

98-163 NE 328 - REG. OF ALIENS & SKI
PLATFORMS / STAMPS

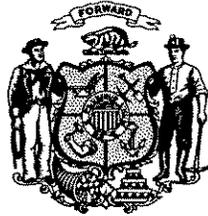
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-163

AN ORDER to create chapter NR 328, relating to regulation of water ski platforms and water ski jumps.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

10-27-98 RECEIVED BY LEGISLATIVE COUNCIL.

11-20-98 REPORT SENT TO AGENCY.

RS:GAA;jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 98-163

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 30.135 (2) (a), Stats., as created by 1997 Wisconsin Act 27, provides that, upon receipt of a complete permit application for a placement of a water ski platform or water ski jump in a navigable waterway, the department may proceed on the application without a hearing unless a substantive written objection to issuance of the permit is received. Sections NR 328.03 (2) and 328.05 (1) refer to a requirement that the persons submitting the substantive written objection must appear and present information supporting an objection in a contested case hearing. What is the specific statutory authority for this requirement?

2. Form, Style and Placement in Administrative Code

a. The order states that the rule interprets "s. 30.02, Stats.," however, s. 30.135 (4), Stats., as created by 1997 Wisconsin Act 27, provides that: "Section 30.02 does not apply to permit applications submitted under this section." The statute interpreted is s. 30.135, Stats.

b. In s. NR 328.01 "for purposes of water ski exhibition or competition events" should be deleted since the statute does not limit water ski jumps and platforms to those purposes.

c. In s. NR 328.02, the phrase "shall apply" should be replaced by the word "applies."

d. In s. NR 328.04, the introduction should read: "Under s. 30.135 (2) (a), Stats., notice of a proposed water ski jump or water ski platform shall include all of the following:". Also, each of the subsections should conclude with a period.

e. In s. NR 328.05 (1), “s. NR 328.05 (2)” should be replaced by “sub. (2).” [See s. 1.07 (2), Manual.] Also, the first sentence of s. NR 328.05 (1), should conclude with the phrase “under s. NR 328.04.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

Section NR 328.05 (2) requires an objector to allege that the water ski jump or platform “has an effect on one or more of the following factors.” It would appear the person should allege that the water ski jump or water ski platform has an *adverse* effect. If there is a beneficial effect, there is no need for a hearing.

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create ch. NR 328 relating to regulation of water ski platforms and water ski jumps.

FH -55- 98

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 30.135 and 227.11(2)(a), Stats.

Statutes interpreted: s. 30.02, Stats.

— Does not apply

Chapter NR 328 explains what constitutes a substantive written objection to a water ski jump or platform and provides a list of reasons that support a substantive written objection. It specifies the contents of a public notice and the process for making a substantive written objection.

SECTION 1. Chapter NR 328 is created to read:

Chapter NR 328
REGULATION OF WATER SKI JUMPS AND WATER SKI PLATFORMS

NR 328.01	Purpose	NR 328.04	Contents of public notice
NR 328.02	Applicability	NR 328.05	Factors constituting substantive written objection
NR 328.03	Definitions		

NR 328.01 Purpose. These rules are promulgated under s. 30.135, Stats., in order to comply with s. 30.135(2)(a) and (b), Stats., regarding the construction and location of water ski platforms and water ski jumps for purposes of water ski exhibition or competition events. X

NR 328.02 Applicability. This chapter ^{applies} ~~shall apply~~ to all water ski jumps and water ski platforms constructed or maintained by riparians on the beds of navigable waters which require a permit under s. 30.135(1), Stats.

NR 328.03 Definitions As used in this chapter:

(1) "Department" means the department of natural resources.

(2) "Substantive written objection" means a written statement giving specific reasons why a proposed project may violate the statutory provisions applicable to the project and specifying that the person making the objection will appear and present information supporting the objection in a contested case hearing.

(3) "Water ski jump" means a human-made, inclined-plane structure especially prepared for jumping by skiers towed behind boats.

(4) "Water ski platform" means a human-made structure especially prepared for starting or landing water skiers, and temporary set-up of tow ropes, skis, and other water ski equipment, during public exhibition events, competition events, or practice.

Note: Water ski platforms are also commonly known as starting docks or performance platforms.

NR 328.04 Contents of public notice of proposed water ski jump or water ski platform. Notice ~~under this section~~ shall include all of the following:

- of ...
- (1) Name and address of the applicant;
 - (2) Description of the activity and its location; periods
 - (3) A statement apprising the public of the opportunity to request a hearing under s. 30.135(2), Stats.;
 - (4) A statement of what constitutes a substantive written objection;
 - (5) A list of specific reasons that support a substantive written objection;
 - (6) A statement that the department may decide to proceed on the application without a hearing;
 - (7) A statement that a decision to proceed on an application without a hearing is subject to review under ch. 227, Stats.

under ← **NR 328.05 Substantive written objection.** (1) PROCESS. Notwithstanding ch. NR 2, any person objecting to a proposed water ski jump or water ski platform shall request a contested case hearing by letter to the department employe whose name and address appears in the public notice. The request must be received within 30 days of the publication of the notice. An objection shall include a written statement giving specific reasons as described in s. NR 328.05(2) why the proposed activity should not be allowed. The request for hearing shall also include a written statement specifying that the petitioner will appear and present information supporting the objections in a contested case hearing. The department may request additional information to support allegations in the objection prior to granting or denying the hearing request.

(2) SPECIFIC REASONS. In order to qualify for a hearing under s. 30.135(2), Stats., an objector shall allege that the water ski jump or water ski platform has an effect on one or more of the following factors:

adverse

(a) Navigation or its incidents, including but not limited to swimming, boating, fishing and hunting.

(b) Water quality or quantity.

(c) Fisheries or wildlife.

(d) Aquatic or terrestrial habitat.

(e) Shoreline stability.

(f) Natural scenic beauty.

(g) Rights of riparians.

(h) Water safety.

(i) Other public rights in navigable waters established by law.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

30.135

30.135 Regulation of water ski platforms and jumps.

30.135(1)

(1) When permit required.

30.135(1)(a)

(a) (intro.) A riparian proprietor may place a water ski platform or water ski jump in a navigable waterway without obtaining a permit if all of the following requirements are met:

30.135(1)(a)1.

1. The platform or jump does not interfere with public rights in navigable waters.

30.135(1)(a)2.

2. The platform or jump does not interfere with rights of other riparian proprietors.

30.135(1)(a)3.

3. The platform or jump is located at a site that ensures adequate water depth and clearance for safe water skiing.

30.135(1)(b)

(b) If the department determines that any of the requirements under par. (a) are not met, the riparian owner shall submit a permit application to the department.

30.135(2)

(2) Notice and hearing procedure.

30.135(2)(a)

(a) Upon receipt of a complete permit application, the department shall either order a hearing or provide notice stating that it will proceed on the application without a hearing unless a substantive written objection to issuance of the permit is received within 30 days after publication of the notice. The department shall provide a copy of the notice to the applicant for the permit, the clerk of each municipality in which the water ski platform or water ski jump is to be located and to any other person required by law to receive notice. The department may provide notice to other persons as it considers appropriate. The applicant shall publish the notice as a class 1 notice under ch. 985 in a newspaper designated by the department that is likely to give notice in the area affected. The applicant shall file proof of publication with the department.

30.135(2)(b)

(b) If the department receives no substantive written objection to the permit and proceeds on the permit application without a hearing, the department shall approve or disapprove the permit within 5 days after the date that the 30-day period under par. (a) expires.

30.135(2)(c)

(c) If the department orders a hearing on the permit application, the hearing shall be scheduled within 30 days after the date on which the department orders the hearing. The division of hearings and appeals shall mail copies of the written notice of the hearing at least 10 days before

the hearing to each person provided the notice under par. (a). The division of hearings and appeals shall mail the copies at least 10 days before the hearing except that it shall mail the copy to the applicant for the permit at least 20 days before the hearing. The applicant shall publish the notice as a class 1 notice under ch. 985 in a newspaper designated by the department that is likely to give notice in the area affected. The applicant shall file proof of the publication with the hearing examiner at or prior to the hearing.

30.135(3)

(3) Rules.

30.135(3)(a)

(a) The department shall promulgate a rule listing specific reasons that will support a substantive written objection to the placement of a water ski platform or water ski jump.

30.135(3)(b)

(b) (intro.) The department shall promulgate rules specifying the information that shall be disclosed in a notice under sub. (2) (a). The disclosed information shall include all of the following:

30.135(3)(b)1.

1. A statement explaining what constitutes a substantive written objection and the list of specific reasons that support a substantive written objection that is promulgated under par. (a).

30.135(3)(b)2.

2. The fact that the department may decide to proceed on the application without a hearing.

30.135(3)(b)3.

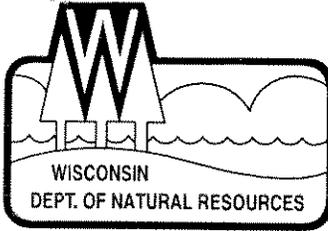
3. The fact that a decision to proceed on an application without a hearing under subd. 2 is subject to review under ch. 227.

30.135(4)

(4) Exemption. Section 30.02 does not apply to permit applications submitted under this section.

30.135 - ANNOT.

History: 1997 a. 27.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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George E. Meyer, Secretary

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November 10, 1998

The Honorable Robert Welch
Wisconsin State Senate
1 East Main Street, Suite 201
Madison, WI 53707

Nov 17 1998

The Honorable Glenn Grothman
Wisconsin State Assembly
125 West, State Capitol
Madison, WI 53707

SUBJECT: Administrative Rule on Water Ski Jumps and Platforms

Bob Glenn

Dear Senator Welch and Representative Grothman:

As you know, Department staff are conducting rule making on aspects of placing water ski jumps and platforms in public waterways in response to s. 30.135 as adopted in the last budget. In response to the request of the Joint Committee on Review of Administrative Rules, we committed to having a rule in effect in January 1999. My staff shared advance copies of the draft rule and staff guidance with the Wisconsin Water Ski Federation (WWSF) and a number of other interest groups, met with WWSF, and held three rule hearings around the state. The level of controversy on this issue is high. We intend to slow our rule process in order to work with all parties to reach mutual understanding and resolve the issues. We intend to have the right rule in place by bringing in the involved public. My staff met with the Wisconsin Water Ski Federation again Saturday, November 7th. I have directed them to work out an agreeable schedule and process for completing the rule making process with the Federation and other interest groups over the next few months. We will inform you of the schedule as soon as we have agreement.

While I share your interest in having a rule in place well in advance of the next open water season, the statute is very clear about the rule requirements - to clarify the public notice and hearing procedures. We will be able to accomplish permitting for any new water ski jumps or platforms proposed for construction next season as described in the statute. The issue of when water ski structures can be placed without a permit is controversial but is not a part of the required rule making, nor do we expect it to have any effect on the continued operation of Wisconsin's many water ski clubs and shows.

My staff and I remain committed to working closely with the Wisconsin Water Ski Federation, waterfront property owners and related interest groups. Without the constraints of the earlier time commitments, we believe we can reach mutual understanding and resolve the controversy. I have advised my staff to keep you informed of our progress.

Sincerely,

A handwritten signature in cursive script that reads "George".

George E. Meyer
Secretary

c: Representative Lorraine Seratti
Representative Gary Drzewiecki
Representative Scott Fitzgerald
Moose Speros, Department of Tourism
Robert Marx, WWSF
Terri Pasterski, WWSF
Rule Hearings Mailing List