

CHAPTER 103G

WATERS OF THE STATE

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103G.222 REPLACEMENT OF WETLANDS.

(a) After the effective date of the rules adopted under section 103B.3355 or 103G.2242, whichever is later, wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value under either a replacement plan approved as provided in section 103G.2242 or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. Mining reclamation plans shall apply the same principles and standards for replacing wetlands by restoration or creation of wetland areas that are applicable to mitigation plans approved as provided in section 103G.2242.

(b) Replacement must be guided by the following principles in descending order of priority:

(1) avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;

(2) minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;

(3) rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;

(4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity; and

(5) compensating for the impact by replacing or providing substitute wetland resources or environments.

(c) If a wetland is located in a cultivated field, then replacement must be accomplished through restoration only without regard to the priority order in paragraph (b), provided that a deed restriction is placed on the altered wetland prohibiting nonagricultural use for at least ten years.

(d) Restoration and replacement of wetlands must be accomplished in accordance with the ecology of the landscape area affected.

(e) Replacement shall be within the same watershed or county as the impacted wetlands, as based on the wetland evaluation in section 103G.2242, subdivision 2, except that counties or watersheds in which 80 percent or more of the presettlement wetland acreage is intact may accomplish replacement in counties or watersheds in which 50 percent or more of the presettlement wetland acreage has been filled, drained, or otherwise degraded. Wetlands impacted by public transportation projects may be replaced statewide, provided they are approved by the commissioner under an established wetland banking system, or under the rules for wetland banking as provided for under section 103G.2242.

(f) Except as provided in paragraph (g), for a wetland located on nonagricultural land, replacement must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland.

(g) For a wetland located on agricultural land or in counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, replacement must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland.

(h) Wetlands that are restored or created as a result of an approved replacement plan are subject to the provisions of this section for any subsequent drainage or filling.

(i) Except in counties or watersheds where 80 percent or more of the presettlement wetlands are intact, only wetlands that have been restored from previously drained or filled wetlands, wetlands created by excavation in nonwetlands, wetlands created by dikes or dams along public or private drainage ditches, or wetlands created by dikes or dams associated with the restoration of previously drained or filled wetlands may be used in a statewide banking program established in rules adopted under section 103G.2242, subdivision 1. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

(j) The technical evaluation panel established under section 103G.2242, subdivision 2, shall ensure that sufficient time has occurred for the wetland to develop wetland characteristics of soils, vegetation, and hydrology before recommending that the wetland be deposited in the statewide wetland bank. If the technical evaluation panel has reason to believe that the wetland characteristics may change substantially, the panel shall postpone its recommendation until the wetland has stabilized.

History: 1993 c 175 s 2

103G.2241 EXEMPTIONS.

(a) Subject to the conditions in paragraph (b), a replacement plan for wetlands is not required for:

(1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;

(2) activities in a wetland that is or has been enrolled in the federal conservation reserve program under United States Code, title 16, section 3831, that:

(i) was planted with annually seeded crops, was in a crop rotation seeding, or was required to be set aside to receive price support or payment under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the program; and

(ii) has not been restored with assistance from a public or private wetland restoration program;

(3) activities necessary to repair and maintain existing public or private drainage systems as long as wetlands that have been in existence for more than 20 years are not drained;

(4) activities in a wetland that has received a commenced drainage determination provided for by the federal Food Security Act of 1985, that was made to the county agricultural stabilization and conservation service office prior to September 19, 1988, and a ruling and any subsequent appeals or reviews have determined that drainage of the wetland had been commenced prior to December 23, 1985;

(5) activities exempted from federal regulation under United States Code, title 33, section 1344(f);

(6) activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clause (14), limited to when a new road crosses a wetland, and all of clause (26);

(7) activities in a type 1 wetland, as defined in United States Fish and Wildlife Circular No. 39 (1971 edition) except for bottomland hardwood type 1 wetlands;

(8) activities in a type 2 wetland that is two acres in size or less;

(9) activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland;

- (10) activities in a wetland created solely as a result of:
 - (i) beaver dam construction;
 - (ii) blockage of culverts through roadways maintained by a public or private entity;
 - (iii) actions by public entities that were taken for a purpose other than creating the wetland; or
 - (iv) any combination of (i) to (iii);
- (11) placement, maintenance, repair, enhancement, or replacement of utility or utility-type service, including the transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications if:
 - (i) the impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and
 - (ii) the proposed project significantly modifies or alters less than one-half acre of wetlands;
- (12) activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;
- (13) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline;
- (14) temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activities do not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters;
- (15) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch or tile line; with filling avoided wherever possible; and there is no drainage of the wetland or public waters;
- (16) activities associated with routine maintenance or repair of existing public highways, roads, streets, and bridges, provided the activities do not result in additional intrusion into the wetland outside of the existing right-of-way;
- (17) emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and do not result in the draining or filling, wholly or partially, of a wetland;
- (18) normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland;
- (19) duck blinds;
- (20) aquaculture activities, including pond excavation and construction and maintenance of associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including construction or expansion of buildings;
- (21) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344;
- (22) normal agricultural practices to control pests or weeds, defined by rule as either noxious or secondary weeds, in accordance with applicable requirements under state and federal law, including established best management practices;

(23) activities in a wetland that is on agricultural land annually enrolled in the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program;

(24) development projects and ditch improvement projects in the state that have received preliminary or final plat approval, or infrastructure that has been installed, or having local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. In the seven-county metropolitan area and in cities of the first and second class, plat approval must be preliminary as approved by the appropriate governing body; and

(25) activities that result in the draining or filling of less than 400 square feet of wetlands.

(b) A person conducting an activity in a wetland under an exemption in paragraph (a) shall ensure that:

(1) appropriate erosion control measures are taken to prevent sedimentation of the water;

(2) the activity does not block fish passage in a watercourse; and

(3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.

History: 1993 c 175 s 3; 1993 c 226 s 20

103G.2242 WETLAND VALUE REPLACEMENT PLANS.

[For text of subd 1, see M.S.1992]

Subd. 2. Evaluation. Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a technical evaluation panel after an on-site inspection. The technical evaluation panel shall be composed of a technical professional employee of the board, a technical professional employee of the local soil and water conservation district or districts, and a technical professional with expertise in water resources management appointed by the local government unit. The panel shall use the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989). The panel shall provide the wetland determination to the local government unit that must approve a replacement plan under this section, and may recommend approval or denial of the plan. The authority must consider and include the decision of the technical evaluation panel in their approval or denial of a plan.

[For text of subds 3 to 10, see M.S.1992]

Subd. 11. Wetland heritage advisory committee. The governor shall establish a wetland heritage advisory committee consisting of a balanced diversity of interests including agriculture, environmental, and sporting organizations, land development organizations, local government organizations, and other agencies. The committee must consist of nine members including the commissioner of agriculture, or a designee of the commissioner, the commissioner of natural resources, and seven members appointed by the governor. The governor's appointees must include one county commissioner, one representative each from a statewide sporting organization, a statewide conservation organization, an agricultural commodity group, one faculty member of an institution of higher education with expertise in the natural sciences, and one member each from two statewide farm organizations. The committee shall advise the board on the development of rules under this section and, after rule adoption, shall meet at least twice a year to review implementation of the program, to identify strengths and weaknesses, and to recommend changes to the rules and the law to improve the program.

[For text of subds 12 and 13, see M.S.1992]

History: 1993 c 175 s 4,5

103G.2369 INTERIM.

[For text of subd 1, see M.S.1992]

Subd. 2. **Prohibited activities.** (a) Except as provided in subdivision 3, until July 1, 1993, a person may not drain or fill a wetland.

(b) Except as provided in subdivision 3, until July 1, 1993, a state agency or local unit of government may not issue a permit for an activity prohibited in paragraph (a) or for an activity that would include an activity prohibited in paragraph (a).

[For text of subds 3 and 4, see M.S.1992]

Subd. 4a. **Election by local government unit.** Notwithstanding subdivision 2 and sections 103G.222 and 103G.2242, a local government unit may elect to operate under this section after July 1, 1993, but not beyond December 31, 1993.

[For text of subd 5, see M.S.1992]

History: 1993 c 175 s 6,7

NOTE: This section is repealed January 1, 1994. See Laws 1991, chapter 354, article 7, section 2, as amended by Laws 1993, chapter 175, section 8.

103G.261 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 103G.285, subdivision 6;

(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 103G.285, subdivision 6;

(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

(6) sixth priority, nonessential uses.

(b) For the purposes of this section, "consumption" means water withdrawn from a supply that 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 for 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.

History: 1993 c 186 s 1

103G.265 WATER SUPPLY MANAGEMENT.

[For text of subds 1 and 2, see M.S.1992]

Subd. 3. **Consumptive use of more than 2,000,000 gallons per day.** (a) Except as provided in paragraph (b), a water use permit or a plan that requires a permit or the com-

missioner'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:

(1) a determination is made 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 of the consumptive use is given 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;

(2) agricultural irrigation and processing of agricultural products;

(3) construction and mineland dewatering;

(4) pollution abatement or remediation; and

(5) fish and wildlife enhancement projects using surface water sources.

[For text of subd 4, see M.S.1992]

History: 1993 c 186 s 2

103G.271 APPROPRIATION AND USE OF WATERS.

[For text of subds 1 to 5, see M.S.1992]

Subd. 5a. Maintenance of surface water levels. Except as provided in subdivision 5, paragraph (c), the commissioner shall, by January 31, 1994, revoke all existing permits, and may not issue new permits, for the appropriation or use of groundwater in excess of 10,000,000 gallons per year for the primary purpose of maintaining or increasing surface water levels in the seven-county metropolitan area and in other areas of concern as determined by the commissioner. This subdivision does not apply until January 1, 1998, to a municipality that, by January 1, 1994, submits a plan acceptable to the commissioner for maintaining or increasing surface water levels using sources other than groundwater.

[For text of subd 6, see M.S.1992]

Subd. 6a. Payment of fees for past unpermitted appropriations. An entity that appropriates water without a required permit under subdivision 1 must pay the applicable water use permit processing fee specified in subdivision 6 for the period during which the unpermitted appropriation occurred. This fee is in addition to any other fee or penalty assessed.

Subd. 7. Transfer of permit. A water use permit may be transferred to a successive owner of real property if the permittee conveys the real property where the source of water is located. The new owner must notify the commissioner immediately after the conveyance and request transfer of the permit.

History: 1993 c 186 s 3-5

103G.291 PUBLIC WATER SUPPLY APPROPRIATION DURING DEFICIENCY.

[For text of subds 1 and 2, see M.S.1992]

Subd. 3. Emergency plans; demand reduction. (a) Every public water supplier serving more than 1,000 people must submit an emergency and conservation plan to the commissioner for approval by January 1, 1996. The plan must address supply and demand reduction measures and allocation priorities and must identify alternative sources of water for use in an emergency. Public water suppliers must update the plan and submit it to the commissioner for approval every ten years.

(b) Public water suppliers serving more than 1,000 people must employ water use demand reduction measures before requesting approval from the commissioner of

health under section 144.383, paragraph (a), to construct a public water supply well or requesting an increase in the authorized volume of appropriation. Demand reduction measures must include evaluation of conservation rate structures and a public education program that may include a toilet and showerhead retrofit program.

(c) Public water suppliers serving more than 1,000 people must submit records that indicate the number of connections and amount of use by customer category and volume of water unaccounted for with the annual report of water use required under section 103G.281, subdivision 3.

(d) For the purposes of this subdivision, "public water supplier" means an entity that owns, manages, or operates a public water supply, as defined in section 144.382, subdivision 4.

History: 1993 c 186 s 6

103G.293 STATEWIDE DROUGHT PLAN.

The commissioner shall establish a plan to respond to drought-related emergencies and to prepare a statewide framework for drought response. The plan must consider metropolitan water supply plans of the metropolitan council prepared under section 473.156. The plan must provide a framework for implementing drought response actions in a staged approach related to decreasing levels of flows. Permits issued under section 103G.271 must provide conditions on water appropriation consistent with the drought response plan established by this section.

History: 1993 c 13 art 1 s 23

103G.301 GENERAL PERMIT APPLICATION PROCEDURES.

Subdivision 1. **Application documentation.** (a) An application for a permit must be accompanied by:

(1) maps, plans, and specifications describing the proposed appropriation and use of waters;

(2) the changes, additions, repairs, or abandonment proposed to be made;

(3) the waters of the state affected; and

(4) other data the commissioner may require.

(b) The commissioner may require a statement of the effect the actions proposed in the permit application will have on the environment, including:

(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 application, including conservation measures to improve water use efficiencies and reduce water demand.

[For text of subs 2 to 7, see M.S.1992]

History: 1993 c 186 s 7

103G.615 PERMITS TO HARVEST OR DESTROY AQUATIC PLANTS.

[For text of subd 1, see M.S.1992]

Subd. 2. **Fees.** (a) The commissioner shall establish a fee schedule for permits to harvest aquatic plants other than wild rice, by order, after holding a public hearing. The fees may not exceed \$200 per permit based upon the cost of receiving, processing, analyzing, and issuing the permit, and additional costs incurred after the application to inspect and monitor the activities authorized by the permit.

(b) The fee for a permit for chemical treatment of rooted aquatic vegetation may not exceed \$20 for each contiguous parcel of shoreline owned by an owner. This fee may not be charged for permits issued in connection with lakewide Eurasian water milfoil control programs.

(c) A fee may not be charged to the state or a federal governmental agency applying for a permit.

(d) The money received for the permits under this subdivision shall be deposited in the treasury and credited to the game and fish fund.

[For text of subd 3, see M.S.1992]

History: 1993 c 235 s 4

103G.617 EURASIAN WATER MILFOIL EDUCATION AND MANAGEMENT.

[For text of subds 1 to 4, see M.S.1992]

Subd. 5. **Research.** The commissioner shall initiate cooperative research with the University of Minnesota and other public and private research facilities to study the use of nonchemical methods, including biological control agents, for control of Eurasian water milfoil.

History: 1993 c 235 s 5