



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

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

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 NR 300.01, 300.04 (1), (2), (3) and (4)(a) and (b), 300.05(1) and 300.06(1) and create 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 hearing within 105 calendar days (was generally 120 days)
- Department must make a final determination on individual permits requiring a public hearing 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).

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.

| <b>Time Limit</b>          | <b>U.S. Army Corps of Engineers</b>  | <b>Wisconsin DNR</b>  |
|----------------------------|--|---|
| 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.

| <b>Time Limit</b>        | <b>Wisconsin</b> | <b>Illinois</b> | <b>Iowa</b>    | <b>Michigan</b> | <b>Minnesota</b> |
|--------------------------|------------------|-----------------|----------------|-----------------|------------------|
| 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: Any person placing a structure or making similar physical modifications to public navigable waters either qualifies for an exemption or must obtain a general or individual permit under state statute. To comply, small businesses follow the same requirements as other waterfront property owners: (1) make a self-determination of exemption using web-based tools provided by the department or describe their activity on an exemption determination request form; and if the activity is not exempt (2) complete a general permit application; or (3) complete an individual permit application. Schedules, application steps and compliance/reporting requirements are very basic for all applicants, and most projects can be planned and conducted by individuals with no specific professional background.

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

Effect on Small Business: Small businesses who wish to conduct regulated activities on or near navigable waterways will be affected by the rule. Specific standards will provide clarity and consistency in the permitting process.

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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 (1) is amended to read:

**NR 300.04 Time limits (1)** Except as provided in s. NR 300.05, time limits specified in sub. (4) shall be applied to decisions ~~on fully completed~~ applications for water regulatory permits, approvals or determinations listed in s. NR 300.02.

SECTION 3. 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., has 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 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 4. 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 35 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 5. NR 300.05(1) is amended to read:

**NR 300.05(1)** When a contested case hearing is required because ~~a substantive written objection to the granting of a permit or approval by the department has been received in response to a public notice, or when a hearing is scheduled on the department's own motion the department's decision shall be mailed to~~

~~the applicant within 45 business days after completion of the hearing, including preparation of a transcript if necessary, and subsequent filings under s. 30.03, Stats.~~

SECTION 6. 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 7. 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 8. 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)(a) and (br), 30.123(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.

**Note:** This incorporates the definition at s. 30.01(4m), Stats., and current case law, which requires a watercourse to have a bed and banks, *Hoyt v. City of Hudson*, 27 Wis. 656 (1871), and requires a navigable waterway to float on a regularly recurring basis the lightest boat or skiff, *DeGayner & Co., Inc. v. DNR*, 70 Wis. 2d 936 (1975); *Village of Menomonee Falls v. DNR*, 140 Wis.2d 579 (Ct. App. 1987).

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

## 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 ss. NR 1.05 and 1.06.

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

(2) For those activities which are not allowed in locations where there are public rights features as described in s. NR 1.06, a person may only undertake an exempt activity after they have evaluated the site and determined that the structure or activity is not in the location of a public rights feature as described in s. NR 1.06(4).

(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](http://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), 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 an exemption is not available for the activity, 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) When 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) When 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)(a) or (br), 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 s. 30.206, Stats., and, as applicable, either s. 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](http://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(2), 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 an application which meets the requirements of s. NR 310.10(2) is received at the department office specified on the form or accompanying instructions.

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

(5) 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.

(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 a general permit is not available for the activity, and of any provisions of ch. 30, Stats., that apply to the activity.

(7) The department may dismiss a general permit application 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 revise the project so that the activity is eligible for a general permit, withdraw the application or apply for an individual permit. In its notification, the department shall state why the project is ineligible for a general permit. The statement shall, where applicable, describe public rights features at the site or conditions specific to the site that require restrictions different than the general permit conditions in order to prevent significant adverse impacts to public rights and interests, environmental pollution as defined in s. 299.01(4), Stats., or material injury to the riparian rights of any riparian owner.

(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), (8) or (9) 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.

#### **SUBCHAPTER IV INDIVIDUAL PERMITS, NOTICES, HEARINGS AND ADMINISTRATIVE REVIEW**

**NR 310.13 Eligibility for individual permits.** (1) 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](http://www.dnr.wi.gov) under the topic "Waterway and Wetland Permits."

**Note:** Federal permits may also be required. Applications for individual permits are joint applications for both state and federal permits. The applicant shall mail a duplicate copy of the completed individual 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.

(f) The department has completed providing a notice of complete application pursuant to s. 30.208(3)(c) and (4)(a), Stats., on the later of the date that the applicant publishes notice or mails notice to all parties under sub. (2).

**(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 adjacent riparian on each side of the property on which the activity is located.
2. The designated contact for any local lake or river organization for the waterway where the project is located.

**Note:** Directories of contact names and addresses are available at websites maintained by the Wisconsin Lakes Partnership and the River Alliance of Wisconsin.

3. The clerks of the county and the town, village or city in which the activity is located.
4. 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.
5. Any additional interested members of the public identified by the department for a specific individual permit application.

(b) 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 par. (a)4. and 5.

**(3) COMPLETENESS DETERMINATIONS.** (a) Determining completeness under this subchapter means that the department determines if an applicant has submitted all items required in s. NR 310.14(1)(b). A determination that an application is complete is not a judgement that 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 if the proof of publication required in s. NR 310.15(1)(f) 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 for 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 no later than 10 days before the scheduled hearing date.

(d) The applicant shall provide a copy of the notice to any person or group who requests a copy no later than 10 days before the scheduled hearing date.

(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 prior to the scheduled hearing date. The proof of publication shall be an affidavit from the newspaper certifying publication and documenting the date of publication. If an affidavit cannot be obtained prior to the scheduled hearing date, the proof of publication shall be an original newspaper page, not a photocopy, which contains the notice and publication date.

(g) If the applicant is required to notify a list of persons in pars. (d) and (e), the applicant shall provide proof of notification prior to the scheduled hearing date. The proof of notification shall be proof of mailing from the U.S. postal service, or a signed and dated statement from the person delivering the notices that the notices were personally delivered.

**(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 no later than 10 days before the scheduled hearing date.

(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 no later than 10 days before the scheduled 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 prior to the scheduled hearing date. The proof of publication shall be an affidavit from the newspaper certifying publication and documenting the date of publication. If an affidavit cannot be obtained prior to the scheduled hearing date, the proof of publication shall be an original newspaper page, not a photocopy, which contains the notice and publication date.

(h) If the applicant is required to notify a list of persons in pars. (e) and (f), the applicant shall provide proof of notification prior to the scheduled hearing date. The proof of notification shall be proof of mailing from the U.S. postal service, or a signed and dated statement from the person delivering the notices that the notices were personally delivered.

**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) DATE AND LOCATION OF PUBLIC INFORMATIONAL HEARING.** The department shall hold a public informational hearing within 30 days after notice of hearing has been provided to the applicant under s. 30.208(3)(d), Stats. 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. Failure to publish or notify as required by s. NR 310.15(3)(d) and (e) shall constitute good cause for changes or adjournment.

(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 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 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.* The hearing examiner may exclude from the hearing a person who engages in loud, noisy, disruptive or contemptuous conduct.

**(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.** 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 information 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) *Normal effective date.* Except as otherwise provided in this subsection, the permit shall take effect upon mailing of the decision to all the parties listed in sub. (3).

(b) *Delayed effective date based on objection.* 1. Within 3 days of the close of any public comment period, the department shall notify the applicant and objectors of any objections, based on substantive standards in the statute and rules relating to the project that it has received.

2. If the department has received objections under subd. 1, the individual permit shall take effect 30 days after the department mails its decision to all the parties listed in sub. (3).

3. If objections under subd. 1 are withdrawn, the permit shall take effect upon mailing of the decision to all the parties listed in sub. (3).

(c) *Delayed effective date based on petition for administrative review.* 1. If a petition for administrative review contains a request for a stay and the department denies the petition provided under s. 30.209(f) and (fm), Stats., an individual permit shall take effect the day after the date the department denies the petition.

2. If a petition for administrative review contains a request for a stay that contains information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment and the department grants the petition, 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.

(d) *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 in the petition 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) If a petition filed under s. 30.209(1m)(a), Stats., requests a stay under s. 30.209(1m)(c), Stats., and contains information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment, a stay shall take effect upon filing of the petition and remain in effect until the department denies the petition under sub. (3) and s. 30.209(1m)(d), Stats., or the hearing examiner lifts the stay as provided by s. 30.209(2)(b), Stats., or renders a decision approving, modifying or denying the individual permit.

**(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.

**(6) 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.

**(7) 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 9. Chapter NR 322 is repealed.

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 11. 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. Any steps that the department, applicant or other parties have not yet begun to implement shall be conducted as provided in this rule for applications received after February 6, 2004. To the extent that the department or applicant have begun or completed procedural steps, those steps are not affected by this rule.

SECTION 12. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 8, 2004 and March 8, 2005.

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

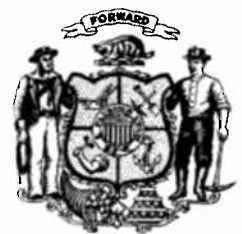
STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

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

(SEAL)



# WISCONSIN STATE LEGISLATURE



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 328, subch. I relating to shore erosion control of inland lakes and impoundments.

FH-39-01

Summary Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.12(1), 30.12(1p), 30.2035, 30.206, and 227.11(2), Stats

Statutes Interpreted: ss. 30.12(1), 30.12(1g) (i), (j) and (k), (3) and (3m), and 30.206, Stats.

Explanation of Agency Authority:

The Department has authority under s. 30.12, Stats., to promulgate rules that establish installation practices, construction and design requirements and limitations on the location of structures placed under statutory exemptions. The Department has authority under ss. 30.12 and 30.206, Stats., to promulgate rules to establish general permits.

Related statute or rule:

These rules relate directly to regulation of activities in navigable waters under ch. 30, Stats., waters designations in ch. NR 1, and the NR 300 series of rules.

Plain Language Analysis:

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

Standards for exemptions, general permits and individual permits in this section are based on state-of-the-art science for determining wave energy condition at a site that corresponds to the presence of habitat features (and coincidentally the potential for shore erosion at the site). Research shows that fish and wildlife habitat is maximized along natural shorelines and minimized where hard armoring (e.g., seawalls, riprap) is installed. Riprap repair and replacement are generally allowed at moderate and high energy sites with several installation practices. Biological shore erosion control structures are generally allowed with several installation practices.

This order also establishes general permits for biological erosion control, riprap or vegetative armoring, and seawall replacement. Biological erosion control is allowed in ASNRIs under general permit if all standards for exemptions for this activity are met. Up to 100' of new riprap or vegetative armoring is allowed along moderate or high shorelines under general permit if all standards for exemptions for riprap repair and replacement are met. Seawall replacement is allowed under general permit at municipal and commercial marinas, navigation channels, and locations with slopes greater than 1.5:1.

This order also establishes some limitations on individual permits.

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

Comparison with Adjacent States:

## **Minnesota**

The Minnesota Department of Natural Resources, Division of Waters is responsible for Administrative Rules 6115.0215 (Restoration of Public Waters) and 6115.0210 (Structures in Public Waters). Minnesota's regulations include exempted activities and general permits and the regulated activity are roughly similar to Wisconsin. Minnesota's stated resource protection goals are more protective than Wisconsin, however their Administrative Rule criteria are more subjective.

## **Michigan**

Inland lakes and streams are regulated under Part 301 and of the Natural Resources and Environmental Protection Act (NREPA), PA 451 of 1994, as amended. Under Part 301 the construction of any type of shore stabilization structure such as a sea wall, bulkhead, revetment, etc. at or below the ordinary high water mark of the lake or stream requires a permit. Michigan's stated goals and procedures (except MI has no erosion control structures exempt from permits) are similar to Wisconsin, however their specific decision criteria are more subjective.

## **Illinois**

Illinois has no firm detailed guidelines related to specific permitting of erosion control structures. The U.S. Army Corps of Engineers often plays the lead role in permit issuance of erosion control structures in Illinois. The Army Corps consults with Illinois DNR, Illinois EPA and the U.S. Fish and Wildlife Service when reviewing projects. Project reviews typically focus on water quality and endangered resources. Illinois' regulated erosion control activities are less protective of the environment than in Wisconsin, and their decision criteria more subjective.

## **Iowa**

Pursuant to Chapter 461A, erosion control structures placed below the ordinary high water mark require a permit for rivers, streams and lakes under the jurisdiction of the DNR (Sovereign Lands Construction Permit). Iowa Administrative Code only identifies authority, and the Department offers limited guidance and historical precedence for conducting project reviews. Environmental reviews consist of a record of review for protected species (state listed endangered or threatened), rare natural communities, state lands and waters in the project area, including review by personnel representing state parks, preserves, recreation areas, wetlands, fisheries and wildlife. Iowa's regulated erosion control activities are less protective of the environment than in Wisconsin and their decision criteria more subjective.

Summary of Factual Data and Analytical Methodologies: Standards are based on state-of-the-art science for determining wave energy condition at a site that corresponds to the presence of habitat features, and the potential for shore erosion at the site.

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

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

Effect on Small Business: Small businesses who wish to conduct regulated activities on or near navigable waterways will be affected by the rule. Specific standards will provide clarity and consistency in the permitting process.

Agency Contact Person: Paul Cunningham, Paul.Cunningham@dnr.state.wi.us, (608) 267-7502



SECTION 1. Chapter NR 328 (title) is repealed and recreated to read:

**CHAPTER NR 328  
SHORE EROSION CONTROL STRUCTURES IN NAVIGABLE WATERWAYS**

SECTION 2. Chapter NR 328, subch. I is created to read:

**SUBCHAPTER I  
SHORE EROSION CONTROL STRUCTURES ON INLAND LAKES AND IMPOUNDMENTS**

**NR 328.01 Purpose.** (1) The purpose of this subchapter is to establish reasonable procedures and limitations for exempt activities, general permits and individual permits for placement of shore erosion control structures in inland lakes and impoundments as regulated under s. 30.12, Stats., in order to protect the public rights and interest in the navigable, public waters of the state as defined in s. 30.10, Stats.

(2) The standards for exemptions, general permits and individual permits in this chapter balance the reasonable right of riparians to control shore erosion under Wisconsin law with the public rights and interests in navigable waters. (*Doemel v. Jantz*, 180 Wis. 225, 193 N.W., 393 (1923)). The public interest in navigable waters includes navigation, recreation, fish and wildlife habitat, water quality and natural scenic beauty.

(3) Natural shoreline features provide natural erosion control in various ways. Nearshore lakebeds and beach slopes change and shoals forms erosion uncovers or sorts out sand, gravel, cobbles, boulders and bedrock from beneath glacial till and other fine soils. These more energy resistant materials are formed into wave-breaking, energy-absorbing barriers that eliminate, or slow, further erosion. Natural vegetation provides erosion control in several ways. Plants form a network of roots that hold soil particles together and stabilize the bank. Exposed stalks, stems, branches, foliage and fallen trees dampen waves, reduce local flow velocities, and dissipate energy against the plant rather than eroding the soil. Vegetation also acts as a buffer to trap suspended sediment and induce its deposition.

(4) Shoreline erosion control structures allowed under this rule are setting-dependent and based on erosive energy at a site. Erosive energy is a reflection of habitat features at a site. Low-energy settings are found to contain fine-size nearshore sediments, stable natural vegetation, and absent or natural levels of erosion. In low-energy and some moderate energy sites vegetation can effectively meet erosion control needs without infringement on the public interest. Shore protection from vegetation alone may be inadequate in some low- to moderate-energy settings and many high-energy settings; therefore, methods that rely on technical structures or a combination of vegetation with technical structures, i.e., large substrates, may be necessary. Riprap, vegetated riprap and integrated toe protection are preferred structural shore protection methods in high-energy settings with erosion problems.

(5) Standards for exemptions are intended to provide clear and consistent requirements so that individuals can determine whether they qualify, and easily design projects to meet the requirements. To achieve this, exemption standards establish reasonable installation practices to minimize environmental impacts, establish reasonable construction and design requirements consistent with the purpose of the activity, and establish reasonable limitations on location.

(6) Standards for general permits are intended to ensure that cumulative adverse environmental impact of authorized activities is insignificant and that issuance of the general permit will not injure public rights or interests, cause environmental pollution as defined in s. 299.01(4), Stats., or result in material injury to the rights of any riparian owner. To achieve this, general permit standards establish: construction and design requirements consistent with the purpose of the activity; location requirements that ensure that the activity will not have an adverse impact on fish and wildlife habitat, water quality and natural scenic beauty, or materially interfere with navigation or have an adverse impact on the riparian property rights of adjacent riparian owners.

(7) Standards and factors for individual permits are intended to provide direction for detailed evaluation of permit applications, and to balance case-by-case review with consistent decision-making. Individual permits may only be granted where the department determines that the structure will not materially obstruct navigation, will not be detrimental to the public interest, and will not materially reduce the flood flow capacity of a stream.

**NR 328.02 Applicability.** (1) Except as provided in s. 30.2023, Stats., this subchapter applies to construction, placement and maintenance of shore erosion control structures regulated under ss. 30.12(1), (1g)(a), (i), (j) and (k), (2m), (3)(a)3c., 3g., 3r. and 13. and (3m), Stats. Any person that intends to construct, place or maintain a shore erosion control structure in any inland lake or impoundment shall comply with all applicable provisions of this chapter and any permit issued under this chapter.

**Note:** This subchapter does not apply to the Great Lakes or outlying waters as defined in s. 29.001(63), Stats.

**Note:** Shore erosion control structures for lakes and impoundments in the areas described in s. 30.203, Stats., (Seawalls; Wolf River and Fox River basins) that do not qualify for an exemption are regulated under this chapter.

(2) Shore erosion control measures such as grading to establish a stable slope, revegetation or other bioengineering methods that do not involve the placement of structures on the bed of a waterway are not regulated under s. 30.12, Stats., or this subchapter.

**Note:** A permit is required under s. 30.19, Stats., and ch. NR 341 if land disturbance or excavation exceeds 10,000 square feet on the bank of the navigable waterway.

**NR 328.03 Definitions.** In this subchapter:

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

**Note:** "Area of special natural resource interest" means any of the following:

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

(b) A surface water identified as a trout stream by the department under s. NR 1.02(7).

(bm) A surface water identified as an outstanding or exceptional resource water under s. 281.15, Stats.

(c) An area that possesses significant scientific value, as identified by the department in s. NR 1.05.

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

(2) "Biological shore erosion control structure" means a structure that relies solely on biological materials.

(3) "Biological materials" means living or organic materials that are biodegradable such as native grasses, sedges, forbs, shrubs and trees; live stakes and posts; non-treated wood; jute netting; fiber rolls and mats; logs; and branches.

**Note:** Temporary breakwaters, with non-biodegradable elements, are considered a permissible element during the plant establishment phase of a biological erosion control project.

(4) "Commercial marina" has the meaning in ch. NR 326.

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

(6) "Erosion intensity" or "EI" means the degree of erosion as estimated under s. NR 328.08(2).

(7) "Grading" means the physical disturbance of the bank by the addition, removal or redistribution of soil.

(8) "Hard armoring" means a shore erosion control structure that relies solely on inert materials, and includes but is not limited to riprap and seawalls.

(9) "High energy site" means a site where the storm-wave height calculated under s. NR 328.08(1) is greater than or equal to 2.3 feet, where the erosion intensity score calculated under s. NR 328.08(2) has a score of greater than 67.

(10) "Inert materials" means those materials that slowly degrade, such as chemically treated wood, stone, stainless and galvanized steel, plastics and synthetic polymers.

(11) "Integrated toe protection" means a structure combining 2 separate treatments: toe protection at the base of the bank and vegetation establishment on the remaining upper portion of the bank above the ordinary high water mark.

**Note:** The maximum toe protection structure elevation is equal to the ordinary high water mark plus one-half of the storm-wave height.

**Note:** The toe protection relies on materials such as stone, armor units, fiber rolls or wattles to protect the base of the bank. Above the toe protection, the remainder of the bank is revegetated by installing a shoreland buffer or with brush layering, brush mattresses, fiber rolls, live stakes, vegetated geogrid, rolled erosion control products or wattles. Plant materials may also be incorporated as part of the shore protection design below the ordinary high water mark as well.

(12) "Low energy site" means a site where the storm-wave height calculated under s. NR 328.08(1) is less than 1.0 foot, or where the erosion intensity score calculated under s. NR 328.08(2) has a score of 47 or less.

(13) "Municipal marina" has the meaning in ch. NR 326.

(14) "Maximum toe elevation" means the elevation of the bank toe mark plus the storm-wave height estimated under s. NR 328.08(1).

(15) "Moderate energy site" means a site where the storm-wave height calculated under s. NR 328.08(1) is greater than or equal to 1.0 foot but less than 2.3 feet, where the erosion intensity score calculated under s. NR 328.08(2) has a score of 48 to 67.

**Note:** Common law doctrine of avulsion secures to waterfront property owner the ability to reclaim land suddenly lost to erosion (*AG ex rel Becker v. Bay Boom Wild River and Fur Company*, 172 Wis. 363 1920.)

(16) "Offshore" means located a minimum of 10 horizontal feet waterward from the ordinary high water mark.

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

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

**Note:** This incorporates the definition at s. 30.01(4m), Stats., and current case law, which requires a watercourse to have a bed and banks, *Hoyt v. City of Hudson*, 27 Wis. 656 (1871), and requires a navigable waterway to float on a regularly recurring basis the lightest boat or skiff, *DeGayner & Co., Inc. v. DNR*, 70 Wis. 2d 936 (1975); *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987).

(19) "Permanent breakwater" means a structure constructed of stone, rock, concrete or other non-degradable materials and located offshore for the purpose of diminishing the force of the waves and protecting the shoreline.

**Note:** These structures can be designed to provide fish and wildlife habitat in addition to erosion control by incorporating vegetation on the breakwater and in the nearshore zone. Examples of permanent breakwaters include stone dikes, barrier islands, stone islands and submerged offshore shoals.

(20) "Replacement" means a degree of structural changes to the shore erosion control structure by which some or all of the structure is being removed and recreated.

**Note:** For seawalls, any replacement of a portion of the seawall down to or at the footing of the structure is considered replacement. For riprap, replacement of filter fabric or replacement of the base substrate is considered replacement.

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

(22) "Riprap" means a layer or layers of rock, including filter material, placed on the bed and bank of a navigable waterway to prevent erosion, scour or sloughing of the existing bank.

(23) "Seawall" means an upright structure that is steeper than 1.5 feet vertical to one foot horizontal and that is installed parallel to the shore to prevent the sliding or slumping of the land and to protect the adjacent upland from wave action.

**Note:** Seawalls are commonly constructed of timber, rock (including gabions), concrete, steel or aluminum sheet piling, and may incorporate biological components.

(24) "Shore erosion control structure" means a structure with defined shape, size, form and utility constructed and maintained for the purpose of protecting a shoreline from erosion. Shore erosion control structures include vegetated armoring and hard armoring.

(25) "Storm-wave height" means the wave height estimated under s. NR 328.08(1).

(26) "Temporary breakwater" means an offshore structure consisting of biological components, such as jute, fiber rolls, willow stakes, branchbox breakwater or a structure consisting of inert components that will be removed after a set period of time.

**Note:** Temporary breakwaters are placed for the purpose of providing an area of quiescent water, when new erosion protection designs and shoreland plant installations are becoming established. Biological temporary breakwater designs degrade naturally and examples include branchbox breakwaters and fiber rolls.

(27) "Toe" means the most waterward edge of a shore erosion control structure.

(28) "Vegetated armoring" means a shore erosion control structure that combines biological and inert materials, and includes 3 types: integrated toe protection, vegetated-riprap and vegetated-geogrids.

(29) "Wave height" means the vertical distance between the wave crest and wave trough.

(30) "Wetland" means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

**NR 328.04 Exemptions.** (1) PROCEDURES. Exemptions shall be processed according to the procedures in ch. NR 310.

(2) APPLICABLE ACTIVITIES. A biological shore erosion control structure that meets all the

standards in subs. (3) and (4) shall be exempt under s. 30.12(1g)(k), Stats. Riprap repair that meets all the standards in subs. (3) and (5) shall be exempt under s. 30.12(1g)(j), Stats. Riprap replacement that meets all the standards in subs. (3) and (6) shall be exempt under s. 30.12(1g)(i), Stats.

**Note:** Eligibility for an exemption or general permit does not automatically result in a federal permit or state water quality certification for fill in wetlands. Some projects involving minimal wetland fill may be eligible for authorization under a U.S. Army Corps of Engineers general permit which has already been granted state water quality certification [see non-reporting and 404 GP activities in the table at <http://www.mvp.usace.army.mil/docs/regulatory/WIMATRIX.htm>] or a general permit under s. 281.36(8), Stats. (under development) All other projects affecting wetlands will require individual water quality certification including public notice as required by s. 401, Federal Clean Water Act, and s. 281.36(2), Stats. and carried out under NR103 and NR299, Wis. Adm. Code. For further instructions, see the department's website at [www.dnr.wi.gov](http://www.dnr.wi.gov) under the topic "Waterway and Wetland Permits."

**(3) GENERAL STANDARDS.** (a) The structure may not be located in an area of special natural resource interest.

(b) The structure may be placed and maintained only by a riparian.

(c) The project will not result in removal of greater than 20% of the aerial coverage of natural bank vegetation, emergent vegetation or floating vegetation, not including the area covered by the footprint of the riprap, or any access corridors necessary for the placement of the riprap.

(d) Any grading, excavation and land disturbance shall be confined to the minimum area necessary for the construction and may not exceed 10,000 square feet.

(e) Erosion control measures shall meet or exceed the technical standards for erosion control approved by the department under subch. V of ch. NR 151. Any area where topsoil is exposed during construction shall be immediately seeded and mulched or rippaped to stabilize disturbed areas and prevent soils from being eroded and washed into the waterway.

**Note:** These standards can be found at the following website:  
<http://dnr.wi.gov/org/water/wm/nps/stormwater/techstds.htm>

(f) Unless part of a permanent stormwater management system, all temporary erosion and sediment control practices shall be removed upon final site stabilization. Areas disturbed during construction or installation shall be restored.

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

(h) No waterward extension of the property is permitted other than what is reasonably necessary to conduct the project and protect the existing bank. No soil or similar fill material may be placed in a wetland or below the ordinary high water mark of any navigable waterway.

(i) Dredging under s. 30.20(1g)(b)1., Stats., is not allowed for the placement or maintenance of any shore erosion control structure under this section.

**(4) BIOLOGICAL SHORE EROSION CONTROL.** Biological shore erosion control structures, including but not limited to native vegetation, fiber rolls, fiber mats, live stakes, brush mattresses, branchbox breakwaters, temporary breakwaters, may be placed subject to the requirements and limitations of sub. (3) and this subsection:

(a) Any wave breaks or wave barriers shall be completely removed within 2 years of the installation date. If wave barriers are used, they shall be located within the 3-foot water depth contour or less, marked with reflectors, and may not create an obstruction to navigation.

(b) Willow wattles, willow posts, brush mattresses, brush layering, fiber roll breakwaters, plant carpets, root wads, and other natural materials shall be installed by hand.

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

(d) Fiber rolls shall be secured using can and duckbill anchors or hardwood stakes. Spacing between the duckbill anchors shall be 6 feet or less. Spacing between the hardwood stakes shall be 4 feet or less.

(e) A deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., may not be associated with the biological erosion control structure.

**(5) RIPRAP REPAIR.** Existing riprap may be repaired subject to the requirements and limitations of sub. (3) and this subsection:

(a) Riprap repair may not exceed 300 linear feet of shoreline located on an inland lake or flowage.

(b) Riprap repair may only involve placement of additional rock or redistribution of existing rock within the footprint of the existing riprap.

(c) Addition of rock may only occur no more than once every 5 years.

(d) A deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., other than the riprap itself, may be not associated with the riprap repair.

(e) Except as provided in pars. (a), (b), (c) and (d), the riprap repair shall meet the conditions of the original permit.

(f) Where riprap was not previously permitted, the riprap repair shall meet the following conditions in addition to the requirements of pars. (a) to (d):

1. Repair shall be outside of sensitive areas identified in ch. NR 107.

2. Repair shall be located along moderate or high energy shorelines, based on the calculation of storm wave height calculated in s. NR 328.08(1).

3. Riprap may not be placed at an elevation higher than the ordinary high water mark plus the storm-wave height as calculated in s. NR 328.08. For waters subject to subch. II, riprap may not be placed at an elevation higher than the ordinary high water mark plus 1.5 times the storm-wave height calculated in s. NR 328.08.

**Note:** The listed waters in subch. II are typified by following conditions – impounded; 2500 acres and larger; extensive water level fluctuation; high shoreline recession rates; historic loss of shoreline vegetation.

4. The toe of the riprap may not extend more than 6 feet waterward of the ordinary high water mark.

5. Riprap shall be clean fieldstone or quarry stone 6 to 24 inches in diameter.

**(6) RIPRAP REPLACEMENT.** Replacement of existing riprap is subject to the requirements and limitations of sub. (3) and this subsection:

(a) Riprap replacement may not exceed 100 linear feet of shoreline located on an inland lake or flowage.

(b) Riprap replacement may occur no more than once every 5 years.

(c) A deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., may be associated with the riprap replacement provided the deposit is limited to the area immediately underneath the riprap and is less than 2 cubic yards, not including the riprap itself or clean washed gravel provided under par. (e)6.

(d) Except as provided in pars. (a), (b) and (c), the riprap replacement shall meet the conditions of the original permit.

(e) Where the riprap was not previously permitted, the riprap replacement shall meet the following conditions in addition to the requirements of pars. (a) to (c):

1. Replacement shall be outside of sensitive areas identified in ch. NR 107.

2. Replacement shall be located along moderate or high energy shorelines, based on the calculation of storm wave height calculated in s. NR 328.08(1).

3. Riprap may not be placed at an elevation higher than the ordinary high water mark plus the storm-wave height as calculated in s. NR 328.08(1). For waters subject to subch. II, riprap may not be placed at an elevation higher than the ordinary high water mark plus 1.5 times the storm-wave height calculated in s. NR 328.08.

**Note:** The listed waters in subch. II are typified by following conditions – impounded; 2500 acres and larger; extensive water level fluctuation; high shoreline recession rates; historic loss of shoreline vegetation.

4. The toe of the riprap may not extend more than 6 feet waterward of the ordinary high water mark.

5. Riprap shall be clean fieldstone or quarry stone 6 to 24 inches in diameter.

6. The final riprap slope may not exceed (be steeper than) 2 feet horizontal to one foot vertical.

7. Filter cloth or clean-washed gravel shall be used as a filter layer under the riprap to extend the life of the structure, improve effectiveness and prevent soil erosion behind the riprap.

8. Riprap or other vegetated armoring along moderate energy sites shall be re-vegetated above the ordinary high water mark by using native plantings which may include native non-woody plants, native shrub plantings, native live stakes or native jointed plantings.

9. The applicant can document, using historical information and photos, the previous placement of riprap.

10. The applicant can demonstrate that the replacement structure is within the footprint of the previous structure.

**(7) PERMIT REQUIRED.** (a) Activities which do not meet the standards in sub. (3) and either sub. (4), (5) or (6) or are determined ineligible for an exemption by the department shall require a general permit or individual permit.

(b) The department has the authority under s. 30.12(1m), Stats., to require a permit in lieu of exemption.

**NR 328.05 General permits. (1) PROCEDURES.** (a) General permits shall be processed according to the procedures in ch. NR 310.

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

1. The project avoids impacts to the endangered or threatened species in accordance with s. 29.604, Stats.
2. The project has received an incidental take authorization under s. 29.604, Stats.

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

**(2) APPLICABLE ACTIVITIES.** Biological shore erosion control that meets all the criteria in sub. (3) shall be eligible for general permit coverage under ss. 30.12(3)(br) and 30.206, Stats. Riprap that meets all the criteria in subs. (4), (5) or (6) shall be eligible for general permit coverage under ss. 30.12(3)(a)3g., (br) and 30.206, Stats. Seawall replacement that meets all the criteria in sub. (7) shall be eligible for general permit coverage under ss. 30.12(3)(a)13. and 30.206, Stats.

**Note:** Eligibility for an exemption or general permit does not automatically result in a federal permit or state water quality certification for fill in wetlands. Some projects involving minimal wetland fill may be eligible for authorization under a U.S. Army Corps of Engineers general permit which has already been granted state water quality certification [see non-reporting and 404 GP activities in the table at <http://www.mvp.usace.army.mil/docs/regulatory/WIMATRIX.htm>] or a general permit under s. 281.36(8), Stats. (under development) All other projects affecting wetlands will require individual water quality certification including public notice as required by s. 401, Federal Clean Water Act, and s. 281.36(2), Stats. and carried out under NR103 and NR299, Wis. Adm. Code. For further instructions, see the department's website at [www.dnr.wi.gov](http://www.dnr.wi.gov) under the topic "Waterway and Wetland Permits."

**(3) BIOLOGICAL SHORE EROSION CONTROL.** Biological shore erosion control structures may be authorized under this general permit if it meets all of the requirements of s. NR 328.04(3) and (4) with the exception that it may be located in an area of special natural resource interest.

**(4) RIPRAP REPAIR OR REPLACEMENT.** Repair of riprap or replacement of riprap on the bed or bank of a navigable water may be authorized under this general permit if it meets all of the requirements of s. NR 328.04(3) with the exception that it may be located in an area of special natural resource interest, and with additional limitations as follows:

- (a) Riprap replacement may not exceed 100 linear feet of shoreline located on an inland lake or flowage.
- (b) Riprap repair may not exceed 300 linear feet of shoreline located on an inland lake or flowage.
- (c) Riprap repair/replacement may occur no more than once every 5 years.
- (d) A deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., may be associated with the riprap replacement provided the deposit is limited to the area immediately underneath the riprap and is less than 2 cubic yards, not including the riprap itself or clean washed gravel provide under par. (L).
- (e) The repair/replacement will not disturb sensitive areas identified in ch. NR 107.
- (f) The applicant can document, using historical information and photos, the previous placement of riprap.



(g) The applicant can demonstrate that the replacement structure is within the footprint of the previous structures.

(h) Riprap may not be placed at an elevation higher than the ordinary high water mark plus the storm-wave height as calculated in s. NR 328.08(1).

(i) The toe of the riprap may not extend more than 8 feet waterward of the ordinary high water mark.

(j) For replacement the final riprap slope may not exceed (be steeper than) 2 feet horizontal to one foot vertical.

(k) Riprap shall be clean fieldstone or quarry stone 6 to 24 inches in diameter.

(L) For replacement projects the filter cloth or clean-washed gravel shall be used as a filter layer under the riprap to extend the life of the structure, improve effectiveness and prevent soil erosion behind the riprap.

(m) Riprap or other vegetated armoring shall be re-vegetated above the ordinary high water mark by using native plantings which may include native non-woody plants, native shrub plantings, native live stakes or native jointed plantings.

**(5) RIPRAP OR VEGETATED ARMORING.** Riprap or vegetated armoring on the bed or bank of a lake or flowage may be authorized under this general permit if it meets all of the requirements of s. NR 328.04(3) with the exception that it may be located in an area of special natural resource interest, and with additional limitations as follows:

(a) Riprap or vegetated armoring may not exceed 200 linear feet of shoreline.

(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.

(c) Riprap shall be clean fieldstone or quarry stone 6 to 24 inches in diameter.

(d) The toe of the riprap may not extend more than 8 feet waterward of the ordinary high water mark.

(e) The final riprap slope may not exceed (be steeper than) 2 feet horizontal to one foot vertical.

(f) Riprap may not be placed at an elevation higher than the ordinary high water mark plus the storm-wave height as calculated in s. NR 328.08(1). For waters subject to subch. II, riprap may not be placed at an elevation higher than the ordinary high water mark plus 1.5 times the storm-wave height calculated in s. NR 328.08.

**Note:** The listed waters in subch. II are typified by following conditions – impounded; 2500 acres and larger; extensive water level fluctuation; high shoreline recession rates; historic loss of shoreline vegetation.

(g) No fill material or soil may be placed in a wetland or below the ordinary high water mark of any navigable waterway.

(h) The riprap shall follow the natural contour of the shoreline.

(i) Filter cloth or clean-washed gravel shall be used as a filter layer under the riprap to extend the life of the structure, improve effectiveness and prevent soil erosion behind the riprap.

(j) Riprap or other vegetated armoring along moderate energy sites shall be re-vegetated above the ordinary high water mark by using native shrub plantings, native live stakes or native jointed plantings.

**Note:** Erosion control treatments may include a 10-foot shoreline segment where plant establishment is not required for the purpose of ingress/egress associated with the placement of a pier or access to the waterway, or associated with public park activities.

(6) REPLACEMENT OF AN EXISTING SEAWALL WITH RIPRAP OR VEGETATED ARMORING. Replacement of an existing seawall with riprap or vegetated armoring on the bed or bank of a lake or flowage may be authorized under this general permit if it meets all of the requirements of s. NR 328.04(3) and (5) (c) to (j), with the exception that it may be located in an area of special natural resource interest, and may not exceed 500 linear feet.

(7) SEAWALL REPLACEMENT. Replacement of an existing seawall on the bed or bank of a navigable water adjacent to a riparian property may be authorized under this general permit if it meets all of the requirements and limitations:

(a) The replacement may not exceed 100 feet of shoreline located on an inland lake or flowage of 300 acres or more.

(b) Seawall replacement may be permitted only at the following locations:

1. Municipal or commercial marinas where vertical docking facilities are a practical alternative after considering the public interest.

2. Navigational channels actively used as thoroughfares or for access, where slopes are greater (steeper) than 1.5 feet vertical to one foot horizontal, showing evidence of erosion, where alternative methods of erosion control would impede navigation.

3. Locations where slopes are greater (steeper) than 1.5 feet vertical to one foot horizontal, and where the applicant demonstrates that alternative measures are not practicable taking into consideration bank height and the location of other permanent structures on the property.

(c) The seawall replacement shall incorporate an adequate footing to prevent settlement, tipping or undermining.

(d) The seawall shall be attached, where appropriate, to tieback anchors placed on the upland to prevent or minimize tipping of the wall.

(e) The seawall shall include weep holes where necessary to relieve hydrostatic pressure in upland soils. A filter fabric or gravel filter layer backing at weep holes shall be installed to facilitate drainage and prevent the loss of soil from behind the wall.

(f) For locations identified in par. (b)3., rock riprap shall be placed in front of the seawall to dissipate wave energy, minimize scour at the base of the wall and provide aquatic habitat. Rock shall be placed to the top of the wall. Riprap shall be clean fieldstone or quarry stone 6 to 24 inches in diameter, placed at a slope not to exceed (be steeper than) 2 feet horizontal to one foot vertical, and may not extend more than 8 feet waterward of the face of the seawall.

(g) Each end of the seawall shall be buried or keyed into the bank to prevent flanking.

(h) The seawall may be built only high enough to prevent the over-topping by storm waves.

**(7) INDIVIDUAL PERMIT REQUIRED.** (a) Activities which do not meet the applicable standards in sub. (3), (4), (5), (6) or (7) are otherwise ineligible for a general permit shall require an individual permit.

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

**NR 328.06 Individual permits. (1) PROCEDURES.** (a) Individual permits shall be processed according to the procedures in ch. NR 310.

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

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

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

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

**(2) APPLICABLE ACTIVITIES.** Any shore erosion control structure which is not exempt under s. NR 328.04, is not authorized by a general permit under s. NR 328.05, requires authorization by an individual permit pursuant to s. 30.12(1), Stats.

**(3) RIPRAP.** (a) *Moderate or high energy site.* Construction of new riprap at moderate or high energy sites which do not meet the general permit standards in s. NR 328.05 may be authorized by an individual permit provided that the construction meets the standards in s. 30.12(3m), Stats., and the rules promulgated thereunder.

(b) *Low energy site.* Construction of new riprap at low energy sites may be authorized by an individual permit provided one of the following can be shown:

1. The bank-edge recession described in s. NR 328.08(3) is equal to or greater than 0.5 feet per year, and the construction meets the standards in s. 30.12(3m), Stats., and sub. (5).

2. The EI score described in s. NR 328.08(2) is equal to or greater than 40, and the construction meets the standards in s. 30.12(3m) Stats., and sub. (5).

**(4) SEAWALLS.** Seawalls meeting the standards in s. 30.12(3m), Stats., may be authorized under an individual permit, except that seawalls at low energy sites may only be permitted in the following locations:

(a) Municipal or commercial marinas where vertical docking facilities are a practical alternative after considering the public interest.

(b) Navigational channels actively used as thoroughfares or for access, where slopes are greater (steeper) than 1.5 feet vertical to one foot horizontal, showing evidence of erosion, where alternative methods of erosion control would impede navigation.

(c) Locations where slopes are greater (steeper) than 1.5 feet vertical to one foot horizontal, and where the applicant demonstrates that alternative measures are not practicable taking into consideration bank height and the location of other permanent structures on the property.

**(5) ANALYSIS OF INDIVIDUAL PERMITS.** The department shall consider factual data from applicant regarding all of the following factors in evaluating individual permit applications:

**Note:** The Department's analysis of individual permits is not constrained to the general permit standards identified in s. NR 328.05.

(a) Whether shore protection measures allowed without permits or with a general permit would provide adequate erosion control.

(b) The cumulative and individual impact on public rights and interests including fish and wildlife habitat, physical, chemical and biological effects on the adjacent waterway and natural scenic beauty including: interference with navigation and its incidents, i.e, swimming, boating, fishing and hunting; impacts on natural scenic beauty; and impacts on special concern, threatened or endangered species.

**Note:** Less developed areas of the lake or less developed lakes in general will experience greater impacts on natural scenic beauty from the structure and its activity than other more developed areas or lakes.

**Note:** Survey information indicates that special concern, threatened, or endangered species or their habitats are found near the site.

(c) Impacts on littoral zone and nearshore habitat including: reduced density of woody cover in shallow water; reduced density, coverage and diversity of nearshore vegetation, such as terrestrial, emergent, floating-leafed and submerged zones; designated sensitive areas, spawning or nursery habitat.; change in nearshore substrate that reduces its suitability for habitat.

**Note:** The structure and its associated activity located in or near spawning/nursery habitats or designated sensitive areas.

(d) The erosion exposure of the project site based on site-specific conditions, including ice and the presence of natural ice ridges.

(e) The effect of the project on the adjoining upland and its ability to prevent erosion and sedimentation into the waterway.

(f) Whether project designs or specific conditions can avoid or reduce impacts of the structure. Designs shall have high likelihood of success, and duration equal to the life-span of the structure.

**(6) EXISTING PERMITS.** A shore protection structure which is authorized by an existing department permit shall continue to be authorized, provided the structure is maintained in compliance with all the conditions of the original permit. Any modifications to the structure that do not comply with the original permit conditions shall require a new individual permit and shall comply with all standards in this section.

**NR 328.07 Prohibited erosion control methods. (1) PERMANENT BREAKWATERS.** Except as provided in subch. II, construction of permanent breakwaters is prohibited.

**(2) NEW SEAWALLS.** Except as provided in s. NR 328.06(4) or s. 30.203, Stats., construction of new seawalls is prohibited.

**(3) NEW RIPRAP.** Construction of new riprap is prohibited at low energy sites, except as provided in s. NR 328.06(3)(b).

**Note:** Construction of new riprap may be authorized at moderate and high energy sites as provided in s. NR 328.05(5) or NR 328.06(3).

**NR 328.08 Data requirements and site assessment methods.** Applicants and department staff shall adhere to the following data requirements and site assessment methods:

**(1) CALCULATION OF STORM-WAVE HEIGHT.** The department shall provide applicants with worksheets and internet-based computer software for the purpose of estimating storm wave height. Computer software shall be mathematically designed based on Young and Verhagen (1996) and Young (1998). Storm-wave heights shall be estimated according to Young and Verhagen (1996) and Young (1997) by applying a storm wind speed of 35 miles per hour (51.45 ft/sec), fetch at the applicant's shore protection site, and the average depth along that fetch. To record fetch, applicants shall measure the longest unobstructed straight-line distance originating from the shore protection site across the water surface to the opposite intersect with the shore. To estimate average depth applicants shall examine a lake map, sum the reported depths along the fetch, and divide by the number of recorded values. At least 5 equally placed intervals along the fetch shall be used.

**Note:** The citation for Young (1997) is as follows: Young, I.R. 1997. The growth rate of finite depth wind-generated waves. Coastal Engineering, Vol. 32, pp. 181-195. The citation for Young and Verhagen (1996) is as follows: Young, I.R. and L.A. Verhagen. 1996. The growth of fetch limited waves in finite water depth. Coastal Engineering, Vol. 29, pp. 47-78.

**Note:** Statewide storm wind speeds are estimated from Naber Knox, P. 1996. Wind Atlas of Wisconsin. Wisconsin Geological and Natural History Survey, Bulletin No. 94.

**(2) CALCULATION OF EROSION INTENSITY.** Where an applicant or the department believes that, as a result of site conditions, storm-wave height as calculated in sub. (1) may inaccurately predict the degree of erosion, the erosion intensity score may be calculated to determine erosion. The department shall provide applicants with worksheets and internet-based computer software for the purpose of calculating erosion intensity. When the department or applicants assess erosion at the shore protection site they shall apply methods outlined in Table 1 to calculate an erosion intensity score. Wherever EI and storm-wave height result in different energy categories, the site shall be placed in the category as determined by EI.

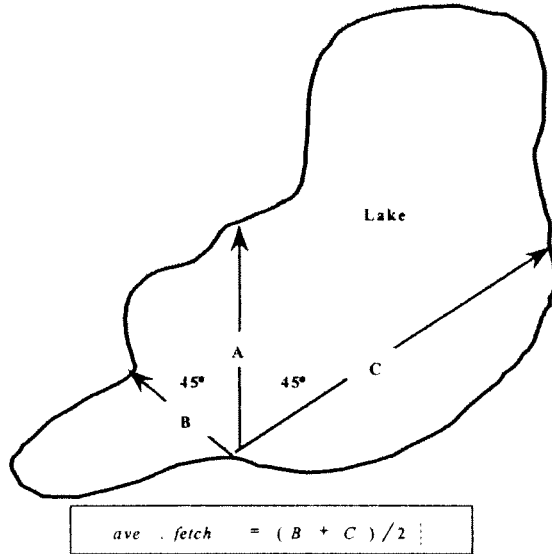
**(3) BANK EDGE RECESSION MEASUREMENTS.** Methods of measuring bank edge recession shall include all of the following: establishment of a physical measurement reference line between at least 2 headstakes; date-imbedded photographs showing the initial installation of the reference line and headstakes; reference distance measures to the bank lip shall be reported on department supplied forms; and time between separate measurements shall equal or exceed 3 months during the open-water season.

**Table 1. Erosion Intensity (EI) Score Worksheet.** Applicants and department staff shall use this worksheet to calculate erosion intensity pursuant to s. NR 328.08(2).

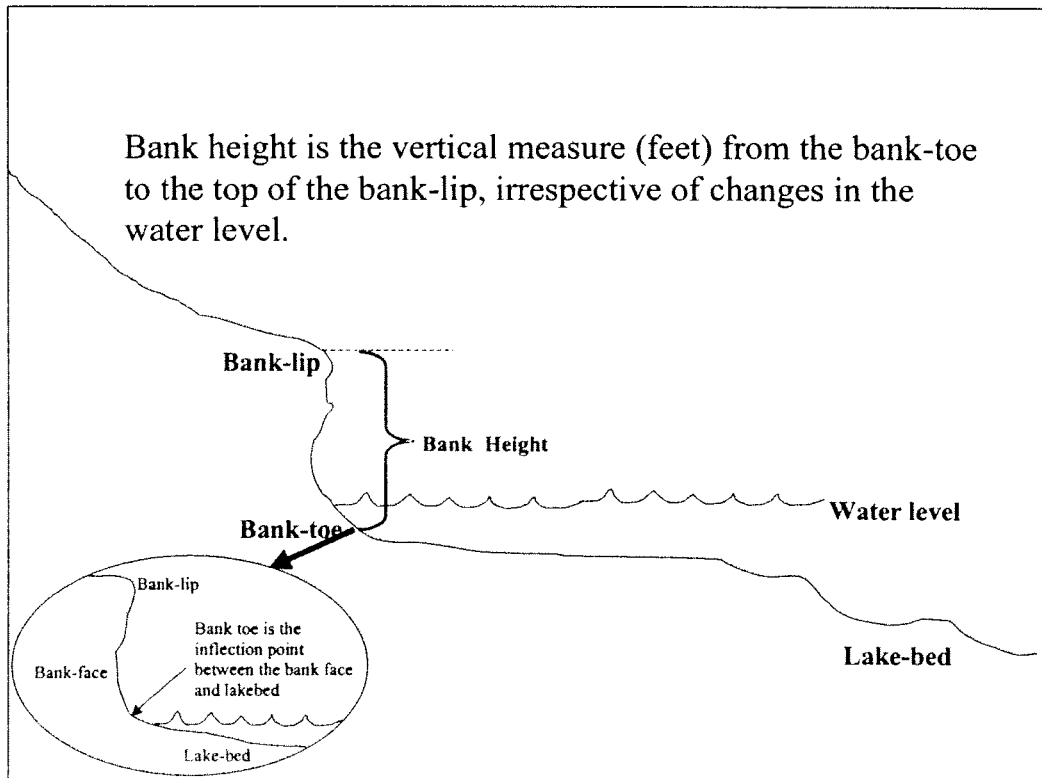
| SHORELINE VARIABLES  | DESCRIPTIVE CATEGORIES<br>EROSION INTENSITY VALUE IS LOCATED IN PARENTHESIS ON LEFT SIDE OF EACH CATEGORY BOX                |   |  |  |  |   | ASSIGNED EI  |  |
|--|--|---|--|--|--|---|--|--|
| AVERAGE FETCH <sup>1</sup> , average distance (miles), across the open water to the opposite shore measure 450 other side of the perpendicular to the shoreline.   | (0) <1/10  | (2) 1/10 – 1/3  | (4) 1/3-1  | (7) 1 –3   | (10) 3-10  | (13) 10-30  | (16) >30   |  |
| DEPTH AT 20 FEET, Depth of water (feet) 20 feet from shoreline   | (1) <1   | (2) 1-3   | (3) 3-6  | (4) 6-12   | (5) >12  |   |  |  |
| DEPTH AT 100 FEET, depth of water (feet) 100 feet from shoreline   | (1) <1   | (2) 1-3   | (3) 3-6  | (4) 6-12   | (5) >12  |   |  |  |
| BANK HEIGHT <sup>2</sup> , height of bank (feet), measure from top of the bank to top of the bank-lip.   | (1) <1   | (2) 1-5   | (3) 5-10   | (4) 10-20  | (5) >20  |   |  |  |
| BANK COMPOSITION, composition and degree of cementation of the sediments   | (0) rock, marl, tight clay, well cemented sand (dig with a pick)   |   | (7) soft clay, clayey sand, moderately cemented (easily dug with a knife)  |  | (15) uncemented sands or peat (easily dug with your hand)  |   |  |  |
| INFLUENCE OF ADJACENT STRUCTURES, likelihood that adjacent structures are causing flank erosion at the site  | (0) no hard armoring on either adjacent property   | (1) hard armoring on one adjacent property  | (2) hard armoring on both adjacent properties  | (3) hard armoring on one adjacent property with measurable recession | (4) hard armoring on both adjacent properties with measurable recession adjacent to both structures  |   |  |  |
| AQUATIC VEGETATION <sup>3</sup> , type and abundance of vegetation occurring in the water off the shoreline  | (0) rocky substrates unable to support vegetation.   | (1) dense or abundant emergent, floating or submerged vegetation  | (4) scattered or patchy emergent, floating or submergent vegetation  |  | (7) lack of emergent, floating or submergent vegetation  |   |  |  |
| BANK VEGETATION, type and abundance of the vegetation occurring on the bank face and immediately on top of the bank lip  | (0) bank compose of rocky outcropping unable to support vegetation   |   | (1) dense vegetation, upland trees, shrubs and grasses, including lawns  | (4) clumps of vegetation alternating with areas lacking vegetation   |  | (7) lack of vegetation (cleared), crop or agricultural land |  |  |
| BANK STABILITY, The degree to which bank and adjacent area (within 10 feet of the bank-lip) is stabilized by natural ground, shrub, and canopy vegetation (outside a 10' pier access corridor). Human disturbance is typified by tree removal, brushing, mowing, and lawn establishment. | (0) established lawn with few canopy trees   | (1) established lawn with moderate to dense canopy trees  | (4) moderate to dense natural ground vegetation and canopy trees with shrub layer substantially reduced; or few canopy trees with moderate to dense natural shrub layer. |  | (7) moderate to dense canopy trees with moderate to dense natural shrub layer; or other natural features prevents establishment of vegetation. |   |  |  |
| SHORELINE GEOMETRY, general shape of the shoreline at the point of interest plus 200 yards on either side.   | (1) coves or bays  |   | (4) irregular shoreline or straight shoreline  |  | (8) headland, point, or island   |   |  |  |
| SHORE ORIENTATION <sup>4</sup> , geographic direction the shoreline faces  | (0) < 1/3 mile fetch   | (1) north to east to south-southeast (349 <sup>o</sup> -360 <sup>o</sup> , 1 <sup>o</sup> -168 <sup>o</sup> ) |  | (4) south to west-southwest (169 <sup>o</sup> -258 <sup>o</sup> )    | (8) west to north-northwest (259 <sup>o</sup> -349 <sup>o</sup> )  |   |  |  |
| BOAT WAKES <sup>5</sup> , proximity to and use of boat channels  | (1) no channels within 100 yards, broad open water body, or constricted shallow water body; or channels within no-wake zones |   | (6) thoroughfare within 100 yards carrying limited traffic, or thoroughfare 100 yards to ½ mile offshore carrying intensive traffic                                      |  | (12) thoroughfare within 100 yards carrying intensive traffic (unregulated boating activity)   |   |  |  |
| <b>EROSION INTENSITY SCORE (EI)</b>  |  |   |  |  |  |   | → <input style="width: 30px; height: 20px; border: 2px solid black;" type="text"/> |  |

**Note:** Table 1 is adapted from Knutson, P. L., H. H. Allen, and J. W. Webb, 1990. "Guidelines for Vegetative Erosion Control on Wave-Impacted Coastal Dredged Material Sites," Dredging Operations Technical Support Program Technical Report D-90-13, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS 39180, 35 pp.

<sup>1</sup> Average fetch: The following diagram describes the calculation of average fetch.



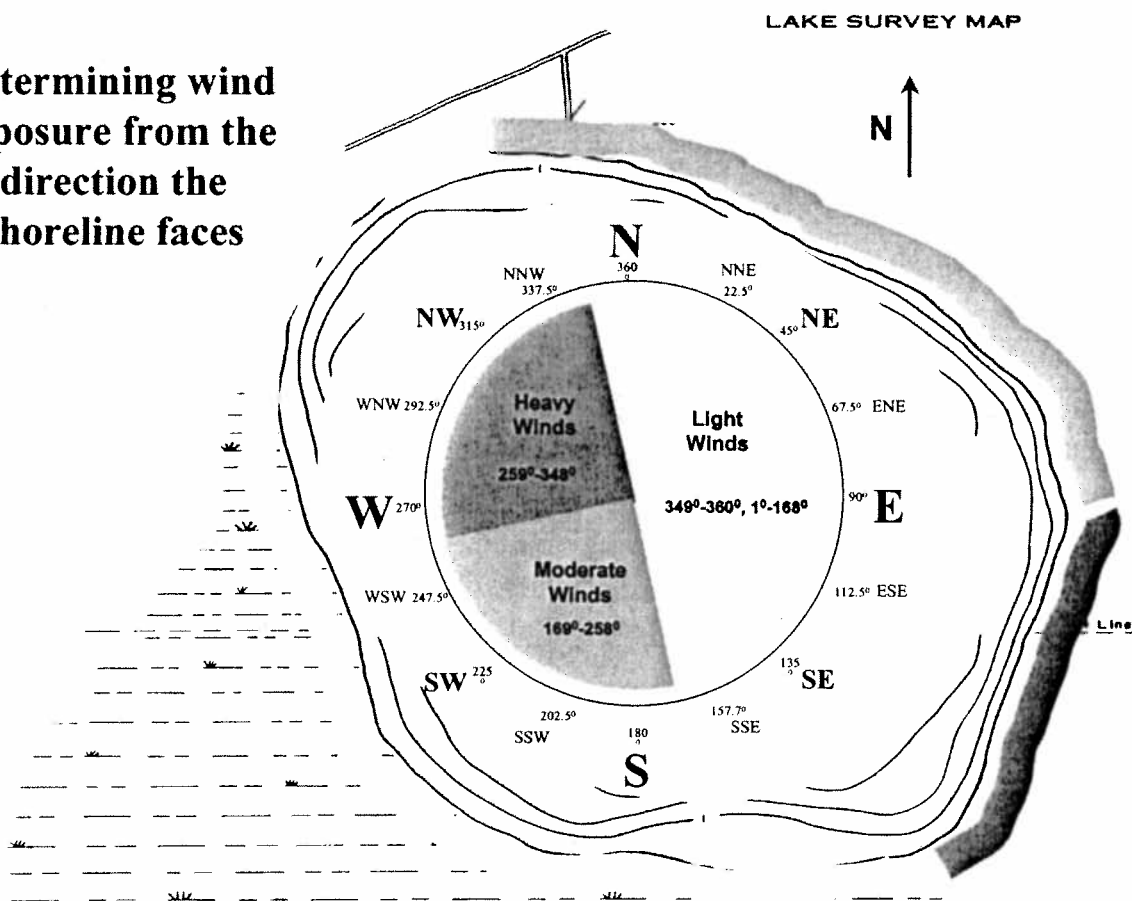
<sup>2</sup> Bank height: The following diagram describes the features of the bank for the purpose of accurately measuring bank height



<sup>3</sup>Aquatic vegetation: Dense or abundant means that on average 50-100% of the bottom is visually obstructed by plants during the growing season, defined by the dates June 1 through September 15. Scattered or patchy means that on average 1-49% of the bottom is visually obstructed by plants during the growing season, defined by the dates June 1 through September 15. Absent means that on average < 1% of the bottom is visually obstructed by plants during the growing season, defined by the dates June 1 through September 15.

<sup>4</sup>Shoreline Orientation: The following lake map shows an example of accurately determining shoreline orientation

**Determining wind exposure from the direction the shoreline faces**



<sup>5</sup>Boating: A thoroughfare is identified as physical narrowing of the waterbody that by its nature intensifies boating activity near the shore. Thoroughfares which are 250 yards or wider are not scored 12 points, unless the depth contours of the thoroughfare constricts boating activity in close proximity to one shore, and the traffic is intensive. Intensive traffic is defined by a location where at least 50% of the public boating access available must pass through the thoroughfare to reach the open water of the lake, provided the waterway has a total of more than 60 car-trailer units. Limited traffic is defined by a location where at least 30% of the public boating access available must pass through the thoroughfare to reach the open water of the lake, provided the waterway has a total of more than 40 car-trailer units.



**NR 328.09 Enforcement. (1)** Noncompliance with the provisions of ss. 30.12, 30.20 and 30.206, Stats., this chapter, or any conditions of an exemption, general permit or individual permit issued by the department, constitutes a violation and may result in a forfeiture, fine or imprisonment. The department may seek abatement under s. 30.294, Stats., for any activity in violation of ss. 30.12, 30.20 and 30.206, Stats.

**(2)** If the activity may be authorized by a general permit under s. 30.206, Stats., failure of an applicant to follow the procedural requirements may not, by itself, result in abatement of the activity.

**(3)** When an after-the-fact permit application has been filed with the department, the department shall follow the procedures in ch. NR 301 for violations.

**(4)** Any violation of these rules shall be treated as a violation of the statutes they interpret or are promulgated under.

**(5)** No person may place a shore erosion control structure in a navigable waterway if the activity is not eligible for an exemption, authorized by a general permit or individual permit issued under this chapter, or otherwise authorized under this chapter.

**SECTION 3. EFFECTIVE DATE.** This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

**SECTION 4. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on **December 8, 2004 and March 8, 2005.**

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

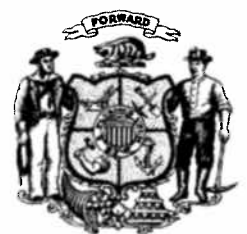
STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

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

(SEAL)



# WISCONSIN STATE LEGISLATURE



## ATTACHMENT A

### 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.~~

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](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:

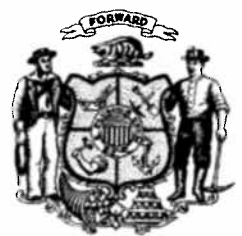
- (a) Number and type of permits and exemption determinations issued, the average time taken to process them, and performance in meeting permit deadlines.
- (b) Use of the waters designations including extent and nature of waters added to the Areas of Special Natural Resource Interest, Public Rights 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



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.

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- (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.

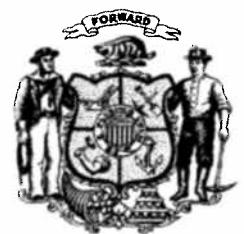


- (c) Performance of the new public hearing and individual permit process including number of hearings held, number of objections registered, number of individual permits issued with delayed effective dates, and number of contested case hearings.
- (d) Number and circumstances of general permits required in lieu of exemptions and individual permits required in lieu of a general permit.
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- (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.
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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 – Waters Designations – NR 1

### Summary of Rule Proposal

Wisconsin Act 118 created a three-tier permit system intended to speed permit decisions without reducing protection of fish and wildlife habitat, navigation, water quality and natural scenic beauty (public rights). A number of activities in or along lakes and streams that previously required permits from the Department of Natural Resources (DNR) are exempt under Act 118 unless they are located in designated waters. This proposed rule lays out the policy DNR follows to meet the state's constitutional responsibility as trustee of public waters. The proposed rule identifies designated waters of high quality and sensitivity where exemptions to the permitting process are not allowed. People can pursue projects on these waters, but must receive some DNR review first.

The Natural Resources Board in June approved holding hearings on this proposed permanent rule – that is the same as the temporary rule in place today. In June, the legislature's Joint Committee on Administrative Rules voted to suspend the temporary rule unless the department modified it. DNR has been working with stakeholders to complete that task. A modified rule is described below and will be considered by the Natural Resources Board in August.

### Policy Statement

NR 1 includes a policy statement to recognize the State's affirmative duty to enhance public rights in navigable waters. These public rights are long established through the state Constitution, court rulings and administrative rules to include, but not be limited to, a right to enjoy fishing, hunting, boating, scenic beauty and other recreation. The policy statement also acknowledges that DNR shares this duty with the legislative and judicial branches of government, and to reflect the agency's understanding that no branch has unrestricted authority to modify the Public Trust Doctrine. As the day-to-day trustee of public waters, the Natural Resources Board must consider this obligation in making decisions on administrative rules and direct department staff accordingly. Finally, the policy statement recognizes the importance of public waters to Wisconsin's recreation and economy. And it restates the legislative intent of Act 118 to streamline the permitting system without weakening protection for public waters and citizens' rights to enjoy fishing, hunting, boating, natural scenic beauty and other rights in those waters.

### Waters Designations

The temporary NR1 adopted by the Natural Resources Board describes and names waters that are areas of special natural resource interest - where by law exemptions are not available - along with describing and setting a process for identifying public rights features (that serve as location standards for three of the exemptions and two general permits). Act 118 authorized DNR to name waters that possess significant scientific value as areas of special natural resource interest, or ASNRI. NR1 describes waters that might be of scientific interest. It specifies that only the Natural Resources Board may make such designations by rule (which is subject to legislative review).

In temporary NR1, public rights features affect the pier, dredging and culvert exemptions and the permanent boathouse and pond general permits. Public rights features are generally parts of lakes or streams. They are physical features recognizable to water resources professionals as well as many landowners, anglers and boaters. They are described and are designated by the same process used to list trout streams (data requirements; public notice in the newspaper, to local governments and the legislature; and opportunity for public hearing, leading to a decision whether to designate). Where they are not yet described, then landowners are asked to make a reasonable attempt to recognize and avoid them. Because the law was already in effect, the Natural Resources Board pre-designated mapped sensitive areas of lakes (areas of unique or diverse aquatic plants) and named waters in the DNR's Land Legacy Report (water "gems" of the state) as locations of public rights features.

Finally, temporary NR1 designates Priority Navigable Waters to determine where state permits are required for large grading projects at the water's edge. Act 118 specifies that priority navigable waters are those with sensitive fish and aquatic habitat. In addition to the statutory designations of Outstanding & Exceptional Resources Waters, trout

stream, state natural areas and lakes less than 50 acres in size, temporary NR1 designates all ASNRI and waters with public rights features as priority navigable waters.

### Previous Regulations

Prior to Act 118, all public waters were subject to the same permit requirements. Permits were approved if DNR staff could determine “no detrimental impact to public rights.”

### Issues and Alternatives

The DNR has developed an alternative approach that would make exemptions available on more waters but sets additional design, construction and location standards for projects in specific waters. Fact sheets for each activity show what exemption standards are needed to provide the same level of protection as the temporary NR1.

Here are the areas of special natural resource interest (where exemptions aren't available) under the temporary NR1 and the modified NR 1.

| Temporary NR1  | Modified NR 1  |
|--|--|
| Outstanding & exceptional resource waters  | Outstanding & exceptional resource waters  |
| State natural areas  | State natural areas  |
| Trout streams  | Trout streams  |
| Waters with water-dependent endangered, threatened, special concern species & unique natural communities | Waters with water-dependent endangered, threatened, special concern species & unique natural communities |
| State or federal wild or scenic rivers   | State or federal wild or scenic rivers   |
| Wild rice waters   | Wild rice waters   |
| Waters in areas with a Special Area Management Plan or equivalent (Great Lakes tribs)                    | Waters in areas with a Special Area Management Plan or equivalent (Great Lakes tribs)                    |
| Musky waters with self-sustaining populations (categories 0, 1 and 2)                                    |  |
| Walleye waters with self-sustaining populations in the ceded territories                                 |  |
| Tributaries and connecting rivers used by sturgeon during their life cycle                               |  |
| Perennial tributaries to trout streams   |  |

### What do YOU think?

DNR seeks your input on the 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/Rmo?nRmold=167>

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

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

**Comments accepted through August 9, 2004**