

## CHAPTER 105

## DIVISION OF WATERS, SOILS AND MINERALS

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**105.37 DEFINITIONS.**

Subdivision 1. **Scope.** The terms in sections 105.37 to 105.55 have the meanings given them in this section.

Subd. 2. **Commissioner.** "Commissioner" means Minnesota's commissioner of natural resources.

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

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

Subd. 5. **Appropriating.** "Appropriating" includes but is not limited to "taking," regardless of how the water is used.

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

Subd. 8. **Abandon.** "Abandon" means to give up the use and maintenance of the described structures or improvements to realty and to surrender them to deterioration. It does not refer to 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 the definition of abandon.

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

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

Subd. 11. **Altered natural watercourse.** "Altered natural watercourse" means a

former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel.

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

Subd. 13. **Meandered lakes.** "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.** "Public waters" includes and shall be limited to the following waters of the state:

(1) All waterbasins 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;

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

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

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

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

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

(7) 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;

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

(9) 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 this section and sections 105.38 and 105.391, the term "public waters" shall include "wetlands" unless the statute expressly states otherwise.

Subd. 15. **Wetlands.** "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.** "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.

Subd. 17. **"Basin of origin"** means the drainage basin of the Great Lakes, the Red River of the North, the Mississippi River, or the Missouri River.

Subd. 18. **"Consumptive use"** means water that is withdrawn from its source for immediate further use in the area of the source and is not directly returned to the source.

**History:** 1987 c 159 s 1,2; 1987 c 229 art 2 s 1

**105.38 DECLARATION OF POLICY.**

To conserve and use the state's water resources in the best interests of its people, and to promote the public health, safety, and welfare, the policy of the state is as follows:

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

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

(c) The state shall control and supervise, so far as practicable, any activity that changes or 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 public waters or wetlands of the state.

**History:** 1987 c 229 art 2 s 1

**105.39 AUTHORITY AND POWERS OF COMMISSIONER.**

**Subdivision 1. Water conservation program.** The commissioner shall develop a general water resources conservation program for the state. The program must 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 must be guided by the program in issuing 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 may have surveys, maps, investigations, and studies made of the water resources and topography of the state as the commissioner finds necessary to provide the information to set up a program and carry out sections 105.37 to 105.55.

**Subd. 3. Allocation and control of wetlands and waters.** The commissioner shall administer:

- (1) the use, allocation, and control of public waters and wetlands;
- (2) the establishment, maintenance, and control of lake levels and water storage reservoirs; and
- (3) the determination of the ordinary high water level of public waters and wetlands.

**Subd. 4. Power to acquire property; eminent domain.** The commissioner may acquire title to private property for any authorized purpose by purchase or by eminent domain. The use of this property for lawful projects under sections 105.37 to 105.55 is a public purpose. On request by the commissioner, the attorney general shall acquire the necessary title to private property for that use under chapter 117.

**Subd. 5. Contracts.** The commissioner may approve contracts for works under sections 105.37 to 105.55, change the plans of the works when necessary, and supervise, control, and accept them when complete. The commissioner may have the works, and expenses incurred in connection with them, paid for out of funds available to 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 distribute 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 carrying out this subdivision.

**History:** 1987 c 229 art 2 s 1

**105.391 WATERS INVENTORY AND CLASSIFICATION.**

**Subdivision 1. Inventory, county board review, hearings.** On the basis of information available to the commissioner and the criteria 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 are 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 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 have the list and map published in the official newspaper of the county. The published notice must 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 must state with particularity the waters for which the commissioner's designation is disputed and 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 the hearing must be published in the State Register and the official newspaper of the county. The hearings must be conducted by a hearings unit. The unit is 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 must be selected by the other two members at least 20 days before the hearing date. The expenses and per diem of any member of the hearings unit who is not a state employee must be paid as provided for in section 15.059, subdivision 3, within the limits of funds available from grants to the county under Laws 1979, chapter 199, section 16.

If there is a watershed district whose boundaries include the waters involved, the district may give the hearings unit its recommendations.

Within 60 days after completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which must be considered the decision of an agency in a contested case for purposes of judicial review under 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. On receiving the order of the hearings unit and after the appeal period has expired, or on receiving 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. 3. Permission to drain waters and wetlands.** 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 that will have equal or greater public value. Wetlands, drainage of which is lawful, feasible, and practical and would provide high quality cropland and that is the projected land use, as determined by the commis-

sioner, may be drained without a permit and without replacement of wetlands of equal or greater public value if the commissioner does not choose, within 60 days of receiving an application for a permit to drain the wetlands, to (1) place the wetlands in the state waterbank program under section 105.392, or (2) acquire it in fee under section 97A.145. The applicant, if not offered a choice of the above alternatives, is entitled to drain the wetlands involved.

In addition, the owner of lands underlying wetlands situated on privately owned lands may apply to the commissioner for a permit to drain the wetlands at any time more than ten years after their original designation. On receiving an application, the commissioner shall review the status and conditions of the wetlands. If the commissioner finds that the current status or conditions make it likely that the economic or other benefits from agricultural use to the owner 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, the owner may not apply again for another ten years.

**Subd. 9. Restrictions on access to wetlands.** To protect the public health or safety, local units of government may by ordinance restrict public access to wetlands from city, county, or township roads that abut wetlands.

**Subd. 10. Landowner's use of wetlands.** This chapter does not prevent a landowner from using the bed of wetlands or public waters for pasture or cropland during periods of drought, if 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 does not prevent a landowner from filling a wetland to accommodate wheeled booms on irrigation devices so long as the fill does not impede normal drainage.

**Subd. 11. State wetlands and public drainage systems.** When the state owns wetlands on or adjacent to existing public drainage systems, the state shall consider the use 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 necessary work to allow proper use and maintenance of the drainage system while still preserving the wetlands.

**Subd. 12. Commissioner's designation does not change rights or trespass law.** The designation of waters as public waters or wetlands under this section does not grant the public additional or greater right of access to those waters. The commissioner is not required to acquire access to those waters under section 97A.141. The right of ownership or usage of the beds underlying those waters is not diminished. Notwithstanding the designation of waters or lands as public waters or wetlands, any Minnesota law forbidding trespass upon private lands remains in force.

*History: 1987 c 229 art 2 s 1; 1987 c 357 s 20*

## **105.392 WATER BANK PROGRAM.**

**Subdivision 1. Policy.** The legislature finds that it is in the public interest to preserve the wetlands of the state and so conserve surface waters, maintain and improve water quality, preserve wildlife habitat, reduce runoff, provide for floodwater retention, reduce stream sedimentation, contribute to improved subsurface moisture, enhance the natural beauty of the landscape, and promote comprehensive and total water management planning. Therefore, the commissioner of natural resources may promulgate rules that include the procedures and payment rates designed to carry out this section.

**Subd. 2. Twenty-year waterbank agreements.** For the conservation of wetlands, whether or not included in the definition contained in section 105.37, subdivision 15, the commissioner may acquire wetlands in fee pursuant to section 97A.145, or may enter into easement agreements with landowners for the conservation of wetlands and other waters. These easement agreements shall be conservation easements, as defined in section 84C.01, paragraph (1), but, in addition, may be made possessory as well as nonpossessory if agreed upon by the landowner and the commissioner. These ease-

ments must be entered into for a period of not less than 20 years, with provision for renewal for not less than 20-year periods, or the agreements may provide that the easement will be permanent in duration. Highest priority must be given to the selection of permanent easements. The commissioner may reexamine the payment rates at the beginning of a 20-year renewal period and adjust them giving consideration to current land and crop values.

**Subd. 3. Contents of waterbank agreement.** In the easement 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 may include wetlands covered by a federal or state government easement that permits agricultural use, together with adjacent areas as determined desirable by the commissioner;

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

(3) to carry out the wetland conservation and development plan for the land in accordance with the agreement, unless any requirement of the agreement or plan is waived or changed by the commissioner;

(4) to forfeit rights to further payments or grants under the agreement and to refund to the state payments or grants received under it 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 warrants termination of the agreement, or to make refunds or accept payment adjustments the commissioner finds appropriate if the commissioner determines that the violation by the owner does not warrant termination of the agreement;

(5) not to adopt any practice specified by the commissioner in the easement as a practice that would tend to defeat the purposes of the easement; and

(6) to additional provisions that the commissioner determines are desirable and includes in the easement to carry out the purposes of the program or to facilitate its administration.

**Subd. 4. Payment and help to owner.** In return for the easement of the owner, the commissioner must 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. The commissioner must make the following payments to the landowner for the easement: (1) for a permanent easement, 50 percent of the average equalized estimated market value of cropland in the township as established by the commissioner of revenue for the time period when the application is made; (2) for an easement of limited duration, a lump sum payment equal to the present value of the annual payments for the term of the easement based on 50 percent of the mean adjusted cash rental for cropland in the county as established by the commissioner of revenue for the time period when the application is made.

**Subd. 5. Changes in ownership.** A limited-term easement may be converted to a permanent easement or renewed at the end of the easement period for an additional 20 years by mutual agreement of the commissioner and the owner, subject to any rate redetermination by the commissioner. If, during the easement period, the owner sells or otherwise disposes of the ownership or right of occupancy of the land, the new owner must continue the easement under the same terms or conditions.

**Subd. 6. Ending or changing agreement.** The commissioner may terminate any easement 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 determines desirable to carry out the purposes of the program or facilitate its administration.

**History:** 1987 c 229 art 2 s 1; art 11 s 1; 1987 c 357 s 21-26

## **105.40 DIRECTOR; QUALIFICATIONS, DUTIES.**

**Subdivision 1.** The director of the division of waters, soils and minerals of the

department of natural resources must possess the qualifications required of division directors by section 84.081, subdivision 1. Under the direction of the commissioner, the director shall be responsible for providing the surveys and engineering investigations required by sections 105.37 to 105.55 and shall perform the following duties.

**Subd. 2. Ditch information; director's report.** A complete copy of all preliminary and final engineers' maps, plans and reports on all public ditches hereafter must be filed in the office of the director by the respective county auditors or court administrators of district court. The director shall report on them 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. Advice about ditches.** Upon request by any county board or judge of the district court or engineer on a public ditch, the director shall advise them on engineering questions or problems in connection with a public ditch.

**Subd. 4. Field surveys, investigations.** When a field survey or investigation of any public ditch is found necessary by the director or is requested in writing by the county board or district judge, the director may make it. If the field survey or investigation is made at the request of the board or judge, its cost must be reported to the board or court and paid by the county as are other ditch expenses.

**Subd. 5. Information, publishing.** The director may prepare and publish run-off data and information about the capacity of tile drains and open ditches in the state together with forms of specifications for drain tile, open ditches, and ditch construction and standard procedural forms for public ditch proceedings. The director may furnish the information to engineers and public officials for their advice and information.

**Subd. 6. Drain tile manufacturing, studies.** The director may investigate the methods used in the manufacture of drain tile and the causes of its failures and may conduct research and experimentation to improve 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 the manufacturing plants for inspections and tests. The results of inspections and tests must 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. Water board requests; appearances at hearings.** The director shall perform engineering work 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. Cooperation, recommendations to agencies.** The director shall cooperate with agencies and departments of the state and federal government relating to projects affecting waters within the state and shall make recommendations to the agencies involved and to the governor about the desirability, feasibility, and practicability of the proposed projects.

**Subd. 9. Purchasing.** The director may purchase technical and scientific equipment needed for the functions and duties of the director's office.

**Subd. 10. Contract approvals.** 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 of it, 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. Rules to standardize forms.** The director may adopt permanent rules to standardize the forms and sizes of maps, plats, drawings, and specifications in drainage proceedings and proceedings relating to public waters. The director must require the permanent grass strips acquired under section 106A.021 to be shown on the maps and maintain an inventory of all permanent grass strips acquired by drainage authorities.

**Subd. 12. Appropriations available.** Money appropriated to the commissioner of natural resources for the division of waters, soils, and minerals or its director, to conduct hydrologic studies, remains available until spent.

Subd. 13. **Appearances.** The director may appear for the state in any matter or proceeding affecting waters within the state, including boundary waters, to give hydrologic and hydraulic engineering advice and information in connection with the proceeding.

Subd. 14. **Agreements.** The director, with the approval of the commissioner, may make cooperative agreements with and cooperate with any person, corporation, or governmental authority to carry out this section.

**History:** 1987 c 229 art 2 s 1; 1987 c 239 s 1; 1987 c 306 s 6

### 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 must relate each of the programs of the department of natural resources for specific aspects of water management to the others. The statewide plan must include but is not limited to provisions for the following:

- (1) 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 to preserve them for beneficial use;
- (2) regulation of construction of improvements on and prevention of encroachments in the flood plains of the rivers, streams, lakes, and marshes of the state;
- (3) reclamation or filling of wet and overflowed lands;
- (4) repair, improvement, relocation, modification or consolidation in whole or in part of previously established public drainage systems within the state;
- (5) preservation of wetland areas;
- (6) management of game and fish resources as related to water resources;
- (7) control of water weeds;
- (8) control or alleviation of damages by flood waters;
- (9) alteration of stream channels for conveyance of surface waters, navigation, and any other public purposes;
- (10) diversion or changing of watercourses in whole or in part;
- (11) regulation of the flow of streams and conservation of their waters;
- (12) regulation of lake water levels;
- (13) maintenance of water supply for municipal, domestic, industrial, recreational, agricultural, aesthetic, wildlife, fishery, or other public use;
- (14) sanitation and public health and regulation of uses of streams, ditches, or watercourses to dispose of waste and maintain water quality;
- (15) preventive or remedial measures to control or alleviate land and soil erosion and siltation of watercourses or bodies of water; and
- (16) regulation of uses of water surfaces.

**History:** 1987 c 229 art 2 s 1

### 105.405 WATER SUPPLY MANAGEMENT.

Subdivision 1. **Assurance of supply.** 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. **Requirements for diversion.** No permit authorized by sections 105.37 to 105.55 nor any plan that requires a permit or the commissioner's approval, involving a diversion of any waters of the state, surface or underground, of more than 2,000,000



gallons per day average in any 30-day period, to a place outside of this state or from the basin of origin within this state shall be granted or approved until after (1) the commissioner has determined that the water remaining in the basin of origin will be adequate to meet the basin's water resources needs during the specified life of the diversion project; and (2) approval by the legislature.

**Subd. 3. Requirements for consumptive use.** (a) Except as provided in paragraph (b), a permit authorized by sections 105.37 to 105.55 or a plan that requires a permit or the commissioner's approval, involving a consumptive use of more than 2,000,000 gallons per day average in a 30-day period, may not be granted or approved until after: (1) a determination by the commissioner that the water remaining in the basin of origin will be adequate to meet the basin's water resources needs during the specified life of the consumptive use; and (2) approval by the legislature.

(b) Legislative approval under paragraph (a), clause (2), is not required for a consumptive use in excess of 2,000,000 gallons per day average in a 30-day period for:

(1) a domestic water supply, excluding industrial and commercial uses of a municipal water supply; and

(2) agricultural irrigation and processing of agricultural products.

**Subd. 4. Requirements for Great Lakes.** (a) A permit authorized by sections 105.37 to 105.55 or a plan that requires a permit or the commissioner's approval, involving a diversion or consumptive use of waters of the state from the Great Lakes water basin within Minnesota where the diversion or consumptive use of waters would be more than 5,000,000 gallons per day average in a 30-day period, may not be granted or approved until after:

(1) the commissioner has notified and solicited comments on the proposed diversion or consumptive use from the offices of the governors of the Great Lakes states and premiers of the Great Lakes provinces, the appropriate water management agencies of the Great Lakes states and provinces, and the international joint commission;

(2) the commissioner has considered the comments and concerns of the offices, agencies, and commission to which notice was given under clause (1); and

(3) approval by the legislature.

(b) If an objection is made to the proposed diversion or consumptive use by an office, agency, or commission to which notice was given under paragraph (a), clause (1), the commissioner will convene a meeting with the affected office, agency or commission to investigate and consider the issues involved, and to seek a mutually agreeable solution to be recommended to the commissioner. In making a final decision on the approval of a permit or plan subject to review under this subdivision, the commissioner shall consider the record of the meeting and the recommendation. The commissioner shall send notification of the final decision to each office, agency, or commission to which notice was given under paragraph (a), clause (1).

**History:** 1987 c 159 s 3-5; 1987 c 229 art 2 s 1

## 105.41 APPROPRIATION AND USE OF WATERS.

**Subdivision 1. Commissioner's permission.** It is 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. This section does not apply to the use of water for domestic purposes serving less than 25 persons. The commissioner shall set up a statewide training program to provide training in the conduct of pumping tests and data acquisition programs.

**Subd. 1a. Water allocation rules, priorities.** 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 must be based on the following priorities for appropriation and use of water:

First: domestic water supply, excluding industrial and commercial uses of municipal water supply.

Second: any use of water that involves consumption of less than 10,000 gallons of water a day. In this section "consumption" means water withdrawn from a supply that is lost for immediate further use in the area.

Third: agricultural irrigation, involving consumption in excess of 10,000 gallons a day, and processing of agricultural products.

Fourth: power production, involving consumption in excess of 10,000 gallons a day.

Fifth: other uses, involving consumption in excess of 10,000 gallons a day.

Appropriation and use of surface water from streams during periods of flood flows and high water levels must 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 must be discouraged.

Diversions of water from the state for use in other states or regions of the United States or Canada must be discouraged.

No permit may be issued under this section unless it is consistent with state, regional, and local water and related land resources management plans, if regional and local plans are consistent with statewide plans. The commissioner must not modify or restrict the amount of appropriation from a groundwater source authorized in a permit issued under 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. Use less than minimum.** No permit is 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 must 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 must include provisions for reporting to the commissioner the amounts of water appropriated under local permits.

**Subd. 2. Installations for water use, permits and reports.** It is unlawful for the owner of any installation for appropriating or using surface or underground water to increase the pumping capacity or make any major change in the installation without first applying in writing for, and obtaining, the written permit of the commissioner.

The owner or person in charge of an installation for appropriating or using surface or underground water, whether or not under permit, shall file a statement with the commissioner. The statement shall be filed at the time the commissioner determines necessary for the statewide water information system. The statement must identify the installation's location, its capacity, the purposes for which it is used, and additional information that the commissioner may require. The statement shall be provided on forms provided by the commissioner.

**Subd. 3. Commissioner's examinations.** The commissioner may examine any installation that appropriates or uses surface or underground water. The owner of the installation shall supply information concerning it as the commissioner requires.

**Subd. 4. Measuring and recording quantities used.** It is unlawful for the state, a person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state to appropriate or use waters of the state, surface or underground, without measuring and keeping a record of the quantity of water used or appropriated as provided in this section. Each installation for appropriating or using water must 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 must be based on 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 required.** Records of the amount of water appropriated or used must be kept for each installation. The readings and the total amount of water

appropriated must 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 must 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: (1) irrigation permits, \$15 for the first permitted 160 acres or part of 160 acres, and \$25 for each additional permitted 160 acres or part of 160 acres; (2) for nonirrigation permits, \$5 for each ten million gallons or portion of that amount permitted each year. However, the fee must not 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. Transfer of permit.** Any appropriation or use permit may be transferred if the permittee conveys the real property where the source of water is located to the next owner of the real property. The new owner shall notify the commissioner of natural resources immediately after an appropriation or use permit is transferred under this section.

**History:** 1987 c 229 art 2 s 1

#### 105.415 RULES GOVERNING PERMITS.

Notwithstanding the provision in section 105.41, subdivision 1a, and notwithstanding the provision in section 105.42, subdivision 1a, the commissioner shall, before 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:** 1987 c 229 art 2 s 1

#### 105.416 IRRIGATION FROM GROUNDWATER.

**Subdivision 1. Permit.** Permit applications required by section 105.41, for appropriation of groundwater for agricultural irrigation, must 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 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 later order of the commissioner. Class A and B applications must 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:

(1) A summary of the anticipated well depth and subsurface geologic formation expected to be penetrated by the well. For glacial drift aquifers, this data must include the logs of test holes drilled to locate the site of the proposed production well.

(2) The formation and aquifer expected to serve as the groundwater source.

(3) The maximum daily, seasonal and annual pumpage expected.

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

(5) 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 not more than 72 continuous hours for wells under water table conditions and not more than 24 continuous 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 a distance from the pumping well that the commissioner

has reason to believe may be affected by the new appropriation. The permit applicant is responsible for costs of the pumping tests and monitoring in the one observation well. The applicant is 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 more observation wells. The commissioner shall reimburse the applicant for these added costs.

(6) When the area of influence of the proposed well is determined, the location of existing wells within the area of influence that were reported according 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 water well construction code.

The commissioner may in any specific application waive any requirements of clauses (4) to (6) 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:

(1) proposed soil and water conservation measures are adequate based on recommendations of the soil and water conservation districts; and

(2) 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 in Minnesota Rules, parts 4725.1900 to 4725.6500.

**History:** 1987 c 229 art 2 s 1

#### **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 is available, permits to appropriate water from natural and altered natural watercourses must be limited so that consumptive appropriations are not made from the watercourses during periods of specified low flows. The purpose of the limits is to safeguard water availability for instream uses and for downstream higher priority users located reasonably near the site of appropriation.

**Subd. 3. Waterbasins.** (a) Permits to appropriate water from waterbasins must 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 a surface water appropriation permit, the commissioner of natural resources shall set an elevation for the subject waterbasin, below which no appropriation is allowed. During the determination of the elevation called 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 an application for appropriation of water from a waterbasin less than 500 acres in surface area, the applicant shall get a statement containing as many signatures as the applicant can obtain of landowners with land riparian to the subject waterbasin. It must state their support to the proposed appropriation, and it must show the number of landowners whose signatures the applicant could not obtain.

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

**Subd. 5. Contingency planning.** No application for use of surface waters of the state is complete until the applicant submits, as part of the application, a contingency

plan that describes the alternatives the applicant will use if further appropriation is restricted due to the flow of the stream or the level of a waterbasin. No surface water appropriation shall be allowed unless the contingency plan is feasible or the permittee agrees to withstand the results of no appropriation.

**History:** 1987 c 229 art 2 s 1

#### **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. The restrictions must limit lawn sprinkling, car washing, golf course and park irrigation, and other nonessential uses and have appropriate penalties for failure to comply with the restrictions. The commissioner may adopt emergency rules according to sections 14.29 to 14.36 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, is grounds for immediate modification of any public water supply authority's appropriator's permit.

**History:** 1987 c 229 art 2 s 1

#### **105.42 PERMITS; WORK IN PUBLIC WATERS.**

Subdivision 1. **Construction.** It is unlawful for the state, a person, partnership, association, private or public corporation, county, municipality or other political subdivision of the state, to construct, reconstruct, remove, abandon, transfer ownership of, 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 materials in or on the beds of public waters, without first getting a written permit from the commissioner. Application for a permit must be in writing to the commissioner on forms prescribed by the commissioner. No permit shall be required for work in altered natural watercourses that are part of drainage systems established under sections 106A.005 to 106A.811 and chapter 112 when the work in the waters is undertaken under those chapters.

This section does not apply to any public drainage system established under sections 106A.005 to 106A.811 that does not substantially affect public waters.

The commissioner, subject to the approval of the county board, may grant, and prescribe terms and conditions for granting, permits to establish, construct, maintain, and control wharves, 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. **Standards and criteria.** By January 15, 1975, the commissioner shall recommend to the legislature a comprehensive law containing standards and criteria for the issuance and denial of permits under this section. These standards and criteria must relate to the diversion of water from other uses and changes in the level of public waters to ensure that projects will be satisfactorily completed and maintained. 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 guidelines the commissioner may provide based on agreement with the involved county or city and in compliance with 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. When a major change in the resource is justified, permits must 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 must include provisions governing the deposition of spoil materials.

A permit affecting flood waters shall be granted only if:

(1) the area covered by the permit is governed by a flood plain management ordinance approved by the commissioner; and

(2) the conduct authorized by the permit is consistent with the flood plain management ordinance, if the commissioner has determined that enough information is available for the adoption of a flood plain ordinance.

A permit involving the control of flood waters by structural means, such as dams, dikes, levees, and channel improvements, shall be granted only after the commissioner has considered all other flood damage reduction alternatives. In developing a policy on 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 change 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 ensure that the rights of all persons are protected when lake levels are changed and must provide for: (1) technical advice to persons involved; (2) establishing alternatives to help local agencies resolve water level conflicts; and (3) mechanics necessary for local resolution of water problems within the state guidelines.

**Subd. 2. Emergency repairs.** This section does not prevent the owner of a dam, reservoir, control structure, or waterway obstruction from making repairs that 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 made and, as soon as practicable, shall apply for a permit for the emergency repairs and any necessary permanent repairs. This section does not apply to routine maintenance not affecting the safety of the structures.

In 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, must be started immediately by the owner.

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

**Subd. 4. Landlocked lakes; prevention of flooding.** 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 control is necessary to prevent flooding of homesteads and that no other reasonable or cost-effective alternative is available.

**History:** 1987 c 229 art 2 s 1

### 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:** 1987 c 229 art 2 s 1

**105.44 PROCEDURE UPON APPLICATION.**

Subdivision 1. **Permit.** Each application for a permit required by sections 105.37 to 105.55 must 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 other data 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:

- (1) anticipated changes in water and related land resources;
- (2) unavoidable but anticipated detrimental effects; and
- (3) 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 must 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 service must 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 may receive applications for permits and grant them, with or without conditions, or refuse them. 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 get the written recommendation of the managers of the 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 application granted or refused. In that 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 of the order file with the commissioner a demand for hearing on the application together with the bond required by subdivision 6. The application must then be fully heard, on notice under subdivision 5, and determined as though no previous order had been made. Any hearing under this section must be conducted as a contested case in accordance with chapter 14. If the commissioner waives a hearing, and if no demand for hearing is made, or if a hearing is demanded but no bond is filed as required by subdivision 6, the order becomes final at the end of 30 days after mailed notice of the order 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.

Subd. 4. **Time.** (a) Except as provided in paragraph (b), the commissioner shall act on all applications for appropriation permits within 30 days after the application and all required data are filed in the commissioner's office. The commissioner shall either waive the hearing and make an order on the application or direct the hearing on it.

(b) The requirements of paragraph (a) do not apply to applications for:

- (1) appropriations for irrigation, under subdivision 8;
- (2) appropriations for diversion from the basin of origin of more than 2,000,000 gallons per day average in a 30-day period; or
- (3) appropriations with a consumptive use of more than 2,000,000 gallons per day average for a 30-day period.

Subd. 5. **Notice.** The notice of hearing on an application must state the date, place,

and time fixed by the commissioner for the public hearing. It must also show the waters affected, the levels sought to be established, or control structures proposed. The notice must 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. It must be published once a week for two successive weeks before the day of hearing in a legal newspaper published in the county in which any part of the affected waters is located. Notice must 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.** (a) Except as stated in paragraph (b), the applicant shall pay the following, if after the hearing the commissioner's action, taken under subdivision 2, is affirmed without material modification: (1) costs of the stenographic record and transcript, (2) rental costs, if any, of the place of hearing, (3) costs of publication of orders made by the commissioner. However, the applicant shall not pay more than \$750.

(b) Where the public hearing is demanded by a public authority that is not the applicant, the public authority making the demand shall pay the costs listed in paragraph (a) if the commissioner's action is affirmed without material modification.

(c) 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 must be conditioned for the payment of costs of the public hearing if the commissioner's action taken under subdivision 2 is affirmed without material modification. No bond or security is required of a public authority that demands a public hearing. The commissioner may waive the requirement for a bond or other security. In other instances, costs of the hearing must be borne as 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 books and documents that are material to the purposes of the hearing. Disobedience of a subpoena is punishable in the same way as a contempt of the district court on complaint of the commissioner before the district court of the county where the disobedience occurred.

**Subd. 8. Permit to irrigate agricultural land.** When a person applies for permit to irrigate agricultural land from public waters, 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 under section 40.07, subdivision 9. The recommendations must be made 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. On receiving all requested information, the commissioner has an additional 60 days to review it, consider the soil and water conservation recommendations, and decide whether to grant or deny the permit. If the commissioner orders a hearing, then the application must be granted or denied within 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 on it within the specified time is an order granting the application. This order is considered 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, a permit issued by the commissioner of natural resources under sections 105.37 to 105.55 is subject to the following:

(1) cancellation by the commissioner at any time if necessary to protect the public interests;

(2) further conditions on the term of the permit or its cancellation as the commissioner may prescribe and insert in the permit;



(3) applicable law existing before or after the issuance of the permit;

Applications granted under subdivision 8, or considered granted under it are also subject to this subdivision, and are subject also to cancellation by the commissioner upon the recommendation of the supervisors of the soil and water conservation district where 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, must be accompanied by a permit application fee 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 \$30 fee but not over \$250 for each application, in accordance with a schedule of fees under section 16A.128.

The commissioner may charge an additional field inspection fee for:

- (1) projects requiring a mandatory environmental assessment under chapter 116D;
  - (2) projects undertaken without a permit or application as required by sections 105.37 to 105.64; and
  - (3) projects undertaken in excess of limitations established in an issued permit.
- The fee must not be less than \$25 nor more than \$750. The purpose of the fee is 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 a schedule of field inspection fees under section 16A.128. The schedule must 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:** 1987 c 159 s 6; 1987 c 229 art 2 s 1

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

The commissioner shall make findings of fact on issues necessary for determination of the applications considered. Orders made by the commissioner must be based upon findings of fact made on substantial evidence. The commissioner may have investigations made. The facts disclosed by investigation must be put in evidence at the hearing.

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. If they are in issue, the commissioner shall also fix the control levels of public waters accordingly. Otherwise the commissioner shall reject the application or may require modification of the plan as the commissioner finds proper to protect the public interest. In 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 in it terms and reservations about the amount and manner of the use or appropriation or method of construction or operation of controls as appear reasonably necessary for the safety and welfare of the people of the state.

Notice of orders made after hearing must be given by publication of the order once

a 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 parties who entered an appearance at the hearing.

The commissioner shall make an order within 60 days after the completion of the hearing.

**History:** 1987 c 229 art 2 s 1

#### **105.46 TIME LIMIT.**

The commissioner shall set the time within which construction authorized in the permit must be completed, or within which the appropriation or use of water must be made. The time must not exceed five years from the date of the permit. The time may be later extended by the commissioner for good cause shown. Permits granted in connection with the mining, transporting, concentration or shipment of taconite as defined in section 93.20, subdivision 18, and permits granted in connection with the mining, production, or beneficiation of copper, copper-nickel, or nickel, are irrevocable for the term of the permits without the consent of the permittee, except for breach or nonperformance of any condition of the permit by the permittee. The commissioner may allow and prescribe in the permit any time the commissioner considers reasonable, regardless of the limitations of time contained in this section, for beginning or completing construction or operations under the permit, or exercising the rights granted under it. The commissioner may extend the time, for cause shown, upon the application of the permittee.

**History:** 1987 c 229 art 2 s 1

#### **105.461 ORDERS TO RESTORE.**

As a part of an 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 their beds 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 contest the order within 30 days of receiving it and must be given a contested case hearing as prescribed by chapter 14.

**History:** 1987 c 229 art 2 s 1

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

On determining that the public interest requires it, the commissioner may investigate 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 under sections 105.37 to 105.55. A copy of the findings and order must 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 must be heard in the same way and under the same laws as an application following a demand made under section 105.44, subdivision 3. If the person does not demand a hearing, or if that person demands a hearing but fails to file the required bond, the commissioner's order becomes final at the end of 30 days after the person is served with the order and no appeal of the order may be taken.

**History:** 1987 c 229 art 2 s 1

#### **105.463 CONTRACTOR'S RESPONSIBILITY.**

Except under certain conditions, an agent, servant, or employee of another may not construct, reconstruct, remove, make any change in any reservoir, dam, or water-

way obstruction on any public water or in any manner change or diminish the course, current, or cross-section of any public waters. These actions are lawful only if the agent, servant, or employee has:

(1) obtained a signed statement from the landowner that all permits required for the work have been obtained or that no permit is required; and

(2) 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. The form must include:

(1) a listing of the activities for which a permit is required;

(2) a description of the penalties for violating this chapter;

(3) the mailing addresses and telephone numbers of the various regional offices of the department of natural resources;

(4) a statement that water inventory maps completed according to section 105.391, subdivision 1, are on file with the auditors of the various counties; and

(5) 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:** 1987 c 229 art 2 s 1

#### **105.471 VENUE OF ACTIONS ON COMMISSIONER'S DECISIONS.**

Notwithstanding any other law to the contrary, an action for declaratory judgment that is brought under chapter 555 by or against the commissioner to determine the validity of the commissioner's final decision regarding the classification of waters of the state as public waters under sections 105.38 to 105.391, or the drainage of waterbasins or watercourses as provided in sections 106A.011 and 106A.015, subdivision 1, must be venued in the county where the water, watercourse, or waterbasin is located, if the water, watercourse, or waterbasin is located in one county. If the water, watercourse, or waterbasin is located in more than one county, then the venue is the judicial district where the majority of the water, watercourse, or waterbasin is located.

**History:** 1987 c 229 art 2 s 1

#### **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 to clean up stream beds and flood plains of streams benefits the public health, safety, and welfare.

**Subd. 2. Establishment; commissioner's duties.** The commissioner of natural resources shall establish and supervise a stream maintenance program. The program must include grants-in-aid to participating counties. Money granted by the commissioner must be apportioned according to the relative severity of the maintenance problem, the date of application for the grant, and the availability of funds. The grant must not exceed 75 percent of the total cost of a stream maintenance project. The stream maintenance work must be performed by the county or under county supervision. The commissioner may grant money for the following work:

(1) cutting and removal of brush and dead or down trees; and

(2) 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:

- (1) a map of the county showing the stream and the specific reaches of the stream to be maintained;
- (2) photographs showing the nature and extent of the maintenance problem; and
- (3) a resolution by the county board of commissioners asking to participate 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 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:** 1987 c 229 art 2 s 1

#### 105.48 DAM CONSTRUCTION AND MAINTENANCE BY STATE.

To improve navigation, protect and improve domestic water supply, protect and preserve fish and other wildlife, protect the public interest in the shore and shore lines of public waters, and promote public health, the commissioner may construct, maintain, and operate dikes, dams, and other structures necessary to maintain uniform water levels established under sections 105.37 to 105.55.

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

Dams owned by the state or built on lands owned or controlled by the state must be maintained under the direction of the commissioner and operated under the commissioner's direction and control.

The commissioner may accept funds from local governmental and civic agencies or persons to construct, maintain, or operate dams and control structures or acquire the lands required for those purposes.

**History:** 1987 c 229 art 2 s 1

#### 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. Therefore, 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.** In this section, "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, 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 using dams for hydroelectric power generation. Except as provided in this section, no grant to a local governmental unit may 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 using a dam for hydroelectric power generation may be for an amount not over 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 must 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:

- (1) the age and type of construction of the dam;
- (2) 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;
- (3) the consequences of abandonment, removal, or alteration of the dam;
- (4) prospective future uses of the dam; and
- (5) 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 under section 105.44 on the proposed repair or reconstruction after giving notice. 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 must be paid by the governmental unit. To receive a grant the local governmental unit must 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 must agree to other conditions the commissioner considers 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 \$250,000, 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. If the cost or grant amount is \$250,000 or more, the commissioner may recommend the project to the legislature for its consideration and action, except in the following emergencies. With the approval of the commissioner of finance after consulting with the legislative advisory commission, the commissioner may direct that a state owned dam be repaired or reconstructed or a grant be made to a local governmental unit if the commissioner determines that an emergency exists and that there is danger that life will be lost or that substantial property losses will be suffered if 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 for 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 longer than 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 later year, until its loan is paid:

- (1) the amount of its annual loan payment, or
- (2) the amount of the required loan payment levy 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 under this subdivision do not require approval by the electors of the local governmental unit as provided in section 475.58. 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 under section 105.52, the commissioner may repair or remove the dam by proceeding 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 the powers of the legislative authority of the local governmental unit in regard to the repair or removal of dams. After issuing the order, 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 of a system, or issuing bonds and levying taxes under 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 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 by 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 in subdivision 9. For installations of 15,000 kilowatts or less at a dam site and reservoir that is unused 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 constitutes 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 is not effective unless it is approved by the governing body of the city or town. In 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:

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

(2) 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; and

(3) provisions to assure adequate maintenance and safety in the impoundment structures, if any, and to assure access to recreational sites, if any.

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

**History:** 1987 c 229 art 2 s 1; 1987 c 306 s 7

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

The commissioner of natural resources, with the help of the pollution control

agency and the commissioner of energy and economic development, shall assess 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. The assessment must include provisions to ensure that any federal program of aid to local lake improvement projects reduces the local share of project costs and not only the state's share.

**History:** 1987 c 229 art 2 s 1

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

**Subdivision 1. Purpose.** To promote the policies in section 105.38 and chapter 116, it is in the interest of the public health, safety, and welfare to:

- (1) provide guidance for the wise development of shorelands of public waters and thus preserve and enhance the quality of surface waters;
- (2) preserve the economic and natural environmental values of shorelands; and
- (3) provide for the wise use of water and related land resources of the state.

**Subd. 2. Definitions.** (a) The terms used in this section have the meanings given them in this subdivision.

(b) "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.

(c) "Unincorporated area" means the area outside a city.

(d) "Municipality" means a city.

**Subd. 3. Commissioner's duties.** The commissioner of natural resources shall adopt, under chapter 14, model standards and criteria, other than a model ordinance, for the subdivision, use, and development of shoreland in municipalities. The standards and criteria must include but not be limited to those listed in clauses (1) to (7). The commissioner of natural resources shall adopt, under chapter 14, model standards and criteria for the subdivision, use, and development of shoreland in unincorporated areas, including but not limited to the following:

- (1) the area of a lot and length of water frontage suitable for a building site;
- (2) the placement of structures in relation to shorelines and roads;
- (3) the placement and construction of sanitary and waste disposal facilities;
- (4) designation of types of land uses;
- (5) changes in bottom contours of adjacent public waters;
- (6) preservation of natural shorelands through the restriction of land uses;
- (7) variances from the minimum standards and criteria; and
- (8) a model ordinance.

The following agencies shall provide information and advice necessary to prepare or amend the rules: the state departments of agriculture, health, and energy and economic development; the state planning and pollution control agencies; 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 under this section, or amendments to them must not be finally adopted 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.** The commissioner shall adapt the model ordinance to the county if a county:

- (1) fails to adopt a shoreland conservation ordinance by July 1, 1972; or
- (2) 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 that fails to meet the minimum standards established under this section.

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 any rules the commissioner prescribes relating to compliance. The ordinance must 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 under 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 must be levied in excess of any limitation as to rate or amount, but must not reduce the amount of other taxes that are subject to any limitation. On completion of the tax settlement following this levy, the county treasurer shall pay 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 under 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 that 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, then the commissioner shall notify the municipality. The notice must tell the municipality what changes 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 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.

The commissioner may adopt an ordinance or rules for the municipality if:

(1) a municipality has no ordinance or rule affecting the use and development of shoreland on April 1, 1974, and fails to adopt one by July 1, 1975;

(2) the corporate boundaries of the municipality are expanded to include shorelands not previously included within the municipal boundaries and the municipality fails to adopt an ordinance within one year after including the shorelands within its municipal boundaries; or

(3) 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 ordinance or rules for the municipality must be adopted 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 under section 462.357. The ordinance or rules are effective for the municipality on the date and in accordance with any rules prescribed by the commissioner relating to compliance. The ordinance must be enforced as provided in section 462.362. The penalties 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 must be paid by the municipality and collected from the municipality just as costs are paid by a county and collected from a county under subdivision 5. Tax levied to pay the costs must be levied in excess of any limitation as to rate or amount but must not reduce the amount of other taxes that are subject to any limitation.

**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 must be, to the maximum extent practical, compatible with planning and land use controls for shoreland adopted under subdivision 6.

**Subd. 8. Extent of authority of municipality.** This section does not prohibit a municipality from adopting and enforcing ordinances or rules affecting the use and development of shoreland that are more restrictive than the state standards and criteria.

**History:** 1987 c 229 art 2 s 1

#### **105.49 COOPERATION WITH OTHER AGENCIES.**

The commissioner may cooperate and enter into agreements with the United States government, a state department, or any state or country adjacent to the state of Minnesota to carry out 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. County attorneys, sheriffs, and other peace officers and other officers having authority shall take all action to the extent of their authority, respectively, that may be necessary or proper for the enforcement of the provisions, rules, standards, orders, or permits specified in sections 105.37 to 105.55.

**History:** 1987 c 229 art 2 s 1

#### **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 their use and may do whatever the commissioner finds proper to protect the interests of the people of the state consistent with sections 105.37 to 105.55.

**History:** 1987 c 229 art 2 s 1

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

**Subdivision 1. Waste prevention required.** For the conservation of the underground water supplies of the state, the commissioner may require the owners of wells, especially flowing artesian wells, to prevent waste.

**Subd. 2. Drilling records.** A person, firm, or corporation that provides 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 and related water pumping tests. The statements are confidential and can be used only by the division for scientific study. The study's result may be public information. The commissioner may exclude from the requirement to file statements those whose operations are of a type that would not yield significant scientific information.

**Subd. 3. Well abandonment.** The owner of a well with a casing six inches or more in inside diameter must not abandon the well, cover or otherwise render it inaccessible for inspection, or permanently remove the pumps from it without notifying the commissioner of natural resources and complying with the commissioner's recommendations. The commissioner may make recommendations and impose conditions as the commissioner finds 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 well that has been abandoned, or for which notice of abandonment has been given under this subdivision.

**History:** 1987 c 229 art 2 s 1

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

Upon complaint or acting personally, the commissioner may examine a 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 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 to have investigations made at the owner's expense and filed with the commissioner for use in determining the condition of the structures and the need for their repair, alteration, or removal.

If the commissioner determines that the reservoir, dam, control structure, or waterway obstruction is unsafe or needs repair or alteration, the commissioner shall notify its owner to repair, alter, or remove it as necessary, and shall issue an order to that effect as if the owner had applied for permit for the repairs, alterations, or removal. The engineering investigations or the work of repair, alteration, or removal must begin and be completed within a reasonable time prescribed by the commissioner.

**History:** 1987 c 229 art 2 s 1

### **105.521 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 session.

**History:** 1987 c 229 art 2 s 1

### **105.53 APPLICATION.**

Sections 105.37 to 105.55 do not supersede or amend sections 92.45 and 110.13.

Sections 105.37 to 105.55 do not authorize the commissioner to require a permit for the original construction of dams, reservoirs, or control works in existence on and before July 1, 1937.

**History:** 1987 c 229 art 2 s 1

### **105.535 RULES.**

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

**History:** 1987 c 229 art 2 s 1

**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 under a permit 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 the project has been denied by the commissioner; or

(4) violates any other provision of this chapter.

**History:** 1987 c 229 art 2 s 1

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

Upon application of the commissioner, the district court of a county in which the project is wholly or partially located, may by injunction enforce compliance with, or restrain the violation of, any order of the commissioner made under sections 105.37 to 105.55, or restrain the violation of those sections.

**History:** 1987 c 229 art 2 s 1

**105.63 TRANSFER OF CUSTODY OF CERTAIN DAM AND WATER CONTROLS FROM STATE AGENCY.**

**Subdivision 1. Application for transfer.** Upon application by resolution of the governing body of any governmental subdivision of the state authorized to maintain and operate dams or other control works affecting public waters, the commissioner of natural resources with the approval of the executive council, may transfer to the subdivision the custody of a dam or other water control works belonging to the state and under the supervision or control of the commissioner if the commissioner determines that the transfer will promote the best interests of the public. The transfer must be made by order of the commissioner upon the terms and conditions the commissioner sets for maintenance and operation of the project. In connection with the 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 state property pertaining to the project, subject to conditions and reservations the commissioner finds proper. A duplicate of every order, conveyance, or other instrument executed by the commissioner in connection with a transfer must be filed with the commissioner of finance.

**Subd. 2. Actual transfer.** A transfer may be made with or without payment of money to the state, as agreed upon between the commissioner and the transferee. Payment received must be paid into the general fund.

**History:** 1987 c 229 art 2 s 1

**105.64 DRAINAGE OR DIVERSION OF WATER FOR MINING.**

**Subdivision 1. Mining permits.** The commissioner of natural resources may grant permits for the drainage, diversion, control, or use of waters under the commissioner's jurisdiction when necessary for the mining of iron ore, taconite, copper, copper-nickel, or nickel as provided in this section.

**Subd. 2. Application.** Application for a permit must be made to the commissioner in the form the commissioner prescribes by the owner of the iron ore, taconite, copper, copper-nickel, or nickel deposits affected or by the owner of the right to mine them.

Except as otherwise provided, all matters pertaining to the application, to the proceedings on it, and to any permit issued on it are governed by the applicable provisions of sections 105.37 to 105.55.

Subd. 3. **Grant.** A permit shall be granted only when the commissioner determines:

(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 of mining 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 of lands or waters except as expressly authorized in the permit and will not endanger public health or safety; and

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

Subd. 4. **Operation.** If the operations authorized by a permit may affect public or private property not owned by the permittee, before proceeding with the operations, the permittee shall acquire all rights or easements necessary for them, shall pay or give security for the payment of damages to the property that may result from the operations, and shall give evidence of compliance with this subdivision as the commissioner may require. The state and its officers, agents, or employees do not incur liability on account of the issuance of a permit or on account of any act or omission of the permittee, or the permittee's agents or servants, under or in connection with the permit.

Subd. 5. **Duration of mining.** Notwithstanding other limitations prescribed by law, a permit shall be granted for a term the commissioner finds necessary for the completion of the proposed mining operations, and the commissioner may prescribe in the permit a time the commissioner deems reasonable for the commencement or completion of operations or construction under the permit or the exercise of the rights granted by it. The commissioner may extend the original term of the permit or the time allowed for the performance of its conditions for good cause shown upon application of the permittee. In a permit, the commissioner may prescribe conditions the commissioner finds necessary and practicable for restoring the waters to their former condition after completion of the mining operations or after expiration or cancellation of the permit. The commissioner may also prescribe other conditions necessary to protect the public health, safety, and welfare, and may require the permittee to furnish a bond to the state, in an appropriate form and amount as security for compliance with the conditions of the permit and applicable law.

Subd. 6. **Irrevocability.** A permit issued under this section is irrevocable for the term of the permit and for any extension of the 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 conditions the commissioner finds necessary to protect the public interests.

(2) Subject to appeal according to sections 105.37 to 105.55, the commissioner may modify or cancel a permit if: (i) the permittee or its servants or agents breach the permit's terms or conditions or violate pertinent law; or (ii) the commissioner finds the 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. The commissioner may modify or cancel the permit 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.

(3) By written order to the permittee the commissioner may immediately 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 the danger, and may require the permittee to take any measures necessary to prevent or remedy the injury. No order may remain in effect for more than 30 days from the date of the order without giving the permittee at least ten days' written notice of the order and an opportunity to be heard on it.

**Subd. 7. Effect on other law.** This section does not amend, supersede, or repeal any existing law, but is supplementary to it.

**History:** 1987 c 229 art 2 s 1

#### **105.71 [Repealed, 1987 c 358 s 132]**

#### **105.72 DECLARATION OF POLICY.**

The code of water law of Minnesota is contained in numerous statutes that must be considered as a whole to systematically administer 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 public interest conflicts 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:** 1987 c 229 art 2 s 1

#### **105.73 DEFINITIONS.**

**Subdivision 1. Scope.** Unless the context clearly indicates a different meaning is intended, the terms used in sections 105.72 to 105.78 have the meanings given them in this section.

**Subd. 2. Board.** "Board" means the board of water and soil resources.

**Subd. 3. Proceeding.** "Proceeding" means a procedure under any of the laws listed in section 105.74 however administrative discretion or duty under them may be invoked in any instance.

**Subd. 4. Agency.** "Agency" means a state officer, board, commission, bureau, division, or agency, other than a court, exercising duty or authority under laws listed in section 105.74.

**Subd. 5. Court.** "Court" means the district court or a judge of the district court before whom the proceeding is pending.

**Subd. 6. Question of water policy.** "Question of water policy" means the question or questions of state water law and policy involved where use, disposal, pollution, or conservation of water is a purpose, incident, or factor in a proceeding, including:

(1) determination of the governing policy of state law in the proceeding, resolving apparent inconsistencies between different statutes;

(2) the proper application of that policy to facts in the proceeding when application is a matter of administrative discretion; or

(3) both (1) and (2).

**History:** 1987 c 229 art 2 s 1; 1987 c 358 s 101

#### **105.74 BOARD DUTIES; WATER POLICY QUESTIONS.**

In addition to other duties, 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:** 1987 c 229 art 2 s 1

**105.75 PETITION FOR INTERVENTION.**

Subdivision 1. **Intervention invoked.** 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 of the questions.

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

Subd. 3. **Timing.** 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:** 1987 c 229 art 2 s 1

**105.751 COURT REFERRALS.**

The court may refer a procedure before it under any laws listed 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. A party to the procedure may ask the court to refer the matter to the board. On receiving a petition for referral the board shall proceed under sections 105.72 to 105.79.

**History:** 1987 c 229 art 2 s 1

**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 passed after conclusion of hearing before the board, whichever is earlier, unless the agency makes a written finding stating reasons that the public interest requires the board to act immediately. 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:** 1987 c 229 art 2 s 1

**105.77 HEARING, DETERMINATION.**

As a petition is filed the board proceeds with 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 in order to make 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 enough detail to tell the parties, the

agency, and a reviewing court the basis and reason for the decision. In the proceeding and upon any judicial review the recommendation is evidence. A copy, certified, is competent evidence of the recommendation.

**History:** 1987 c 229 art 2 s 1

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

When a consent, notice, or recommendation is made by the board a copy is filed with the agency. The filing is notice of the board's action. The board's rules may provide for a notice, in addition to filing by mail, posting, publication, or otherwise, which it believes will practically inform parties and interested persons of its actions. To carry out sections 105.72 to 105.79, the chair of the board, or any board member may subpoena witnesses, administer oaths, and compel the production of books, records, and other evidence. Disobedience of a subpoena, or refusal to be sworn, or to answer as a witness, is punishable as a contempt of the district court on complaint of the board, or any board member, before the district court of the county where it occurred. Witnesses receive the same fees and mileage as in civil actions. Persons are sworn before testifying and the right to examine or cross-examine is the same as in civil actions. Hearings are public, conducted by the board or an authorized board member, and affected persons have the opportunity to be heard. The board provides a stenographer to take the testimony, and proceedings at the hearings are recorded and preserved. Hearings are conducted insofar as practicable in the same way as civil actions. State agencies may adopt opposite positions on the matter before the board when full advocacy will assist to disclose the public interest.

**History:** 1987 c 229 art 2 s 1

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

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

**History:** 1987 c 229 art 2 s 1

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

To conserve and make 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 for the installation of dams or other control works in drainage ditch systems to impound or divert waters for beneficial use. The petition must be directed to the county board when a drainage system is wholly within one county and to the joint county board when the system affects two or more counties. The petition must 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 the petition, the petitioners shall file a bond as provided in sections 106A.205 and 106A.211. No bond is 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. The petition must 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 must 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 the 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 its benefit, the board or court shall issue a permit authorizing its installation. Before installing or constructing an impoundment or diversion, the

petitioner shall obtain rights-of-way and flowage easements from owners of land to be affected by it.

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

**History:** *1987 c 229 art 2 s 1*