

Report to
Legislative Council Rules Clearinghouse
NR 300, 301, 305 and 310 Wis. Adm. Code
Natural Resources Board Order No. WT-22-19

Wisconsin Statutory Authority

Chapter 30 requires the department to implement waterway permitting, exemption and other determinations for a number of activities including waterway structure placement, dredging, water withdrawals, etc.

Chapter 31 requires the department to issue approvals, permits and other determinations to construct, raise or enlarge dam and to operate and maintain dams.

Chapter 227 specifies administrative procedures and review that must be implemented for permitting, enforcement, and other department determinations.

Section 281.36 requires the department to implement wetland permitting, exemption and other determinations for a number of activities including wetland fill, restoration, or modification.

Section 23.32 requires the department to complete wetland mapping in alignment with applicable federal standards and guidance.

Section 23.321 creates the wetland identification and wetland confirmation services and administration.

Federal Authority

§401 of the Clean Water Act requires that, for any federally-licensed or permitted project that may result in a discharge into waters of the United States (33 USC 1341), a water quality certification be issued by the department to ensure that the discharge complies with applicable water quality requirements or that certification be waived.

Comparison of Adjacent States

Illinois Administrative Code 17, 1090 regulates exemption and permitting for state wetlands; Admin Code 3704 regulates public waters permitting and fees are tied annually to Consumer Price Index inflation rates. Ill. Admin Code 3702 provides the process for dam regulations.

Iowa relies on the federal water quality certification program for wetland regulations for Outstanding State Waters. Iowa does not have similar administrative code for a waterways and wetland program. Michigan Rule 281.1300 regulates dam permits and fees, while 281.10 regulates permitting for inland lakes and streams, and 281.900 provides the administrative framework for wetland permitting and identification services.

Minnesota Chapter 8420 provides comprehensive regulations for wetland permitting, including local government roles and responsibilities, mitigation requirements, and enforcement procedures. MN Chapter 6115 regulates public waterways permitting and exemptions, including dam projects.

Court Decisions Directly Relevant

None apply

Analysis of the Rule - Rule Effect - Reason for the Rule

The purpose of this rule is to reduce the administrative code redundancy through consolidation of chs. NR 300, 301, 305, and 310. This rulemaking also seeks to update administrative procedures for waterway regulations to align with statutory requirements specified in chs. 30, 31, 227, and ss. 281.36, 23.32, and 23.321, Wis. Stats. The purpose of ss. NR 300.01 to 300.03 is to specify this purpose and to create consistent definitions for use. The purpose of subchapter I is to articulate regulatory processes for requesting waterway and wetland exemption reviews, general permits, and individual permits. This subchapter outlines application requirements, process for review, and general standards for which the department will make decisions. This subchapter also articulates the fee structure for waterway, wetland, and dam regulatory decisions. This purpose of subchapter II is to clarify that the water quality certification process must align with applicable 401 Clean Water Act requirements. Additionally, this subchapter clarifies that the department shall waive water quality certification that are eligible for an exemption under subchapter I. Subchapter III articulates the process for stakeholders that request the department to complete an ordinary high water mark, navigability determination or wetland determination on their property. These services are options for property owners that want this information for planning purposes. This subchapter includes a description of the service, the process for a service request, service fees, and timelines. Subchapter IV clarifies the process and timeline for projects that require multiple permits under Subchapter I. This subchapter also outlines the process for after-the-fact permit process, general enforcement process and inspection authority.

Agency Procedures for Promulgation

The department’s Waterways Bureau has included the Wetland Study Council in this rule to gather input and apprised them of the need and purpose of the rule, as well as potential rule inclusions. The department will hold a public hearing on this rule on March 7, 2022, with adoption by the Natural Resources Board to follow.

Description of any Forms

Stakeholders will use existing permitting and service forms to request waterway or wetland permits, exemptions or service requests electronically. Attached are samples of the paper forms that are currently used and would be used in the event that the electronic reporting system is inaccessible. The electronic forms containing this information are built into the electronic water e-permitting system.



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