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(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

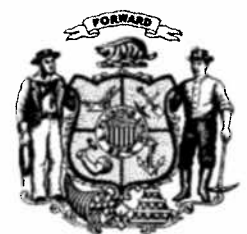
March 11, 2005

NO ACTION TAKEN

Dan Johnson
Committee Clerk



WISCONSIN STATE LEGISLATURE



Streamlining the Permit Process while Protecting Public Waters

Proposed Rule – Dredging – NR 345

Summary of Rule Proposal

Wisconsin Act 118 created a three-tier permit system intended to speed permit decisions without reducing protection of fish and wildlife habitat, navigation, water quality and natural scenic beauty (public rights). Small-scale manual dredging and dredging associated with exempt piers, culverts or other exempt structures no longer need permits unless they are in designated waters. NR 345 sets specifications for when dredging projects are exempt and when projects are eligible for general permits. The proposed rule creates general permits (GP) for manual dredging and maintenance dredging of areas previously dredged.

The Natural Resources Board in June approved holding hearings on the proposed permanent rule – that is the same as the temporary rule put in place at the end of August. DNR has been working with stakeholders to take additional input on the existing emergency rule and for the final version of the permanent rule.

Why is this an issue for our waters?

Dredging ranges from projects that use bulldozers, backhoes or a hydraulic dredge to remove large amounts of sediment from a lake or stream, to sifting by hand through bottom sediments to harvest aquatic insects for bait or panning for gold. Dredging has the potential to cause substantial and long lasting environmental damage to our public waterways. Whether this happens or not largely depends on where and when dredging is done. Some of the potential impacts include:

- Significant alteration of aquatic habitat that can affect fish populations and open the door for invasive aquatic species like Eurasian watermilfoil.
- Degradation of water quality by suspension of bottom sediments that can smother fish eggs, interfere with feeding, or release hazardous substances potentially affecting the health of humans and aquatic life.
- Direct physical harm to creatures such as turtles, frogs and aquatic insects.

Most people realize the substantial threat to habitat, water quality and even human health that large dredging projects can have. Removing 100,000 cubic yards of material could eliminate a critical bass spawning area, remove the last remnants of an endangered mussel, or open an area to an infestation of Eurasian watermilfoil. Through the permitting process, DNR biologists work with dredging applicants to avoid these types of impacts, and also at the same time, allow the applicant to achieve his or her own goals, if feasible.

Some people think that small dredging projects don't have these impacts. However, the consequences accumulate with the tens or hundreds of small dredging projects done annually. And even one project in a critical reach of a small stream can eliminate spawning habitat, reduce fish reproduction and damage a fishery stressed for another reason, such as a drought.

Previous Regulations

Prior to Act 118, all dredging projects required permits. Permits were approved if DNR staff determined “no detrimental impact to public rights or interests.” Permits required notification to riparian property owners, but there was no legal requirement for the person who wanted to dredge to be the shoreline property owner. Smaller dredging projects did not require a public notice. However, public notices were published for dredging project greater than 3,000 cubic yards as part of a required Environmental Assessment (EA) or Environmental Impact Statement (EIS).

Issues and Alternatives

In order to meet the legislative intent of maintaining protection for our public waters, the two different types of exempted dredging activities have to meet the following locational and construction requirements to be eligible for the exemption:

1. Dredging of a farm drainage ditch which was not a navigable stream before ditching:
 - The project has to be located in a agricultural drainage ditch that was not a navigable stream before ditching
 - The applicant has to notify the department of the proposed dredging 10 days in advance
 - The dredging may not have a long-term, adverse effect on a cold-water fishery or may not destroy cold water or warm water spawning or nursery areas for fish.
2. Dredging by hand-held device:
 - No dredging in designated waters
 - The dredge material may not contain hazardous substances
 - Dredged material must be disposed of in uplands or approved solid waste facility.
 - Erosion control best management practices must be used
 - Not more than 4 cubic yards of material may be removed
 - Dredging is restricted at different times to protect cold water and warm water fish spawning
 - Resuspension of sediment must be controlled and total suspended solid limits should be met.

NR 345 then establishes the standards for four different types of general permits. Please see the proposed rule for the specific requirements for each of the following general permits:

1. Installation of utility lines
2. Maintenance dredging of a previously dredged area
3. Manual dredging that does not meet the standards for a statutory exemption
4. Maintenance dredging within an established drainage district

A few new items are included in the proposed permanent rule. NR 345 would define a number of "de minimis" (inconsequential) dredging actions that do not require permits. The code also uses the statutory definition of "hazardous substance" in s. 289.01(11), Stats., and uses the DNR's Consensus Based Contaminated Sediment Evaluation report (2001) to establish the hazardous concentration of some pollutants found in Wisconsin sediments.

What do YOU think?

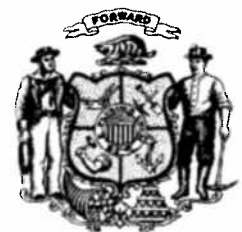
DNR seeks your input on the proposed rules. You can participate in one of several ways:

- Fill out a questionnaire at a public hearing **open house**
- Send comments over the **internet** at <http://adminrules.wisconsin.gov>
- **Testify** at a public hearing. See locations, dates and times by going to DNR's website dnr.wi.gov, clicking on "Permits & Licenses", then "Waterway & Wetlands"
- **Mail** written comments to Ms. Roberta Lund, DNR-FH/3, P.O. Box 7921, Madison, WI, 53707-7921

Comments accepted through September 7, 2004



WISCONSIN STATE LEGISLATURE



Clearinghouse Rule 04-087

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create ch. NR 345 relating to dredging in navigable waterways.

FH-38-04

Summary Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.20(1), (1k), (1t) and (2), 30.206, and 227.11(2), Stats.

Statutes interpreted: ss 30.20(1), (1g), (1k), (1m), (1t) and (2), and 30.206, Stats.

Explanation of Agency Authority:

The Department has authority under s. 30.20, Stats., to promulgate rules that establish installation practices, construction and design requirements and limitations on the location of dredging conducted under statutory exemptions. The Department has authority under ss. 30.20 and 30.206, Stats., to promulgate rules to establish general permits.

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, and the NR 300 series of rules.

Plain Language Analysis:

The purpose of this rule is to establish construction, design and placement standards for projects to be eligible for statutory exemptions, to establish a general permit (s) with appropriate conditions, and to establish standards for projects that may be authorized under an individual permit.

NR345 cross-references the rules for exempt structures where the standards for associated dredging are set. It also sets standards under which hand-held dredging activities are exempt which include:

- *Not in ASNRI or Public Rights Feature
- *May not contain hazardous substances
- *Dredged material disposed of in uplands or approved solid waste facility.
- *Erosion control BMP utilized
- *Not more than 4 cu yards of material removed or displaced

NR345 also establishes general permits for installation of utility lines and maintenance dredging of up to 3000 cubic yards in established drainage districts. The standards are similar to those required for exemptions above but have some additional standards specific to the activity being conducted including compliance with ATCP rules for drainage districts.

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 – Individual permit required (joint application with Corps). Exempts dredging in water courses with total drainage area of less than 5 square miles and not trout water. Prohibits dredging in number of cases including where dredging would not provide an effective solution to the problem. Similar Information requirements and permit conditions to Wisconsin's.

Michigan – Individual dredging permit required for all dredging from inland lakes and streams from MDEQ (Section 404 program has been assumed by state, so state permit serves as federal permit); individual permit dredging permit required from MDNR and Corps for dredging from Great Lakes waters and connecting waterways.

Iowa – Individual permit (joint application with Corps) required for all dredging projects in Iowa waters. Similar information requirements. Standard Corps permit conditions.

Illinois – Individual permit required to dredge from navigable waters. Disposal may require separate permit from Illinois EPA. Separate dredging permit required from Corps in navigable waters of the U.S.

Summary of Factual Data and Analytical Methodologies: Substantial published scientific literature on the effects on fish, wildlife and water quality during and after physical alterations to lake and streambeds is 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: Dredging contractors, marinas and other waterfront businesses who wish to conduct dredging activities will be affected by the rule. Specific standards will provide clarity and consistency in the permitting process.

Agency Contact Person: Dan Helsel, Dan.Helsel@dnr.state.wi.us, (715) 284-1431

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. Chapter NR 345 is created to read:

**CHAPTER NR 345
DREDGING IN NAVIGABLE WATERWAYS**

NR 345.01 Purpose. The purpose of this chapter is to establish reasonable procedures and limitations for exempt activities, general permits and individual permits for removal of material from the beds of navigable waterways as regulated under s. 30.20, Stats., in order to protect the public rights and interest in the navigable, public waters of the state as defined in s. 30.10, Stats.

NR 345.02 Applicability. This chapter applies to removal of material from the bed of navigable waterways under ss. 30.20(1), (1g)(b), (1m), (1t) and (2), Stats. Any person that intends to remove material from the bed of a navigable waterway shall comply with all applicable provisions of this chapter and any permit issued under this chapter.

Note: In accordance with 2003 Wisconsin Act 118, removal of material from non-navigable waterways is no longer regulated under s. 30.20, Stats.

NR 345.03 Definitions. (1) "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: "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.
- (b) A surface water identified as a trout stream by the department under NR 1.02(7).
- (bm) A surface water identified as an outstanding or exceptional resource water under s. 281.15.
- (c) An area that possesses significant scientific value, as identified by the department in NR 1.05.

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

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

(3) "Dredged material" means any material removed from the bed of a navigable waterway by dredging.

(4) "Dredging" means any part of the process of the removal of material from the bed of a navigable waterways, transport of the material to a disposal, rehandling or treatment facility; treatment of the material; discharge of carriage or interstitial water; and disposal of the material.

(5) "Hazardous substance" means a hazardous waste as defined in s. 291.01(7), Stats., and identified in ch. NR 605.

(6) "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.

(7) "Ordinary high water mark" means the point on the banks 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.

NR 345.04 Dredging. (1) EXEMPTIONS. (a) *Procedures.* Exemptions shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* Dredging by hand or using a hand-held device without the use or aid of external or auxiliary power that meets the standards in par. (c) is exempt under s. 30.20(1g) and (2), Stats.

(c) *Standards.* 1. The dredging may not be located in an area of special natural resource interest as defined in s. 30.01(1am), Stats., and identified by the department in s. NR 1.05.

2. The dredging may not be located where there are public rights features as defined in s. NR 1.06.

3. The dredged material may not contain any hazardous substance as defined in s. NR 345.03(5).

4. The dredged material shall be disposed of in an upland location, including a solid waste facility authorized to accept the material pursuant ch. NR 500.

5. The dredged material may not be temporarily or permanently placed in a wetland, floodplain or below the ordinary high water mark of a navigable waterway.

6. Erosion control measures shall meet or exceed the standards in the Wisconsin Construction Site Best Management Practices Handbook.

Note: Information on how to obtain this publication can be found by contacting the department or found on the department's website at www.dnr.wi.gov, under the "Runoff Management" program.

7. The amount of bottom material removed or displaced may not exceed 100 square feet in surface area or one foot in depth in a calendar year.

(d) Standards for dredging necessary to place or maintain an exempt structure under s. 30.20(1g)(b)1., Stats., are contained in the rules that describe the standards for those exempt structures.

Note: Chapters NR 320, 323, 326, 328 and 329 contain rules regarding various exempt activities including culvert replacement, habitat structures, piers, boat shelters, riprap replacement, intake and outfall structures and dry fire hydrants.

(e) Activities which do not meet the standards in par. (c) or are determined ineligible for an exemption by the department shall require a general permit or individual permit.

(2) GENERAL PERMITS. (a) *Procedures.* General permits shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* Dredging that meets the standards in par. (c) is eligible for a general permit under ss. 30.20(1t)(b) and 30.206, Stats. Dredging that meets the standards in par. (d) is eligible for a general permit under ss. 30.20(1t)(a) and (am) and 30.206, Stats.

(c) *Standards for installation of utility lines.* Dredging to install cables, conduits or pipelines for gas water, fiber optic, cable or telephone lines using vibratory plow or open trench methods is eligible for a general permit subject to the following limitations.

1. The dredging may not be located in an area of special natural resource interest as defined in s. 30.01(1am), Stats., and identified by the department in s. NR 1.05.

2. The dredging may not be located where there are public rights features as defined in s. NR 1.06.

3. The dredging may occur only to cross a navigable stream no more than 35-feet across.

4. The general permit may authorize up to 10 waterway crossings that are part of a single project.

5. The size of the cable, conduit or pipe may not exceed 12 inches in diameter.

6. The dredging shall conform to the dimensions and elevations shown on the application.

7. Erosion control measures shall meet or exceed the standards in the most current version of the Wisconsin Construction Site Best Management Practices Handbook.

Note: Information on how to obtain this publication can be found by contacting the department or found on the department's website at www.dnr.wi.gov, under the "Runoff Management" program.

8. All equipment used for the project shall be designed and properly sized to minimize the amount of sediment that can escape into the water.

9. Any area where topsoil is exposed during construction shall be immediately seeded and mulched or ripped to prevent soil from being eroded and washed into the waterway.

10. Prior to any trench excavation in the stream, a coffer dam or silt curtain shall be installed immediately downstream of the proposed trench, and stream flow diverted around the crossing. The coffer dam or silt curtain shall be maintained until the cable, conduit or pipeline is installed, the trench is filled and the streambed restored.

11. During excavation of the trench, dredged material may be temporarily stockpiled in an upland area provided it is separated from the stream by an installed silt fence or a protective, vegetated buffer strip not less than 20 feet in width.

12. The dredged material may not be temporarily or permanently placed in a wetland or below the ordinary high water mark of a navigable waterway. The dredged material may not be permanently placed in any floodway.

13. The dredged material shall be disposed of in an upland location, including a solid waste facility authorized to accept the material pursuant ch. NR 500.

14. Clean, washed gravel or crushed stone shall be used as backfill material for the trench to replace the excavated material.

15. When the dredging is complete, the streambed contours shall be the same as the pre-construction contours.

16. All equipment used for the project shall be adequately de-contaminated for invasive and exotic species prior to use and after use. All equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, sheet pile and pumps, shall be thoroughly disinfected.

(d) *Standards for maintenance dredging in established drainage districts.* Dredging to maintain a district drain which is part of a drainage district established under ch. 88, Stats., is eligible for a general permit subject to the following limitations.

1. The dredging may not be located in an area of special natural resource interest as defined in s. 30.01(1am), Stats., and identified by the department in s. NR 1.05.

2. The dredging may not be located where there are public rights features as defined in s. NR 1.06.

3. Dredging shall comply with s. ATCP 48.32.

4. Maintenance of the district ditch and any structures in the ditch shall comply with the established specifications and compliance plan under ch. ATCP 48.

5. Dredging may not exceed 3000 cubic yards.

6. Bottom materials shall be removed by equipment which is designed and properly sized to minimize the amount of sediment that can escape into the water.

7. The dredged material may not be temporarily or permanently placed in a wetland, floodway or below the ordinary high water mark of a navigable waterway.

8. All equipment used for the project shall be adequately de-contaminated for invasive and exotic species prior to being used. All equipment that comes in contact with infested waters including, but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, sheet pile, and pumps shall be thoroughly disinfected.

(e) Activities which do not meet the standards in par. (c) or (d) or a general permit issued by the department shall require an individual permit or contract.

(3) INDIVIDUAL PERMITS. (a) *Procedures.* Individual permits shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* Any dredging which is not exempt under sub. (1), is not authorized by a general permit under sub. (2), or is located in an area of special natural resource interest require authorization by an individual permit pursuant to s. 30.20(1), Stats.

(c) *Standards.* Dredging which meets the standards in s. 30.20(2), Stats. may be authorized under an individual permit or contract. All applicable provisions in chs. NR 346 and 347 shall be met.

NR 345.05 Enforcement. (1) Noncompliance with the provisions of ss. 30.20 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 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. 30.20 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 remove material from the bed of a navigable waterway where the activity is not eligible for an exemption, authorized by a general permit or individual permit issued under this chapter, or otherwise authorized under this chapter.

SECTION 2. 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 3. 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