



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
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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 01-054

AN ORDER to renumber NR 326.03 (3) to (11); 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."

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-11-01 RECEIVED BY LEGISLATIVE COUNCIL.

06-05-01 REPORT SENT TO AGENCY.

RNS:NZ:jal;ksm

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 01-054

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.]

2. Form, Style and Placement in Administrative Code

In the treatment clause for SECTION 2, “(11)” should replace “11”.

4. Adequacy of References to Related Statutes, Rules and Forms

In s. NR 326.08 (1), the department states that “. . . the use of swim rafts in excess of 100 square feet in surface area may interfere with public rights as used in s. 30.13 (1m), Stats., and thereby require a permit under s. 30.12, Stats.”

Section 30.13 (1m), Stats., allows a swim raft to be placed in a navigable waterway without a permit if three conditions are met. One of those conditions is that the raft does not interfere with public rights in navigable waters. Section 30.12, Stats., allows the department to grant a permit if, among other criteria, the structure “. . . is not detrimental to the public interest.”

It is not clear how a raft that has been found by the department to require a permit because it may interfere with public rights could then receive a permit as being not detrimental to the public interest. The department should clarify this.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
RENUMBERING AND CREATING RULES

The State of Wisconsin Natural Resources Board adopts an order to renumber NR 326.03(3) to (11); 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.

SECTION 1. Renumbers NR 326.03(3) through (11) to NR 326.01(4) through (10), (12) and (13).

SECTION 2. Creates definitions of an "impoundment" for purposes of s. 30.134, Stats., and "similar conveyance" for purposes of s. 30.133, Stats.

SECTION 3. Creates s. NR 326.08 making finding on swim rafts in excess of 100 square feet and creating standards for swim rafts.

SECTION 4. Creates s. NR 326.09 regarding the proper method for determining the extent of an "impoundment" as the term is used in 30.134, Stats.

SECTION 1. NR 326.03(3) to (11) are renumbered as NR 326.01(4) to (10), (12) and (13), respectively.

SECTION 2. 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 conveyance in excess of 2 years. "Similar conveyance" does not include a lease of a marina facility to an operator of the facility.

SECTION 3. NR 326.08 is created to read:

NR 326.08 Swim rafts. (1) 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 100 square feet in surface area may interfere with public rights as used in s. 30.13(1m), Stats., and thereby require a permit under s. 30.12, Stats.

(2) Except for ladders extending down into the water, swim rafts may not exceed 3 feet in height. Calculations to determine the square footage of a swim raft shall include diving boards, ramps, slides and similar accessories.

SECTION 4. 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 _____.

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)

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. FA-19-01

Legislative Council Rules Clearinghouse Number 01-054

Subject of Rules THE REGULATION OF SWIM RAFTS
AND THE DEFINITION OF "IMPOUNDMENT" AND
"SIMILAR CONVEYANCE"

Date of Transmittal to Presiding Officers MARCH 6, 2002

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 326, Wis. Adm. Code Regulation of swim rafts and the definition of "impoundment" and "similar conveyance"

Board Order No. FH-19-01
Clearinghouse Rule No. 01-054

Statement of Need

DNR field biologists and conservation wardens are struggling with increasing complaints about larger swim rafts being placed in public waters. In recent years, the number and size of rafts and other recreational water products like water trampolines have increased. Current law allows swim rafts without a permit under certain generally described circumstances. This rule sets specific standards for when a riparian owner must obtain a permit prior to placing a swim raft larger than 200 square feet. A number of exemptions to the permit requirement are proposed, including:

- (1) All swim rafts anchored inside buoyed swim areas approved by the department (such as camps and community beaches);
- (2) All swim rafts pulled completely out of the water on a daily basis;
- (3) All swim rafts less than 200 square feet and less than 38 inches high (ladders, slides, diving boards and protective covers are not included in the height measurement).

Overall, only private individuals with rafts larger than 200 square feet (16 feet in diameter) in surface area that are not pulled out of the water each day will require a permit.

The rule also defines two terms used in the statutes, "similar conveyance" and "impoundments" that are ambiguous and in need of clarification to practically and consistently make field determinations.

Modifications as a Result of Public Hearing

As a result of the public hearing, instead of a 100 square foot threshold, the rule will use a 200 square foot threshold for when a permit is required. This will allow swim rafts as large as 16 feet in diameter or 15 feet in diameter along with attachments to be placed without a permit requirement. The great majority of sales (90-95%) to private property owners consist of water trampolines that are 15 feet in diameter or less. The great majority of water trampolines greater than 200 square feet are sold to camps or resorts. These entities generally have an approved swim area from the Department, and, therefore, would not need a permit due to the exemption for swim areas. Others could avoid the permit requirement by removing the swim raft from the water when not in use.

The Department also increased the height limitations because the popular model 15 foot diameter trampoline is 38 inches high. Accordingly, the 15 foot diameter model will not need a permit due to either square footage or height.

Appearances at the Public Hearing and Their Position

July 17, 2001 – Hayward

In support:

Jon Kleist, 10126 Solberg Dam Road, Phillips, WI 54555
Douglas J. Kurtzwell, Chippewa Flowage Area Property Owners Assoc., 11055W Arrow Road,
Hayward, WI 54843
Curt Van Dyke, 5943 N. Runzel Road, Stone Lake, WI 54876
Jim Brakken, Cable Lake Association, Route 1, Box 271, Cable, WI 54821
Sybil Brakken, Route 1, Box 271, Cable, WI 54821
Ed Slaminski, N5548 Tower Hill Road, Spooner, WI
John Spangberg, W7848 County E, Spooner, WI 54801
Linda Van Dyke, 5943 N. Runzel Road, Stone Lake, WI 54876
Jerrold Winters, President, Tigercat Flowage Property Owners Assn., 11387 N. Hummingbird Lane,
Hayward, WI 54843

In opposition:

Craig Jilk, 15484 Victory Heights Road, Stone Lake, WI 54876
Patricia Jilk, 15484 W. Victory Heights Road, Stone Lake, WI 54876
Pat Golden, Rave Sports, 15484 Victory Heights Road, Stone Lake, WI 54876
Norm Mears, President, Rave Sports, Inc., 5251 Program Avenue, St. Paul, MN 55112
Jean Rasmussen, 1031 Carson Trail, Spooner, WI 54801
Dennis Gilbert, 6805 N. Norway Shores Lane, Stone Lake, WI 54876
Michele Krolczyk, 65 Cygnet Place, Orono, MN 55356
Jack Weiner, American Camping Association, North Star Camp, Hayward, WI 54843
Arnold Angeloni, 2077 Grob Lane, Sarona, WI 54870
Rob Gales, 4080 Garland Lane North, Minneapolis, MN 55446
Bryon Schroeder, 12305 West Highway 77, Hayward, WI 54843
Lisa Newcombe-Dierl, 7276 N. Winters Point Road, Hayward, WI 54843
Christopher Larson, 3327 Garfield Road, Eau Claire, WI 54701
William Miley, 8514 N. Williams Resort Road, Hayward, WI
Cliff Schwartz, 1052 23 $\frac{1}{4}$ Street, Cameron, WI 54822
Bill Schramm, 6676 Thors Lane, Stone Lake, WI 54876
Julie A. McNeil, 6824 N. Fleur De Lane, Stone Lake, WI 54876

As interest may appear:

John C. Hirschfield, Jr., 10840 N. Linden Road, Hayward, WI 54843
Dan Tyrolt, 8879 North Old 27, Hayward, WI 54843
George A. Greenbank, Sr., 7708 North Broken Arrow Road, Hayward, WI 54843
Bob Staits, 8004 North County Road K, Hayward, WI 54843
Angeline M. Lang, 219 Spruce Street, Rhinelander, WI 54501

July 23, 2001 – Minocqua

In support:

Susan Wahnar, 1696 Silver Beach Drive, Lac du Flambeau, WI 54538
Stu Hunt, Black Oak Lake Riparian Owners Assoc., P.O. Box 385, Land O'Lakes, WI 54540

Howard Kumbier, Lake Arrowhead Association, Nekoosa, WI 54457
Lee Billmeyer, 1460B Rain Dance Trail, Nekoosa, WI 54457
Tom Wrasse, P.O. Box 2062, Woodruff, WI 54568

In opposition:

Donovan J. Palmquist, Box 312, Phelps, WI 54554
Tom Thayer, 5437 Highway M, Oregon, WI 53575
Mike Bachmann, Director, Camp Highlands for Boys, Sayner, WI 54560
Ron Romens, Commercial Recreation Supply, 6411 DeMarco Tr., Verona, WI 53593
Billy Fried, Director, Camp Agawak, 7851 Agawak Road, Minocqua, WI 54548
Patrick Golden, Rave Sports, 15484 W. Victory Heights Road, Stone Lake, WI 54875
Bud Styer, General Manager, Crystal Lake Campground, N550 Gannon Road, Lodi, WI 53555
Norm Mears, Rave Sports, Inc., 5251 Program Avenue, St. Paul, MN 55112
Stephen James Cook, Chippewa Ranch Camp, 8258 County O, Eagle River, WI 54521
Dick Johnson, 7696 Wacker Drive, Minocqua, WI 54548
Jordan Shiner, Director, Camp Kawaga, 10000 Kawaga Road, Minocqua, WI 54548
Kurt D. Veldhuizen, 8170 Northern Road, Minocqua, WI 54548
Guy C. Bratton, Program Director, Lake Lundgren Bible Camp, W6675 Old 8 Road, Niagara, WI
Glenn Schiffmann, P.O. Box 997, Eagle River, WI 54521
Gerhard Schiffmann, 6874 Pickerel Lake Road, St. Germain, WI 54558
Donna Thayer, 5437 Highway M, Oregon, WI 53575
Dorothy Palmquist, Box 312, Phelps, WI 54554
Elizabeth A. Bratton, Lake Lundgren Bible Camp, W6675 Old 8 Road, Niagara, WI 54151
Brad Ellis, Camp Director, Silver Birch Ranch, N6120 Sawyer Lake Road, White Lake, WI 54491
Tom Robertson, Director, Fort Wilderness, P. O. Box 715, McNaughton, WI 54543
Tom Matthews, Camp Director, Crescent Lake Bible Camp, 2750 Bible Camp Drive, Rhinelander, WI
Joe & Penny Francois, P.O. Box 877, Minocqua, WI 54548
John & Sandy Hilgemann, T6590 N. Troy Street, Wausau, WI 54403
Lynne Foster, P.O. Box 70, Hazelhurst, WI 54531
Ralph Plowman, Plowman's Marine, Inc., 382 Highway 51 North, Woodruff, WI 54568
Rosalie Schiffmann, 6874 Pickerel Lake Road, St. Germain, WI 54558
Mary Schiffmann, 6870 Pickerel Lake Road, St. Germain, WI 54558

As interest may appear - none

July 27, 2001 - Madison

In support - none

In opposition:

Norm Mears, Rave Sports, Inc., 5251 Program Avenue, St. Paul, MN 55112
Waltraud A. Arts, One South Pinckney, Madison, WI 53701
Patrick Rehwinkel, President, Crystal Lake Estates Homeowners Assoc, 8202 Jade Drive, Lodi, WI
Christopher W. Hawn, N8705 Scout Road, East Troy, WI 53120
Tom Plante, Rave Sports, Inc., 7875 Bristol Road, Woodbury, MN 55125
Roger Johnson, Timber-lee Christian Center, N8705 Scout Road, East Troy, WI 53120
Gunnar Bevgersen, 1240 Sherman Avenue, Madison, WI 53703
Patrick Golden, Rave Sports, 15484 W. Victory Heights Road, Stone Lake, WI 54875

As interest may appear - none

Response to Legislative Council Rules Clearinghouse Report

The Rules Clearinghouse questioned how a swim raft might need a permit because it interfered with public rights but then receive a permit only when it is determined that the swim raft did not interfere with public rights. This is a dilemma that exists with all s. 30.12, Stats., structure permits. Typically, a structure as proposed might interfere with public rights and so require a permit. Through the permit process, conditions are developed to place reasonable limitations on the proposed structure under which such impacts will be avoided. The permit essentially states that the proposal could violate public rights, but will not if placed in accordance with reasonable permit conditions.

Final Regulatory Flexibility Analysis

Department staff have worked with the primary manufacturer of commercial water trampolines in the state to minimize significant economic impacts. We expect that substantially more than 90% of the water trampolines sold in Wisconsin will be exempt from having to obtain permits. None of the water trampoline products are banned by this code. Rather only the larger model swim rafts may require a permit where the rafts are not exempt. A number of exemptions have been proposed that allow individuals to avoid having to apply for a permit and the camps, campgrounds and municipalities that have DNR approved buoyed swim areas are also exempt from the permit requirements.

Furthermore, the primary manufacturer does not qualify as a small business as it is dominant in its field within the meaning of s. 227.114, Stats. All individuals appearing at the hearing whom had purchased a water trampoline had purchased it from Rave Sports. Although other inflatable products (the ice berg and the blob) are also used in the state, those products appear to represent less than 5% of inflatable swim rafts currently in use in the state.

**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 this section.

(b) The height requirement 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)