

2011 DRAFTING REQUEST

Bill

Received: **02/14/2011**

Received By: **rkite**

Wanted: **As time permits**

Companion to LRB:

For: **Neal Kedzie (608) 266-2635**

By/Representing: **Dan Johnson**

May Contact:

Drafter: **rkite**

Subject: **Nat. Res. - nav. waters
Nat. Res. - wet/shore/flood
Environment - water quality
Environment - air quality**

Adl. Drafters: **mglass**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kedzie@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Navigable waters and environment permit changes

Instructions:

See attached

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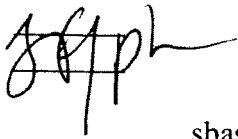
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/? rkite

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Kite, Robin

From: Johnson, Dan
Sent: Monday, February 14, 2011 11:11 AM
To: Gibson-Glass, Mary; Kite, Robin; Tradewell, Becky
Cc: Gary, Tim
Subject: RE: revisions to c. 30, 281 and 285

Attachments: 2011 Regulatory Reform Proposal - draft instructions.doc

Hello –

As promised, attached is a document which provides specific drafting instructions from Senator Kedzie for various revisions to Chapter 30, 285, and 281. We would request this be drafted as one preliminary draft so we can make the appropriate mark-ups, additions, and deletions as needed. You have our permission to share this document and the preliminary draft with Tim Gary in the office of Representative Jeff Mursau. If you have any questions at all, please let me know.

Thank you very much.

Dan Johnson
Chief of Staff
State Senator Neal Kedzie
11th Senate District
608.266.2635



2011 Regulatory
Reform Proposa...

From: Johnson, Dan
Sent: Friday, February 11, 2011 1:48 PM
To: Gibson-Glass, Mary; Kite, Robin; Tradewell, Becky
Subject: revisions to c. 30, 281 and 285

Hello Mary, Robin, and Becky –

I wanted to touch base with all of you that Senator Kedzie and Representative Mursau are considering a number of revisions to Chapter 30, 281, and 285. This legislative effort would be somewhat similar to what was done in 2003-04 session, Wisconsin Act 118, the Jobs Creation Act. I am working on drafting instructions this afternoon and hopefully will have a document to you in the very near future. But I wanted to give you all a heads-up that this is coming.

In order to simplify and expedite this effort, we will request a preliminary draft just so we can see everything in the statutory format; hopefully, that will make your jobs easier as well. You have our permission to share any draft language with Representative Mursau's office, specifically his Research Assistant, Tim Gary. Again, I hope to have drafting instructions to you very soon, maybe by the end of today.

Thank you very much!

Dan Johnson

Chief of Staff

State Senator Neal Kedzie

11th Senate District

608.266.2635

Public Notice System for Environmental Permits

Issue and Intent: Change the current requirement to Public Notice permits as a Class 1 public notice to allow for an equivalent Web-based public notice system. The Web-based system would become the DNR's "Public Notice Page" where projects would be continuously displayed along with the applications/permit status until the decision is complete.

Drafting Instructions: The process would require revisions to Chapter 985 to allow a 15 day Web-Based Public Notice System as equivalent to a Class 1 Public Notice.

Plan and Specification Reviews for Minor or Repeat Projects

Issue and Intent: The DNR provides detailed engineering review of the design of structures proposed to be constructed as part of a permitted facility. Some of these reviews are for facilities of standard design in areas posing a lower level of environmental risk. In that regard, the review process should be expedited.

Drafting Instructions: Create an expedited engineering review process in statute for structure designs that meet the following criteria:

- The design is for a commonly built facility in size and scope or for a minor addition to an existing facility;
- The plans are submitted by an engineer with a professional engineer accreditation;
- The engineer or consulting firm submitting the plans has designed similar facilities that have been constructed and have not been the subject of failure resulting in adverse environmental impacts;
- There are no unusual site or other features that would require unique design characteristics.

If this statutory framework can be created, the Department would then proceed with implementation through internal guidance changes.

Streamline Wetland Permitting for Small Business

Issue and Intent: Establish a two-year jobs emergency for streamlined wetland permitting for any small business that demonstrates job growth for projects proposing to fill wetlands that have low functional values.

Drafting Instructions: Revise Chapter 281 to reflect that intent. Create a simplified wetland permitting process whereby a small business (as defined by law) would be allowed to fill low value wetlands without extensive analysis of practical alternatives.

more info needed
↓
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PK
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MGR

The business would need to certify that it is creating jobs through its proposal and that it had designed the project to avoid and minimize the wetland impact as much as practicable. No additional alternatives would be required for the business to obtain a permit to fill the wetland.

which ones

DNK

Extensions for Waterway Permits

Issue and Intent: Allow businesses and other state water permit holders to request extensions to their existing permits for up to five years from permit issuance. Extensions would be applicable to Chapter 30 permits, wetlands, and construction site storm water permits.

Drafting Instructions: Revise ss. 30.2095, 281.22, and 283.53 Wis. Stats. to allow extensions beyond the current permit time limits. *(1)*

DNK

Pier Regulations Revision

Issue and Intent: Simplify pier regulations created under 2007 Act 204, as it relates to the size of the platform and the registration requirements. Maximum platform size for an exempt pier shall be 300 square in surface area, and registration requirements shall be repealed, with forms returned to registrants. Finally, remove certain references to February 6, 2004.

Drafting Instructions: Under 30.12 (1k)(b):

- ✓ 1. Delete: "that was placed on the bed of a navigable water on or before February 6, 2004"
- ✓ 2. Delete: "If the platform has a surface area of 200 square feet or less, the platform may be of any width."
- ✓ 3. Delete: "If the platform has a surface area of more than 200 square feet but not more than 300 square feet, the platform may not be more than 10 feet wide."
- ✓ 4. Delete: The riparian owner registers the pier or wharf with the department, in the manner and form required by the department, no later than April 1, 2011.
- ✓ 5. Delete: The department shall make available to riparian owners a form for registration of a pier or wharf under par. (b) 3. that is designed so that it may be recorded with the register of deeds. A riparian owner may, but is not required to, record the registration form with the register of deeds of the county where the pier or wharf is located. The register of deeds may charge the fee under s. 59.43 (2) (ag) for the recording of a pier or wharf registration under par. (b) 3. The department may not charge a fee for the registration of a pier or wharf under par. (b) 3.

D-Note
6. Revise: A structure for which the department has issued a written authorization on or before February 6, 2004 the effective date of this subdivision if the structure is in compliance with that written authorization.

But regis. requirement is being deleted?
7. Require that any registration forms received by the Department shall be returned to the registrant.

RNK
Data Systems for Ordinary High Water Mark and Navigability Determinations

Issue and Intent: Require the DNR to create a publicly-accessible electronic data system for ordinary high-water make and navigability determinations.

Drafting Instructions: Revise s. 30.10, Wis. Stats to meet that intent.

RNK
Grading/Land Disturbance Regulations

Issue and Intent: Eliminate duplicative grading and land disturbance regulations.

Drafting Instructions: Amend s. 30.19 (1g)(c) and s. 283.33, Wis. Stats. to eliminate duplicative regulation of grading/land disturbance activities similar to NR 216.42(6).

The amendment should eliminate the need to get a grading permit under s. 30.19 if the permit coverage has already been obtained under s. 283.33. (Notice of Intent pursuant to NR 216).

Amend s. 30.19 (1g)(c), Wis. Stats. to eliminate the need for a department-issued grading permit if the grading is regulated and a permit has been issued pursuant to shoreland zoning regulations (NR 115) by a local unit of government.

M6
Wetlands Permit Process/Wetland Mitigation

Intent and Issue: Provide additional flexibility to reduce paperwork and review time needed to make decisions for impact to low functioning wetlands, including expanding when mitigation can be considered.

Drafting Instructions: Revise c. 281, Wis. Stats. to clarify and override current administrative rules, regarding these four components:

1. Mitigation – Expand the Department’s ability to consider mitigation for any project proposal and establish the purchase of credits from an approved mitigation on in-lieu fee program as the preferred form of compensation.

*Storm water discharge permit
NR 216?
land disturbing construction activity*

2. Scope of Alternative – Allow the Department to consider a streamlined scope of alternatives for project proposals that impact low functioning wetlands.
3. Net Environmental Benefit – Allow the Department to make a net environmental benefit determination to consider other environmental consequences and alternatives to the proposed wetland fill.
4. Process Steps – Establish permit process steps for low functioning wetlands that allow the Department to consider avoid and minimize alternatives at the same time as wetland impacts of the proposed project. Also, modify the procedures for individual 401 Wetland Water Quality Certifications so they are consistent with Chapter 30 Individual Waterway.

OTHER CHAPTER 30 ISSUES

MGB **Issue and Intent:** Clarify the scope of ASNRI waters for threatened or endangered species.

Drafting Instructions: Create ss. 30.106 Wis. Stats. – **Determination of areas of significant scientific value.**

see revision

1. In identifying areas that possess significant scientific value, the department may only include the following:
 - a. Those portions of waters that contain critical habitat for endangered or threatened species or for aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory.
 - b. Wild rice water as identified in a written agreement between the department and the Great Lakes Indian Fish and Wildlife Commission.
 - c. Waters in areas identified in a special management plan approved by the US Army Corps of Engineer, or special wetland inventory study.
 - d. Waters in ecologically significant coastal wetlands along Lakes Michigan and Superior as identified in Publication #ER-002-00, Data Compilation and Assessment of Coastal Wetlands of Wisconsin's Great Lakes, March 2000.
 - e. Federal or state, under ss. 30.26 and 30.27, Stats., designated wild or scenic rivers.
 - f. Specific waters or portions of waters designated by the Natural Resources Board by rule.

RNK

Issue and Intent: Create a General Permit for Piers

Drafting Instructions: Create 30.12(3)(a)14 to read:

14. Place a pier or wharf that meets the requirements of sub(1g)(f) but is located in an area of special natural resource interest.

add. revised language

RNK

Issue and Intent: Section 30.12 exempts certain piers provided they meet basic criteria to depth. However, depth is not defined by statute. Thus, create the definition.

Drafting Instructions: Create ss. 30.01 (3c) Wis. Stats. to read:

“Maximum depth” for the purpose of placing piers in navigable water is determined based on normal summer time low levels on the waterway or summer minimum levels where established by department order, and takes into account wave action from wind, current, boat wakes, and other common causes.

add. revised language

MGG

Issue and Intent: Seawalls in Winnebago Pool

Modify ss. 30.2023 Wis. Stats. to provide that when a seawall is placed above the OHWM, any temporary enlargement does not require a permit under ss. 30.19 (1g)(a) Wis. Stats.

RNK

Issue and Intent: Riprap in the Winnebago Pool

Create a riprap exemption and general permit for the Winnebago Pool system that incorporates many of the key construction components of NR 328, but provides for greater flexibility in determining erosion and in the construction conditions to address severe conditions without having to go to an individual permit.

RNK

Issue and Intent: General Permits for Dredging Relating to Pier and Boathouse Access

Modify ss. 30.20 (1t) to create general permits to allow for minor dredging to access piers, and general permits for the removal of animal and plant deposits. Also, create an exemption in ss. 30.20 (1g)(b) to allow for the moving of rocks or materials in order to provide access to a pier or wharf involving less than 10 cubic yards of material.

also new language

Create the new GP in ss. 30.20 (1t) Wis. Stats. as follows:

(ar) The department shall issue a statewide general permit that authorizes any riparian owner to remove up to 50 cubic yards of material from lakes or streams within the riparian zone for the purpose of placing a pier or wharf or providing access to a pier or wharf.

Create the new exemption in ss. 30.20 (1g)(b) Wis. Stats. as follows:

The removal relocates rock within the riparian zone for the purpose of providing access to a pier or wharf and involves less than 10 cubic yards of material.

Issue and Intent: Boathouse Repair and Maintenance

Allow existing boathouses to be repaired and maintained by deleting the 50% cost of repair condition under ss. 30.121(3).

Revise ss. 30.121(3) Wis. Stats. as follows:

(3) Maintenance. The riparian owner of any boathouse or fixed houseboat extending beyond the ordinary high-water mark of any navigable waterway may repair and maintain the boathouse or fixed houseboat if the boathouse has been in existence since December 16, 1979 and the repair or maintenance does not expand the footprint, height, or area of the boathouse. ~~the cost of the repair or maintenance does not exceed 50% of the equalized assessed value of the boathouse or fixed houseboat.~~ If the boathouse or fixed houseboat is not subject to assessment, the owner may make repairs if the cost of the repair or maintenance does not exceed 50% of the current fair market value of the boathouse or fixed houseboat.

Deadlines for Various DNR Permits

Issue and Intent: Direct the DNR to establish deadlines for certain permits and activities, and the appropriate sanctions for not meeting those deadlines, which include presumptive approval and refund of fees for said permit applications.

Drafting Instructions: **Redraft sections 24 and 25 in 2003 SB 246** in regards to establishing deadlines by rule, sanctions for failure to meet deadlines, and the ability for the DNR to extend deadlines.

- Approvals for which failure to act by a deadline results in automatic approval include: high-capacity well approvals, water pollution permits, solid or hazardous waste facility operating licenses, and permits and other determinations related to structures and deposits in navigable waters issued by the DNR.
 - [30.10 Declarations of navigability, 30.12 Structures and deposits in navigable waters., 30.123 Bridges and culverts, 30.18 Withdrawal of water from lakes and streams, 30.19 Enlargement and protection of waterways, and 30.20 Changing of stream courses.]
- Approvals for which the consequence of failure to act on an application within the period established by rule is a refund of fees include: air pollution permits and well driller registrations.

6

33-
3166

✓
~~RNK~~
RCT

AIR ISSUES

Modeling Requirements for Air Permits

Issue and Intent: Provide that the DNR is not required in all cases to use air dispersion modeling analysis as a basis for determining that proposed minor source air permit is eligible for approval.

Drafting Instructions: Revise s. 285.63(1)(b)

nothing
in
statute
requires
this

~~UDET~~
~~RNK~~

Air Construction and Operating Permitting for Minor Sources

Issue and Intent: The current registration permit threshold of 25 tons per pollutant limits the ability of existing business to make minor process changes, and inhibits start-up businesses.

Drafting Instructions: Revise s. 285.60(2g) Wis. Stats. to increase the threshold for registration operation permits and registration construction permits from 25 to 79 tons per year.

Kite, Robin

From: Johnson, Dan
Sent: Friday, February 25, 2011 4:35 PM
To: Gibson-Glass, Mary; Tradewell, Becky; Kite, Robin
Subject: 2.14.11 drafting instructions memo - Addendum

Attachments: 2011 Regulatory Reform Proposal - ADDENDUM draft instructions.doc

Hello –

The attached document is an addendum to the drafting instructions memo submitted on February 14, 2011. If you have any questions, please contact me.

Thank you very much for your time and attention to this request.

Dan Johnson
Chief of Staff
State Senator Neal Kedzie
11th Senate District
608.266.2635



2011 Regulatory
Reform Proposa...

The following items appear on pages 4, 5, and 6 of the 2/14/11 drafting instructions memo, under the heading 'Other Chapter 30 Issues'.

MG **Determination of areas of significant scientific value**
Change:

Those portions of waters that contain critical habitat for endangered or threatened species or for aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory.

To:

Those portions of waters that contain critical habitat for endangered or threatened species or for aquatic elements.

RNK **General Permits for Piers**
Change:

14. Place a pier or wharf that meets the requirements of sub(1g)(f) but is located in an area of special natural resource interest.

To:

14. Place a pier or wharf that meets the requirements of sub(1g)(f) but is located in an area of special natural resource interest or would immediately impact an area of special natural resource interest.

RNK **Definitional Changes for Piers**
Change:

"Maximum depth" for the purpose of placing piers in navigable water is determined based on normal summer time low levels on the waterway or summer minimum levels where established by department order, and takes into account wave action from wind, current, boat wakes, and other common causes.

To:

30.01(1ad) "Adequate depth" for the purpose of placing piers and any associated boat hoists or boat lifts, in navigable waters is determined based on normal summer time low levels on the waterway or summer minimum levels where established by department order, and takes into account wave action from wind, current, boat wakes, and other common causes.

(1g)(f)

8

✓
K
General Permits for Dredging Relating to Pier and Boathouse Access

Change:

(ar) The department shall issue a statewide general permit that authorizes any riparian owner to remove up to 50 cubic yards of material from lakes or streams within the riparian zone for the purpose of placing a pier or wharf or providing access to a pier or wharf.

To:

(ar) The department shall issue a statewide general permit that authorizes any riparian owner to remove up to 50 cubic yards of material from lakes or streams within the riparian zone for the purpose of placing a pier or wharf or providing access to a pier or wharf. Such authorization shall not include blasting.

(as) The department shall issue a state wide general permit that authorizes any person to annually remove plant and animal nuisance deposits that impede navigation in streams, inland lakes or outlying waters up to 3000 cubic yards.

M 6/9
Boathouse Repair and Maintenance

Change:

(3) Maintenance. The riparian owner of any boathouse or fixed houseboat extending beyond the ordinary high-water mark of any navigable waterway may repair and maintain the boathouse or fixed houseboat if the boathouse has been in existence since December 16, 1979 and the repair of maintenance does not expand the footprint, height or area of the boathouse or convert the boathouse.

To:

(3) Maintenance. The riparian owner of any boathouse or fixed houseboat extending beyond the ordinary high-water mark of any navigable waterway may repair and maintain the boathouse or fixed houseboat if the boathouse has been in existence since December 16, 1979 and the repair of maintenance does not expand the footprint, height or area of the boathouse or convert the boathouse into living quarters.

M 6/9
Riprap in the Winnebago Pool

Create a riprap exemption and general permit for the Winnebago pool system that incorporates many of the key construction components of NR 328, but provides for greater flexibility in determining erosion and in the construction conditions to address severe conditions without having to go through an individual permit.

30.2024 Riprap; Wolf River and Fox River basins.

MGN

(1) Exemption. A riparian owner is exempt from the permit requirements under s. 30.12 for riprap that is placed on the bed of a navigable water in the Wolf River and Fox River basin area, as described in s. 30.207 (1), and that extends beyond the ordinary high-water mark, if the following conditions apply:

(a) The riparian certifies that the riprap is designed to prevent land from eroding into a navigable water.

(b) The riprap is placed to repair or replace existing riprap, or the riprap is new riprap placed on the bed or bank of a navigable water adjacent to an owner's property in an amount up to and including 300 continuous feet, provided that the riprap is not placed in an area that is critical habitat for any threatened or endangered species.

(d) Erosion control measures shall meet the technical standards for erosion control approved by the department.

(e) Measures to control invasive species shall meet the technical standards for invasive species management approved by the department.

(f) No waterward extension of the property is permitted other than what is reasonably necessary to conduct the project and protect the existing bank.

(h) Riprap may not be placed at an elevation greater than 2 feet above the ordinary high water mark.

(i) Riprap shall be clean fieldstone or quarry stone 6 to 24 inches. 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) The toe of the riprap may not extend more than 6 feet waterward of the ordinary high water mark.

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

MGN

(2) General Permit. The Department shall issue a general permit for the placement of riprap on the bed of a navigable water in the Wolf River and Fox River basin area, as described in s. 30.207 (1), beyond the ordinary high-water mark, if the activity is not otherwise exempt under sub (1) and the following conditions apply:

- (a) A licensed professional engineer certifies that riprap is necessary to prevent land from eroding into a navigable water.
- (b) Erosion control measures shall meet the technical standards for erosion control approved by the department.
- (c) Measures to control invasive species shall meet the technical standards for invasive species management approved by the department.
- (d) No waterward extension of the property is permitted other than is reasonably necessary to conduct the project and protect the existing bank .
- (e) Riprap may not be placed at an elevation greater than is necessary to prevent overtopping by wave or ice action, unless the riprap is being placed in an artificial channel in which case it may extend to the top of the bank, not to exceed four feet above the OHWM unless the riprap is vegetated .
- (f) Riprap shall be clean fieldstone or quarry stone, and only as large as is necessary to protect the existing stream bank and prevent erosion, but existing rock may remain. A filter fabric lining or layer of filter stone shall extend from the landward side of the structure as necessary to facilitate drainage.
- (g) The base of the structure shall extend to a sufficient depth into the bed of the navigable water to ensure the structure's stability and to prevent the structure from failing, but shall not extend more than four feet from toe of the slope.
- (h) The final riprap slope may not exceed (be steeper than) the minimum slope necessary to prevent erosion given the topography of the site and may not exceed 1.5 horizontal to one foot vertical.

Seawalls in Winnebago Pool

Modify Wis. Stat. §30.2023 to provide that when a seawall is placed above the OHWM, any temporary enlargement does not require a permit under Wis. Stat. §30.19(1g)(a).

30.2023 Seawalls; Wolf River and Fox River basins.

(1) A riparian owner is exempt from the permit requirements under s. 30.12 for a structure that is placed on the bed of a navigable water in the Wolf River and Fox River basin area, as described in s. 30.207 (1), and that extends beyond the ordinary high-water mark, if the following conditions apply:

~~(1)~~**(a)** The structure is a vertical wall designed to prevent land from eroding into a navigable water.

~~(2)~~**(b)** The structure meets one of the following criteria:



1. The structure is not a replacement for an existing structure and is placed on the bed of an artificial enlargement of a navigable water, or

2. The structure is a replacement for an existing structure placed on the bed of a navigable water, including the bed of an artificial enlargement of a navigable water or

3. The structure is placed entirely above the ordinary high water mark.

~~(3)~~ (c) If the structure is a replacement for an existing structure placed on the bed of a navigable water, including the bed of an artificial enlargement of a navigable water, it is placed not more than 2 feet waterward of the structure that it is replacing.

~~(4)~~ (d) The structure incorporates the following design elements.

1. The structure incorporates adequate bracing and anchors to ensure structural stability.

~~(5)~~ 2. A filter fabric lining containing a layer of gravel extends from the landward side of the structure to facilitate drainage.

~~(6)~~ 3. The base of the structure extends to a sufficient depth into the bed of the navigable water to ensure the structure's stability and to prevent the structure from failing.

~~(7)~~ 4. The structure is secured into the bank of the navigable water in a manner that prevents erosion or scouring.

~~(8)~~ 5. The riparian owner places riprap at the base of the waterward side of the structure up to the waterline or, if the structure is placed in a location where watercraft are moored, the riparian owner places riprap at the base of the waterward side of the structure up to a point that allows adequate space for the mooring of watercraft.

~~(9)~~ 6. The structure is constructed of treated wood and built so that the top of the structure meets the lower of the following:

(a) a. The natural topography of the bank of the navigable water.

(b) b. A point that is 4 feet above the ordinary high-water mark of the navigable water.

(c) c. The minimum height required to prevent overtopping by wave action.

12

(2) A riparian owner is exempt from the permit requirements under s. 30.19(1g)(a) for a temporary enlargement for constructing a seawall. For the placement of such structures, any excavation below the ordinary high water mark may occur under the following conditions:

- a. The excavation is for a temporary period not to exceed 90 days
- b. During the temporary period best management practices for the control of erosion and stabilization of the bank shall be employed
- c. At the conclusion of the temporary period, the enlargement is filled back to the pre-construction contours to the maximum extent practicable.

(3) The department shall issue a general permit for the placement of a seawall below the ordinary high water mark only if all of the following apply:

(a) The wall is above the ordinary high water mark to the maximum extent practicable taking into consideration the presence of vegetation, the ability to construct a wall in 50 foot sections and the contours of the shoreline. In no event shall more than 25% of the seawall extend below the ordinary high water mark.

(b) The conditions in sub (1)(d) and (2) are followed.

 **6. Permanent Boat Shelter GP (new item)**

Issue: The statutes currently authorize a permanent boat shelter GP but none have been developed. In addition, the current rules, restrict boat shelter placement to as follows:

NR 326.055(4)(e) A permanent boat shelter may not extend more than 30 feet from the shoreline or to the line of navigation, whichever is less, on rivers named in par. (c) and on waters between 500 and 1000 acres in size and may not extend more than 50 feet from the shoreline or to the line of navigation, whichever is less, on waters 1000 acres and larger in size.

As a practical matter this does not allow enough depth to place a boatlift.

Solution: Modify the existing GP provision in Wis. Stat. §30.12(30(a)6. as follows:

6. Place a permanent boat shelter adjacent to the owner's property for the purpose of storing or protecting watercraft and associated materials, except that no general or individual permit may be issued for a permanent boat shelter that is constructed after May 3, 1988, if the property on which the permanent boat shelter is to be located also contains a boathouse within 75 feet of the ordinary high-water mark or if there is a boathouse over navigable waters adjacent to the owner's property. A permanent boat shelter may not extend beyond the length of the pier, whichever is less.



Kite, Robin

From: Johnson, Dan
Sent: Thursday, March 24, 2011 10:26 AM
To: Kite, Robin
Subject: RE: Regulation of piers

Robin,

Thank you for your detailed analysis. I knew issues like this would arise and hopefully I can clarify the intent. First and foremost, the ultimate goal is to simplify the standards and requirements for both existing and new piers. The current law standards, requirements, and exemptions are based on size and time. We would like to eliminate 'time' and maintain size as the standard for compliance of pier regulations going forward.

In the shortest of terms, our intent is for an existing or new pier to be exempt from regulation so long as the loading platform is 300 square feet or less. Conditions relating to areas of special natural resource interest and interference on navigation would continue to supersede any such exemption. An existing or new pier with a loading platform more than 300 square would be considered out of compliance unless the riparian owner applied for a permit, either general or individual, or reduced the size of the platform to the 300 square foot standard. In regards to permits for non-compliant piers, the goal is to move towards more general permits than individual. The requirement for registration of piers was a concept that simply did not work, and created too much confusion for riparian owners with piers of all sizes. Thus, we're requesting to do away with that requirement.

I would be more than happy to sit down and talk this through a bit more if you like. My schedule is wide open at this point and I could meet with you either here in our office, or over at your office. Thank you!

Dan Johnson
Chief of Staff
State Senator Neal Kedzie
11th Senate District
608.266.2635

From: Kite, Robin
Sent: Wednesday, March 23, 2011 11:27 AM
To: Johnson, Dan
Subject: Regulation of piers

Dan:

I have some additional questions with regard to your regulatory reform draft as it concerns the regulation of piers.

As you know, the statutes concerning the regulation of piers are very complicated. A pier may be subject to an individual permit under certain circumstances, a general permit under certain other circumstances, or may be exempt from permitting requirements under still other circumstances. Furthermore, current law grandfathers certain piers so that they are exempt from permitting requirements entirely. One of your instructions is to delete the grandfathering date in s. 30.12 (1k) (b). The effect of doing this will be to have 2 exemptions with entirely different requirements. That is, one provision will provide that an exempt pier must meet the conditions under s. 30.12 (1g) and the other provision will provide that an exempt pier must meet the conditions under s. 30.12 (1k) (b). Because these provisions overlap, I strongly suggest that the draft should repeal the exemption in s. 30.12 (1k) (b) which was intended to cover only grandfathered piers, and

amend the language in the current exemption under s. 30.12 (1g) so that it fully reflects your intent as to what conditions a pier must satisfy in order to qualify for exemption.

Also, the deletion of the grandfathering date in s. 30.12 (1k) (b) as you requested, raises other certain other issues. For example, under current law, certain piers that are grandfathered are also exempt from enforcement action (see s. 30.12 (1k) (cm)) and there are other references to the grandfathering date that need to be addressed (see s. 30.12 (3m) (ar)).

Please give me a call at your convenience so that we can discuss these issues. Alternatively, if you prefer, I would be happy to meet with you to discuss all of the pier issues so that I am sure that I understand your intent. Thank you.

Robin

Robin N. Kite
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 E. Main St., Suite 200
Madison, WI 53703
(608) 266-7291

meeting w/ Dan Johnson 3/25
Re: Instructions on Piers
313 South

Re:

leave (i)(f) alone for now (may change in later drafts) (this bill's date)

any pier in place before enactment must also meet (i)(f) except loading platform can be up to 300 sq. - (any configuration)

no registration requirements any more
don't change (i)

(1k)(cm) take out February date - no date needed
(3m)(ar) - don't change - leave as is

Kite, Robin

From: Johnson, Dan
Sent: Friday, April 01, 2011 1:27 PM
To: Kite, Robin
Subject: FW: Regulatory reform drafting request questions

Hi Robin,

Please see the answers below your questions, as offered by the Department of Natural Resources. I hope this information is helpful to you.

Thanks again for all your assistance!

Dan Johnson
Chief of Staff
State Senator Neal Kedzie
11th Senate District
608.266.2635

From: Rasmussen, Russell A - DNR [mailto:Russell.Rasmussen@Wisconsin.gov]
Sent: Friday, April 01, 2011 10:52 AM
To: Johnson, Dan
Subject: Regulatory reform drafting request questions

I have been unable to find any reference in the statutes to a requirement that DNR provide "detailed engineering review of the design of structures proposed to be constructed as part of a permitted facility". Can you provide more information on this issue given that DNR issues approvals for many types of facilities and structures including dams, wells, piers, bridges, storm sewers, and many others?

Facility plan approval is based for the most part on s. 281.41. In turn, NR 108 provides more depth concerning plan approval for wastewater facilities and N 243.15 gives more depth for CAFO facilities. Authority for dam plan reviews are in s. 31.12. (A note about dams - we would be less supportive of expedited plan reviews for dams in general - but most especially for large and high-hazard dams. All large and high hazard dam plans are reviewed by our state dam safety engineer. In 25 years, he has never received a plan for a dam that has not had to be revised. This is mainly a function of the consulting design engineers creating a dam design plan once every four years or so, as opposed to department engineers that review these every day.)

Or do you want the draft to provide that *if* DNR requires an engineering review for *any* facility or structure that requires an approval, then in those cases the expedited process applies if the structure meets the criteria given? This would be ok (depending on the criteria) and as long as dams (at least large, high-hazard and medium hazard) are excluded.

You have requested that the draft establish an expedited engineering review process for a

4/11/2011

structure that has a design for "a commonly built facility in size and scope or for a minor addition to an existing facility". Will DNR decide what is "commonly built" or is "a minor addition"? Yes, DNR should decide, but this would probably have to be done in rule, which could delay implementation, but given the wide variety of facilities, this may be the option.

With regard to the last criterion listed, again does DNR decide if there are "unusual site or other features that would require unique design characteristics"? This is a criteria where we won't know it until we see it. Factors that would influence this is proximity to surface and ground water, presence of karst features, significant slopes, soil characteristics, location of floodplains etc. So yes, DNR should decide on a case-by-case basis.

 *Russell Rasmussen*

Acting Administrator

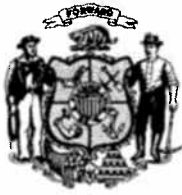
Water Division

Wisconsin Department of Natural Resources

(☎) phone: (608) 267-7651

(☎) fax: (608) 267-2800

(✉) e-mail: Russell.Rasmussen@wi.gov



[Soon]
State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1446
RNK & MGG:.....

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

g's

In
4/12

D-Note

CerCat

SA ✓

1 AN ACT ~~...~~; **relating to:** information required to be published on the Department
 2 of Natural Resources Internet Web site; identification of areas of significant
 3 scientific value for purposes of regulating the placement of deposits and
 4 structures on the beds of navigable waters and the removal of materials from
 5 the ~~beds~~ of navigable waters; permit exemptions for land grading activities and
 6 for persons who place piers and wharves in navigable waters; time limits for
 7 certain permits and contracts for navigable waters activities and projects;
 8 expedited procedures for plan approvals for dams and for water and sewerage
 9 systems; water quality certification procedures for certain wetlands; and
 10 granting rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1

INSERT
1-1

1

SECTION 1. 30.102 of the statutes is created to read:

2

30.102 Navigability determination and ordinary high-water mark

3

identification. If the department makes a determination that a waterway is

4

navigable or identifies the ordinary high-water mark of a navigable waterway, the

5

department shall publish that information on the department's Internet Web site.

INSERT
2-5

6

SECTION 2. 30.12 (1g) (f) of the statutes is amended to read:

7

30.12 (1g) (f) A pier or wharf that is no more than 6 8 feet wide, that extends

8

no further than to a point where the water is 3 feet at its maximum depth, or to the

9

point where there is adequate depth for mooring a boat or using a boat hoist or boat

10

lift, whichever is farther from the shoreline, and that has no more than 2 boat slips

11

for the first 50 feet of riparian owner's shoreline footage and no more than one

12

additional boat slip for each additional 50 feet of the riparian owner's shoreline. The

13

department shall determine adequate depth under this paragraph based upon

14

normal summer time low levels on the relevant waterway or upon summer minimum

15

levels that are established by an order issued by the department and taking into

16

account the wave action on the relevant waterway from wind, currents, wakes, and

17

other typical causes of wave action. Notwithstanding the width limitation in this

18

paragraph, a pier may have an area as a loading platform that is more than 6 8 feet

19

wide if the platform is ~~not more than 8 feet wide, it extends perpendicular to one or~~

20

~~both sides of the pier, and it is located at the lakeward end of the pier or at the end~~

21

~~of the pier that extends into a stream~~ does not have more than 300 feet in surface

22

area.

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204.

****NOTE: I recognize that the underscored language is based on a provision in DNR rules but I do not think that the language is as clear as it could be. For example, the use of the term "summer" and "summer time" in the same sentence is confusing. Do they

mean different things? And are "low levels" different than "minimum levels"? Finally, what kind of "order" does DNR issue with regard to minimum levels?

1 **SECTION 3.** 30.12 (1k) (b) of the statutes is repealed. +

2 **SECTION 4.** 30.12 (1k) (c) of the statutes is repealed. +

3 **SECTION 5.** 30.12 (1k) (cm) 1. of the statutes is amended to read:

4 30.12 (1k) (cm) 1. A structure for which the department has issued a permit
5 under this section ~~on or before February 6, 2004~~, if the structure is in compliance with
6 that permit.

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204.

7 **SECTION 6.** 30.12 (1k) (cm) 2. of the statutes is amended to read:

8 30.12 (1k) (cm) 2. A structure for which the department has issued a written
9 authorization ~~on or before February 6, 2004~~, if the structure is in compliance with
10 that written authorization. +

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204.

11 **SECTION 7.** 30.12 (1k) (cm) 3. of the statutes is repealed. +

12 **SECTION 8.** 30.12 (1k) (e) (intro.) of the statutes is amended to read:

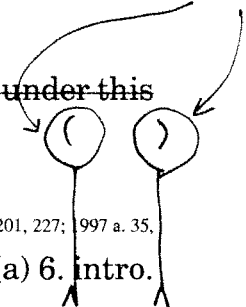
13 30.12 (1k) (e) (intro.) A riparian owner who is exempt under ~~par. (b) from the~~
14 ~~permit requirements under this section or who is exempt under~~ par. (cm) from
15 enforcement action under this chapter may do all of the following:

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204.

16 **SECTION 9.** 30.12 (1k) (e) 2. of the statutes is amended to read:

17 30.12 (1k) (e) 2. If the exempt structure is a pier or wharf, relocate or
18 reconfigure the pier or wharf if the riparian owner does not enlarge the pier or wharf,
19 ~~the riparian owner registered the pier or wharf with the department under par. (b)~~
20 ~~3. and, before relocating or reconfiguring the pier or wharf, the riparian owner~~

1 registers the reconfigured or relocated pier or wharf with the department under this
2 subdivision.



History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204.

3 SECTION 10. 30.12 (3) (a) 6. of the statutes is renumbered 30.12 (3) (a) 6. intro.

4 and amended to read:

5 30.12 (3) (a) 6. (intro.) Place a permanent boat shelter adjacent to the owner's
6 property for the purpose of storing or protecting watercraft and associated materials,
7 except that no general or individual permit may be issued for a permanent boat
8 shelter that is constructed after May 3, 1988, if the any of the following apply:

9 a. The property on which the permanent boat shelter is to be located also
10 contains a boathouse within 75 feet of the ordinary high-water mark ~~or if there,~~

11 b. There is a boathouse over navigable waters adjacent to the owner's property.

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204.

12 SECTION 11. 30.12 (3) (a) 6. c. of the statutes is created to read:

13 30.12 (3) (a) 6. c. The permanent boat shelter extends beyond the length of the
14 pier.

****NOTE: Please review this language carefully to ensure that it meets your intent.
Your proposed language included the phrase "whichever is less" but didn't indicate what
the other comparative standard should be.

^

*

15 SECTION 12. 30.12 (3) (a) 14. of the statutes is created to read:

16 30.12 (3) (a) 14. Place a pier or wharf on the bed of a navigable water that is
17 in, or that would immediately affect, an area of special natural resource interest and
18 that is adjacent to the owner's property if the pier or wharf meets the requirements
19 of sub. (1g) (f). ✓

****NOTE: I think that additional language may be needed in this provision. What
makes an effect "immediate?" And what kind of effect must there be?

INSERT
4-19

20 SECTION 13. 30.19 (1m) (f) of the statutes is created to read:

1 [^]
2 30.19 (1m) (f) Any land grading activity authorized under a stormwater
3 discharge permit issued under s. 283.33.

4 **SECTION 14.** 30.19 (1m)[^](g) of the statutes is created to read:

5 30.19 (1m) (g) Any land grading activity authorized by a permit issued by a
6 county under a shoreland zoning ordinance enacted under s. 59.692.

7 **SECTION 15.** 30.20 (1g) (b) 3.[^] of the statutes is created to read:

8 30.20 (1g) (b) 3. The amount of material removed is less than 10 cubic yards
9 and the removal is necessary to allow access to a pier or wharf.

10 **SECTION 16.** 30.20 (1t) (a) of the statutes is renumbered 30.20 (1t) (a) (intro.)
11 and amended to read:

12 30.20 (1t) (a) (intro.) The department shall issue statewide general permits
13 under s. 30.206 that authorize any all of the following:

14 1. Any person to remove material for maintenance purposes from an area from
15 which material has been previously removed.

History: 1977 c. 391; 1979 c. 34 s. 2102 (39) (g); 1981 c. 330; 1983 a. 27 s. 2202 (38); 1985 a. 332 s. 251 (1); 1987 a. 374; 1999 a. 9, 185; 2003 a. 118.

16 **SECTION 17.** 30.20 (1t) (a) 2. of the statutes is created to read:

17 30.20 (1t) (a) 2. Any riparian owner to remove 50 cubic yards or less of material
18 from a lake or stream adjacent to the riparian owner's property, by means other than
19 blasting, for the purpose of placing a pier or wharf or of providing access to a pier or
20 wharf.

21 **SECTION 18.** 30.20 (1t) (a) 3. of the statutes is created to read:

22 30.20 (1t) (a) 3. Any person to annually remove not more than 3000 cubic yards
23 of plant or animal nuisance deposits from a stream, inland lake, or outlying waters
if the plant or animal nuisance deposits impede navigation.

****NOTE: This language needs clarification. Is it intended to apply only to riparian owners? Does the "annual" requirement mean that the person can conduct removal only

once a year or does it mean that removal can occur only once a year on a given waterway? Also, I think the phrase "plant or animal nuisance deposits" needs a definition. I'm not sure what constitutes a "plant or animal nuisance deposit". Finally, should this provision refer simply to a "navigable water" rather than to a "stream, inland lake, or outlying waters?"

1 SECTION 19. 30.2095 (1) (b) of the statutes is amended to read:

2 30.2095 (1) (b) The department may specify a time limit of less than 3 years
3 for a permit or contract issued under ss. 30.01 to 30.29. ~~For good cause, the~~ The
4 department may extend the time limit for a permit or contract issued under ss. 30.01
5 to 30.29 for no longer than ~~2~~ an additional 5 years if the grantee requests an
6 extension prior to expiration of the initial time limit.

History: 1987 a. 374; 2003 a. 118 s. 15; Stats. 2003 s. 30.2095.

****NOTE: Please let me know if you want to keep the "good cause" requirement in this provision.

7 SECTION 20. 31.12 (5) of the statutes is created to read:

8 31.12 (5) The department shall promulgate rules that establish an expedited
9 procedure for approval of plans under this section. The expedited procedure shall
10 apply, in lieu of the procedure under this section, if all of the following are satisfied:

11 (a) The plan design is of a common construction and size or is for a minor
12 addition to an existing dam.

13 (b) The plan design is submitted by a registered professional engineer.

14 (c) The plan design is submitted by a person who has designed similar dams
15 and none of those similar dams has caused adverse impacts to the environment.

16 (d) The plan design contains no unusual siting requirements or other unique
17 design features.

****NOTE: Please see the note after s. 281.41 (5). Also, do you want to limit the expedited procedure to only low hazard dams or dams that are not large dams (see s. 31.19, stats.), as suggested by Russell Rasmussen at DNR?

18 SECTION 21. 281.344 (9) (b) 1. a. of the statutes is amended to read:

1 281.344 (9) (b) 1. a. Publication of the notice as a class 1 notice under ch. 985
2 or as a notice on its Internet Web site.

3 History: 2007 a. 227; 2009 a. 180.

3 **SECTION 22.** 281.346 (9) (b) 1. a. of the statutes is amended to read:

4 281.346 (9) (b) 1. a. Publication of the notice as a class 1 notice under ch. 985
5 or as a notice on its Internet Web site.

6 History: 2007 a. 227; 2009 a. 28, 180, 276.

6 **SECTION 23.** 281.36 (2) (b) of the statutes is amended to read: X

7 281.36 (2) (b) 1. The department shall approve or deny a complete application
8 for a water quality certification under this section within ~~120~~ 21 days after the date
9 the department determines that a complete application for the certification has been
10 submitted unless the applicant and the department agree to extend the time period.
11 The department may not determine an application to be complete until the
12 requirements under s. 1.11 have been met and until all of the items of information
13 for the water quality certification and for any associated permits or other approvals
14 have been submitted to the department. If the department fails to approve or deny
15 the complete application within the applicable time period, the applicant may bring
16 an action for mandamus to compel the department to approve or deny the
17 application. If the court grants the mandamus, the department shall approve or
18 deny the application within 30 days after the mandamus is granted and the court
19 shall award the applicant reasonable attorney fees and court costs incurred in
20 bringing the action.

21 2. For purposes of subd. 1., the department shall initially determine whether
22 a complete application has been submitted and, no later than ~~30~~ 14 days after the
23 application is submitted, notify the applicant in writing about the initial
24 determination of completeness. If the department determines that the application

1 is incomplete, the notice shall state the reason for the determination and the specific
2 items of information necessary to make the application complete. An applicant may
3 supplement and resubmit an application that the department has determined to be
4 incomplete. There is no limit on the number of times that an applicant may resubmit
5 an application that the department has determined to be incomplete under this
6 subdivision. The department may not demand items of information that are not
7 specified in the notice as a condition for determining whether the application is
8 complete unless both the department and the applicant agree or unless the applicant
9 makes material additions or alterations to the project for which the the application
10 has been submitted.

11 **SECTION 24.** 281.41 (5) of the statutes is created to read:

12 281.41 (5) The department shall promulgate rules that establish an expedited
13 procedure for approval of plans under this section. The expedited procedure shall
14 apply, in lieu of the procedure under sub. (1) (b) if all of the following are satisfied:

15 (a) The plan design is of a common construction and size or is for a minor
16 addition to an existing facility.

17 (b) The plan design is submitted by a registered professional engineer.

18 (c) The plan design is submitted by a person who has designed similar facilities
19 and none of those similar facilities has caused adverse impacts to the environment.

20 (d) The plan design contains no unusual siting requirements or other unique
21 design features.

****NOTE: These criteria are very general in nature. You may want to consider making them somewhat more narrow in scope. For example, when is an addition "minor"? Does that refer to the size of the addition, the cost of the addition, the purpose of the addition, or something else entirely?

22 **SECTION 25.** 283.39 (1) (a) of the statutes is amended to read:

1 283.39 (1) (a) Publication of the notice as a class 1 notice under ch. 985 or as
2 a notice on its Internet Web site;

3 History: 1973 c. 74; 1975 c. 349; 1995 a. 227 s. 866; Stats. 1995 s. 283.39.

3 SECTION 26. 283.53 (1) of the statutes is amended to read:

4 283.53 (1) No permit issued by the department under s. 283.31 or 283.33 shall
5 have a an initial term for more than 5 years. Upon the request of a permit holder,
6 the department may extend the term of the initial permit by not more than 5
7 additional years.

History: 1973 c. 74, 243; 1979 c. 221; 1985 a. 182 s. 57; 1991 a. 39; 1993 a. 16, 482; 1995 a. 227 s. 855; Stats. 1995 s. 283.53.

****NOTE: You had asked that this draft also authorize DNR to extend "wetlands permits" by an amount up to 5 years. I assume that you are referring to water quality certifications for wetlands that are issued by DNR. I could not find any references in the statutes or administrative code that suggests that water quality certifications are issued for a limited time period. Consequently, this draft does not authorize DNR to extend "wetlands permits". Please let me know if you have additional information on this issue. Also, do you want the amended language to allow a permit holder to request more than one extension? The language is not clear on this issue.

8 SECTION 27. 285.53 (1) (c) 2. of the statutes is amended to read:

9 285.53 (1) (c) 2. ~~The city, village or town in which the medical waste incinerator~~
10 ~~is located shall publish the analysis provided under subd. 1. as a class 1 notice under~~
11 ~~ch. 985 or shall publish notice on its Internet Web site.~~

12 History: 1989 a. 335; 1991 a. 300; 1995 a. 227 s. 479; Stats. 1995 s. 285.53.

12 SECTION 28. 285.61 (5) (c) of the statutes is amended to read:

13 285.61 (5) (c) *Newspaper notice.* The department shall publish a class 1 notice
14 under ch. 985, or shall publish notice on its Internet Web site, announcing the
15 opportunity for written public comment and the opportunity to request a public
16 hearing on the analysis and preliminary determination.

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.; 1995 a. 227 s. 486; Stats. 1995 s. 285.61; 2003 a. 118; 2005 a. 155.

17 SECTION 29. 285.62 (3) (c) of the statutes is amended to read:

18 285.62 (3) (c) The department shall publish the notice prepared under par. (a)
19 as a class 1 notice under ch. 985 in a newspaper published in the area that may be

1 affected by emissions from the stationary source, or shall publish the notice on its
2 Internet Web site. *or publish a notice on the department's Internet*
Web site.

3 History: 1979 c. 221; 1985 a 182 s. 57; 1991 a. 302; 1995 a. 27; 1995 a. 227 ss. 471, 487; Stats. 1995 s. 285.62; 1997 a. 33; 2003 a. 118; 2005 a. 155.

3 SECTION 30. 285.63 (11) of the statutes is created to read:

4 285.63 (11) MODELING. The department is not required to use air dispersion
5 modeling as a basis for making its findings under subs. (1) to (3).

6 SECTION 31. 285.76 (2) (a) of the statutes is amended to read:

7 285.76 (2) (a) Publish a class 1 notice, under ch. 985, of the proposed
8 redesignation and request for consultation with the state in a newspaper of general
9 circulation in the area that would be affected by the redesignation, as determined
10 using standards established by the federal environmental protection agency, *or on*

11 the department's Internet Web site, *publish a class 1 notice under ch. 985;* and in the official state newspaper, and provide
12 a written statement concerning the proposed redesignation *to those newspapers*

13 History: 1997 a. 270.

13 SECTION 32. 289.25 (3) of the statutes is amended to read:

14 289.25 (3) NOTIFICATION ON FEASIBILITY REPORT AND PRELIMINARY ENVIRONMENTAL
15 IMPACT STATEMENT DECISIONS. Immediately after the department issues a preliminary
16 determination that an environmental impact statement is not required or, if it is
17 required, immediately after the department issues the environmental impact
18 statement, the department shall publish a class 1 notice under ch. 985 in the official
19 newspaper designated under s. 985.04 or 985.05 or, if none exists, in a newspaper
20 likely to give notice in the area of the proposed facility, or shall publish a notice on
21 its Internet Web site. The notice shall include a statement that the feasibility report
22 and the environmental impact statement process are complete. The notice shall
23 invite the submission of written comments by any person within 30 days after the
24 notice for a solid waste disposal facility or within 45 days after the notice for a

each
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1 hazardous waste facility is published. The notice shall describe the methods by
2 which a hearing may be requested under ss. 289.26 (1) and 289.27 (1). The
3 department shall distribute copies of the notice to the persons specified under s.
4 289.32.

History: 1995 a. 227 ss. 552, 991.

5 **SECTION 33.** 289.31 (4) (a) of the statutes is amended to read: X

6 289.31 (4) (a) Publishing a class 1 notice, under ch. 985, in a newspaper likely
7 to give notice in the area where the facility is located or publishing a notice on its
8 Internet Web site.

History: 1995 a. 227 s. 569, 570.

9 **SECTION 34.** 289.41 (1m) (g) 1. of the statutes is amended to read:

10 289.41 (1m) (g) 1. The owner of an approved mining facility may apply, at any
11 time at least 40 years after the closing of the facility, to the department for
12 termination of the owner's obligation to maintain proof of financial responsibility for
13 long-term care of the facility. Upon receipt of an application under this subdivision,
14 the department shall publish a class 1 notice under ch. 985 in the official newspaper
15 designated under s. 985.04 or 985.05 or, if none exists, in a newspaper likely to give
16 notice in the area of the facility, or shall publish a notice on its Internet Web site. The
17 notice shall include a statement that the owner has applied to terminate the owner's
18 obligation to maintain proof of financial responsibility for the long-term care of the
19 facility. The notice shall invite the submission of written comments by any person
20 within 30 days after the notice is published. The notice shall describe the methods
21 by which a hearing may be requested under subds. 2. and 3. The department shall
22 distribute a copy of the notice to the owner of the facility. In any hearing on the
23 matter, the burden is on the owner to prove by a preponderance of the evidence that
24 continuation of the requirement to provide proof of financial responsibility for

SECTION 34

1 long-term care is not necessary for adequate protection of human health or the
 2 environment. Within 120 days after the publication of the notice or within 60 days
 3 after any hearing is adjourned, whichever is later, the department shall determine
 4 whether proof of financial responsibility for long-term care of the facility continues
 5 to be required. A determination that proof of financial responsibility for long-term
 6 care is no longer required terminates the owner's obligation to maintain proof of
 7 financial responsibility for long-term care. The owner may not submit another
 8 application under this subdivision until at least 5 years after the previous
 9 application has been rejected by the department.

History: 1981 c. 374; 1983 a. 27; 1983 a. 53 s. 114; 1985 a. 29 s. 3202 (39); 1987 a. 384; 1989 a. 31, 359; 1991 a. 31, 39; 1993 a. 135; 1995 a. 63; 1995 a. 227 ss. 588, 617 to 624; Stats. 1995 s. 289.41; 1995 a. 377 ss. 1 to 3; 1997 a. 35 ss. 327, 328, 396; 2001 a. 16.

10 **SECTION 35. 291.87 (3)** of the statutes is amended to read: x

11 **291.87 (3)** If the licensee requests a hearing within 45 days after receiving the
 12 notice under sub. (2), the department shall schedule a hearing and give notice of the
 13 hearing by publishing a class 1 notice, under ch. 985, or ~~shall publish~~ ^{by publishing} a notice on its
 14 Internet Web site, at least 45 days prior to the date scheduled for the hearing. If the
 15 licensee requests a contested case hearing and if the conditions specified under s.
 16 227.42 (1) (a) to (d) are satisfied, the department shall conduct the hearing as a
 17 contested case; otherwise, the department shall conduct the hearing as an
 18 informational hearing. There is no statutory right to any hearing concerning the
 19 denial, suspension or revocation of a license for the reasons stated under sub. (1m)
 20 (b) to (f) except as provided under this subsection.

History: 1983 a. 298; 1985 a. 182 s. 57; 1987 a. 384; 1995 a. 227 ss. 681, 688; Stats. 1995 s. 291.87.

21 **SECTION 36. 291.87 (6) (a)** of the statutes is amended to read:

X

1 291.87 **(6)** (a) Publishing a class 1 notice, under ch. 985, in a newspaper likely
2 to give notice in the area where the facility is located or publishing a notice on its
3 Internet Web site.

History: 1983 a. 298; 1985 a. 182 s. 57; 1987 a. 384; 1995 a. 227 ss. 681, 688; Stats. 1995 s. 291.87.

X

4 **SECTION 37.** 292.31 (3) (f) of the statutes is amended to read:

5 292.31 **(3)** (f) *Notice; hearing.* The department shall publish a class 1 notice,
6 under ch. 985 or shall publish a notice on its Internet Web site, prior to taking
7 remedial action under this subsection and subs. (1) and (7), which describes the
8 proposed remedial action and the amount and purpose of any proposed expenditure.
9 Except as provided under par. (d), the department shall provide a hearing to any
10 person who demands a hearing within 30 days after the notice is published for the
11 purpose of determining whether the proposed remedial action and any expenditure
12 is within the scope of this section and is reasonable in relation to the cost of obtaining
13 similar materials and services. The department is not required to conduct more than
14 one hearing for the remedial action proposed at a single site or facility.
15 Notwithstanding s. 227.42, the hearing shall not be conducted as a contested case.
16 The decision of the department to take remedial action under this section is a final
17 decision of the agency subject to judicial review under ch. 227.

History: 1995 a. 227 ss. 605 to 610, 612; 1995 a. 378 s. 45; 1997 a. 27; 2001 a. 16; 2005 a. 418; 2009 a. 28.

18 **SECTION 38.** 299.05 of the statutes is repealed and recreated to read:

19 **299.05 Deadlines for action on certain applications. (1) DEADLINES.** The
20 department, by rule, shall establish periods within which the department intends to
21 approve or disapprove an application for any of the following:

INSERT
13-21
(on next
page)

22 ~~(b)~~(a) A well driller or pump installer registration under s. 280.15.

23 ~~(c)~~(b) A water system, wastewater treatment plant, or septage servicing vehicle
24 operator certification under s. 281.17 ~~(3)~~.

SECTION 38

- 1 (d) ~~(d)~~ A license for servicing septic tanks and similar facilities under s. 281.48 (3).
- 2 (e) ~~(d)~~ A solid waste incinerator operator certification under s. 285.51 (2).
- 3 (f) ~~(e)~~ An ozone-depleting refrigerant removal approval under s. 285.59.
- 4 (g) ~~(em)~~ An air pollution control permit under s. 285.60.
- 5 (h) ~~(f)~~ A solid waste disposal facility operator certification under s. 289.42 (1).
- 6 (i) ~~(g)~~ A hazardous waste transportation service license under s. 291.23.
- 7 (j) ~~(h)~~ A metallic mining exploration license under s. 293.21.
- 8 (k) ~~(i)~~ An oil or gas exploration license under s. 295.33 (1).
- 9 (L) ~~(j)~~ A laboratory certification or registration under s. 299.11.
- 10 (m) ~~(k)~~ A medical waste transportation license under s. 299.51 (3) (c).

11 (2) FAILURE TO MEET DEADLINE. (a) Subject to sub. (4), the department shall
 12 refund fees paid by the applicant for a license or other approval specified in sub. (1)
 13 if the department fails to provide the applicant with written notice that the
 14 department has approved or disapproved the application for the license or other
 15 approval, including the specific facts upon which any disapproval is based, before the
 16 expiration of the period established under sub. (1) for the license or other approval.

17 (b) Subject to sub. (4), if the department fails to provide the applicant for a
 18 license or other approval specified in sub. (1) with written notice that the department
 19 has approved or disapproved the application before the expiration of the period
 20 established under sub. (1) for the license or other approval, the applicant may choose
 21 to proceed under ch. 227 as though the department had disapproved the application
 22 by providing the department with written notice of that choice no later than 45 days
 23 after the expiration of the period established under sub. (1).

INSERT 13-21 <goes to page 13.>

(a) An approval under s. 30.10[↑], 30.12[↑], 30.123[↑],
 30.18[↑], 30.19[↑], or 30.20.

1 (c) The department may not disapprove an application for a license or other
2 approval solely because the department is unable to complete its review of the
3 application within the period established under sub. (1).

4 (3) NOTICE OF DEADLINE. Upon receiving an application for a license or other
5 approval specified in sub. (1), the department shall inform the applicant of the period
6 established under sub. (1) for the license or other approval.

7 (4) PERMITTED EXTENSION OF DEADLINE. The department may extend the period
8 established under sub. (1) because an application is incomplete if all of the following
9 apply:

10 (a) Within 14 days after receiving the application, the department provides
11 written notice to the applicant describing specifically the information that must be
12 provided to complete the application.

13 (b) The information under par. (a) is directly related to eligibility for the license
14 or other approval or to terms or conditions of the license or other approval.

15 (c) The information under par. (a) is necessary to determine whether to approve
16 the application or is necessary to determine the terms or conditions of the license or
17 other approval.

18 (d) The extension is not longer than the number of days from the day on which
19 the department provides the notice under par. (a) to the day on which the department
20 receives the information.

21 **SECTION 39.** 299.17 of the statutes is created to read:

22 **299.17 Web site information.** The department shall publish on the
23 department's Internet Web site the current status of any application filed with the
24 department for a permit, license, or other approval under chs. 281 to 285 or 289 to

⑨ *** NOTE: This provision, which comes from 2007 SB 246, seems to require DNR to make a decision on an application on the same day that DNR receives the additional information. Is this consistent with your intent?

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FROM THE
LEGISLATIVE REFERENCE BUREAU

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1 ~~for relating clause:~~ identification of areas of significant scientific value for
2 purposes of regulating the placement of deposits and structures on the beds of
3 navigable waters and the removal of materials from the beds of navigable waters;

4 SECTION 1. 30.01 (1am) (c) of the statutes is amended to read:

5 30.01 (1am) (c) An area that possesses significant scientific value, as identified
6 by the department under s. 30.106.

History: 1983 a. 189; 1985 a. 243, 332; 1987 a. 374 ss. 1 to 9, 25, 34, 35, 46 to 49, 70, 76; 1987 a. 403; 1989 a. 56; 1993 a. 236; 1995 a. 227; 1997 a. 27, 248; 1999 a. 9; 2003 a. 118.

7 SECTION 2. 30.106 of the statutes is created to read:

8 **30.106 AREAS OF SIGNIFICANT SCIENTIFIC VALUE.** In identify^{ing} areas that possess
9 significant scientific value, the department may include only the following:

10 (1) Waters or portions of waters that contain endangered or threatened species
11 or aquatic elements.

***NOTE: By removing the qualifying phrase relating to the Wisconsin Natural Heritage Inventory, "aquatic element" becomes a very vague term. OK?

12 (2) Wild rice waters as identified in a written agreement between the
13 department and the Great Lakes Indian Fish and Wildlife Commission.

14 (3) Waters in areas in special management plan Waters in areas identified in
15 a special area management plan approved by the U.S. Army Corps of Engineers,^{or}
16 identified in a special wetland inventory study conducted by the department.

17 (4) Waters in ecologically significant coastal wetlands along Lakes Michigan
18 and Superior as identified in the most recent assessment conducted by the
19 department of the coastal wetlands of Lakes Michigan and Superior.

***NOTE: Although a specific document may appear in the rules relating to areas of significant scientific value, putting such language in the statutes is discouraged because it may be unconstitutional as a improper delegation of legislative authority. Also, I think there is a later assessment ^{than} the 2000 version. I have drafted this so that the most recent version is the one to be used.

INSERT
2-5
Continued

1 (5) Rivers that are included in the national wild and scenic rivers system and
2 rivers that are designated as wild rivers under s. 30.26.

3 (6) ~~Specific waters or portions of waters, if designated by the department by~~
4 rule

****NOTE: I have omitted a reference to DNR or the DNR board being able to
designate additional waters by rule because, as I understand it, the only waters are to be
~~the ones~~ that may be identified as having significant scientific value are the ones listed
in this newly created statutory provision.

5 SECTION 3. 30.121 (3c) of the statutes is created to read: X

INSERT
4-19

6 30.121 (3c) EXCEPTION; CERTAIN BOATHOUSES. Subsection (3) does not apply to the
7 repair or maintenance of a boathouse if the boathouse was in existence on December
8 16, 1979, and the repair or maintenance does not expand the footprint, height, or area
9 of the boathouse and the repair and maintenance does not result in the boathouse
10 being converted into living quarters.

****NOTE: The general limitation on the maintenance and repair of boathouses
needs to be kept in current law because it interacts with the existing exceptions under
s. 30.121 (3g), (3m), (3r), and (3w).

****NOTE: This exception applies only to boathouses and not houseboats. OK?

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1446/P1dn
RNK & RNK:.....

RCT
gjs

date

①

You had requested a provision that would allow DNR to give certain notices by way of publication on DNR's Internet Web site in lieu of required ~~Class 0~~ notices. Your request was to "allow a 15 day" notice. I did not include the 15 day requirement because, typically, the provisions in current law requiring a ~~Class 0~~ notice include a date by which the notice must be given and, under this draft, if a ~~Class 0~~ notice must be published by a certain date, and DNR chooses to publish on the Internet instead of publishing by way of a ~~Class 0~~ notice, then the Internet publication must also occur by that date. If I have misunderstood your intent, please let me know.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

With regard to the threshold for registration construction and operation permits, you requested that the draft increase the threshold for registration operation permits (ROP) and registration construction permits (RCP) from 25 to 79 tons per year.

I am uncertain how to proceed with drafting this request. The statute relating to air registration permits (s. 285.60 (2g)) does not include a threshold. The DNR rule that relates to registration construction permits (NR 406.17) and the rule that relates to registration operation permits (NR 407.105) specify criteria for issuance of registration permits and characteristics that prevent a source from being eligible for a registration permit. The general eligibility criteria for registration permits in DNR's rules include a threshold, among other criteria, but the threshold is not expressed in terms of a specified number of tons, except for lead emissions. The provisions setting the thresholds read as follows:

For construction permits: NR 406.17 (2) (a) 1. Actual emissions of each air contaminant from the construction, reconstruction, replacement, relocation or modification of the stationary source or sources will not exceed 25% of any major source threshold in s. NR 407.02 (4), over any 12 consecutive month period, except that emissions of lead may not exceed 0.5 tons over any 12 consecutive month period.

9

For operation permits: NR 407.105 (2) (a) 1. The calendar year sum of actual emissions of each air contaminant from the facility may not exceed 25% of any major source threshold in s. NR 407.02 (4), except that for lead, emissions may not exceed 0.5 tons per calendar year. The major source thresholds in NR 407.02 (4) vary, although for many pollutants the threshold is 100 tons per year. For hazardous air pollutants, the thresholds are lower and there are also lower thresholds in some nonattainment areas. The major source thresholds derive from the Clean Air Act. This is how DNR describes the thresholds on its Website (http://dnr.wi.gov/air/permits/streamlining/regpermits.html):

Website = LPS: remove extra spaces

There are two types of registration permits.

Type A Registration Permit - available for qualifying facilities that have emissions below 25 tons per year of each criteria pollutant, 2.5 tons per year of each federal hazardous air pollutant, 6.25 tons per year of all federal hazardous air pollutants combined, and 0.5 tons per year lead.

Type C Registration Permit - available only for qualified printing facilities that have emissions below 25 tons per year VOC, 5 tons per year of each federal hazardous air pollutant, 12.5 tons per year of all federal hazardous air pollutants combined, and 0.5 tons per year lead. It contains permit conditions specific to the printing industry.

That Web site also has a link to a fact sheet that has additional information about eligibility for registration permits. It appears that it would not comply with the Clean Air Act to set a registration permit threshold of 79 tons per year for all types of pollutants and in all areas. There is not sufficient information available to me to determine how to proceed with drafting this request. The information can be provided in writing or I am available to meet with you or anyone you designate to discuss the issues relating to this issue.

the increase in the threshold for ROP and RCP

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1446/P1dn
RNK&RCT:cjs:md

April 20, 2011

You had requested a provision that would allow DNR to give certain notices by way of publication on DNR's Internet Web site in lieu of required class 1 notices. Your request was to "allow a 15 day" notice. I did not include the 15 day requirement because, typically, the provisions in current law requiring a class 1 notice include a date by which the notice must be given and, under this draft, if a class 1 notice must be published by a certain date, and DNR chooses to publish on the Internet instead of publishing by way of a class 1 notice, then the Internet publication must also occur by that date. If I have misunderstood your intent, please let me know.

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Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Kite, Robin

From: Johnson, Dan
Sent: Monday, April 25, 2011 4:21 PM
To: Kite, Robin
Cc: Gibson-Glass, Mary
Subject: RE: LRB 1446/P1 question

Very good, thank you Robin!

By the way, at 11:00 a.m. next Tuesday (May 3rd) Senator Kedzie and Representative Mursau are meeting with the DNR and other interested parties to discuss and make decisions on these bill drafts, LRB 1446 and LRB 1713. This, if either of you are able to sit in on that meeting, it might be very helpful to all of us regarding any new drafting instructions. The meeting will be held in Room 813 of the GEF 2 building, which is the 8th floor of the DNR. If you are able to make it over, please let me know. Thanks again, and I'll look forward to the new, corrected preliminary draft.

Dan Johnson
Chief of Staff
State Senator Neal Kedzie
11th Senate District
608.266.2635

From: Kite, Robin
Sent: Monday, April 25, 2011 3:21 PM
To: Johnson, Dan
Cc: Gibson-Glass, Mary
Subject: RE: LRB 1446/P1 question

Dan:

I reviewed the file and it does, in fact, look as if I inadvertently incorporated into the draft the language from section 23 of 2003 SB 246. I apologize for the error. I will take that language out of the next version of the draft.

Thanks.
Robin

From: Johnson, Dan
Sent: Friday, April 22, 2011 7:53 AM
To: Gibson-Glass, Mary; Kite, Robin
Subject: LRB 1446/P1 question

Hi Mary and Robin,

I am in receipt of LRB 1446/P1, thank you for all your work on this. I do have one question:

On page 8-9, Section 26, the bill changes water quality certification approvals from 120 days to 21 days, and the notification of a complete application from 30 days to 14 days. I'm wondering how that change came to be, as I don't recall it being a part of our drafting request.

4/25/2011

I noticed this revision also appeared in 2003 SB 246, under Section 23. I did request that Section 24 and 25 of that bill be included in this draft, thus it may be possible that Section 23 also was included? I don't know.

I will be in the office all day today if you would like to give me a call, or perhaps just reply to this message with your thoughts.

Thank you!

Dan Johnson
Sen. Kedzie office
6-2635