CHAPTER 14 SUBMERGED AQUATIC VEGETATION REGULATIONS

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1400 PURPOSE AND SCOPE

1400.1 The purpose of this chapter is to provide for the management of submerged aquatic vegetation. This chapter is promulgated under §4 of D.C. Law 5-188, the Water Pollution Control Act of 1984, D.C. Code §6-923 (1995 Repl. Vol.).

1400.2 If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid in a court of law, the remainder of the rules of this chapter and its application to any other persons or circumstances shall not be affected.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §4 of the Water Pollution Control Act of 1984, D.C. Law 5-188, D.C. Code §6-923 (1995 Repl. Vol.), Mayor's Order 85-152 dated September 12, 1985.

SOURCE: Final Rulemaking published at 41 DCR 1971 (April 15, 1994).

1401 HARVESTING PLAN APPROVAL

1401.1 Every person desiring to harvest, cut or otherwise remove or eradicate submerged aquatic vegetation from any land under the tidal waters of the District below the elevation of mean high tide, shall obtain plan approval from the Director.

1401.2 The plan approval shall be obtained prior to initiation of harvesting, cutting, removing or eradication of submerged aquatic vegetation.

1401.3 Harvesting, cutting, removing or eradication of submerged aquatic vegetation without plan approval shall be prohibited.

SOURCE: Final Rulemaking published at 41 DCR 1971 (April 15, 1994).

1402 EXEMPTIONS

1402.1 The requirements for obtaining plan approval set forth in §1401.1 shall not apply to any of the following activities:

(a) The harvesting of fish, shellfish or crabs;

(b) Any action requiring approval under §7 of D.C. Law 5-188, D.C. Code §6-926 (1995 Repl. Vol.); or

(c) Recreational boating or angling activities which might incidentally affect submerged aquatic vegetation.

SOURCE: Final Rulemaking published at 41 DCR 1971, 1972 (April 15, 1994).

1403 APPLICATION, LETTER OF NOTIFICATION AND PLAN CONTENTS

1403.1 This section prescribes the information which shall be included in a plan submitted for approval. Applications and plans submitted to the Director for approval shall be made on forms provided by the Director.

1403.2 Application forms submitted to the Director shall, at a minimum, contain the following information:

(a) Name and address of the applicant;

(b) Project location, the name of the waterway, and a description of how to reach the site;

(c) Purpose and justification of the project and the proposed method of removal;

(d) Location of off-loading site;

(e) Method and location of disposal;

(f) Name and address of the contractor, if applicable; and

(g) Proposed starting date and dates on which the proposed actions will be undertaken.

1403.3 Each application form shall contain the signature of the applicant certifying that the information provided is accurate.

1403.4 Each plan (diagram) submitted to the Director shall include, but not be limited to, the following information or documentation:

(a) A vicinity map which identifies the relative location of the project site, off-loading site and disposal site;

(b) The area and extent of the proposed harvesting, cutting, or otherwise removing or eradicating of the submerged aquatic vegetation;

(c) The areas of existing submerged aquatic vegetation;

(d) Water depths on the project site;

(e) Location of major landside structures (houses and boathouses) and water based structures including buoys, and mooring areas, in the project area;

(f) The names and current mailing addresses of adjoining property owners impacted;

(g) The scale to which the plan is drawn; and

(h) The dates of the drawing or diagrams submitted.

1403.5 An applicant submitting a plan for approval to the Director shall notify property owners who may be affected the proposed action through a letter of notification.

1403.6 A letter of notification shall include the following:

(a) A copy of the application and proposed plan; and

(b) A statement directing the affected property owner(s) to contact the Director for additional information or provide comments concerning the project.

1403.7 A copy of each letter of notification shall accompany the application and plan submitted to the Director.

SOURCE: Final Rulemaking published at 41 DCR 1971, 1972 (April 15, 1994).

1404 CRITERIA FOR APPROVAL

1404.1 A submerged aquatic vegetation removal plan may be approved by the Director only for projects which are necessary to do the following:

(a) Provide reasonable access to navigable waters;

(b) Provide reasonable opportunities for water-based recreational activities; and

(c) Manage the living aquatic resources of the waters of the District.

1404.2 A submerged aquatic vegetation removal plan may be approved by the Director only if the following two (2) criteria are met to the Director's satisfaction:

(a) The duration of the proposed project is no longer than is necessary to achieve the purpose intended by this chapter; and

(b) The proposed project is consistent with acceptable natural resources and environmental management practices as determined by the Director.

1404.3 In determining the reasonableness of a plan submitted for approval, the Director may consider the following factors:

(a) The purpose, timing, method and extent of the proposed removal action;

(b) Potential impacts to the living aquatic resources in the project area such as anadromous fish, shellfish, and submerged aquatic vegetation;

(c) The method and location of disposal;

(d) The extent of overall benefit from the proposed project; and

(e) The opinions of affected property owners or others.

SOURCE: Final Rulemaking published at 41 DCR 1971, 1973 (April 15, 1994).

1405 CONDITIONS AND LIMITATIONS

1405.1 The Director may authorize or prohibit the removal or eradication of any species of submerged aquatic vegetation or combination thereof for any purpose, including facilitation of boating access, except as provided in §1402 of this chapter..

1405.2 The Director, in approving submitted plans, may act to condition or otherwise limit approved plans. Conditions or limitations may be formulated to include, but are not limited to, the following concerns:

(a) Protection of anadromous fish spawning areas between March 1st and July 1st of each year; and

(b) Prescribing the timing, method and extent of removal, in general.

SOURCE: Final Rulemaking published at 41 DCR 1971, 1974 (April 15, 1994).

1406 TIMEFRAME FOR APPROVALS AND THE REVIEW PROCESS

1406.1 Except as provided in §§1406.2, 1406.3 and 1406.4, the Director shall review all applications and plans and deny, approve or conditionally approve plans within thirty (30) days of receipt of a completed application and plan.

1406.2 In the case of complex or extensive removal projects, the Director may extend the thirty (30) days review period to not more than sixty (60) days from the receipt of a completed application.

1406.3 At the request of the applicant, the Director or other parties, an extension to the initial review period may be granted for a mutually agreed upon duration.

1406.4 If the Director determines that there is reason to perform an environmental assessment or an environmental impact statement, then approval shall be withheld until the environmental review process is completed.

1406.5 Each completed plan shall be reviewed based on the following process:

(a) Applicant completes application package in accordance with instruction sheets;

(b) Upon receipt by the Director, a completed application shall be assigned a case number;

(c) Within ten (10) days of receipt of any application, a letter shall be sent to the applicant acknowledging receipt of the application. The letter shall include notification of whether or not the submitted application is complete. If the application is not complete, the required information will be listed;

(d) The completed application may be sent by the Director to any other state or federal agency, or parties with expertise in related fields, for review; and

(e) A written decision on the denial, conditional approval or approval of the completed application will be sent to the applicant by the Director within thirty (30) days of receipt by the Director of the completed application and plan, unless a review extension period is in effect.

1406.6 Unless otherwise limited, approval of plans shall authorize the applicant to undertake actions for a two (2) year period from the date of approval.

1406.7 Written notification shall be received by the Director no less than thirty (30) days prior to the proposed project commencement date. Written notification shall also reference the assigned case number of the approved plan.

SOURCE: Final Rulemaking published at 41 DCR 1971, 1975 (April 15, 1994).

1407 HERBICIDES

1407.1 The use of any herbicide or chemical to control submerged aquatic vegetation shall be prohibited unless approved by the Director against aquatic life which is a nuisance.

SOURCE: Final Rulemaking published at 41 DCR 1971, 1976 (April 15, 1994).

1408 VIOLATIONS

1408.1 Plan approval may be revoked for any violation of this chapter following written notice by the Director setting forth the reasons for revocation.

1408.2 Before an application is denied or revoked the Director shall provide the person an opportunity for a hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Code §1-1501 *et seq.* (1992 Repl. Vol.).

SOURCE: Final Rulemaking published at 41 DCR 1971, 1976 (April 15, 1994).

1499 DEFINITIONS

1499.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

Applicant - any person submitting a submerged aquatic vegetation removal plan to the Director for approval.

Anadromous fish - a fish that migrate upstream from their primary habitat in the ocean to freshwater in order to spawn.

Director - the Director of the Department of Consumer and Regulatory Affairs or his or her representative.

Harvesting, cutting, removal or eradicating - any method either mechanical, physical, chemical or biological which can be used to remove submerged aquatic vegetation.

Navigable channel - any portions of tidal or nontidal water which are either designated as a channel by navigational aids or which are the deeper part of a water body where the main current flows and which afford the best passage for vessels.

Person - the federal government, the District, any county, municipal corporation, or other political subdivision or any of their units; an individual, receiver, trustee, guardian, executor, administrator, or representative of any kind; or any partnership, firm, association, public or private corporation or any other entity.

Submerged aquatic vegetation - a vascular or nonvascular hydrophyte, which is rooted in the hydrosoil and lies beneath the surface or the water, except for the flowering parts in some species.

SOURCE: Final Rulemaking published at 41 DCR 1971, 1976 (April 15, 1994).