

Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155-40



March 9, 2009

Albin A. Mathiowetz, Chief Clerk
Minnesota House of Representatives
211 State Capitol
St. Paul, MN 55155

Peter S. Watson
Secretary of the Senate
75 Rev. Dr. Martin Luther King Jr. Blvd.,
Room 231
St. Paul, MN 55155-1606

Senator Ellen Anderson
Chair, Senate Environment and Natural
Resources Budget Division
120 Capitol
St. Paul, MN 55155

Senator Satveer Chaudhary
Chair, Environment and Natural Resources
Policy Committee
205 Capitol
St. Paul, MN 55155

Rep. Jean Wagenius
Chair, House Environment & Natural
Resources Finance Division
449 State Office Building
St. Paul, MN 55155

Rep. Kent Eken
Chair, House Environment Policy &
Oversight Committee
575 State Office Building
St. Paul, MN 55155

RE: In the matter of proposed rules of the State Department of Natural Resources Relating to Aquatic Plant Management Permit Fees.

Dear Legislators:

The 2008 legislature directed the DNR to establish aquatic plant management (APM) permit fees that recover the full cost of administering and enforcing the APM permit program. As outlined in that legislation, *The fees are to be set by rule based upon the costs of receiving, processing, analyzing, and issuing the permit and additional costs incurred after the application to inspect and monitor activities authorized by the permit, and enforce aquatic plant management rules and permit requirements* (M.S. 103G.615, subd. 2). The legislature also eliminated from M.S. 103G.615 the \$35 permit fee for aquatic plant control at individual properties and the \$750 maximum amount that can be charged for a group permit. Finally, the legislature directed that the rule must not take effect until 45 legislative days after it has been reported to the legislature. This letter and accompanying information is intended to meet this legislative requirement.

To determine the full cost of administering and enforcing the APM permit program the DNR reviewed costs incurred by the divisions of enforcement, ecological resources, and fish and wildlife over the last three years. All three divisions have staff involved in APM administrative or enforcement responsibilities. The average program cost over the last three years was about \$1,030,000, which is substantially higher than the approximately \$300,000 that is currently collected annually by permit fees.



The DNR formed an external advisory group of stakeholders to get input on how the APM permit fee structure should be modified to generate the additional revenue. The advisory group included representatives from three lake associations, a representative from Minnesota Waters and Minnesotan's for Healthy Lakes, a commercial plant harvester, two commercial aquatic pesticide applicator companies, and a manufacturer of automated aquatic plant control devices. The advisory group met twice (October 1 and October 23, 2008). In addition, DNR received other input on fees in response to the notice to request comments on aquatic plant fee rules published in the state register on July 28, 2008.

The input we received from the advisory group was to keep the permit fee as low as possible and keep the fee schedule as simple as possible. External stakeholders believed that a permit fee in excess of fifty or sixty dollars would be a disincentive for property owners to comply with the APM program. The external stakeholders were willing to eliminate permit fee incentives for group permits and multi-year permits to keep the fee as low as possible.

The DNR considered several different permit fee options to recover program costs. Those included:

- 1) Keep the current fee structure but proportionally increase all existing permit fees to raise the necessary revenue. That option would have increased the basic \$35 permit fee (that previously was in statute) to \$110 and the maximum group permit fee to \$2,200. That option was viewed as too expensive for individual permit holders.
- 2) Charge a higher fee for permits that require a site inspection. Site inspections require DNR staff to travel to the site where APM work is proposed, which increases the agency's cost of issuing the permit. Once a property has been inspected and a permit issued, future permits generally do not require an inspection and are less costly to administer. However, the advisory group believed that the expense of the initial permit under this option, \$130 (\$75 permit fee + \$55 inspection fee), would be a strong disincentive for lakeshore homeowners to obtain a permit. DNR staff believed that an inspection fee would increase the complexity of calculating the correct fee resulting in more mistakes in permit applications, delay in issuance of some permits, and increased DNR administrative costs. This option was not chosen because of its administrative complexity and the high initial cost for first-time APM permit applicants.
- 3) Maintain a flat fee structure, but eliminate or reduce existing incentives in the fee structure to reduce the magnitude of the fee increase. This is the option the DNR is proposing.

The draft rule proposes a flat \$90 permit fee for near-shore removal of aquatic vegetation. This option eliminates the existing financial incentive associated with group permits. Group permits will still be issued, but there is no reduced permit cost to individuals participating on the permit. This option also reduces the incentive for three-year permits issued for automated aquatic plant control devices. Individuals receiving a three-year permit would pay two-thirds the cost of three 1-year permits. This option maintains the incentive for channels through emergent vegetation. Individuals requesting channel permits will pay \$90 the first year the permit is issued and the

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permit will remain in effect for as long as they own their property, provided certain rule requirements are met. This option adds permit fees for some activities (e.g., commercial mechanical control permits and permits allowing the commercial harvest of aquatic plants for sale purposes) that previously received permits at no cost. No-cost permits are retained to transplant (restore) aquatic vegetation in public waters and remove a floating bog that has lodged against a person's shoreline. Permits for lake-wide control of Eurasian watermilfoil or curly-leaf pondweed (invasive species) would also be issued at no cost.

The fee structure outlined in the attached rule revision will generate the required revenue to recover the costs of the APM program based on current costs and permit numbers. The proposed fee schedule will not increase administrative costs of the program.

A strikeout/underline version of the proposed rule, a stripped version of the rule, and a table showing the proposed fee structure and projected annual revenues are included as attachments.

The agency is currently working on the Statement of Need and Reasonableness for this rule. When that document is completed, the Notice to Adopt will be published. Our goal is to have new fee structure in place by January 1, 2010

Questions about the proposed fee structure should be directed to Steve Enger of my staff at 651-259-5092.

Sincerely,



Mark Holsten, Commissioner
Department of Natural Resources

Attachments

c: Jess Hopemann
Legislative Reference Library
645 State Office Building
St. Paul, MN 55155

Division of Ecological Resources Proposed Aquatic Plant Permit Fee Rule Changes
(stripped version)

Subp. 4. **APM permit application fees.** Items A to G apply to APM permit fees.

A. When application is made to control two or more shoreline nuisance conditions, only the larger fee applies. A permit application fee, in the form of a check or money order payable to the Minnesota Department of Natural Resources, must accompany each permit application when required by the following fee schedule:

(1) to control aquatic plants by pesticide or mechanical means: \$90 for each contiguous parcel of shoreline owned by an owner. Except that the permit fee for a permit of three years duration as provided in 6280.0450, Subp. 3 item A is \$180; and

(2) to control filamentous algae, snails that carry swimmer's itch, or leeches, singly or in combination: \$40 for each contiguous parcel of shoreline with a distinct owner.

B. For offshore control of submersed aquatic plants, by pesticide or mechanical means: \$ 90.

C. To control plankton algae or members of the duckweed family and the genus *Azolla* by lakewide or baywide application of approved pesticides: \$90.

D. There is no charge for permits to:

(1) transplant aquatic plants in public waters;

(2) move a floating bog in public waters or remove a floating bog that has recently become lodged against a person's property; and

(3) to control purple loosestrife (*Lythrum salicaria*), or for lake wide Eurasian watermilfoil (*Myriophyllum spicatum*) or curly-leaf pondweed (*Potamogeton crispus*) control programs.

E. The fee for a commercial mechanical control permit: \$100/year.

F. If the fee does not accompany the application, the applicant will be notified and no action will be taken on the application until the fee is received.

G. The fee is refundable only when the application is withdrawn, prior to issuance or denial of the permit, or the commissioner determines that the activity does not require a permit.

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

6280.0500 COMMERCIAL HARVEST OF AQUATIC PLANTS

[For text of subps. 1-4, see M.R.]

Subp. 6. **Permit fee.** The fee for a commercial harvest permit is \$100 for each public water.

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~~(2) except as provided under subitems (6) and (7), to control nonrooted aquatic vegetation by pesticide means: \$20 for each contiguous parcel of shoreline owned by an owner, up to a maximum of \$200;~~

~~(2) to control filamentous algae, snails that carry swimmer's itch, or leeches, singly or in combination: \$40 for each contiguous parcel of shoreline with a distinct owner.~~

~~B.(3) to fFor offshore control submerged of submersed rooted aquatic vegetation plants in an area larger than 2,500 square feet, by pesticide or mechanical means: \$3590 for the first acre or portion of an acre and \$2 for each additional acre or portion of an acre to be controlled, up to a maximum of \$750;~~

~~C. To control plankton algae or members of the duckweed family and the genus *Azolla* by lakewide or baywide application of approved pesticides: \$90.~~

~~(4) to gather or harvest aquatic macrophytes or plant parts, other than wild rice, for sale purposes: no charge;~~

D. There is no charge for permits to:

~~(5) (1) to transplant aquatic macrophytes plants or bog into in public waters: ;~~

~~(6) to control chara, filamentous algae, snails that carry swimmer's itch, or leeches, singly or in combination: \$4 per 100 shoreline feet or portion proposed to be treated, up to a maximum of \$200;~~

~~(7) to control algae by lakewide application of copper sulfate or other approved algicide: \$20 plus 40 cents per acre to be treated, up to a maximum of \$200; and~~

(2) to move a floating bog in public waters or remove a floating bog that has recently become lodged against a person's property; and

(8) (3) to control purple loosestrife (*Lythrum salicaria*): ~~no charge~~, or for lake wide Eurasian watermilfoil (*Myriophyllum spicatum*) or curly-leaf pondweed (*Potamogeton crispus*) control programs.

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~~(2) except as provided under subitems (6) and (7), to control nonrooted aquatic vegetation by pesticide means: \$20 for each contiguous parcel of shoreline owned by an owner, up to a maximum of \$200;~~

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Table 1. Proposed APM Permit fees for control of aquatic plants or nuisances adjacent to riparian property

Permit Type (permit duration)	Permittees	Fee (\$)	% Base Fee Pd	Revenue (\$)
Aquatic plant control - new and renewal (annual)	9,679	\$90	100%	\$871,110
Channels through emergent plants (for duration of property ownership)	91	\$90	100%	\$8,190
Automated aquatic plant control devices used in limited area (3 years)	515	\$180	66%	\$92,700
Swimmers itch and leeches control (annual)	316	\$40	100%	\$12,640
Filamentous algae control (annual)	85	\$40	100%	\$3,400
Total				\$988,040

Table 2. Proposed fees for lake or bay-wide and offshore aquatic plant control

Permit Type (permit duration)	Permits	Fee (\$)	Revenue (\$)
Lake or bay-wide plankton algae or duckweed control (annual)	15	\$90	\$1,350
Offshore chemical control (annual)	87	\$90	\$7,830
Offshore mechanical control (annual)	34	\$90	\$2,992
Total			\$12,172

Table 3. Proposed fees for Commercial Activities and activities with no permit fee.

Permit Type (permit duration)	Permits	Fee (\$)	Revenue (\$)
Commercial mechanical control permit (annual)	21	\$100	\$2,100
Commercial harvest of aquatic plants for sale (annual)	8	\$100	\$800
Removal of floating bog (annual)		\$0	\$0
Plant or transplant aquatic plants (up to 3 year duration)		\$0	\$0
Lakewide control of curly-leaf pondweed (annual)		\$0	\$0
Total			\$2,900

Table 1 Total	\$988,040
Table 2 Total	\$12,172
Table 3 Total	\$2,900
Aquatic pesticide enforcement grant from EPA	\$23,500

Total Revenue **\$1,026,612**