing processes and materials used and the resultant product in any manufacturing plant in the state where drain tile is made and sold to the general public. The director, or his authorized representative, shall have free access to all such manufacturing plants for the purpose of such inspections and tests, and the results thereof shall be made public for the information of officials concerned in public ditch proceedings, tile manufacturers, and others interested in the use of drain tile.

The director, with the approval of the commissioner, may make cooperative agreements with and cooperate with any person, corporation or governmental authority for the purpose of effectuating the provisions of this section.

[1947 c 142 s 4]

**105.41 APPROPRIATION AND USE OF WATERS.** It shall be unlawful for the state, any person, partnership or association, private or public corporation, county, municipality, or other political subdivision of the state to appropriate or use any waters of the state, surface or underground, without the written permit of

the commissioner, previously obtained upon written application therefor to the commissioner. The commissioner may give such permit subject to such conditions as he may find advisable or necessary in the public interest. Nothing in this section shall be construed to apply to the use of water for domestic purposes serving at any time less than 25 persons, or to the use of water for any purpose originating within the geographical limits of any municipality, nor to any beneficial uses and rights in existence on July 1, 1937.

[1947 c 142 s 5]

**105.42 PERMISSION REQUIRED TO BUILD DAMS.** Except in the construction and maintenance of highways when the control of public waters is not affected, it shall be unlawful for the state, any person, partnership, association, private or public corporation, county, municipality or other political subdivision of the state, to construct, reconstruct, remove, or abandon or make any change in any reservoir, dam or waterway obstruction on any public water; or in any manner, other than in the usual operation of dams beneficially using water prior to July 1, 1937, to change or diminish the course, current or cross-section of any public waters, wholly or partly within the state, without a written permit from the commissioner previously obtained. Application for such permit shall be in writing to the commissioner on forms prescribed by him.

The commissioner, subject to the approval of the county board, shall have power to grant permits under such terms and conditions as he shall prescribe, to establish, construct, maintain and control wharfs, docks, piers, levees, breakwaters, basins, canals and hangars in or adjacent to public waters of the state except within the corporate limits of cities or villages.

[1947 c 142 s 6]

**105.43 APPLICATION FOR ESTABLISHMENT OF LAKE LEVELS.** Application for authority to establish and maintain levels on any public water and applications to establish the natural ordinary high water level of any body of public water may be made to the commissioner by any public body or authority or by two or more riparian owners thereon; or, for the purpose of conserving or utilizing the water resources of the state, the commissioner may initiate proceedings therefor.

[1947 c 142 s 7]

**105.44 PROCEDURE UPON APPLICATION.** Subdivision 1. **Application for permit.** Each application for a permit required by sections 105.37 to 105.55 shall be accompanied by maps, plans, and specifications describing the proposed appropriation and use of waters, or the changes, additions, repairs or abandonment proposed to be made, or the public water affected, and such other data as the commissioner may require.

Subd. 2. **Authority of commissioner.** The commissioner is authorized to receive applications for permits and to grant the same, with or without conditions, or refuse the same as hereinafter set forth.

Subd. 3. **Waiver of hearing.** The commissioner in his discretion may waive hearing on any application and make his order granting or refusing such application. In such case, if any application be granted with conditions or be refused, the applicant may within ten days after mailed notice thereof file with the commissioner a demand for hearing on the application. The application shall thereupon be fully heard on notice as hereinafter provided, and determined the same as though no previous order had been made. If no demand for hearing be made, the order shall become final at the expiration of ten days after mailed notice thereof to the applicant.

Subd. 4. **Time.** The commissioner shall act upon all applications within 20 days after the application and all required data is filed in his office; either waiving hearing and making an order thereon or directing hearing thereon.

Subd. 5. **Notice.** The notice of hearing on any application shall recite the date, place and time fixed by the commissioner for the public hearing thereon and shall show the waters affected, the levels sought to be established or any control structures proposed. The notice shall be published by the applicant, or by the commissioner if the proceeding is initiated by him, once each week for two successive weeks prior to the day of hearing in a legal newspaper published in the county in which a part or all of the affected waters are located. Notice shall also be mailed by the commissioner to the county auditor and the chief executive official of any municipality affected.

**Subd. 6. Hearing.** The hearings shall be public and shall be conducted by the commissioner or a referee appointed by him. All affected persons shall have an opportunity to be heard. All testimony shall be taken under oath and the right of cross-examination shall be accorded. The commissioner shall provide a stenographer to take testimony and a record of the testimony and all proceedings at the hearing shall be taken and preserved. The commissioner shall not be bound by judicial rules of evidence or of pleading and procedure.

**Subd. 7. Witnesses; contempt.** The commissioner may subpoena and compel the attendance of witnesses and the production of all books and documents material to the purposes of the hearing. Disobedience of every such subpoena, or refusal to be sworn, or to answer as a witness, shall be punishable as a contempt in like manner as a contempt of the district court on complaint of the commissioner before the district court of the county where such disobedience or refusal occurred.

[1947 c 142 s 8]

**105.45 PERMITS AND ORDERS OF COMMISSIONER; NOTICE THEREOF.** The commissioner shall make findings of fact upon all issues necessary for determination of the applications heard by him. All orders made by the commissioner shall be based upon findings of fact made on substantial evidence. He may cause investigations to be made, and in such event the facts disclosed thereby shall be put in evidence at the hearing or any adjournment thereof.

If the commissioner concludes that the plans of the applicant provide for the most practical use of the waters of the state and will adequately protect public safety and promote the public welfare, he shall grant the permit, and, if that be in issue, fix the control levels of public waters accordingly. If the commissioner concludes that the proposed appropriation or use of state waters or the proposed construction is inadequate, wasteful, dangerous, or impractical, or detrimental to the public interest, he shall reject the application or he may require such modification of the plan as he deems proper to protect the public interest.

In granting a permit the commissioner may include therein such terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state.

Notice of all orders made after hearing shall be given by publication of the order once each week for two successive weeks in a legal newspaper in the county where the hearing was held, and by mailing copies of the order to all parties who entered an appearance at such hearing.

The commissioner shall make his order pursuant to hearing within 60 days after the completion of the hearing.

[1947 c 142 s 9]

**105.46 TIME LIMIT.** The commissioner shall fix the time within which all construction authorized in the permit must be completed, or within which the appropriation or use of water must be made, which time shall not exceed five years from the date of the permit. Such time may be thereafter extended by the commissioner for good cause shown. Permits granted in connection with the mining, transporting, concentration or shipment of taconite as defined in Minnesota Statutes 1945, Section 93.20, shall be irrevocable for the term thereof without the consent of the permittee, except for breach or non-performance of any condition of the permit by the permittee and the commissioner may allow and prescribe therein such time as he deems reasonable, regardless of the limitations of time contained in this section, for the commencement or completion of any construction or operations under such permit, or the exercising of the rights granted thereunder, or may extend such time, for cause shown, upon the application of the permittee.

[1947 c 142 s 10]

**105.47 APPEALS.** Any party in interest may appeal from any determination of the commissioner to the district court of the county in which the project is wholly or partly located, at any time within 30 days after notice of the commissioner's order. Notice by publication shall be sufficient.

The appellant shall serve the notice of appeal on the commissioner and on the attorney for any adverse party who appears of record in the proceeding. The notice of appeal with proof of service thereof shall be filed with the clerk of the court to

which such appeal is taken within five days after the service thereof; thereupon the district court shall have jurisdiction over the appeal. The notice of appeal shall set forth the order appealed from and the grounds upon which the appeal is taken.

When an appeal is taken from any order of the commissioner under the provisions of sections 105.37 to 105.55, the commissioner shall forthwith cause to be made a certified transcript of all proceedings had and of all pleadings, exhibits and files and all testimony taken or offered before him upon which said order is based, and shall file the same with the clerk of the district court where the appeal is pending.

Upon such appeal being perfected, it may be brought on for trial at any time by either party upon ten days' notice to the other, and shall then be tried by the court without a jury, and determined upon the record. At such trial the findings of fact made by the commissioner shall be prima facie evidence of the matters therein stated, and his orders shall be deemed prima facie reasonable. If the court shall determine that the order appealed from is lawful and reasonable, it shall be affirmed. If the court finds that the order appealed from is unjust, unreasonable, or not supported by the evidence, it shall make such order to take the place of the order appealed from as is justified by the record before it.

Any person aggrieved may appeal to the supreme court from the judgment of the district court made therein as in a civil action, except that the appeal must be taken within 30 days from date of the entry of such judgment.

The pendency of any such appeal shall not stay the operation of the order of the commissioner, but the district court or the supreme court in their discretion may suspend the operation of the commissioner's order pending a determination of the appeal; provided the appellant shall file an appropriate bond approved by the court conditioned that he shall answer for all damages caused by the delay in the enforcement of the commissioner's order.

[1947 c 142 s 11]

**105.48 DAM CONSTRUCTION AND MAINTENANCE BY STATE.** The commissioner, in order to improve navigation, protect and improve domestic water supply, protect and preserve fish and other wild life, protect the public interest in the shore and shore lines of public waters, and promote public health, shall have power to construct, maintain, and operate all necessary dikes, dams and other structures necessary to maintain such uniform water levels as may be established under sections 105.37 to 105.55.

For the purposes of sections 105.37 to 105.55 the commissioner is authorized to acquire lands or any necessary interest therein by purchase, gift or condemnation.

All dams owned by the state or erected upon lands owned or controlled by the state shall be maintained under the direction of the commissioner and the same shall be operated under his direction and control.

The commissioner is authorized to accept from local governmental and civic agencies or persons funds for the purpose of constructing, maintaining, or operating dams and control structures or acquiring the lands required therefor.

[1947 c 142 s 12]

**105.49 COOPERATION WITH OTHER AGENCIES.** The commissioner may cooperate and enter into agreements with the United States government, any department of the State of Minnesota, or any state or country adjacent to the State of Minnesota for the purpose of effecting any of the provisions of sections 105.37 to 105.55. He may cooperate with any department of the government of the United States in the execution of surveys within the state.

[1947 c 142 s 13]

**105.50 COMMISSIONER TO APPEAR FOR STATE.** The commissioner may appear, represent and act for the state in any matter relating to any application to be made to the federal government relating to waters within the state or the use thereof; and he may do and perform such acts in connection therewith as he deems proper to protect the interests of the people of the state consistent with the provisions of sections 105.37 to 105.55.

[1947 c 142 s 14]

**105.51 OWNERS TO CAP ARTESIAN WELLS.** For the conservation of the underground water supplies of the state, the commissioner is authorized to require the owners to control artesian wells to prevent waste.

[1947 c 142 s 15]

**105.52 EXAMINATION AND REPAIR OF DAMS AND RESERVOIRS.** Upon complaint or upon his own initiative, the commissioner is authorized to examine any reservoir, dam or waterway obstruction. If the commissioner determines that such reservoir, dam or waterway obstruction is unsafe or needs repair, he shall notify the owner thereof to repair or remove the same as the exigencies of the case may require. The work of repair or removal shall be commenced and completed within such reasonable time as may be prescribed by the commissioner.

[1947 c 142 s 16]

**105.53 APPLICATION OF SECTIONS 105.37 TO 105.55.** Sections 105.37 to 105.55 shall not in any way supersede or amend the provisions of Minnesota Statutes 1945, Sections 92.45 and 110.13.

Nothing in sections 105.37 to 105.55 shall apply to dams, reservoirs or control works in existence on and prior to July 1, 1937, except as may be necessary to protect the health and safety of the people of the state.

[1947 c 142 s 17]

**105.54 VIOLATION A GROSS MISDEMEANOR.** Any person, partnership, association or corporation violating any of the provisions of sections 105.37 to 105.55 shall be guilty of a gross misdemeanor.

Any public officer responsible for the violation of sections 105.37 to 105.55 shall be subject to removal from office by the governor.

[1947 c 142 s 18]

**105.55 MAY ENFORCE ORDERS OF COMMISSIONER.** Upon application of the commissioner, the district court of any county in which the project is wholly or partially located, may by injunction, enforce the compliance with, or restrain the violation of, any order of the commissioner made pursuant to sections 105.37 to 105.55, or restrain the violation of sections 105.37 to 105.55.

[1947 c 142 s 19]

**105.60 ACQUISITION OF EASEMENTS FOR THE USE OF STOPLOGS.** In order to provide more effective regulation of the waters controlled by the Lac qui Parle water control project in Chippewa and Lac qui Parle counties for flood control, water conservation, and other authorized public purposes, the commissioner of conservation is hereby authorized to acquire in the name of the state by purchase, gift, or condemnation under the provisions of section 84.154, and other applicable statutes any and all rights or easements, in addition to those already owned by the state, that may be necessary for the use of stoplogs in not more than five of the openings in the concrete spillway in the dam at the outlet of the Lac qui Parle reservoir in said project, upon the following conditions:

(1) That no stoplogs shall be placed or kept in any of said openings from the time the reservoir freezes over in the fall until April 1 following;

(2) That between April 1 and April 30 following, inclusive, stoplogs may be placed and maintained in said five openings, or any thereof, to a height not exceeding four feet above the fixed concrete crest of said spillway;

(3) That thereafter and until the reservoir freezes over in the following fall, stoplogs may be placed and maintained in said five openings, or any thereof, to a height not exceeding six and one-half feet above the crest of said spillway.

[1947 c 571 s 1]

**105.61 USE OF STOPLOGS UPON INSTITUTION OF PROCEEDINGS.** The commissioner of conservation, either upon making and filing in the office of the state auditor an order declaring the taking of any of the rights or easements specified in section 105.60, and upon the filing of certified copies of such order in the offices of the registers of deeds of said Chippewa and Lac qui Parle counties, or upon the filing of an appropriate petition in condemnation proceedings for the taking of any such rights or easements, may thereupon forthwith exercise and use the rights or easements described in such order or petition, as the case may be.

[1947 c 571 s 2]

**105.62 EXPENSE PAID FROM CERTAIN WATER CONTROLLED PROJECTS.** All costs and damages incurred on account of the taking, exercise, or use of any right or easement under sections 105.60 to 105.62 shall be paid from the Lac qui Parle and Big Stone Lake Water Control Projects fund created by section 84.154,

and such amounts as may be necessary therefor are hereby appropriated from any moneys now or hereafter credited to said fund, subject to disbursement as provided by said chapter for other expenditures from said fund.

[1947 c 571 s 3]

**105.63 TRANSFER OF CUSTODY OF CERTAIN DAM AND WATER CONTROL TO STATE AGENCY.** Subdivision 1. Upon application by resolution of the governing body of any governmental subdivision of the state having authority to maintain and operate dams or other control works affecting public waters, the commissioner of conservation, hereinafter called the commissioner, with the approval of the executive council, may transfer to such subdivision the custody of any such dam or other water control works belonging to the state and under the supervision or control of the commissioner in any case where he shall determine that the transfer will be in furtherance of the best interests of the public. Such transfer shall be made by order of the commissioner upon such terms and conditions as he shall prescribe respecting maintenance and operation of the project. In connection with such transfer the commissioner may convey to the transferee by deed or other appropriate instrument in the name of the state any lands, easements, or other property of the state pertaining to the project, subject to such conditions and reservations as he may deem proper. A duplicate of every order, conveyance, or other instrument executed by the commissioner in connection with a transfer shall be filed with the state auditor.

Subd. 2. A transfer may be made hereunder with or without payment of money consideration to the state, as may be agreed upon between the commissioner and the transferee. Any amounts received on account of such consideration shall be paid into the general revenue fund.

[1949 c 571 s 1]

**105.64 DRAINAGE OR DIVERSION OF WATER TO FACILITATE MINING.** Subdivision 1. The commissioner of conservation may grant permits for the drainage, diversion, control, or use of any waters under his jurisdiction when necessary for the mining of iron ore or taconite, wherever situated, as herein provided.

Subd. 2. Application for such permit shall be made to the commissioner in such form as he shall prescribe by the owner of the iron ore or taconite deposits affected or by the owner of the right to mine the same. Except as otherwise herein provided, all matters pertaining to such application, to the proceedings thereon, and to any permit issued thereon shall be governed by the provisions of sections 105.37 to 105.55 relating to applications and permits affecting waters, so far as applicable.

Subd. 3. A permit shall be granted hereunder only upon determination by the commissioner of the following conditions:

(1) That the proposed drainage, diversion, control, or use of waters will be necessary for the mining of substantial deposits of iron ore or taconite, and that no other feasible and economical method therefor is reasonably available;

(2) That the proposed drainage, diversion, control, or use of 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;

(3) That the proposed mining operations will be in the public interest, and that the public benefits resulting therefrom will be sufficient to warrant the proposed drainage, diversion, or control of waters.

Subd. 4. In any case where the operations authorized by a permit hereunder may affect any public or private property not owned by the permittee, before proceeding with such operations, he shall acquire all rights or easements necessary therefor, shall pay or furnish security for the payment of all damages to such property that may result therefrom, and shall furnish such evidence of compliance with the provisions hereof as the commissioner may require. Neither the state nor any of its officers, agents, or employees shall incur any liability on account of the issuance of a permit hereunder or on account of any act or omission of the permittee, his agents or servants, under or in connection with any such permit.

Subd. 5. Notwithstanding any other limitations prescribed by law, every permit hereunder shall be granted for such term as the commissioner shall find necessary for the completion of the proposed mining operations, and he may allow and prescribe in the permit such time as he deems reasonable for the commencement or completion of any operations or construction under the permit or the exercise of the

rights granted thereby. The original term of the permit or the time allowed for the performance of any condition thereof may be extended by the commissioner for good cause shown upon application of the permittee. In any permit issued hereunder the commissioner may prescribe such conditions as he deems necessary and practicable for restoration of the waters affected to their former condition after completion of the mining operations or after expiration or cancellation of the permit, and may prescribe such other conditions as he deems necessary for protection of the public health, safety, and welfare, and may require the permittee to furnish a bond to the state, in such form and amount as the commissioner deems appropriate, as security for compliance with the conditions of the permit and all applicable provisions of law.

Subd. 6. Every permit issued hereunder shall be irrevocable for the term thereof and for any extension of such term except as follows:

(1) A permit may be modified or canceled by the commissioner at the request or with the consent of the permittee upon such conditions as the commissioner deems necessary for protection of the public interests;

(2) Subject to appeal in the manner provided by sections 105.37 to 105.55, a permit may be modified or canceled by the commissioner in case of any breach of the terms or conditions thereof or in case of any violation of law pertaining thereto by the permittee, his agents or servants, or in case the commissioner finds such modification or cancellation necessary to protect the public health or safety, or to protect the public interests in lands or waters against substantial injury resulting in any manner or to any extent not expressly authorized by the permit, or to prevent substantial injury to persons or property resulting in any manner or to any extent not so authorized, upon at least 30 days' written notice to the permittee, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard thereon;

(3) By written order to the permittee the commissioner may forthwith suspend operations under a permit if he finds it necessary in an emergency to protect the public health or safety or to protect public interests in lands or waters against imminent danger of substantial injury in any manner or to any extent not expressly authorized by the permit, or to protect persons or property against such danger, and may require the permittee to take any measures necessary to prevent or remedy such injury; provided, that no such order shall be in effect for more than 30 days from the date thereof without giving the permittee at least ten days' written notice of such order and an opportunity to be heard thereon.

Subd. 7. This section shall not amend, supersede, or repeal any existing law, but shall be supplementary thereto.

[1949 c 599 s 1, 4]