

New Dock Regulations to Issue Sooner Than Earlier Reported

The COLA Call

by Ed Mutsch

The process to effect the first update of Minnesota shoreland regulations in twenty years is presently underway and has been described in some detail in earlier COLA Call columns (May 31st & June 21st). The new regulations are projected to be promulgated in early 2010. However, one key aspect and a frequently rancorous hot button issue, namely the issue of docks, has been placed on a separate track, outside the purview of this process. The history and philosophy of Minnesota regulation of docks on public waters, including the January 2008 DNR publication of General Permit 2008-0401, was the subject of the August 16th column. This permit essentially grandfathered in most existing docks and was to remain in effect for five years while new dock regulations were being formulated. [Earlier COLA Call columns can be found at www.mnwaters.org/hubbardcola.]

This DNR approach to dock regulation was troublesome in that it would have allowed the continued proliferation of frequently unsightly, dangerous, and environmentally destructive docks and platforms during the five years that the agency was contemplating what to do next. And with new shoreland rules expected to issue in early 2010, but new dock rules not likely until 2013, that left a three year period following the new shoreland rules during which continued dock proliferation could well undo much of what the new shoreland rules were intended to achieve.

This situation distressed many observers including a number of Minnesota legislators, most notably Senator Mary Olson (DFL, Bemidji) who sponsored

legislative language in a bill directing the DNR to promulgate new rules governing “structures” in public waters by January 2010 at which time General Permit 2008-0401 will expire. This rulemaking process is now on a shorter timeline more “in sync” with the shoreland regulations update process, while dealing not merely with docks, but also with wharves, breakwaters, boat launching ramps, mooring facilities, marinas, retaining walls, boathouses, and boat storage structure.

We have arrived at the present state of affairs as the result of a very large number of illegal docks and dock platforms having been erected on Minnesota lakes the past few years. Many of these have been introduced out of ignorance on the part of the lakeshore property owner of what the regulations are. Others have been constructed out of willful ignorance, i.e., an intentional flouting of those regulations undertaken in the confidence that in the unlikely event there were to be any repercussions, the associated penalties would be comparatively and acceptably painless. As illegal docks have become ever more numerous, there has been a corresponding increase in the public demand that the DNR address this growing problem. Since the DNR lacks the enforcement resources necessary to even begin to quantify and cite all the owners of such docks, much less to effect a rollback, it has had little recourse other than to essentially legalize the previously illegal; hence the issuance of the General Permit. [In fairness to the DNR, readers are reminded of the perennial legislative tendency to place far more mandates on regulatory agencies than resources to effect and enforce those mandates.]

The public has an opportunity to submit comments on the development of possible rules governing docks and other public waters structures either orally or in writing until November 17, 2008. Such comments should be directed to:

Mr. Tom Hovey
Public Waters Hydrologist
DNR Division of Waters, Box 32
500 Lafayette Road
St. Paul, MN 55155-4032
Telephone: 651-259-5654
Tom.Hovey@dnr.state.mn.us

Citizens interested in protecting Hubbard County’s precious water resources should avail themselves of the opportunity to provide their input on this issue. In doing so, it is useful to bear in mind that Minnesota rules governing public water structures already exist. Those rules read in part:

The purpose of Public Waters rules is to provide for the conservation and utilization of the water resources of the State, in the best interest of its people (from MN Rules, part 6115.0150). Specifically, the goals of the rules relating to structures are to limit the occupation of public waters by structures to preserve the natural character of public waters and their shorelands; provide a balance between the protection and utilization of public waters; and encourage the removal of existing structures which do not serve the public interest from the beds of public waters (from MN Rules, part 6115.0210, subp. 1.)

Citizens should demand that, going forward, the Minnesota DNR enforce its own rules. A corresponding message should be sent to Minnesota legislators demanding that the agency be sufficiently empowered to do so.

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