

☞ **05hr\_SC-NRT\_CRule\_04-085\_pt01**



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2005-06**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on ... Natural Resources and  
Transportation (SC-NRT)**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Mike Barman (LRB) (July/2012)



- Gary Neu, Madison — self
- Karen Etter Hale, Madison — WI Audobon Council and Madison Audobon Society

Registrations Against

- Sandra Verhulst, Arbor Vitae — self

March 11, 2005

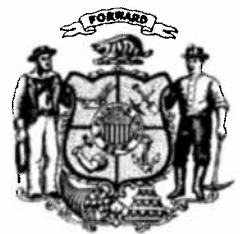
**NO ACTION TAKEN**

---

Dan Johnson  
Committee Clerk



# WISCONSIN STATE LEGISLATURE



# Streamlining the Permit Process while Protecting Public Waters

## **Proposed Rule on Grading of Lake or Stream Banks - NR 341**

### **Summary of Rule Proposal**

The rule revises a previous rule to determine what constitutes a bank for priority navigable waterways and navigable waterways; establishes criteria defining those activities needing a grading permit for grading sites located on the bank of a navigable waterway; and specifies conditions under which individual permits are required. This rule recognizes the similarity between the requirements of a grading permit and the requirements of a ch. NR 216 stormwater construction site discharge permit. This rule specifies permit requirements necessary to protect public health, safety, welfare, rights and interest and to protect riparian landowner rights and property.

### **Why is this an issue for public waters?**

Research in Wisconsin and elsewhere documents that small changes to the shoreline affect water quality and fish and wildlife habitat that could harm the diversity and abundance of fish, songbirds and frogs, and make our waters vulnerable to invasive species. The shallow water and shoreline habitat protected by the permit system is the keys to continuing Wisconsin's great fishing, clean water and natural scenic beauty. In particular, significant reshaping at the water's edge can eliminate such features as songbird habitat, overhanging cover that shades shallow waters and contributes fish food organisms.

### **Previous Regulation**

Prior to 2004, grading projects that came under the jurisdiction of the department received an individual permit. Permits were issued after an analysis of the impacts of the project on the water resource and any public rights features. Early in 2004, Wisconsin Act 118 was passed by the legislature and signed by the Governor to speed permit decision making while maintaining the state's long-standing level of protection for public waters. Chapter 30, Wisconsin Statutes, was revised by the act.

### **What's Being Proposed?**

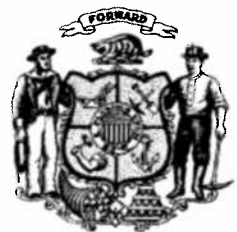
Since 1991, NR340 defined the bank as the unbroken slope to a waterway. The Natural Resources Board adopted temporary emergency rules that are in effect now. The proposed permanent rule defines bank as a combination of distance from the ordinary high water mark and a minimum slope. Greater protection is provided for a class of waterways that are defined as priority navigable waters. In addition, the rule provides for the use of general permits for sites less than one acre and sites one acre or more. If a project meets the locational and temporal conditions of the general permit, the applicant can receive their permit in 30 days. Sites of one acre or more will require the same erosion and sediment control plan that an applicant for a project on a similar site would be asked to provide under an NR 216 general stormwater construction site permit. This will enable future consolidation of these two permit programs. Finally, the rule continues to allow the use of individual permits in all other situations.

### **Issues and Alternatives**

During implementation of the emergency rules there have been questions raised related to the measurement of the bank and the determination of jurisdiction. This section of the code may need further clarification for ease of implementation by both the public and regional staff. There is also an interest in combining the grading permit for sites of one or more acre with the construction site permit of NR 216. Consideration needs to be given to whether language in the code presents barriers to this coordination or if language can be added to make the process seamless.



# WISCONSIN STATE LEGISLATURE



## Clearinghouse Rule 04-085

### ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal NR 340.02(2), (8) and (19) and to create ch. NR 341 related to regulation of grading on the bank of a navigable waterway.

FH-24-04

#### Analysis Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.19(1g)(c), (1d), (1m), (3r)(a)(2) and (4), and 227.11(2), Stats.

Statutes Interpreted: ss. 30.19(1g)(c), (1d), (1m), (3r)(a)(2) and (4), and 227.11(2), Stats.

Explanation of Agency Authority:

The Department has authority under s. 30.19, Stats., to promulgate rules that establish definitions and standards for the regulation of grading on the banks of navigable waters.

Related statute or rule:

These rules relate directly to regulation of activities in navigable waters under ch. 30, Stats., waters designations in ch. NR 1, the NR 300 series of rules, and NR 216 requirements related to regulation of construction site stormwater management.

Plain Language Analysis: The rule determines what constitutes a bank for priority navigable waterways and navigable waterways; establishes criteria defining those activities needing a grading permit for grading sites located on the bank of a navigable waterway; and specifies conditions under which individual permit coverage is required. This rule recognizes the similarity between the requirements of a grading permit and the requirements of a ch. NR 216 stormwater construction site discharge permit. This rule specifies permit requirements necessary to protect public health, safety, welfare, rights and interest and to protect riparian landowner rights and property.

Three definitions from NR 340 are repealed to reflect statutory changes.

Federal Regulatory Analysis: Any activity that results in a discharge (including deposits and structures) into "waters of the United States" is regulated by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. An Individual Permit from the Corps is required, unless Wisconsin regulates the project in its entirety under chapter 30, Stats., in which case the project is authorized by the Corps under general permits GP-01-WI or GP-LOP-WI. Dredging or discharge into waters declared navigable under Section 10, Rivers and Harbors Act, 1899 is also regulated, and requires an Individual Permit from the Corps.

Comparison with Adjacent States:

Minnesota – The Minnesota DNR regulates grading from the ordinary high water mark down to the stream. For Minnesota, the ordinary high water mark is equivalent to the top of the bank. There is additional authority if the area above the ordinary high water mark is a wetland. Then the Board of Water and Soil Resources has jurisdiction. The MPCA or the county zoning department issues permits for land disturbing construction activity of one or more acres. Because of the jurisdictional difference in the definition of bank, Minnesota is less protective than Wisconsin.

Michigan – The Michigan jurisdiction covers any earth change (removal of vegetation) greater than 225 square feet within 500 feet landward of a lake or stream. The water level at the time of construction is the point from which the 500 feet is measured. The county issues an individual permit for this activity and if a project receives this individual soil erosion permit then the land disturbing construction site permit of one or more acres is automatic. This rule has been in place since the 1970s. Michigan has a broader

jurisdiction for control of grading sites near navigable streams and is therefore more protective than Wisconsin.

Iowa – The Iowa DNR regulates from the ordinary high water mark downward to the navigable stream with an individual permit. They use a sovereign lands construction permit for “meandered streams” defined by the federal government for public ownership and navigation rights. This is a separate permit process from the stormwater permit process for land disturbing construction activity, which Iowa also administers. Because of their limited jurisdiction above the ordinary high water mark, Iowa is less protective than Wisconsin.

Illinois – The Illinois DNR regulates construction within public bodies of water and within the floodway of streams draining 10 square miles or more in rural areas and one square mile or more in urban areas. The floodway dimension is based on maps or is done in the field for unmapped areas. The purpose of the permit is to protect structures from flood damage and to maintain the flood flow conditions. They administer general, statewide and individual permits. Illinois also administers the stormwater permit program in accordance with Federal Phase II, using general permits. Illinois’ jurisdiction is not as broad as Wisconsin’s and therefore less protective.

Summary of Factual Data and Analytical Methodologies:

Published scientific literature on the effects on fish, wildlife and water quality during and after physical alterations to shorelines the basis for the rule parameters. In addition, data on actual field conditions during and after such alterations from department files is applied.

Analysis and Documents supporting determination of Small Business Effect: Any person placing a structure or making similar physical modifications to public navigable waters either qualifies for an exemption or must obtain a general or individual permit under state statute. To comply, small businesses follow the same requirements as other waterfront property owners: (1) make a self-determination of exemption using web-based tools provided by the department or describe their activity on an exemption determination request form; (2) complete a general permit application; or (3) complete an individual permit application. Schedules, application steps and compliance/reporting requirements are very basic for all applicants, and most projects can be planned and conducted by individuals with no specific professional background.

Anticipated Private Sector Costs: No significant fiscal effect on the private sector is anticipated.

Effect on Small Business: Building contractors, developers of waterfront property and their technical consultants, and other waterfront businesses will be affected by the rule revisions. Specific standards will provide clarity and consistency in the permitting process.

Agency Contact Person: Mary Anne Lowndes, [lowndm@dnr.state.wi.us](mailto:lowndm@dnr.state.wi.us), (608) 261-6420

Place where comments are to be submitted and deadline for submission: The proposed rules may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Ms. Roberta Lund, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 17, 2004.

---

SECTION 1. NR 340.02(2), (8) and (19) are repealed.

SECTION 2. Chapter NR 341 is created to read:

**Chapter NR 341  
GRADING ON THE BANK OF NAVIGABLE WATERWAYS**



**NR 341.01 Purpose.** The purpose of this chapter is to establish criteria defining those activities needing a grading permit for grading sites as required by s. 30.19(1g)(c), Stats.; and to specify permit requirements necessary to protect public rights and interest and to protect riparian rights for grading sites regulated under this chapter.

**NR 341.02 Applicability. (1) GRADING SITES.** This chapter applies to activities regulated under s. 30.19(1g)(c), Stats. An application for grading shall be filed with the department pursuant to ch. NR 310 by any person that intends to grade or remove soil from the bank of any navigable waterway where the area exposed by the grading or removal will exceed 10,000 square feet on the surface of the bank as determined in s. NR 341.035. This includes areas that are part of a larger common plan of development or sale where multiple separate and distinct grading activities may be taking place at different times on different schedules, but under one plan, such that the total area exposed by grading or removal will exceed 10,000 square feet on the bank. An applicant for a grading permit regulated by this chapter shall comply with all applicable provisions of this chapter and the appropriate permit issued pursuant to this chapter.

**(2) NR 216 CONSTRUCTION PERMITS.** Sites in compliance with a construction site stormwater discharge permit administered under subch. III of ch. NR 216 and also meeting the conditions of s. NR 341.08 shall be deemed to be in compliance with the provisions of this chapter.

**(3) LOCAL ADMINISTRATION OF NR 216.** Sites in compliance with the terms of an authorized local program for the administration of construction site stormwater discharge permits under subch. III of ch. NR 216, and consistent with the conditions of s. NR 341.08 as well as procedural requirements agreed to in writing between the department and the municipality shall be deemed to be in compliance with the provisions of this chapter.

**(4) EXEMPTIONS.** This chapter does not apply to:

(a) The construction or repair of any public highway.

(b) Any agricultural use of land.

(c) An activity that affects a navigable inland lake that is located wholly or partly in any county having a population of 750,000 or more.

(d) Any activity that affects a portion of Lake Michigan, Lake Superior or a navigable stream that is located within a county having a population of 750,000 or more.

Note: The landowner of a site exempt under pars. (c) and (d) is still required to submit a notice of intent under subch. III of ch. NR 216 for land disturbing construction activity of one or more acres.

**NR 341.03 Definitions.** For the purposes of this chapter the following definitions apply:

**(1) "Agricultural land use"** means planting, growing, cultivating and harvesting of crops for human or livestock consumption, pasturing or yarding of livestock, sod farms and beekeeping. This definition does not include the construction of structures such as barns, manure storage facilities or barnyard runoff control systems.

Note: This definition is equivalent to the definition in s. 30.40(1), Stats., and differs from the definition in chs. NR 151 and 216 only in that beekeeping is included and tree nurseries are not included.

**(2) "Area of special natural resource interest"** has the meaning in s. 30.01(1am), Stats., and as identified by the department in s. NR 1.05.

Note: Section 30.01(1am), Stats., provides that "area of special natural resource interest" means any of the following:

(a) A state natural area designated or dedicated under ss. 23.27 to 23.29, Stats.

- (b) A surface water identified as a trout stream by the department.
- (bm) A surface water identified as an outstanding or exceptional resource water under s. 281.15, Stats.
- (c) An area that possesses significant scientific value, as identified by the department.

Information and lists can be obtained by contacting the department, or found on the department's website at [www.dnr.wi.gov](http://www.dnr.wi.gov), under the topic "Waterway and Wetland Permits".

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

(4) "Final stabilization" means that all land disturbing construction activities at the grading site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.

(5) "Grading" means the physical disturbance of the land surface by the addition, removal or redistribution of soil.

(6) "Highway" or "public highway" has the meaning given it in s. 340.01(22), Stats.

(7) "Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in topography or existing vegetative or non-vegetative soil cover that may result in stormwater runoff and lead to increased soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

(8) "Navigable waterway" means any body of water with a defined bed and bank, which is navigable under the laws of the state. In Wisconsin, a navigable body of water is capable of floating the lightest boat or skiff used for recreation or any other purpose on a regularly recurring basis.

(9) "Ordinary high water mark" means the point on the bank or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognizable characteristics.

(10) "Priority navigable waterway" has the meaning in s. 30.19(1b)(c), Stats., and s. NR 1.07, and means any of the following:

- (a) Areas of special natural resource interest as defined in s. NR 1.05.
- (b) Lakes less than 50 acres in size.
- (c) Locations containing public rights features as defined in s. NR 1.06.

(11) "Stabilize" means the process of making a site steadfast or firm, minimizing soil movement by the use of practices such as mulching and seeding, sodding, landscaping, paving, graveling or other appropriate measures.

(12) "Total project area" means the area of land disturbing construction activity both within and outside of the defined bank, if it is part of the same project.

**NR 341.035 Bank determination. (1) DETERMINATION OF THE BANK.** For purposes of establishing jurisdiction under s. 30.19, Stats., the bank of a navigable waterway shall be determined as follows:

(a) *Non-priority navigable waterways.* For navigable waterways that are not priority navigable waterways, the bank is a minimum distance of 75 feet landward from the ordinary high water mark. However, if at 75 feet or less from the ordinary high water mark the slope is 12% or greater, the bank

shall extend further landward until the slope of the land becomes less than 12%, provided the slope is less than 12% for more than 50 feet.

(b) *Priority navigable waterways.* For priority navigable waterways, the bank is a minimum distance of 300 feet landward from the ordinary high water mark. However, if at 300 feet or less from the ordinary high water mark the slope is 10% or greater, the bank shall extend further landward until the slope of the land becomes less than 10%, provided the slope is less than 10% for more than 50 feet.

(c) *Complete interruption.* Notwithstanding pars. (a) and (b), the bank may not include any areas where the slope or drainage of the land into the navigable waterway is completely interrupted. Completely interrupted means all of the following:

1. Runoff from the area flows through a stable, undisturbed, vegetated area for at least 150 feet of land surface before reaching any waters of the state other than groundwater.

2. The condition in subd. 1. is preexisting and will remain in the post-construction condition.

(2) **MEASUREMENTS.** For purposes of establishing jurisdiction under s. 30.19, Stats., the measurement of the bank of a navigable waterway shall be determined as follows:

(a) The bank distance shall be measured on a horizontal plane.

(b) Slope shall be measured along the surface flow path.

(c) Area of bank disturbance shall be calculated on the surface of the land and shall include all the disturbed area between the ordinary high water mark and the bank as defined in sub. (1).

**NR 341.04 Grading proposal.** The following information shall be submitted for a grading proposal:

(1) **OWNERSHIP.** A copy of the deed, lease, land contract or other document showing ownership.

(2) **PHOTOS.** Photographs that clearly show the existing project area with a size reference.

(3) **PERMISSION.** Permission from landowner to enter the site.

(4) **PLANS.** Plan drawing sheet.

(5) **DESCRIPTION.** A narrative description of the grading proposal describing:

(a) The project purpose.

(b) Methods, materials and equipment to be used.

(c) A construction schedule and sequence of work.

(d) Erosion control and stormwater management plans in accordance with ss. NR 341.05 and 341.06.

(e) Site map in accordance with s. NR 341.05(2).

**NR 341.05 Erosion control plan requirements.** (1) **SITE-SPECIFIC PLAN.** Any person required to submit an application for grading under this chapter shall develop a site specific erosion control plan in accordance with s. NR 216.46.

(2) **SITE MAP REQUIREMENTS.** Each grading site map shall include all of the following:

(a) Existing topography and drainage patterns, roads, waterways, wetlands and floodplain boundaries.

(b) Two foot pre- and post-construction contours for project sites of one acre or more.

(c) Location, description and elevation of a reference benchmark , i.e., permanent vertical reference.

(d) Horizontal and vertical scale and north arrow.

(e) Approximate identification of the ordinary high water mark.

(f) Area between the grading project and the water body to be left undisturbed.

(g) Boundaries of the construction site, i.e., lateral extent of land disturbing construction activity.

(h) Drainage patterns and approximate slopes anticipated after major grading activities, including the existing and proposed slope of the bank and the water level of the existing waterway.

(i) Area of soil disturbance in square feet.

(j) Volume of earth to be added or removed in cubic yards.

(k) Location of any disposal area for dredged or excavated materials.

(L) Location of major structural and non-structural controls identified in the erosion control plan.

(m) Location of areas where stabilization practices will be employed.

(n) Areas that will be vegetated following land disturbing construction activities.

(o) A vegetation plan that provides for a self-sustaining vegetative cover of at least 70% for all pervious areas, and is sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions.

(p) Areas used for infiltration of post-construction stormwater runoff.

(q) An alphanumeric or equivalent coordinate system for the entire grading site for sites of one acre or more.

(r) Cross sections of pre- and post-construction contours, sufficient to show slope variability across the site with a minimum of one for every 50 feet of shoreline frontage. If the site is uniform, only one cross section is necessary.

Note: Many of the requirements for a grading project site map are identical to the construction site map requirements of s. NR 216.46. A site map prepared to meet the requirements of s. NR 216.46 will need to add the information requested in pars. (b), (e), (h), (o) and (r).

**(3) EROSION AND SEDIMENT CONTROL BEST MANAGEMENT PRACTICES.** The erosion control plan shall include a description of appropriate erosion and sediment control best management practices that will be installed and maintained at the grading site to prevent pollutants from reaching waters of the state. The erosion control plan shall clearly describe the appropriate erosion and sediment control best management practices for each major land disturbing construction activity and the timing during the period of land disturbing construction activity that the erosion and sediment control best management practices will be

implemented. The erosion and sediment control best management practices shall be designed in accordance with s. NR 216.46(6).

**NR 341.06 Stormwater management plan requirements.** Pollution caused by stormwater discharges from the grading site after construction is completed, including rooftops, parking lots, roadways and the maintenance of grassed areas, shall be addressed by a stormwater management plan for post-construction sites in accordance with s. NR 216.47. A stormwater management plan shall be developed prior to submitting an application for grading to the department and implemented upon final stabilization of the grading site.

**NR 341.07 Construction site inspections and maintenance.** Any person required to submit an application for grading under this chapter shall inspect and maintain practices in accordance with s. NR 216.48(4).

**NR 341.08 General permit for project sites of one acre or more. (1) PROCEDURES.**

(a) General permits shall be processed according to the procedures in ch. NR 310.

Note: Where there is overlapping jurisdiction between chs. NR 216 and this chapter, the department will develop consolidated procedures so that only one submittal will be required.

(b) If the department determines that a grading proposal submitted under this section has the potential to impact an endangered or threatened species in accordance with s. 29.604, Stats., the application shall be deemed incomplete. The department may not consider the application complete or issue a general permit until the applicant submits documentation to demonstrate one of the following:

1. The grading project avoids impacts to the endangered or threatened species in accordance with s. 29.604, Stats.

2. The grading project has received an incidental take authorization under s. 29.604, Stats.

(c) If the applicant modifies their grading project plans to meet the requirements of par. (b), the modified plans shall be submitted before the department can consider the application complete or issue a general permit.

**(2) APPLICABLE ACTIVITIES.** A grading project that meets the requirements in subs. (3), (4) and (5) shall be eligible for general permit coverage under ss. 30.19(3r) and 30.206, Stats.

**(3) STANDARDS.** A grading project may be authorized under this general permit if it meets all of the following requirements:

(a) *Size.* The total project area is one acre or greater.

(b) *Performance standards.* The grading project meets the stormwater performance standards of ss. NR 151.11 and 151.12 for stormwater discharges from land disturbing construction activities for non-transportation projects and ss. NR 151.23 and 151.24 for transportation projects.

Note: The department maintains a list of technical standards that it has determined adequate and effective for designing best management practices to control erosion and sediment runoff. Contact the department storm water program in the Bureau of Watershed Management at (608) 267-7694 to obtain a copy of this list or visit the department's stormwater website at [www.dnr.wi.gov/org/water/wm/nps/stormwater.htm](http://www.dnr.wi.gov/org/water/wm/nps/stormwater.htm).

(c) *Buffers on lakes and streams.* The grading does not disturb an existing vegetated area in accordance with the distances in s. NR 151.12(5)(d)1.a. to c. for protective areas around lakes or streams. In the absence of a protective area, the vegetative cover may not be disturbed for 35 feet landward from the ordinary high water mark. Construction or land disturbance within this buffer may

occur for an activity that is otherwise authorized under ch. 30 or 31, Stats., exempted under ch. 30, Stats., or is a stormwater best management practice designed to comply with ch. NR 151 or 216.

Note: For example, a grading project including placement of a road and culvert to cross a navigable waterway is not excluded from eligibility for this general permit if the culvert is authorized under ch. 30, Stats. This section does not prohibit a local ordinance from being more restrictive.

(d) *Buffers on wetlands.* The grading does not disturb an existing vegetated area in accordance with the distances in s. NR 151.12(5)(d)1.a. or d. to f. for protective areas around wetlands. Construction or land disturbance within this buffer, but not within the wetland, may occur for a stormwater best management practice designed to comply with ch. NR 151 or 216.

(e) *Spawning season.* To protect fish habitat during spawning seasons, the grading site shall be stabilized and no new grading initiated within 75 feet of the following waterways, during the time period specified:

1. For trout streams identified under s. NR 1.02(7) and perennial tributaries to those trout streams, September 15 through December 15.
2. For all waters not identified in subd. 1. and located south of State Highway 29, March 15 through May 15.
3. For all waters not identified in subd. 1. and located north of State Highway 29, April 1 through June 1.
4. The applicant may request that the requirements in subd. 1., 2. or 3. be waived by the department on a case-by-case basis, by submitting a written statement signed by the local department fisheries biologist, documenting consultation about the proposed project, and that the local department fisheries biologist has determined that the requirements of this paragraph are not necessary to protect fish spawning for the proposed project.

Note: If grading work occurs over the winter and vegetation has not been established to meet this requirement, other stabilization measures such as mulch or erosion control matting shall be required.

(f) *Elevation change.* The difference in elevation between pre- and post-construction contours does not exceed 5 feet within the bank area, except for areas immediately adjacent to exposed or walkout basements where the difference in elevation between pre- and post-construction contours may not exceed 10 feet within the bank area.

Note: This section does not prohibit a local ordinance from being more restrictive.

(g) *Slope.* The grading may not disturb or create a slope that exceeds 20% within the bank area.

(h) *Revegetation.* The vegetation plan required in s. NR 341.05(2)(o) shall be implemented and monitored for one year after project completion. During the monitoring period, the grading site shall be inspected regularly, and any areas requiring additional stabilization or re-vegetation shall be addressed to ensure final stabilization. One year after project completion, a report and photographs shall be submitted to the department to demonstrate that the grading site is stabilized. If after one year, final stabilization has not been achieved or maintained, the department may require the landowner to submit a revised vegetation plan to the department, and implement the revised plan.

(i) *Designated waters.* The grading site is not located in or adjacent to any of the following:

1. A state natural area designated or dedicated under ss. 23.27 to 23.29, Stats.
2. A federal wild and scenic river designated under s. 30.27, Stats., or 16 USC 1274 (a)(8).

3. A state wild river designated under s. 30.26, Stats.

4. A river, stream or creek identified as an outstanding or exceptional resource water under s. 281.15, Stats.

(j) For grading projects on lakes identified as an outstanding or exceptional resource water under s. 281.15, Stats., upon receipt of a general permit application, the department shall conduct a site inspection.

**(4) EROSION CONTROL REQUIREMENTS.** Any person required to submit an application for grading under this chapter shall develop a site specific erosion control plan and they shall implement and maintain as appropriate all best management practices specified in the erosion control plan from the start of land disturbing construction activities until final stabilization of the grading site. The erosion and sediment control best management practices shall be designed in accordance with s. NR 216.46(6).

**(5) STORMWATER MANAGEMENT REQUIREMENTS.** Any person required to submit an application for grading under this chapter shall develop a site specific stormwater management plan and they shall implement and maintain as appropriate all best management practices specified in the stormwater management plan upon final stabilization of the grading site. The stormwater management best management practices shall be designed in accordance with s. NR 216.47.

**(6) PLANS PART OF PERMIT.** The general permit shall require that the applicant comply with submitted project plans or modified project plans as a condition of the permit.

**(7) NON-COMPLIANCE WITH GENERAL PERMIT.** Activities which do not meet the requirements in subs. (3), (4) and (5) or a general permit issued by the department shall require an individual permit.

**(8) INDIVIDUAL PERMIT.** The department has authority under s. 30.206 (3r), Stats., to require an individual permit in lieu of a general permit.

**NR 341.085 General permit for project sites of less than one acre. (1) PROCEDURES.** (a) General permits shall be processed according to the procedures in ch. NR 310.

(b) If the department determines that a grading proposal submitted under this section has the potential to impact an endangered or threatened species in accordance with s. 29.604, Stats., the application shall be deemed incomplete. The department may not consider the application complete or issue a general permit until the applicant submits documentation to demonstrate one of the following:

1. The grading project avoids impacts to the endangered or threatened species in accordance with s. 29.604, Stats.

2. The grading project has received an incidental take authorization under s. 29.604, Stats.

(c) If the applicant modifies the grading project plans to meet the requirements of par. (b), the modified plans must also be submitted before the department can consider the application complete or issue a general permit.

(d) Applicants shall submit a grading proposal in accordance with s. NR 341.04, except for the stormwater requirements of s. NR 341.06.

Note: Requirements for a stormwater management plan in s. NR 341.04(5)(d) are covered under s. NR 341.085 (5).

**(2) APPLICABLE ACTIVITIES.** A grading project that meets the requirements in subs. (3), (4) and (5) shall be eligible for general permit coverage under ss. 30.19(3r) and 30.206, Stats.

(3) STANDARDS. A grading project may be authorized under this general permit if it meets all of the following requirements:

(a) *Size*. The total project area is less than one acre.

(b) *Performance standards*. The grading project meets the stormwater performance standards of ss. NR 151.11 and 151.12 for stormwater discharges from land disturbing construction activities for non-transportation projects and ss. NR 151.23 and 151.24 for transportation projects.

Note: The department maintains a list of technical standards that it has determined adequate and effective for designing best management practices to control erosion and sediment runoff. Contact the department storm water program in the Bureau of Watershed Management at (608) 267-7694 to obtain a copy of this list or visit the department's stormwater website at [www.dnr.wi.gov/org/water/wm/nps/stormwater.htm](http://www.dnr.wi.gov/org/water/wm/nps/stormwater.htm).

(c) *Buffers on lakes and streams*. The grading does not disturb an existing vegetated area in accordance with the distances in s. NR 151.12(5)(d)1.a. to c. for protective areas around lakes or streams. In the absence of a protective area, the vegetative cover may not be disturbed for 35 feet landward from the ordinary high water mark. Construction or land disturbance within this buffer may occur for an activity that is otherwise authorized under ch. 30 or 31, Stats., exempted under ch. 30, Stats., or is a stormwater best management practice designed to comply with ch. NR 151 or 216.

Note: For example, a grading project including placement of a road and culvert to cross a navigable waterway is not excluded from eligibility for this general permit if the culvert is authorized under ch. 30, Stats. This section does not prohibit a local ordinance from being more restrictive.

(d) *Buffers on wetlands*. The grading does not disturb an existing vegetated area in accordance with the distances in s. NR 151.12(5)(d)1.a. or d. to f. for protective areas around wetlands. Construction or land disturbance within this buffer, but not within the wetland, may occur for a stormwater best management practice designed to comply with ch. NR 151 or 216.

(e) *Spawning season*. To protect fish habitat during spawning seasons, the grading site shall be stabilized and no new grading initiated within 75 feet of the following waterways, during the time period specified:

1. For trout streams identified under s. NR 1.02(7) and perennial tributaries to those trout streams, September 15 through December 15.

2. For all waters not identified in subd. 1. and located south of State Highway 29, March 15 through May 15.

3. For all waters not identified in subd. 1. and located north of State Highway 29, April 1 through June 1.

4. The applicant may request that the requirements in subd. 1., 2. or 3. be waived by the department on a case-by-case basis, by submitting a written statement signed by the local department fisheries biologist, documenting consultation about the proposed project, and that the local department fisheries biologist has determined that the requirements of this paragraph are not necessary to protect fish spawning for the proposed project.

Note: If grading work occurs over the winter and vegetation has not been established to meet this requirement, other stabilization measures such as mulch or erosion control matting shall be required.

(f) *Elevation change*. The difference in elevation between pre- and post-construction contours does not exceed 5 feet within the bank area, except for areas immediately adjacent to exposed or walkout basements where the difference in elevation between pre-and post-construction contours may not exceed 10 feet within the bank area.



Note: This section does not prohibit a local ordinance from being more restrictive.

(g) *Slope*. The grading may not disturb or create a slope that exceeds 20% within the bank area.

(h) *Revegetation*. The vegetation plan required in s. NR 341.05(2)(o) shall be implemented and monitored for one year after project completion. During the monitoring period, the grading site shall be inspected regularly, and any areas requiring additional stabilization or re-vegetation shall be addressed to ensure final stabilization. One year after project completion, a report and photographs shall be submitted to the department to demonstrate that the grading site is stabilized. If after one year, final stabilization has not been achieved or maintained, the department may require the landowner to submit a revised vegetation plan to the department, and implement the revised plan.

(i) *Designated waters*. The grading site is not located in or adjacent to any of the following:

1. A state natural area designated or dedicated under ss. 23.27 to 23.29, Stats.
2. A federal wild and scenic river designated under s. 30.27, Stats., or 16 USC 1274 (a)(8).
3. A state wild river designated under s. 30.26, Stats.
4. A river, stream or creek identified as an outstanding or exceptional resource water under s. 281.15, Stats.

(j) For grading projects on lakes identified as an outstanding or exceptional resource water under s. 281.15, Stats., upon receipt of a general permit application the department shall conduct a site inspection.

**(4) EROSION CONTROL REQUIREMENTS.** Any person required to submit an application for grading under this chapter shall develop a site specific erosion control plan and they shall implement and maintain as appropriate all best management practices specified in the erosion control plan from the start of land disturbing construction activities until final stabilization of the grading site. The erosion and sediment control best management practices shall be designed in accordance with s. NR 216.46(6).

**(5) STORMWATER MANAGEMENT REQUIREMENTS.** Pollution caused by stormwater discharges from the grading site after construction is completed, including rooftops, parking lots, roadways and the maintenance of grassed areas, shall be addressed by a stormwater management plan for post-construction sites. Any person required to submit an application for grading under this chapter shall develop a site specific stormwater management plan and they shall implement and maintain as appropriate all best management practices specified in the stormwater management plan upon final stabilization of the grading site. The stormwater management plan shall to the maximum extent practicable direct runoff from impervious surfaces onto pervious surfaces. Examples may include directing downspouts onto lawns and away from pavement, driveways sloped onto lawns, and avoidance of piping or channelizing flow from impervious areas into waters of the state.

**(6) PLANS PART OF PERMIT.** The general permit shall require that the applicant comply with submitted project plans or modified project plans as a condition of the permit.

**(7) NON-COMPLIANCE WITH GENERAL PERMIT.** Activities which do not meet the requirements in sub. (3), (4) or (5) or a general permit issued by the department shall require an individual permit.

**(8) INDIVIDUAL PERMIT.** The department has authority under s. 30.206 (3r), Stats., to require an individual permit in lieu of a general permit.

**NR 341.09 Individual permits. (1) PROCEDURES.** Individual permits shall be processed according to the procedures in ch. NR 310.

(2) GRADING STANDARDS. (a) A grading project that meets the standards in s. 30.19(4), Stats., may be authorized under an individual permit.

(b) For grading projects requiring an individual permit under s. NR 341.08(3)(i)4. or 341.085(3)(i)4., on receipt of an individual permit application the department may evaluate whether the project can be authorized under a general permit, based on a site inspection or prior department knowledge of the project site.

**NR 341.10 Enforcement.** (1) Noncompliance with the provisions of ss. 30.19 and 30.206, Stats., this chapter, or any conditions of an exemption, general permit or individual permit issued by the department, constitutes a violation and may result in a forfeiture. If the activity is authorized by a general permit under s. 30.206, Stats., the failure to follow procedural requirements may not, by itself, result in abatement of the activity. Unless there is good cause shown, the department shall seek abatement of any activity in violation of ss. 30.19 and 30.206, Stats.

(2) General permits may not be issued for after-the-fact permit applications. When an after-the-fact permit application has been filed with the department, the department shall follow the procedures in ch. NR 301 for violations.

(3) Any reference in ss. 30.15, 30.292, 30.294 and 30.298, Stats., to any provision of ch. 30, Stats., shall include any rules promulgated under that provision.

(4) No person may grade on the bank of a navigable waterway where the activity is not authorized by a general permit or individual permit issued under this chapter, or otherwise authorized under this chapter.

SECTION 3. EFFECTIVE DATE. This 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.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Scott Hassett, Secretary

(SEAL)