



(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...

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**

Senate

Record of Committee Proceedings

Committee on Natural Resources and Transportation

Clearinghouse Rule 04-065

Relating to timelines and procedures for exemptions, general permits, and individual permits for activities in navigable waters.

Department of Natural Resources

January 12, 2005 Referred to Committee on Natural Resources and Transportation.

February 23, 2005 **PUBLIC HEARING HELD**

Present: (5) Senators Kedzie, Stepp, Kapanke, Wirch and
Breske.

Absent: (0) None.

Appearances For

- Todd Ambs, Madison — WI Department of Natural Resources
- Mary Ellen Vollbrecht, Madison — WI Department of Natural Resources
- Paul Cunningham, Madison — WI Department of Natural Resources
- George Meyer, Madison — WI Wildlife Federation
- Jeff Smith, Madison — Trout Unlimited
- Peter Murray, Madison — WI Association of Lakes
- Denny Caneff, Madison — River Alliance of Wisconsin
- Becky Abel, Madison — WI Wetlands Association
- Steve Books, Mount Horeb — self
- Jeff Nania, Portage — WI Waterfowl Association
- Robert Livingston, Twin Lakes — Crane Landscape and Design Inc.

Appearances Against

- Jay Verhulst, Arbor Vitae — Vilas County Board Supervisor

Appearances for Information Only

- Tom Larson, Madison — WI Realtors Association

Registrations For

- Sue Moline-Larson, Madison — Reverend, Lutheran Office for Public Policy in Wisconsin
- Anne Sayers, Madison — WI League of Conservation Voters
- Derek Scheer, Madison — Clean Wisconsin

- Caryl Terrell, Madison — Sierra Club - John Muir Chapter
- Gary Neu, Madison — self
- Karen Etter Hale, Madison — WI Audobon Council and Madison Audobon Society

Registrations Against

- Sandra Verhulst, Arbor Vitae — self

March 9, 2005

MODIFICATIONS RECEIVED FROM THE AGENCY, Pursuant to s. 227.19(4)(b)3., Wis. Stats..

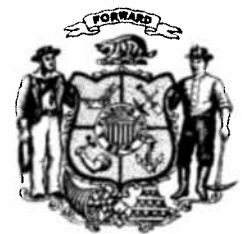
March 25, 2005

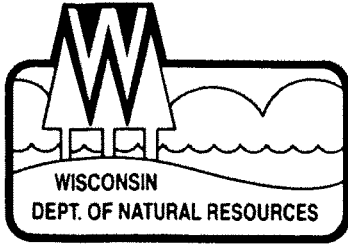
NO ACTION TAKEN

Dan Johnson
Committee Clerk



WISCONSIN STATE LEGISLATURE





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

March 9, 2005

Honorable Scott Gunderson, Chair
Assembly Committee on Natural Resources
Room 7 West
State Capitol

Honorable Neal Kedzie, Chair
Senate Committee on Natural Resources and Transportation
Room 313 South
State Capitol

Re: Clearinghouse Rule No. 02-099 relating to department standards for erosion control of inland lakes and impoundments
Clearinghouse Rule No. 04-065 relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waters
Clearinghouse Rule No. 04-066 relating to Natural Resources Board policies on protection and management of public waters

Gentlemen:

I write in response to the February 28, 2005 Senate Natural Resources and Transportation Committee request to make modifications to Clearinghouse Rules No. 02-099 and 04-066, the March 2, 2005 Assembly Natural Resources Committee request for identical changes, as well as the Assembly Committee on Natural Resources request for unspecified changes to ss. NR 1.05 and 1.06 in Clearinghouse Rule No. 04-066.

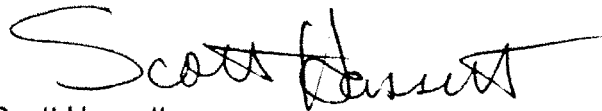
At a meeting on March 8, 2005, the Natural Resources Board adopted the modifications shown on Attachment A which include all of the modifications specified by the Senate Committee and additional items that the Department has been able to determine may be responsive to the Assembly Committee's request for unspecified modifications.

A germane modification to Clearinghouse Rule 04-065 was also adopted by the Natural Resources Board. This modification incorporates the December 8, 2004 motion of the Natural Resources Board regarding evaluating the implementation of Act 118 through the public waters rules.

A copy of the revised orders with the modifications incorporated is attached.

If you have questions about these modifications or about other aspects of these rules, please feel free to contact Todd Ambs or Mary Ellen Vollbrecht of my staff.

Sincerely,

A handwritten signature in black ink that reads "Scott Hassett". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Scott Hassett
Secretary

cc: Todd Ambs – AD/5
Mary Ellen Vollbrecht – FH/4
Carol Turner – LS/5

Attach.

ATTACHMENT A

Modifications to CHR-04-066 (NR 1, Board Order FH-36-04) In response to Assembly Natural Resource Committee

Approved by the Natural Resources Board on March 23, 2005

Amend NR 1.05 (4)(a)

(a) Waters or portions of waters that contain endangered, or threatened, special concern species ~~or unique ecological communities identified as~~ aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory. ~~Aquatic elements are elements that spend part of their life in water or wetlands or they rely on a waterbody for food, e.g., eagles and dragonflies.~~

~~Note: The definitions of special concern species and scientific protocols for their identification are established in the Wisconsin Natural Heritage Working List available at <http://dnr.wi.gov/org/land/er> or by contacting the Bureau of Endangered Resources. Special concern species are those species about which some problem of abundance or distribution is suspected but not yet proved. The main purpose of this category is to focus attention on these species before they become threatened or endangered. Aquatic elements are elements that spend part of their life in water or wetlands or they rely on a waterbody for food, e.g., eagles and dragonflies.~~

Amend NR 1.05 (5)(a)

(a) The Natural Resources Board may designate by rule categories of waters as areas of special natural resource interest. The status of waters added or removed from designated categories by independent listing processes shall be effective at the time that the name or location of the water is made available in the listing on the department's website as required in sub. ~~(5)(6)~~ and no earlier than the effective date of any rule or required report to the legislature designating a water or portion of a waters as an Area of Special Natural Resource Interest.

Amend NR 1.05 (5)(b)

(b) The Natural Resources Board may designate by rule individual waters or portions of waters as areas of special natural resource interest.

Amend NR 1.06 (1)

To fulfill its affirmative duty to protect public trust waters, the department shall ~~continually~~ assess the state's public trust waters to identify locations of public rights features where activities shall require general or individual permit review in lieu of exemptions, or reasonable limitations on location to assure that the public's rights and interests under the public trust doctrine are protected, under ss. 30.12(1p)(a)3. and (2m), 30.123(6m) and (6s), 30.20(1k)(a)2. and (1m), 30.206(1c), (3) and (3r), Stats.

Create:

NR 1.06 (4) For those activities that are not exempt or eligible for general permits in locations where there are public rights features as described in sub. (5), the department will base determinations of whether activities are in locations of public rights features on information as specified in sub. (6).

Renumber NR 1.06 (4) to NR1.06 (5) and amend:

NR 1.06 (5) Public rights features ~~include all of the following are:~~

Re-number NR 1.06(4)(a) to **NR 1.06(5)(a)** and amend:

(a) Fish and wildlife habitat, including ~~but not limited to~~ specific sites necessary for breeding, nesting, nursery and feeding areas.

Re-number NR 1.06(5) to **NR 1.06(6)** and amend:

The department shall base its identification of public rights features on factual information obtained from reputable sources, including ~~but not limited to~~:

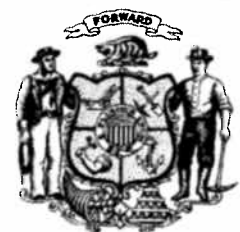
(a) Field surveys and inspections, including historical surveys for fish, wildlife, rare species, aquatic plants, geologic features or water quality.

(b) Surveys or plans from federal, state or local agencies.

(c) Factual documentation of features or use patterns from property owners, user groups or knowledgeable users on the waterbody.



WISCONSIN STATE LEGISLATURE



Clearinghouse Rule 04-065

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

The Wisconsin Natural Resources Board proposes an order to repeal ch. NR 322, amend ss. NR 300.01, 300.04(2), (3) and (4)(a) and (b) and 300.06(1) and create ss. NR 300.04(4)(d) to (g) and 300.05(3)(e) and ch. NR 310 related to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways.

FH-37-04

Summary Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.12(1p); 30.123(6s); 30.20(1k), 30.206, 30.208, 30.209, 30.28, 30.291, 30.298, 227.11(2), 281.22, 281.36 and 281.37, Stats.

Statutes interpreted: ss. 30.10 to 30.27, 30.291, 31.02 to 31.38, 281.22, 281.36 and 281.37, Stats.

Explanation of Agency Authority:

The Department has authority under ch. 30, Stats., to clarify statutory procedures and timelines in administrative rule.

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:

This action amends rules requiring the Department to establish time limits and fees for waterway and wetland permit decisions to bring those rules into compliance with new statutory requirements, and creates a rule to establish procedures for processing exemptions, general permits, and individual permits, issuing public notices, and conducting hearings for individual permits as authorized under ch. 30, Stats.

The amendments to existing ch. NR 300 establish timelines and fees for processing permits, based on significant statutory changes to timeline requirements in 2003 Wisconsin Act 118. The important changes include:

- Department must determine whether an application is complete within 30 calendar days (was 60 days)
- Department must act on a general permit within 30 calendar days or the permit is presumptively approved (previously there were no general permits).
- Department must make a final determination on individual permits not requiring a public notice within 105 calendar days (was generally 120 days)
- Department must make a final determination on individual permits requiring a public notice within 150 calendar days (was generally 180 days).
- Department must make determinations on exemption requests that grant permission to inspect the property within 15 days or the exemptions is presumptively approved (previously there were not exemption determination requests).

A note is also added to this section to clarify that general permits are subject to a fee of \$50.

Chapter NR 310 establishes specific procedures used for exemptions, general permits and individual permits. These processes were written to be in strict conformance with procedures and timelines

established in Act 118. The most complex changes are in the public notice and hearing process that was significantly changed. Important changes include:

- Individual permits are required for all activities which are not exempt and not covered by a general permit. A 30 day public notice is now required for all individual permits.
- The applicant will be responsible for providing adequate written notice to all interested persons and publishing the public notice.
- A public hearing option is added before the Department's decision, which is then subject to an administrative hearing.

Federal Regulatory Analysis:

The U.S. Army Corps of Engineers has comparable procedures for taking applications and making decisions on physical alterations to waters of the United States. A comparison of timelines is shown in the following table.

Time Limit	U.S. Army Corps of Engineers	Wisconsin DNR
Exemption determinations	Not applicable	15 calendar days
Completeness determination	15 calendar days (no limit on the number of times they can request additional information)	30 calendar days (one time request for additional information)
Issuance of public notice	15 calendar days	15 calendar days
Final decisions	90 calendar days from receipt of initial application if no exceptions* are involved	15 calendar days for exemption determinations
	150 calendar days from receipt of initial application if exceptions* are involved	30 calendar days for general permits
		105 calendar days from receipt of initial application for individual permits that do not include public hearing
		150 calendar days from receipt of initial application for individual permits that include public hearing

*Exceptions: Final decision not later than 60 days after receipt of a complete application UNLESS: Final decision is precluded as a matter of law or procedures required by law. The following laws require procedures such as state or other federal agency certifications, public hearings, Environmental Impact Statements, consultation, special studies, and testing which may prevent District Engineers from being able to decide certain applications within 60 days:

Clean Water Act; Coastal Zone Management Act; National Environmental Policy Act; National Historic Preservation Act; Preservation of Historical & Archaeological Data Act; Endangered Species Act; Wild & Scenic Rivers Act; Marine Protection; Research and Sanctuaries Act

Once the Corps of Engineers has enough information to make a decision, they need to do so even though other agencies which may have regulatory jurisdiction have not yet granted their authorizations, except where such authorizations are, by federal law, a prerequisite to making a decision, unless:

- The case must be referred to higher authority
- The comment period is extended
- A timely submittal of information or comments is not received from the applicant
- The processing is suspended at the request of the applicant
- Information needed by the District Engineer for a decision on the application cannot reasonably be obtained within the 60-day period

Comparison with Adjacent States:

Minnesota, Michigan, Illinois and Iowa all have comparable procedures for taking applications and making decision on physical alterations to surface waters. A comparison of timelines is shown in the following table.

Time Limit	Wisconsin	Illinois	Iowa	Michigan	Minnesota
Exemption determinations	15 calendar days	Not applicable	Not applicable	Not applicable	Not applicable
Completeness determinations	30 calendar days	No time limit	No time limit	No time limit	No time limit
Issuance of Public Notice	15 calendar days	Upon receipt of an application for an individual permit	No time limit		
Final decisions	15 calendar days for exemption determinations		No time limit		
	30 calendar days for general permits		No time limit		
	105 calendar days from receipt of initial application for individual permits that do not include a public hearing	90 calendar days	No time limit	Normally acted upon within 60 days of completed application	30 days from receipt of water diversion applications
	150 calendar days from receipt of initial application for individual permits that include a public hearing	150 calendar days	No time limit		

Summary of Factual Data and Analytical Methodologies: Not applicable.

Analysis and Documents supporting determination of Small Business Effect:

Anticipated Private Sector Costs:

Effect on Small Business:

Agency Contact Person: Mary Ellen Vollbrecht, Mary.Vollbrecht@dnr.state.wi.us, (608) 264-8554

Place where comments are to be submitted and deadline for submission: Ms. Roberta Lund, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than August 9, 2004.

SECTION 1. NR 300.01 is amended to read:

NR 300.01 Purpose. This chapter is developed pursuant to ss. 30.28, 31.39, 281.22, 281.36 and 281.37, Stats., to establish procedures for charging basic and supplemental fees for permits, approvals, determinations and hearings for projects in navigable waters and wetlands and to establish time limits for permits, approvals and determinations for projects in navigable waters and wetlands.

SECTION 2. NR 300.04(2), (3) and (4)(a) and (b) are amended to read:

NR 300.04(2) For any permit, approval or determination made pursuant to ss. 30.10 to 30.27, ~~281.36 or 281.37~~, Stats., the department shall initially determine whether a complete application has been submitted and, no later than ~~60~~ 30 calendar days after the application is submitted, notify the applicant in writing about the initial determination of completeness. For any permit, approval or determination made pursuant to s. 281.37, Stats., the department shall initially determine whether a complete application has been submitted and, no later than 30 calendar days after the application is submitted, notify the applicant in writing about the initial determination of completeness. If the department determines that the application is incomplete, the notice shall state the reason for the determination and the specific items of information necessary to make the application complete. For any permit, approval or determination made pursuant to ss. 30.10 to 30.27 and ~~281.37~~ 281.36, Stats., the department may not demand items of information that are not specified in the notice as a condition for determining whether the application is complete unless both the department and the applicant agree or unless the applicant makes material additions or alterations to the project for which the application has been submitted. An application may not be considered complete until the requirements of the Wisconsin environmental policy act, s. 1.11, Stats., have been met and until all information necessary for associated permits, such as Wisconsin pollution discharge elimination permits under ch. 283, Stats., have been submitted to the department.

(3) For any permit, approval or determination made pursuant to ss. 31.02 to 31.38, 281.22 and ~~281.36~~ 281.37, Stats., the applicant shall submit as requested, at any time during the review process, additional information the department finds to be reasonably necessary for review of the application.

(4)(a) The department shall initially determine whether a complete application has been submitted and, no later than 30 calendar days after the application is submitted, notify the applicant in writing about the initial determination of completeness. For individual permits, the department shall provide to the applicant a notice of complete application within 15 calendar days after the department determines that the application is complete.

(b) For determinations made pursuant to ss. ~~30.10 to 30.27~~, 31.02 to 31.28, 281.22, 281.36 and 281.37, Stats., 120 calendar days.

SECTION 3. NR 300.04(4)(d) to (g) are created to read:

NR 300.04(4)(d) A person wishing to proceed with an activity that may be authorized by a general permit promulgated under s. 30.206, Stats., shall apply to the department, with written notification of the person's wish to proceed, not less than 30 calendar days before commencing the activity. If within 30 calendar days after a notification is received, the department does not inform the applicant that an individual permit is required, the activity will be considered to be authorized and the applicant may proceed without further notice.

(e) For determinations made for individual permits without a request for hearing pursuant to ss. 30.10 to 30.27, Stats., 105 calendar days.

(f) For determinations made for individual permits with a request for public hearing pursuant to ss. 30.10 to 30.27, Stats., 150 calendar days.

(g) For exemption determinations made pursuant to ss. 30.10 to 30.27, Stats., 15 calendar days.

SECTION 4. NR 300.05(3)(e) is created to read:

NR 300.05(3)(e) If an exemption determination request is not made according to the procedures in s. NR 310.05 or the exemption determination request does not give consent to inspect, the 15 calendar day time limit does not apply.

SECTION 5. NR 300.06(1) is amended to read:

NR 300.06 Fee processing. (1) FEE REQUIRED. The department shall charge a fee for permits or approvals. The permit or approval fee shall accompany the permit application or request for approval. Projects funded in whole or in part by any federal agency or state agency ~~or any permits issued under s. 30.12(3)(a) 2., 2m. or 3., Stats.,~~ are exempt from fees. Except for federal or state agency dam projects, any construction, alteration, change in operation, transfer or abandonment of a dam requires a fee pursuant to s. 31.39 (3), Stats.

Note: Fees for general permits will be set at \$50.

SECTION 6. Chapter NR 310 is created to read:

**NR 310
PROCEDURES FOR EXEMPTIONS, GENERAL PERMITS, INDIVIDUAL PERMITS,
NOTICES, HEARINGS, AND ADMINISTRATIVE REVIEW**

**SUBCHAPTER I
GENERAL PROVISIONS**

NR 310.01 Purpose. This chapter establishes procedures for processing exemption determinations, general permits and individual permits for activities in navigable waterways, in order to provide consistent and efficient administration of the exemption and permit programs while assuring that the public trust in Wisconsin waterways is maintained.

NR 310.02 Applicability. This chapter applies to exemptions, general permits and individual permits regulated under subchs. I and II, ch. 30, Stats.

NR 310.03 Definitions. In this chapter:

(1) "Days" under this chapter means calendar days unless otherwise specified.

Note: See s. 990.001(4), Stats., for statutory standards on computing time.

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

(3) "General permit" means a permit issued by the department that categorically authorizes certain activities regulated under ss. 30.206 and 30.12(3), 30.12(7), 30.19(3r) and 30.20(1t), Stats.

(4) "Individual permit" means a permit issued by the department for a single project under specific applicable provisions of ch. 30, Stats., excluding s. 30.206, Stats. For purposes of this chapter, "individual permit" includes a contract issued under s. 30.20, Stats.

(5) "Navigable waterway" means any body of water with a defined bed and bank that is navigable under Wisconsin law. In Wisconsin a body of water is navigable if it is capable of floating on a regularly recurring basis the lightest boat or skiff used for recreation or any other purpose.

(6) "Riparian" means an owner of land abutting a navigable waterway.

(7) "Surface waters" means all natural and artificial lakes and streams, except for artificial cooling lakes, agricultural or irrigation ponds, and facilities constructed for the treatment of wastewaters.

**SUBCHAPTER II
EXEMPTIONS**

NR 310.04 Eligibility for exemptions. (1) To be exempt under s. 30.12(1g), 30.123(6)(d) or (e), or 30.20(1g), Stats., from the requirement to obtain a general or individual permit under ch. 30, Stats., an activity shall meet all standards for installation, construction and location in the statute authorizing the exemption and the rules promulgated under s. 30.12(1p), 30.123(6s) or 30.20(1k), Stats.

Note: Some locations are not eligible for exemptions or general permits, see ch. NR 1.

Note: The rules specifying standards for exempted activities are chs. NR 1, 320, 323, 326, 328, 329 and 345.

(2) For those activities which may not be located where there are public rights features as defined in s. NR 1.06, a person may only undertake an exempt activity after they have evaluated the site and determined that no public rights features described in s. NR 1.06(4) may be affected by their activity.

(3) Pursuant to ss. 30.12(2m), 30.123(6m) and 30.20(1m), Stats., the department may require a person engaged in or proposing an activity for which an exemption is available to obtain a general or individual permit.

NR 310.05 Exemption determination requests. (1) Any person may request a determination from the department under s. 30.12(2r), 30.123(6r) or 30.20(1r), Stats., as to whether an activity or location is exempt under s. 30.12(1g), 30.123(6)(d) or (e) or 30.20(1g), Stats.

(2) A person who seeks a department determination as to whether an activity or location is eligible for an exemption under sub. (1) shall submit a written request to the department. The request shall be submitted on a form provided by the department, by delivery methods specified by the department, and shall provide all the information requested on the form.

(3) If the person who requests the determination is the person proposing the activity, the request shall be submitted not less than 20 days before commencing the activity to allow time for mailing between the applicant and department.

Note: Federal or local permits may be required. Applicants are responsible for obtaining all necessary federal or local permits or approvals for their activity.

NR 310.06 Department procedures for processing exemption determination requests. (1) The department shall develop and maintain a form for requesting an exemption determination under s. NR 310.05, and provide a copy of the form to any person on request.

Note: Form 3500-107, "Chapter 30 Exemption Determination Request" is available at department service centers and on the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

(2) Upon receipt of an exemption determination request under s. NR 310.05, the department shall determine whether an activity or location qualifies for an exemption under s. 30.12(1g), 30.123(6)(d) or (e) or 30.20(1g), Stats., and the rules promulgated under the applicable statute.

(3) The date of receipt of an exemption determination request shall be the date the form is received at the department office specified on the form.

(4) If the exemption determination request does not meet all the requirements of s. NR 310.05(2), it shall be deemed incomplete. The department shall notify the requester that the activity is not exempt and shall describe the information that a new exemption determination request must include in order for the information to be complete.

(5) Where an exemption determination request is filed for an activity for which an exemption is not available under s. 30.12(1g), 30.123(6)(d) or (e) or 30.20(1g), Stats., the department shall notify the requester within 15 days of receipt that the activity is not eligible for an exemption, and of any provisions of ch. 30, Stats., that apply to the activity.

NR 310.07 Exemption determinations. (1) The department shall determine whether an activity is exempt under s. 30.12(1g), 30.123(6)(d) or (e) or 30.20(1g), Stats., based on whether it complies with this chapter, all standards in the statute that create the specific exemption and all standards in any rules promulgated under that statute.

(2) The department may inspect activity sites as necessary to determine whether the activity qualifies for an exemption, or whether a general or individual permit is required.

(3) In determining whether an activity is eligible for an exemption, the department may rely on information and data gathered by the department in a prior inspection of the activity site or the waterbody adjacent to the activity site. The department is not required to make a new site inspection in response to receipt of an exemption determination request form.

(4) Where a person who owns the property where an activity is or will be located files an exemption determination request, the department shall determine if the activity is exempt under sub. (1), notify the requester in writing within 15 days if it determines that an activity is not exempt, and inform the requester that a general or individual permit is required for the activity. The department also may notify a requester if it determines that an activity is exempt.

(5) Where a person who does not own the property where an activity is or will be located files an exemption determination request, the department shall determine if the activity is exempt under sub. (1) and notify the requester in writing of its determination. If the activity is not exempt, the department shall inform the requester that a general or individual permit is required for the activity. If the department seeks permission from the landowner to access the property, the department shall notify the landowner of both the exemption determination request and its exemption determination. If the department is not able to obtain permission to access the property to inspect the site, and therefore unable to make a determination as to whether the activity is exempt, the department shall inform the requester of this fact. The department also may notify a requester if it determines that an activity is exempt.

(6) The department has provided notice of its exemption determination on the date the department mails the written determination to the person who requested the determination.

NR 310.08 Permits in lieu of exemptions. In making a determination under s. 30.12(2m), 30.123(6m) or 30.20(1m), Stats., that a general permit or individual permit is required in lieu of an exemption, the department may rely on information and data gathered by the department in a prior inspection of the activity site or waterbody adjacent to the activity site. The department is not required to make a new site inspection in response to receipt of an exemption determination request form.

SUBCHAPTER III GENERAL PERMITS

NR 310.09 Eligibility for general permits. (1) To be eligible for authorization under a general permit pursuant to ss. 30.206 and 30.12(3), 30.123(7), 30.19(3r), or 30.20(1t), Stats., an activity shall meet all standards for the general permit in the statute that authorized issuance of the general permit, the rules in this subchapter and the rules promulgated under the statute that authorized issuance of the general permit and s. 30.206, Stats.

Note: The rules specifying standards for regulated activities for which general permits are available are chs. NR 320, 323, 326, 328, 329, 341, 343 and 345.

(2) Pursuant to ss. 30.12(2m), 30.123(6m), 30.20(1m) and 30.206(3r), Stats., the department may require a person engaged in or proposing an activity for which general permit authorization is available to obtain an individual permit.

NR 310.10 General permit applications. (1) Any person may apply for a general permit from the department under ss. 30.206 and 30.12(3), 30.123(7), 30.19(3r) or 30.20(1t), Stats.

(2) A person who seeks a general permit from the department under sub. (1) shall submit an application on a form provided by the department and shall provide all the information requested on the form and accompanying instructions.

Note: General permit application forms are available at department service centers and on the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

(3) A person filing an application under subs. (1) and (2) shall submit the application to the department not less than 35 days before commencing the activity to allow time for mailing between the applicant and department.

Note: Federal permits may also be required. Applications for general permits are joint applications for both state and federal permits. The applicant shall mail a duplicate copy of the completed general permit application form to the St. Paul district, U.S. army corps of engineers to seek federal authorization. Applicants are responsible for obtaining all necessary federal permits or approvals for their activity.

Note: Local land use or building permits may also be required. Applicants are responsible for obtaining all necessary local permits or approvals for their activity.

NR 310.11 Department procedures for processing general permits. (1) The department shall develop and maintain application forms for requesting authorization under a general permit under s. NR 310.10 and shall provide a copy of a form to any person upon request.

(2) Upon receipt of a general permit application under s. NR 310.10, the department shall determine whether the activity qualifies for a general permit under s. 30.12(3), 30.123(7), 30.19(3r) or 30.20(1t), Stats.

(3) The date of receipt of a general permit application shall be the date the application is received at the department office specified on the form or accompanying instructions.

(4) The department may investigate or visit a site to determine whether an activity meets the standards for a general permit or requires an individual permit under s. 30.206(3r), Stats.

(5) If the general permit application does not meet all the requirements of s. NR 310.10(2) it shall be deemed incomplete. Within 30 days of receipt, the department shall notify the applicant that the application is incomplete and shall describe the information that shall be submitted in order for the application to be complete.

(6) Where a general permit application is filed for an activity for which a general permit is not available under s. 30.12(3), 30.123(7), 30.19(3r) or 30.20(1t), Stats., the department shall notify the requester that the activity is not eligible for general permit, and of any provisions of ch. 30, Stats., that apply to the activity.

(7) The department may dismiss a general permit application without prejudice if the information needed to complete the application is not received within 30 days after the department notifies an applicant that its application is incomplete.

(8) If the department determines that an activity is not eligible for a general permit, the department shall notify the applicant in writing that the applicant may withdraw their application, revise the project so that the activity is eligible for a general permit, or apply for an individual permit.

(9) If the department determines that an activity is eligible for a general permit, the department shall notify the applicant in writing.

(10) The department has provided notice of its determination under sub. (5), (7) or (8) on the date the department mails the written determination to the applicant.

NR 310.12 General permit decisions. (1) All activities proceeding under a general permit issued under s. 30.206, Stats., shall be subject to any requirements in ss. 30.12(3), 30.123(7), 30.19(3r), 30.20(1t), and 30.206, Stats., rules promulgated under those statutes, and all of the following conditions.

(a) The permit does not authorize any work other than what is specifically described in the application and plans, and as limited by the conditions of the permit. A permittee shall obtain prior written approval of modifications from the department before modifying a project or amending permit conditions.

(b) The permittee shall notify the department before starting construction and again not more than 5 days after the project is complete.

(c) The permittee shall post a copy of this permit at a conspicuous location on the project site visible from the waterway, beginning at least 5 days prior to construction and remaining at least 5 days after construction. The permittee shall also have a copy of the permit and approved plan available at the project site at all times until the project is complete.

(d) Upon reasonable notice, the permittee shall allow access to the project site during reasonable hours to any department employee who is investigating the project's construction, operation, maintenance or permit compliance.

(e) The permittee shall complete the project on or before the expiration date established in the permit. If the project is not completed by the expiration date, the permittee shall submit to the department a written request for an extension prior to the expiration date of the permit. The request shall identify the requested extension date and the reason for the extension. The department may grant a permit extension for good cause shown. The permittee may not begin or continue construction after the original permit expiration date unless the department grants a new permit or permit extension in writing.

(f) The permittee shall submit a series of photographs to the department within one week of completion of work on the site. The photographs shall be taken from different vantage points and depict all work authorized by the permit.

(g) The permittee shall maintain the project in good condition and in compliance with the terms and conditions of the permit, this chapter and s. 30.206, Stats.

(h) The department may modify or revoke the permit if the project is not completed according to the terms of the permit or if the department subsequently determines the activity is detrimental to the public interest.

(i) Acceptance of a general permit and efforts to begin work on the activity authorized by the general permit signifies that the permittee has read, understood and agreed to follow all conditions of the general permit.

(2) The department shall retain continuing jurisdiction over any project permitted under this chapter and s. 30.206, Stats.

(3) The department shall monitor activities permitted under the general permit program and shall evaluate the need to repeal or amend this chapter or other chapters authorizing general permits for specific activities.

SUBCHAPTER IV INDIVIDUAL PERMITS, NOTICES, HEARINGS AND ADMINISTRATIVE REVIEW

NR 310.13 Eligibility for individual permits. To be eligible under subchs. I and II of ch. 30, Stats., for authorization under an individual permit, an activity shall meet all standards for the individual permit in the statute that authorized issuance of the individual permit, the rules in this chapter and the rules promulgated under the statute that authorized issuance of the individual permit.

Note: The rules specifying standards for regulated activities for which individual permits are available are the NR 300 series of Wisconsin administrative code.

NR 310.14 Individual permit applications. (1) GENERAL PROVISIONS. (a) Any person may apply for an individual permit from the department under subch. II, ch. 30, Stats.

(b) A person who seeks an individual permit from the department under this section shall submit an application on a form provided by the department and shall provide all the information requested on the form and accompanying instructions.

Note: Individual permit application forms are available at department service centers and on the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

Note: Federal permits may also be required. Applications for general permits are joint applications for both state and federal permits. The applicant shall mail a duplicate copy of the completed general permit application forms to the St. Paul district, U.S. Army Corps of Engineers to seek federal authorization. Applicants are responsible for obtaining all necessary federal permits or approvals for their activity.

Note: Local land use or building permits may also be required. Applicants are responsible for obtaining all necessary local permits or approvals for their activity.

(c) An individual permit application is received by or submitted to the department on the date the application or additional information is received at the department office specified on the permit application form or accompanying instructions.

(d) Any additional information filed by an applicant to complete an individual permit application is received by or submitted to the department on the date the additional information is received at the department office where the additional information was requested to be submitted.

(e) The department has provided notice under this subchapter when it mails an applicant the initial determination of completeness, notice of complete application or notice of public hearing.

(2) INTERESTED AND POTENTIALLY INTERESTED MEMBERS OF THE PUBLIC. (a) The following are determined to be interested and potentially interested members of the public under s. 30.208(3), Stats.:

1. The designated contact for all state, regional, and local watershed and waterway organizations for the waterway or waterways affected by the activity.

2. The clerk of the county and the town, village or city in which the activity is located.

3. Any person who submits to the department a written request for notification regarding a specific application or any general type of application. If the department receives requests for notification from persons who identify themselves as members of a specific organization, notice to an officer of the organization shall constitute notice to all organization members.

4. The adjacent riparian on each side of the property on which the activity is located.

(b) The department may identify additional interested members of the public for a specific individual permit application.

(c) The department shall provide to the applicant with the notice of complete application a list of the names and addresses of the persons it has identified under pars. (a) and (b).

(3) COMPLETENESS DETERMINATIONS. (a) In determining completeness under this subchapter, the department shall determine if an applicant submitted all required items of information necessary to evaluate the application. A determination that an application is complete does not determine whether the submitted information is accurate or sufficient to prove that the activity meets the standards to obtain an individual permit.

(b) The department may dismiss an individual permit application without prejudice if the information needed to complete the application is not received within 45 days after the department notifies an applicant that its application is incomplete.

(c) The department may dismiss an individual permit application without prejudice if the proof of publication required in sub. (9) is not received within 45 days after the department notifies an applicant that its application is complete.

(4) INITIAL DETERMINATION OF COMPLETENESS (APPLICATION DATE + 30 DAYS OR LESS). (a) Within 30 days after an individual permit application is submitted, the department shall initially determine whether the application is complete and notify the applicant as follows:

1. If the application is complete, the department shall notify the applicant in writing that the application is complete.

2. If the application is incomplete, the department shall notify the applicant in writing that the application is incomplete, identify all specific items of information needed to complete the application, and advise the applicant that the department may dismiss the application if the information needed to complete the application is not received within 45 days after the department provides notice that the application is incomplete.

(b) The department may not determine an application is complete unless the department determines that the applicant has provided all information necessary any environmental assessment or environmental impact statement required under s. 1.11, Stats., and ch. NR 150.

NR 310.15 Notices and public comment. **(1) NOTICE OF COMPLETE APPLICATION (INITIAL DETERMINATION OF COMPLETENESS DATE + 15 DAYS).** (a) Within 15 days after the department provides an initial determination of completeness under s. NR 310.14(4)(a)1., the department shall send the applicant a notice of complete application. The notice shall contain all the information required under s. 30.208(5)(b), Stats.

(b) If the applicant requests a public hearing in its individual permit application, the department shall include a notice of public hearing with the notice provided in par. (a).

(c) The applicant shall publish the notice in par. (a) or (b) in the newspaper identified by the department in the notice.

(d) The applicant shall provide a copy of the notice to any person or group who requests a copy.

(e) If the notice contains a list of names and addresses identified under s. NR 310.14(2), the applicant shall provide a copy of the notice to each person on the list. The notice shall be provided to each person via US mail with return receipt requested or delivered in person.

(f) The applicant shall provide proof of notice publication to the department within 45 days after the department provides to the applicant the notice of complete application. The proof of publication shall be an affidavit from the newspaper certifying publication and documenting the date of publication.

(g) If the applicant is required to notify a list of persons in par. (e), the applicant shall provide proof of notification to the department within 45 days after the department provides to the applicant the notice of

complete application. The proof of notification shall be copies of signed return receipts or other signed document verifying that the person received the notice in person.

(2) PUBLIC COMMENT PERIOD (NOTICE OF COMPLETE APPLICATION DATE + 30 DAYS, OR PUBLIC HEARING DATE + 10 DAYS). (a) Any person may submit written comments on an application to the address specified in the notice of complete application or notice of public hearing.

(b) Comments shall address facts relevant to whether an activity in an application will comply with the legal standards listed in the notice of complete application.

(c) The department shall consider all written public comments in evaluating an individual permit application.

(d) Comments are submitted on the date they are postmarked using U.S. mail or on the date they are hand-delivered to the address specified in the notice of complete application or notice of public hearing.

(3) NOTICE OF PUBLIC HEARING. (a) The department shall provide a notice of public hearing:

1. If an applicant requests a public hearing in their individual permit application.

2. If a person submits a written request for public hearing within 30 days after the date the department provided notice of complete application under sub. (1).

3. If the department determines within 30 days after the date the department provided notice of complete application under sub. (1) that there is a significant public interest in holding a public hearing.

(b) The notice of public hearing shall contain all the information required under s. 30.208(5)(b), Stats.

(c) The department shall provide the notice of public hearing required in par. (a)1. with the notice of complete application provided under sub. (1).

(d) The applicant shall publish the notice of public hearing in the newspaper identified by the department in the notice.

(e) The applicant shall provide a copy of the notice of public hearing to any person or group that requests a copy of the notice prior to the public hearing date.

(f) If the notice contains a list of names and addresses identified under s. NR 310.14(2), the applicant shall provide a copy of the notice to each person on the list. The notice shall be provided to each person via US mail with return receipt requested or delivered in person.

(g) The applicant shall provide proof of notice publication to the department within 45 days after the department provides to the applicant a notice of public hearing. The proof of publication shall be an affidavit from the newspaper certifying publication and documenting the date of publication.

(h) If the applicant is required to notify a list of persons in par. (f), the applicant shall provide proof of notification to the department within 45 days after the department provides to the applicant a notice of public hearing. The proof of notification shall be copies of signed return receipts, or other signed document verifying that the person received the notice in person.

NR 310.16 Public informational hearings. (1) FORM AND TIMELINESS OF REQUEST FOR PUBLIC HEARING. Any request for a public informational hearing shall comply with all the following requirements:

(a) A request shall be in writing and dated.

(b) A request shall be submitted to the address in the notice of complete application and postmarked no later than 30 days following the date the department provided notice of complete application.

(c) A request shall include the docket number or applicant name and specify the issues that the party desires to be addressed at the public informational hearing.

(d) The issues specified in the hearing request shall relate to the legal standards listed in the notice of complete application.

(2) LOCATION OF PUBLIC INFORMATIONAL HEARING. The department shall schedule the public informational hearing. The hearing shall be located in the vicinity of the property that is the subject of the individual permit application wherever possible and practicable.

(3) PARTICIPATION AT PUBLIC INFORMATIONAL HEARINGS. Any interested members of the public or representatives of government agencies may participate in a public informational hearing with respect to the issuance of the proposed permit subject to the procedures in sub. (5). Persons and government agencies participating need not be represented by legal counsel.

(4) CHANGES OR ADJOURNMENTS IN TIME OR PLACE OF HEARING. (a) Requests for changes in the time and place of a scheduled hearing will be granted only for good cause shown prior to any required newspaper publication of legal notice for the hearing.

(b) The hearing examiner may adjourn a hearing for good cause shown, to be reconvened at the discretion of the department on 10 days' notice or at a time certain on agreement of all persons present.

(5) CONDUCT OF PUBLIC INFORMATIONAL HEARINGS. (a) *Informational hearings.* Public informational hearings held pursuant to this subsection are not contested cases as defined in s. 227.01(3), Stats.

(b) *Hearing examiner.* Public informational hearings held pursuant to this subsection shall be conducted by a hearing examiner designated by the secretary or secretary's designee.

(c) *Procedure.* 1. The hearing examiner shall open the hearing by concisely stating the scope and purpose of the hearing and explaining the procedures to be used in the hearing. The hearing examiner shall explain how and to whom notice of the final decision granting or denying a permit will be provided and how a person may seek administrative or judicial review of the final decision.

2. Appearance slips shall be distributed to all persons attending the hearing and the hearing examiner shall ask all persons present to indicate on their appearance slips whether they intend to present an oral or written statement at the hearing.

3. Any person may direct informational or clarifying questions through the hearing examiner to a person making oral statements, but cross-examination is not allowed at the hearing.

4. The hearing examiner may place time limits on individual oral statements to prevent undue repetition or insure that all persons wanting to make statements can do so in a reasonable period of time.

5. The hearing examiner, in the hearing examiner's discretion, may limit the number of representatives that may make oral statements on behalf of any individual or organized group.

6. When necessary to ensure maximum participation and adequately allot time for oral statements at hearing, the hearing examiner may schedule at set times for persons to make oral statements. Even if oral statements are scheduled, unscheduled oral or written statements also shall be allowed at hearing.

7. Any person submitting a written statement at hearing shall submit at least one legible copy to the hearing examiner.

8. Regardless of specific requirements of this paragraph, the hearing examiner may, in the hearing examiner's discretion, use any procedures necessary to insure that the hearing will be conducted in an orderly and expeditious manner, provided the measures are consistent with broad public participation in the hearing.

(d) *Contempt*. Loud, noisy, disruptive or contemptuous conduct at a hearing shall be grounds for exclusion from the hearing, at the discretion of the hearing examiner.

(6) RECORD OF PUBLIC PARTICIPATION. The department shall record public informational hearings electronically. The department may prepare a written report of public participation in the hearing.

NR 310.17 Individual permit decision. (1) DECISION DATE (PUBLIC HEARING DATE OR PUBLIC COMMENT PERIOD END DATE + 30 DAYS OR LESS). The department shall render a decision issuing, denying or modifying a permit or approving a contract within 30 days after the public hearing is held, or if no public hearing is held, within 30 days after the end of the public comment period.

(2) STANDARDS AND INFORMATION. The department shall consider all the following information in deciding whether to approve, modify or deny an individual permit application:

- (a) Applicable standards in statutes, rules and common law.
- (b) Plans and information provided by an applicant.
- (c) Information gathered during site investigations.
- (d) Written or oral provided during a public comment period or public hearing.
- (e) Statements or information provided by local, state and national government agencies.

(f) Data or information found in natural resource inventories and plans, or maps collected by the department or others using commonly accepted methods.

- (g) Published scientific research.
- (h) Section 1.11, Stats., Wisconsin environmental policy act, and ch. NR 150.
- (i) Any other pertinent information.

(3) NOTICE OF DECISION. The department shall mail copies of its decision on an individual permit application to all of the following:

- (a) The applicant.
- (b) The city, town or village where the activity is located.
- (c) The county where the activity is located.
- (d) The United States army corps of engineers.
- (e) Any person who asks the department in writing for a copy of the final decision.

(4) EFFECTIVE DATE. (a) *Delayed effective date*. All individual permits issued under this subchapter shall take effect 30 days after the date the department mails its decision to all the parties listed in sub. (3), unless the department receives a petition for administrative hearing under s. 30.209, Stats., and s. NR 310.18 that contains a request for a stay as provided in s. 30.209(1m)(c), Stats.

(b) *Effect of request for stay on permit effective date.* 1. If a petition for administrative review contains a request for a stay, the individual permit for which a stay is requested shall take effect the day after the date the department denies the petition as provided under s. 30.209(f) and (fm), Stats.

2. If the department grants a petition for administrative review, the individual permit for which the petition has been granted shall take effect the day after any of the following occurs:

a. The hearing examiner assigned the case by the division of hearings and appeals lifts the stay because the hearing examiner has determined as provided in s. 30.209(2)(b), Stats., that continuation of the stay is not necessary to prevent significant adverse impacts or irreversible harm to the environment pending completion of the hearing.

b. The hearing examiner renders a decision approving, modifying or denying the individual permit.

(c) *Dates of decisions regarding permits, petitions for administrative review, and stays.* For purposes of this subsection, the department or hearing examiner has rendered a decision, granted or denied a petition for administrative review, or lifted a stay on the date that the department or examiner mails the applicant and the petitioner copies of the decision.

NR 310.18 Administrative review. (1) PETITION FOR ADMINISTRATIVE REVIEW AND REQUEST FOR STAY (PERMIT DECISION DATE + 30 DAYS). (a) Within 30 days after the department renders a decision under s. NR 310.17, any interested person may file with the department, and at the same time provide a copy to the applicant of, a petition seeking administrative review of the decision. The petition also may request a stay of the activity pending an administrative hearing.

(b) The petition shall be in writing, shall be dated and shall be signed by the petitioner.

(c) The petition shall be submitted to the secretary of the department at the address provided in ch. NR 2.

(d) The petition shall include as an attachment a copy of the decision for which administrative review is sought.

(e) A petition for administrative review and any request for stay therein shall comply with the format and be filed in the manner provided by s. 30.209(1m), Stats., and ch. NR 2.

(f) A petition is filed on the date it is received by the secretary of the department at the address specified in ch. NR 2.

(g) A stay requested in a petition shall take effect upon filing of the petition and remain in effect until the department denies the petition under sub. (3) or a hearing examiner lifts the stay as provided by s. 30.209(2)(b), Stats.

(2) APPLICANT RESPONSE TO PETITION (PETITION RECEIPT DATE + 15 DAYS OR LESS) (a) Within 15 days after a petition is filed with the department, an applicant may file with the department, and at the same time shall provide to the petitioner seeking review, a response to the petition.

(b) A response to a petition shall comply with s. 30.209(1m)(e), Stats.

(c) A response to a petition is filed on the date it is received by the secretary of the department at the address specified in ch. NR 2.

(3) GRANT OR DENIAL OF ADMINISTRATIVE REVIEW PETITION (PETITION RECEIPT DATE + 30 DAYS OR LESS). (a) Within 30 days after the date that a petition is filed, the department shall grant or deny the petition in writing and, if the petition is denied, state the reasons for denial as provided in s. 30.209(1m)(f), Stats. Failure to dispose of the petition within 30 days is a denial.

(b) The department has granted or denied a petition under par. (a) when it mails a grant or denial to a petitioner.

(4) REFERRAL TO DIVISION OF HEARINGS AND APPEALS (PETITION GRANT DATE + 15 DAYS OR LESS). (a) Unless both the petitioner and applicant agree to an extension, the department shall refer the matter to the division of hearings and appeals within 15 days after granting the petition.

(b) The department has referred the matter under par. (a) when it mails to the division of hearings and appeals a hearing request form and copies of the permit application, the notice of completeness, the permit decision, the petition for administrative review, any petitioner's response to the petition, and the department letter granting the petition.

(5) NOTICE OF ADMINISTRATIVE HEARING. (a) At least 30 days before the date of the administrative hearing, the division of hearings and appeals shall notify the applicant as provided in par. (b).

(b) The division of hearings and appeals shall provide an applicant all the following:

1. A notice of administrative hearing that shall contain all the information required under s. 30.208(5)(b), Stats. The division of hearings and appeals may include any additional information that it deems necessary to provide adequate notice of an administrative hearing.

2. A letter accompanying the notice or notices that contains all the following:

a. A statement that an administrative hearing will be held and whether the applicant or an interested person requested the hearing.

b. A statement that the applicant must mail a copy of the notice to any person or group who asks for a copy and mail a copy via U.S. mail with return receipt requested to an enclosed list of persons that the department has determined are interested and potentially interested members of the public pursuant to s. 30.208(3), Stats., and s. NR 310.14(2).

c. A list of persons and groups that asked that a notice of hearing be mailed to them, a list of interested and potentially interested members of the public determined by the department under s. 30.208(3), Stats., and s. NR 310.14(2) and a statement that the applicant is required to mail a notice of hearing to any person or group that asks for the notice between now and the hearing date.

d. A statement that the applicant is required to publish the notice as a Class I notice under ch. 985, Stats., and provide the division an affidavit of publication to prove the notice was published. The name of the newspaper in which the notice must be published shall also be provided to the applicant.

e. A statement that the applicant is required to furnish the division return receipts of mailing to or signed affidavits of receipt of notice from all persons under this subd. 2.c.

f. A statement that the applicant or an authorized representative must appear at the hearing to present testimony or the hearing will be rescheduled or the application dismissed.

g. A statement that the hearing may be rescheduled or the application dismissed if the hearing examiner does not receive the information specified under this subd. 2.d. and e. by the date requested by the hearing examiner.

h. A statement that if the application is dismissed, the applicant may resubmit an application for the individual permit.

(c) The division has provided the information in par. (b) when it mails an applicant the information.

(d) An applicant shall publish a notice provided under par. (b) as a class I notice under ch. 985, Stats., mail the notice or notices to all listed persons in par. (b)2.c., and provide to the division a copy of the notice, an affidavit of publication, and return receipts of mailing to or signed affidavits of receipt of notice from all persons under par. (b)2.c.

(e) The department has provided notice of an administrative hearing on the later of the date notice of hearing was published or mailed to all listed persons as required by par. (d).

(f) The division may reschedule a hearing or dismiss an application without hearing if the hearing examiner does not receive the information specified in par. (b)2. d. and e. by the date requested by the hearing examiner.

(g) If the application is dismissed, the applicant may resubmit an application for the individual permit.

(5) CONDUCT OF ADMINISTRATIVE HEARING. An administrative hearing shall be conducted in compliance with the requirements of ss. 30.209(2) and 227.42, Stats., and chs. NR 2 and HA 1.

(6) CONFLICTS OR OMISSIONS. In the event of conflicts between or omissions in the statutes and rules that govern requests for and conduct of administrative hearings, the applicable statutes and rules shall be applied in the following sequence:

(a) Section 30.209, Stats., shall apply notwithstanding any conflicting statutes or rules.

(b) Section 227.42, Stats., shall apply notwithstanding any conflicting statutes or rules except for s. 30.209, Stats., and shall apply to any issues not addressed by s. 30.209, Stats.

(c) This section applies notwithstanding any conflicting statutes or rules except for ss. 30.209 and 227.42, Stats., and shall apply to any issues not addressed by s. 30.209 or 227.42, Stats.

(d) Chapter NR 2 shall apply notwithstanding any conflicting statutes or rules except for ss. 30.209 and 227.42, Stats., and this section, and shall apply to any issues not addressed by s. 30.209 or 227.42, Stats., and this section.

(e) Chapter HA 1 shall apply to any issues not addressed by s. 30.209 or 227.42, Stats., or this section or ch. NR 2.

SECTION 7. Chapter NR 322 is repealed.

SECTION 8. 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 9. 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

ADOPTED BY
NR BOARD 2/8/05

**Modifications to Public Waters Rules
requested by Senate & Assembly Natural Resource Committees**

CHR-02-099 (NR328)

NR 328.04 (4) (c) Vegetation shall be plant species that are native to the area of Wisconsin where the project is located. Vegetative treatments shall be installed according to Natural Resources Conservation Service Conservation Practice Standard Code 580 (Streambank and Shoreline Protection) or the Natural Resources Conservation Service Engineering Field Handbook (chapter 16).

NR 328.05 (5) (b) The project site is a moderate or high energy site; or a low energy site where the bank-edge recession described in s. NR 328.08 (3) is equal to or greater than 0.5 feet per year and the applicant can show a biological erosion control structure was previously placed according to the standards in s. NR 328.04 (3) and (4).

Note: NR 328.08(3) requires that the time between separate measurements shall equal or exceed 3 months during the open-water season.

Note: The applicant will satisfy the "equal to or greater than 0.5 feet per year" requirement by demonstrating that the bank-edge recession is equal to or greater than 1.5 inches per 3 months during the open-water season.

CHR-04-066 (NR 1)

Note following s. NR 1.05 (2)

Note: Activities not exempted in areas of special natural resource interest under ss. 30.12 and 30.20, Stats., are: deposits less than 2 cubic yards; seasonal structures other than piers or wharves; fish habitat structures; bird nesting platforms; dry hydrants; pilings; riprap repair or replacement; biological shore erosion control structures; intake or outfall structures; dredging to place or maintain an exempt structure; dredging without auxiliary power. Activities not exempted in areas of special natural resource interest under ch. NR 320 are culvert replacements. ~~Piers meeting the dimensional standards in s. 30.12, Stats., are exempt in areas of special natural resource interest under s. 30.13, Stats., unless 30.12 (2m), Stats., applies.~~ However, new and existing piers may be exempt in areas of special natural resource interest under s. 30.13, Stats., as set forth in ch. NR 326.

Note following s. NR 1.06 (2)

Note: Exemptions not allowed in locations of public rights features are: intake or outfall structures other than dry hydrants; replacement culverts with inside diameter not more than 24 inches; dredging without auxiliary power. ~~In locations of public rights features, piers exceeding the dimensional standards in s. 30.12, Stats., are unlikely to~~

qualify for the exemption under s. 30.13, Stats. However, new and existing piers may be exempt in areas with public rights features under s. 30.13, Stats., as set forth in ch. NR 326.

[Typographical correction: In s. NR1.06(2), the "and" between "30.12 (1g)" and "(km)" will be eliminated.]

Note following NR1.05 (4)(a)

Note: The definition of special concern species and scientific protocols for their identification are established in the Wisconsin Natural Heritage Working List available at http://dnr.wi.gov/org/land/er/working_list/taxalists/key.htm. Special concern species are those species about which some problem of abundance or distribution is suspected but not yet proved. The main purpose of this category is to focus attention on these species before they become threatened or endangered.

NR1.05(7) . The department shall report to the chairs of the standing natural resource committees of the Legislature and to the co-chairs of the joint committee for review of administrative rules in July January of each year the aquatic-dependent species of special concern that may be have been added or removed from the state's list and those bodies of water that may be are known be impacted by the addition or removal of those species. The department will notify the chairs of the standing natural resource committees of the Legislature and to the co-chairs of the joint committee for review of administrative rules in January of those bodies of water that have been added to or removed from the consolidated list of areas of special natural resource interest as required in NR1.05(6) that result from identification of special concern species. This notification ~~report~~ shall be included in an annual report on waterway and wetland permit program performance that is provided to all members of the legislature and the clerk of each county.

CHR-040065 (NR310)

SECTION 10. Evaluation. The department shall report to the Natural Resources Board, with copies to the chairs of the Senate and Assembly Natural Resources Committees, no later than one year after the effective date of this permanent rule on the implementation of Act 118 through rules promulgated thereunder.

(1) The report should cover all aspects of implementation but shall specifically address the following:

(a) Number and type of permits and exemption determinations issued, the average time taken to process them, and performance in meeting permit deadlines.

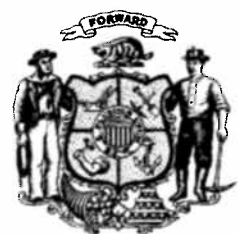
(b) Use of the waters designations including extent and nature of waters added to the Areas of Special Natural Resource Interest, Public Rights Features or Priority Navigable Waters lists, and accessibility of list or maps as required by rule.

- (c) Performance of the new public hearing and individual permit process including number of hearings held, number of objections registered, number of individual permits issued with delayed effective dates, and number of contested case hearings.
- (d) Number and circumstances of general permits required in lieu of exemptions and individual permits required in lieu of a general permit.
- (e) Adverse effects of exempt or general permit activities on habitat, natural features, water quality or navigation, including cumulative and long-term effects on fish and wildlife habitat.
- (f) Results of compliance monitoring program based on inspections of at least a sample of known exempted activities, and general and individual permits.
- (g) Efficiency of permitting complex projects with multiple permitted activities including number of such projects, average number of permitted activities and number of applicants who voluntarily requested a combined permit.
- (h) Experience with making grading jurisdiction determinations using slope measurements and the number of projects requesting the voluntary distance stipulation.
- (i) Experience with applicants requesting fish spawning window waivers.
- (j) Additional activities that could be more efficiently permitted using general permits.
- (k) Alternative processes for general permit development.
- (l) Experiences with making wetland water quality determinations on general permits including estimates of total wetland loss.
- (m) For decisions under NR328, the number of permit applications, application withdrawals, and permit denials; the time period between the application submittal and final action by the department; name and contact information for each permit applicant; and the physical site features of such applications each year.
- (2) The department shall establish an advisory group consisting of interested stakeholders who will provide recommendations to the Department and Natural Resources Board on implementation issues to be evaluated and any needed changes to administrative rules or operating procedures. Members of the advisory board should include at least representatives from the Wisconsin Wildlife Federation, River Alliance, Wisconsin Association of Lakes, Wisconsin Builders Association, Wisconsin Realtors Association, Senate and Assembly Natural Resources Committees, and other interested parties as determined by the Secretary.
- (3) The Secretary may extend the evaluation, reporting and advisory group for additional years based on the results and recommendations of the initial report.

Section 40 11. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.



WISCONSIN STATE LEGISLATURE



Streamlining the Permit Process while Protecting Public Waters

Proposed Rule - Timelines & Procedures - NR 300 & 310

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. All of the administrative procedures for public waters permits needed change to adapt to the new system. A detailed procedures rule is proposed in order that waterfront property owners, developers, consultants and other water users, have clear expectations about the permit process and can plan accordingly for their projects, or participate constructively in decisions about public waters. Details also ensure that DNR staff all carries out the new law the same way.

Fees & Timelines

Public waters permit applications decisions have always been governed by deadlines. The current fee system has been in place since 1988, with fees based on the relative agency review times. Proposed changes include:

- DNR must determine whether an application is complete within 30 calendar days (was 60 days)
- DNR must act on a general permit within 30 calendar days or the permit is approved (previously there were no such general permits).
- DNR must make a final determination on individual permits not requiring a public notice within 105 calendar days (was generally 120 days before)
- DNR must make a final determination on individual permits requiring a public notice within 150 calendar days (was generally 180 days).
- DNR must make determinations on exemption requests that grant permission to inspect the property within 15 days or the exemptions is presumptively approved (previously there were not exemption determination requests).
- General permits have a fee of \$50 – except for activities where determining whether or not a plan meets the GP specifications requires detailed review (fees are then \$300).

Permit Application & Decision Procedures

Procedures in the proposed NR300-310 for exemptions, general permits and individual permits were written to be in strict conformance with procedures and timelines established in Act 118. The most complex changes are in the public notice and hearing process that was significantly changed.

- Individual permits are required for all activities that are not exempt and not covered by a general permit. A 30 day public notice is now required for all individual permits.
- Applicants are responsible for providing adequate written notice to all interested persons and publishing the newspaper notice.
- An informational hearing is available, rather than a hearing before an administrative law judge, prior to DNR's permit decision.
- The permit decision may be appealed to obtain a hearing before an administrative law judge.

Issues & Alternatives

One provision is at issue: The Joint Committee on Review of Administrative Rules suspended a provision that DNR's permit decision be effective 30 days after the date of issue. Many projects are well underway as soon as a permit is issued – and may be completed before an appeal is filed that can stop the work. For applicants, this can mean rework. For concerned citizens, this can mean legal fees to try stopping the work. For lakes and streams, in some instances this can mean irreversible impacts. In drafting its temporary NR310, DNR considered a number of options including staff

discretion to delay permit effective dates and delayed effective dates for subsets of permits – and for the temporary rule and the purpose of public hearings, selected the simple uniform approach.

What do YOU Think?

DNR is looking for your input concerning these proposed rules. You can participate in one of several ways.

Fill out a written questionnaire at a public hearing **open house**.

Send comments over the **internet** at
<https://apps4.dhfs.state.wi.us/admrules/public/Home>

Testify at a public hearing (see locations, dates and times by clicking on DNR's page, then on "Permits & Licenses," then "Waterway & Wetlands.")

Mail DNR your written comments to Ms. Roberta Lund, DNR FH/3, P.O. Box 7921, Madison, WI, 53707-7921.

Comments accepted through August 9, 2004