



## Minnesota Environmental Quality Board

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## Notice

OAH Docket No. 10-2002-33626

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of Public Water  
Restoration Order RPN #883637,  
Maple Lake (60-305P), Polk County,  
issued to Christopher Erickson.

**NOTICE AND ORDER FOR  
PREHEARING CONFERENCE AND  
HEARING**

TO: Christopher Erickson, 11623 Bay St. SE, Mentor, Minnesota 56736.

CHRISTOPHER ERICKSON IS HEREBY NOTIFIED that the Minnesota Department of Natural Resources (“DNR”) has initiated this action to determine whether cause exists for DNR to direct that restoration of the bed of Maple Lake (60-305P) be undertaken pursuant to Minn. Stat. § 103G.251 as set forth in the Restoration Order RPN #883637 dated September 28, 2015, as modified on review by the DNR letter dated January 20, 2016.

**ORDER FOR PREHEARING CONFERENCE**

IT IS HEREBY ORDERED that a prehearing conference will be held on August 17, 2016, at 9:30 a.m. by telephone. The call-in number for the prehearing conference is 1-888-742-5095, and the conference code is 7501907990#. **All mail sent to the Administrative Law Judge should be directed to P.O. Box 64620, St. Paul, Minnesota 55164-0620.**

**ORDER FOR HEARING**

IT IS FURTHER ORDERED that, pursuant to Minn. Stat. § 103G.311 (2014), a contested case hearing in this matter will be held at a time and place to be decided by the Administrative Law Judge at the prehearing conference.

The Chief Administrative Law Judge, Office of Administrative Hearings, has assigned this matter to Perry Wilson, Administrative Law Judge, Office of Administrative Hearings, P.O. Box 64620, St. Paul, Minnesota 55164-0620; (651) 361-7881.

**ALLEGATIONS**

1. This matter involves the removal/destruction of cattails and the placement of black fabric cloth and sand below the ordinary high water level (“OHWL”) of Maple Lake located in Polk County, Minnesota, at Township 148 N, Range 44 W, Section 14. Maple Lake has been identified in the Public Water Inventory pursuant to Minn. Stat. § 103G.201, subd. 1, as Public Water No. 60-305P.

2. DNR's regulatory jurisdictional boundary for public waters is defined in Minn. Stat. § 103G.005, subd. 14, as all waters found below the OHWL. The OHWL for Maple Lake has been determined by DNR to be located at elevation 1173.0 feet (NGVD 1929) (equivalent to 1174.17 feet (NAVD 1988)).

3. A public waters work permit is needed to "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." Minn. Stat. § 103G.245, subd. 1(2). In addition, a DNR Aquatic Plant Management permit is needed to remove or otherwise destroy aquatic plants found below the OHWL of public waters of the state. Minn. Stat. § 103G.615, subd. 1.

4. On September 1, 2015, DNR Conservation Officer Tom Hutchins ("Hutchins") and DNR Area Hydrologist Stephanie Klamm ("Klamm") investigated a report of removal/destruction of cattails, an emergent aquatic plant, and the placement of black fabric cloth and sand below the OHWL of Maple Lake located in Polk County, Minnesota.

5. DNR's investigation determined that the owner of the subject real property is Christopher Erickson ("Erickson"), 11623 Bay St. SE, Mentor, Minnesota 56736 (hereinafter referred to as "the Erickson property").

6. By Public Waters Restoration and Replacement Order RPN # 883637 dated September 28, 2015, (hereinafter referred to as the "Restoration Order") and as authorized by Minn. Stat. §§ 103G.251, subd. 2, and 103G.2372, and Minn. R. 6115.0255, DNR ordered the following:

A. Remove all sand and the black fabric cloth within an area of approximately 4400 square feet (44 feet by 100 feet) placed lakeward of the OHWL of Maple Lake.

B. Allow the natural cattails to regrow along the restored 4400 square feet of shoreline and lakebed.

C. An open water access strip through the restored cattails for the location of a dock and boat may be authorized in this area pursuant to a DNR aquatic plant management permit. Erickson must immediately apply for this permit if the access strip is desired.

D. No sand or black fabric cloth may remain or be placed lakeward of the OHWL.

E. If after two years the cattails have not naturally reestablished themselves, the vegetation must be replaced by Erickson through plantings.

F. Complete all restoration work by December 31, 2015.

G. Klamm must be contacted within seven days of completion of the work required in the Restoration Order.

7. By letter dated October 26, 2015, Erickson timely appealed the Restoration Order to the Commissioner of DNR pursuant to Minn. R. 6115.0255, subp. 5.A.

8. By letter dated January 20, 2016, DNR Ecological and Water Resources Director Luke Skinner, acting for the Commissioner of DNR, sustained the Restoration Order with the following modifications:

A. The removal of the black fabric cloth and sand below the OHWL of 1173.0 (NAVD 1929) (equivalent to 1174.17 feet (NAVD 1988)) must be completed by May 31, 2016.

B. If the cattails removed below the OHWL are not naturally reestablished by June 1, 2018, Christopher Erickson must undertake the planting of cattails by either purchasing from an aquatic plant nursery or by transplanting from a DNR-approved site if available. Before such planting takes place, a DNR permit for transportation of aquatic vegetation must be applied for and issued.

9. By email dated February 24, 2016, and letter received February 26, 2016, Christopher Erickson timely appealed the Commissioner's decision pursuant to Minn. Stat. § 103G.251, subd. 2(c) and Minn. R. 6115.0255, subp. 5.B.

### ISSUES

Whether DNR appropriately found that the removal/destruction of cattails and placement of sand and black fabric cloth in Maple Lake is in violation of applicable public waters work permit and aquatic plant management statutes and rules, supporting its Restoration Order as modified.

Applicable statutes and rules include: Minn. Stat. §§ 103G.245, 103G.251, 103G.311, 103G.315, subd. 6, and 103G.615; Minn. R. 6115.0010 through .0280, including but not limited to parts 6115.0190, .0191, .0192, .0250, .0255; and Minn. R. 6280.0100 through .1300, including but not limited to parts 6280.0250 and .0450.

For a complete copy of the Notice and Order for Prehearing Conference and Hearing, contact Jill Schlick Nguyen, Minnesota Attorney General's Office, 445 Minnesota Street, Ste. 900, St. Paul, MN 55101, phone (651) 757-1325.

Dated this 13th day of July, 2016.

/s/ BARB NARAMORE  
BARB NARRAMORE  
Assistant Commissioner