

1.1 **Department of Natural Resources**
1.2 **Proposed Permanent Rules Relating to Aquatic Plant Management**

1.3 **6280.0100 DEFINITIONS.**

1.4 Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in
1.5 this part.

1.6 Subp. 2. **Aquatic macrophytes plant.** "Aquatic macrophytes plant" means ~~vascular~~
1.7 ~~nonwoody plants, either submerged, floating-leaved, a plant naturally growing in water,~~
1.8 saturated soils, or seasonally saturated soils, and includes algae, submersed, floating-leaf,
1.9 floating, or and emergent plants growing in water, and their root stalks, seeds, and other
1.10 vegetative propagules.

1.11 Subp. 2a. **Aquatic plant management.** "Aquatic plant management" means
1.12 activities ~~which are~~ intended to reduce, enhance, or otherwise alter aquatic plant
1.13 populations ~~(either reduce or enhance)~~ by means of herbicides, biological agents,
1.14 mechanical devices, ~~or~~ physical alteration. ~~This includes the,~~ or transplanting or seeding
1.15 ~~of aquatic macrophytes plants.~~

1.16 Subp. 2b. **Aquatic plant management permit or APM permit.** "Aquatic plant
1.17 management permit" or "APM permit" means a permit issued by the commissioner
1.18 authorizing aquatic plant management or aquatic nuisance control ~~activities.~~

1.19 Subp. 2c. **Aquatic plant management (APM)-related conviction.** "Aquatic plant
1.20 management (APM)-related conviction" includes a conviction under:

1.21 A. this chapter or Minnesota Statutes, section 103G.615 (permits to harvest or
1.22 destroy aquatic plants);

1.23 B. chapter 6115 (public water resources) or Minnesota Statutes, section
1.24 103G.245 (work in public waters), if the conviction is for work that resulted in the
1.25 destruction of aquatic plants;

2.1 C. chapter 8420 (wetland conservation) or Minnesota Statutes, section 103G.222
2.2 (replacement of wetlands); or

2.3 D. any other applicable rules and statutes, if the conviction is for work that
2.4 resulted in the destruction of aquatic plants.

2.5 Subp. 2d. **Aquatic plant management (APM)-related permit revocation.**
2.6 "Aquatic plant management (APM)-related permit revocation" includes the revocation of
2.7 an APM, commercial mechanical control, or commercial harvest permit and ineligibility
2.8 to apply aquatic pesticides to public waters under an APM permit.

2.9 Subp. 3. **Aquatic nuisance.** "Aquatic nuisance" means the presence of leeches,
2.10 snails that carry swimmer's itch, or algae in ~~such numbers or~~ such abundance as to
2.11 interfere with boating, swimming, or other aquatic recreation or beneficial water use.

2.12 Subp. 3a. **Automated ~~untended~~ aquatic plant control device.** "Automated
2.13 ~~untended~~ aquatic plant control device" means a self-propelled device for that is capable of
2.14 destroying aquatic macrophytes that may be remotely operated or placed on a timer and is
2.15 capable of being operated without the assistance of an operator plants.

2.16 Subp. 4. **Bog.** "Bog" means an aquatic mat, either attached to or resting on the
2.17 bottom or floating, that is ~~normally~~ made up of dead organic matter held together by
2.18 various types of living plants.

2.19 Subp. 4a. **Commercial harvest.** "Commercial harvest" means taking aquatic plants
2.20 for sale, for establishing stock to produce plants for sale, or for transferring to another
2.21 person for sale or establishment of stock to produce plants for sale. "Sale" has the meaning
2.22 given in Minnesota Statutes, section 97A.015, subdivision 44.

2.23 Subp. 4b. **Commercial harvest permit.** "Commercial harvest permit" means a
2.24 permit issued by the commissioner authorizing commercial harvest of aquatic plants.

3.1 Subp. 4c. **Commercial mechanical control.** "Commercial mechanical control"
3.2 means conducting mechanical control for financial or other material compensation.

3.3 Subp. 5. [See repealer.]

3.4 Subp. 5a. **Emergent aquatic plants.** "Emergent aquatic plants" means aquatic
3.5 plants with lower portions that are rooted in hydric soils and typically below the water's
3.6 surface and leaves, stems, and reproductive parts that are typically above the water's
3.7 surface, including, but not limited to, species in the genera *Scirpus*, *Typha*, and *Zizania*.
3.8 Submersed and floating-leaf aquatic plants that have emergent fruits, flowers, or leaves
3.9 are not included in this definition.

3.10 Subp. 6. **Excessive algae bloom.** "Excessive algae bloom" means that ~~some~~ one or
3.11 all more of the following conditions are present:

3.12 A. algae population is dominated by blue-green algae;

3.13 B. secchi disc reading is typically two feet or less due to the algae bloom;

3.14 C. floating mats or scums of plankton or filamentous algae have accumulated on
3.15 the downwind shore; or

3.16 D. decomposition of accumulated algae has occurred releasing a blue-green
3.17 pigment and causing an offensive odor.

3.18 Subp. 7. **Field inspection.** "Field inspection" means an on-site ~~determination~~ review
3.19 by department personnel the commissioner of relevant characteristics of a proposed
3.20 treatment area APM permit.

3.21 Subp. 7a. **Filamentous algae.** "Filamentous algae" means algae cells that form long
3.22 visible chains, threads, or filaments, which intertwine and form a mat, generally growing
3.23 near shore and sometimes growing on the bottom or on rooted aquatic plants. Macro-algae
3.24 in the genera *Chara* or *Nitella* are not included in this definition.

4.1 Subp. 7b. **Floating-leaf aquatic plants.** "Floating-leaf aquatic plants" means aquatic
4.2 plants that are rooted in the bottom and have their lower portions submersed in water and
4.3 leaves that float on the surface of the water, including, but not limited to, species in the
4.4 genera *Nymphaea*, *Nuphar*, *Brasenia*, and *Nelumbo*. Species in the genera *Potamogeton*,
4.5 *Callitriche*, and *Ranunculus*, which are submersed aquatic plants that may produce some
4.6 floating leaves, are not included in this definition.

4.7 Subp. 7c. **Group APM permit.** A "group APM permit" is an APM permit that
4.8 includes more than one riparian property owner or lessee or that authorizes control
4.9 adjacent to more than one riparian property.

4.10 Subp. 8. **Label and labeling.** "Label and labeling" has the meaning given in
4.11 Minnesota Statutes, section 18B.01, subdivisions 13 and 14.

4.12 Subp. 9. **Littoral area.** "Littoral area" means ~~any part~~ the surface area of a body of
4.13 water where the depth is 15 feet ~~deep~~ or less.

4.14 Subp. 9a. **Mechanical control.** "Mechanical control" means cutting, pulling, raking,
4.15 or otherwise removing or altering aquatic plants by physical means, including by hand
4.16 and motorized or nonmotorized equipment. Incidental damage caused to aquatic plants
4.17 by watercraft traveling to and from open water, commercial harvesting of aquatic plants,
4.18 transplanting aquatic plants, moving a bog, and harvesting aquatic plants for personal
4.19 use are not mechanical control.

4.20 Subp. 10. [See repealer.]

4.21 Subp. 10a. **Offshore control.** "Offshore control" means mechanical or pesticide
4.22 control that is done away from the shoreline and not for the purpose of providing a riparian
4.23 property owner or lessee access to open water.

4.24 Subp. 11. **Ordinary high water level.** "Ordinary high water level" has the meaning
4.25 given in Minnesota Statutes, section 103G.005, subdivision 14.

5.1 Subp. 11a. **Personal use.** "Personal use" means use of aquatic plants by an individual
5.2 for purposes that do not include sale or transfer to another person for sale, as defined by
5.3 Minnesota Statutes, section 97A.015, subdivision 44.

5.4 Subp. 12. **Pesticide.** "Pesticide" has the meaning given by Minnesota Statutes,
5.5 section 18B.01, subdivision 18.

5.6 Subp. 12a. **Pesticide control.** "Pesticide control" means applying herbicides or other
5.7 chemicals to control aquatic plants and nuisances.

5.8 Subp. 12b. **Plankton algae.** "Plankton algae" means microscopic, nonvascular,
5.9 free-floating plants, generally growing near the water surface, which may form
5.10 multicellular colonies or filaments, but not attached to a substrate.

5.11 Subp. 13. **Public waters.** "Public waters" means those waters of the state defined as
5.12 public waters by Minnesota Statutes, section 103G.005, subdivision 15, and inventoried
5.13 pursuant to Laws 1979, chapter 199, and Minnesota Statutes, section 103G.201.

5.14 Subp. 14. [See repealer.]

5.15 Subp. 15. [Repealed, 21 SR 1406]

5.16 Subp. 16. **Submersed aquatic plants.** "Submersed aquatic plants" means aquatic
5.17 plants that grow beneath the surface of the water, except for emergent flowers, fruits, and
5.18 leaves, and may produce floating leaves but have mostly submersed leaves, including,
5.19 but not limited to, species in the genera *Potamogeton*, *Callitriche*, and *Ranunculus* and
5.20 macro-algae in the genera *Chara* and *Nitella* and excluding plankton and filamentous
5.21 algae.

5.22 **6280.0250 STANDARDS FOR AQUATIC PLANT MANAGEMENT PERMIT**
5.23 **ISSUANCE.**

5.24 Subpart 1. **Actions not requiring an APM or commercial harvest permit.** ~~Unless~~
5.25 ~~otherwise required in subpart 2, an APM permit is not required for~~ A person may conduct

6.1 the activities listed in items A to F; H without an APM or commercial harvest permit,
6.2 subject to restrictions in part 6280.0350, subpart 3. A person conducting activities under
6.3 item C, E, F, or H must be an owner, lessee, or easement holder of land adjacent to the
6.4 water where the activity is occurring or an agent of the owner, lessee, or easement holder:

6.5 A. cutting or pulling aquatic ~~macrophytes~~ plants for the purpose of constructing
6.6 shooting ~~and~~ or observation blinds in amounts sufficient for ~~that purpose~~ those purposes;

6.7 B. ~~gathering~~ harvesting aquatic ~~macrophytes~~ plants or plant parts, ~~other than~~
6.8 ~~wild rice and American lotus~~, for personal use only ~~and not for resale~~;

6.9 C. ~~cutting or pulling submerged~~ except as provided for automated aquatic
6.10 plant control devices in subpart 2, item D, mechanical control of submersed aquatic
6.11 ~~macrophytes in order~~ plants to maintain a site for swimming or boat docking not to
6.12 extend along more than 50 feet ~~of the owner's shoreline~~ or one-half the length of the
6.13 owner's total shoreline, whichever is less, and ~~that does not to~~ not to exceed 2,500 square feet
6.14 ~~in area, except that a boat channel extending~~ plus the area needed to extend a channel no
6.15 wider than 15 feet to open water, not to exceed 15 feet in width, may be maintained. The
6.16 ~~boating channel is included in the maximum shoreline feet allowed. Cutting or pulling~~
6.17 ~~may only be done under the following conditions:~~ provided the channel is included in the
6.18 maximum shoreline feet allowed;

6.19 (1) ~~by hand or with power-operated cutters, rakes, or similar equipment~~
6.20 ~~that does not significantly alter the course, current, or cross-section of the lake bottom.~~
6.21 ~~Draglines, bulldozers, hydraulic jets, suction dredges, automated untended aquatic plant~~
6.22 ~~control devices, or other power-operated earth-moving equipment may not be used;~~

6.23 (2) ~~cutting or pulling takes place in the same location each year unless an~~
6.24 ~~APM permit has been obtained authorizing a change in location; and~~

6.25 (3) ~~aquatic macrophytes that have been cut or pulled must immediately and~~
6.26 ~~permanently be removed from the water;~~

7.1 D. ~~destroying aquatic macrophytes plants~~ incidental to activities authorized by a
7.2 department permit for work in public waters as provided by Minnesota Statutes, section
7.3 103G.245, or by a license permitting the passage of utilities over public lands and waters
7.4 as provided by parts 6135.0100 to 6135.1800 and Minnesota Statutes, section 84.415;

7.5 E. ~~cutting or pulling~~ mechanical control of purple loosestrife (*Lythrum*
7.6 *salicaria*); and

7.7 F. skimming duckweed or filamentous algae off the surface of a water body;

7.8 G. mechanical or pesticide control of aquatic plants done as part of public road
7.9 or utility crossing right-of-way maintenance by authorized government units or utility
7.10 companies; and

7.11 ~~F. H. cutting or pulling water lilies and water shield or submerged vegetation~~
7.12 mechanical control of floating-leaf aquatic plants to obtain a channel extending to open
7.13 water, provided that:

7.14 (1) the channel is no more than 15 feet wide and takes the most direct
7.15 route to open water;

7.16 (2) the channel is maintained by cutting or pulling; and

7.17 (3) the channel remains in the same location from year to year.

7.18 Subp. 1a. **Limits on APM activities without a permit.** Subpart 1 shall not be
7.19 construed to allow taking or control of aquatic plants inconsistent with other provisions of
7.20 law, including wild rice provisions under chapter 6284 and provisions for endangered,
7.21 threatened, and of special concern species under chapter 6134. A person who receives an
7.22 APM permit under this chapter may not conduct unpermitted aquatic plant control under
7.23 subpart 1, item C or H, at the location and during the period covered by the permit.

8.1 Subp. 2. **Actions requiring a an APM permit.** Except as provided in subpart 1, a
8.2 person must have an APM permit is required to for all aquatic plant management activities
8.3 below the ordinary high water level in public waters, including:

8.4 A. ~~apply pesticides below the ordinary high water level of public waters to~~
8.5 ~~control:~~ mechanical and pesticide control of aquatic plants or nuisances;

8.6 (1) ~~snails that carry swimmer's itch, or leeches;~~

8.7 (2) ~~dense growths of aquatic macrophytes that interfere with watercraft~~
8.8 ~~use, swimming, or other traditional recreational uses;~~

8.9 (3) ~~excessive filamentous algae;~~

8.10 (4) ~~excessive plankton algae blooms; and~~

8.11 (5) ~~purple loosestrife (*Lythrum salicaria*), except for state and county~~
8.12 ~~noncommercial aquatic pesticide applicators, controlling purple loosestrife as part of~~
8.13 ~~rights-of-way maintenance, when the public waters are within the rights-of-way;~~

8.14 B. ~~physically remove from or transplant into~~ transplanting aquatic plants in
8.15 ~~public waters any aquatic plants or a bog of any size whether free-floating or lodged~~
8.16 ~~in an area other than its original location;~~

8.17 C. ~~destroy emergent aquatic macrophytes in public waters~~ relocating or
8.18 removing a bog or portion thereof; and

8.19 D. ~~destroy water lilies and water shield in public waters except as provided in~~
8.20 ~~subpart 1, item F;~~

8.21 E. D. install installing or operate operating an automated ~~intended~~ aquatic plant
8.22 control device, ~~for each property where the device is intended for operation, except that a~~
8.23 ~~permit of three years' duration may be issued when:~~

9.1 ~~(1) the site to be controlled extends along no more than 50 feet of the~~
9.2 ~~owner's shoreline or one-half the length of the owner's total shoreline, whichever is less,~~
9.3 ~~and the site does not exceed 2,500 square feet in area; and~~

9.4 ~~(2) the site to be controlled does not contain emergent or floating-leaf~~
9.5 ~~aquatic macrophytes; or~~

9.6 ~~F. create a channel extending to open water through emergent vegetation by~~
9.7 ~~cutting or pulling. The permit shall be of continuing duration provided that:~~

9.8 ~~(1) the channel is no more than 15 feet wide and takes the most direct~~
9.9 ~~route to open water;~~

9.10 ~~(2) the channel is maintained by cutting or pulling;~~

9.11 ~~(3) the channel remains in the same location from year to year; and~~

9.12 ~~(4) the permit is not transferable.~~

9.13 Subp. 3. **Justification required for issuance of permits.** Permits for the
9.14 ~~destruction~~ control of emergent and floating-leaf aquatic ~~macrophytes plants,~~ including,
9.15 but not limited to, wild rice, bulrush, cattail, and water lilies, ~~and other vegetation~~ will
9.16 not be issued unless the commissioner determines sufficient justification exists. The
9.17 commissioner will consider the relevant criteria in subpart 3a and balance the reasonable
9.18 needs of riparian owners to gain access and use public water against the need to protect
9.19 emergent and floating-leaf aquatic ~~macrophytes plants~~ so that the integrity and value of
9.20 the aquatic ~~macrophyte plant~~ plant community is maintained.

9.21 Subp. 3a. Criteria for issuing APM permits. The commissioner may issue
9.22 APM permits for public waters to provide riparian access, enhance recreational use,
9.23 control invasive aquatic plants, manage water levels, and protect or improve habitat. The
9.24 following criteria shall be considered to determine if an APM permit should be approved
9.25 or denied and how much control or harvest to allow under an APM permit:

- 10.1 A. the presence of aquatic plants or nuisances that are interfering with a permit
10.2 applicant's ability to use watercraft, swim, or engage in other traditional recreational uses;
- 10.3 B. the habitat, water quality, and erosion control value of the aquatic plants
10.4 subject to the proposed permit;
- 10.5 C. the extent of shoreline development on the water body subject to the proposed
10.6 permit and potential for aquatic plant control to result in cumulative impacts to habitat
10.7 and water quality;
- 10.8 D. the presence of invasive aquatic plants in the proposed permit area;
- 10.9 E. whether the water body subject to the proposed permit is a wetland or a
10.10 shallow lake or bay that naturally supports abundant aquatic plants;
- 10.11 F. the prevalence of soft bottom types that could result in turbidity or changes to
10.12 the cross-section of the bottom if aquatic plants are disturbed or removed;
- 10.13 G. whether the proposed permit is consistent with a lake vegetation management
10.14 plan under part 6280.1000, subpart 2, and shoreland conservation ordinances, lake
10.15 management plans and programs, wild and scenic river plans, and other pertinent
10.16 ordinances and regulations;
- 10.17 H. whether the proposed permit is consistent with a variance issued to control
10.18 invasive aquatic plants or protect or improve aquatic resources under part 6280.1000,
10.19 subpart 1;
- 10.20 I. the presence of species designated as of special concern, threatened, or
10.21 endangered under chapter 6134;
- 10.22 J. the presence of public land adjacent to the public water and the compatibility
10.23 of the proposed permit with the management of the public land; and
- 10.24 K. the presence of an excessive algae bloom.

- 11.1 Subp. 4. **Prohibitions.** An APM or commercial harvest permit will not be issued
11.2 ~~for the following purposes:~~
- 11.3 A. to place plastic mats, plastic sheets, filter fabric, or similar materials on the
11.4 bed of public waters to destroy or prevent the growth of aquatic ~~macrophytes~~ plants;
- 11.5 B. to improve the appearance of undeveloped shoreline;
- 11.6 C. for esthetic purposes alone on developed shoreline;
- 11.7 D. for ~~the~~ mechanical or pesticide control or commercial harvest of aquatic
11.8 ~~macrophytes~~ plants in areas posted or designated by the commissioner as scientific and
11.9 natural areas under Minnesota Statutes, section 84.033, aquatic management areas under
11.10 Minnesota Statutes, section 86A.07, or in areas designated for the protection of lotus
11.11 (*Nelumbo lutea*) or other kinds of aquatic ~~macrophytes~~ plants and animals;
- 11.12 E. for pesticide control of aquatic ~~macrophytes~~ plants, except plankton and
11.13 filamentous algae, in natural environment lakes established pursuant to part 6120.3000
11.14 or in waters adjacent to special protection lakes, bays, or districts established pursuant
11.15 to part 6120.3200;
- 11.16 F. for pesticide control of aquatic ~~macrophytes~~ plants in watercourses or portions
11.17 of watercourses classified as wild as defined under either the Minnesota or federal Wild
11.18 and Scenic Rivers Acts as provided in Minnesota Statutes, section 103F.325, and Public
11.19 Law 90-542 (1968), United States Code, title 16, sections 1271 to 1287, as amended; or
- 11.20 G. ~~to destroy~~ for mechanical or pesticide control or commercial harvest of
11.21 aquatic ~~macrophytes~~ plants within ~~a~~ an area posted for fish spawning ~~area; or under~~
11.22 Minnesota Statutes, section 97C.025.
- 11.23 H. ~~to destroy or prevent the growth of aquatic plants or invertebrate life in~~
11.24 ~~public waters by means not authorized under parts 6280.0100 to 6280.1100.~~

12.1 Subp. 5. **Pesticide treatment of drinking water.** The commissioner shall not issue
12.2 an APM permit for pesticide treatment of waters used by humans for drinking unless
12.3 approval is obtained from the Minnesota Department of Health.

12.4 Subp. 6. **APM permit conditions.** The commissioner may specify conditions for
12.5 APM permits to avoid or minimize harm to aquatic resources and conflict between public
12.6 water users, including, but not limited to:

12.7 A. limits on the amount of control allowed, including limits on the percentage of
12.8 the littoral area, shoreline length, and distance outward from the shoreline to be managed;

12.9 B. restrictions on the method and timing of control;

12.10 C. restrictions on the species of plants targeted by the control;

12.11 D. requirements for supervision of the control by the commissioner; and

12.12 E. requirements for public notice including posting at public water access sites,
12.13 news releases or public notices in a local newspaper, public meetings, or other notice that
12.14 would effectively inform users of the affected water.

12.15 Subp. 7. **Inspections.** The commissioner shall require field inspection of a proposed
12.16 APM permit site prior to issuing a permit for:

12.17 A. properties with no previous permit history, unless the proposed control is
12.18 for swimmer's itch;

12.19 B. properties where there has been a lapse in permit issuance or where ownership
12.20 has changed;

12.21 C. requests for changes in treatment area, plant type controlled, or method
12.22 of control;

12.23 D. requests for off-shore control or requests to control invasive aquatic plants to
12.24 enhance growth of native aquatic plants; and

13.1 E. properties where there has been a shoreline restoration order that could be
 13.2 affected by aquatic plant control.

13.3 **6280.0350 AQUATIC PLANT ~~MANAGEMENT PRACTICES~~ CONTROL.**

13.4 Subpart 1. [See repealer.]

13.5 Subp. 1a **Submersed aquatic plant control restrictions for riparian property**
 13.6 **owners and lessees.** The commissioner may issue an APM permit to a person who is an
 13.7 owner, lessee, or easement holder of land adjacent to a public water or to the agent of the
 13.8 owner, lessee, or easement holder to control submersed aquatic plants on up to 100 feet
 13.9 or one-half of the length of the person's shoreline, whichever is less, with the following
 13.10 exceptions:

13.11 A. for properties with less than 70 shoreline feet, up to 35 feet of shoreline
 13.12 may be controlled;

13.13 B. control may be allowed on more than 100 feet of shoreline owned or leased
 13.14 by resorts, apartments, condominium complexes, townhouse associations, government
 13.15 units, and marinas; and

13.16 C. control may be allowed on up to the entire shoreline owned or leased by a
 13.17 person if the proposed method is selective for invasive aquatic plants.

13.18 Subp. 2. [See repealer.]

13.19 Subp. 2a. **Aquatic plant control in offshore areas.** The commissioner may issue an
 13.20 APM permit for offshore control subject to the provisions in subparts 3, item B, and 4.

13.21 Subp. 3. **Mechanical control restrictions.** ~~Items A to C apply to conditions for~~
 13.22 Mechanical control of aquatic ~~macrophytes.~~ plants is subject to the following conditions:

13.23 A. a person who ~~cuts or pulls~~ mechanically controls aquatic ~~macrophytes~~ plants
 13.24 in a public water must immediately and permanently remove the vegetation from the water
 13.25 and dispose of it above the ordinary high water level ~~of any public water.~~

14.1 B. ~~Organized lakewide cutting and removal programs are restricted to a~~
14.2 ~~maximum area permitted mechanical control may not to exceed 50 percent of the total~~
14.3 ~~littoral area as determined by the commissioner, nor can the sum of permitted mechanical~~
14.4 ~~and pesticide control exceed 50 percent of the littoral area;~~

14.5 C. ~~Applications for lakewide or baywide mechanical control of aquatic~~
14.6 ~~macrophytes must include a written statement of the plan and a map showing proposed~~
14.7 ~~areas to be controlled. The commissioner may reduce the littoral area proposed for~~
14.8 ~~harvest. An application for mechanical control of aquatic macrophytes must include the~~
14.9 ~~name, address, signature, and location on the lake of all property owners whose shoreline~~
14.10 ~~will be controlled. control methods may not excavate or substantially alter the course,~~
14.11 ~~current, or cross-section of public waters;~~

14.12 D. a person must conduct mechanical control in the same location each year
14.13 unless the person obtains an APM permit authorizing a change in location;

14.14 E. a person may not place an automated aquatic plant control device in a public
14.15 water unless the sticker provided with the APM permit is attached to the device, the
14.16 person's dock, or another nearby location as described in the permit;

14.17 F. automated aquatic plant control devices may not be used if the bottom is
14.18 predominantly soft sediment with an average depth of three inches or more; and

14.19 G. hydraulic jets and suction dredges may not be used.

14.20 Subp. 4. **Pesticide control of aquatic macrophytes restrictions.** ~~Except as~~
14.21 ~~otherwise specified in this part, items A and B apply to pesticide control of aquatic~~
14.22 ~~macrophytes.~~

14.23 A. ~~On all public waters and watercourses, the lesser of Pesticide control of~~
14.24 aquatic plants in public waters may not exceed 15 percent of the littoral area or a maximum
14.25 of 100 feet of shoreline per site belonging to an individual riparian property owner may

15.1 ~~be treated for control of submerged vegetation, except that on waters that are 20 acres~~
15.2 ~~or less, pesticide control may be permitted on up to five acres or one-half the surface~~
15.3 ~~area of the pond, whichever is less. These limitations do not apply in the circumstances~~
15.4 ~~described in subitems (1) to (3) item B.~~

15.5 ~~(1) For resorts, apartments, condominium complexes, public swimming~~
15.6 ~~beaches, and marinas, the commissioner must make an individual determination, taking~~
15.7 ~~into consideration the total impact on the protected water.~~

15.8 ~~B. (2) Larger percentages of the littoral area shall be treated at the discretion of~~
15.9 ~~the commissioner when authorized by permits issued prior to 1976. The waters affected~~
15.10 ~~by this provision are: Sunfish Lake in Dakota County; Cedar Island and Lost Lakes and~~
15.11 ~~Carson's and St. Louis Bays of Lake Minnetonka in Hennepin County; and Johanna,~~
15.12 ~~Owasso, Gervais, and McCarron Lakes in Ramsey County.~~

15.13 ~~(3) On stormwater retention ponds, treatment may occur on up to five acres~~
15.14 ~~or one-half the surface area of the pond, whichever is less.~~

15.15 ~~B. Applications from riparian property owners' associations for large area or~~
15.16 ~~baywide treatment must include a written statement of the plan and a map showing areas~~
15.17 ~~proposed to be treated. The commissioner may reduce the amount of littoral area which~~
15.18 ~~the applicant proposes to control. Any application for treatment must include the names,~~
15.19 ~~addresses, location on lake, and signatures of all property owners whose shorelines will~~
15.20 ~~be treated. Signatures must be obtained every three years or when there is a change of~~
15.21 ~~property ownership.~~

15.22 ~~C. Item B expires five years after the effective date of this item. Before the~~
15.23 ~~expiration of item B, the commissioner shall develop a lake vegetation management~~
15.24 ~~plan as provided under part 6280.1000, subpart 2, for each of the waters listed in item~~
15.25 ~~B. The commissioner shall provide opportunities for the public to participate in the~~
15.26 ~~planning process.~~

16.1 Subp. 5. [See repealer.]

16.2 Subp. 6. [See repealer.]

16.3 **6280.0450 APM PERMIT APPLICATION, FEES, AND ANNUAL REPORT**
16.4 **REQUIREMENTS.**

16.5 Subpart 1. **Application process.** Application for an APM permit for ~~any body of a~~
16.6 public ~~waters~~ water may be made by a riparian owner, a lessee, or an easement holder, ~~or,~~
16.7 by owners of a fee, leasehold, or interest to riparian lands to that body of water; ~~or by the~~
16.8 ~~representative of a group of riparian owners~~ a lake association or government agency. The
16.9 commissioner shall deny a lessee's permit application if the owner of the leased shoreline
16.10 is opposed to the proposed permit. Application for an APM permit must be made on
16.11 forms provided by the commissioner and must be submitted to the address specified in the
16.12 instructions. All information requested on the application form must be provided.

16.13 Subp. 1a. **Landowner approval.** The commissioner shall require dated signatures of
16.14 approval from all landowners with shorelines adjacent to proposed treatment areas before
16.15 issuing an APM permit, except that for lake-wide control of algae, the commissioner shall
16.16 require dated signatures of approval from a majority of landowners on the lake and except
16.17 that the requirement for landowner signature approval may be waived if the commissioner
16.18 determines that aquatic plant control is necessary to protect aquatic habitat. The signatures
16.19 may be provided in an electronic format.

16.20 Subp. 2. **Deadline for permit application.** Applications for permits to control
16.21 ~~submerged~~ submersed or ~~floating~~ floating-leaf aquatic ~~macrophytes~~ plants with pesticides
16.22 will not be accepted after August 1 ~~annually~~, unless the commissioner determines that
16.23 sufficient justification exists for late season pesticide ~~treatment~~ control.

16.24 Subp. 3. **Duration of permits.** ~~Unless otherwise noted,~~ An APM permit is ~~only~~
16.25 valid for only one growing season and expires on September 1 of the year it was issued; ~~2~~
16.26 except as provided in this subpart:

17.1 A. an APM permit that is valid until September 1 of the third year after it is
17.2 issued may be authorized for an automated aquatic plant control device if the site to be
17.3 controlled does not exceed 2,500 square feet in area;

17.4 B. a continuous APM permit may be issued to control emergent vegetation to
17.5 create a channel extending to open water if the following criteria are met:

17.6 (1) the channel is no more than 15 feet wide and takes the most direct
17.7 route to open water;

17.8 (2) the channel remains in the same location from year to year; and

17.9 (3) only mechanical control is used after the first year; and

17.10 C. a permit to transplant aquatic plants may be issued for three years.

17.11 Subp. 3a. **APM permits not transferable.** A person may not transfer an APM
17.12 permit to another person.

17.13 Subp. 3b. **Control notice.** The holder of an APM permit or the holder's agent must
17.14 give notice of the proposed date of control to all persons specified on the permit. The
17.15 notification must be received before any work begins under the permit. Failure to give
17.16 notice is grounds for permit revocation under part 6280.0900, subpart 1a.

17.17 [For text of subp 4, see M.R.]

17.18 Subp. 5. **Fees for state and federal agencies.** The fees set forth in this part will
17.19 not be required of any state agency as defined in Minnesota Statutes, section 15.01, or of
17.20 any federal agency.

17.21 Subp. 6. **Annual report.** The holder of a commissioner shall require a person
17.22 who conducts activities under an APM permit, commercial aquatic plant harvester's
17.23 mechanical control permit, or commercial aquatic pest control license, or APM permit
17.24 must to report, no later than December 31 of each year, report to the commissioner, on the

18.1 forms provided, information on permitted operations ~~requested~~. Failure to report will be
18.2 grounds for refusing to issue such permits in the future.

18.3 Subp. 7. **Regulations of other programs apply.** APM permits issued as provided
18.4 by this part may not be construed to supersede the requirements of shoreland conservation
18.5 ordinances, flood plain management ordinances, lake management plans and programs,
18.6 wild and scenic river plans and programs, or other pertinent ordinances and regulations.

18.7 **6280.0550 COMMERCIAL HARVEST OF AQUATIC PLANTS.**

18.8 Subpart 1. **Permit required.** A person must have a commercial harvest permit to
18.9 commercially harvest aquatic plants from public waters, except for wild rice, which is
18.10 regulated under chapter 6284 and Minnesota Statutes, chapter 84.

18.11 Subp. 2. **Commercial harvest permit application.** A person may apply for a
18.12 commercial harvest permit on forms provided by the commissioner. An applicant for
18.13 a permit to commercially harvest aquatic plants in waters with no public access must
18.14 provide documentation of legal access to the waters requested on the permit, including
18.15 contact information for the owner of the access. The commissioner shall require an
18.16 applicant to complete an aquatic plant workshop before issuing a commercial harvest
18.17 permit and may require follow-up workshops as needed to update permittees on new
18.18 regulations or other relevant issues.

18.19 Subp. 3. **Commercial harvest permit conditions.** The commissioner may specify
18.20 conditions for commercial harvest permits to avoid or minimize harm to aquatic resources,
18.21 including, but not limited to, restrictions on the amount and species of plants harvested,
18.22 location and timing of harvest, and method of harvest. A commercial harvest permit is
18.23 valid for one year and may not be transferred to another person.

18.24 Subp. 4. **Criteria for issuing commercial harvest permits.** The commissioner shall
18.25 consider the relevant criteria in part 6280.0250, subpart 3a, when determining whether to
18.26 approve or deny a commercial harvest permit. The commissioner shall deny a commercial

19.1 harvest permit application in waters that are infested with prohibited or regulated invasive
19.2 species under chapter 6216 and Minnesota Statutes, chapter 84D, unless it is feasible and
19.3 practical to apply permit conditions that would prevent the spread of invasive species. The
19.4 commissioner shall deny a commercial harvest permit application in waters where there is
19.5 not enough information on the aquatic plant community to make an informed decision.

19.6 Subp. 5. **Annual report.** The commissioner shall require the holder of a commercial
19.7 harvest permit to report, no later than December 31 of each year, on the forms provided,
19.8 information on permitted operations. Failure to report is grounds for refusing to issue
19.9 such permits in the future.

19.10 **6280.0600 APPROVAL OF PESTICIDES AND METHODS USED FOR AQUATIC**
19.11 **PLANT MANAGEMENT OR AQUATIC NUISANCE CONTROL.**

19.12 Subpart 1. **Pesticides must be labeled for use in aquatic sites.** Pesticides used to
19.13 control aquatic ~~macrophytes~~ plants or algae in public waters must be registered by the
19.14 United States Environmental Protection Agency (EPA) and the Minnesota Department of
19.15 Agriculture (MDA), including pesticides registered pursuant to the Federal Insecticide,
19.16 Fungicide, and Rodenticide Act (FIFRA), United States Code, title 7, sections 136c
19.17 (experimental use permit), 136p (emergency exemption), and 136v (special local need),
19.18 and must be approved for use in aquatic sites by the EPA and by the commissioner
19.19 in consultation with the MDA.

19.20 Subp. 2. **Instructions and precautions of pesticides must be followed.** Pesticides
19.21 must be applied according to the label and labeling provided by the manufacturer and
19.22 other water use restrictions imposed by the department or the MDA. Pesticide-treated
19.23 areas must be posted with signs provided or approved by the ~~department~~ commissioner
19.24 bearing the permit number; the name of pesticide used; the date of treatment; and dates
19.25 on which water from the treated area may be safely used for swimming, fishing, and
19.26 other uses, as specified on the product label or by the department. The department, in

20.1 consultation with the MDA, may require water use restrictions in addition to those on the
20.2 product label. The permittee or agent is responsible for the placement and removal of
20.3 required signs. The treatment area must be posted in such a way that people entering from
20.4 any direction can see the signs, or as otherwise prescribed in the permit. The treatment
20.5 area must be posted for at least 24 hours or the length of time of the longest water use
20.6 restriction on the pesticide label, whichever is greater.

20.7 Subp. 3. **Pesticide control of aquatic ~~macrophytes~~ plants in watercourses.**
20.8 Pesticides may be used to control aquatic ~~macrophytes~~ plants in flowing waters, provided
20.9 that the vegetation is present to such a degree that it impedes the flow of water and that
20.10 the flow rate will not carry the pesticide beyond the treatment area during the period of
20.11 water use restriction specified on the pesticide label. The pesticide to be used must be
20.12 labeled for use in flowing water.

20.13 **6280.0700 COMMERCIAL ~~APPLICATORS AND OPERATORS~~ PESTICIDE AND**
20.14 **MECHANICAL CONTROL.**

20.15 Subpart 1. **Pesticide applicators.** A person or firm may not apply pesticides of any
20.16 kind for hire for aquatic plant management or aquatic nuisance control on public waters
20.17 unless a commercial aquatic pest control license has been obtained from the Minnesota
20.18 Department of Agriculture.

20.19 Subp. 2. **Commercial ~~aquatic plant harvesters~~ mechanical control.** A person
20.20 or firm may not ~~cut, pull, or harvest~~ mechanically control aquatic ~~macrophytes~~ plants
20.21 on public waters for hire without first obtaining a commercial ~~aquatic plant harvester's~~
20.22 mechanical control permit issued by the ~~department~~ commissioner. ~~Issuance of a~~
20.23 ~~commercial aquatic plant harvester's permit is contingent upon determination by the~~
20.24 ~~commissioner that the applicant has adequate equipment and knowledge to properly~~
20.25 ~~harvest aquatic macrophytes in public waters.~~ A person must complete an aquatic plant
20.26 management workshop provided by the commissioner before conducting control activities

21.1 under a commercial mechanical control permit. The commissioner may require follow-up
 21.2 workshops as needed to update permittees on new regulations or other relevant issues.

21.3 This subpart does not apply to persons or firms using power-operated earth-moving
 21.4 equipment in public waters under terms of permits issued by the ~~department~~ commissioner
 21.5 for work in the bed of public waters as provided by Minnesota Statutes, section 103G.245,
 21.6 or by a license permitting the passage of utilities over public lands and waters as provided
 21.7 by Minnesota Statutes, section 84.415. Persons or firms that use ~~aquatic vegetation~~
 21.8 ~~cutting and harvesting~~ mechanical control equipment must thoroughly inspect, remove,
 21.9 and properly dispose of plant parts from the equipment before transporting it to another
 21.10 body of water.

21.11 **6280.0900 ~~AMENDMENTS~~ AUTHORITY TO AMEND AND REVOCATION**
 21.12 **REVOKE PERMITS.**

21.13 Subpart 1. **Amendments and revocation.** The commissioner may amend or revoke
 21.14 ~~any commercial aquatic plant harvester's permit or an~~ APM permit or suspend aquatic
 21.15 plant management or commercial harvest activities without prior notice whenever it
 21.16 has been determined that it is necessary to protect the interests of the public, to protect
 21.17 human life, or to protect fish, wildlife, and native plants ~~or for violation of the terms and~~
 21.18 ~~conditions of APM permits, this chapter, or other applicable laws or rules.~~

21.19 Subp. 1a. **Permit revocation for violation of rules.**

21.20 A. A person who receives an APM-related conviction may be subject to an
 21.21 APM-related permit revocation. The commissioner shall consider the following criteria in
 21.22 determining whether to invoke an APM-related permit revocation:

21.23 (1) the extent and number of violations leading to the conviction;

21.24 (2) the extent and number of prior aquatic plant management-related
 21.25 convictions; and

22.1 (3) the extent to which the person had received prior warnings regarding
22.2 unlawful aquatic plant management activities.

22.3 B. A person who receives two separate APM-related convictions in a three-year
22.4 period is subject to an APM-related permit revocation for one year from the date of the
22.5 second conviction. A person who receives an APM-related conviction after being subject
22.6 to an APM-related permit revocation is subject to an APM-related permit revocation for
22.7 five years from the date of the conviction. The commissioner shall require a person who
22.8 has had an APM-related permit revocation to participate in an aquatic plant management
22.9 workshop before the person can receive an APM, commercial mechanical control, or
22.10 commercial harvest permit or apply pesticides to public waters. If the commissioner
22.11 requires a person to participate in a workshop before receiving a permit, the commissioner
22.12 shall make the workshop available so as not to delay the issuance of the permit. The
22.13 commissioner may overturn an APM-related permit revocation after review pursuant to
22.14 part 6280.1100, subpart 1.

22.15 C. An APM-related conviction is considered to be separate from a prior
22.16 APM-related conviction if it arises from a course of conduct that is separate from the
22.17 conduct that resulted in the prior conviction.

22.18 Subp. 2. **Amendments by request.** The commissioner may amend a commercial
22.19 ~~aquatic plant harvester~~ mechanical control, APM, or commercial harvest permit or an
22.20 ~~APM permit~~ upon request from the permittee if the amendment maintains adequate
22.21 protection for interests of the public, human life, and fish, wildlife, and native plants.

22.22 **6280.1000 VARIANCE AND LAKE VEGETATION MANAGEMENT PLAN.**

22.23 Subpart 1. **Variance.** ~~Provisions of this chapter may be waived under special~~
22.24 ~~circumstances when deemed necessary by the commissioner for the protection and~~
22.25 ~~preservation of the natural resources of the state.~~

23.1 A. The commissioner may issue APM permits with a variance from one or more
23.2 of the provisions of parts 6280.0250, subpart 4, and 6280.0350, except that no variance
23.3 may be issued for part 6280.0250, subpart 4, items B and C. Variances may be issued to
23.4 control invasive aquatic plants, protect or improve aquatic resources, provide riparian
23.5 access, or enhance recreational use on public waters. The commissioner shall make a
23.6 determination that there are exceptional circumstances or special or unique conditions
23.7 before granting a variance to control native aquatic plants to provide riparian access or
23.8 enhance recreational use.

23.9 B. The following criteria shall be considered to determine if a variance is justified
23.10 to control invasive aquatic plants or protect or improve aquatic resources in public waters:

23.11 (1) whether the variance has the potential to increase or protect native
23.12 aquatic plants, improve water quality, or provide other ecological benefits;

23.13 (2) whether the variance has the potential to prevent the spread of invasive
23.14 aquatic plants;

23.15 (3) whether the variance would further research or evaluation of invasive
23.16 aquatic plant control; and

23.17 (4) whether there is a feasible alternative to control invasive aquatic plants
23.18 or improve aquatic resources.

23.19 C. The following criteria shall be considered to determine if a variance is
23.20 justified to provide riparian access or enhance recreational opportunities on public waters:

23.21 (1) the habitat, water quality, and erosion control value of the aquatic plants
23.22 in the proposed permit area and the amount of aquatic habitat reduction that would occur
23.23 under the proposed control;

23.24 (2) the abundance of invasive aquatic plants in the proposed permit area;

23.25 (3) the selectivity of the proposed control for invasive aquatic plants;

24.1 (4) whether shoreline development is limited on the water subject to the
24.2 proposed variance such that exceeding the individual property limits in part 6280.0350,
24.3 subpart 1a, would not have potential to combine with other aquatic plant control to
24.4 substantially reduce aquatic habitat or result in other undesirable ecological impacts;

24.5 (5) the presence of extensive mats of aquatic plants at the surface that
24.6 substantially interfere with recreation in the proposed permit area, but only if this is not a
24.7 natural condition of a shallow lake, shallow bay, or wetland;

24.8 (6) the compatibility of the proposed variance with the regulatory or
24.9 management classification of the water and adjacent lands, including, but not limited to,
24.10 natural environment lakes, special protection districts, scientific and natural areas, wildlife
24.11 management areas, aquatic management areas, designated wildlife lakes, and wild and
24.12 scenic rivers;

24.13 (7) whether the variance, if granted, would alter the essential character
24.14 of the public water; and

24.15 (8) whether there is a feasible alternative to provide riparian access or
24.16 enhance recreational access.

24.17 D. The commissioner may require monitoring of aquatic plants, water quality, or
24.18 other parameters as a condition of an APM permit that includes a variance.

24.19 E. The commissioner may require practical and feasible measures to mitigate
24.20 the adverse effects on aquatic habitat as a condition of an APM permit that includes
24.21 a variance. Mitigation measures may include, but are not limited to, reduction in the
24.22 number or size of docks and other water-oriented structures, removal of shoreline riprap
24.23 and retaining walls, restoration of natural riparian vegetation, and restoration of emergent
24.24 and floating-leaf aquatic plants.

24.25 **Subp. 2. Lake vegetation management plan (LVMP).**

25.1 ~~A. This chapter may be modified or waived in accordance with~~ A lake
25.2 vegetation management plan (LVMP) approved by the commissioner: may authorize a
25.3 variance from the provisions of this chapter, if permitted under subpart 1, item A, to
25.4 control invasive species, protect or improve aquatic resources, provide riparian access,
25.5 and enhance recreational use on public waters. The commissioner shall require an APM
25.6 permit applicant to develop an LVMP before granting a variance if the proposed control
25.7 proposes methods or actions that need to be evaluated to determine if the goals of the
25.8 variance are met. If a public water has an LVMP approved by the commissioner, APM
25.9 permits shall be issued in accordance with the plan and APM permit applications that are
25.10 inconsistent with the plan may be denied.

25.11 B. The commissioner shall provide the format for an LVMP. An LVMP must
25.12 contain the following information before being approved by the commissioner:

25.13 (1) a description of the lake and its water quality including location, size,
25.14 and clarity;

25.15 (2) a description of the aquatic plant community;

25.16 (3) a description of the public participation process used in developing
25.17 the plan;

25.18 (4) a description of the problems addressed in the plan;

25.19 (5) a statement of the goal for management of aquatic plants;

25.20 (6) a description of the proposed actions to achieve the plan's goal and a
25.21 map showing the location of proposed actions; and

25.22 (7) conditions of APM permits that would be issued as part of the plan,
25.23 including identification of variances requested under subpart 1.

26.1 C. The commissioner shall require a monitoring plan for an LVMP if the plan
26.2 proposes methods or actions that need to be evaluated to determine whether the plan's
26.3 goals will be met.

26.4 **6280.1100 REVIEW AND APPEAL OF PERMIT DECISION.**

26.5 Subpart 1. **Commissioner's review.** If an APM, commercial mechanical control, or
26.6 commercial harvest permit is granted with conditions ~~or is~~, modified, denied, suspended,
26.7 or revoked, the applicant may file with the commissioner a written request for review.
26.8 The commissioner shall review the ~~permit application~~ relevant information and render a
26.9 decision within 15 working days of the request for review.

26.10 Subp. 2. **Contested case hearing.** If the applicant wishes to appeal the decision
26.11 of the commissioner after review under subpart 1, the applicant may file with the
26.12 commissioner a written request for a contested case hearing under Minnesota Statutes,
26.13 chapter 14.

26.14 **6280.1200 PENALTY.**

26.15 ~~The destruction of aquatic macrophytes in public waters without an APM permit~~
26.16 ~~issued pursuant to parts 6280.0100 to 6280.1100 or in violation of this chapter or the~~
26.17 ~~terms of such a~~ an APM, commercial mechanical control, or commercial harvest permit
26.18 is a petty misdemeanor.

26.19 **REPEALER.** Minnesota Rules, parts 6280.0100, subparts 5, 10, and 14; 6280.0350,
26.20 subparts 1, 2, 5, and 6; and 6280.0800, are repealed.

26.21 **EFFECTIVE PERIOD.** The amendments to Minnesota Rules, parts 6280.0100;
26.22 6280.0250; 6280.0350; 6280.0450; 6280.0600; 6280.0700; 6280.0900; 6280.1000;
26.23 6280.1100; and 6280.1200, are effective January 1, 2009. Minnesota Rules, part
26.24 6280.0550, and the repealer are effective January 1, 2009.