

## CHAPTER 105

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## WATER RESOURCES, CONSERVATION

### 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 natural resources of the state of Minnesota.

Subd. 3. "Division" means the division of waters, soils and minerals of the department of natural resources of the state of Minnesota.

Subd. 4. "Director" means the director of the division of waters, soils and minerals of the department of natural resources of the state of Minnesota.

Subd. 5. "Appropriating" includes but is not limited to "taking," regardless of the use to which the water is put.

Subd. 6. [Repealed, 1979 c 199 s 17]

Subd. 7. "Waters of the state" means any waters, surface or underground, except those surface waters which are not confined but are spread and diffused over the land. "Waters of the state" includes all boundary and inland waters.

Subd. 8. "Abandon" means to give up the use and maintenance of the described structures or improvements to realty and to surrender the same to deterioration, without reference to any intent to surrender or relinquish title to or possessory interest in the real property constituting the site of the structures or improvements. "Abandoned" and "abandonment" have meanings consistent with this definition of "abandon."

Subd. 9. "Waterbasin" means an enclosed natural depression with definable banks capable of containing water which may be partly filled with waters of the state and which is discernible on aerial photographs.

Subd. 10. "Natural watercourse" means any natural channel which has definable beds and banks capable of conducting confined runoff from adjacent lands.

Subd. 11. "Altered natural watercourse" means a former natural watercourse which has been affected by artificial changes in straightening, deepening, narrowing, or widening of the original channel.

Subd. 12. "Artificial watercourse" means a watercourse which has been artificially constructed by human beings where there was no previous natural watercourse.

Subd. 13. "Meandered lakes" means all bodies of water except streams lying within the meander lines shown on plats made by the United States General Land Office.

Subd. 14. "Public waters" includes and shall be limited to the following waters of the state:

(a) All water basins assigned a shoreland management classification by the commissioner pursuant to section 105.485, except wetlands less than 80 acres in size which are classified as natural environment lakes;

(b) All waters of the state which have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;

(c) All meandered lakes, except for those which have been legally drained;

(d) All waterbasins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;

(e) All waterbasins designated as scientific and natural areas pursuant to section 84.033;

(f) All waterbasins located within and totally surrounded by publicly owned lands;

(g) All waterbasins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;

(h) All waterbasins where there is a publicly owned and controlled access which is intended to provide for public access to the water basin; and

(i) All natural and altered natural watercourses with a total drainage area greater than two square miles, except that trout streams officially designated by the commissioner shall be public waters regardless of the size of their drainage area.

The public character of water shall not be determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water which was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

For the purposes of statutes other than sections 105.37, 105.38 and 105.391, the term "public waters" shall include "wetlands" unless the statute expressly states otherwise.

Subd. 15. "Wetlands" includes, and shall be limited to all types 3, 4 and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), not included within the definition of public waters, which are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas.

Subd. 16. "Ordinary high water level" means the boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level shall be the elevation of the top of the bank of the channel. For reservoirs and flowages the ordinary high water level shall be the operating elevation of the normal summer pool.

**History:** 1947 c 142 s 1; 1967 c 905 s 5; 1969 c 1129 art 3 s 1; 1973 c 315 s 1-3; 1973 c 344 s 1; 1976 c 83 s 2-6; 1979 c 199 s 1-4; 1986 c 444

## 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 health, safety and welfare, it is hereby declared to be the policy of the state:

(1) Subject to existing rights all public waters and wetlands are subject to the control of the state.

(2) The state, to the extent provided by law from time to time, shall control the appropriation and use of surface and underground waters of the state.

(3) The state shall control and supervise, so far as practicable, any activity which changes or which will change the course, current, or cross section of public waters or wetlands, including but not limited to the construction, reconstruction, repair, removal, abandonment, the making of any other change, or the transfer of ownership of dams,

reservoirs, control structures, and waterway obstructions in any of the public waters or wetlands of the state.

**History:** 1947 c 142 s 2; 1957 c 502 s 1; 1973 c 315 s 4; 1973 c 344 s 2; 1976 c 83 s 7; 1979 c 199 s 5

### 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 the commissioner deems necessary to provide the information to formulate a program and carry out the provisions of sections 105.37 to 105.55.

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

**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. The commissioner 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.

**Subd. 6. Statewide water information system.** The commissioner in cooperation with other state agencies, including the Minnesota geologic survey, shall establish and maintain a statewide system to gather, process, and disseminate information on the availability, distribution, quality, and use of waters of the state. Each local, regional, and state governmental unit, its officers and employees shall cooperate with the commissioner in accomplishing the purpose of this subdivision.

**History:** 1947 c 142 s 3; 1973 c 315 s 5; 1979 c 199 s 6; 1986 c 444

### 105.391 WATERS INVENTORY AND CLASSIFICATION.

**Subdivision 1.** On the basis of all information available to the commissioner and the criteria set forth in section 105.37, subdivisions 14 and 15, the commissioner shall inventory the waters of each county and make a preliminary designation as to which constitute public waters and wetlands. The commissioner shall send a list and map of the waters preliminarily designated as public waters and wetlands in each county to the county board of that county for its review and comment. The county board shall conduct at least one public informational meeting within the county regarding the commissioner's preliminary designation. After conducting the meetings and within 90 days after receipt of the list or maps, the county board shall present its recommendation to the commissioner, listing any waters regarding which the board disagrees with the

commissioner's preliminary designation and stating with particularity the waters involved and the reasons for disagreement. The commissioner shall review the county board's response and, if in agreement with any of the board's recommendations, shall revise the list and map to reflect the recommendations. Within 30 days after receiving the county board's recommendations, the commissioner shall also notify the county board as to which recommendations are accepted and rejected and the reasons for the decision. After the revision of the map and list, if any, or if no response is received from the county board within the 90 days review period, the commissioner shall file the revised list and map with the recorder of each county and shall cause the list and map to be published in the official newspaper of the county. The published notice shall also state that any person or any county may challenge the designation of specific waters as public waters or wetlands or may request the designation of additional waters as public waters or wetlands, by filing a petition for a hearing with the commissioner within 90 days following the date of publication. The petition shall state with particularity the waters for which the commissioner's designation is disputed and shall set forth the reasons for disputing the designation. If any designations are disputed by petition, the commissioner shall order a public hearing to be held within the county within 60 days following the 90 day period, notice of which shall be published in the state register and the official newspaper of the county. The hearings shall be conducted by a hearings unit composed of one person appointed by the affected county board, one person appointed by the commissioner and one board member of the local soil and water conservation district or districts within the county who shall be selected by the other two members at least 20 days prior to the hearing date. The expenses of and per diem payments to any member of the hearings unit who is not a state employee shall be paid as provided for in section 15.059, subdivision 3, within the limits of funds available from grants to the county pursuant to Laws 1979, chapter 199, section 16. In the event there is a watershed district whose boundaries include the waters involved, the district may provide the hearings unit with its recommendations. 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 sections 14.63 to 14.69. The commissioner, the county or any person aggrieved by the decision of the hearings unit may appeal from the hearings unit's order. Upon receipt of the order of the hearings unit and after the appeal period has expired, or upon receipt of the final order of the court in the case of an appeal, the commissioner shall publish a list of the waters determined to be public waters and wetlands. The commissioner shall complete the public waters and wetlands inventory by December 31, 1982.

Subd. 2. [Repealed, 1979 c 199 s 17]

Subd. 3. Except as provided below, no public waters or wetlands shall be drained, and no permit authorizing drainage of public waters or wetlands shall be issued, unless the public waters or wetlands being drained are replaced by public waters or wetlands which will have equal or greater public value. However, after a state waterbank program has been established, wetlands which are eligible for inclusion in that program may be drained without a permit and without replacement of wetlands of equal or greater public value if the commissioner does not elect, within 60 days of the receipt of an application for a permit to drain the wetlands, to either (1) place the wetlands in the state waterbank program, or (2) acquire it pursuant to section 97A.145, or (3) indemnify the landowner through any other appropriate means, including but not limited to conservation restrictions, easements, leases, or any applicable federal program. The applicant, if not offered a choice of the above alternatives, is entitled to drain the wetlands involved.

In addition, the owner or owners of lands underlying wetlands situated on privately owned lands may apply to the commissioner for a permit to drain the wetlands at any time after the expiration of ten years following the original designation thereof. Upon receipt of an application, the commissioner shall review the current status and conditions of the wetlands. If the commissioner finds that the current status or conditions are such that it appears likely that the economic or other benefits to the owner or owners

which would result from drainage would exceed the public benefits of maintaining the wetlands, the commissioner shall grant the application and issue a drainage permit. If the application is denied, no additional application shall be made until the expiration of an additional ten years.

Subd. 4. [Repealed, 1979 c 199 s 17]

Subd. 5. [Repealed, 1979 c 199 s 17]

Subd. 6. [Repealed, 1979 c 199 s 17]

Subd. 7. [Repealed, 1979 c 199 s 17]

Subd. 8. [Repealed, 1979 c 199 s 17]

Subd. 9. In order to protect the public health or safety, local units of government may establish by ordinance restrictions upon public access to any wetlands from city, county or township roads which abut wetlands.

Subd. 10. Nothing in this chapter shall prevent a landowner from utilizing the bed of wetlands or public waters for pasture or cropland during periods of drought, provided there is no construction of dikes, ditches, tile lines or buildings, and the agricultural use does not result in the drainage of the wetlands or public waters. This chapter shall not prevent a landowner from filling any wetland to accommodate wheeled booms on irrigation devices so long as the fill does not impede normal drainage.

Subd. 11. When the state owns wetlands on or adjacent to existing public drainage systems, the state shall give consideration to the utilization of the wetlands as part of the drainage system. If the wetlands interfere with or prevent the authorized functioning of the public drainage system, the state shall provide for any necessary work to allow the proper use and maintenance of the drainage system while still preserving the wetlands.

Subd. 12. The designation of waters as "public waters" or "wetlands" pursuant to this section shall not grant any additional or greater right of access to the public to those waters, nor is the commissioner required to acquire access to those waters under section 97A.141, nor is any right of ownership or usage of the beds underlying those waters diminished. Notwithstanding the designation of waters or lands as public waters or wetlands, all provisions of Minnesota law forbidding trespass upon private lands shall remain in full force and effect.

**History:** 1976 c 83 s 8; 1978 c 505 s 1; 1979 c 199 s 7-12; 1979 c 289 s 6; 1982 c 424 s 130; 1986 c 386 art 4 s 19,20; 1986 c 444

#### 105.392 WATER BANK PROGRAM.

Subdivision 1. The legislature finds that it is in the public interest to preserve the wetlands of the state and thereby to conserve surface waters, to preserve wildlife habitat, to reduce runoff, to provide for floodwater retention, to reduce stream sedimentation, to contribute to improved subsurface moisture, to enhance the natural beauty of the landscape, and to promote comprehensive and total water management planning. Therefore, the commissioner of natural resources is authorized to promulgate rules, which shall include the procedures and payment rates designed to effectuate the terms of this section. This program is intended to supplement and complement the federal water bank program and the payment rates established shall be at least equal to the federal rates existing at the time any agreements are entered into.

Subd. 2. The commissioner shall have authority to enter into agreements with landowners for the conservation of wetlands. These agreements shall be entered into for a period of ten years, with provision for renewal for additional ten year periods. The commissioner may reexamine the payment rates at the beginning of any ten year renewal period in the light of the then current land and crop values and make needed adjustments in rates for any renewal period.

Wetlands eligible for inclusion in the waterbank program shall have all the following characteristics as determined by the commissioner: (a) type 3, 4, or 5 as defined

in United States Fish and Wildlife Service Circular No. 39 (1971 edition); (b) its drainage is lawful, feasible, and practical; and (c) its drainage would provide high quality cropland and that is the projected land use. Waters which have the foregoing characteristics but are less than ten acres in size in unincorporated areas or less than 2-1/2 acres in size in incorporated areas shall also be eligible for inclusion in the waterbank program, at the discretion of the commissioner.

Subd. 3. In the agreement between the commissioner and an owner, the owner shall agree:

(1) to place in the program for the period of the agreement eligible wetland areas the owner designates, which areas may include wetlands covered by a federal or state government easement which permits agricultural use, together with such adjacent areas as determined desirable by the commissioner;

(2) not to drain, burn, fill, or otherwise destroy the wetland character of such areas, nor to use such areas for agricultural purposes, as determined by the commissioner;

(3) to effectuate the wetland conservation and development plan for the land in accordance with the terms of the agreement, unless any requirement thereof is waived or modified by the commissioner;

(4) to forfeit all rights to further payments or grants under the agreement and to refund to the state all payments or grants received thereunder upon violating the agreement at any stage during the time the owner has control of the land subject to the agreement if the commissioner determines that the violation is of such a nature as to warrant termination of the agreement, or to make refunds or accept such payment adjustments as the commissioner may deem appropriate if the commissioner determines that the violation by the owner does not warrant termination of the agreement;

(5) upon transfer of right and interest in the lands subject to the agreement during the agreement period, to forfeit all rights to further payments or grants under the agreement and refund to the state all payments or grants received thereunder during the year of the transfer unless the transferee of any such land agrees with the commissioner to assume all obligations of the agreement;

(6) not to adopt any practice specified by the commissioner in the agreement as a practice which would tend to defeat the purposes of the agreement; and

(7) to additional provisions which the commissioner determines are desirable and includes in the agreement to effectuate the purposes of the program or to facilitate its administration.

Subd. 4. In return for the agreement of the owner, the commissioner shall (1) make an annual payment to the owner for the period of the agreement at the rate as the commissioner determines to be fair and reasonable in consideration of the obligations undertaken by the owner; and (2) provide advice on conservation and development practices on the wetlands and adjacent areas for the purposes of this section as the commissioner determines to be appropriate. In making the determination, the commissioner shall consider, among other things, the rate of compensation necessary to encourage owners of wetlands to participate in the waterbank program.

Subd. 5. Any agreement may be renewed or extended at the end of the agreement period for an additional period of ten years by mutual agreement of the commissioner and the owner, subject to any rate redetermination by the commissioner. If during the agreement period the owner sells or otherwise disposes of the ownership or right of occupancy of the land, the new owner may continue such agreement under the same terms or conditions, or enter into a new agreement in accordance with the provisions of this section, including the provisions for renewal and adjustment of payment rates, or may choose not to participate in the program, except any water designated as wetlands shall not be drained.

Subd. 6. The commissioner may terminate any agreement by mutual agreement with the owner if the commissioner determines that the termination would be in the public interest, and may agree to any modification of agreements the commissioner may determine to be desirable to carry out the purposes of the program or facilitate its administration.

**History:** 1976 c 83 s 9; 1979 c 199 s 13,14; 1986 c 444

**105.40 DIRECTOR; QUALIFICATIONS, DUTIES.**

Subdivision 1. The director of the division of waters, soils and minerals of the department of natural resources shall be a registered professional engineer, skilled in hydraulics. Under the direction of the commissioner, the director shall make the surveys and engineering investigations required by sections 105.37 to 105.55 and perform the following duties.

Subd. 2. 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 court administrators 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.

Subd. 3. 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.

Subd. 4. 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.

Subd. 5. 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.

Subd. 6. 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. The director 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 an authorized representative of the director, 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.

Subd. 7. The director shall perform such engineering work as may be requested by the state water policy board, and shall appear in all hearings and proceedings before the state water policy board affecting waters within the state.

Subd. 8. The director shall cooperate with all agencies and departments of the state and federal government relating to projects or works of improvement affecting waters within the state and shall make recommendations to the agencies involved and to the governor as to the desirability, feasibility and practicability of such proposed projects and works of improvement.

Subd. 9. The director is authorized to purchase such technical and scientific equipment as may be necessary to perform the functions and discharge the duties of the director's office.

Subd. 10. No contract or agreement shall be made by any department or agency of the state or any municipality with the United States or any agency or department thereof, for the collection of basic data pertaining to surface or ground waters of the state without first securing the written approval of the director.

Subd. 11. The director is authorized to formulate rules so as to standardize the forms and sizes of maps, plats, drawings and specifications in public drainage proceedings and proceedings and undertakings pertaining to public waters of the state.

Subd. 12. All moneys appropriated to the commissioner of natural resources of the department of natural resources for the use of the division of waters, soils and



minerals or the director thereof, to conduct hydrologic studies, shall remain available until expended.

Subd. 13. The director may appear for the state in any matter or proceeding affecting waters within the state, including boundary waters, for the purpose of furnishing hydrologic and hydraulic engineering advice and information in connection therewith.

Subd. 14. 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.

**History:** 1947 c 142 s 4; 1955 c 771 s 1; 1967 c 905 s 5; 1969 c 1129 art 3 s 1; 1985 c 248 s 70; 1986 c 444; 1Sp1986 c 3 art 1 s 82

#### **105.401 [Expired]**

NOTE: See Laws 1982, chapter 524, section 8.

#### **105.403 WATER AND RELATED LAND RESOURCES PLANS.**

The commissioner of natural resources, in cooperation with other state and federal agencies, regional development commissions, the metropolitan council, local governmental units, and citizens, shall prepare a statewide framework and assessment water and related land resources plan for presentation to the legislature by November 15, 1975, for its review and approval or disapproval. This plan shall relate each of the programs of the department of natural resources for specific aspects of water management to the others. The statewide plan shall include but not be limited to provisions for the following:

(a) Regulation of improvements and land development by abutting landowners of the beds, banks, and shores of lakes, streams, watercourses, and marshes by permit or otherwise in order to preserve them for beneficial use;

(b) Regulation of construction of improvements on and prevention of encroachments in the flood plains of the rivers, streams, lakes, and marshes of the state;

(c) Reclamation or filling of wet and overflowed lands;

(d) Repair, improvement, relocation, modification or consolidation in whole or in part of previously established public drainage systems within the state;

(e) Preservation of wetland areas;

(f) Management of game and fish resources as related to water resources;

(g) Control of water weeds;

(h) Control or alleviation of damages by flood waters;

(i) Alteration of stream channels for conveyance of surface waters, navigation, and any other public purposes;

(j) Diversion or changing of watercourses in whole or in part;

(k) Regulation of the flow of streams and conservation of the waters thereof;

(l) Regulation of lake water levels;

(m) Maintenance of water supply for municipal, domestic, industrial, recreational, agricultural, aesthetic, wildlife, fishery, or other public use;

(n) Sanitation and public health and regulation of uses of streams, ditches, or watercourses for the purpose of disposing of waste and maintaining water quality;

(o) Preventive or remedial measures to control or alleviate land and soil erosion and siltation of watercourses or bodies of water affected thereby;

(p) Regulation of uses of water surfaces.

**History:** 1974 c 558 s 1

#### **105.405 WATER SUPPLY MANAGEMENT.**

Subdivision 1. The commissioner shall develop and manage water resources to assure a supply adequate to meet long range seasonal requirements for domestic,

municipal, industrial, agricultural, fish and wildlife, recreational, power, navigation, and quality control purposes from surface or ground water sources, or from a combination of these.

Subd. 2. No permit authorized by sections 105.37 to 105.55 nor any plan for which the commissioner's approval is required or permitted, involving a diversion of any waters of the state, surface or underground, to a place outside of this state shall be granted or approved until after a determination by the commissioner that the water remaining in this state will be adequate to meet the state's water resources needs during the specified life of the diversion project and after approval by the legislature.

**History:** 1973 c 412 s 11; 1983 c 301 s 107

## 105.41 APPROPRIATION AND USE OF WATERS.

Subdivision 1. 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. Nothing in this section shall be construed to apply to the use of water for domestic purposes serving less than 25 persons. The commissioner shall establish a statewide training program to provide training in the conduct of pumping tests and data acquisition programs.

Subd. 1a. The commissioner shall submit to the legislature by January 1, 1975, for its approval, proposed rules governing the allocation of waters among potential water users. These rules shall be based on the following priorities for appropriation and use of water:

First priority. Domestic water supply, excluding industrial and commercial uses of municipal water supply.

Second priority. Any use of water that involves consumption of less than 10,000 gallons of water per day. For purposes of this section "consumption" shall mean water withdrawn from a supply which is lost for immediate further use in the area.

Third priority. Agricultural irrigation, involving consumption in excess of 10,000 gallons per day, and processing of agricultural products.

Fourth priority. Power production, involving consumption in excess of 10,000 gallons per day.

Fifth priority. Other uses, involving consumption in excess of 10,000 gallons per day.

Appropriation and use of surface water from streams during periods of flood flows and high water levels shall be encouraged subject to consideration of the purposes for use, quantities to be used, and the number of persons appropriating water.

Appropriation and use of surface water from lakes of less than 500 acres in surface area shall be discouraged.

Diversions of water from the state for use in other states or regions of the United States or Canada shall be discouraged, subject to the jurisdiction of the United States government.

No permit shall be issued under this section unless it is consistent with state, regional, and local water and related land resources management plans, provided that regional and local plans are consistent with statewide plans. The commissioner shall not modify or restrict the amount of appropriation from a groundwater source authorized in a permit issued pursuant to section 105.44, subdivision 8, between May 1 and October 1 of any year, unless the commissioner determines the authorized amount of appropriation endangers any domestic water supply.

Subd. 1b. No permit shall be required for the appropriation and use of less than a minimum amount to be established by the commissioner by rule. Permits for more than the minimum amount but less than an intermediate amount to be specified by the commissioner by rule shall be processed and approved at the municipal, county, or regional level based on rules to be established by the commissioner by January 1, 1977.

The rules shall include provisions for reporting to the commissioner the amounts of water appropriated pursuant to local permits.

Subd. 2. It shall be unlawful for the owner of any installation for appropriating or using surface or underground water to increase the pumping capacity or make any major modification in such installation without the written permit of the commissioner previously obtained upon written application therefor to the commissioner.

The owner or person in charge of every installation for appropriating or using surface or underground water, whether or not under permit, shall file with the commissioner at such time as the commissioner determines necessary to the statewide water information system, a statement of the location thereof, its capacity, the purpose or purposes for which it is used, and such additional information that the commissioner may require, on forms provided by the commissioner.

Subd. 3. The commissioner may examine any installation which appropriates or uses surface or underground water, and the owner of such installation shall supply such information concerning such installation as the commissioner may require.

Subd. 4. 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 measuring and keeping a record of the quantity of water used or appropriated as herein provided. Each installation for appropriating or using water shall be equipped with a device or employ a method to measure the quantity of water appropriated with reasonable accuracy. The commissioner's determination of the method to be used for measuring water quantity shall be based upon the quantity of water appropriated or used, the source of water, the method of appropriating or using water, and any other facts supplied to the commissioner.

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.

Subd. 6. Any appropriation or use permit may be transferred if the permittee conveys the real property where the source of water is located to the subsequent owner of the real property. The subsequent owner shall notify the commissioner of natural resources immediately after an appropriation or use permit is transferred pursuant to this section.

**History:** 1947 c 142 s 5; 1959 c 486 s 1; 1965 c 797 s 1; 1969 c 1129 art 3 s 1; 1973 c 211 s 2; 1973 c 315 s 6; 1974 c 558 s 2,3; 1975 c 105 s 1; 1977 c 446 s 2-4; 1978 c 505 s 2; 1983 c 301 s 108; 1984 c 544 s 89; 1985 c 264 s 2; 1985 c 248 s 70;

#### **105.415 RULES GOVERNING PERMITS.**

Notwithstanding the provision in section 105.41, subdivision 1a, stating that the commissioner of natural resources shall submit to the legislature by January 1, 1975, for its approval proposed rules governing the allocation of waters among potential water users, and notwithstanding the provision in section 105.42, subdivision 1a, stating that the commissioner shall recommend by January 15, 1975, to the legislature a comprehensive law containing standards and criteria governing the issuance and

denial of permits under the section, the commissioner shall prior to January 30, 1978, adopt rules containing standards and criteria for the issuance and denial of the permits required by sections 105.41 and 105.42.

**History:** 1976 c 346 s 18; 1977 c 446 s 5

#### **105.416 IRRIGATION FROM GROUNDWATER.**

**Subdivision 1. Permit.** Permit applications required by section 105.41, for appropriation of groundwater for purposes of agricultural irrigation shall be processed as either class A or class B applications. Class A applications are for wells located in areas for which the commissioner of natural resources has adequate groundwater availability data. Class B are those for all other areas. The commissioner shall evaluate available groundwater data, determine its adequacy, and designate areas A and B, statewide. The commissioner shall solicit, receive, and evaluate groundwater data from soil and water conservation districts, and where appropriate revise the area A and B designations. The commissioner of natural resources shall file with the secretary of state a commissioner's order defining these areas by county and township. Additional areas may be added by a subsequent order of the commissioner. Class A and B applications shall be processed in the order received.

**Subd. 2. Class B permits; information requirements.** Class B applications are not complete until the applicant has supplied the following data:

(a) A summary of the anticipated well depth and subsurface geologic formation expected to be penetrated by the well. For glacial drift aquifers, this data shall include the logs of test holes drilled for the purpose of locating the site of the proposed production well;

(b) The formation and aquifer expected to serve as the groundwater source;

(c) The maximum daily, seasonal and annual pumpage expected;

(d) The anticipated groundwater quality in terms of the measures of quality commonly specified for the proposed water use;

(e) The results of a pumping test supervised by the commissioner or a designee of the commissioner, conducted at a rate not to exceed the proposed pumping rate for a period not to exceed 72 hours for wells under water table conditions and not to exceed 24 hours for wells under artesian conditions. Before, during and after the pumping test the commissioner shall require monitoring of water levels in one observation well located at such distance from the pumping well which the commissioner has reason to believe may be affected by the new appropriation. The permit applicant shall be responsible for all costs of the pumping tests and monitoring in the one observation well. The applicant shall be responsible for the construction of this one observation well if suitable existing wells cannot be located for this purpose. If the commissioner believes that more than one observation well is needed the commissioner shall instruct the applicant to install and monitor additional observation wells. The commissioner shall reimburse the applicant for these added costs; and

(f) Upon determination of the area of influence of the proposed well, the location of existing wells within the area of influence which were reported pursuant to section 156A.07, together with readily available facts on depths, geologic formations, pumping and nonpumping water levels and details of well construction as related to the commissioner of health "Water Well Construction Code".

The commissioner may in any specific application waive any of the requirements of clauses (d) to (f) when the necessary data is already available.

**Subd. 3. Issuance of new permits; conditions.** The commissioner shall issue permits for irrigation appropriation from groundwater only where the commissioner determines that proposed soil and water conservation measures are adequate based on recommendations of the soil and water conservation districts and that water supply is available for the proposed use without reducing water levels beyond the reach of vicinity wells constructed in accordance with the water well construction code, contained in the rules of the Minnesota state commissioner of health, parts 4725.1900 to 4725.6500.

**History:** 1977 c 305 s 45; 1977 c 446 s 18; 1985 c 248 s 69; 1986 c 444

**105.417 WATER APPROPRIATIONS FROM SURFACE SOURCES.**

Subdivision 1. **Waiver.** The commissioner may waive any limitation or requirement in subdivisions 2 to 5 for just cause.

Subd. 2. **Natural and altered natural watercourses.** Where data are available, permits to appropriate water from natural and altered natural watercourses shall be limited so that consumptive appropriations are not made from the watercourses during periods of specified low flows in order to safeguard water availability for instream uses and for downstream higher priority users located in reasonable proximity to the site of appropriation.

Subd. 3. **Waterbasins.** (a) Permits to appropriate water for any purpose from waterbasins shall be limited so that the collective annual withdrawals do not exceed a total volume of water amounting to one-half acre-foot per acre of waterbasin based on Minnesota department of conservation bulletin No. 25, "An Inventory of Minnesota Lakes."

(b) As a condition to any surface water appropriation permit, the commissioner of natural resources shall establish an elevation for the subject waterbasin, below which no appropriation shall be allowed. During the determination of the elevation, which for the purposes of this section shall be known as the "protection elevation," the commissioner shall take into account the elevation of important aquatic vegetation characteristics related to fish and wildlife habitat, existing uses of the waterbasin by the public and riparian land owners, the total volume within the waterbasin and the slope of the littoral zone.

(c) As part of any application for appropriation of water for any purpose from a waterbasin of less than 500 acres in surface area, the applicant shall obtain a signed statement from as many landowners with land riparian to the subject waterbasin stating their support to the proposed appropriation as the applicant is able to obtain and it shall indicate the number whose signature the applicant is unable to obtain.

Subd. 4. **Trout streams.** Permits issued after June 3, 1977 to appropriate water for any purpose from streams designated trout streams by the commissioner's orders pursuant to section 97C.021, shall be limited to temporary appropriations.

Subd. 5. **Contingency planning.** No application for use of surface waters of the state for any purpose is complete until the applicant submits, as part of the application, a contingency plan which describes the alternatives the applicant will utilize if further appropriation is restricted due to the flow of the stream or the level of a waterbasin. No surface water appropriation for any purpose shall be allowed unless the contingency plan is feasible or the permittee agrees to withstand the results of no appropriation.

**History:** 1977 c 446 s 19; 1986 c 386 art 4 s 21; 1986 c 444

**105.418 CONSERVATION OF PUBLIC WATER SUPPLIES.**

During periods of critical water deficiency as determined by the governor and declared by order of the governor, public water supply authorities appropriating water shall adopt and enforce restrictions consistent with rules adopted by the commissioner of natural resources within their areas of jurisdiction to restrict lawn sprinkling, car washing, golf course and park irrigation, and other nonessential uses, together with appropriate penalties for failure to comply with the restrictions. The commissioner may adopt emergency rules pursuant to section 15.0412, subdivision 5 relating to matters covered by this section during the year 1977. Disregard of critical water deficiency orders, even though total appropriation remains less than that permitted, shall be adequate grounds for immediate modification of any public water supply authority's appropriator's permit.

**History:** 1977 c 446 s 20

**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 the commissioner. 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, and to prescribe terms and conditions for granting, permits 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.

Subd. 1a. The commissioner shall recommend by January 15, 1975, to the legislature a comprehensive law containing standards and criteria governing the issuance and denial of permits under this section. These standards and criteria shall relate to the diversion of water from other uses and changes in the level of public waters to insure that projects will be completed and maintained in a satisfactory manner. The commissioner may by rule identify classes of activities in waterbasins and classes of watercourses on which the commissioner may delegate permit authority to the appropriate county or city under such guidelines as the commissioner may provide based on agreement with the involved county or city and in compliance with the requirements of section 105.45. After November 15, 1975, a permit shall be granted under this section only when the project conforms to state, regional, and local water and related land resources management plans, and only when it will involve a minimum of encroachment, change, or damage to the environment, particularly the ecology of the waterway. In those instances where a major change in the resource is justified, permits shall include provisions to compensate for the detrimental aspects of the change.

In unincorporated areas and, after January 1, 1976, in incorporated areas, permits that will involve excavation in the beds of public waters shall be granted only where the area in which the excavation will take place is covered by a shoreland conservation ordinance approved by the commissioner and only where the work to be authorized is consistent with the shoreland conservation ordinance. Each permit that will involve excavation in the public waters shall include provisions governing the deposition of spoil materials.

No permit affecting flood waters shall be granted except where the area covered by the permit is governed by a flood plain management ordinance approved by the commissioner and the conduct authorized by the permit is consistent with the flood plain management ordinance, provided that the commissioner has determined that sufficient information is available for the adoption of a flood plain ordinance. No permit involving the control of flood waters by structural means, such as dams, dikes, levees, and channel improvements, shall be granted until after the commissioner has given due consideration to all other flood damage reduction alternatives. In developing a policy with regard to placing emergency levees along the banks of public waters under flood emergency conditions, the commissioner shall consult and cooperate with the office of emergency services.

No permit that will involve a change in the level of public waters shall be granted unless the shoreland adjacent to the waters to be changed is governed by a shoreland conservation ordinance approved by the commissioner and the change in water level is consistent with that shoreland conservation ordinance. Standards and procedures for use in deciding the level of a particular lake must insure that the rights of all persons

are protected when lake levels are changed and shall include provisions for providing technical advice to all persons involved, for establishing alternatives to assist local agencies in resolving water level conflicts, and mechanics necessary to provide for local resolution of water problems within the state guidelines.

Subd. 2. Nothing in this section shall prevent the owner of any dam, reservoir, control structure, or waterway obstruction from instituting repairs which are immediately necessary in case of emergency. However, the owner shall notify the commissioner at once of the emergency and of the emergency repairs being instituted and, as soon as practicable, shall apply for a permit for the emergency repairs and any necessary permanent repairs. Nothing in this section shall apply to routine maintenance, not affecting the safety of the structures.

In case of an emergency where the commissioner declares that repairs or remedial action is immediately necessary to safeguard life and property, the repairs, remedial action, or both, shall be started immediately by the owner.

Subd. 3. The owner of any dam, reservoir, control structure, or waterway obstruction constructed before a permit was required by law shall maintain and operate all such dams, reservoirs, control structures, and waterway obstructions in a manner approved by the commissioner and in accordance with any rules promulgated by the commissioner in the manner prescribed by chapter 14.

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:** 1947 c 142 s 6; 1973 c 123 art 5 s 7; 1973 c 315 s 7; 1973 c 344 s 3; 1974 c 428 s 5; 1974 c 558 s 4; 1976 c 83 s 10; 1978 c 779 s 1; 1979 c 199 s 15; 1982 c 424 s 130; 1985 c 172 s 102; 1985 c 248 s 70; 1Sp1985 c 13 s 228; 1986 c 444

### 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 a majority of the riparian owners thereon; or, for the purpose of conserving or utilizing the water resources of the state, the commissioner may initiate proceedings therefor.

**History:** 1947 c 142 s 7; 1973 c 315 s 8

### 105.44 PROCEDURE UPON APPLICATION.

Subdivision 1. **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. This data may include but not be limited to a statement of the effect the actions proposed in the permit application will have on the environment, such as: (a) changes in water and related land resources which are anticipated; (b) unavoidable but anticipated detrimental effects; (c) alternatives to the actions proposed in the permit. If the proposed activity, for which the permit is requested, is within a city, or is within or affects a watershed district or a soil and water conservation district, a copy of the application together with maps, plans and specifications shall be served on the secretary of the board of managers of the district and the secretary of the board of supervisors of the soil and water conservation district and on the mayor of the city. Proof of such service shall be included with the application and filed with the commissioner.

Subd. 1a. **Excavation charges.** The commissioner shall impose charges for the excavation of minerals from the beds of public waters, as provided in chapter 93.

Subd. 2. **Authority.** 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. Provided, that if the proposed activity for which the permit is requested is within a city, or is within or affects a watershed district or a soil and water conservation district the commissioner may secure the written recommendation of the managers of said district and the board of supervisors of the soil and water conservation district or the mayor of the city before granting or refusing the permit. The managers or supervisors or mayors shall file their recommendation within 30 days after receipt of a copy of the application for permit.

**Subd. 3. Waiver of hearing.** The commissioner may waive hearing on any application and order the granting or refusal of such application. In such case, if any application is granted, with or without conditions, or is refused, 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 within 30 days after mailed notice thereof file with the commissioner a demand for hearing on the application together with the bond required by subdivision 6. The application shall thereupon be fully heard on notice as hereinafter provided, and determined the same as though no previous order had been made. Any hearing pursuant to this section shall be conducted as a contested case in accordance with chapter 14. If the commissioner elects to waive a hearing, and if no demand for hearing be made, or if a hearing is demanded but no bond is filed as required by subdivision 6, the order shall become final at the expiration of 30 days after mailed notice thereof to 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 and no appeal of the order may be taken to the district court.

**Subd. 4. Time.** The commissioner shall act upon all applications, except for appropriations for irrigation, pursuant to subdivision 8, within 30 days after the application and all required data is filed in the commissioner's 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 commissioner at the expense of the applicant or, if the proceeding is initiated by the commissioner in the absence of an applicant, at the expense of the commissioner, 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 mayor of any municipality or the watershed district and the soil and water conservation district affected. The commissioner shall also fulfill any notice requirements prescribed by sections 14.57 to 14.59 and rules of the chief administrative law judge.

**Subd. 6. Hearing costs.** Except where a public hearing is demanded by a public authority which is not the applicant, the applicant shall pay the following, if after the hearing the commissioner's action, taken pursuant to subdivision 2, is affirmed without material modification: (1) Costs of the stenographic record and transcript, (2) rental expenses, if any, of the place of hearing, (3) costs of publication of orders made by the commissioner; however, in no event shall the applicant pay more than \$750.

Where the public hearing is demanded by a public authority which is not the applicant, the public authority making the demand shall pay the costs and expenses listed above if the commissioner's action is affirmed without material modification. An applicant filing a demand for a public hearing shall execute and file a corporate surety bond or equivalent security to the state of Minnesota, to be approved by the commissioner, and in an amount and form fixed by the commissioner. The bond or security shall be conditioned for the payment of all costs and expenses of the public hearing if the commissioner's action taken pursuant to subdivision 2 is affirmed without material modification. No bond or security is required of a public authority which demands a public hearing. The commissioner may waive the requirement for a bond or other security. In all other instances, costs of the hearing shall be borne in the manner prescribed by chapter 14 and the chief administrative law judge.



**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 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.

**Subd. 8. Permit to irrigate agricultural land.** When an application for permit to irrigate agricultural land from public waters is made, the soil and water conservation district may make recommendations to the commissioner regarding the disposition of the application and its compatibility to a comprehensive soil and water conservation plan approved pursuant to section 40.07, subdivision 9, within 30 days of the receipt of the application. Within 30 days of receipt of the application the commissioner may require additional specific information from the applicant. Upon receipt of all additional specific information required of the applicant, the commissioner shall have an additional 60 days to review that information, consider the soil and water conservation recommendations and decide whether to grant or deny the permit; provided that if the commissioner orders a hearing, then the time within which the commissioner must grant or deny the application shall be ten days after receipt of the report of the hearing officer. In the case of an application for permit to irrigate agricultural land, failure of the commissioner to act thereon within the specified time period, shall be deemed an order granting the application. This order shall be deemed granted ten days after the applicant has given written notice to the commissioner stating an intention to proceed with the appropriation.

**Subd. 9. Limitations on permits.** Except as otherwise expressly provided by law, every permit issued by the commissioner of natural resources under the provisions of Minnesota Statutes 1949, sections 105.37 to 105.55, or any amendment thereof, shall be subject to the following:

(1) Cancellation by the commissioner at any time if deemed necessary for any cause for the protection of the public interests;

(2) Such further conditions respecting the term of the permit or the cancellation thereof as the commissioner may prescribe and insert in the permit;

(3) All applicable provisions of law existing at the time of the issuance of the permit or thereafter enacted by the legislature;

(4) Any applications granted under subdivision 8, or deemed granted under the provisions thereof, shall likewise be subject to the foregoing provisions of this subdivision, and shall be subject also to cancellation by the commissioner upon the recommendation of the supervisors of the soil and water conservation district wherein the land to be irrigated is located.

**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:** 1947 c 142 s 8; 1951 c 334 s 1; 1961 c 488 s 1-3; 1969 c 637 s 1; 1969 c 706 s 1-3; 1969 c 1129 art 3 s 1; 1973 c 123 art 5 s 7; 1973 c 211 s 3; 1973 c 315 s 9-12; 1974 c 558 s 5; 1977 c 162 s 1-5; 1977 c 446 s 6-13; 1982 c 424 s 130; 1983 c 301 s 109; 1984 c 544 s 89; 1984 c 640 s 32; 1985 c 264 s 3; 1986 c 444

#### 105.45 PERMITS AND ORDERS OF COMMISSIONER; NOTICE.

The commissioner shall make findings of fact upon all issues necessary for determination of the applications considered. All orders made by the commissioner shall be based upon findings of fact made on substantial evidence. The commissioner 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 are reasonable, practical, and will adequately protect public safety and promote the public welfare, the commissioner shall grant the permit, and, if that be in issue, fix the control levels of public waters accordingly. In all other cases the commissioner shall reject the application or may require such modification of the plan as the commissioner deems proper to protect the public interest. In all permit applications the applicant has the burden of proving that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare.

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 an order pursuant to hearing within 60 days after the completion of the hearing.

**History:** 1947 c 142 s 9; 1973 c 315 s 13; 1977 c 162 s 6; 1986 c 444

#### 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, and permits granted in connection with the mining, production or beneficiation of copper, copper-nickel or nickel, shall be irrevocable for the term thereof without the consent of the permittee, except for breach or nonperformance of any condition of the permit by the permittee and the commissioner may allow and prescribe therein such time as the commissioner 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.

**History:** 1947 c 142 s 10; 1967 c 566 s 1; 1986 c 444

**105.461 ORDERS TO RESTORE.**

As a part of any order granting or denying a permit, whether or not a hearing has been held, the commissioner may order the applicant to take any action necessary to restore the public waters or beds thereof to the condition existing before unlawful activities, if any, were undertaken by the applicant. This restoration may include, but not be limited to, filling beds unlawfully dredged, removing fill unlawfully placed, or restoring water unlawfully appropriated. If a hearing on the application was not held, the applicant may, within 30 days of the receipt of an order to restore public waters or beds, contest the order and shall be afforded a contested case hearing in the manner prescribed by chapter 14.

*History: 1973 c 315 s 14; 1977 c 162 s 7; 1982 c 424 s 130*

**105.462 INVESTIGATIONS; ORDERS WITHOUT A PERMIT APPLICATION.**

On determining that the public interest requires it, the commissioner may investigate any activities being conducted in relation to public waters without a permit as required by sections 105.37 to 105.55. With or without a public hearing, the commissioner may make findings and issue orders as otherwise may be issued pursuant to sections 105.37 to 105.55. A copy of the findings and order shall be served upon the person to whom the order is issued. If the commissioner issues the findings and order without a hearing, the person to whom the order is issued may file with the commissioner a demand for a hearing, together with the bond required by section 105.44, subdivision 6, within 30 days after being served with a copy of the commissioner's order. The matter shall be heard in the same manner and pursuant to the same laws as an application is heard following a demand made under section 105.44, subdivision 3, insofar as applicable. If no demand for hearing is made by the person to whom the order is issued under this section, or if that person demands a hearing but fails to file the required bond, the commissioner's order becomes final at the expiration of 30 days after the person is served with the order and no appeal of the order may be taken.

*History: 1973 c 315 s 15; 1977 c 446 s 14; 1983 c 247 s 43; 1986 c 444*

**105.463 CONTRACTOR'S RESPONSIBILITY.**

It is unlawful for any agent, servant, or employee of another to construct, reconstruct, remove, 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 unless the agent, servant or employee has (a) obtained a signed statement from the landowner that all permits required for the work have been obtained or that no permit is required, and (b) mailed a copy of the statement to the office of the department for the region in which the proposed work is located. Violation of this section constitutes a separate and independent offense from any other provided by sections 105.37 to 105.55.

The commissioner of natural resources shall develop a suitable form to be distributed to contractors' associations and county auditors for the purposes of this section, which shall include a listing of the activities for which a permit is required, a description of the penalties for violating this chapter, the mailing addresses and telephone numbers of the various regional offices of the department of natural resources, a statement that water inventory maps completed pursuant to section 105.391, subdivision 1, are on file with the auditors of the various counties, and spaces for a description of the work and the names, mailing addresses, and phone numbers of the person authorizing the work and the agent, servant, or employee proposing to undertake it.

*History: 1973 c 315 s 16; 1982 c 512 s 7*

**105.47 [Repealed, 1977 c 162 s 8]**

**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:** 1978 c 729 s 1; 1985 c 172 s 103

**105.475 STREAM MAINTENANCE PROGRAM.**

**Subdivision 1. Findings.** In recognition of recurrent problems created by debris and rubble accumulation in streams in Minnesota, the legislature finds that the removal of debris and rubble for the purpose of cleaning up stream beds and flood plains of streams is of benefit to the public health, safety, and welfare.

**Subd. 2. Establishment; commissioner's duties.** In furtherance of the finding set forth in subdivision 1, the commissioner of natural resources shall establish and supervise a stream maintenance program which shall include grants in aid to participating counties. Money granted by the commissioner shall be apportioned according to the relative severity of the maintenance problem, the date of application for the grant, and the availability of funds. In no case may the amount granted to a county by the commissioner exceed 75 percent of the total cost of a stream maintenance project. The stream maintenance work shall be performed by the county or under county supervision. The commissioner may grant money for the following work: Cutting and removal of brush and dead or down trees, and removal of large rocks and other debris such as concrete, asphalt, or scrap material. No money may be granted for excavation or filling or for work performed before an application is filed.

**Subd. 3. Application.** A county desiring to participate in the stream maintenance program shall complete and submit to the commissioner an application for the proposed work on forms provided by the commissioner. Unless waived by the commissioner, the county shall submit the following information with its application:

(a) A map of the county showing the stream for which maintenance is desired, and the specific reaches of the stream to be maintained;

(b) Photographs showing the nature and extent of the maintenance problem;

(c) A resolution by the county board of commissioners requesting participation in the program and agreeing to provide at least 25 percent of the cost of the maintenance project.

**Subd. 4. Contract.** Upon approving a stream maintenance project, the commissioner shall contract with the county for performance of work necessary to the stream maintenance project. The contract may provide that the county share of the cost of the project may be paid in the form of services provided by the county.

**Subd. 5. County matching funds.** Any county may appropriate from its general revenue fund sufficient funds to match the grants in aid authorized in this section.

**History:** 1973 c 434 s 1

**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 the commissioner's 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.

**History:** 1947 c 142 s 12; 1986 c 444

#### **105.482 DAMS; REPAIR, RECONSTRUCTION; GRANTS.**

**Subdivision 1. Purpose.** The public health, safety, and welfare is promoted by the orderly repair and restoration of dams serving the public interest and by the use of existing dams and potential dam sites for hydroelectric or hydromechanical power generation wherever that use is economically justified and environmentally sound. In furtherance of this objective, it is the purpose of this section to facilitate the repair and restoration of dams owned by the state and local governmental units and to investigate and analyze hydroelectric or hydromechanical generating capability of publicly owned dams and potential dam sites.

**Subd. 2. Definition.** For the purposes of this section, the term "local governmental unit" means any political subdivision of the state, or any two or more of these subdivisions acting jointly.

**Subd. 3. Commissioner's duties.** From money appropriated for the following purposes from time to time, the commissioner of natural resources may repair or reconstruct state owned dams and may grant aid to local governmental units to repair or reconstruct dams owned by local governmental units and to make necessary engineering evaluations related to the repair or reconstruction. The engineering evaluations may include, but are not limited to, studies of the feasibility, practicality, and environmental effects of utilizing dams for hydroelectric power generation. Except as provided below, no grant to a local governmental unit shall exceed the amount contributed to the project by the local governmental unit from funds raised locally. A grant to study the feasibility, practicality and environmental effects of utilizing a dam for hydroelectric power generation may be for an amount not to exceed 90 percent of the costs of the study. Federal general revenue sharing money may be counted as funds raised locally, but other federal grants or loans shall be used to reduce equally the state share and the local share of project costs.

**Subd. 4. Procedures.** The commissioner shall repair or reconstruct a state owned dam or make a grant to a local governmental unit only after making an investigation of the dam. A local governmental unit desiring a grant for the repair or reconstruction of a dam shall apply for the grant on forms supplied by the commissioner. The commissioner shall consider all relevant factors, including but not limited to the following in determining whether to repair or reconstruct a state owned dam or to make a grant to a local governmental unit: (a) the age and type of construction of the dam; (b) the use of the dam for water supply, flood control, navigation, hydroelectric power generation, recreation, wildlife management, scenic, or other purpose related to public health, safety, and welfare; (c) the consequences of abandonment, removal, or alteration of the dam; (d) prospective future uses of the dam; and (e) the relative importance of the dam to the statewide water resource program. Upon the commissioner's own initiative or at the request of a governmental unit applying for a grant, the commissioner may hold a public hearing on the proposed repair or reconstruction in the manner provided in section 105.44, after giving the same notice as required for such a hearing. If the hearing is held at the request of a governmental unit, the costs of publishing notice and of taking and preparing the stenographic record shall be paid by the governmental unit. To receive a grant the local governmental unit shall enter into an agreement with the commissioner giving assurance that the governmental unit will operate and maintain the dam in a safe condition for the benefit of the public and shall agree to such other conditions as the commissioner deems reasonable.

**Subd. 5. Limitations.** If the cost of repair or reconstruction of a state owned dam or a grant to a local governmental unit is less than \$75,000, the commissioner may direct that the state owned dam be repaired or reconstructed or that a grant be made to repair or reconstruct a dam owned by a local governmental unit without the approval of the state executive council. If the cost of repair or reconstruction of a state owned dam, or a grant to a local governmental unit is \$75,000 or more but less than \$150,000, the expenditure shall be made only with the approval of the state executive council. If the cost of repair or reconstruction of a state owned dam or a grant to a local governmental unit is \$150,000 or more, the commissioner may recommend the project to the legislature for its consideration and action, except in the following emergency situations. With the approval of the executive council, the commissioner may direct that a state owned dam be repaired or reconstructed or a grant be made to a local governmental unit where the commissioner determines that an emergency condition exists and that there is danger that life will be lost or that substantial property losses will be suffered if such action is not promptly taken.

**Subd. 5a. Loans.** When the commissioner of natural resources decides to recommend to the legislature a dam repair or reconstruction grant to a local governmental unit, the commissioner shall notify the local governmental unit and the commissioner of finance of the decision. The local government unit may then apply to the commissioner of finance on forms supplied by the commissioner of finance for a loan to cover up to 90 percent of the local share of project costs. The loan is repayable over a period not to exceed 20 years, with interest at a rate sufficient to cover the cost to the state of borrowing the money. Each local unit of government receiving a dam safety loan shall levy for the loan payment in that year and each year thereafter, until its loan is paid, (a) the amount of its annual loan payment, or (b) the amount of the required loan payment less the amount the local unit certifies is available from other sources for the loan payment. Upon approval of the project grant by the legislature, the commissioner of finance shall make the loan in an amount and on terms that are appropriate. Loans made pursuant to this subdivision shall not require approval by the electors of the local governmental unit as provided in section 475.58. All principal and interest payments received by the commissioner of finance in repayment of these loans are appropriated to the Minnesota state building bond account.

**Subd. 6. Commissioner's order to repair or reconstruct a dam.** If for any reason a local governmental unit fails to repair or remove a dam when ordered to do so by the commissioner pursuant to section 105.52, the commissioner may repair or remove the dam. In so doing the commissioner shall proceed as follows. After a hearing as provided in section 105.44, on the failure of the local governmental unit to repair or remove the dam, the commissioner shall make findings relating to the matter, specifying the failure of the local governmental unit to act, and shall by order assume and possess the powers of the legislative authority of the local governmental unit in regard to the repair or removal of dams. Thereafter the commissioner has the same powers, insofar as applicable to the repair or removal of dams, as the commissioner of administration and pollution control agency have in the construction, installation, maintenance, or operation of a municipal disposal system, or part thereof, or issuing bonds and levying taxes therefor, pursuant to section 115.48.

**Subd. 7. Priority list of dams needing repair.** On the basis of examinations of dams owned by the state or local governmental units, the commissioner shall report annually to the legislature those state or local governmental dams in need of repair or reconstruction in the order of priority the commissioner determines necessary considering danger to life, damage to property and those factors listed in subdivision 4.

**Subd. 8. Hydropower generation policy; leasing of dams and dam sites.** Consistent with laws relating to dam construction, reconstruction, repair, and maintenance, the legislature finds that the public health, safety, and welfare of the state is also promoted by the use of state waters to produce hydroelectric or hydromechanical power. Further, the legislature finds that the leasing of existing dams and potential dam sites primarily for such power generation is a valid public purpose. A local governmental unit, or the

commissioner of natural resources with the approval of the state executive council, may provide pursuant to a lease or development agreement for the development and operation of dams, dam sites, and hydroelectric or hydromechanical power generation plants owned by the respective government by an individual, a corporation, an organization, or other legal entity upon terms and conditions as contained in subdivision 9. For installations of 15,000 kilowatts or less at a dam site and reservoir that is not being used on January 1, 1984 in connection with the production of hydroelectric or hydromechanical power, the lease or development agreement negotiated by the local governmental unit and the developer shall constitute full payment by the lessee and may be in lieu of all real or personal property taxes that might otherwise be due to a local governmental unit. If the dam, dam site, or power generation plant is located in or contiguous to a city or town, other than the lessor governmental unit, the lease or agreement shall not be effective unless it is approved by the governing body of the city or town. For purposes of this subdivision, city means a statutory or home rule charter city.

**Subd. 9. Contents of development agreement.** An agreement for the development or redevelopment of a hydropower site may contain, but need not be limited to, the following provisions:

(a) Length of the development agreement, subject to negotiations between the parties but not more than 99 years, and conditions for extension, modification, or termination;

(b) Provisions for a performance bond on the developer, or, certification that the equipment and its installation have a design life at least as long as the lease;

(c) Provisions to assure adequate maintenance and safety in the impoundment structures, if any, and to assure access to recreational sites, if any;

An agreement shall contain provisions to assure the maximum financial return to the local governmental unit or the commissioner of natural resources.

**History:** 1973 c 123 art 5 s 7; 1973 c 344 s 4; 1977 c 446 s 15,16; 1978 c 779 s 2,3; 1979 c 300 s 1-3; 1980 c 585 s 1-4; 1982 c 523 art 27 s 1-3; 1984 c 502 art 3 s 1,2; 1986 c 436 s 4,5; 1986 c 444

#### **105.484 LAKE IMPROVEMENTS; GRANTS-IN-AID; PRIORITIES.**

The commissioner of natural resources with the assistance of the pollution control agency and the commissioner of energy and economic development shall make an assessment of the need for particular kinds of lake improvements including improvements related to high or low water levels and any other resource management considerations, except pollution problems, and develop criteria for allocating state aid funds among proposed projects. Provisions shall be included to insure that any federal program of aid to local lake improvement projects serves to reduce the local share of project costs rather than reducing only the state's share.

**History:** 1974 c 558 s 7; 1978 c 726 s 1; 1981 c 356 s 116; 1983 c 289 s 115 subd 1

#### **105.485 REGULATION OF SHORELAND DEVELOPMENT.**

**Subdivision 1. Purpose.** In furtherance of the policies declared in section 105.38, and chapter 116, it is in the interest of the public health, safety, and welfare to provide guidance for the wise development of shorelands of public waters and thus preserve and enhance the quality of surface waters, preserve the economic and natural environmental values of shorelands, and provide for the wise utilization of water and related land resources of the state.

**Subd. 2. Definitions.** For the purposes of this section the terms defined in this section have the meanings given them: (a) "Shoreland" means land located within the following distances from the ordinary high water elevation of public waters: (1) Land within 1,000 feet from the normal high watermark of a lake, pond, or flowage; and (2) land within 300 feet of a river or stream or the landward side of flood plain delineated by ordinance on such a river or stream, whichever is greater. (b) "Unincorporated area" means the area outside a city. (c) "Municipality" means a city.

**Subd. 3. Commissioner's duties.** The commissioner of natural resources shall adopt, in the manner provided in chapter 14, model standards and criteria, other than a model ordinance, for the subdivision, use, and development of shoreland in municipalities, which standards and criteria shall include but not be limited to those listed below in regard to unincorporated areas. The commissioner of natural resources shall adopt, in the manner provided in chapter 14, model standards and criteria for the subdivision, use, and development of shoreland in unincorporated areas, including but not limited to the following: (a) The area of a lot and length of water frontage suitable for a building site; (b) the placement of structures in relation to shorelines and roads; (c) the placement and construction of sanitary and waste disposal facilities; (d) designation of types of land uses; (e) changes in bottom contours of adjacent public waters; (f) preservation of natural shorelands through the restriction of land uses; (g) variances from the minimum standards and criteria; and (h) a model ordinance. The following agencies shall provide information and advice necessary to the preparation of the rules, or amendments thereto: The state departments of agriculture, health, and energy, planning and development; the pollution control agency; the state soil and water conservation board; and the Minnesota historical society. In addition to other requirements of chapter 14, the model standards and ordinance adopted pursuant to this section, or amendments thereto, shall not be filed with the secretary of state unless approved by the state commissioner of health and the director of the pollution control agency.

**Subd. 4. Failure of county to act; commissioner's duties; enforcement.** If a county fails to adopt a shoreland conservation ordinance by July 1, 1972, or if the commissioner of natural resources, at any time after July 1, 1972, after notice and hearing as provided in section 105.44, finds that a county has adopted a shoreland conservation ordinance which fails to meet the minimum standards established pursuant to this section, the commissioner shall adapt the model ordinance to the county. The commissioner shall hold at least one public hearing on the proposed ordinance in the manner provided in section 394.26, after giving notice as provided in section 394.26. This ordinance is effective for the county on the date and in accordance with such rules relating to compliance as the commissioner shall prescribe. The ordinance shall be enforced as provided in section 394.37. The penalties provided in section 394.37, apply to violations of the ordinance so adapted by the commissioner.

**Subd. 5. Costs.** The cost incurred by the commissioner in adapting the model ordinance to the county pursuant to subdivision 4 shall be paid by the county upon the submission to the county of an itemized statement of these costs by the commissioner. If the county fails to pay these costs within 90 days after the commissioner's statement is received, the commissioner may file a copy of the statement of these costs with the county auditor of the county for collection by special tax levy. The county auditor, upon receiving a statement from the commissioner, shall include the amount of the state's claim in the tax levy for general revenue purposes of the county. This additional tax shall be levied in excess of any limitation as to rate or amount, but shall not cause the amount of other taxes which are subject to any limitation to be reduced in any amount whatsoever. Upon completion of the tax settlement following this levy, the county treasurer shall remit the amount due to the state to the commissioner for deposit in the state treasury.

**Subd. 6. Municipal shoreland management.** Before April 1, 1974, each municipality having shoreland within its corporate limits shall submit to the commissioner, for review, any ordinances or rules affecting the use and development of its shorelands. The commissioner shall review the ordinances or rules and determine whether they are in substantial compliance with municipal shoreland management standards and criteria promulgated pursuant to subdivision 3. In making the review the commissioner also shall consider any feature unique to the municipal shoreland in question, including but not limited to the characteristics of the waters which may be affected by development, storm sewer facilities, and sanitary and waste disposal facilities in existence at the time of the commissioner's review. If the commissioner determines that the ordinances or rules of a municipality do not substantially comply with the state standards and criteria



for municipal shoreland management, the commissioner shall so notify the municipality and shall indicate to the municipality the changes which are necessary to bring the ordinances or rules into substantial compliance with state standards and criteria. Within one year after receiving this notice from the commissioner, the municipality shall make the changes necessary to bring the ordinances or rules into substantial compliance with state standards and criteria. If a municipality has no ordinance or rule affecting the use and development of shoreland on April 1, 1974, it shall adopt such an ordinance or rule complying with state standards and criteria for municipal shoreland management, before July 1, 1975. If (a) a municipality has no ordinance or rule affecting the use and development of shoreland on April 1, 1974, and fails to adopt such an ordinance by July 1, 1975, or if (b) the corporate boundaries of the municipality are expanded to include shorelands not previously included within the municipal boundaries and the municipality fails to adopt such an ordinance within one year after including the shorelands within its municipal boundaries, or if (c) the commissioner determines that a municipal shoreland management ordinance does not substantially comply with the state standards and criteria for municipal shoreland management and that the municipality has failed to make the necessary changes within one year after receiving notice of noncompliance, the commissioner may adopt an ordinance or rules for the municipality in the following manner. The commissioner shall hold at least one public hearing on the proposed ordinance or rules in the manner provided in section 462.357, after giving notice as provided in section 462.357. The ordinance or rules are effective for the municipality on the date and in accordance with such rules relating to compliance as the commissioner shall prescribe. The ordinance shall be enforced as provided in section 462.362. The penalties provided in section 462.362 apply to violations of the ordinances or rules adopted for the municipality by the commissioner. The costs incurred by the commissioner in adopting the ordinances or rules for the municipality shall be paid by the municipality and collected from the municipality in the same manner as such costs are paid by a county and collected from a county pursuant to subdivision 5; and any tax levied to pay the costs shall be levied in excess of any limitation as to rate or amount, but shall not cause the amount of other taxes which are subject to any limitation to be reduced in any amount whatsoever.

**Subd. 7. Municipal use of land other than shoreland.** Municipal planning and land use controls for land other than shoreland in the vicinity of shoreland shall be, to the maximum extent practical, compatible with planning and land use controls for shoreland adopted pursuant to subdivision 6.

**Subd. 8. Extent of authority of municipality.** Nothing in Laws 1973, chapter 379 shall be construed to prohibit a municipality from adopting and enforcing ordinances or rules affecting the use and development of shoreland which are more restrictive than the state standards and criteria.

**History:** 1969 c 777 s 1; 1969 c 1129 art 3 s 1; 1973 c 123 art 5 s 7; 1973 c 379 s 1-3,5; 1975 c 271 s 6; 1976 c 149 s 59; 1977 c 305 s 45; 1981 c 356 s 117; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 444

## **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. The commissioner may cooperate with any department of the government of the United States in the execution of surveys within the state.

Personnel of the pollution control agency, the health department, and county and municipal governments shall cooperate with the commissioner in monitoring and enforcing water permits. It shall be the duty of all county attorneys, sheriffs, and other peace officers and other officers having authority to take all action to the extent of their authority, respectively, that may be necessary or proper for the enforcement of any of the provisions, rules, standards, orders, or permits specified in sections 105.37 to 105.55.

**History:** 1947 c 142 s 13; 1974 c 558 s 6; 1985 c 248 s 70; 1986 c 444

**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 may do and perform such acts in connection therewith as the commissioner deems proper to protect the interests of the people of the state consistent with the provisions of sections 105.37 to 105.55.

**History:** 1947 c 142 s 14; 1986 c 444

**105.51 WELLS; CONTROL, REPORTS BY DRILLERS.**

Subdivision 1. For the conservation of the underground water supplies of the state, the commissioner is authorized to require the owners of wells, especially flowing artesian wells, to prevent waste.

Subd. 2. Every person, firm or corporation who shall provide the means of appropriating ground water by drilling, boring, or otherwise shall file a verified statement with the director of the division of waters containing the log of the materials and water encountered in connection therewith, together with all water pumping tests relating thereto. Such statements shall be confidential and be used only by the division for scientific study, the result of which may be public information. The commissioner may exclude from the requirement to file such statements those whose operations are of a type which would not yield significant scientific information.

Subd. 3. It shall be unlawful for the owner of any well having a casing six inches or more in inside diameter to abandon such well, or to cover or otherwise render the same inaccessible for inspection, or to permanently remove the pumps therefrom without notifying the commissioner of natural resources and complying with the commissioner's recommendations relating thereto. The commissioner may make such recommendations and impose such conditions as the commissioner may find advisable in the public interest. The commissioner or an authorized agent of the commissioner shall be granted access at any reasonable time to inspect the site of any such well that has been abandoned, or for which notice of abandonment has been given under this subdivision.

**History:** 1947 c 142 s 15; 1955 c 523 s 1; 1965 c 797 s 2; 1969 c 1129 art 3 s 1; 1973 c 315 s 18; 1986 c 444

**105.52 EXAMINATION AND REPAIR OF DAMS AND RESERVOIRS.**

Upon complaint or acting personally, the commissioner is authorized to examine any reservoir, dam, control structure, or waterway obstruction. In so doing the commissioner or an authorized agent shall be granted access at any reasonable time to examine the reservoir, dam, control structure, or waterway obstruction. If the commissioner determines that additional engineering investigations are necessary in order to determine the safety of the dam, reservoir, control structure, or waterway obstruction and the nature and extent of the necessary repairs or alterations, the commissioner shall notify the owner thereof to cause such investigations to be made at the owner's expense and filed with the commissioner for use in determining the condition of the structures and the need for the repair, alteration or removal thereof. If the commissioner determines that such reservoir, dam, control structure, or waterway obstruction is unsafe or needs repair or alteration, the commissioner shall notify the owner thereof to repair, alter, or remove the same as the exigencies of the case may require, and shall issue an order to that effect in the same manner and subject to the same conditions as if the owner had made application for permit for the said repairs, alterations, or removal. The engineering investigations or the work of repair, alteration, or removal shall be commenced and completed within such reasonable time as may be prescribed by the commissioner.

**History:** 1947 c 142 s 16; 1973 c 344 s 5; 1978 c 779 s 4; 1986 c 444

**105.521 DAM EXAMINATION REPORTS; LIMITATIONS ON TRANSFERS OF DAMS.**

No state department or agency and no county, city, town, or other governmental entity may purchase or accept as a gift any privately owned dam subject to permit requirements until after (1) the commissioner has examined the dam, (2) the commissioner has prepared a report of the examination and filed it with the legislature, and (3) the legislature has had an opportunity to consider the report and has not prohibited the purchase or gift during the legislative session in which the report is filed, or, if the report is filed when the legislature is not in session, the legislature has not prohibited the gift or purchase at the next succeeding session.

**History:** 1978 c 779 s 5; 1986 c 444

**105.53 APPLICATION.**

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 authorize the commissioner to require a permit for the original construction of dams, reservoirs or control works in existence on and prior to July 1, 1937.

**History:** 1947 c 142 s 17; 1978 c 779 s 6

**105.535 RULES.**

The commissioner of natural resources shall promulgate rules pursuant to Laws 1978, chapter 779 by April 1, 1979. These rules shall include provisions which exclude from permit requirements, minor dams such as those less than six feet in height or which impound less than 50 acre-feet of storage at maximum storage elevations. This does not apply to any such barrier which is not in excess of six feet in height, regardless of storage capacity or which has a storage capacity at maximum water storage elevation not in excess of 15 acre-feet, regardless of height. Rules shall include a fee schedule to cover the cost of dam inspection and shall classify structures to adequately define risks and hazards involved in relation to public health, safety and welfare. The rules shall not impose a field inspection fee on any state agency, political subdivision of the state or federal governmental agency.

**History:** 1978 c 779 s 8

**105.54 [Repealed, 1973 c 315 s 20]****105.541 PENALTIES.**

Whoever does any of the following is guilty of a misdemeanor:

(1) Undertakes or procures another to undertake an alteration in the course, current, or cross section of public waters or appropriates waters of the state without a permit from the commissioner previously obtained regardless of whether the commissioner would have granted a permit had an application been filed;

(2) Undertakes or procures another to undertake an alteration in the course, current, or cross section of public waters or appropriates waters of the state in violation or in excess of authority granted pursuant to a permit duly issued by the commissioner, regardless of whether an application had been filed for permission to perform the act involved, or whether the act involved would have been permitted had a proper application been filed;

(3) Undertakes or procures another to undertake an alteration in the course, current, or cross section of public waters or appropriates waters of the state after a permit to undertake such project has been denied by the commissioner;

(4) Violates any other provision of this chapter.

**History:** 1973 c 315 s 19

**105.55 COMMISSIONER'S ORDERS, ENFORCEMENT.**

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.

**History:** 1947 c 142 s 19

**105.60** [Repealed, 1969 c 350 s 1]

**105.61** [Repealed, 1969 c 350 s 1]

**105.62** [Repealed, 1969 c 350 s 1]

**DAM AND WATER CONTROLS**

**105.63 TRANSFER OF CUSTODY OF CERTAIN DAM AND WATER CONTROLS FROM 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 natural resources, 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 the commissioner 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 the commissioner 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 the commissioner 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 commissioner of finance.

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 fund.

**History:** 1949 c 571 s 1; 1969 c 399 s 49; 1969 c 1129 art 3 s 1; 1973 c 492 s 14; 1986 c 444

**WATER DRAINAGE OR DIVERSION**

**105.64 DRAINAGE OR DIVERSION OF WATER TO FACILITATE MINING.**

Subdivision 1. The commissioner of natural resources may grant permits for the drainage, diversion, control, or use of any waters under the commissioner's jurisdiction when necessary for the mining of iron ore, taconite, copper, copper-nickel or nickel, wherever situated, as herein provided.

Subd. 2. Application for such permit shall be made to the commissioner in such form as the commissioner shall prescribe by the owner of the iron ore, taconite, copper, copper-nickel or nickel 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, taconite, copper, copper-nickel or nickel, 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, the permittee 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, or the permittee's 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 the commissioner may allow and prescribe in the permit such time as the commissioner 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 the commissioner 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 the commissioner 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, or the permittee's 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 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.

**History:** 1949 c 599 s 1,4; 1967 c 566 s 2-4; 1969 c 1129 art 3 s 1; 1986 c 444

## WATER RESOURCES BOARD

### 105.71 WATER RESOURCES BOARD.

Subdivision 1. There is hereby established to serve as an agency of the state a board to be known as the Minnesota Water Resources Board to perform such functions and duties as shall be prescribed by law. The board shall be composed of three members who are conversant with water problems and conditions within the watersheds of this state and who are not officers or employees of the state, the federal government or any political subdivisions thereof, to be appointed by the governor with the advice and consent of the senate. The membership of said board may be increased by the governor to five members. The additional members shall have the same qualifications and be appointed in the same manner as the members of the original board.

The board shall keep a record of its official actions, and may perform such acts, hold such public hearings, and promulgate such rules as may be necessary for the discharge of its duties and the exercise of its functions.

Subd. 1a. The membership terms, compensation, removal of members, and filling of vacancies on the board shall be as provided in section 15.0575.

Subd. 2. The state board may employ such technical and professional personnel and such other agents and employees, permanent or temporary, as it may require, and shall determine their qualifications and duties. Compensation of employees shall be determined pursuant to chapter 43A. It shall have authority to prescribe the powers and duties of its officers and employees.

Upon request of the board for the purpose of carrying out any of its functions, the supervising officer of any state agency, or any state institution of learning, shall, insofar as it may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the state board from the staff or personnel of the agency or institution of learning, and make such special reports, surveys or studies as the state board may request.

Subd. 3. The board shall designate its chair, and may annually from time to time change such designation.

A majority of the board shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for a determination.

In connection with their duties as members of the board, the board shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules, and orders issued or adopted.

The commissioner of administration shall provide and make available within the department of natural resources suitable and adequate office facilities and space for the board. The legislative auditor shall annually audit the books of the board if funds and personnel permit.

**History:** 1955 c 664 s 1; 1957 c 97 s 1; 1957 c 915 s 1; 1969 c 1129 art 3 s 1; 1971 c 661 s 3; 1973 c 492 s 14; 1976 c 134 s 22-24; 1983 c 299 s 19; 1985 c 248 s 70; 1986 c 444

### 105.72 DECLARATION OF POLICY.

The code of water law of Minnesota is contained in numerous statutes enacted

from time to time, which must be considered as a whole to effect a systematic administration of water policy for the public welfare. Seeming contradictions in these laws when applied in a specific proceeding create a need for a forum where the conflicting aspects of public interest involved can be presented and by consideration of the whole body of water law the controlling policy can be determined and apparent inconsistencies resolved.

**History:** 1957 c 740 s 1

### 105.73 DEFINITIONS.

Unless the context clearly indicates a different meaning is intended, the following terms for the purposes of this chapter shall be given the meanings ascribed to them in this section.

**Board** — Minnesota water resources board.

**Proceeding** — Any procedure under any of the laws enumerated in section 105.74 however administrative discretion or duty thereunder may be invoked in any instance.

**Agency** — Any state officer, board, commission, bureau, division, or agency, other than a court, exercising duty or authority under any of the laws enumerated in section 105.74.

**Court** — The court means the district court or a judge thereof before whom the proceedings are pending.

**Question of water policy** — Where use, disposal, pollution, or conservation of water is a purpose, incident, or factor in a proceeding, the question or questions of state water law and policy involved, including either (a) determination of the governing policy of state law in the proceeding, resolving apparent inconsistencies between different statutes, (b) the proper application of that policy to facts in the proceeding when application is a matter of administrative discretion, or both (a) and (b).

**History:** 1957 c 740 s 2; 1959 c 438 s 1

### 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, 97A.135, 105.41, 105.42, 105.43, 105.44, 105.64, 106A.011, 106A.015, 115.04, 115.05, and chapter 110.

**History:** 1957 c 740 s 3; 1959 c 438 s 2; 1969 c 6 s 20; 1985 c 172 s 104; 1986 c 386 art 4 s 22

### 105.75 PETITION FOR INTERVENTION.

**Subdivision 1.** The board's intervention is invoked by a petition addressed to it for referral of a question of water policy involved in the proceeding. The petition must identify the proceeding in which it is made and state the grounds for referral generally but in sufficient detail to inform interested parties of the nature of the questions proposed to be presented to the board and the public importance thereof.

**Subd. 2.** This petition can be made by the applicant in the proceeding, by any party thereto, the governor, the agency, the commissioner or director of any division in the department of natural resources, the head of any other department of state, any bureau or division of the federal government a function of which includes a concern in the proceeding, and any organization or group of persons of appropriate purpose, or person, the board deems representative of any substantial segment of the state or peculiarly able to present evidence bearing on the public interest. The petition signed by the petitioner's attorney or verified by the petitioner, or on behalf of the petitioner by any of its officers, shall be filed in duplicate, one counterpart with the board, the other with the agency.

Subd. 3. The intervention of the board can be invoked by this petition in any proceeding at any time after the proceeding is initiated and before the agency's order is made.

**History:** 1957 c 740 s 4; 1959 c 438 s 3; 1969 c 1129 art 3 s 1

#### **105.751 COURT REFERRALS.**

The court may refer any procedure before it under any of the laws enumerated in section 105.74, to the board. This referral may be used in both original and appellate matters; it may be invoked by a petition of the court directed to the board. Any party to the procedure may request the court to refer the matter to the board. Upon receipt of a petition for referral the board shall proceed under the provisions of sections 105.72 to 105.79.

**History:** 1959 c 438 s 4

#### **105.76 PETITION ABATES PROCEEDING UNTIL BOARD ACTS.**

A filed petition abates the proceeding until there is a recommendation by the board or until 60 days have elapsed after conclusion of hearing before the board, whichever is earlier, unless the agency makes a finding in writing with a statement of reasons that the public interest requires immediate action by it. In all cases the board or its staff according to its rules decides whether the petition and the record made before the agency show an important question of water policy. If the decision on that question is negative it refuses to intervene, and the proceeding continues in the agency as though the petition had not been made; if the decision is affirmative and the board believes its intervention in the public interest is justified, it consents to intervene. Consent is shown by a brief statement in general terms of the questions of public policy it will consider.

**History:** 1957 c 740 s 5

#### **105.77 HEARING, DETERMINATION.**

As a petition is filed the board proceeds with all reasonable dispatch to hear, determine, and make its recommendations on the questions it has consented to consider. The hearings are so conducted that the board may be fully informed about all aspects of the public interest in those questions, to the end that its recommendation will state an impartial, scientific, and fully considered judgment. The recommendation of the board is its decision on the question of water policy considered by it; the ultimate question to which the board's recommendation is directed in all cases is the proper course of action to be followed by the agency in the proceeding in relation to questions of water policy considered by the board. The decision of the board is in the form of a written recommendation to the agency; it must recite controlling facts in sufficient detail to apprise the parties, the agency, and a reviewing court of the basis and reason therefor. In the proceeding and upon any judicial review the recommendation is evidence. A copy, certified, is competent evidence of the recommendation.

**History:** 1957 c 740 s 6

#### **105.78 CONSENT, NOTICE AND PROCEDURE.**

When a consent, notice, or recommendation is made by the board a copy is filed with the agency, and such filing is notice thereof. The board's rules may provide for a notice, in addition to such filing by mail, posting, publication, or otherwise which it deems will practically give information to parties and interested persons of its actions. For the purposes of carrying out the provisions of sections 105.72 to 105.79 the chair of the board, or any member thereof, has the power to subpoena witnesses, to administer oaths and to compel the production of books, records and other evidence. Disobedience of any such subpoena, or refusal to be sworn, or to answer as a witness, shall be punishable as a contempt of the district court on complaint of the board, or any member thereof, before the district court of the county where such disobedience or



refusal occurred. Witnesses receive the same fees and mileage as in civil actions. All persons are sworn before testifying and the right to examine or cross-examine is the same as in civil actions. All hearings are public, conducted by the board or any authorized member thereof, and all affected persons have the opportunity to be heard. The board provides a stenographer to take the testimony and all proceedings at the hearings are recorded and preserved. All hearings are conducted insofar as practicable in the same manner as civil actions. It is proper for the divisions of state government and the agencies thereof to adopt opposite positions in respect to the matter before the board when full advocacy will assist to disclose the public interest.

**History:** 1957 c 740 s 7; 1986 c 444

#### **105.79 FINDINGS BY BOARD.**

Within 60 days of the close of any hearing the board makes its findings and recommendations based solely on the evidence adduced at the public hearing.

**History:** 1957 c 740 s 8

### **IMPOUNDING AND DIVERSION OF DRAINAGE SYSTEM WATERS**

#### **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 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 installing or constructing any impoundment or diversion, the petitioner 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:** 1963 c 817 s 1; 1969 c 1129 art 3 s 1; 1973 c 123 art 5 s 7; 1985 c 172 s 105; 1986 c 444