

1.1 **Department of Natural Resources**

1.2 **Adopted Permanent Rules Relating to Aquatic Plant Management**

1.3 The rules proposed and published at State Register, Volume 33, Number 12, pages
1.4 538-548, September 22, 2008 (33 SR 538), are adopted with the following modifications:

1.5 **6280.0100 DEFINITIONS.**

1.6 Subp. 2d. **Aquatic plant management (APM)-related permit revocation.**

1.7 "Aquatic plant management (APM)-related permit revocation" includes the revocation of
1.8 an APM, commercial mechanical control, or commercial harvest permit ~~and ineligibility~~
1.9 ~~to apply aquatic pesticides to public waters under an APM permit.~~

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

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

1.22 Subp. 16. **Submersed aquatic plants.** "Submersed aquatic plants" means aquatic
1.23 plants that grow beneath the surface of the water, except for emergent flowers, fruits, and
1.24 leaves, and may produce floating leaves but have mostly submersed leaves, including,
1.25 ~~but not limited to,~~ species in the genera *Potamogeton*, *Callitriche*, and *Ranunculus* and

2.1 macro-algae in the genera *Chara* and *Nitella* and excluding plankton and filamentous
2.2 algae.

2.3 **6280.0250 STANDARDS FOR AQUATIC PLANT MANAGEMENT PERMIT**
2.4 **ISSUANCE.**

2.5 Subp. 3. **Justification required for issuance of permits.** Permits for the control of
2.6 emergent and floating-leaf aquatic plants, ~~including, but not limited to, wild rice, bulrush,~~
2.7 ~~cattail, and water lilies,~~ will not be issued unless the commissioner determines sufficient
2.8 justification exists. The commissioner will consider the relevant criteria in subpart 3a
2.9 and balance the reasonable needs of riparian owners to gain access and use public water
2.10 against the need to protect emergent and floating-leaf aquatic plants so that the integrity
2.11 and value of the aquatic plant community is maintained.

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

2.17 J. the presence of public land adjacent to the public water and the compatibility
2.18 of the proposed permit with the management of the public land; ~~and~~

2.19 K. the presence of an excessive algae bloom; and

2.20 L. the presence of wild rice.

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

2.24 **6280.0350 AQUATIC PLANT CONTROL.**

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

3.7 B. control may be allowed on more than 100 feet of shoreline owned or leased
3.8 by resorts, commercial campgrounds, apartments, condominium complexes, townhouse
3.9 associations, government units, and marinas; and

3.10 Subp. 4. **Pesticide control restrictions.**

3.11 C. Item B expires five years after the effective date of this item. Before the
3.12 expiration of item B, the commissioner shall develop a lake vegetation management plan
3.13 as provided under part 6280.1000, subpart 2, for each of the waters listed in item B. The
3.14 commissioner shall provide opportunities for the public to participate in the planning
3.15 process, including a notice or news release in a local newspaper, at least one public
3.16 meeting, and a 30-day comment period.

3.17 **6280.0450 APM PERMIT REQUIREMENTS.**

3.18 Subp. 1a. **Landowner approval.** Before issuing an APM permit, the commissioner
3.19 shall require dated signatures of approval from all landowners with whose shorelines
3.20 adjacent to proposed treatment areas before issuing an APM permit will be treated,
3.21 except that for ~~lake-wide~~ lakewide control of algae, the commissioner shall require
3.22 dated signatures of approval from a majority of landowners on the lake ~~and except that~~
3.23 ~~the requirement for landowner signature approval may be waived if the commissioner~~
3.24 ~~determines that aquatic plant control is necessary to protect aquatic habitat.~~ The signatures
3.25 may be provided in an electronic format.

4.1 Subp. 1b. **Landowner approval waiver.** The requirements for landowner approval
4.2 in subpart 1a may be waived if the commissioner determines that aquatic plant control is
4.3 necessary to protect aquatic habitat.

4.4 **6280.0550 COMMERCIAL HARVEST OF AQUATIC PLANTS.**

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

4.10 **6280.0900 AUTHORITY TO AMEND AND REVOKE PERMITS.**

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

4.12 B. A person who receives two separate APM-related convictions in a three-year
4.13 period is subject to an APM-related permit revocation for one year from the date of the
4.14 second conviction. A person who receives an APM-related conviction after being subject
4.15 to an APM-related permit revocation is subject to an APM-related permit revocation for
4.16 five years from the date of the conviction. The commissioner shall require a person who
4.17 has had an APM-related permit revocation to participate in an aquatic plant management
4.18 workshop before the person can receive an APM, commercial mechanical control, or
4.19 commercial harvest permit ~~or apply pesticides to public waters~~. If the commissioner
4.20 requires a person to participate in a workshop before receiving a permit, the commissioner
4.21 shall make the workshop available so as not to delay the issuance of the permit. A person
4.22 who is subject to an APM-related permit revocation may request review pursuant to
4.23 part 6280.1100, subpart 1, during which time the revocation will be suspended until all
4.24 administrative appeals are exhausted. The commissioner may overturn an APM-related
4.25 permit revocation after review pursuant to part 6280.1100, subpart 1.

5.1 **6280.1000 VARIANCE AND LAKE VEGETATION MANAGEMENT PLAN.**

5.2 Subpart 1. **Variance.**

5.3 A. The commissioner may issue APM permits with a variance from one or more
5.4 of the provisions of parts 6280.0250, subpart 4, and 6280.0350, except that no variance
5.5 may be issued for part 6280.0250, subpart 4, items B and C. Variances may be issued to
5.6 control invasive aquatic plants, protect or improve aquatic resources, provide riparian
5.7 access, or enhance recreational use on public waters. The commissioner shall make a
5.8 determination that there are exceptional circumstances or special or unique conditions
5.9 based on the criteria in items B and C before granting a variance to control native aquatic
5.10 plants to provide riparian access or enhance recreational use.

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

5.13 (6) the compatibility of the proposed variance with the regulatory or
5.14 management classification of the water and adjacent lands, including, ~~but not limited to,~~
5.15 natural environment lakes, special protection districts, scientific and natural areas, wildlife
5.16 management areas, aquatic management areas, designated wildlife lakes, and wild and
5.17 scenic rivers;

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

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

6.1 A. A lake vegetation management plan (LVMP) approved by the commissioner
 6.2 may authorize a variance from the provisions of this chapter, if permitted under subpart 1,
 6.3 item A, to control invasive species, protect or improve aquatic resources, provide riparian
 6.4 access, and enhance recreational use on public waters. The commissioner shall require an
 6.5 APM permit applicant to develop an LVMP before granting a variance if the proposed
 6.6 control proposes methods or actions that need to be evaluated to determine if the goals
 6.7 of the variance are met. If a public water has an LVMP approved by the commissioner,
 6.8 all APM permits within that public water shall be issued in accordance with the plan and
 6.9 APM permit applications that are inconsistent with the plan may be denied.

6.10 **6280.1100 REVIEW AND APPEAL OF PERMIT DECISION.**

6.11 Subpart 1. **Commissioner's review.** If an APM, commercial mechanical control,
 6.12 or commercial harvest permit is granted with conditions, modified, denied, suspended,
 6.13 or revoked, the applicant may file with the commissioner a written request for review.
 6.14 The commissioner shall review the relevant information and render a decision within 15
 6.15 working days of the request for review. The commissioner shall notify the applicant of the
 6.16 right to appeal the decision under subpart 2.

6.17 Subp. 2. **Contested case hearing.** ~~If the~~ An applicant ~~wishes to~~ requesting an
 6.18 appeal of the decision of the commissioner after review under subpart 1, ~~the applicant~~
 6.19 ~~may shall~~ file with the commissioner a written request for a contested case hearing under
 6.20 Minnesota Statutes, chapter 14.

6.21 **6280.1200 PENALTY.**

6.22 Violation of this chapter or the terms of an APM, commercial mechanical control, or
 6.23 commercial harvest permit is a ~~petty~~ misdemeanor.

6.24 ~~**EFFECTIVE PERIOD.** The amendments to Minnesota Rules, parts 6280.0100;~~
 6.25 ~~6280.0250; 6280.0350; 6280.0450; 6280.0600; 6280.0700; 6280.0900; 6280.1000;~~

- 7.1 ~~6280.1100, and 6280.1200, are effective January 1, 2009. Minnesota Rules, part~~
- 7.2 ~~6280.0550, and the repealer are effective January 1, 2009.~~