

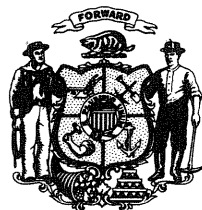
ROGER BRESKE

STATE SENATOR

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M E M O R A N D U M

March 19, 2002

TO: Senate Committee on Insurance, Tourism and Transportation
FR: Senator Roger Breske, Chair
RE: Proposed Clearinghouse Rule 01-054; *relating to the regulation of swim rafts and the definition of the impoundment "and similar conveyance."*

Clearinghouse Rule 01-054 was recently referred to the Senate Committee on Insurance, Tourism and Transportation. For your reference, I have included the analysis by the Department of Transportation below. If you have questions or concerns, please contact Beth in my office before **Friday, April 12th, 2002.**

Analysis Prepared by Department of Natural Resources

Authorizing Statutes: s. 227.11 (2)(a), Stats.
Statutes Interpreted: ss. 30.01 (6e), 30.13(lm), 30.12,30.133(1) and 30.134(5), Stats.

This rule creates a definition of impoundment, for purposes of the shoreland-access law of s. 30.134, Stats., and of similar conveyance, for purposes of s. 30.133, Stats., which limits transfers of riparian rights by easement and "similar conveyance." References are added to swim rafts throughout ch. NR 326, to reflect the fact that it is being expanded to regulate not only piers and boat houses, but also swim rafts. The rule creates a Natural Resources Board finding that swim rafts, in excess of 200 square feet or 38 inches feet in height, may interfere with public rights and thereby lose their s. 30.13, Stats., exemption from the permit requirement of s. 30.12, Stats. Swim rafts that are completely removed from the water on a daily basis or placed within an approved swim area, are exempt from the Natural Resources Board finding. Similarly, the height requirement does not apply to protective covers, ladders, diving boards and slides. The rule recognizes that those swim rafts, not subject to the Natural Resources Board finding, must still comply with s. 30.13, Stats., and may be subject to enforcement action or a permit requirement even if they are within the size limitations established by the Natural Resources Board. Finally, provisions are made for the proper method of calculating the square footage of a swim raft and the boundaries of an impoundment.

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senate/sen12/sen12.html](http://www.legis.state.wi.us/senate/sen12/sen12.html)

April 11, 2002

Darrell Bazzell, Secretary
Department of Natural Resources
101 South Webster Street
HAND DELIVERED

RE: Clearinghouse Rule 01-054
Relating to: the regulation of swim rafts and the definition of impoundment and similar conveyance.

Dear Secretary Bazzell:

At the request of the members of the Senate Committee on Insurance, Tourism and Transportation and pursuant to §227.19(4)(a) and (b) Wis. Stats., I write to extend the Committee's review of this proposed rule. I will be in contact with your office to schedule a meeting to discuss possible modifications to this rule.

Thank you for your assistance. As always, please feel free to give me a call should you have any questions or concerns regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Roger".

ROGER BRESKE, CHAIR
Senate Committee on Insurance, Tourism
and Transportation

RB/ekp

cc: Paul Heinen, Department of Natural Resources
Joyce Kiel, Legislative Council
Donald Schneider, Senate Chief Clerk
Members, Senate Committee on Insurance, Tourism and Transportation



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott McCallum, Governor
Darrell Bazzell, Secretary

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June 21, 2002

REPRESENTATIVE DU WAYNE JOHNSRUD
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ROGER BRESKE
STATE SENATOR
CHAIR, SENATE COMMITTEE ON INSURANCE, TOURISM AND TRANSPORTATION
STATE CAPITOL
PO BOX 7882
MADISON, WI 53707-7882

Subject: Clearinghouse Rule 01-054 relating to the regulation of swim rafts and the definition of impoundment and similar conveyance.

Dear Senator Breske and Representative Johnsrud:

In an April 10, 2002, letter from Representative Johnsrud, the Department of Natural Resources was notified that the Assembly Natural Resources Committee voted to return Clearinghouse Rule 01-054 relating to the regulation of swim rafts and the definition of impoundment and similar conveyance. The motion requested that the Department consider modifications to the proposed rule. In a letter dated April 12, 2002, the Department agreed to consider modifying the rule.

The Department has agreed that technical modifications to the rule are necessary. We have revised s. NR 326.08(2)(a) and (b). The exception created for swim rafts which are completely removed from the water on a daily basis or placed in a swim area will be only from the finding in sub. (1) and not the entire section. This will clarify that the exemption in sub. (2)(b) for protective covers, diving boards, ladders and slides also applies to swim rafts that are pulled out of the water or placed in swim areas. In addition, the reference to the height requirement in s. NR 326.08(2)(b) is changed to height limitation to more accurately reflect the intent of the provision. The changes are described below:

(2) EXEMPTIONS.

- (a) Swim rafts which are pulled on to shore and completely removed from the water on a daily basis or they are placed in swim areas marked and approved pursuant to s. NR 5.09 are exempt from ~~this section~~ sub. (1).
- (b) The height ~~requirement~~ limitation of sub. (1) does not apply to protective covers, diving boards, ladders and slides.

Under s. 227.194(4)(b)2., Stats., the Department of Natural Resources refers this rule to your Committees for an additional 10 working day review. If the Department does not hear from you within 10 working days of the receipt of this notification, the Department will continue processing this rule. A copy of the rule as modified is attached.

Sincerely,



Darrell Bazzell
Secretary

cc: Michael A. Lutz - LS/5
Paul Heinen - AD/5
Mary Ellen Vollbrecht - FH/3
Carol Turner - LS/5
Joyce Kiel - Legislative Council

Attach.

Clearinghouse Rule 01-054

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
RENUMBERING, RENumbering AND AMENDING, AMENDING AND CREATING RULES**

The State of Wisconsin Natural Resources Board adopts an order to renumber NR 326.03(3) to (11); to renumber and amend NR 326.06(4); to amend ch. NR 326 (title), 326.01 and 326.06(1) and (3); and to create NR 326.03(3) and (11), 326.08 and 326.09 relating to the regulation of swim rafts and the definition of "impoundment" and "similar conveyance".

FH-19-01

Analysis Prepared by Department of Natural Resources

Authorizing Statutes: s. 227.11(2)(a), Stats.

Statutes Interpreted: ss. 30.01(6e), 30.13(1m), 30.12, 30.133(1) and 30.134(5), Stats.

This rule creates a definition of impoundment, for purposes of the shoreland access law of s. 30.134, Stats., and of similar conveyance, for purposes of s. 30.133, Stats., which limits transfers of riparian rights by easement and "similar conveyance." References are added to swim rafts throughout ch. NR 326, to reflect the fact that it is being expanded to regulate not only piers and boat houses, but also swim rafts. The rule creates a Natural Resources Board finding that swim rafts, in excess of 200 square feet or 38 inches feet in height, may interfere with public rights and thereby lose their s. 30.13, Stats., exemption from the permit requirement of s. 30.12, Stats. Swim rafts that are completely removed from the water on a daily basis or placed within an approved swim area, are exempt from the Natural Resources Board finding. Similarly, the height requirement does not apply to protective covers, ladders, diving boards and slides. The rule recognizes that those swim rafts, not subject to the Natural Resources Board finding, must still comply with s. 30.13, Stats., and may be subject to enforcement action or a permit requirement even if they are within the size limitations established by the Natural Resources Board. Finally, provisions are made for the proper method of calculating the square footage of a swim raft and the boundaries of an impoundment.

SECTION 1. Chapter NR 326 (title) is amended to read:

PIERS, ~~AND~~ BOAT SHELTERS AND SWIM RAFTS IN NAVIGABLE WATERWAYS

SECTION 2. NR 326.01 is amended to read:

NR 326.01 Purpose. (1) These rules are promulgated under ss. 30.03, 30.12, 30.13, 30.14, 30.15, and 227.11, Stats., in order to provide consistency in the application of ss. 30.12 and 30.13, Stats., to the construction of piers, boat shelters, swim rafts and similar structures on the beds of navigable waterways as aids to navigation.

(2) A secondary purpose of this chapter is to define terms set forth in ss. 30.12, 30.13, 30.133, 30.134, 30.14 and 30.15, Stats.

SECTION 3. NR 326.03(3) to (11) are renumbered as NR 326.01(4) to (10), (12) and (13), respectively.

SECTION 4. NR 326.03(3) and (11) are created to read:

NR 326.03(3) "Impoundment" for purposes of s. 30.134, Stats., means the pool of water created by a dam. "Impoundment" does not include waters upstream of the pool which are raised, but within the original river channel. "Impoundment" includes the entire Mississippi river in Wisconsin.

(11) "Similar conveyance" for purposes of s. 30.133, Stats., means any transfer in excess of 2 years. "Similar conveyance" does not include a lease of a marina facility to an operator of the facility.

SECTION 5. NR 326.06(1) and (3) are amended to read:

NR 326.06(1) Upon receipt of a complaint by any municipality or person under s. 30.14, Stats., the department shall investigate the pier, boat shelter, swim raft or related structure mentioned in the complaint to determine if it conforms with applicable provisions of s. 30.12 or 30.13, Stats., and this chapter, and shall provide all known parties with the results of the investigation. The department may request such additional information as may be required from the complainant.

(3) The burden of proving that a pier, ~~or~~ boat shelter or swim raft is in violation of s. 30.12 or 30.13, Stats., and this chapter, is ordinarily on the complainant.

SECTION 6. NR 326.06(4) is renumbered NR 326.10 and, as renumbered, is amended to read:

NR 326.06(10) ~~This section does~~ Sections NR 326.06 and 326.08 do not limit in any manner the authority of the department to require a permit or bring an enforcement action alleging that a pier, ~~or~~ boat shelter or swim raft adversely affects public rights in navigable waters.

SECTION 7. NR 326.08 is created to read:

NR 326.08 Swim rafts. (1) FINDING. The natural resources board finds that near shore areas are the most heavily used areas of a water body and are the most valuable ecological areas. Extensive and large structures on an individual and cumulative basis interfere with the public's ability to use and enjoy near shore areas and affect the growth of aquatic vegetation necessary for fish and wildlife habitat. Accordingly, the natural resources board finds that the use of swim rafts in excess of 200 square feet in surface area or 38 inches in height may interfere with public rights as used in s. 30.13(1m), Stats., and thereby require a permit under s. 30.12, Stats.

(2) EXEMPTIONS. (a) Swim rafts which are pulled onto shore and completely removed from the water on a daily basis or that are placed in swim areas marked and approved pursuant to s. NR 5.09 are exempt from sub. (1).

(b) The height limitation of sub. (1) does not apply to protective covers, diving boards, ladders and slides.

(3) MEASUREMENTS. Calculations to determine the square footage of a swim raft shall include diving boards, ramps, slides and similar accessories.

SECTION 8. NR 326.09 is created to read:

NR 326.09 Impoundment determination. The boundaries of the pool of an impoundment shall be determined at normal summer water levels.

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on February 27, 2002.

The rules contained herein 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 _____
Darrell Bazzell, Secretary

(SEAL)

[Handwritten notes and signatures in pencil and blue ink are scattered across the page, including names like 'Darrell Bazzell' and various initials.]