

## CHAPTER 105

## DIVISION OF WATERS, SOILS AND MINERALS

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## 105.41 APPROPRIATION AND USE OF WATERS.

*[For text of subds 1 to 4, see M.S.1984]*

Subd. 5. Records of the amount of water appropriated or used shall be recorded for each such installation and such readings and the total amount of water appropriated shall be reported annually to the commissioner of natural resources on or before February 15 of the following year upon forms to be supplied by the commissioner.

The records shall be submitted with an annual water appropriation processing fee in the amount established in accordance with the following schedule of fees for each water appropriation permit in force at any time during the year: (a) irrigation permits, \$15 for the first permitted 160 acres or portion thereof, and \$25 for each additional permitted 160 acres or portion thereof; (b) for nonirrigation permits, \$5 for each ten million gallons or portion thereof permitted each year. However, in no case shall the fee exceed a total of \$500 per permit. The fee is payable regardless of the amount of water appropriated during the year. Failure to pay the fee is sufficient cause for revoking a permit. No fee may be imposed on any state agency, as defined in section 16B.01, or federal governmental agency holding a water appropriation permit.

*[For text of subd 6, see M.S.1984]*

**History:** 1985 c 264 s 2

## 105.42 PERMITS; WORK IN PUBLIC WATERS.

Subdivision 1. 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, abandon, transfer ownership, or make any change in any reservoir, dam or waterway obstruction on any public water; or in any manner, to change or diminish the course, current or cross-section of any public waters, wholly or partly within the state, by any means, including but not limited to, filling, excavating, or placing of any materials in or on the beds of public waters, 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. No permit shall be required for work in altered natural watercourses which are part of drainage systems established pursuant to sections 106A.005 to 106A.811 and chapter 112 when the work in the waters is undertaken pursuant to those chapters.

This section does not apply to any public drainage system lawfully established under the provisions of sections 106A.005 to 106A.811 which does not substantially affect any public waters.

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.

*[For text of subds 1a to 3, see M.S.1984]*

Subd. 4. Where prescribed in an approved storm water management plan under section 473.879, the commissioner shall issue permits to establish control elevations for landlocked lakes up to three feet below the ordinary high water level for the lake, if the commissioner finds that the control is necessary to prevent flooding of homesteads and that no other reasonable or cost-effective alternative is available.

**History:** 1985 c 172 s 102; 1Sp1985 c 13 s 228

#### **105.44 PROCEDURE UPON APPLICATION.**

*[For text of subds 1 to 9, see M.S.1984]*

Subd. 10. **Permit fees.** Each application for a permit authorized by sections 105.37 to 105.64, and each request to amend or transfer an existing permit, shall be accompanied by a permit application fee in the amount of \$30 to defray the costs of receiving, recording, and processing the application or request to amend or transfer. The commissioner may charge an additional permit application fee in excess of the fee specified above, but not to exceed \$250 for each application, in accordance with a schedule of fees adopted by rules promulgated in the manner provided by section 16A.128.

For projects requiring a mandatory environmental assessment pursuant to chapter 116D, projects undertaken without a permit or application as required by sections 105.37 to 105.64, and projects undertaken in excess of limitations established in an issued permit, the commissioner may charge an additional field inspection fee of not less than \$25 nor more than \$750 to cover actual costs for each permit applied for under sections 105.37 to 105.64 and for each project undertaken without proper authorization. The commissioner shall establish pursuant to rules adopted in the manner provided by section 16A.128, a schedule for field inspection fees which shall include actual costs related to field inspection such as investigations of the area affected by the proposed activity, analysis of the proposed activity, consultant services, and subsequent monitoring, if any, of the activity authorized by the permit.

Except as provided below, the commissioner may not issue a permit until all fees required by this section relating to the issuance of a permit have been paid. The time limits prescribed by subdivision 4, do not apply to an application for which the appropriate fee has not been paid. Field inspection fees relating to monitoring of an activity authorized by a permit may be charged and collected as necessary at any time after the issuance of the permit. No permit application or field inspection fee may be refunded for any reason, even if the application is denied or withdrawn. No permit application or field inspection fee may be imposed on any state agency, as defined in section 16B.01, or federal governmental agency applying for a permit.

**History:** 1985 c 264 s 3

#### **105.471 VENUE OF ACTIONS AGAINST COMMISSIONER; DRAINAGE AND CLASSIFICATION OF PUBLIC WATERS.**

Notwithstanding any other law to the contrary, any action for declaratory judgment that is commenced under chapter 555 by or against the commissioner to

determine the validity of the commissioner's final decision regarding the classification of any waters of the state as public waters pursuant to sections 105.38 to 105.391, or the drainage of waterbasins or watercourses as provided in sections 106A.011 and 106A.015, subdivision 1, shall be venued in the county where the water, watercourse or waterbasin is located, if the water, watercourse or waterbasin is located in one county, or in the judicial district where the majority of the water, watercourse or waterbasin is located, if the water, watercourse or waterbasin is located in more than one county.

**History:** 1985 c 172 s 103

#### **105.74 ADDITIONAL DUTIES OF BOARD.**

In addition to duties elsewhere prescribed, the board has the function defined in sections 105.72 to 105.79 when the decision of the agency in a proceeding involves a question of water policy in one or more of the areas of water conservation, water pollution, preservation and management of wildlife, drainage, soil conservation, public recreation, forest management, and municipal planning under any of the following: Sections 84.57, 97.48, subdivision 13, 105.41, 105.42, 105.43, 105.44, 105.64, 106A.011, 106A.015, 115.04, 115.05, and chapter 110.

**History:** 1985 c 172 s 104

#### **105.81 PETITION; BOND; INVESTIGATION; REPORT; HEARING; ORDER.**

For the purpose of conserving and making more adequate use of our water resources, any person, public or municipal corporation, governmental subdivision, the state or any of its departments or agencies, the commissioner of natural resources and the United States or any of its agencies, may petition the county board in the case of a system lying wholly within one county or the district court in the case of a drainage system affecting two or more counties for the installation of dams or other control works in said ditches to impound or divert waters for any beneficial use. Said petition shall contain the location of the installation, plans and specifications for the proposed structure, and a map of the areas likely to be affected by the impoundment or diversion. The petitioner shall agree to be responsible for the cost of installation and construction of the structure. Upon filing of the petition, the petitioners shall file a bond as provided in sections 106A.205 and 106A.211. No bond shall be required if the petition is filed by the state, any of its departments or agencies, the commissioner of natural resources, the United States or any of its agencies, and cities. Said petition shall also be accompanied by a permit from the commissioner of natural resources as required in sections 105.41 and 105.42.

On receipt of the petition, bond, and permit, if required, the board or court shall appoint an engineer to investigate the effect of the proposed installation and file a report of his findings. Upon filing of the engineer's report, notice shall be given and a public hearing held as provided in section 106A.261. If at this hearing it appears from the engineer's report and other evidence presented that such installation will be of a public or private benefit and that it will not impair the utility of the ditch or deprive affected land owners of the benefit thereof, the board or court shall issue a permit authorizing its installation. Before the petitioner shall install or construct any impoundment or diversion, he shall obtain such rights-of-way and flowage easements from all owners of land to be affected thereby.

The order of the court modifying the ditch system shall provide that all construction and subsequent maintenance and repairs of the ditch modification shall be done and performed by the petitioner without any cost to the owners of lands and properties previously within the drainage system.

**History:** 1985 c 172 s 105