

CHAPTER 105

DIVISION OF WATERS, SOILS AND MINERALS

105.41 Appropriation and use of waters.
 105.418 Conservation of public water supplies.
 105.51 Wells; control, reports by drillers.

105.81 Petition; bond; investigation; report;
 hearing; order.

105.41 APPROPRIATION AND USE OF WATERS.

Subdivision 1. Commissioner's permission. (a) 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.

(b) A permit may not be issued under this section unless the permit is consistent with state, regional, and local water and related land resources management plans.

(c) The commissioner may not modify or restrict the amount of appropriation from a groundwater source authorized in a permit issued for agricultural irrigation 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 a domestic water supply.

Subd. 1a. Water allocation priorities. (a) The commissioner shall adopt rules for allocation of waters based on the following priorities for the consumptive appropriation and use of water:

(1) first priority: domestic water supply excluding industrial and commercial uses of municipal water supply, and use for power production that meets the contingency planning provisions of section 105.417, subdivision 5;

(2) second priority: a use of water that involves consumption of less than 10,000 gallons of water per day;

(3) third priority: agricultural irrigation and processing of agricultural products, involving consumption in excess of 10,000 gallons per day;

(4) fourth priority: power production in excess of the use provided for in the contingency plan developed under section 105.417, subdivision 5; and

(5) fifth priority: uses, other than agricultural irrigation, processing of agricultural products, and power production, involving consumption in excess of 10,000 gallons per day and nonessential uses of public water supplies as defined in section 105.518, subdivision 1.

(b) For the purposes of this section, "consumption" shall mean water withdrawn from a supply which is lost for immediate further use in the area.

(c) 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.

(d) Appropriation and use of surface water from lakes of less than 500 acres in surface area must be discouraged.

(e) The treatment and reuse of water from nonconsumptive uses shall be encouraged.

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

Subd. 1b. Use less than minimum. Except for local permits under section 473.877, subdivision 4, a permit is not 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. 1c. Certain cooling system permits prohibited. (a) The commissioner may not issue a water use permit from a groundwater source for a once-through cooling system using in excess of five million gallons annually.

(b) For purposes of this subdivision, a once-through cooling system means a cooling or heating system for human comfort that draws a continuous stream of water from a groundwater source to remove or add heat for cooling, heating, or refrigeration.

[For text of subds 2 to 4, see M.S.1988]

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.

Subd. 5a. Water use processing fee. (a) Except as provided in paragraph (b), a water use processing fee not to exceed \$2,000 must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

(1) 0.05 cent per 1,000 gallons for the first 50 million gallons per year; and

(2) 0.1 cents per 1,000 gallons for the amounts greater than 50 million gallons per year.

(b) For once-through cooling systems as defined in subdivision 1c, a water use processing fee must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

(1) 5.0 cents per 1,000 gallons until December 31, 1991;

(2) 10.0 cents for 1,000 gallons from January 1, 1992, until December 31, 1996; and

(3) 15.0 cents per 1,000 gallons after January 1, 1997.

(c) The fee is payable based on the amount of water permitted during the year and in no case may the fee be less than \$25.

(d) Failure to pay the fee is sufficient cause for revoking a permit.

[For text of subd 6, see M.S.1988]

History: 1989 c 326 art 4 s 1-5; 1989 c 335 art 1 s 126; 1989 c 356 s 50

105.418 CONSERVATION OF PUBLIC WATER SUPPLIES.

(a) During periods of critical water deficiency as determined by the governor and declared by executive 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.

(b) The commissioner may adopt rules relating to matters covered by this section.

(c) Disregard of critical water deficiency orders, even though total appropriation remains less than that permitted, is adequate grounds for immediate modification of a public water supply authority's water use permit.

History: 1989 c 326 art 4 s 6

105.51 WELLS; CONTROL, REPORTS BY DRILLERS.

[For text of subds 1 and 2, see M.S.1988]

Subd. 3. [Repealed, 1989 c 326 art 3 s 48]

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 section 106A.202, subdivisions 5 and 6. 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: 1989 c 209 art 2 s 6