

**CHAPTER 6115**  
**DEPARTMENT OF NATURAL RESOURCES**  
**PUBLIC WATER RESOURCES**

**STANDARDS AND CRITERIA FOR GRANTING PERMITS TO CHANGE THE COURSE, CURRENT, OR CROSS-SECTION OF PROTECTED WATERS**

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**STANDARDS AND CRITERIA FOR GRANTING PERMITS TO CHANGE THE COURSE, CURRENT, OR CROSS-SECTION OF PROTECTED WATERS**

**6115.0150 PURPOSE AND STATUTORY AUTHORITY.**

The purpose of parts 6115.0150 to 6115.0280 is to provide for the orderly and consistent review of permit applications in order to conserve and utilize the water resources of the state in the best interest of its people. In deciding whether to issue permits, the department shall be guided by the policies and requirements declared in Minnesota Statutes, sections 104.01, 104.25, 104.32, 105.38, 105.42, 105.64, and 116D.04.

The proposed development must also be consistent with the goals and objectives of applicable federal, state, and local environmental quality programs and policies including but not limited to shoreland management, floodplam management, water surface use management, boat and water safety, wild and scenic rivers management, water quality management, recreational or wilderness management, critical areas management, scientific and natural areas management, and protected species management.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

**6115.0160 SCOPE.**

To achieve the purpose declared in part 6115.0150 these rules set forth minimum standards and criteria for the review, issuance, and denial of permits for proposed projects affecting protected waters. Permits shall be required for any activity affecting the course, current, or cross-section of protected waters unless specifically exempted within these rules.

These standards and criteria apply to any and all work which will cause or result in the alteration of the course, current, or cross-section of protected waters except for the following:

A. utility crossings of protected waters which are regulated under Minnesota Statutes, section 84.415 and rules promulgated thereunder; or

B. destruction and control of aquatic vegetation which is regulated under Minnesota Statutes, section 98.48, subdivision 9 and rules promulgated thereunder.

**Statutory Authority:** *MS s 105 415*

**History:** *8 SR 533*

### 6115.0170 DEFINITIONS.

Subpart 1 **Certain terms.** For the purposes of parts 6115 0150 to 6115 0280, certain terms or words used herein shall be interpreted as follows: the word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.

Subp. 2. **Alteration.** "Alteration" means any activity that will change or diminish the course, current, or cross-section of protected waters.

Subp. 3 **Beds of protected waters.** "Beds of protected waters" means all portions of protected waters located below the ordinary high water mark.

Subp. 4. **Breakwater.** "Breakwater" means an offshore structure intended to protect a shore area, harbor, or marina from wave and current action, erosion, or sedimentation.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of natural resources.

Subp. 6. **Department.** "Department" means the Department of Natural Resources.

Subp. 7 **Dock.** "Dock" means a narrow platform extending waterward from the shoreline intended for ingress and egress for moored watercraft or to provide access to deeper water for swimming, fishing, or other water-oriented recreational activities.

Subp. 8 **Drainage.** "Drainage" means any method for removing or diverting waters from protected waterbasins or wetlands. Such methods shall include, but are not limited to, excavation of an open ditch, installation of subsurface drainage tile, filling, diking, or pumping.

Subp. 9 **Drawdown.** "Drawdown" means a temporary lowering of water levels, for a maximum duration of two years.

Subp. 10 **Excavation.** "Excavation" means the displacement or removal of the sediment or other materials from the beds of protected waters by means of hydraulic suction or mechanical operations.

Subp. 11. **Fill.** "Fill" means any material placed or intended to be placed on the bed or bank of any protected water.

Subp. 12. **Filter.** "Filter" means a transitional layer of gravel, small stone, or fabric between the fine material of an embankment and riprap shore protection materials.

Subp. 13. **Floating structure.** "Floating structure" means any houseboat, mooring or navigational buoy, swimming or diving platform, water ski jump, watercraft, or other structure supported entirely by its own buoyancy which is not permanently anchored by means of pilings, foundations, gabion baskets, or other materials incapable of removal by nonmechanized means.

Subp. 14. **Floodplain.** "Floodplain" means the areas adjoining a watercourse which has been or hereafter may be covered by the regional flood.

Subp. 15. **Floodway.** "Floodway" means the channel of the watercourse and those portions of the adjoining floodplains which are reasonably required to carry and discharge the regional flood.

Subp. 16. **Harbor.** "Harbor" means either an inland or offshore area protected from waves which is intended for the mooring of watercraft.

Subp. 17. **Inland boat slip.** "Inland boat slip" means an inland excavation generally having a uniform width which serves as a protective area for launching and mooring of a single watercraft.

Subp. 18. **Inland excavation.** "Inland excavation" means any excavation intended to extend the cross-section of protected waters landward of the natural or preexisting shoreline

Subp. 19. **Low-water ford type crossing.** "Low-water ford type crossing" means a stream crossing which conforms to the natural cross-section of the stream and utilizes the placement of a suitable substrate to allow vehicular passage without confining the stream flow within culverts or other hydraulic enclosures.

Subp. 20. **Marina.** "Marina" means either an inland or offshore structure for the concentrated mooring of five or more watercraft wherein facilities are provided for ancillary services such as boat mooring, storage, fueling, launching, mechanical repairs, sanitary pumpout, and restaurant services.

Subp. 21. **Maximum.** "Maximum," with respect to storage capacity, refers to the most severe design condition, including surcharge (floodwater storage).

Subp. 22. **Mining activity.** "Mining activity" means the construction, reconstruction, repair, relocation, expansion, or removal of any facility for the extraction, stockpiling, storage, disposal, or reclamation of metallic or nonmetallic minerals. Facilities include all mine pits, quarries, stockpiles, tailings basins, and any structures which drain or divert protected waters to allow mining. Ancillary facilities such as access roads, bridges, culverts, and water level control structures are not mining activities.

Subp. 23. **Mooring.** "Mooring" means any containment of free-floating watercraft that provides a fixed fastening for the craft.

Subp. 24. **Offshore.** "Offshore" means the area waterward of the ordinary high water mark of a protected water

Subp. 25. **Ordinary high water mark.** "Ordinary high water mark" means the boundary of protected waters as defined in Minnesota Statutes, section 105.37, subdivision 16.

Subp. 26. **Permanent dock.** "Permanent dock" means any dock other than seasonal docks and wharves as defined by this part.

Subp. 27. **Port.** "Port" means a water transportation complex established and operated under the jurisdiction of a port authority pursuant to Minnesota Statutes, chapter 458

Subp. 28. **Port facility.** "Port facility" means any facility useful in the maintenance and operation of a port. Facilities include, but are not limited to, transportation facilities, terminal and storage facilities, floating and handling equipment, power stations, and other facilities necessary for the maintenance and operation of a port.

Subp. 29. **Principal spillway.** "Principal spillway" means a spillway designed to convey water from an impoundment at release rates established for the structure.

Subp. 30. **Professional engineer.** "Professional engineer" means an engineer registered to practice in Minnesota.

Subp. 31. **Protected waters.** "Protected waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 105.37, subdivision 14 or 15, or 105.391, subdivision 1.

Subp. 32. **Reconstruction.** "Reconstruction" means the rebuilding or renovation of an existing structure, where the cost of such work will exceed 50 percent of the replacement cost.

Subp. 33. **Regional flood.** "Regional flood" means the flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval.

Subp. 34. **Retaining walls.** "Retaining walls" means vertical or nearly-vertical structures constructed of mortar-rubble masonry, handlaid rock or stone, vertical timber pilings, horizontal timber planks with piling supports, sheet pilings, poured concrete, concrete blocks, or other durable materials and constructed approximately parallel to the shoreline.

Subp. 35. **Riprap shore protection.** "Riprap shore protection" means coarse stones, boulders, cobbles, artificially broken rock or concrete, or brick materials laid loosely or within gabion baskets against the slope of the existing bank of a protected water.

Subp. 36. **Seasonal dock.** "Seasonal dock" means a dock so designed and constructed that it may be removed from the lake or stream bed on a seasonal basis. All components such as supports, decking, and footings must be capable of removal by nonmechanized means.

Subp. 37. **Structure.** "Structure" means any building, footing, foundation, slab, roof, boathouse, deck, wall, or any other object extending over, anchored, or permanently attached to the bed or bank of a protected water.

Subp. 38. **Structural height.** "Structural height" means the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe of the control structure or from the lowest elevation of the outside limit of the control structure, if it is not across a stream channel or watercourse, to the maximum storage elevation.

Subp. 39. **Swellhead.** "Swellhead" means the difference between the headwater elevation necessary to pass the regional flood through the proposed structure and the tailwater elevation below the structure.

Subp. 40. **Temporary structure.** "Temporary structure" means any seasonal dock or floating structure that can be removed from protected waters before winter freeze-up.

Subp. 41. **Watercourse.** "Watercourse" means any channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods water may leave the confining beds and banks but under low and normal flows water is confined within the channel. A watercourse may be perennial or intermittent.

Subp. 42. **Water level control structure.** "Water level control structure" means any structure which impounds or regulates the water surface elevation or flow of protected waters, including dams regulated under the provisions of parts 6115.0300 to 6115.0520.

Subp. 43. **Wharf.** "Wharf" means a permanent structure constructed into navigable waters as a part of a port facility for berthing or mooring commercial watercraft, or for transferring cargo to and from watercraft in an industrial or commercial enterprise, or for loading or unloading passengers from commercial watercraft, or for the operation of a port facility.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

**6115.0180** [Repealed by amendment, 8 SR 533]

**6115.0190 FILLING INTO PROTECTED WATERS.**

Subpart 1 **Goals.** It is the goal of the department to limit the placement of any fill material into protected waters in order to:

A. minimize encroachment, change, or damage to the environment,  
 B. regulate the quantity and quality of fill and the purposes for which filling may be allowed based upon the capabilities of the waters to assimilate the material; and

C. maintain consistency with floodplain, shoreland, and wild and scenic rivers management standards and ordinances

Subp. 2. **Scope.** Filling as used in this part involves placement of unconfined or loosely confined materials in protected waters.

Subp. 3. **Nonpermitted placement.** Placement shall not be permitted in the following cases:

A. to achieve vegetation control;  
 B. to create upland areas, except where expressly provided herein;  
 C. to stabilize beds of protected waters which cannot support fill materials because of excessive depths of muck, steep bank, bed slope, or other conditions;

D. to stabilize or impound the site of active springs;  
 E. to dispose of rock, sand, gravel, or any other solid material resulting from activities carried out above the ordinary high water mark;

F. to construct a roadway or pathway, or create or improve land accesses from peripheral shorelands to islands, or to facilitate land transportation across the waters; however, where a project is proposed by a federal, state, or local government agency and this provision would prevent or restrict the project, or create a major conflict with other public purposes or interests, the commissioner may waive this provision provided:

(1) there is no other feasible and practical alternative to the project that would have less environmental impact; and

(2) that the public need for the project rules out the no-build alternative;

G. filling of posted fish spawning areas is prohibited.

Subp. 4. **No permit required.** No permit shall be required for the following activities unless prohibited under subpart 3:

A. To install a beach sand blanket provided the sand or gravel layer does not exceed six inches in thickness, 50 feet in width along the shoreline, or one-half the width of the lot, whichever is less, and does not extend more than ten feet waterward of the ordinary high water mark, provided local watershed district and local zoning officials are given at least seven days notice by the landowner.

B. For one additional installation of a sand or gravel layer subsequent to an initial installation at the same location and not exceeding the same amounts and dimensions allowed under item A.

C. To install riprap shore protection, except along the shores of Lake Superior and officially designated trout streams, provided the riprap materials consist of natural rock having an average size of 12 inches or larger in its smallest dimension, and conform with the natural alignment of the shoreline, with a minimum finished slope not steeper than 3:1 horizontal:vertical, no materials are placed more than five feet waterward of the ordinary high water mark, and the material does not obstruct the flow of water.

D. To place fill in a protected watercourse having a total drainage area, at its mouth, of five square miles or less, provided that the watercourse is not an officially designated trout stream and the placement of fill shall not result in:

- (1) any diversions of water from the drainage area;
- (2) any impoundment of waters by damming the watercourse;
- (3) any actions which would result in erosion and cause sedimentation of downstream waters as determined by the county or local soil and water conservation district.

Subp. 5. **Permits required.** Permits shall be required for the placement of fill in protected waters, except as provided under subparts 3 and 4, and shall meet all of the following requirements:

A. the project will involve a minimum of encroachment, change, or damage to the environment, including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention;

B. the fill consists of clean inorganic material that is free of pollutants and nutrients;

C. the existence of a stable, supporting foundation is established by appropriate means, including soil boring data where deemed necessary by the commissioner;

D. where erosion protection is deemed necessary by the commissioner, the site conditions and fill material are capable of being stabilized by an approved erosion control method such as riprap, retaining wall, or other method which is consistent with existing land uses on the affected protected water;

E. the proposed project must represent the minimal impact solution to a specific need with respect to all other reasonable alternatives;

F. the size, shape, depths, shoreline, and bottom character and topography, and susceptibility of the beds of protected waters to actions of wind, waves, and currents are such that the fill will be stable;

G. adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects;

H. the proposed filling must be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved;

I. the proposed filling must be consistent with water and related land management plans and programs of local and regional governments provided such plans and programs are consistent with state plans and programs.

**Statutory Authority:** *MS s 105.415*

**History:** 8 SR 533

#### **6115.0191 SPECIFIC STANDARDS.**

Subpart 1. **In general.** In addition to compliance with the general standards in part 6115.0190, subparts 2 to 5, specific requirements for certain activities shall be met as follows.

Subp. 2. **Riprap shore protection.** The protection of shoreline from continued erosion by placement of natural rock riprap along the shore shall be permitted provided:

A. The riprap materials are of sufficient size, quality, and thickness to withstand ice and wave action. The riprap shall be placed with a minimum amount of space between the larger materials and the space between them shall be filled with firmly seated smaller rocks or gabion baskets to procure a uniform surface.

B. The site soils are capable of supporting riprap and a filter consisting of well-graded gravel, crushed stone, or fabric is installed to prevent undercutting of the riprap.

C. The encroachment into the water is the minimum amount necessary to provide protection and does not unduly interfere with the flow of water.

Subp. 3. **Navigational access.** Filling to gain navigational access to waters shall be permitted only where access to navigable depths cannot be reasonably attained by utilizing a dock, the excavation of an offshore access channel, or other alternatives which would result in less environmental impact.

Fill for navigational access shall not extend beyond the edge of open water, shall not exceed side slopes greater than 2:1 horizontal:vertical, shall not exceed a maximum width of 15 feet at the base of the fill, and shall not extend to a water depth greater than four feet.

Subp. 4. **Shoreline lost by erosion.** Applications for filling to recover shoreland lost by erosion or other natural forces shall be permitted only where:

A. the loss of shoreline is a threat to health and safety through the impending loss or damage to existing shoreline developments;

B. the loss of shoreline has occurred as a result of changes in water level or flow conditions caused by artificial manipulation of flows or levels of the waters involved within a period of not more than five years prior to the date when an application for filling is submitted.

The requirements of items A and B shall not preclude the issuance of permits to place riprap materials or use other structural means for protection of the shoreline to prevent continuous erosion.

Subp. 5. **Port development or improvement.** Filling necessary for port development or improvement shall be allowed only on those waters which are under the jurisdiction of established port authorities subject to the following:

A. no filling shall be allowed to extend beyond the limits of federally established harbor lines, or where no harbor line has been established, beyond the maximum distance waterward which could be attained without obstructing navigational use of the waters;

B. the proposed development must be part of a comprehensive port development plan which has been approved by the commissioner, and

C. adverse effects of the proposed filling on the physical and biological character of the area shall be subject to mitigation measures approved by the commissioner.

Subp. 6. **Fish and wildlife habitat.** Filling to restore or improve fish and wildlife habitat, except for filling in designated trout streams, shall be permitted provided plans are submitted showing the nature and degree of habitat to be benefited, and the project will not create other adverse effects such as flooding, erosion, sedimentation, or navigational obstructions.

Subp. 7. **Trout streams.** Filling in trout streams officially designated by the commissioner shall be allowed only if:

A. the amount, method of placement, and location of the fill will not result in increased water temperatures, excessive sedimentation in the stream, or destruction of fish habitat; and

B. there is no other feasible or practical alternative other than filling.

Subp. 8. **Other purposes.** Filling for other purposes not specifically listed shall be subject to the general standards in part 6115.0190, subparts 2 to 5 and submission of information to show that:

A. the intended purpose of the fill is reasonable with respect to all other alternatives and there are no feasible and practical means to attain the intended purpose without filling; and

B. the proposal will adequately protect public safety and promote the public welfare.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

**6115.0192 RELATIONSHIP TO STANDARDS AND CRITERIA FOR OTHER ACTIVITIES INVOLVING CHANGES IN COURSE, CURRENT, OR CROSS-SECTION.**

Unless otherwise specified in other parts, parts 6115.0190 and 6115.0191 shall apply to filling proposed as part of any other activity or activities including but not limited to: Excavations parts 6115.0200 to 6115.0202, Structures parts 6115.0210 to 6115.0212, Water level controls parts 6115.0220 to 6115.0222, Bridges and culverts parts 6115.0230 to 6115.0232, Drainage of protected waters parts 6115.0270 to 6115.0272, and Alterations of protected waters for mining part 6115.0280.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

**6115.0200 EXCAVATION OF PROTECTED WATERS.**

**Subpart 1. Goals.** It is the goal of the department to limit the excavation of materials from the beds of protected waters in order to:

A. preserve the natural character of protected waters and their shorelands, in order to minimize encroachment, change, or damage to the environment, particularly the ecosystem of the waters;

B. regulate the nature, degree, and purpose of excavations so that excavations will be compatible with the capability of the waters to assimilate the excavation; and

C. control the deposition of materials excavated from protected waters and protect and preserve the waters and adjacent lands from sedimentation and other adverse physical and biological effects.

**Subp. 2. Scope.** Excavation as used in this rule includes any activity which results in the displacement or removal of bottom materials or the widening, deepening, straightening, realigning, or extending of protected waters. It may involve proposals for excavations landward or waterward from the ordinary high water mark.

**Subp. 3. Nonpermitted excavation.** Excavation shall not be permitted in the following cases:

A. where it is intended to gain access to navigable water depths when such access can be reasonably attained by alternative means which would result in less environmental impact;

B. where inland excavation is intended to extend riparian rights to nonriparian lands, or to promote the subdivision and development of nonriparian lands;

C. where the proposed excavation will be detrimental to significant fish and wildlife habitat, or protected vegetation and there are no feasible, practical, or ecologically acceptable means to mitigate the effects;

D. to control or eliminate vegetation for the development of beach areas;

E. where it is intended to provide fill materials for development purposes except as provided under part 6115.0280;

F. where the excavation would not provide an effective solution to a problem because of recurrent sedimentation and there are feasible and practical alternative solutions which do not require excavation;

G. unless the excavation project includes provisions for acceptable disposal of excavated materials as provided in these rules; or

H. where the excavation would cause increased seepage of water which would lower the water level of protected waters and result in subsurface drainage.

Subp. 4. **No permit required.** No permit for excavation shall be required for the following activities unless prohibited in subpart 3:

A. for excavations in a protected watercourse having a total drainage area, at its mouth, of five square miles or less, provided that the watercourse is not an officially designated trout stream and the excavation will not result in:

- (1) any diversions of water from the drainage area;
- (2) any impoundment of waters by damming the watercourse;
- (3) any actions which would result in erosion and cause sedimentation of downstream waters as determined by the county or local soil and water conservation district;

B. to remove debris such as trees, logs, stumps, and trash provided such removal does not alter the original alignment, slope, or cross-section of the waters;

C. for repair of a public drainage system lawfully established pursuant to Minnesota Statutes, chapters 106 and 112 consistent with the definition of "repair" set forth in Minnesota Statutes, section 106.471, subdivision 1.

Subp. 5. **Permits required.** Permits shall be required for the excavation and removal of any materials from protected waters or any excavations extending into or out of protected waters, except as provided in subparts 3 and 4, and shall be subject to the following general criteria:

A. The project must be reasonable and practical based upon geologic and hydrologic conditions including but not limited to:

- (1) quantity and quality of local drainage at the site;
- (2) type of sediment/soil strata and underground formations in the vicinity;
- (3) life expectancy of the excavation with respect to bedload, long-shore drift, and siltation patterns in the project vicinity; and
- (4) protection of the water body from increased seepage, pollution, and other hydrologic impacts.

B. The disposal of excavated materials shall be subject to the following requirements:

- (1) The disposal of any excavated materials containing pollutants shall be subject to requirements of Minnesota Statutes, chapter 115.
- (2) The most acceptable means of disposing of clean materials, free from pollutants, which are excavated from protected waters listed in order of preference are:

(a) Complete removal of excavated materials from the waters and disposal or reuse for other purposes outside of the floodplain.

(b) Deposition in stable on-land disposal sites located above the ordinary high water mark and outside of floodway districts established under local ordinance. Provisions must be included for sodding, seeding, or otherwise properly stabilizing these materials.

(c) Temporary deposition along shorelines or within floodplains by stockpiling materials for subsequent removal to areas outside of any protected waters and outside of established floodplain districts provided that: any stockpile materials are removed within one year of stockpiling; and the stockpile is constructed so that any materials or waters entering or leaving the stockpile are controlled to prevent any introduction of sediment into the environment surrounding the stockpile.

(d) Redeposition of excavated materials, consisting of inorganic materials free from pollutants, into protected waters shall only be permitted when it will result in improvement of natural conditions of protected waters for the public benefit and will not result in sedimentation, obstruction of navigation,

or a loss of fish or wildlife habitat. Separate permit provisions shall be required for redeposition of excavated materials subject to the standards and criteria of subparts 2 to 5.

(e) Determination of the public benefit served by redeposition of excavated materials shall be based on the value to the public of redéposited materials in order to protect shorelines from the damaging effects of erosion due to winds and waves when there are no other feasible, practical, and ecologically acceptable means to protect the shoreline; or create or improve habitat areas for fish and wildlife; or mitigate or enhance the physical and biological environment within protected waters when mitigative or enhancement measures are required as a condition of a permitted activity within the waters involved and there are no other feasible, practical, and ecologically acceptable mitigative measures.

C. The proposed project must represent the "minimal impact" solution to a specific need with respect to all other reasonable alternatives.

D. The excavation must be limited to the minimum dimensions necessary for achieving the desired purpose.

E. Where excavation is proposed in a protected water that is perched on an impervious stratum, soil borings must show that the proposed excavation will not rupture the impervious stratum.

F. The biological character of the waters and surrounding shorelines shall be affected to the minimum degree feasible and practical.

G. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

H. The water supply, navigational, and drainage characteristics of the waters shall be protected to ensure that the interests of the public and of private riparian landowners are not adversely affected by the proposed excavation.

I. The proposed excavation shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

J. The proposed excavation shall be consistent with plans and management programs of local and regional governments provided that such plans are consistent with state plans and programs.

K. For harbors, boat slips, and other mooring facilities, the excavation shall be appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline to be served divided by the lot requirements of the local land use control authority and the state shoreland management standards.

**Statutory Authority:** *MS s 105.415*

**History:** 8 SR 533

### 6115.0201 SPECIFIC STANDARDS.

Subpart 1. **In general.** In addition to compliance with the general standards in part 6115.0200, subparts 2 to 5, specific requirements shall be met for the activities described in subparts 2 to 7.

Subp. 2. **Excavations for beach development.** The existing site conditions will not provide a suitable beach using a sand blanket alone. When the proposal includes the installation of a beach sand blanket, the area to be excavated shall be consistent with the criteria for filling under part 6115.0190, subparts 2 to 5. The depth of excavation needed to reach a suitable beach stratum shall be the minimum depth necessary considering anticipated site maintenance and reasonable water depths for a beach.

Subp. 3. **Waterbasin excavations.** Excavations for improvement or enhancement of hydrologic and biologic conditions in all, or large portions of waterbasins.

A. A public need for the excavation has been established by local governmental resolution specifying the public interests to be improved or enhanced, except where the project is state sponsored.

B. The proposed project is intended to achieve one or more of the following public purposes:

- (1) to improve navigation, swimming, and other recreational uses;
- (2) to reduce winter fish-kill potential;
- (3) sediment removal to eliminate a source of nutrients and/or contaminants.

C. The proposed excavation is part of an overall improvement or enhancement project based upon adequate background and field test data for which a comprehensive plan is submitted at the time of application detailing all of the following:

(1) Objectives to be accomplished, and an analysis of any alternative means considered to meet the objectives and the rationale for selecting excavation.

(2) Sufficient soil boring and bottom sampling data to evaluate sediment quality and bottom "seal" conditions. Where excavation is proposed on a waterbasin that is perched on an impervious stratum, soil borings must show that the proposed excavation will not rupture the impervious stratum.

(3) The methods, uses, and locations to be employed in excavating and disposing of excavated material consistent with the provisions of parts 6115.0190 to 6115.0192.

(4) Existing water quality data and provision for future water quality monitoring including any water returned to the waterbasin during the removal of excavated materials.

(5) A timetable which indicates anticipated yearly excavation areas and volumes of materials to be removed, plus the selected disposal methods, uses, and deposition locations for each excavation period.

(6) A detailed description of proposed excavation and disposal equipment and facilities, including, where applicable, the length of discharge pipe purchased or available for the project and the pumping characteristics of the equipment.

**Subp. 4. Excavations for navigation-related purposes.** Excavations for navigation-related purposes:

A. Access channels from shorelines for recreational craft. Excavations for accesses from shorelines to reach navigable depths shall not be allowed if access could reasonably be obtained through use of a dock to reach navigable depths, and prevalent wind, wave, and current conditions would not impair reasonable access to reach navigable depths.

When shoreline conditions and wind, wave, and current conditions preclude access to navigable depths, excavations for navigational access shall be allowed provided the access channel shall not exceed four feet in depth, more than 15 feet in bottom width, and will not extend to an offshore water depth greater than four feet.

B. Other navigational channels. Excavations shall be limited to the minimum depth and width necessary to allow reasonable use of anticipated watercraft.

Excavations to provide maintenance of navigational channel projects shall be limited to the length, width, and depth dimensions of the original channel.

**Subp. 5. Harbors and boat slips.** Harbors and boat slips:

A. Excavations for development of offshore or inland harbors or boat slips for the mooring of more than 25 watercraft or watercraft larger than 20 feet in length shall be restricted to those waters which have the following characteristics:

(1) waterbasins having areas of 1,000 acres or more,

(2) watercourses which are used for commercial or industrial navigational purposes.

B. Excavations for development of offshore harbors serving fewer than 25 watercraft shall be limited to those water areas where the location of the proposed offshore harbor would not create unreasonable obstructions to public use and navigation on the water involved. Unreasonable obstructions include any development which would result in threats to public health, safety, or welfare

C. Excavations for development of private inland harbors or boat slips serving fewer than 25 watercraft or watercraft less than 20 feet in length shall be limited to those waters where

(1) Prevalent wind, wave, or current conditions along the shoreline where excavation is proposed are of a magnitude and frequency which precludes the use and maintenance of docks to moor watercraft. Determinations of magnitude and frequency which would inhibit use of docks shall be based on supporting facts including:

(a) the character of the water involved and its shoreline in relation to exposure to severe wind, wave, or current actions and the configuration and area of the water;

(b) the frequency of occurrence of storms producing severe winds and waves based on climatological data for the area; and

(c) the average number of days during each month of the navigational season when the shoreline is affected by severe winds, waves, or currents;

(2) The presence of lake bed and bank conditions would preclude the use and maintenance of docks and the conditions of the site and the number, type, or size of watercraft intended to be moored would preclude the development and use of on-land facilities, such as rollers, winch and track systems, sliderails, or other facilities which could be used to haul watercraft out of the water for on-land storage; or

(3) The proposed site is located in an area of the water body where offshore mooring or excavations or extensive dock development would create unreasonable obstructions to public use and navigation of the water body.

D. The width and length of boat slips shall not exceed 150 percent of the width and length of the anticipated watercraft and all authorized boat slips shall be oriented to maximize the degree of wave protection.

E. Excavations for development of inland harbors shall be limited to those waters described in item C and shall meet the following additional requirements:

(1) Requirements applicable to all commercial and industrial inland harbors:

(a) The mooring area of the harbor shall be compactly shaped in order to minimize the surface area excavated in relation to the number of mooring spaces to be provided and shall be located at an adequate distance from the shoreline to provide wave protection and prevent breakthrough.

(b) No branch or connecting channels shall be permitted extending laterally outward from authorized inland excavations.

(c) If practical, a "dogleg" shall be incorporated in the approach channel located between the mooring area and the shoreline to minimize visual impact from the water body and promote wave dissipation.

(d) The excavation shall not extend more than 200 feet inland from the protected water unless evidence is provided to show that greater distances are required because of the dimensions of the watercraft to be moored.

(e) The methods, use, and deposition locations to be employed in disposing of excavated materials shall be consistent with the provisions of part 6115 0200, subpart 5, item B.

(2) An application for a permit shall contain plans, maps, and supporting data regarding proposed excavation site soil borings, ground water levels and characteristics, water quality, topography, drainage, and vegetation which shall substantiate that the proposed project must be reasonable and practical based upon geologic and hydrologic conditions including:

(a) quantity and quality of stream flow and local drainage at the proposed project site;

(b) water stagnancy problems including the capability of being flushed or drained;

(c) interference with stream flow or longshore drift;

(d) type of soil strata and underground formations in the project vicinity;

(e) protection of the water body itself in terms of reduced water supply, increased seepage or drainage, pollution, increased flooding, and other adverse hydrological impacts;

(f) adequate entrance openings;

(g) ample turning radius,

(h) adequate depth and size for the anticipated watercraft usage;

(i) adequate reduction of wave heights in mooring areas;

(j) proper harbor shape to reduce wave resonance;

(k) need for and feasibility of maintenance dredging;

(l) adequate height of perimeter wall;

(m) need for wave absorbers within the harbor; and

(n) bank stabilization by appropriate erosion control measures.

(3) Additional requirements applicable to specific types of harbors. Private inland harbors serving two or more single family residential riparian lots shall, if practical, be located along the mutual boundary of properties to be served.

Private inland harbors for proposed multi-family or cluster developments, residential planned unit developments, or for resorts, campgrounds, or other commercial purposes. The development plan shall be approved by the local governmental unit. The permit shall be of the title-registration type including a provision that the individual waterfront lots in the development have priority rights to the available mooring spaces thus obviating issuance of future permits for individual harbors for these lots. The harbor shall be appropriately sized, consistent with the number of watercraft to be served with the number of mooring spaces not to exceed one mooring space for each riparian unit served or each rental cabin or campsite unit plus consideration of use by transient watercraft.

Public inland harbor projects must be justified by:

(a) a public need for the proposed inland harbor established by local governmental resolution specifying public interests to be enhanced;

(b) the harbor shall be appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served,

(c) the harbor shall be available for use by the general public; and

(d) the harbor may extend more than 200 feet inland provided the plans minimize the total length by which the protected water is proposed to be extended in keeping with the number of watercraft to be served and the topography.

Subp. 6. **Excavations for fish and wildlife habitat improvement.** Excavation to restore or improve fish and wildlife habitat require plans showing the nature and degree of habitat to be benefited, and information showing that the project will not create other adverse effects such as flooding, erosion, sedimentation, or navigational obstructions

Excavations in trout streams officially designated by the commissioner shall be allowed only if:

A. the amount, method, and location of the excavation will not result in increased water temperatures, cause excessive sedimentation in the stream, or destruction of fish habitat; and

B. there is no other feasible or practical alternative other than excavation.

Subp 7. **Excavations in protected watercourses.** Except as noted in part 6115.0200, subpart 4, a permit shall be required for any excavation in a protected watercourse and shall be subject to the following specific requirements in addition to the general requirements of part 6115 0200, subparts 2 to 5:

A. The watercourse capacity shall be sufficient to adequately convey normal runoff.

B. The watercourse bottom gradients shall be such that normal low flow velocities are nonerosive and the sideslopes shall be graded such that bank slumping is not a hazard. Where excavation will result in excessive bank erosion, energy dissipation structures, channel and bank protection, or other engineering measures shall be required.

C. The outlet shall be adequate in that it:

(1) sufficiently conveys the discharge waters from the area proposed for excavation;

(2) does not produce substantial increases in downstream overbank flooding; and

(3) does not produce downstream erosion hazards as a result of the watercourse excavation.

D. When projects involve widening or straightening which alters the watercourse banks, all sideslopes which contribute direct surface runoff into the authorized altered watercourse, and a strip of land along both sides of the watercourse, one rod wide or to the top of the spoil bank, whichever is the greater, shall be seeded and maintained in permanent grasses. No mowing of this grassed strip shall be allowed until after July 31 of each year.

E. The alignment and slope of the excavated channel shall be such as to provide a smooth transition between the existing and the excavated channel.

F Disposal of excavated material from channel excavation shall be consistent with part 6115.0200, subpart 5, except where the original channel is allowed to be filled as part of the project

G No significant increase in flood damages will be permitted. Floodwater retardance structures may be required to minimize any increase in flood damage.

H. The applicant shall submit the names and addresses of landowners located immediately upstream, downstream, and adjacent to any proposed watercourse alteration resulting from excavation. In addition, the applicant shall submit the names and addresses of other landowners and occupants that the commissioner, after reviewing the plans for the proposed excavation, believes will have a substantial interest in the channel change or will be substantially affected by the watercourse alteration.

I. The preferred alternative to widening, deepening, or straightening a watercourse for control of flood waters is the construction of water impoundment structures in upstream areas. Where impoundments are infeasible, impractical, or would result in adverse effects on health and safety or greater adverse

environmental effects, the preferred alternative is the construction of flood bypass channels to convey high velocity flood flows.

Excavations in protected watercourses for flood management purposes shall be allowed only where an upstream impoundment or a flood bypass channel is infeasible or impractical or excavation is the least damaging environmentally.

Excavations for widening, deepening, or straightening portions of watercourses shall be based on flood management plans which provide details on the relationship of the proposed excavation to management of flood flows for the entire watercourse and shall be consistent with state standards and state approved local standards for floodplain management including maximum use of nonstructural measures where feasible and practical.

J. Excavations shall be limited to the minimum extent necessary to facilitate construction of the road crossing and shall include provisions for adequate riprap or other bank protection measures to protect altered banks from erosion.

K. Excavations for construction of sediment traps or settling basins to control sedimentation and water quality shall be based on plans approved by the Pollution Control Agency or the local soil and water conservation district and shall be consistent with any state and local standards, regulations, and requirements.

L. Watercourse channel excavations to restore or improve fish and wildlife habitat shall require plans showing the nature and degree of habitat to be benefited, and information showing that the project will not create other adverse effects such as flooding, erosion, sedimentation, or navigational obstructions.

M. Watercourse channel excavations in trout streams officially designated by the commissioner shall only be allowed if:

(1) the amount, method, and location of the channel excavation will not result in increased water temperatures, cause excessive sedimentation in the stream, or destruction of fish habitat; and

(2) there is no other feasible or practical alternative other than channel excavation.

N. The straightening or realignment of a watercourse with a total drainage area, at its mouth, greater than five square miles shall only be permitted where the project will not result in increased downstream flooding, erosion, or sedimentation. Where it is proposed to straighten or realign a watercourse with a total drainage area, at its mouth, greater than five square miles, the applicant may be required to submit appropriate hydraulic data. Such data may include:

(1) contributing watershed above the project;

(2) data for the flood of record;

(3) maximum observed high water level;

(4) flow data, based on the best available technology as follows:

(a) existing and proposed time of concentration;

(b) existing and proposed stage downstream;

(c) existing and proposed mean velocity downstream;

(5) certification that the data was prepared by a registered professional engineer.

O. The alteration of watercourses by straightening or realigning channels to facilitate adjacent land use shall be allowed only if the applicant provides evidence:

(1) that the alteration is reasonable, practical, and will adequately protect public safety and welfare; and

(2) that the alteration will involve a minimum of encroachment, change, or damage to the environment, particularly to the ecological system of the waterway.

P. All other proposals for excavations in protected watercourses shall meet the general requirements of part 6115.0200, subparts 2 to 5 and the specific requirements of subparts 2 to 6 of this part and shall require submission of supporting evidence as provided in subpart 7, items N and O of this part.

**Statutory Authority:** *MS s 105.415*

**History:** 8 SR 533

### **6115.0202 RELATIONSHIP TO STANDARDS AND CRITERIA FOR OTHER ACTIVITIES INVOLVING CHANGES IN COURSE, CURRENT, OR CROSS-SECTION.**

Unless otherwise specified in other parts, parts 6115.0200 and 6115.0201 shall apply to excavations proposed as part of any other activity or activities including but not limited to: filling, parts 6115.0190 to 6115.0192; structures, parts 6115.0210 to 6115.0212; water level controls, parts 6115.0220 to 6115.0222; bridges and culverts, parts 6115.0230 to 6115.0232; drainage of protected waters, parts 6115.0270 to 6115.0272; and alterations of protected waters for mining, part 6115.0280.

**Statutory Authority:** *MS s 105.415*

**History:** 8 SR 533

### **6115.0210 STRUCTURES IN PROTECTED WATERS.**

Subpart 1 **Goals.** It is the goal of the department to limit the occupation of protected waters by offshore navigational facilities, retaining walls, and other structures in order to:

- A. preserve the natural character of protected waters and their shorelands;
- B. provide a balance between the protection and utilization of protected waters; and
- C. encourage the removal of existing structures which do not serve the public interest from the beds of protected waters at the earliest practicable date.

Subp. 2. **Scope.** This part applies to the placement, construction, reconstruction, repair, relocation, abandonment, or removal of any structure placed on or in protected waters.

Subp. 3. **Placement of structures not permitted.** Placement of structures shall not be permitted where the structure:

- A. Will obstruct navigation or create a water safety hazard.
- B. Will be detrimental to significant fish and wildlife habitat, or protected vegetation. Construction is prohibited in posted fish spawning areas.
- C. Is designed or intended to be used for human habitation or as a boathouse.
- D. Is designed or intended to include walls, a roof, or sewage facilities

Subp. 4. **No permit required.** No permit shall be required for the following activities, unless prohibited under subpart 3:

- A. To construct, reconstruct, or install a seasonal dock or floating structure provided:
  - (1) the structure will not constitute a hazard to navigation or public health, safety, and welfare, as determined by the commissioner;
  - (2) the structure will not include fuel-handling facilities;
  - (3) the structure will allow the free flow of water beneath it; and
  - (4) the structure is not used or intended to be used as a marina.
- B. To construct or reconstruct a permanent dock on wood pilings or rock filled cribs on lakes provided:
  - (1) the dock is a single lineal structure with no appurtenances;

- (2) only one dock is installed per riparian lot;
- (3) the structure shall not exceed six feet in width nor exceed 50 feet in length, or extend to a depth greater than four feet, whichever is less;
- (4) the structure shall comply with the requirements of item A, subitems (2), (3), and (4);
- (5) for a permanent dock on wood pilings, the surface area of the lake is equal to or greater than 500 acres;
- (6) for a permanent dock on rock filled cribs, the surface area of the lake is equal to or greater than 2,500 acres; and
- (7) structures using rock filled cribs shall only be placed where the lakebed is predominantly bedrock which is incapable of supporting wood pilings and shall utilize intermittently spaced cribs which allow unrestricted circulation of water beneath the dock.

C. To construct or reconstruct a boat launching ramp provided:

(1) Privately owned ramps shall not exceed 12 feet in width, and extend more than ten feet beyond the ordinary high water mark or into water more than four feet in depth, whichever is less. Excavations five cubic yards or less, and placement of up to five cubic yards of crushed rock, gravel, clean sand, or small stone shall be allowed in order to provide a stable base or maintain use of the ramp.

(2) Publicly owned ramps shall not exceed 24 feet in width and extend more than 20 feet waterward of the shoreline or into water more than four feet in depth, whichever is less. Excavations of 60 cubic yards or less, and placement of up to 30 cubic yards of crushed rock, gravel, clean sand, or small stone shall be allowed in order to provide a stable base or maintain use of the ramp.

(3) The ramp shall be constructed of gravel, natural rock, concrete, steel matting, or other durable inorganic material not exceeding six inches in thickness.

D. Remove structures or other waterway obstructions provided:

(1) the original cross-section and bed conditions shall be restored insofar as practicable;

(2) the structure shall be completely removed including any footings or pilings which obstruct navigation;

(3) the structure is not located on an officially designated trout stream;

(4) the structure does not function as a water level control device.

Subp. 5. **Permits required; criteria.** Permits shall be required for the construction, reconstruction, repair, or relocation of any structure on or in protected waters, except as provided under subparts 3 and 4, and shall meet the following general criteria:

A. The proposed project must represent the minimal impact solution to a specific need with respect to all other reasonable alternatives.

B. The project will involve a minimum of encroachment, change, or damage to the environment, including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention.

C. The proposed structure shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

D. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

E. The proposed structure shall be consistent with water and related land management plans and programs of local and regional governments, provided these plans and programs are consistent with state plans and programs.

F. Except for docks and boat ramps, all new structures shall have a title-registered permit, unless a public agency or local governmental unit accepts responsibility for future maintenance or removal.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

#### **6115.0211 SPECIFIC STANDARDS.**

Subpart 1. **In general.** In addition to compliance with the general standards in part 6115.0210, subparts 2 to 5, specific requirements shall apply to the activities described in subparts 2 to 8.

Subp. 2. **Docks.** Except as provided in part 6115.0210, subpart 3, item B, a permit shall be required for the construction or reconstruction of any dock and shall be granted provided:

A. Similarly situated docks in the vicinity have not experienced maintenance difficulty and the use of a seasonal dock is precluded because:

(1) long fetches would subject seasonal docks to damaging storm wave conditions;

(2) bottom conditions such as bedrock or an extremely gradual offshore slope would preclude the use of seasonal dock stringers; or

(3) the number of public and private users is so great the seasonal docking equipment would not provide adequate stability.

B. Piling docks shall be preferred in all cases unless the depth to bedrock is too shallow to allow the driving of piles, in which case rock crib docks may be authorized.

C. The docks shall extend waterward only to a navigable depth, generally considered to be no greater than four feet.

D. The dock shall not exceed six feet in width.

Subp. 3. **Wharves.** A permit shall be required for the construction or reconstruction of all wharves. The following order of preference for construction types shall be utilized: bulkheaded shoreline, inland slip with bulkheaded sidewalls, wharf projecting into protected waters.

Wharves shall be permitted provided the structure:

A. is part of a designated port facility;

B. is consistent with local land use plans and ordinances;

C. does not extend further waterward than any existing wharves in the area or beyond any established harbor line, whichever is less;

D. size is the minimum practicable; and

E. is not an obstruction to flood flows or longshore drift and is adequately designed to resist the natural forces of ice, wind, and wave.

Subp. 4. **Breakwaters and marinas.** A permit shall be required for the construction or reconstruction of all offshore breakwaters and marinas. These structures shall be permitted provided the following general conditions and the additional listed specific conditions are met:

A. Alternative dock or inland facilities are infeasible.

B. The facility shall be adequate in relation to appropriate engineering factors including but not limited to those listed in part 6115.0201, subpart 5, item E, subitem (2), units (f) to (n).

C. The plan shall be adequate in relation to the geologic and hydrologic factors listed in part 6115.0201, subpart 5, item E, subitem (2), units (a) to (e).

D. The size and shape shall be designed in a compact fashion so as to blend in with the surrounding shoreline while minimizing the surface area occupied in relation to the number of watercraft to be served.

E The breakwaters shall not exceed the minimum thickness necessary to withstand the anticipated forces consistent with maintenance requirements and shall be faced with an adequate layer of natural rock riprap of appropriate size and gradation.

F The following types of offshore structures shall be permitted, subject to the listed specific conditions:

(1) Private offshore structures serving several contiguous riparian lots; provided:

(a) The site shall meet the standards of subpart 2 for a dock

(b) The structure shall minimize encroachment waterward of the ordinary high water mark.

(c) The total length of the structure shall be appropriately sized to provide a single mooring space for each riparian lot served.

(2) Private offshore structures for proposed multi-family or cluster or residential planned unit developments; provided:

(a) The structure shall minimize encroachment waterward of the ordinary high water mark and its total length shall be appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline to be served divided by the lot frontage requirements of the local land use control authority

(b) The development plan shall be approved by the local land use control authority.

(3) Private offshore structures for resorts, campgrounds, or similar enterprises; provided:

(a) The structure shall minimize encroachment waterward of the ordinary high water mark and its total length shall be appropriately sized to provide one mooring space for each rental cabin or campsite unit plus a reasonable number of mooring spaces for transient watercraft.

(b) The development plan shall be approved by the local land use control authority.

(4) Public offshore structure projects; provided:

(a) A local unit of government shall pass a resolution which specifies the public interests to be benefited by the proposal.

(b) The structure shall be appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served.

(c) The structure shall be available for use by the general public.

(d) The development plans shall minimize the waterward encroachment of the facilities.

(5) Offshore marinas; provided:

(a) The area shall be zoned for such use or local government shall grant a land use permit.

(b) The proposed marina shall minimize encroachment waterward of the ordinary high water mark.

(c) The marina shall be sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served

Subp. 5. **Retaining walls and erosion and sedimentation control structures.** A permit shall be required for the construction or reconstruction of all retaining walls and erosion and sedimentation control structures that do not impound water. The construction of retaining walls shall be discouraged because their appearance is generally not consistent with the natural environment and their construction and maintenance cost is generally greater than riprap

The issuance of permits shall be contingent on the following conditions:

A. Existing or expected erosion problems shall preclude the use of riprap shore protection, or there shall be a demonstrated need for direct shoreland docking; or

B. Design shall be consistent with existing uses in the area. Examples are: riverfront commercial-industrial areas having existing structures of this nature, dense residential shoreland areas where similar retaining walls are common, resorts where floating docks may be attached to such a bulkhead, or where barges are utilized to transport equipment and supplies, and

C. Adequate engineering studies shall be performed of foundation conditions, tiebacks, internal drainage, construction materials, and protection against flanking; and

D. The facility shall not be an aesthetic intrusion upon the area and is consistent with all applicable local, state, and federal management plans and programs for the water body; and

E. Encroachment below the ordinary high water mark shall be held to the absolute minimum necessary for construction

Subp. 6 **Boat launching ramp.** A permit shall be required for the construction or reconstruction of any boat launching ramp not covered under part 6115.0210, subpart 4, item C, and shall be granted provided:

A. the applicant shall demonstrate a need for a launching facility;

B. the proposed ramp shall be of the minimum dimensions necessary for launching of watercraft;

C. the proposed ramp shall not obstruct flowing water; and

D. construction shall not necessitate alteration of shoreland which could result in substantial erosion and sedimentation.

Subp. 7. **Other facilities.** A permit shall be required for the construction, reconstruction, relocation, removal, repair, and abandonment of all other offshore structures, cables other than utility crossings, pilings, or other facilities not covered by specific regulations:

A. Permits for structural repair, relocation, or modification, other than minor maintenance work such as reroofing, painting of structures or similar work, shall be issued provided all of the following conditions are met

(1) the applicant demonstrates a need for the work;

(2) the cost of the work will not exceed 50 percent of the replacement cost of the structure;

(3) the degree of permanence of the structure will not be materially increased by virtue of constructing a new foundation or replacing the majority of the structure above the foundation;

(4) the structure being repaired has appropriate permits from the local land use or sanitary authority;

(5) the degree of obstruction or structure size is not increased.

B. Permits for construction, relocation, or reconstruction of publicly-owned structures shall be issued where:

(1) public need is documented and outweighs adverse environmental impact;

(2) the site is adequately protected from the forces of ice and wave pressures; and

(3) the proposed construction is of sound design and is not necessarily obtrusive or visually incompatible with the natural surroundings

C. The construction, relocation, or reconstruction of privately-owned structures shall be permitted only when a governmental agency or local governmental unit accepts responsibility for future maintenance of the structure or its removal.

Subp. 8. **Removal of structures.** Where the commissioner has determined that a structure is no longer functional, constitutes a public nuisance or a hazard to navigation, or poses a threat to public health or safety, the structure shall be removed from protected waters under the applicable provisions of these rules. Except as provided under part 6115.0210, subpart 4, item D, a permit is required for the removal or abandonment of all existing waterway obstructions including boathouses, bridges, culverts, pilings, piers, and docks. Permits shall be issued provided:

A. the original cross-section and bed conditions will be restored insofar as practicable;

B. adequate provisions are made to mitigate any side effects resulting from removal, such as restoration of wave or current forces; and

C. no portion of the structure remains which would obstruct or impair navigation, interfere with the passage of flood waters, or contribute to erosion and sedimentation.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

#### **6115.0212 RELATIONSHIP TO STANDARDS AND CRITERIA FOR OTHER ACTIVITIES INVOLVING CHANGES IN COURSE, CURRENT, OR CROSS-SECTION.**

Unless otherwise specified in other parts, parts 6115.0210 and 6115.0211 shall apply to structures proposed as part of any other activity or activities including but not limited to: filling, parts 6115.0190 to 6115.0192; excavations, parts 6115.0200 to 6115.0202; water level controls, parts 6115.0220 to 6115.0222; bridges and culverts, parts 6115.0230 to 6115.0232; drainage of protected waters, parts 6115.0270 to 6115.0272; and alterations of protected waters for mining, part 6115.0280.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

#### **6115.0220 WATER LEVEL CONTROLS.**

Subpart 1. **Goals.** It is the goal of the department to manage protected waters in order to:

A. maintain natural flow and natural water level conditions to the maximum feasible extent;

B. encourage the construction of small upstream retarding structures for the conservation of water in natural waterbasins and watercourses, consistent with any overall plans for the affected watershed area; and

C. limit the artificial manipulation of water levels except where the balance of affected public interests clearly warrants the establishment of appropriate controls and it is not proposed solely to satisfy private interests

Subp. 2. **Scope.** The construction, repair, reconstruction, or abandonment of any structure intended to impound, divert, or control the level or flow of protected waters shall be subject to the provisions of this part.

Subp. 3. **Nonallowed water level control facilities.** Construction or reconstruction of water level control facilities shall not be allowed where it is intended to manipulate water levels solely to satisfy private interests.

Subp. 4. **No permit required.** No permit shall be required to construct, reconstruct, or abandon a water level control structure on protected watercourses with a contributing watershed of 300 acres or less, except on officially designated trout streams, provided the structure does not qualify as a dam under the rules for dam safety

Subp. 5. **Permits required.** Permits shall be required for the construction, repair, reconstruction, or abandonment of any water level control structure except as provided in subparts 3 and 4, and shall meet the following general criteria:

A. The project will involve a minimum of encroachment, change, or damage to the environment including but not limited to fish and wildlife habitat, navigation, water supply, storm water retention, and agricultural uses

B. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects

C. The proposed project shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

D. The proposed project shall be consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs

E. The construction or reconstruction shall comply with the requirements of parts 6115.0300 to 6115.0520 with respect to dam safety for the protection of human life and property.

F. The construction or reconstruction of water level control structures or changing the level of an existing structure may be permitted to:

(1) control and store flood waters;

(2) maintain low flows for stream flow or water level protection;

(3) manage water quality, including the prevention or control of erosion and sedimentation;

(4) improve water-based recreation;

(5) create, improve, and maintain water supplies;

(6) create, improve, or maintain aquatic habitat for fish and wildlife species;

(7) establish, improve, or maintain the generation of hydroelectric power.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

#### **6115.0221 SPECIFIC STANDARDS.**

In addition to the general standards in part 6115.0220, subparts 2 to 5, specific requirements for water level control structures shall be met as follows:

A. Permanent lake level control facilities shall be approved when the commissioner initiates proceedings for the purpose of conserving or utilizing the water resources of the state and assumes responsibility for operation and future maintenance, or when all of the following conditions are met:

(1) The ordinary high water mark and runoff elevation of the water body have been determined by a detailed engineering survey, or by order of the commissioner following a public hearing;

(2) The proposed facilities shall be "reasonably consistent with natural conditions":

(a) Where a functioning outlet existed in a state of nature or for a long period of time following lawful creation or alteration of an outlet by the activities of man or animals, or cataclysmic events, the proposed outlet is at essentially the same control elevation;

(b) Where no natural or artificial outlet exists and the lake is for all practical purposes "landlocked," the control elevation shall not be more than 1-1/2 feet below the ordinary high water mark;

(3) The project is sponsored by a governmental unit which assumes responsibility for operation and future maintenance, except where:

(a) the majority of the riparian owners sign the permit application;

(b) appropriate easements or other property interests have been obtained from all affected owners;

(c) a title-registration type permit shall be issued to the owner or owners of the property upon which the proposed water level control structure will be located; and

(d) the structure will further public interests in navigation, propagation of fish or wildlife, or other beneficial public uses of the water;

(4) Justification has been made of the need in terms of public and private interests and the available alternatives, including the impact on receiving waters and public uses thereof, through a detailed hydrologic study, and

(5) A detailed plan is developed for operation and control including:

(a) manner and time of operation;

(b) frequency of maintenance;

(c) appropriate monitoring of water levels, water quality, and other factors;

(d) management of excess waters.

B. Fish and wildlife management proposals made pursuant to Minnesota Statutes, section 97.48, subdivision 11, or other appropriate authority shall be approved where:

(1) The protected water has been designated for wildlife management purposes.

(2) There is a specific water level management plan for the lake basin.

(3) Any drawdown of the lake is only temporary and the management plans include a permanent facility for restoration of water levels following such drawdowns.

(4) Any alteration of a watercourse included in the plan follows the requirements specified in part 6115.0201, subpart 7.

(5) Appropriate easements or fee title have been obtained.

(6) Specified management personnel are required to establish a lake level gauge and keep a record of water levels with a specified frequency during seasons of active water level manipulation and with a lesser frequency during all other open water seasons.

C. Plans for landlocked waterbasins less than 25 acres in surface area and contained completely within the municipal boundaries of a single city shall be approved where:

(1) A municipal drainage plan for the affected tributary watershed is prepared by a qualified engineer or hydrologist and is approved by the affected watershed district and the city.

(2) The city has a field survey made of the waterbasin after consultation with the department including but not limited to:

(a) the elevation of the aquatic vegetation fringe;

(b) the elevation of the tree line and a description of the location, type, and size of representative trees;

(c) groundwater elevations, if appropriate;

(d) other information as requested by the department.

(3) Control elevations and associated physical parameters are approved by the department and the city.

(4) The city holds a public hearing on the proposal and provides a transcript of the proceedings to the department. Provision of a transcript may be waived by the department.

D. Permits for the construction, reconstruction, and abandonment of all other water level control structures shall be issued provided:

(1) The need is established in terms of quantifiable benefits.

(2) The structural design shall be done by a professional engineer or by a qualified engineer of the Soil Conservation Service or the Corps of Engineers and must include the following considerations:

(a) gravity forces;

(b) hydrostatic pressure;

(c) uplift forces;

(d) overturning moment;

(e) resistance to sliding,

(f) ice pressures;

(g) earthquake forces;

(h) slope stability including consolidation and pore pressures;

(i) seepage collection or prevention;

(j) foundation conditions including appropriate borings and determination of the strength of foundation materials;

(k) specifications for materials of construction and their placement or installation;

(l) adequate construction inspection to assure conformance with design assumptions; and

(m) adequacy of the cofferdam or diversion during construction, if any.

(3) Adequate assurances shall be made for future maintenance of new water level control structures:

(a) For water level control structures 25 feet or more in structural height or having a maximum storage capacity of 50 acre-feet or more, permits will be issued only to governmental agencies, public utilities, or corporations having authority to construct and maintain such projects, except that a title-registration type permit may be issued to the owner or owners of the private property upon which the proposed water level control structure will be located where the provisions of item A, subitem (3) are met.

(b) For other water level control structures, title-registration type permits may be issued to the owner or owners of the private property upon which the water level control structure will be located which shall run with the land and require breaching or removal if it ever falls into a state of disrepair or becomes unsafe

(c) Periodic engineering inspections of authorized water level control structures may be made by the department or its designee.

**Statutory Authority:** *MS s 105.415*

**History:** 8 SR 533

#### **6115.0222 RELATIONSHIP TO STANDARDS AND CRITERIA FOR OTHER ACTIVITIES INVOLVING CHANGES IN COURSE, CURRENT, OR CROSS-SECTION.**

Unless otherwise specified in other parts, parts 6115.0220 and 6115.0221 shall apply to water level control structures proposed as part of any other activity or activities including but not limited to: filling, parts 6115.0190 to 6115.0192; excavations, parts 6115.0200 to 6115.0202, structures, parts 6115.0210 to 6115.0212; bridges and culverts, parts 6115.0230 to 6115.0232; drainage of protected waters, parts 6115.0270 to 6115.0272; and alterations of protected waters for mining, part 6115.0280.

**Statutory Authority:** *MS s 105.415*

**History:** 8 SR 533

**6115.0230 BRIDGES AND CULVERTS, INTAKES AND OUTFALLS.**

Subpart 1. **Goals.** It is the goal of the department to allow crossings of protected waters, including the construction of water intake and sewer outfall structures in protected waters, only when less detrimental alternatives are unavailable or unreasonable, and where such facilities adequately protect public health, safety, and welfare.

Subp 2. **Scope.** The construction or reconstruction of any bridge, culvert, intake, outfall, or other crossing of protected waters shall be subject to the provisions of this part. Abandonment or removal of all crossings and structures governed by this part shall require a permit pursuant to 6115.0211, subpart 8

Subp. 3. **Nonpermitted crossings.** Crossings shall not be permitted where the project:

- A. will obstruct navigation or create a water safety hazard;
- B. will cause or contribute to significant increases in flood elevations and flood damages either upstream or downstream;
- C. would involve extensive channelization above and beyond minor stream channel realignments to improve hydraulic entrance or exit conditions, except where a separate permit is obtained pursuant to part 6115.0201, subpart 7; or
- D. will be detrimental to water quality, or significant fish and wildlife habitat, or protected vegetation.

Subp. 4. **No permit required.** No permit shall be required to construct the following types of crossings on protected waters, unless prohibited in subpart 3:

A. To construct or reconstruct a bridge or culvert on a protected watercourse with a total drainage area, at its mouth, of five square miles or less, except on officially designated trout streams.

B. To construct or reconstruct a low-water ford type crossing provided that:

- (1) the stream bed is capable of supporting the crossing without the use of pilings, culverts, dredging, or other special site preparation;
- (2) the water depth does not exceed two feet under normal summer flow conditions;
- (3) the crossing conforms to the natural cross-section of the stream channel and does not reduce or restrict normal low-water flows;
- (4) the original stream bank at the site does not exceed four feet in height;
- (5) the crossing is constructed of gravel, natural rock, concrete, steel matting, or other durable inorganic material not exceeding one foot in thickness;
- (6) the approach is graded to a finished slope not steeper than 5:1 horizontal:vertical, and all graded banks are seeded or mulched to prevent erosion and sedimentation; and
- (7) the crossing is not placed on an officially designated trout stream, on a wild, scenic, or recreational river or on an officially designated canoe and boating route

C. To construct or reconstruct a temporary bridge provided that:

- (1) the stream bank is capable of supporting the bridge without the use of foundations, pilings, culverts, excavation, or other special site preparation;
- (2) nothing is placed in the bed of the stream,
- (3) the bridge is designed and constructed so that it can be removed for maintenance and flood damage prevention;
- (4) the bridge is firmly anchored at one end and so constructed as to swing away in order to allow flood waters to pass;
- (5) the lowest portion of the bridge shall be at least three feet above the ordinary high water mark on navigable streams; and

(6) the bridge is consistent with state and local rules and regulations for floodplain, shoreland, and wild, scenic, or recreational rivers management standards and ordinances.

D. To maintain the hydraulic adequacy of any storm sewer or agricultural drain tile outfall or ditch which has been functioning within the previous five years if such work does not alter the original course, current, or cross-section of the protected waters.

E. To install an agricultural drain tile outletting into protected waters provided the bank is restored to the original cross-section or contour, and no permanent structure is placed below the ordinary high water mark, except for the drain tile.

Subp. 5. **Permits required.** Permits shall be required for the construction or reconstruction of any bridge, culvert, intake, outfall, or other crossing of protected waters except as provided in subparts 3 and 4, and shall meet the following general criteria:

A. The project will involve a minimum of encroachment, change, or damage to the environment including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention.

B. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

C. The proposed crossing shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

D. The proposed crossing shall be consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs.

E. Crossings of protected waterbasins or wetlands shall be allowed only where there is no feasible and practical alternative which does not require filling, excavating, or the placement of a structure in protected waters.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

#### **6115.0231 SPECIFIC STANDARDS.**

In addition to the general standards in part 6115.0230, subparts 2 to 5, specific requirements for bridges, culverts, intakes, outfalls, and other crossings of protected waters shall be met as follows:

A. The construction, reconstruction, or relocation of all bridges, culverts, or other crossings over protected waters shall be permitted provided all of the following criteria are met:

(1) The hydraulic capacity of the structure must be established by a competent technical study. The sizing shall not be based solely on the size of existing upstream and downstream structures. If a state or federal floodplain information study exists for the area, or a United States Geological Survey gaging station is located nearby on the stream, the hydraulics of the proposed bridge/culvert design must be consistent with these data. The department may waive this requirement if:

(a) the department has performed a hydraulic study based upon available information and reasonable assumptions;

(b) the department has made a field investigation of the project site;

(c) the project will not cause flood-related damages or problems for upstream or downstream interests.

(2) New crossings and replacements of existing crossings must comply with local floodplain management ordinances and with provisions of part 6120.5700, subpart 4, item A.

(a) New crossings. No approach fill for a crossing can encroach upon a community designated floodway.

Where a floodway has not been designated or where a floodplain management ordinance has not been adopted, increases in flood stage in the regional flood of up to one-half of one foot shall be permitted if they will not materially increase flood damage potential. Additional increases may be permitted if: a field investigation and other available data indicate that no significant increase in flood damage potential would occur upstream or downstream, and any increases in flood stage are reflected in the floodplain boundaries and flood protection elevation adopted in the local floodplain management ordinance.

(b) Replacement of existing crossings. If the existing crossing has a swellhead of one-half of one foot or less for the regional flood, the replacement crossing shall comply with the provisions for new crossings in unit (a).

If the existing crossing has a swellhead of more than one-half of one foot for the regional flood, stage increases up to the existing swellhead may be allowed provided field investigation and other available data indicate that no significant flood damage potential exists upstream from the crossing based on analysis of data submitted by the applicant. The swellhead for the replacement crossing may exceed the existing swellhead if it complies with the provisions for new crossings found in unit (a).

(c) The decks and approaches to bridges or culverts on major transportation routes and on roads that provide access to development at urban densities shall be no lower than two feet below the flood protection elevation as defined in part 6120.5700, subpart 5 unless it can be shown that alternative routes or access can be provided during the regional flood.

(3) The structure shall provide for game fish movement, unless the structure is intended to impede rough fish movement or the stream has negligible fisheries value.

(4) The structure will not obstruct reasonable public navigation. For bridges over protected watercourses, three feet above the calculated 50-year flood stage will ordinarily satisfy navigational clearance requirements. For bridges over protected waterbasins or wetlands, and all culverts, three feet of clearance above the ordinary high water mark will ordinarily satisfy navigational requirements.

(5) Any project proposed near an existing or proposed segment of the state trails system should be consistent therewith.

(6) Footbridges and walkways:

(a) Over watercourses. Must be designed to cause negligible backwater effects during floods. Must be securely anchored or otherwise capable of withstanding the dynamic forces of flowing water, ice, and debris. Approaches must not be raised above the adjacent floodplain lands.

(b) New walkways across any portion of protected waters to provide private access to an island will be prohibited. Permits for reconstruction of existing walkways or for the construction of new walkways intended to provide public access will be issued only if: the walkway provides the only existing access to the island; there is existing development thereon; the design will provide for any public navigational needs and is consistent with the natural surroundings.

B. The construction, reconstruction, or relocation of all water intake and sewer outfall structures placed in protected waters shall be permitted provided all of the following criteria are met:

(1) Adequate attention is given to methods of screening the structure from view as much as possible from the surface of the protected water through the use of existing vegetation or new plantings.

(2) The project is not detrimental to public values including but not limited to fish and wildlife habitat, navigation, water supply; water quality, or storm water retention.

(3) No site conditions will require frequent future disruption of the beds of protected waters.

(4) Adequate precautions must be planned during and after construction to prevent silt, soil, and other suspended particles from being discharged into protected waters.

(5) Adjacent to the intake structure, the banks and bed of the protected water must be protected from erosion and scour by placement of suitable riprap shore protection.

(6) The banks must be revegetated by seeding and/or sodding.

(7) The structure must be designed by a professional engineer.

(8) Intake structures: Excavation must be detailed in the application and on design plans. Where necessary, a water appropriation permit must be obtained from the department prior to operation. An appropriate sized screen must be used to prevent fish intake.

(9) Outfall structure design shall:

(a) where necessary, incorporate a stilling-basins, surge-basin, energy dissipator, or other device or devices to minimize disturbance and erosion of natural shoreline and bed resulting from peak flows;

(b) where feasible, utilize discharge to natural wetlands, natural or artificial stilling or sedimentation basins, or other devices for entrapment of sand, silt, debris, and organic matter;

(c) where feasible, maximize use of natural or artificial ponding areas to provide water retention and storage for the reduction of peak flows into protected waters.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

#### **6115.0232 RELATIONSHIP TO STANDARDS AND CRITERIA FOR OTHER ACTIVITIES INVOLVING CHANGES IN COURSE, CURRENT, OR CROSS-SECTION.**

Unless otherwise specified in other parts, parts 6115.0230 and 6115.0231 shall apply to bridges and culverts proposed as part of any other activity or activities including but not limited to: filling, parts 6115.0190 to 6115.0192; excavations, parts 6115.0200 to 6115.0202; structures, parts 6115.0210 to 6115.0212; water level controls, parts 6115.0220 to 6115.0222; drainage of protected waters, parts 6115.0270 to 6115.0272; and alterations of protected waters for mining, part 6115.0280.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

#### **6115.0240 APPLICATION FOR PROTECTED WATERS PERMITS.**

**Subpart 1. Forms and submission.** All applications pursuant to parts 6115.0150 to 6115.0280 shall be made on forms prepared by the department and submitted to the regional office for the area where the majority of the proposed project is located.

**Subp. 2. Who may apply.** Applications shall be submitted by the riparian owner of the land on which a project is proposed, except:

A. A governmental agency, public utility, or corporation authorized by law to conduct the project may apply if the property rights acquired or to be acquired are fully described in the application.

B. A holder of appropriate property rights such as a lease or easement may apply provided that the application is countersigned by the owner and

accompanied by a copy of the lease or other agreement. A permit may be issued for the term of the lease only, subject to cancellation prior to the termination date of the agreement if the agreement is cancelled.

C. A prospective lessee of state-owned lands may apply for a permit in his own name after he has requested a lease from the departmental official responsible for the affected lands. Both the lease request and the permit application will be processed concurrently with appropriate coordination.

**Subp. 3. Information required.** Pursuant to Minnesota Statutes, section 105.44, subdivision 4, an application shall be considered complete when:

A. It includes all of the information specified in the appropriate section or sections of these standards.

B. It is accompanied by appropriate photographs, maps, sketches, drawings, or other plans which adequately describe the proposed project.

C. It includes a brief statement regarding the following points:

- (1) anticipated changes in water and related land resources;
- (2) unavoidable anticipated detrimental effects on the natural environment;
- (3) alternatives to the proposed action.

D. Application fees have been paid. Note that final permits cannot be issued until any field inspection fees are paid.

E. Proof of service of a copy of the application and accompanying documents on the mayor of the city or the secretary of the board of the district is included with the application if the project is within or affects a city, watershed district, or soil and water conservation district.

**Subp. 4. Fees.** All applications shall be accompanied by an application fee as required by part 6115.0060. An additional fee may be charged for field inspections conducted by department personnel in the course of review subject to the provisions of part 6115.0080.

**Statutory Authority:** *MS s 105.415*

**History:** 8 SR 533

### 6115.0250 PERMIT REVIEW.

**Subpart 1. Field inspection.** The department may conduct field investigations to determine a project's nature, scope, and impact on water and related land resources. The department shall determine which applications must be investigated and such inspections shall be made in a timely fashion.

**Subp. 2. Coordination with other agencies.** Nothing in these standards is intended to supersede or rescind the laws, rules, regulations, standards, and criteria of other federal, state, regional, or local governmental subdivisions with the authority to regulate work in the beds or on the shorelands of protected waters. The issuance of a permit shall not confer upon an applicant the approval of any other unit of government for the proposed project. The department shall coordinate the review with other units of government having jurisdiction in such matters.

**Subp. 3. Procedure upon decision.** The commissioner may grant permits, with or without conditions, or deny them. In all cases, 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 demand a hearing in the manner specified in Minnesota Statutes, section 105.44, subdivision 3, within 30 days after receiving mailed notice outlining the reasons for denying or modifying an application. Any hearing shall be conducted as a contested case hearing before a hearing examiner from the independent Office of Administrative Hearings in accordance with Minnesota Statutes, chapter 14 and sections 105.44

and 105.45.

**Statutory Authority:** *MS s 105.415*

**History:** 8 SR 533

#### **6115.0260 STATUTORY REQUIREMENTS.**

Further provisions for the administration of these rules are found in Minnesota Statutes, chapter 105, including but not limited to sections 105.44 to 105.463, 105.541, and 105.55.

**Statutory Authority:** *MS s 105.415*

**History:** 8 SR 533

#### **6115.0270 DRAINAGE OF PROTECTED WATERS.**

Subpart 1. **Goals.** It is the goal of the department to protect and preserve protected waterbasins and wetlands from damage or destruction by drainage

Subp. 2. **Scope.** Parts 6115.0270 to 6115.0272 relate to the partial drainage or temporary drawdown of protected waterbasins and wetlands for all purposes except mining of metallic or nonmetallic minerals which are subject to provisions of part 6115.0280.

Subp. 3. **Nonpermitted activity.** Except as provided in Minnesota Statutes, section 105.391, subdivision 3, the permanent or total drainage of protected waterbasins and wetlands shall not be permitted.

Subp. 4. **Permits required.** A permit shall be required for the partial drainage or temporary drawdown of protected waterbasins and wetlands and shall be granted provided all of the following conditions are met:

A. The proposed project is intended to achieve one or more of the following purposes:

(1) improve navigational or recreational uses;

(2) improve or restore fish or wildlife habitat,

(3) expose sediment in order to remove or eliminate nutrients or contaminants,

(4) alleviate flooding of agricultural lands caused by artificial obstruction of downstream drainage or increased upstream discharge;

(5) allow the mining of iron ore, taconite, copper, copper-nickel, or nickel under the provisions of Minnesota Statutes, section 105.64.

B. The project will involve a minimum of encroachment, change, or damage to the environment including but not limited to fish and wildlife habitat, navigation, water supply, water quality, and storm water retention.

C. Adverse effects on the physical or biological character of the waters shall be subject to feasible and practical measures to mitigate the effects.

D. The proposed project shall be consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved.

E. The proposed project shall be consistent with water and related land management plans and programs of local and regional governments provided such plans and programs are consistent with state plans and programs.

**Statutory Authority:** *MS s 105.415*

**History:** 8 SR 533

#### **6115.0271 SPECIFIC STANDARDS.**

In addition to compliance with the general standards in 6115.0270, subparts 2 to 4, specific requirements for drainage or drawdown activities shall be met as follows:

A. The drainage or diversion of protected waters for mining iron ore, taconite, copper, copper-nickel, or nickel shall be permitted only where all of the

provisions of Minnesota Statutes, section 105.64 and part 6115.0280 have been met

B. The drainage or diversion of protected waters for mining all other metallic and nonmetallic minerals shall be permitted only when the protected waters being drained are replaced by protected waters which will have equal or greater public value, subject to provisions of part 6115.0280.

C. All other drainage or diversion of protected waters allowed in part 6115.0270, subparts 2 to 4 shall be permitted provided all of the following specific criteria are met

(1) For protected waterbasins, permits will be issued only to governmental agencies having the authority to undertake such projects. In addition, a public need for the partial drainage or temporary drawdown shall be established by specifying the public interests to be enhanced.

(2) Written consent for the partial drainage or temporary drawdown of protected waterbasins and wetlands has been obtained from all riparian owners.

(3) Partial drainage or temporary drawdown of protected waterbasins and wetlands shall be permitted only where the applicant has submitted data to confirm:

(a) that the partial drainage will improve navigation or recreational uses;

(b) that the partial drainage will improve or restore fish and wildlife habitat; or

(c) that agricultural lands have been flooded due to artificial obstruction of downstream drainage or increased upstream discharge.

(4) Any proposed temporary drawdown shall not exceed two years in duration under normal climatic conditions.

(5) There are no feasible and practical means to attain the intended purpose without drainage.

(6) The proposal will adequately protect public safety and promote the public welfare.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

### **6115.0272 RELATIONSHIP TO STANDARDS AND CRITERIA FOR OTHER ACTIVITIES INVOLVING CHANGES IN COURSE, CURRENT, OR CROSS-SECTION.**

Unless otherwise specified in other parts, parts 6115.0270 and 6115.0271 shall apply to drainage activities proposed as part of any other activity or activities including but not limited to: filling, parts 6115.0190 to 6115.0192; excavations, parts 6115.0200 to 6115.0202; structures, parts 6115.0210 to 6115.0212; water level controls, parts 6115.0220 to 6115.0222; and bridges and culverts, parts 6115.0230 to 6115.0232

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*

### **6115.0280 ALTERATIONS OF PROTECTED WATERS FOR MINING.**

Subpart 1. **Goals.** It is the goal of the department to ensure that alterations of protected waters for mining or reclamation of mining areas will minimize adverse environmental effects, preserve water resources to the maximum extent feasible and practical, and encourage the planning of future land and water utilization while at the same time promoting the orderly development of mining and the use of sound mining practices.

Subp. 2. **Scope.** Mining activities which may involve alterations of protected waters include the mining of metallic minerals including but not limited to iron ore, taconite, copper, copper-mckel, nickel, cobalt, and gold; and the mining of nonmetallic minerals including but not limited to sand and gravel, stone, clay, marl, oil, gas, and coal, and the mining of peat.

Subp. 3. **Permits required for alterations of protected waters.** Permits shall be required for any alterations of protected waters to facilitate mining of iron ore, tacomte, copper, copper-mckel, or nickel minerals or reclamation of mining areas provided that:

A. Permits to mine shall be obtained when required by Minnesota Statutes, section 93.44 to 93.51.

B. Permits for alterations in protected waters shall be granted in accordance with provisions of Minnesota Statutes, section 105.64. Applications for permits for alterations in protected waters shall include an analysis showing why underground mining without drainage, diversion, or control of protected waters is not feasible or economical.

Subp. 4. **Permit required for mining of certain minerals and peat.** Permits shall be required for mining of nonmetallic minerals, peat, and other metallic minerals not regulated in Minnesota Statutes, section 105.64, or reclamation of mining areas provided that the applicant provides evidence that:

A. there is no other feasible and practical location for the proposed mining activity;

B. there is no other feasible or economical method to mine except by draining, diverting, or controlling the protected waters;

C. the proposed alteration of protected waters is necessary and no other feasible and economical method for it is reasonably available;

D. the proposed alteration of protected waters will not substantially impair the interests of the public in lands or waters or the substantial beneficial public use thereof, except as expressly authorized in the permit, and will not endanger public health or safety;

E. the proposed mining operations will be in the public interest and that the public benefits resulting from it will be sufficient to warrant the proposed alteration of protected waters;

F. the activities represent the minimal impact solution with respect to watershed modifications, watercourse diversions or changes, drainage, runoff and seepage management, and avoidance of major adverse changes in the ecosystem of protected waters having substantial public value;

G. Whenever protected watercourses must be diverted or changed to facilitate mining, the design and construction of the diversion or change shall provide for:

(1) maintenance of adequate flows and levels in order to protect mstream flows and prevent downstream flooding;

(2) measures to prevent bank erosion and sedimentation in order to protect water quality; and

(3) details on the location, relocation, and utilization of the watercourse after cessation of mining;

H. whenever protected waterbasins are allowed to be drained to facilitate mining, and such drainage is justified and legally permitted, compensation for the loss of the basin must be provided for by either:

(1) immediate replacement of the protected basm with waters of equal or greater value; or

(2) submission of acceptable plans for the eventual replacement of the protected basin with waters of equal or greater value upon cessation of mining activities; and

I. whenever a water impoundment is necessary and justified to facilitate mining, the design, construction, operation, and maintenance of the impoundment structure shall.

(1) meet the applicable requirements of parts 6115.0300 to 6115.0520 pertaining to dam safety;

(2) provide hydrologic and hydraulic measures to ensure that any protected waters downstream of the impoundment area are adequately protected with respect to maintenance of water quantity and quality and prevention of flooding; and

(3) include plans detailing the disposition and utilization of the impoundment area after cessation of mining activities.

Subp. 5. **Compensatory measures for detrimental aspects of mining.** Whenever metallic, nonmetallic, and peat mining activities in the beds of protected waters will result in detrimental effects on the physical and biological character of protected waters, measures to compensate for the detrimental aspects shall be required in the permit conditions.

**Statutory Authority:** *MS s 105.415*

**History:** *8 SR 533*