

Minnesota Attorney General: Administrative Rules Proceedings

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STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

~~PROPOSED RULES~~ Final rules resubmitted by the agency on 5-17-78.

NR 5020 - 5029

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

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STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

~~PROPOSED RULES~~

NR 5020 - 5029

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

NR 5020 GENERAL PROVISIONS

A. GENERAL POLICY

The purpose of these rules 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 105.38, 105.42, and Section 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, flood plain 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 vegetative species management.

B. SCOPE

To achieve the policies declared in NR 5020 A these rules set forth minimum standards and criteria for the review, issuance, and denial of permits for proposed projects affecting public waters as detailed in the preceding table of contents.

C. JURISDICTION

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 public waters except for the following:

1. Utility crossings of public waters which are regulated under Minnesota Statutes, Section 84.415 and rules promulgated thereunder.

2. Destruction and control of aquatic vegetation which is regulated under Minnesota Statutes, Section 98.48, subdivision 9 and rules promulgated thereunder.

3. Changes in the course, current, or cross-section of public waters necessary for the mining of metallic and non-metallic minerals, sand and gravel, peat, coal, and marl. See Minnesota Statutes, Section 105.64.

D. DEFINITIONS

For the purposes of these rules, 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.

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

"Beds of public waters" means all portions of public waters located below the ordinary high water mark.

"Breakwater" means an off-shore structure protecting a shore area, harbor, or marina from waves.

"Class I public watercourse" means a natural watercourse serving as the major drainage outlet or a major tributary of such an outlet, which is capable of serving a number of beneficial public purposes. Smaller natural watercourses serving specific values such as trout streams and scenic watercourses are also included.

"Class II public watercourse" means a natural watercourse serving as a tributary of a Class I watercourse. Class II public watercourses are often perennial streams serving more than one beneficial public purpose.

"Class III public watercourse" means a smaller natural watercourse or an altered natural watercourse not constructed under Minnesota Statutes, Chapter 106 (and which are tributary to other Class I, II, or III watercourses), and which may be an intermittent stream serving at least one beneficial public purpose.

"Class IV watercourse" means any artificial watercourse or altered natural watercourse constructed under the provisions of Minnesota Statutes, Chapter 106 or 112 or prior laws, or as the result of private actions without any public drainage proceedings (and which are tributary to a public drainage system).

"Commissioner" means the Commissioner of Natural Resources.

"Dam" means any artificial barrier or appurtenant works which does or may impound or divert water.

"Department" means the Department of Natural Resources.

"Dredge" means the removal of the sediment or other materials from the beds of public waters by means of hydraulic suction or mechanical excavation.

"Emergency spillway" means a spillway designed to convey water in excess of that impounded for flood control or other beneficial purposes.

"Fill" means any material placed or intended to be placed on the bed or bank of any public water.

"Filter" means a transitional layer of gravel, small stone, or fabric between the fine material of an embankment and riprap shore protection materials. The purposes of the filter are to (1) prevent fine embankment material from being pulled through the riprap materials, (2) distribute the weight of the overlying riprap to prevent settlement, and (3) to provide relief of hydrostatic pressures inside the embankment.

"Floodway" means the channel of the watercourse and those portions of the

adjoining flood plains which are reasonably required to carry and discharge the regional flood.

"Harbor" means either an inland or off-shore area protected from waves which is intended for the mooring of watercraft.

"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.

"Inland excavation" means any excavation intended to extend the cross-section of public waters landward of the natural or pre-existing shoreline.

"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.

"Marina" means either an inland or off-shore area for the concentrated mooring of five (5) or more watercraft wherein facilities are provided for any or all of the following ancillary services: boat storage, fueling, launching, mechanical repairs, sanitary pumpout, and restaurant services.

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

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

"Natural watercourse" means any watercourse in a state provided by nature without artificial straightening, deepening, or widening. See "watercourse" as hereinafter defined.

"Off-shore" means the area waterward of the ordinary high water mark of a public water.

"Ordinary high water mark" for purposes of these regulations means an elevation delineating the highest water level which has been maintained for a

sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water mark shall be considered to be the elevation of the top of the bank of the channel (Re: NR 85(c)). For reservoirs and flowages the ordinary high water mark shall be the operating elevation of the normal summer pool.

"Permanent dock" means any dock other than seasonal docks and wharves as hereinafter defined.

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

"Probable maximum flood" means the most severe flood with respect to peak flow that may be expected from a combination of the most critical meteorological and hydrological conditions that are reasonably possible in the drainage basin.

"Professional Engineer" means an engineer registered to practice in Minnesota.

"Public waters" means any waters of the state which serve a material beneficial public purpose as defined in Minnesota Statutes, Section 105.37, subdivision 6.

"Reconstruction" means the rebuilding or renovation of an existing structure, where the cost of such work will exceed 50 percent of the replacement cost of a dam or 50 percent of the assessed value of other structures.

"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 (Re: NR 85(c)).

"Retaining walls" means vertical or nearly-vertical alongshore structures constructed of mortar-rubble masonry, handlaid rock or stone, vertical timber pilings, horizontal timber planks with piling supports, sheet piling, poured concrete, con-

crete blocks, or other durable materials.

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

"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 non-mechanized means.

"Spillway" means a channel available to discharge excess water from a reservoir.

"Standard project flood" means the flood that may be expected from the most severe combination of meterological and hydrological conditions that is considered reasonably characteristic of the geographical area in which the drainage basin is located, excluding extremely rare combinations. Such floods are intended as practicable expressions of the degree of protection that should be sought in the design of flood control works, the failure of which might be disastrous (Re: NR 85(c)).

"Structure" means any building, footing, foundation, slab, roof, boathouse, deck, wall, dam, or any other object permanently attached to the bed or bank of a public water. These rules shall not pertain to floating structures such as houseboats, mooring and navigation bouys, swimming and diving platforms, water ski jumps, and watercraft, provided such floating structures are not permanently anchored by means of pilings, foundations, gabion baskets, or other materials which are not capable of removal by non-mechanical means.

"Structural height" means the overall vertical distance from the lowest point of construction to the top of the dam including the foundation or cutoff but excluding driven sheet piling primarily intended for cutoff purposes.

"Swellhead" means the difference between the headwater elevation necessary to pass the regional flood through the proposed structure and the tailwater ele-

vation below the structure.

"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.

"Watercraft" means any contrivance used or designed for navigation on water other than a duck boat during the duck hunting season, a rice boat during the harvest season, or a seaplane.

"Wharf" means a permanent structure constructed into navigable waters for the sole purpose of transferring cargo to and from watercraft in an industrial or commercial enterprise.

E. SEVERABILITY

The provisions of these regulations shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

A. POLICY

It is the policy of the Department to limit the placement of any fill material into public waters in order to preserve the natural character of public waters and their shorelands, and maintain suitable aquatic habitat for fish and wildlife.

1. Placement in conformance with these rules shall be permitted in the following cases:

a. Development of beach areas.

b. Protection of shoreline from continued erosion by placement of riprap materials.

c. Recovery of shoreland lost by erosion or other natural forces which has occurred within the last five (5) years.

d. Limited filling to allow raising of previous development constructed at too low an elevation.

e. Provide navigational access from riparian properties, where such access cannot be gained by alternative means.

2. Placement shall not be permitted in the following cases:

a. To achieve vegetation control.

b. To create upland areas for development or subdivision.

c. To stabilize lake and stream beds which cannot support fill materials (e.g. excessive depths of muck, steep bank or bed slope, etc.).

d. To stabilize areas of flowing water, active springs, or subject to substantial wave action, drift, sedimentation, or other disruptive forces.

B. BEACH SAND BLANKETS

1. Permitted Uses: No permit shall be required to install a beach sand blanket provided the conditions of NR 5021 D are met and the sand and/or gravel layer does not exceed six (6) inches in thickness, 50 feet in width along

the shoreline, and does not extend more than ten (10) feet waterward of the ordinary high water mark, provided local watershed district and county zoning officials are given at least seven (7) days notice.

2. Permits: A permit shall be required for any other beach sand blanket and shall be granted provided the conditions of NR 5021 D are met.

C. RIPRAP SHORE PROTECTION

1. General Standards: The protection of shoreline from continued erosion by placement of natural rock riprap along the shore shall be permitted provided the following general standards and the conditions of NR 5021 D are met:

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.

2. Permitted Uses: Except along the shores of Lake Superior and officially designated trout streams, no permit shall be required where the riprap materials consist of natural rock and conform with the natural alignment of the shoreline, with a minimum finished slope not steeper than 3:1, and no materials are placed more than five (5) feet waterward of the ordinary high water mark.

3. Permits: A permit shall be required for any other riprap shore protection and shall be granted provided the conditions of NR 5021 C (1) and NR 5021 D are met.

D. OTHER FILLING

A permit shall be required for all other filling and shall be granted provided:

1. The project is not unduly detrimental to the public purposes listed in Minnesota Statutes, Section 105.37, subdivision 9, including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention. Filling of posted fish spawning areas is prohibited.

2. The fill consists of clean inorganic material that is free of pollutants and nutrients.

3. The existence of a stable, supporting foundation is established by appropriate means, including soil boring data where deemed necessary by the Commissioner.

4. 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 (riprap, retaining wall, etc.) which is consistent with existing land uses on the affected public water.

A. POLICY AND GENERAL RESTRICTIONS

It is the policy of the Department to discourage the excavation of materials from the beds of public waters in order to preserve the natural character of public waters and their shorelands, and maintain suitable aquatic habitat for fish and wildlife. Excavation shall be permitted provided the conditions of NR 5022 B, C, and D are met, except:

1. Where it is intended to gain access to navigable water depths when such access can be reasonably attained by utilizing a temporary or permanent dock.

2. Where inland excavation is intended solely to extend riparian rights to nonriparian lands, or to promote the subdivision and development of nonriparian lands.

3. Where the proposed excavation will be detrimental to significant fish and wildlife habitat, or protected vegetation.

B. DREDGING

1. General Standards: A permit shall be required for all dredging subject to the following general standards:

a. The project must be adequate in relation to appropriate geologic and hydrologic factors 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 dredging 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. Adequate and stable on-land spoil disposal sites located above

the ordinary high water mark and outside of floodway districts must be available for containment of dredged spoils, and project plans must include provisions for sodding, seeding, or otherwise properly protecting these spoils. Dredge spoils may be placed below the ordinary high water mark only when the Department determines that one or more beneficial public purposes will be enhanced.

c. The proposed project must represent the "minimal impact" solution to a specific need with respect to all other reasonable alternatives such as weed removal without dredging, beach sanding, excavation above the bed of public water, less extensive dredging in another area of the public water, or management of an alternate water body for the intended purpose.

d. The dredging must be limited to the minimum dimensions necessary for achieving the desired purpose.

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

2. Additional Specific Standards: The following categories of dredging projects shall be permitted, subject to the following specific restrictions.

a. Beach development:

(1) The existing site conditions will not provide a suitable beach using a sand blanket alone.

(2) The area to be dredged shall be consistent with the general dimensions authorized for beach sanding under NR 5021 B.

(3) The depth of dredging needed to reach a suitable beach stratum shall not be excessive considering anticipated site maintenance and desired water depths.

b. Public waters serving commercial or recreational navigation or access to existing boat harbors:

(1) The dredging shall be confined to the recognized navigational

channel(s) in the area or the length, width, and depth dimensions of the original boat harbor.

(2) The channel or harbor shall not be maintained to a depth or width greater than the minimum necessary to allow reasonable navigational use by the anticipated watercraft.

c. Lake improvement:

(1) The dredging shall be limited to the removal of accumulated sediment or rock debris where such materials constitute an impairment to the use of a common navigational corridor, impede reasonable access, or where it is intended to create open areas in aquatic vegetation to improve fish or wildlife habitat; or

(2) Large-scale lake dredging shall be permitted where:

(a) The proposed project is intended to achieve one or more of the following purposes:

(i) To improve navigation, swimming, and other recreational uses.

(ii) To reduce winter fish-kill potential.

(iii) Sediment removal to eliminate a source of nutrients and/or contaminants.

(b) A public need for the dredging has been established by local governmental resolution specifying the public interests to be enhanced.

(c) The proposed dredging is part of an overall lake restoration project based upon adequate background and field test data for which a comprehensive lake restoration plan is submitted at the time of application detailing all of the following:

(i) Objectives to be accomplished.

(ii) Sufficient soil boring and bottom sampling data to evaluate sediment quality and bottom "seal" conditions.

(iii) Location of spoil disposal sites.

(iv) Existing water quality data and provision for future water quality monitoring of both lake water and return water.

(v) A time-table which indicates yearly dredging areas and volumes of materials to be removed, plus the selected spoil disposal site(s) for any given dredging period.

(vi) A detailed description of proposed dredging equipment and discharge facilities, including the length of discharge pipe purchased or available for the project and the pumping characteristics of the dredging equipment.

C. INLAND EXCAVATIONS CONNECTED TO PUBLIC WATERS

1. General Standards: A permit shall be required for all excavations which extend the cross-section of public waters landward of the ordinary high water mark subject to the following restrictions:

a. The applicant must establish either of the following:

(1) Where a private inland boat slip or harbor is proposed, the applicant's entire shoreline shall be subject to wind and wave conditions of a magnitude occurring with an expected average frequency of at least once each year or possess lakebed conditions which would preclude the use of a temporary or permanent dock; or

(2) Where a commercial or public marina or harbor is proposed, there shall be adequate existing demand in the area to support an inland marina or harbor without creating user conflicts.

b. The facility shall be adequate in relation to appropriate engineering factors including but not limited to:

(1) Adequate entrance openings;

(2) Ample turning radius;

(3) Adequate depth and size for the anticipated watercraft usage;

(4) Adequate reduction of wave heights in mooring areas;

(5) Proper harbor shape to reduce wave resonance;

(6) Need for and feasibility of maintenance dredging;

(7) Adequate height of perimeter wall;

(8) Need for wave absorbers within the harbor;

(9) Bank stabilization by an appropriate erosion control measure; and

(10) Location of the mooring area of the harbor at an adequate distance from the shoreline for wave protection and to prevent breakthrough.

c. The development plan shall be adequate in relation to appropriate geologic and hydrologic factors including but not limited to:

(1) Quantity and quality of stream flow and local drainage at the proposed project site;

(2) Water stagnancy problems including the capability of being flushed or drained;

(3) Interference with stream flow or longshore drift;

(4) Type of soil strata and underground formations in the project vicinity; and

(5) Protection of the water body itself in terms of reduced water supply, increased seepage or drainage, pollution, increased flooding, and other adverse hydrological impacts.

d. 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.

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

f. 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.

g. Suitable onland disposal shall be utilized for containment of excavated materials without erosion into public waters.

h. Unless specifically prohibited, the excavation shall not extend more than 200 feet inland from the public water.

2. Additional Specific Requirements: The following types of inland excavations shall be subject to the following specific restrictions:

a. Private riparian boat slips for inland mooring purposes:

(1) Watercraft size shall be sufficiently great that a temporary dock or other seasonal mooring structure cannot reasonably be utilized along the subject shoreline for mooring of the riparian owner's watercraft.

(2) The width and length of the slip shall not exceed 150 percent of the width and length of the anticipated watercraft.

(3) Authorized boat slips shall be oriented to maximize the degree of wave protection.

b. Private inland harbors serving one or more residential riparian lots:

(1) The harbor shall be appropriately sized to provide a single mooring space for each riparian lot served; and

(2) If practical, the facility shall be located along the mutual boundary of properties to be served.

c. Private inland harbors for proposed multi-family or cluster developments, or for residential planned unit developments:

(1) The harbor 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 [redacted]quirements of the local land u[redacted]control authority;

(2) The development plan shall be approved by the local governmental unit; and

(3) 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.

d. Inland harbors for private resorts, campgrounds, or similar enterprises:

(1) The harbor shall be sized to accommodate one mooring space for each rental cabin or campsite unit plus a reasonable number of mooring spaces for transient watercraft; and

(2) The permit shall be of the title-registration type to assure harbor maintenance and usage in the event of future property sale or subdivision.

e. Public inland harbor projects:

(1) A public need for the proposed inland harbor shall be established by local governmental resolution specifying public interests to be enhanced.

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

(3) The harbor shall be available for use by the general public.

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

f. Inland Marinas:

(1) The marina may extend more than 200 feet inland from the public water, where appropriate deed covenants will preclude any future subdivision of the tract upon which the marina is located.

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

(3) The plans shall minimize the width of the marina parallel to the shoreline consistent with the number of watercraft to be served and the site topography.

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

(5) The permit shall be of the title-registration type in the case of privately owned land to assure proper maintenance of the facility.

g. Private inland boat slips for access to on-land boathouses:

(1) Under the circumstances of the proposed site, mechanical systems such as rollers, winch and track systems, sliderails, etc., which are normally used to hoist watercraft out of the water, must be impractical; and

(2) The slip shall be no more than 25 feet long and is not wider than 150 percent of the width of the anticipated watercraft.

D. ALTERATIONS OF NATURAL WATERCOURSES

1. General Standards: Except as noted in NR 5022 D (2) a permit shall be required for any alteration of a natural watercourse and shall be subject to the following requirements:

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

b. The altered watercourse bottom gradients shall be such that normal low flow velocities are non-erosive and the sideslopes shall be graded such that bank slumping is not a hazard.

c. The outlet shall be adequate in that it:

(1) Sufficiently conveys the discharge waters from the area proposed for alterations.

(2) Does not produce substantial increases in downstream overbank flooding.

(3) Does not produce downstream erosion hazards as a result of the watercourse alterations.

d. To protect the altered 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. Class I and Class II public watercourses: Alterations of Class I and Class II public watercourses may be permitted, provided the proposed project will enhance at least one of the beneficial public purposes identified in Minnesota Statutes, Section 105.37, subdivision 6, and does not cause undue detriment to all other beneficial public purposes presently served by the watercourse.

f. Class III public watercourses: Where the county board of commissioners has not assumed administrative responsibility pursuant to Minnesota Statutes, Section 105.42, subdivision 1a, alterations of Class III public watercourses shall be permitted upon demonstration that the project accomplishes a reasonable objective and that no feasible and prudent alternatives are available.

2. Exceptions:

a. No permit shall be required to remove debris such as trees, logs, stumps, and trash deposited by flood waters, provided such debris removal does not alter the original alignment, slope, or cross-section of the channel.

b. No permit shall be required for the alteration of Class IV watercourses and of Class III watercourses where the County Board of Commissioners has assumed administrative responsibility pursuant to Minnesota Statutes, Section 105.42, subdivision 1a, except in the following cases:

(1) Any activity which would require widening, deepening, or straightening of a Class I or II public watercourse as a result of the change in the Class IV or county administered Class III watercourse.

(2) Any diversion of water from a Class III or IV watercourse into a different watershed which is not a part of the same drainage basin.

(3) Any lowering of the streambed elevation which would result in an overfall of two feet or more in elevation of a channelization project when there is no provision for erosion control structures to prevent headward erosion.

(4) Construction of any dam 20 feet or more in structural height and/or impounding 50 acre-feet or more of water at maximum storage capacity.

c. Pursuant to Minnesota Statutes, Section 105.42, subdivision 1, no permit shall be required for Chapter 106 drainage projects which do not substantially affect public waters.

A. POLICY AND GENERAL REQUIREMENTS

It is the policy of the Department to discourage the waterward occupation of the beds of public waters by off-shore navigational facilities, retaining walls, and other structures in order to preserve the natural character of public waters and their shorelands, and provide a balance between the protection and utilization of public waters; and to encourage the removal of existing waterway obstructions which do not serve the public interest from the beds of public waters at the earliest practicable date.

1. The placement of structures in public waters shall not be permitted where the structure:

a. Is intended to gain access to navigable water depths where such access can be reasonably attained by alternative means.

b. Will obstruct navigation and/or create a water safety hazard.

c. Will be detrimental to significant fish and wildlife habitat, or protected vegetation. Construction is prohibited in posted fish spawning areas.

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

B. PERMANENT DOCKS

1. Permitted Uses: No permit shall be required to construct or reconstruct a permanent dock on wood pilings where the site is subject to unusual physical conditions which would preclude the use of a seasonal dock, and the dock will not exceed 50 feet in length or extend to a depth greater than four (4) feet, whichever is less.

2. Permit: A permit shall be required for the construction or reconstruction of any other permanent dock and shall be granted provided:

a. Similarly situated permanent docks in the vicinity have not experienced maintenance difficulty or 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 off-shore slope would preclude the use of seasonal dock stringers.

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

b. Piling docks shall be used 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 lakeward only to a navigable depth (generally considered to be no greater than four (4) feet).

C. WHARVES

1. A permit shall be required for the construction or reconstruction of all wharves. The following order of preference for construction types shall be utilized:

a. Bulkheaded shoreline.

b. Inland slip with bulkheaded sidewalls.

c. Wharf projecting into public waters.

2. Permit: Wharves shall be permitted provided the structure:

a. Is the only reasonable alternative for loading or unloading a specific cargo.

b. Is consistent with local land use controls.

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 the purpose is not to increase the amount of land available for waterfront development.

e. Plans prohibit buildings or shelter on the deck, other than superstructures needed for cargo handling.

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

D. OFF-SHORE BREAKWATERS, HARBORS AND MARINAS

1. General Standards: A permit shall be required for the construction or reconstruction of all off-shore breakwaters, harbors, and marinas consistent with the requirements of NR 5023 A. Such 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:

(1) Adequate entrance openings;

(2) Ample turning radius;

(3) Adequate depth and size for the anticipated watercraft usage;

(4) Adequate reduction of wave heights in mooring areas;

(5) Proper harbor shape to reduce wave resonance;

(6) Necessity for and feasibility of maintenance dredging;

(7) Adequate breakwater foundation conditions;

(8) Need for wave absorbers within the harbor;

(9) Adequate structural strength to withstand the pressures of wind, wave, and ice;

(10) Proper orientation of breakwaters to achieve maximum wave attenuation, without causing additional sedimentation or erosion problems; and

(11) Proper materials selection and placement preclude transmission of wave energy into mooring areas while adequately resisting erosive forces.

c. The plan shall be adequate in relation to appropriate geologic

and hydrologic factors including but not limited to:

(1) Quantity and quality of streamflow and local drainage at the proposed project site;

(2) Water stagnancy problems including the capability of being flushed or drained;

(3) Interference with streamflow or longshore drift;

(4) Type of soil strata and underground formations in the project vicinity; and

(5) Protection of the water body itself in terms of reduced water supply, increased seepage or drainage, pollution, increased flooding, and other hydrologic impacts.

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.

2. Additional Specific Conditions: The following types of off-shore structures shall be permitted, subject to the listed specific conditions:

a. Private off-shore harbors serving several contiguous riparian lots:

(1) The site shall meet the standards of NR 5022 A and B for a permanent dock.

(2) The breakwater shall minimize encroachment waterward of the ordinary high water mark.

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

b. Private off-shore harbors for proposed multi-family or cluster or

residential planned unit developments:

(1) The breakwater 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.

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

c. Private off-shore harbors for resorts, campgrounds, or similar enterprises:

(1) The breakwater 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.

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

d. Public off-shore harbor projects:

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

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

(3) The harbor shall be available for use by the general public.

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

e. Off-shore marinas:

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

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

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

E. RETAINING WALLS

1. General Standards: A permit shall be required for the construction or reconstruction of all retaining walls which should be discouraged because their appearance is generally not consistent with the natural environment and their construction and maintenance cost is generally greater than riprap.

2. Permit: The issuance of permits shall be contingent on all of 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.

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.

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

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.

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

F. OTHER WATERWAY OBSTRUCTIONS

A permit shall be required for the construction, reconstruction, relocation, removal, and abandonment of all other off-shore structures, cables other than utility crossings, pilings, or other facilities not covered by specific regulations:

1. Repair: Permits for structural repair or modification (not including minor maintenance work such as re-roofing, painting, etc.) of structures shall be issued provided all of the following conditions are met:

a. Applicant shall demonstrate a need for such work.

b. Cost shall not exceed 50 percent of assessed value.

c. The degree of permanence of the structure shall not be materially increased by virtue of constructing a new foundation, replacing the majority of the structure above the foundation, etc.

d. The structure being repaired shall not be in violation of local land use or sanitary regulations.

e. Degree of obstruction or structure size shall not be increased.

2. New structures: Permits for new publicly-sponsored or relocation of existing structures shall be issued where:

a. Public need is documented and outweighs adverse environmental impact.

b. The site is adequately protected from the forces of ice and wave pressures.

c. The proposed construction is of sound design and is not unnecessarily obstrusive or visually incompatible with the natural surroundings.

d. A governmental agency or local governmental unit accepts responsibility for future maintenance of the structure or its removal.

G. BOAT LAUNCHING RAMPS

1. Permitted Uses: No permit shall be required to construct a boat launching ramp provided:

a. The site is capable of supporting a ramp without the use of pilings, dredging, or other special site preparation.

b. The ramp shall not exceed 12 feet in width, and extend more than ten (10) feet beyond the ordinary high water mark or into water more than four (4) feet in depth, whichever is less.

c. The ramp shall be constructed of gravel, natural rock, concrete, steel matting, or other durable non-organic material not exceeding six (6) inches in thickness.

2. Permit: A permit shall be granted for the construction or reconstruction of any other ramp 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.

d. Construction shall not necessitate alteration of shoreland which could result in substantial erosion and sedimentation.

H. REMOVAL OR ABANDONMENT

A permit is required for the removal or abandonment of all existing waterway obstructions including boathouses, bridges, culverts, pilings, piers, and docks. However, when such work is to be accomplished by simple hand tool methods, the requirement for a permit may be waived. Permits shall be issued 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. Adequate provisions shall be made to mitigate any side effects resulting from removal, such as restoration of wave or current forces.

A. POLICY

It is the policy of the Department to manage lake resources to maintain natural flow and water level conditions to the maximum feasible extent and to encourage the construction of small upstream retarding dams for the conservation of water in natural water basins and watercourses, consistent with any overall plans for the affected watershed area. The Department shall oppose 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. The construction or reconstruction of dams or changing the level of an existing structure may be permitted to:

1. Control flood waters.

2. Maintain low flows.

3. Manage water quality, including the prevention and/or control of erosion and sedimentation.

4. Improve water-based recreation.

5. Create, improve, and maintain water supplies.

6. Maintain aquatic habitat for fish and wildlife species.

B. PERMIT REQUIREMENTS

A permit shall be required for the construction, reconstruction, and abandonment of a dam or changing the level of an existing structure for the following projects:

1. 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 if:

a. The ordinary high water mark and runout elevation of the water

body have been determined by detailed engineering survey, or by Order of the Commissioner following a public hearing;

b. The proposed facilities shall be "reasonably consistent with natural conditions":

(1) 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;

(2) Where no natural or artificial outlet exists and the lake is for all practical purposes "landlocked", the control elevation shall not be more than 1.5 feet below the ordinary high water mark;

c. The project is sponsored by a local governmental unit which assumes responsibility for operation and future maintenance, except that title-registration type permits may be issued where the majority of the riparian owners sign the permit application;

d. 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

e. A detailed plan is developed for operation and control including:

(1) Manner and time of operation.

(2) Frequency of maintenance.

(3) Appropriate monitoring (water levels, water quality, etc.).

(4) Management of excess waters.

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

a. The public water has been designated for wildlife management purposes.

b. There is a specific water level management plan for the lake basin;

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

d. Any alteration of a natural watercourse included in the plan is minimal and follows the requirements specified in NR 5022 D.

e. Appropriate easements or fee title have been obtained for the construction area and the lakeshore.

f. 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.

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

a. 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.

b. The city has a field survey made of the water basin after consultation with the Department including but not limited to:

(1) The elevation of the aquatic fringe.

(2) The elevation of the tree line and a description of the location, type, and size of representative trees.

(3) Groundwater elevations, if appropriate.

(4) Other information as requested by the Department.

c. Control elevations and associated physical parameters are approved by the Department and the city.

d. 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.

4. Other Dam Construction or Reconstruction:

a. Permitted Uses: No permit shall be required to construct, reconstruct, or abandon a dam with a contributing watershed of 300 acres or less, provided:

(1) Structural height shall not exceed 20 feet.

(2) Storage capacity shall not exceed 50 acre feet.

(3) The land(s) occupied by the dam and its associated reservoir shall be in common ownership.

b. Permit: A permit shall be required for the construction, reconstruction, and abandonment of all other dams and shall be issued provided:

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

(2) New dams shall be adequate in relation to the following factors:

(a) The hydraulic capacity of the spillway(s) must be established by a competent technical study performed by a professional engineer or by a qualified engineer of the U.S. Soil Conservation Service or the U.S. Corps of Engineers and must be adequate:

(i) For the probable maximum flood, where failure may cause loss of human life and serious damage to homes, industrial and commercial buildings, important public utilities, main highways, or railroads;

(ii) For the standard project flood, in predominantly rural or agricultural areas where failure may damage isolated homes, main highways or minor railroads, or cause interruption of use or service of relatively important public utilities;

(iii) For the regional flood, in rural or agricultural areas where failure may damage farm buildings, agricultural land, or township or county roads;

(iv) For such other floods as may be specified in the procedures of Federal agencies such as the Corps of Engineers or the Soil Conservation Service for analysis of a structure in its risk category; and

(v) The estimation of the magnitude of the design flood must include the anticipated effects of the development of the tributary watershed area expected over the project life and the assessment of the risks involved must be based upon anticipated development in the flood plain.

(b) The Department may require preparation of an inundation map of the area which would be inundated in the event of dam failure for a structure with a height of 20 feet or more, or a maximum storage capacity of more than 50 acre feet. It shall be prepared by a professional engineer showing areas where human life would be endangered and areas subject to serious damage to homes, commercial and industrial buildings, public utilities, and transportation facilities. Where failure may endanger human life, the map shall include a feasibility report on flood plain evacuation, emergency warning systems, or other techniques to eliminate this risk factor.

(c) An emergency spillway is installed unless the hydraulic capacity of the principal spillway is increased to the capacity that would be required for the combination of principal and emergency spillways.

(d) A mechanism for drawing down the water surface to facilitate repairs and maintenance work is installed.

(e) The height of all portions of the dam and associated dikes or other facilities not designed to withstand overtopping must include appropriate freeboard above the maximum storage capacity for wind and wave conditions and to provide a safety factor.

(f) Earthen emergency spillways and the upstream and downstream faces of earthen dams must be adequately riprapped, sodded, or seeded to

prevent erosion.

(g) The storage pool must provide adequate space to store sediment from upstream over the project life without detracting from the public purposes served.

(h) An adequate stilling basin or other means of controlling downstream erosion is installed.

(i) A stage-discharge curve must be developed for the water-course immediately below the dam to ascertain whether or not the dam capacity is reduced due to backwater effects.

(j) Information as to the extent, configuration, and capacity of the reservoir at various pool stages is provided.

(3) 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, if any.

(4) Adequate assurances shall be made for future maintenance of new dams:

(a) For dams 20 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 dam will be located if an authorized governmental sponsor assumes maintenance responsibility.

(b) For other dams, title-registration permits may be issued to the owner or owners of the private property upon which the dam 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 dams may be made by the Department or its designee.

NR 5025 BRIDGES AND CULVERTS, WATERMAIN AND SEWER CROSSINGS, INTAKES AND OUTFALLS

A. POLICY

It is the policy of the Department to allow crossings of public waters, including the construction of water intake and sewer outfall structures in public waters, only when less detrimental alternatives are unavailable or unreasonable, and where such facilities adequately protect public health, safety, and welfare. Such crossings shall not be permitted where the project:

1. Will obstruct navigation or create a water safety hazard.

2. Will cause or contribute to significant increases in flood elevations and flood damages either upstream or downstream.

3. Would involve extensive channelization above and beyond minor stream channel realignments to improve hydraulic entrance/exit conditions, except where a separate permit is obtained pursuant to NR 5022 D.

4. Will be detrimental to water quality, and/or significant fish and wildlife habitat, or protected vegetation.

Abandonment or removal of all crossings and structures governed by this section shall require a permit pursuant to NR 5023 H.

B. BRIDGE AND CULVERT INSTALLATIONS

1. Permitted Uses: No permit shall be required to construct a low-water ford type crossing or place a temporary bridge over public waters provided all of the following conditions are met:

a. Low-water ford type crossings:

(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 2 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 (4) feet in height.

(5) The crossing is constructed of gravel, natural rock, concrete, steel matting, or other durable inorganic material not exceeding one (1) foot in thickness.

(6) The approach is graded to a finished slope not steeper than 5:1, and all graded banks are seeded or mulched to prevent erosion and sedimentation.

(7) The crossing is not placed on an officially designated trout stream or on a federal wild, scenic, or recreational river.

b. Temporary bridges:

(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 (3) feet above normal summer streamflow.

2. Permit: A permit shall be required for the construction, reconstruction, or relocation of all other bridges, culverts, or other crossings over public waters. Except as noted below in NR 5025 relating to sewer and watermain crossings, crossings shall be permitted provided all of the following criteria are met:

a. 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 flood plain information study exists for the area, or a U.S. Geological Survey gaging station is located nearby on the stream, the hydraulics of the proposed bridge/culvert design must be consistent with these data. If acquisition of the study by the applicant would cause undue hardship and would be unreasonable under the circumstances, the Department may waive the requirement if:

(1) It has performed a rough hydraulic study based upon available information and reasonable assumptions.

(2) It has made a field investigation of the project site.

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

b. New crossings and replacements of existing crossings must comply with local flood plain management ordinances and with provisions of NR 87 (d)(1).

(1) New Crossings:

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

(b) Where a floodway has not been designated or where a flood plain management ordinance has not been adopted, increases in flood stage in the regional flood of up to .5 foot shall be permitted if they will not materially increase flood damage potential. Additional increases may be permitted if:

(i) A field investigation and other available data indicate that no significant increase in flood damage potential would occur upstream or downstream.

(ii) Any increases in flood stage are reflected in the flood plain boundaries and flood protection elevation adopted in the local flood plain management ordinance.

(2) Replacement of existing crossings:

(a) If the existing crossing has a swellhead of 0.5 feet or less for the regional flood, the replacement crossing shall comply with the provisions for new crossings (NR 5025 B.2.b.(1)).

(b) If the existing crossing has a swellhead of more than 0.5 feet 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. The swellhead for the replacement crossing may exceed the existing swellhead if it complies with the provisions for new crossings found in (i) and (ii) of NR 5025 B.2.b.(1)(b).

(3) 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 NR 87 (e) unless it can be shown that alternative routes or access can be provided during the regional flood.

c. 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.

d. The structure will not obstruct public navigation. For bridges, three (3) feet above the calculated 50-year flood stage, in keeping with Federal Highway Administration standards, will ordinarily satisfy navigational clearance requirements. For culverts, three (3) feet of clearance above the ordinary high water mark will ordinarily satisfy navigational requirements.

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

f. Footbridges and walkways:

(1) Over watercourses:

(a) Should be designed to cause negligible backwater effects

during floods.

(b) Should be securely anchored or otherwise capable of withstanding the dynamic forces of flowing water, ice, and debris.

(c) Approaches should not be raised above the adjacent flood plain lands.

(2) New walkways across any portion of a lakebed to provide access to an island will be prohibited. Permits for reconstruction of existing walkways will be issued only if:

(a) The walkway provides the only existing access to the island.

(b) There is existing development thereon.

(c) The design will provide for any public navigational needs and is consistent with the natural surroundings.

C. WATERMAIN AND SEWER CROSSINGS

A permit shall be required for the construction, reconstruction, or relocation of all watermain and sewer crossings. They shall be issued provided:

1. No site condition will cause frequent future disruption of the beds.

2. No alignment alternative is possible which would eliminate the crossing. The selection of an alignment shall consider the preservation of lakes, streams, wetlands, recreation lands, and other natural areas.

3. Minimum depth of cover is two feet.

4. Bed and banks must be restored as nearly as practicable to the original cross-section, alignment, and grade.

5. Banks must be revegetated by seeding and/or sodding.

6. The project must be designed by a professional engineer.

7. Pipe and pipe bedding/support specifications for sanitary sewer and force main crossings shall be submitted to the Department for approval. Construction plans and specifications shall be prepared by a professional engineer.

D. INTAKES AND OUTFALLS

1. Permitted Uses: No permit shall be required to maintain the hydraulic adequacy of any storm sewer or agricultural drain tile outfall or ditch which has been functioning within the previous five (5) years if such work does not alter the original course, current, or cross-section of the public waters.

2. Permit: A permit shall be required for the construction, reconstruction, or relocation of all other water intake and sewer outfall structures placed in public waters. It shall be issued where:

a. Adequate attention is given to methods of screening the structure from view as much as possible from the surface of the public water through the use of existing vegetation and/or new plantings.

b. The project is not detrimental to public values including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention.

c. No site conditions will require frequent future disruption of the beds of public waters.

d. Adequate precautions must be planned during and after construction to prevent silt, soil, and other suspended particles from being discharged into public waters.

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

f. The banks must be revegetated by seeding and/or sodding.

g. The structure must be designed by a professional engineer.

h. Intake structures:

(1) Dredging or excavation must be detailed in the application and on design plans.

(2) A water appropriation permit must be obtained from DNR prior

to operation.

i. Outfall structure design shall:

(1) Where necessary, incorporate a stilling-basin, surge-basin, energy dissipator, or other device(s) to minimize disturbance and erosion of natural shoreline and bed resulting from peak flows.

(2) Where feasible, utilize discharge to natural wetlands, natural or artificial stilling or sedimentation basins, or other devices for entrapment (and possible future removal) of sand, silt, debris, and organic matter.

(3) Where feasible, maximize use of natural and/or artificial ponding areas to provide water retention and storage for the reduction of peak flows into public waters.

A. APPLICATION FOR WATER RESOURCE PERMITS

All applications pursuant to NR 5020 to 5025 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.

1. Who May Apply: Applications shall be submitted by the riparian owner of the land(s) 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.

2. 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(s) 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.

3. Fees: All applications shall be accompanied by an application fee as required by NR 5000 (e)(1). An additional fee may be charged for field inspections conducted by Department personnel in the course of review subject to the provisions of NR 5000 (g)(1)-(5).

B. PERMIT REVIEW

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.

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 public 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.

3. Procedure Upon Decision: The Commissioner is authorized to 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 referee appointed by the independent State Hearing Examiners Office in accordance with Minnesota Statutes, Chapter 15 and Sections 105.44 and 105.45.

C. 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 through 105.463, 105.541, and 105.55.

APPROVED AS TO FORM AND LEGALITY
MAY 17 1978 19
WARREN SPANNAUS ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 17 1978
Joan Anderson Growe
Secretary of State
11:30 AM

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Adoption of)
Proposed Rules Containing Standards)
and Criteria for Granting and Denying)
Permits to Change the Course, Current)
to Cross-Section of Public Waters.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, hearings were held on September 7, 21 and October 7, 1977, before Howard L. Kaibel, Jr., a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Natural Resources on November 28, 1977; and

WHEREAS, the Department of Natural Resources has not determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Department of Natural Resources has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearings and that the Department of Natural Resources has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Natural Resources has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated: February 3, 1978.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

RECEIVED
AUG 12 1977
OFFICE OF HEARING EXAMINERS

In the Matter of the Adoption of Proposesd Rules Containing Standards and Criteria for Granting and Denying Permits To Change the Course, Current or Cross-Section of Public Waters.

STATEMENT OF EVIDENCE

The Statement of Need summarizes the evidence to be presented at the hearing by the agency in support of the proposed rule. Additional materials which may be referred to are:

1. Minn. Stats, Sections 116D.04 subdivision 6, in support of the general policy of the rules

2. The definition of ordinary high water mark, its use as the boundary of public waters, and the constitutionality and purpose of Minn. Stats. Section 105.42, are discussed in

In Re Minnetonka Lake Improvement, 56 Minn. 513, 58 N.W. 295 (1894)

State v. Kuluvar, 266 Minn. 408, 123 N.W. 2d 699 (1963)

State Department of Conservation v. Sheriff, 296 Minn. 177, 207 N.W. 2d 358 (1973)

Herschman v. State, 303 Minn. 50, 225 N.W. 2d 841 (1975)

3. A recent case exemplifying the application of Minn. Stats. section 105.42 to a particular permit situation is Application of City of White Bear Lake, _____ Minn. _____, 247 N.W. 2d 901 (1976).

4. Most of the provisions of the proposed rules are continuations of established Department policy, and have been distributed to DNR persons who review permit applications in the form of the "Water Resources Permits Manual".

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the
Adoption of Rules
Containing Standards
and Criteria for Granting
and Denying Permits to
Change the Course, Current
or Cross-Section of Public
Waters.

CERTIFICATE OF
COMPLIANCE

I, A. W. CLAPP III, Special Assistant Attorney General, am familiar with the record in this matter and with the proceedings therein, and certify that laws and rules regarding the adoption of the subject rules have been complied with.

Dated: April 6, 1978.

A. W. Clapp III

A. W. CLAPP III
Special Assistant Attorney General

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the
Adoption of Rules Containing
Standards and Criteria for
Granting and Denying Permits
to Change the Course, Current
or Cross-Section of Public Waters.

ORDER ADOPTING RULE

WHEREAS, public hearings on the above-captioned matter have been held; and

WHEREAS, the REPORT OF THE HEARING EXAMINER finds all statutory and regulatory requirements have been met; and

WHEREAS, the proposed final rule drafted per the FINDINGS AND CONCLUSIONS OF THE COMMISSIONER has been approved by the Chief Hearing Examiner;

NOW THEREFORE, pursuant to the authority vested in me by Minnesota Statutes, Section 105.415, I adopt the rules identified as Minnesota Department of Natural Resources Rules NR 5020-5026, Standards and Criteria for Granting Permits to Change the Course, Current or Cross-Section of Public Waters.

Dated: ~~February~~ March 28, 1978.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

William B. Nye

WILLIAM B. NYE, Commissioner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Adoption of)
Proposed Rules Containing Standards)
and Criteria for Granting and Denying) REPORT OF HEARING EXAMINER
Permits to Change the Course, Current)
to Cross-Section of Public Waters.)

The above-entitled matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr. of the Minnesota Office of Hearing Examiners on the Seventh day of September, 1977, in Room 83 of the State Office Building, Saint Paul, Minnesota, commencing at approximately 9:30 a.m. Additional hearings were conducted in Brainerd at 9:30 a.m., September 21, 1977, and in Saint Paul at 10:30 a.m., October 7, 1977.

William Augustus Clapp, III, Special Assistant Attorney General, represented the Department of Natural Resources (hereinafter "Department"). Hydrologists Ed Fick and Dave Milles also appeared representing Department Staff. The hearings continued until all representatives of associations or other interested groups or persons had an opportunity to participate and be heard concerning the adoption of the proposed rules.

This proceeding involves one part of a general overall three part legislative reform of the state's water conservation program which has been a fundamental aspect of Department responsibilities for more than 30 years. One part of that general reform is a county-by-county inventory and final legal determination of precisely which of the State's watercourses and water basins are public and which are not. That inventory process is taking place generally in various counties at this time. A second part of this general reform was the establishment of a State "water bank" program to compensate certain farmers for not draining certain public water basins. Hearings have been completed on proposed rules to govern that program, and this Hearing Examiner issued a Report this month

recommending their final adoption. The third part of this general reform, involved in this proceeding, is a requirement that the Department formally publish and promulgate its policies and standards governing all proposed projects that have an effect on public waters as formal statewide rules, pursuant to the provisions of Chapter 15, the Administrative Procedures Act. The legislature first directed the Department in 1974, to complete this rule promulgation process by January of 1975. It subsequently extended that deadline to January of 1977 and again to January of 1978. The Department stressed that these proposed rules are not new regulations, but constitute merely a formal codification of existing requirements and practices described generally in an unpublished manual utilized by conservation officers and other officials. It is nonetheless the responsibility of this Report and the rules promulgation process generally to examine each of the proposed provisions carefully to determine whether they are needed, reasonable and statutorily authorized.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Department of Natural Resources shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Department shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On July 5, 1977, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On August 8, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 200.

3. On August 3, 1977, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On August 12, 1977, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called;
(h) The names of Department personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through October 27, 1977, for the receipt of written comments and statements. This was a considerable extension of the time that would normally have been available for public comment, as requested by several watershed districts and others. It was accomplished by recessing and reconvening the hearing.

6. From the very beginning in this proceeding, it became clear that overwhelmingly public concern ran to form rather than substance. The most frequently recurring example (see, Representative Niehaus, September 7, p. 159; City of Fairmont, Comment L; Minnehaha Watershed District, Comment V; other watershed districts, Comment AA) was objection to the use throughout of permissive, non-binding language. The public similarly objected generally that the rules were too lengthy, repetitive, redundant, and duplicative of

statutory language. (For representative testimony, see the Gull Lake Property Owners Association, Comment BB; Wilmar City Engineer Carlson, September 21, p. 100, et seq., and the City fo Winona, Comment M.) The concern of potentially affected persons that the rules be simple, clear and unambiguous is heightened by the fact that work done without a permit when one is required or otherwise in violation of the rules is a crime. The testimony shows that prosecutions are common, and that most major contractors are wary of potential violations and frequently delay work to avoid that possibility. If a permit is required, it can involve extensive delay and expensive inspection and other fees.

Department Staff agreed at the Brainerd hearing to an extended recess to permit them to redraft the rules in order to meet these concerns. A copy of this redraft (included herewith as Appendix A) was then mailed to legislators, attorneys and other interested persons soliciting further reaction. An additional hearing was conducted where the proposed redraft was presented and further public reactions solicited. The Department testified without contradiction at the reconvened hearing that the redraft does not affect a new class of persons, involve a new subject matter, or otherwise make a major substantive change in the rules as contained in the notice of hearing requiring a new notice and hearing pursuant to uniform rule HE 108.

It is specifically found that the redraft involves insubstantial, non-substantive, editorial revisions, needed to shorten, simplify and make the rules enforceable, equitable and more understandable. Because they fulfill this documented need, they are reasonable.

7. The general provisions contained in the redraft of proposed rule 5020 are needed to alert affected persons as to what is contained and omitted in these rules, and to define the terms used repeatedly in later sections. All of the concerns expressed in the record as to specific provisions have been carefully considered and are reasonably dealt with in the redraft, except for the hereinafter discussed additional matter.

Both the North Star Chapter of the Sierra Club (Comment T) and the Hearing Examiner questioned the legal authority for the treatment of class III and class IV watercourses as defined herein. In an excellent legal memorandum (Comment A), Mr. Clapp persuasively argues the question of legal permit authority clarifying the applicability of the definitions to privately altered (non-county-judicial) ditches. Upon reflection subsequent to the hearing, the Department takes the position in this comment that these privately altered ditches should be classified III if they are tributary to class I, II or III (non-county) water courses. They should be classified IV if they are tributary to a ditch "constructed under the provisions of Minnesota Statutes, Chapter 106 or 112 or prior laws". This reasonable clarification needs to be included in the definitions of class III and class IV watercourses. The practical importance of this clarification to numerous affected farmers and other property owners involved in the statewide inventory of watercourses cannot be stressed strongly enough as well as its importance to hearing examiners and to courts in these proceedings. The clarification does not appear at this point to be a substantial change as that term is defined in uniform rule HE 108.

8. Proposed rule 5021 is needed to establish uniform, enforceable statewide regulation of all placement of fill material in public waters. Except as noted below, there was no significant criticism of the statutory authority, need for or reasonableness of the redraft's specific provisions. Conformity with existing standards and practices is therefore some unchallenged documentation thereof.

The only departure from existing standard practice in this proposed rule is the elimination of any permit requirement for certain narrowly defined beach sand blanket and riprap projects. To avoid unnecessary repetition in subsequent findings relating to the other rules where similar permit requirements are eliminated, it is herein specifically found that all of the permit elimination proposals contained in these proposed rules are needed and reasonable. While the Department Permit Staff has not been increased over the

last three years, the number of permit applications has escalated at an average compound annual rate of more than 100 percent from 400 in 1974, to 4,000 in 1977. Without reiterating the specific figures contained in the record (September 21, p. 17, et seq.), it is a fact that the permit exception provisions generally describe situations where, based on past experience, automatic approval would be received and potential for resource damage is minimal. Elimination will save potential future applicants considerable senseless expense and delay and will allow Department Staff to concentrate resources where the public interest is best served. Elimination of state permits does not preclude local regulation by counties and watershed districts, which is already in many cases extensive and duplicative. (See, for example, the roughly 40-page code of the Lake Minnetonka Conservation District, accompanying Comment F.) The only criticism of any of these permit elimination proposals related to beach sand blankets, by representatives of the 30 lakes watershed district (which requires local permits for beach sand blankets) joined in by Gary Lockner, the Lake of the Woods County Zoning Coordinator (September 21, p. 85, et seq.). In response to their discussion of the dangers involved and the Department's reluctance to get involved, the Hearing Examiner suggested requiring that the project proposer notify county and watershed officials. Department Staff indicated this kind of revision is a "worthy suggestion", and Mr. Lockner indicated that his experience with a similar notice requirement indicates that it "works very well". It could be accomplished by adding language to section B(1) substantially similar to the following: ", provided local watershed and county zoning officials are given at least seven days notice (local ordinances may require longer notice periods)."

The Minnesota-Wisconsin Boundary Area Commission (Comment N) urged changes in this and the other proposed rules to establish special provisions related to wild and scenic rivers. If such special provisions are contemplated, the proper legal means of accomplishing those purposes is to amend the uniform or individual

rules relating to wild and scenic rivers, where affected members of the public would look for such restrictions and could properly expect to find them. The opening provision of these rules (5020A) already directs the attention of readers to such rules relating to "wild and scenic rivers management" to alert persons whose project may involve such a river. This Examiner noted on the record his experience with wild and scenic river designation proceedings, and Staff indicated its agreement that the affected public in those proceedings were given some assurance that changes in restrictions for such districts would be limited to Chapter 15 amendment of those rules (September 7, p. 141). It was also suggested on the record without contradiction that these new proposed provisions would be a substantial change requiring a new hearing before enactment in that they would make a major substantive change that was not raised by the original notice of hearing in such a way as to invite reaction at the hearing.

Wilmar City Engineer Carlson urged strongly that the general policy provision "to discourage the placement of any fill material" needs to be revised, to avoid literal or over-zealous interpretation in the future. Mr. Clapp agreed, suggesting that the language be changed to "limit the placement of fill material" without objection. This is clearly an insubstantial revision that should be incorporated into the redraft on final adoption.

9. Proposed rule 5022 is needed to establish uniform enforceable statewide regulation of all excavation of material from the beds and shorelands of public waters. Except for the three concerns hereinafter discussed, there was no significant criticism of the statutory authority, need for or reasonableness of the specific provisions of the redraft of this proposed rule and their conformity with existing practices and standards is therefore some unchallenged documentation thereof.

The City of Fairmont's objection to requiring water quality data, etc., in lake dredging projects should be rejected on this record. None of the other municipalities corroborated the allegation that obtaining such information is "impossible" and indeed,

the allegation is directly contradicted by the later allegation that obtaining and providing the information would be "costly". The provisions objected to are identical to existing dredge plan requirements in the conservation officer manual.

Norman Koller of Sheffield, Pennsylvania (Comment O) was the only member of the public to object to the 75 and 200 foot limits on inland excavations which are and have been applicable to such new construction. His suggestion that they be eliminated altogether and/or that a new category be established for "canals" with no limitation on their use for housing subdivisions, appears to involve a substantial change which would best be pursued by the Department in a separate rules amendment proceeding if it is so inclined.

Northern States Power Company alleges (Comment S) that "MPCA rules" (without specific citation) govern dredge spoil disposal sites. The Examiner was unable to locate such provisions. The Pollution Control Agency did not testify or submit written comments, although the Department indicates that they were provided with copies of the proposed rules. If the Department is aware of any such provisions, an appropriate and insubstantial revision should be inserted herein to provide notice thereof and eliminate any duplication.

Upon careful reconsideration after the hearing of the final redraft, an additional insubstantial editorial revision is required to eliminate potential ambiguity. The language in B(1)(f) should be reworded and moved to A(3) and ", C and D" should be added after "5022B" in that sentence.

10. Proposed rule 5023 is needed to establish uniform enforceable statewide regulation of construction, reconstruction and abandonment of all structures in the State's public waters. Except for the three matters hereinafter discussed, no significant objection was raised to the statutory authority, need for or reasonableness of the specific provisions of the redraft and their conformity with existing practice and standards is therefore some unchallenged documentation thereof.

Representative Niehaus (September 7, p. 157, et seq.) and others objected to the proposal at the hearing to establish a 200 foot limitation of various types of structures, which limitation was not contained in the rules as discussed in the outstate public information meetings or in the notice of hearing as published in the State Register and mailed to persons requesting a free copy on the Secretary of State's list. Doubtless much more objection would have been received if the proposed limitation had been properly noticed. The proposed limitation appears to be a substantial change in that it is a major substantive revision not raised in the notice of hearing. Moreover, no showing has been made in this case of either need for or reasonableness of these proposed limitations. This is one of the few complete departures from existing standards and practice as contained in the conservation officer manual, and therefore, cannot be found prima facie, needed and reasonable on that basis. Department Staff did not endeavor to provide any other facts, figures or documentation of any other kind to show that this arbitrary limitation is needed, or that its effect on future construction of structures would be reasonable. The Lake Minnetonka Conservation District supported the 200 foot limitation (Comment F), but that support only raises further questions of need and reasonableness. Is a limit that has been found workable for Lake Minnetonka appropriate for structures in Cedar Lake, in Minneapolis and breakwaters and other structures on Lake of the Woods? Is the limit better left to local regulation as in this case where the local code already requires the limit and has since 1970? Is the distinction in the Lake Minnetonka code between a 100 foot limit for residential structures and a 200 foot limit for "non-residential multiple facilities" evidence that an arbitrary across-the-board limit without regard to use is unreasonable?

North Star Marina representatives (Comment K) were confused by the impact of these proposed rules on repairs of damages to their existing permanent docks. Mr. Milles clarified the situation by pointing to the definition of "reconstruction" (September 7, p. 98)

but upon rereading the rules subsequent to the hearing, that the problem stems from failure to use the word "reconstruct" in the section relating to permanent docks. The problem should be remedied on final adoption by inserting "or reconstruct" in sections B(1) and B(2).

The word "not" has been accidentally omitted in section B(1) on page 23 of the final redraft. It is contained in the revisions as discussed at the hearing and mailed to interested persons (Ex. 4). It should be restored on final adoption. Similarly, the words "and feasible" should be stricken from C(2)(a).

11. Proposed rule 5024 is needed to establish uniform enforceable statewide regulation of dams and other water level controls affecting public waters. Except for the two concerns hereinafter discussed, no substantial objections were raised to the statutory authority, need for or reasonableness of the specific provisions of the redraft and conformity with existing standards and practices is adequate prima facie documentation thereof, under such circumstances.

The proposed rule already contains special provisions for municipal storm drainage plans for municipal basins of less than 25 acres. The proposals of Bonestro and Associates (Comment G) supported by the City of Maple Grove (Comment U) to set up some kind of "blanket permit" system are ill-defined on this record and would likely involve substantial changes requiring new notice and hearing.

The North Star Chapter of the Sierra Club (Comment T) properly points out that section B(1)(c) requiring that all shoreline owners sign an application for control in order to be eligible for title-registration type permits, must be changed to allow such permits in the case where a majority of owners' petition for such control in order to give full force and effect to Minn. Stat. § 105.42, which allows a petition of a majority of the owners. The Club is correct in noting that there is no statutory authority for the rule as proposed. This provision is also a departure from existing standards and practices as contained in the conservation officer

manual and no independent documentation has been offered to support the need for and reasonableness of this provision. It also appears that this section should be further modified to provide for the possibility that the Commissioner of Natural Resources might initiate a proceeding on his own motion (as is also provided in the statute) and assume responsibility for operation and future maintenance.

12. Proposed rule 5025 is needed to establish uniform enforceable statewide regulation of crossings over and sewer intakes and outfall affecting public waters. Except for the two concerns hereinafter discussed, no substantial objection was raised to the statutory authority, need for or reasonableness of the specific provisions of the proposed redraft and their conformity with existing standards is therefore some unchallenged documentation thereof.

The most significant problems related to this proposed rule involve subsection B(2)(b). General Mills (Comment C) and the Hearing Examiner during the hearing both raised the question of statutory authority for dealing with flood regulations in public water rules which are generally conceded to affect matters below the ordinary high water mark. The Departmental response that authority is contained in the Floodplain statute was uncontroverted and persuasive. That being the case, everything after the first sentence of this subsection should be renumbered and relettered as a subsection of NR 87(d)(1), and enacted as such upon final adoption. This is where this subject is already dealt with, is properly further legally dealt with and where affected persons would be expected to look for the complete rules involved. While the Department of Transporation was not happy with the substance of this subsection and negotiated a number of revisions during the course of this proceeding, with one exception, it does not appear to be a substantial departure from existing practice and as such, is generally found to be both needed and reasonable. The exception is the new notice requirements for local governments and landowners which were, at best, ill-defined. The Department has not documented either the need for or reasonableness of those notice provisions.

The words "state or" should be stricken from subsection B(1)(a)(7) which would otherwise prohibit low water ford crossings of state wild and scenic rivers. As discussed in a previous finding, this kind of change should be made in the uniform rules governing those rivers. Moreover, this proposed restriction is a departure from the conservation manual and cannot be found to be needed or reasonable on this record.

13. Proposed rule 5026 is needed to set forth and explain to potential permit applicants the administrative procedures involved. Except for the omission of procedures related to denial, the provisions as redrafted are generally needed and reasonable. The City of Fairmont's (Comment L) and others' only criticism of these procedures was the omission of denial procedures, urging that the notice include the reasons for the Department decision. A new subsection B(3) to ensure this is needed, reasonable and insubstantial. The new subsection should further require that the notice of denial include notice of the right to a hearing. In urging that the rules be revised to set up some sort of "independent" review, the City of Fairmont and other persons at the hearing were clearly unaware of this right to a contested case hearing provided by the statute.

The last sentence of section A(3) of the redraft should be eliminated upon final enactment. It contradicts the previous subsection defining when an application is complete (which in turn starts the 30-day period within which the Department must act under the statute). Requiring that all fees, including inspection fees, be paid before filing is complete would allow postponement of this starting date until sometime after a discretionary inspection which could postpone indefinitely the 30-day decision period.

14. Either as a new subsection to proposed rule 5026 or as a new rule 5027, the record throughout supports the need for adding an explicit variance provision to the rules as proposed. If such a provision contains the same notice and hearing requirements as a Chapter 15 rules amendment would require, it would clearly be insubstantial. This would restore some of the discretion sought

initially by the Department throughout the rules as initially proposed and urged at various points throughout the record by the Department of Transportation and others. Administrative notice is taken of the fact that variance provisions are common to virtually all major local and state land and resource use regulation schemes. (See, for example: Pollution Control Agency Rule MPCA 6, Department of Labor and Industry Rule MOSHC 310-139, County Land Use Regulations in Minn. Stat. § 394.22, subd. 10, Municipal Land Use Regulations in Minn. Stat. § 462.357, subd. 6, and Municipal Subdivision Regulations in Minn. Stat. § 462.358, subd. 6.) Such provisions are a recognition of the fact that rules of broad applicability can seldom be so perfectly constructed that equitable treatment is assured for exceptional circumstances. Criminal prosecution should not be the only way for a person to legally test hardship situations under this rules. A variance provision should assist with the "enforcement problem" that Department Staff readily admitted to (while questioning its relevance).

15. The attention of Department Staff is urged to comments submitted by the President of the Ruth Lake Improvement Association in Emily, Minnesota (R), the Clark Lake Conservation Association (B and W) and McLeod County Residents (X and Y), which need to be dealt with outside the context of these proposed rules. In the case of Ruth Lake, it appears that the assistance of the Pollution Control Agency Staff should be enlisted.

CONCLUSIONS

1. That the Department of Natural Resources duly acquired and now has jurisdiction over the within proceeding.

2. That all relevant, legal and procedural requirements of statute and rule have been complied with.

3. That the Department of Natural Resources has documented its statutory authority to adopt the proposed rules.

4. That the Department has demonstrated the need for and reasonableness of its proposed rules as hereinafter recommended for adoption with an affirmative presentation of facts.

RECOMMENDATION

It is hereby recommended that the proposed rules of the Department of Natural Resources be promulgated, approved and adopted after attention to the modifications suggested by the Findings.

Dated: November 28, 1977.

HOWARD L. KAIBEL, JR.
Hearing Examiner

DEPARTMENT OF NATURAL RESOURCES

STATE OF MINNESOTA

In the Matter of the Adoption of Proposed Rules Containing Standards and Criteria for Granting and Denying Permits to Change the Course, Current or Cross-Section of Public Waters.

FINDINGS AND CONCLUSIONS OF THE COMMISSIONER

I have read the REPORT OF THE HEARING EXAMINER who has concurred with the proposed rules with specific recommendations amending them. I adopt the hearing examiner's FINDINGS OF FACT and CONCLUSIONS as mine and incorporate them by reference in this document, except for the following:

ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS.

The following findings and conclusions are made in supplement to the hearing examiner's report, to elaborate and comment on some recommendations of the hearing examiner and to bring forth some additional findings.

FINDINGS

1. The hearing examiner has indicated in his finding number "11" that the petition of a majority of lakeshore owners for lake level control must be allowed as required by Minnesota Statutes, Section 105.42. I concur with the intent of this recommendation and have revised that portion of NR 5024 to

reflect this but I would point out that the citation of the statute by the hearing examiner is incorrect. Minnesota Statutes, Section 105.43 provides the proper statutory authority, not Section 105.42.

2. I do not concur with all of the hearing examiner's finding number "12" even though I agree with the intent. All floodplain management requirements belong in flood plain management rules and eventually NR 87 will be amended. However, Minnesota Statutes, Section 105.42, Subdivision 1 a. states:

> ". . . No permit affecting flood waters shall be granted except where the area covered by the permit is governed by a flood plain management ordinance approved by the commissioner and the conduct authorized by the permit is consistent with the flood plain management ordinance, . . ."

As of September, 1977, 76 local units of government in Minnesota have enacted floodplain management ordinances approved by the Commissioner out of a total number of 435 such local units which will eventually be required to adopt these ordinances. Until such time as all floodplain areas are regulated by floodplain management ordinances, I will use the statutory authority found in Minnesota Statutes, Section 104.03, Subdivision 1(d) which states the Commissioner shall:

> ". . . do all other things which are within his lawful authority, which are necessary or desirable to manage the flood plains for beneficial uses compatible with the preservation of the capacity of the flood plain to carry and discharge the regional flood. . . ."

I will comply with the rest of the hearing examiner's recommendation regarding NR 5025, including the notice requirements.

3. I do not concur with the hearing examiner's finding "14." I feel the Department already has sufficient discretionary authority for modifying permit applications within certain limits. However, these limits should not be varied as our staff often uses these limits in direct negotiations with applicants in arriving at compromise solutions through modifications of original applications.

Secondly, I dispute the hearing examiner's contention that "criminal prosecution" is the only legal test unless it is the view of the hearing examiner that appeals through the Chapter 15 contested hearing procedure are "criminal prosecution" cases. The applicant still has recourse to appeal "legally" to the courts if he feels he is not receiving adequate "due process" from the Department staff and then appealing to an independent hearing examiner. Therefore, an additional variance procedure would appear to be unwarranted and unnecessary.

CONCLUSIONS

The rules amendments recommended by the hearing examiner are justified except as noted herein and that the amendment language in these findings and the attached documents for publication in the State Register are needed and reasonable to comply with the hearing examiner's requests.

The Chief Hearing Examiner has determined that the changes specified above are not substantial and would not require rehearing.

Dated: March 28, 1978.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

William B. Nye

WILLIAM B. NYE, Commissioner

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

RECEIVED
AUG 12 1977
OFFICE OF HEARING
EXAMINERS

In the Matter of the Adoption of Proposed Rules Containing Standards and Criteria for Granting and Denying Permits to Change the Course, Current or Cross-Section of Public Waters.

AFFIDAVIT
OF
MAILING

Lynn Ramsey being first duly sworn, deposes and says:

That on the 3rd day of August, 1977, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul, a true and correct copy thereof, properly enveloped, and with postage prepaid, to all persons and associations at the addresses on the attached list.

Subscribed and sworn to before
me this 3rd day of August, 1977.

Rose M. Axness
Notary Public

ROSE M. AXNESS
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires March 2, 1984

RECEIVED
AUG 12 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Adoption of Proposed Rules containing Standards and Criteria for Granting and Denying Permits To Change The Course, Current or Cross-Section of Public Waters.

CERTIFICATE

- - - - - - - - - - - -

I hereby certify that the attached 504 labels and 1 sheet constitute the complete list of persons, associations, and other interested groups who as of 1:30 o'clock P .m., this 26 day of July, 1977, have requested pursuant to Minn. Stat. 1974, Section 15.0412, Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearings on proposed rules on subjects captioned above.

Joan Anderson Growe

SECRETARY OF STATE
JOAN GROWE

By Sheri L. Mattson

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Adoption of Proposed Rules Containing Standards and Criteria for Granting and Denying Permits to Change the Course, Current or Cross-Section of Public Waters.

NOTICE OF HEARING

PLEASE TAKE NOTICE that a public hearing on the above-described rules will be held at the following places and dates:

September 7, 1977 - Saint Paul, Minnesota, State Office Building Auditorium, Room 83, at 9:30 a.m.

September 21, 1977 - Brainerd, Minnesota, Armory, Fifth and Laurel Streets, at 9:30 a.m.

All interested persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted to

Howard L. Kaibel, Jr.
Office of Hearing Examiners
1745 University Avenue
Saint Paul, Minnesota 55105

either before the hearing or within 5 days after the hearing. The hearing will be conducted as described in Minnesota Statutes Section 15.0412 and in Minnesota Regulations HE 101-109.

The proposed rules contain the decision criteria the Commissioner of Natural Resources proposes to follow in deciding whether or not to permit changes in public waters, including but not limited to the following kinds of activities:

beach sanding	harbors and slips
riprapping	marinas
retaining walls	breakwaters
filling	boathouse construction and repair
dredging	dams

excavating
channelizing
docks
launch ramps
wharves
lake level controls
bridges and culverts
watermain and sewer crossings
intakes and outfalls

A free copy of the proposed rules may be obtained by writing to the Department of Natural Resources, Division of Waters, Third Floor, Space Center Building, 440 Lafayette Road, Saint Paul, Minnesota, 55101. Additional copies will be available at the hearings. The agency's authority to adopt the proposed rules is found in Minnesota Statutes 1976, Section 105.42, Subdivision 1a, and in Minnesota Statutes 1976, Section 105.415 as amended by Laws of Minnesota 1977, Chapter 446, Section 5. A "statement of need" explaining why the agency feels the proposed rules are necessary, and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Office of Hearing Examiners 25 days before the hearing and will be available there for public inspection.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota, 55155, phone (612) 296-5615.

Dated this 25th day of July, 1977.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

for WILLIAM B. NYE
Commissioner

ASSISTANT COMMISSIONER

Pursuant to Commissioner's
Delegation Order No. 284

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Adoption of Proposed Rules Containing Standards and Criteria for Granting and Denying Permits To Change the Course, Current or Cross-Section of Public Waters.

ORDER FOR HEARING

Minnesota Statutes 1976 Section 105.42, Subdivision 1a, and Section 105.415 as amended by Laws of Minnesota 1977 Chapter 446, Section 5, require the Commissioner of Natural Resources to adopt rules containing standards and criteria governing the granting and denying of permits under Section 105.42 for those actions which alter the course, current, or cross-section of public waters.

Proposed rules having been drafted, public hearings shall be held on them in the manner provided by the rules-making provisions of Minnesota Statutes Chapter 15 and the rules of the Office of Hearing Examiners. The hearings shall be held at the following dates and places:

September 7, 1977 - Saint Paul, Minnesota, State Office Building Auditorium, Room 83, at 9:30 a.m.

September 21, 1977 - Brainerd, Minnesota, Armory, Fifth and Laurel Streets, at 9:30 a.m.

Prior to the hearings, the Department shall hold one public information meeting in each of the six DNR regions, for the purpose of letting interested persons know the nature and content of the proposed rules.

Dated this 25th day of July, 1977.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

for WILLIAM B. NYE
Commissioner

Joseph N. Alexander for
ASSISTANT COMMISSIONER

Pursuant to Commissioner's
Delegation Order No. 284

STATE OF MINNESOTA
DEPARTMENT OF NATURAL REOSURCES

RELATING TO PROPOSED RULES NR 5020 - 5029,
ESTABLISHING STANDARDS AND CRITERIA FOR
GRANTING PERMITS TO CHANGE THE COURSE,
CURRENT OR CROSS SECTION OF PUBLIC WATERS.

STATEMENT
OF
NEED

- - - - - - - - - - - - - - - - -

The Commissioner of Natural Resources is required by statute to administer a permit system for all projects which will result in the alteration of the course, current or cross section of public waters. In order to carry out this responsibility the Commissioner is further required, by statute, to adopt rules governing the issuance, review and denial of such water resource permits prior to January 30, 1978.

JUSTIFICATION

Minnesota Statutes 1976, Chapter 105 provides the following statutory requirements:

> "105.38 DECLARATION OF POLICY. In order to conserve and utilize the water resources of the state in the best interests of the people of the state, and for the purpose of promoting the public health, safety and welfare, it is hereby declared to be the policy of the state:
>
> (1) Subject to existing rights all waters of the state which serve a material beneficial public purpose are public waters subject to the control of the state...
>
> (3) The state shall control and supervise, so far as practicable, any activity which changes or which will change the course, current, or cross-section of public waters, including but not limited to the construction, reconstruction, repair, removal, abandonment, the making of any other change, or the transfer of ownership of dams, reservoirs, control structures, and waterway obstructions in any of the public waters of the state.
>
> 105.39 AUTHORITY AND POWERS OF COMMISSIONER. Subdivision 1. Water conservation program. The commissioner shall devise and develop a general water resources conservation program for the state. The program shall contemplate the conservation, allocation, and development of all the waters of the state, surface and underground, for the best interests of the people. The commissioner shall be guided by such program in the issuance of permits for the use and appropriation of the waters of the state and the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs and other control structures, as provided by sections 105.37 to 105.55.

105.415 RULES GOVERNING PERMITS. Notwithstanding the provision in section 105.41, subdivision 1a, stating that the commissioner of natural resources shall submit to the legislature by January 1, 1975, for its approval proposed rules governing the allocation of waters among potential water users, and notwithstanding the provision in section 105.42, subdivision 1a, stating that the commissioner shall recommend by January 15, 1975, to the legislature a comprehensive law containing standards and criteria governing the issuance and denial of permits under the section, the commissioner shall prior to January 30, 1978, adopt rules containing standards and criteria for the issuance and denial of the permits required by sections 105.41 and 105.42.

105.42 PERMITS: WORK IN PUBLIC WATERS. Subdivision 1. It shall be unlawful for the state, any person, partnership, association, private or public corporation, county, municipality or other political subdivision of the state, to construct, reconstruct, remove, abandon, transfer ownership, or make any change in any reservoir, dam or waterway obstruction on any public water; or in any manner, to change or diminish the course, current or cross-section of any public waters, wholly or partly within the state, by any means, including but not limited to, filling, excavating, or placing of any materials in or on the beds of public waters, without a written permit from the commissioner previously obtained. Application for such permit shall be in writing to the commissioner on forms prescribed by him.

105.45 PERMITS AND ORDERS OF COMMISSIONER: NOTICE. The commissioner shall make findings of fact upon all issues necessary for determination of the applications heard by him. All orders made by the commissioner shall be based upon findings of fact made on substantial evidence. He may cause investigations to be made, and in such event the facts disclosed thereby shall be put in evidence at the hearing or any adjournment thereof.

If the commissioner concludes that the plans of the applicant are reasonable, practical, and will adequately protect public safety and promote the public welfare, he shall grant the permit, and, if that be in issue, fix the control levels of public waters accordingly. In all other cases the commissioner shall reject the application or he may require such modification of the plan as he deems proper to protect the public interest. In all permit applications the applicant has the burden of proving that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare.

In granting a permit the commissioner may include therein such terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state."

As specified in Minnesota Statutes 1976, Sections 105.42 and 105.415, the Commissioner must regulate all projects which will change the course, current or cross section of public waters and must adopt standards and criteria to be used in regulating such projects. The proposed rules NR 5020 - 5029 are therefore justified based on statutory mandate.

EXPLANATION

As stated above, Minnesota Statutes Section 105.42 requires that all projects which will change the course, current or cross section of public waters must be authorized by a permit issued by the Commissioner of Natural Resources. Any work undertaken without such a permit is deemed a misdemeanor under the provisions of Minnesota Statutes Section 105.541 and is punishable by fine and/or imprisonment. Consequently, the Commissioner is obligated by statute to regulate every project which will affect the course, current or cross section of public waters. The intent of the proposed rules NR 5020 - 5029 is to establish the criteria to be used in reviewing water resource permit applications and to set forth the official policies to be used in deciding to issue or deny such permits.

In exercising the permit authority of Minnesota Statutes Section 105.42, the primary policy of the Commissioner has been that the proposed action must be the action with the least environmental impact as compared to other reasonable alternatives available to the permit applicant. This policy has been retained in the proposed rules NR 5020 - 5029 and is set forth in NR 5020 (A) General Policy as follows:

> "... the Commissioner shall be guided by the following general policies in deciding to issue or deny a water resource permit:
>
> 1. No water resource permit shall be issued where the proposed action is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources, provided that there is a feasible and prudent alternative.
>
> 2. No water resource permit shall be issued unless and until the Commissioner has considered all of the following points:
>
> a. The environmental impact of the proposed project.
>
> b. Direct or indirect adverse environmental effects of the proposed project.
>
> c. The availability and feasibility of reasonable alternatives having a lesser degree of impact upon the water body.
>
> d. The environmental impact of predictable increased future development of an area due to the existence of the proposed project, if approved.

3. The applicant must show that the proposed project is reasonable, practical and will adequately protect public safety and promote the public welfare.

4. The proposed development must 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, floodplain management, water surface use management, boat and water safety, wild and scenic rivers management, fish and wildlife management, recreational or wilderness management, critical areas management, scientific and natural areas management, and protected vegetative species management..."

The intent of this primary policy is to maintain the existing beneficial public purposes served by public waters (re: Minnesota Statutes Section 105.37, subdivision 6). In other words, the Commissioner will not permit any action which will degrade or diminish the natural characters which cause a body of water to be considered a public water.

In order to implement this primary policy, the various subsections of the proposed rules NR 5020 - 5029 require all water resource permit applications to be accompanied by data identifying the environmental and developmental conditions associated with the proposed project. These data include the following:

1) Presence of fish, wildlife and protected vegetation habitat;

2) Hydraulic and hydrologic conditions (i.e. flood flows, channel capacities, water quality and quantity, etc.);

3) Obstruction of navigation or other water safety hazards;

4) Presence of unusual geologic or topographic features;

5) Potential for increased future use and/or development due to the proposed action.

These data will constitute the information upon which the Commissioner will evaluate all water resource permit applications. The Commissioner's decision to issue or deny such permits will be based upon this evaluation and the specific policies set forth in sections NR 5021 (A), 5022 (A), 5023 (A), 5024 (A) and 5025 (A) of the proposed rules.

The specific policies in NR 5021 (A) - 5025 (A) establish an order of preference for permitted projects affecting public waters. This order of preference is based upon the primary policy of least environmental effect, and may be stated as follows:

(First Preference) Temporary solution involving no permanent work in public waters (e.g. temporary docks).

(Second Preference) Work immediately on or adjoining the shoreline (e.g. wood piling dock).

(Third Preference) Work extending public waters inland (e.g. excavated boat slip).

(Fourth Preference) Work in public waters extending offshore (e.g. breakwater harbor).

The rationale behind this order of preference is quite simple. Temporary solutions require no permanent work and therefore represent the least environmental impact. Work immediately on the shoreline does not usually affect the course, current or cross section of off-shore areas. Likewise, work extending public waters inland does not generally cause significant environmental effect on the pre-existing course, current or cross section of public waters. Off-shore work, however, does involve direct alteration of the course, current or cross section of public waters and generally poses the most significant environmental impact. Consequently, in reviewing applications for water resource permits, the action permitted by the Commissioner will be the most reasonable alternative with the highest order of preference (i.e. least environmental effect).

In order to make the water resource permit system more reasonable, certain minor actions with minimal environmental effect will be allowed without the issuance of a permit by the Commissioner. Specifically NR 5021 (B) and (C), NR 5023 (B) AND (F), and NR 5025 (B) will allow the following types of actions without a water resource permit:

1) Installation of a beach sand blanket.
2) Placement of natural rock riprap.
3) Construction of a wood piling permanent dock.
4) Construction of a boat launching ramp.
5) Construction of a low water ford-type stream crossing.

As stated in NR 5021 (B) and (C), NR 5023 (B) and (F), and NR 5025 (B), these actions will be allowed without a water resource permit subject to several conditions. These conditions will limit the extent, location and size of such "permitted" projects. In general, the following conditions must be met in order to undertake an action not requiring a water resource permit:

1) The site must be capable of supporting the proposed project without the use of special site preparation.

2) The proposed project must not exceed minimum size, area and depth limits (Note: these limits are consistent with previous standards established under Commissioner's Order 1938).

3) The proposed project must be constructed with natural rock, wood or other durable, non-polluting materials.

4) The proposed project must not be placed in a fish spawning area posted by the Department of Natural Resources.

5) The proposed project must be installed in accordance with any specific location, design or construction practices established by the Department of Natural Resources.

One of the reasons for allowing minor actions without a water resource permit is that the Commissioner has for some 20 years allowed the selective removal of natural vegetation from public waters without a permit (re: Commissioner's Order 1938). Under the authority of Commissioner's Order 1938 a person may remove up to 2,500 square feet (an area of 50 feet by 50 feet) of natural vegetation by nonmechanical means, without a permit from the Commissioner. The size and area limitations on those types of projects to be allowed without a water resource permit will all fall within or below the previously established limit set forth in Commissioner's Order 1938.

Another consideration in allowing certain activities without a water resource permit are the administrative problems associated with regulating such minor actions. In the past, the Commissioner has generally routinely granted permits for these types of projects with little or no modification. Historically, these types of permits constitute nearly 1/3 of all permit applications and therefore substantially reduce the level of administrative review applied to permit applications posing greater environmental concern. The public interest would better be served by allowing these minor actions without a water resource permit, subject to general conditions which will limit the size and scope of such actions.

In order to clarify Department policy and expedite the processing of permit applications, the proposed regulations NR 5020 - 5029 have been organized according to the major types of projects which usually affect public waters. These types of projects are grouped into five separate classes:

NR 5021 FILLING INTO PUBLIC WATERS

Fill projects may include such things as development of public and private beach areas, protection of shoreline from erosion, recovery of shoreland lost by erosion, filling to raise flooded development, and improvement of navigational access. As stated in NR 5021 (A)..."It is the policy of the Department of Natural Resources to discourage the placement of any fill material into public waters in order to preserve the natural character of public waters and their shorelands, and maintain suitable aquatic habitat for fish and wildlife." It is the intent of this section to allow filling into public waters only where such fill will not adversely affect the beneficial public purposes served by the water body. NR 5021 (A) (1) and (2) go on to outline cases where filling may enhance these beneficial public purposes and those cases where filling will impair them.

NR 5022 EXCAVATION OF PUBLIC WATERS

Excavation projects may include such things as development of public and private beach areas, creation and maintenance of navigation or access channels, excavation for lake improvement, and alteration of natural watercourses. As stated in NR 5022 (A)..."It is the policy of the Department of Natural Resources to discourage the excavation of materials from the beds of public waters in order to preserve the natural character of public waters and their shorelands, and maintain suitable aquatic habitat for fish and wildlife." It is the intent of this section to allow excavation of public waters only where such work will not adversely affect the beneficial public purposes served by the water body. NR 5022 (A) (1) and (2) go on to outline cases where excavation may enhance these beneficial public purposes and those cases where excavation will impair them.

NR 5023 STRUCTURES IN PUBLIC WATERS

Structures in public waters may include such things as docks, wharves, breakwaters, jetties, retaining walls, pilings, diving platforms and boathouses.

As stated in NR 5023 (A)..."It is the policy of the Department of Natural Resources to discourage the waterward occupation of the bed and surface of public waters by off-shore navigational facilities, retaining walls and other structures in order to preserve the natural character of public waters and their shorelands, and provide a balance between the protection and utilization of public waters. Furthermore, it is the policy of the Department of Natural Resources to encourage the removal of existing waterway obstructions which do not serve the public interest from the beds of public waters at the earliest practicable date." It is the intent of this section to allow structures in public waters only when such structures will not adversely affect the beneficial public purposes served by the water body. NR 5023 A (1) and (2) go on to outline cases where such structures may enhance these beneficial public purposes and those cases where structures in public waters will impair them.

NR 5024 WATER LEVEL CONTROLS AND DAM CONSTRUCTION OR RECONSTRUCTION

Dams and other water level control structures are generally constructed to control flood waters, maintain low flows, prevent and/or control erosion and sedimentation, improve water-based recreation, maintain water supplies, and maintain aquatic habitat. As stated in NR 5024 (A)..."It is the policy of the Department of Natural Resources to encourage the management of lake resources in order to maintain natural flow and water level conditions to the maximum feasible extent. Furthermore, it is the policy of the Department of Natural Resources to encourage the construction of smaller upstream retarding dams and reservoirs for the conservation of water in natural water basins and watercourses, and artificial impoundments consistent with any overall plans for the affected watershed area and/or river basin. The Department of Natural Resources shall oppose the artificial manipulation of water levels except where the balance of affected public interests clearly warrants the establishment of appropriate controls." When the construction, reconstruction or abandonment of a dam is permitted, it is the intent of this section to ensure that such structures are located, constructed and maintained in accordance with adequate safety and engineering practices.

NR 5025 BRIDGES & CULVERTS, WATERMAIN & SEWER CROSSINGS, INTAKES & OUTFALLS

Crossings of public waters may include such structures as public and private bridges, culverts, footbridges, walkways, watermains, storm and sanitary sewer lines, public and private water intakes, and storm and sanitary sewer outfalls. As stated in NR 5025 (A)..."It is the policy of the Department of Natural Resources to allow crossings of public waters, including the construction of water intake and sewer outfall structures in public waters, only when less detrimental alternatives are unavailable or unreasonable, and where such facilities adequately protect public health, safety and welfare." It is the intent of this section to allow crossings of public waters only where such structures will not adversely affect the beneficial public purposes served by the water body or pose a threat to public health, safety and welfare. NR 5025 (A) (1) and (2) go on to outline cases where crossings of public waters may enhance these beneficial public purposes and those cases where such crossings will impair them.