



DNR and Public Drainage Systems

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What We'll Cover

- **Relevant statutes and rules**
- **DNR engagement in drainage system repairs**
- **DNR involvement in drainage improvement projects**

Relevant Statutes, 103G

- **103G.245, subd. 1. Permit requirement.** **Except** as provided in subdivisions 2, 11, and 12, the state, a political subdivision of the state, a public or private corporation, or a person must have a public-waters-work permit to:
 - (1) construct, reconstruct, remove, abandon, transfer ownership of, or make any change in a reservoir, dam, or waterway obstruction on public waters; or
 - (2) change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the beds of public waters.
- **103G.245, subd. 2. Exceptions.** A public waters work permit is not required for:
 - (1) **work** in altered natural watercourses that are part of drainage systems established under chapter 103D or 103E if the work in the waters is undertaken according to chapter 103D or 103E;
 - (2) a **drainage project** for a drainage system established under chapter 103E that does not substantially affect public waters; or
 - (3) culvert restoration or replacement of the same size and elevation, if the restoration or replacement does not impact a designated trout stream.

Relevant Rules, 6115

- **6115.0200 EXCAVATION OF PUBLIC WATERS. Subp. 5. No permit required.** No permit for **excavation** is required for the following activities unless prohibited in subpart 3:
 - C. for **repair** of a public drainage system lawfully established under Minnesota Statutes, chapters 103D and 103E, and sponsored by the public drainage authority consistent with the definition of "repair" in Minnesota Statutes, section 103E.701, subdivision 1.

Relevant Statutes, 103E

- **103E.011, subd. 3. Permission of commissioner for **work** in public waters; application.** (a) The drainage authority must receive permission from the commissioner to: (1) remove, construct, or alter a dam affecting public waters; (2) establish, raise, or lower the level of public waters; or (3) drain any portion of a public water.
(b) The petitioners for a proposed drainage project or the drainage authority may apply to the commissioner for permission to do work in public waters or for the determination of public waters status of a water body or watercourse.
- **103E.701, subd. 2. **Repairs** affecting public waters.** Before a repair is ordered, the drainage authority must notify the commissioner if the repair may affect public waters.

Relevant Statutes, 103E

- **103E.255 COMMISSIONER'S PRELIMINARY ADVISORY REPORT.** The commissioner shall make a preliminary advisory report to the drainage authority with an opinion about the adequacy of the preliminary survey report. The commissioner shall state any additional investigation and evaluation that should be done relating to public waters that may be affected and environmental, land use, and multipurpose water management criteria in section 103E.015, subdivision 1, and cite specific portions of the preliminary survey report that are determined inadequate.
- **103E.301 COMMISSIONER'S FINAL ADVISORY REPORT.** (a) The commissioner shall examine the detailed survey report and within 30 days of receipt make a final advisory report to the drainage authority. The final advisory report must state whether the commissioner:
 - (1) finds the detailed survey report is incomplete and not in accordance with the provisions of this chapter, specifying the incomplete or nonconforming provisions;
 - (2) approves the detailed survey report as an acceptable plan to drain the property affected;
 - (3) does not approve the plan and recommendations for changes; (etc.)

Relevant Statutes, 103D

- 103D.605 and 103D.711, Subd. 5 . - Requires that **engineer's report** be transmitted to the **board and the director**.
- 103D.711 Subd. 2 - Specifies **Engineer's report** requirements (as apposed to survey reports under 103E)
- 103D.625, Subd. 3 and 4 direct the WD to 103E proceedings for drainage projects

DNR and Drainage System Repairs

- Communication and early coordination helpful
- When is it most important?
 - May affect a PW basin or wetland
 - Cleanouts within PWs
 - Threatened or endangered species
 - EAW required
- Typical DNR waters-related drainage system repair jurisdiction
 - No permit for repairs, with some exceptions
 - Permission if 103E.011 conditions met
- But remember, work must be 103E/D

DNR and Drainage Projects

- Communication and early coordination helpful
 - PW impacts and OHWM surveys
 - Project Requiring EAW
 - Involving Public Land
 - Wetlands
 - Significant Habitats, or
 - Threatened & Endangered Species
- DNR permit required if will substantially affect public waters
- Permission required if 103E.011 conditions met

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Considerations for Substantial Affects

- Drainage of PWs
- Downstream impacts to PWs
- Lowering a streambed
- Triggers Mandatory Env. Review
- Conversion of a heavy dashed line to a subsurface tile line
- Detrimental to significant fish and wildlife habitat
- Impacts to state- or federally-listed threatened or endangered species

DNR Considerations for Permit vs Permission

Permit

- Substantially affects public waters
- Water level control changes are proposed
- Conditions or other requirements needing authority to enforce – ongoing regulatory control through a permit mechanism.
- Value of tracking project over time is high

Permission

- No outlet elevation control alterations (installation of new culvert/weir not proposed)
- Mitigation is sufficient to eliminate or replace impacts of the proposed work