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Chapter NR 345

DREDGING IN NAVIGABLE WATERWAYS

NR 345.01 Purpose.
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Note: Chapter NR 345 was created as an emergency rule effective April 19, 2004; chapter NR 345 was repealed and recreated by emergency rule effective August 24, 2004.

NR 345.01 Purpose. The purpose of this chapter is to establish reasonable procedures and limitations for exempt activities, general permits and individual permits for removal of material from the beds of navigable waterways as regulated under s. 30.20, 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.

History: CR 04-087: cr. Register April 2005 No. 592, eff. 5-1-05.

NR 345.02 Applicability. This chapter applies to removal of material from the bed of navigable waterways under s. 30.20 (1), (1g) (b), (1m), (1t) and (2), Stats. Any person that intends to remove material from the bed of a navigable waterway shall comply with all applicable provisions of this chapter and any permit issued under this chapter.

Note: For most dredging projects, the discharge of carriage return water is regulated by ch. 283, Stats., and requires a Wisconsin pollutant discharge elimination system (WPDES) permit. Similarly, for most dredging projects, the disposal of dredged material is regulated by ch. 289, Stats., and requires authorization under ch. NR 500. In accordance with 2003 Wisconsin Act 118, removal of material from non-navigable waterways is no longer regulated under s. 30.20, Stats.

History: CR 04-087: cr. Register April 2005 No. 592, eff. 5-1-05.

NR 345.03 Definitions. (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 http://dnr.wi.gov, under the topic "Waterway and Wetland Permits".

(2) "De minimus" activity means the dredging of less than 2 cubic yards in a calendar year from a specific waterbody or disturbance of bottom material during the manual removal of aquatic plants that meet the requirements of s. NR 109.06 (2).

Note: Where the bed material is privately owned, the permission of the property owner is required.

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

(4) "Dredged material" means any material removed from the bed of a navigable waterway by dredging.

(5) "Dredging" means any part of the process of the removal or disturbance of material from the bed of a navigable waterways, transport of the material to a disposal, rehandling or treatment facility; treatment of the material; discharge of carriage or interstitial water; and disposal of the material. For the purpose of ch. 30, Stats., dredging does not include "de minimus" activities as defined in sub. (2).

(6) "Final stabilization" means that all land disturbing construction activities at the site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.

(7) "Hazardous substance" has the meaning specified in s. 289.01 (11), Stats.

Note: Notwithstanding substances that meet the definition of hazardous substances in s. 289.01 (11), Stats., for the purpose of removing material from the bed of navigable streams and lakes, "hazardous substances" include all chemicals present at concentrations at, or greater than the *threshold effect concentration* as published in Consensus Based Contaminated Sediment Evaluation (DNR 2001).

(7k) "Jetting" means the action of dredging bottom sediments, including disturbing or resuspending sediment, while using water or air forced through a hose by means of a pump or vacuum to dislodge and collect aquatic plants, tubers or seeds.

(8) "Manual dredging" means removal or disturbance of bottom material by hand or using a hand-held device without the aid of external or auxiliary power. Manual dredging is often associated with the collection of aquatic insects for bait, removal of nuisance vegetation or debris and the panning for gold or other material. For the purpose of ch. 30, Stats., manual dredging does not include "de minimus" activities as defined in sub. (2).

(9) "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).

(10) "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.

(10g) "Outlying waters" has the meaning in s. 29.001 (63), Stats.

(10r) "Plant and animal nuisance deposit" means a recent and natural deposit within the swash zone of a waterway of mussels, dead fish, Cladophora or similar natural, biological-based material caused by wave action in a quantity that is causing an annoyance, damage, or health issue to the public or waterway.

Note: "Plant and animal nuisance deposit" does not include the natural deposition of the native lakebed material like sand, cobble, silt, detritus, and other organic material.

Note: Effective Aug. 1, 2012, s. 30.20(1t)(b), Stats., is repealed. As provided by s. 30.206(1r), Stats., the General Permit for Removal of Plant and Animal Nuisance Deposits authorized by s. 30.20(1t) (b), Stats., and s. NR 345.04(2)(b), (c), and (im) in which this definition is used is invalid effective June 6, 2013. This permit is replaced with Statewide General Permit GP5-2013-WI (WDNR-GP5-2013), which is found on the department website http://dnr.wi.gov under the topic "Waterway." WDNR-GP5-2013-WI expires June 5, 2018, unless renewed, modified, or revoked on or before that date.

(11) "Previously dredged area" means an area below the ordinary high water mark of a navigable waterway from which material was historically removed.

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

(12m) "Rutting" is defined as an elongated depression caused by wheels or tracks of machinery, equipment or other vehicles and is 6 inches deep or more.

(13) "Stabilize" means the process of making a site steadfast or firm, minimizing soil movement by the use of practices such as mulching and seeding, sodding, landscaping, paving, graveling or other appropriate measures.

(13m) "Swash zone" as defined by the United States Army Corps of Engineers Coastal Engineering Manual, means the zone of wave action on the beach, which moves as water levels vary, extending from the limit of run-down to the limit of run-up.

Note: The "swash zone" does not typically include areas that are stabilized with vegetation. The United States Army Corps of Engineers Coastal Engineering Manual can be found at: http://chl.erdc.usace.army.mil/cem.

(14) "Utility crossing" means dredging by plow, vibratory plow or open trench methods, below the ordinary high water mark of a navigable waterway for the installation of cables, conduits or pipelines by an entity providing service for conveying any fluids, gases, electricity and communications or other public or private utility functions.

History: CR 04-087: cr. Register April 2005 No. 592, eff. 5-1-05; CR 05-037: cr. (7k) Register December 2005 No. 600, eff. 1-1-06; CR 07-112: cr. (10g), (10r), (12m) and (13m) Register July 2008 No. 631, eff. 8-1-08.

NR 345.04 Dredging. (1) EXEMPTIONS. (a) *Procedures.* Exemptions shall be processed according to the procedures in ch. NR 300.

(b) *Applicable activities.* The dredging of a farm drainage ditch which was not a navigable stream before ditching that meets all of the standards in par. (c), is exempt from the permit requirements of s. 30.20 (1) and (2), Stats., in accordance with s. 30.20 (1g) (a), Stats., manual dredging that meets all of the standards in par. (d) is exempt from the permit requirements of s. 30.20 (1) and (2), Stats., in accordance with s. 30.20 (1g) (b) 2., 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 or a general permit under s. 281.36 (3g) (b), 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 (3b) (b), Stats., and carried out under chs. NR 103 and 299. For further instructions, see the department's website at http://dnr.wi.gov under the topic "Waterway and Wetland Permits."

(c) *Standards for dredging of a farm drainage ditch which was not a navigable stream before ditching.* Dredging of a farm drainage ditch which was not a navigable stream before ditching is eligible for an exemption subject to the following limitation:

1. The project is located in a navigable stream that does not have stream history.

2. The applicant has notified the department of the proposed project 10 days prior to dredging.

3. The dredging may not have a long-term adverse effect on cold-water fishery resource or may not destroy cold water or warm water fish spawning beds or nursery areas.

4. The dredged material may not be temporarily or permanently placed in a wetland, floodway or below the ordinary high water mark of a navigable waterway.

5. The person conducting the dredging is the riparian owner or has permission of the riparian owner to remove bottom material.

6. To stop the spread of invasive species and viruses from one navigable waterway to another navigable waterway, all equipment or portions of equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, shall be decontaminated for invasive species and viruses before and after use or prior to use within another navigable waterway. Decontamination activities shall be performed by taking actions specified in subd. 6. a. to c. or h. Decontamination shall include either subd. 6. d., e., f., g., or h. for any equipment, or portions of equipment, that is used in non-frozen navigable waters when the air temperature is above 19 degrees Fahrenheit at the time the decontamination procedures take place.

a. Inspect all equipment used for constructing, operating, or maintaining the project and remove all plants and animals, and other mud, debris, etc.

b. Drain all water from equipment used in navigable waters.

Note: This does not apply to water in closed engine cooling systems or water tanks, or containers of potable drinking water or other beverages meant for human consumption. If a tanker truck discharges water collected from navigable waters in upland areas, the tank does not require disinfection.

c. Dispose of plants and animals in the trash. An operator may not transfer plants or animals or water from one navigable waterway to another.

d. Wash equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).

e. Wash equipment with soap and water or high pressure water of not less than 2000 pounds per square inch.

f. Allow equipment to dry thoroughly for not less than 5 days.

Note: Additional drying techniques including drying through natural or mechanical means or changes in drying duration may be submitted to the department for review and approval.

g. Disinfect equipment with 200 parts per million (0.5 ounces per gallon) chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

Note: Chlorine refers to either household bleach solution (5.25% chlorine) or granular chlorine (70% calcium hypochlorite).

h. Follow the most recent department approved disinfection protocols or department approved best management practices for infested waters. The department shall maintain on its website and make available at its offices a list of the most recent disinfection protocols or department approved best management practices for invasive species and viruses.

Note: See the department's website at http://dnr.wi.gov under the topic "Waterway and Wetlands". Recommendations for additional disinfection or decontamination protocols or department approved best management practices may be submitted to the department for review and approval to be added to this list.

(d) *Standards for manual dredging activities.* Manual dredging is eligible for an exemption subject to the following limitations:

1. The dredging operation meets the definition of manual dredging in s. NR 345.03 (8).

2. The dredging may not be located in an area of special natural resource interest, or where there are public rights features as described in s. NR 1.06, or in perennial tributaries to surface waters identified as trout streams by the department in s. NR 1.02 (7).

3. The dredged material may not contain any hazardous substance as defined in s. NR 345.03 (7).

4. For each riparian property, the amount of bottom material dredged from a specific waterbody may not exceed 100 square feet in surface area and one foot in depth in a calendar year.

5. Any dredged material removed from the waterbody may not be temporarily or permanently placed in a wetland, floodway or re-deposited below the ordinary high water mark of a navigable waterway.

6. 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

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during construction shall be immediately seeded and mulched or riprapped 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/topic/stormwater/standards/.

7. Mechanical equipment may not be operated below the ordinary high water mark or on the bed of a navigable waterway.

8. The applicant is the riparian owner or has permission of the riparian owner to remove bottom material.

Note: When the state is the riparian property owner, the requirements of s. NR 45.04 shall be met.

9. To stop the spread of invasive species and viruses from one navigable waterway to another navigable waterway, all equipment or portions of equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, shall be decontaminated for invasive species and viruses before and after use or prior to use within another navigable waterway. Decontamination activities shall be performed by taking actions specified in subd. 9. a. to c. or h. Decontamination shall include either subd. 9. d., e., f., g., or h. for any equipment, or portions of equipment, that is used in non-frozen navigable waters when the air temperature is above 19 degrees Fahrenheit at the time the decontamination procedures take place.

a. Inspect all equipment used for constructing, operating, or maintaining the project and remove all plants and animals, and other mud, debris, etc.

b. Drain all water from equipment used in navigable waters.

Note: This does not apply to water in closed engine cooling systems or water tanks, or containers of potable drinking water or other beverages meant for human consumption. If a tanker truck discharges water collected from navigable waters in upland areas, the tank does not require disinfection.

c. Dispose of plants and animals in the trash. An operator may not transfer plants or animals or water from one navigable waterway to another.

d. Wash equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).

e. Wash equipment with soap and water or high pressure water of not less than 2000 pounds per square inch.

f. Allow equipment to dry thoroughly for not less than 5 days.

Note: Additional drying techniques including drying through natural or mechanical means or changes in drying duration may be submitted to the department for review and approval.

g. Disinfect equipment with 200 parts per million (0.5 ounces per gallon) chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

Note: Chlorine refers to either household bleach solution (5.25% chlorine) or granular chlorine (70% calcium hypochlorite).

h. Follow the most recent department approved disinfection protocols or department approved best management practices for infested waters. The department shall maintain on its website and make available at its offices a list of the most recent disinfection protocols or department approved best management practices for invasive species and viruses.

Note: See the department's website at http://dnr.wi.gov under the topic "Waterway and Wetlands". Recommendations for additional disinfection or decontamination protocols or department approved best management practices may be submitted to the department for review and approval to be added to this list.

(e) *Standards for dredging necessary to place or maintain an exempt structure under s. 30.20 (1g) (b) 1., Stats.* The standards for this activity are contained in the rules that describe the exempt structures.

Note: Chapters NR 320, 323, 326, 328 and 329 contain rules regarding various exempt activities including culvert replacement, habitat structures, piers, boat shelters, riprap replacement, intake and outfall structures and dry fire hydrants.

(f) *Permit required.* 1. Activities which do not meet the standards in par. (c), (d) or (e) are determined ineligible for an exemption by the department shall require a general permit or contract or individual permit or contract.

2. The department has the authority under s. 30.20 (1m), Stats., to require a permit in lieu of exemption.

(2) GENERAL PERMITS. (a) *Procedures.* 1. General permits shall be processed according to the procedures in ch. NR 300.

2. If the department determines that a dredging 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:

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

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

2m. If the department determines that the dredging proposal submitted under this section has the potential to impact an archaeological site or historic structure in accordance with s. 44.40, 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 that the dredging project avoids impacts to the archaeological site or historic structure, or completes and documents requested investigations of archaeological sites or historic structures in accordance with s. 44.40, Stats. Reports of completed archaeological or historic structures investigations for projects are subject to departmental and Wisconsin Historical Society review and approval in advance of permit issuance.

3. If the applicant modifies their dredging project plans to meet the requirements of subd. 2. or 2m., the modified plans shall be submitted before the department can consider the application complete or issue a general permit.

4. General permit applications under par. (i) for licensed aquatic nursery growers may be submitted to the department of agriculture, trade and consumer protection. Applications shall be considered received on the date they are received by the department.

Note: Applications may be obtained from the department's regional headquarters or service centers, or on the department's website at http://dnr.wi.gov under the topic "Waterway and Wetland Permits." DATCP has agreed to send application forms and instructions provided by the department to aquatic nursery growers along with license renewal forms. DATCP will forward all applications to the department for processing.

(b) *Applicable activities.* Dredging that meets all of the standards in par. (c) and either par. (d), (f), (h), (i), (im) or (ir) is eligible for a general permit under ss. 30.20 (1t) and 30.206, Stats. Dredging that meets all of the standards in par. (c) and either par. (e) or (g) is eligible for a general permit under ss. 30.20 (1t) (a) and (am) 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 or a general permit under s. 281.36 (3g) (b), 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 (3b) (b), Stats., and carried out under chs. NR 103 and 299. For further instructions, see the department's website at http://dnr.wi.gov under the topic "Waterway and Wetland Permits."

Note: Effective Aug. 1, 2012, s. 30.20(1t)(b), Stats., is repealed. As provided by s. 30.206(1r), Stats., the General Permit for Removal of Plant and Animal Nuisance Deposits authorized by s. 30.20(1t) (b), Stats., and s. NR 345.04(2)(b), (c), and (im) is invalid effective June 6, 2013. This permit is replaced with Statewide General Permit GP5-2013-WI (WDNR-GP5-2013), which is found on the department website http://dnr.wi.gov under the topic "Waterway." WDNR-GP5-2013-WI expires June 5, 2018, unless renewed, modified, or revoked on or before that date.

(c) *General permit standards.* In order to be eligible for a general permit, projects must meet all of the general permit standards in par. (c) in the addition to the specific activity standards in par. (d), (e), (im) or (ir).

1. The applicant shall provide information that the dredged material does not contain any hazardous substance as follows:

a. Through the collection and laboratory analysis of the dredged material in compliance with ch. NR 347; or

b. Through the review of historical dredge material information from the vicinity of the proposed project that was collected and analyzed in accordance with ch. NR 347; or

c. By assessing the potential for hazardous substances to be present based upon the characteristic of the watershed, industrial and municipal discharges to the waterbody and dredge material data from similar waterways.

2. To protect fish habitat during spawning seasons, the dredging may not occur during the following time periods:

a. For trout streams identified under s. NR 1.02 (7) and perennial tributaries to those trout streams, September 15 through May 15.

b. For all waters not identified in subd. 2. a. and located south of state highway 29, March 15 through May 15.

c. For all waters not identified in subd. 2. a. and located north of state highway 29, April 1 through June 1.

d. The applicant may request that the requirement in subd. 2. a., b. or c. be waived by the department on a case-by-case basis, by submitting a written statement signed by the local department fisheries biologist, documenting consultation about the proposed dredging project, and that the local department fisheries biologist has determined that the requirements of this paragraph are not necessary to protect fish spawning for the proposed project.

3. Any dredged material removed from the waterbody may not be permanently placed in a wetland, or floodway or re-deposited below the ordinary high water mark of a navigable waterway, except as provided for as backfill in accordance with par. (d) 9.

4. Dredged material may be temporarily placed for not more than 8 hours within a wetland or below the ordinary high water mark of a navigable waterway if the material is placed on matting with appropriate erosion control to prevent runoff. Any areas used for temporary placement shall be completely restored within 24 hours.

5. The project shall be conducted in a manner that prevents dispersal of sediment away from the project site. Temporary control measures such as silt curtains shall be used as needed, and shall be installed prior to dredging and removed from the waterbody no more than 24 hours after dredging is complete. Any temporary control measures shall follow all state lighting requirements and may not obstruct navigation.

6. Dredging shall be conducted to minimize the re-suspension of sediment to the maximum extent practicable in accordance with the following:

a. For trout streams identified under s. NR 1.02 (7) and perennial tributaries to those trout streams, the total suspended solid concentrations may not exceed 40 mg/L.

b. For all waters not identified in subd. 6. a., the total suspended solid concentrations may not exceed 80 mg/L.

7. 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 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/topic/stormwater/standards/.

8. 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 removal shall be restored.

9. To stop the spread of invasive species and viruses from one navigable waterway to another navigable waterway, all equipment or portions of equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, shall be decontaminated for invasive species and viruses before and after use or prior to use within another navigable waterway. Decontamination activities shall be performed by taking actions specified in subd. 9. a. to c. or h. Decontamination shall include either subd. 9. d., e., f., g., or h. for any equipment, or portions of equipment, that is used in non-frozen navigable waters when the air temperature is above 19 degrees Fahrenheit at the time the decontamination procedures take place.

a. Inspect all equipment used for constructing, operating, or maintaining the project and remove all plants and animals, and other mud, debris, etc.

b. Drain all water from equipment used in navigable waters.

Note: This does not apply to water in closed engine cooling systems or water tanks, or containers of potable drinking water or other beverages meant for human consumption. If a tanker truck discharges water collected from navigable waters in upland areas, the tank does not require disinfection.

c. Dispose of plants and animals in the trash. An operator may not transfer plants or animals or water from one navigable waterway to another.

d. Wash equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).

e. Wash equipment with soap and water or high pressure water of not less than 2000 pounds per square inch.

f. Allow equipment to dry thoroughly for not less than 5 days.

Note: Additional drying techniques including drying through natural or mechanical means or changes in drying duration may be submitted to the department for review and approval.

g. Disinfect equipment with 200 parts per million (0.5 ounces per gallon) chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

Note: Chlorine refers to either household bleach solution (5.25% chlorine) or granular chlorine (70% calcium hypochlorite).

h. Follow the most recent department approved disinfection protocols or department approved best management practices for infested waters. The department shall maintain on its website and make available at its offices a list of the most recent disinfection protocols or department approved best management practices for invasive species and viruses.

Note: See the department's website at http://dnr.wi.gov under the topic "Waterway and Wetlands". Recommendations for additional disinfection or decontamination protocols or department approved best management practices may be submitted to the department for review and approval to be added to this list.

10. If the project location is within the riparian zone, the applicant is the riparian owner or has permission of the riparian owner to dredge the bottom material.

Note: Effective Aug. 1, 2012, s. 30.20(1t)(b), Stats., is repealed. As provided by s. 30.206(1r), Stats., the General Permit for Removal of Plant and Animal Nuisance Deposits authorized by s. 30.20(1t) (b), Stats., and s. NR 345.04(2)(b), (c), and (im) is invalid effective June 6, 2013. This permit is replaced with Statewide General Permit GP5-2013-WI (WDNR-GP5-2013), which is found on the department website http://dnr.wi.gov under the topic "Waterway." WDNR-GP5-2013-WI expires June 5, 2018, unless renewed, modified, or revoked on or before that date.

(d) *Standards for installation of utility crossing.* Dredging to install a utility crossing is eligible for a general permit subject to all of the following limitations:

1. The location of the utility crossing shall be located to re-

duce environmental impacts by minimizing the disturbance of the following: adjacent wetland corridors, banks with steep slopes and fish and wildlife habitat within the waterway.

2. The dredging may occur only to cross a navigable stream no more than 35 feet across.

3. The general permit may authorize up to 10 waterway crossings that are part of a single project.

4. The size of the open trench or plowed channel may not exceed 48 inches in width in perennial streams and 72 inches in intermittent streams where no flow is present during construction.

5. The dredging shall conform to the dimensions and elevations shown on the application.

6. All equipment used for the project shall be designed and properly sized to minimize to the extent practicable, the amount of sediment that is resuspended into the water.

7. Any area within 75 feet of the ordinary high water mark, where topsoil is exposed during construction, shall be stabilized within 24 hours to prevent soil from being eroded and washed into the waterway.

8. During construction and installation of the utility crossing, the entire volume of the stream flow shall be maintained downstream from the project site.

9. During excavation of the trench, dredged material may be temporarily stockpiled in an upland area provided it is separated from the stream by an installed silt fence or a protective, vegetated buffer strip not less than 20 feet in width.

10. The trench excavation, filling and installation of utility crossing the below the ordinary high mark shall be completed within an 8-hour period.

11. In perennial streams, clean, washed gravel or crushed stone or clean river stone originally removed from the utility trench or plowed channel, shall be used as backfill material to replace the excavated material. In intermittent streams with no flow present, the originally removed material may be used as backfill material for the dredged trench if the disturbed site is immediately stabilized.

12. When the dredging is complete, the streambed contours shall be the same as the pre-construction contours.

(e) *Standards for maintenance dredging in established drainage districts.* Dredging to maintain a district drain which is part of a drainage district established under ch. 88, Stats., is eligible for a general permit subject to the following limitations:

1. Unless the department previously authorized the project under s. 30.20, Stats., the dredging may not be located in an area of special natural resource interest.

2. Unless the department previously authorized the project under s. 30.20, Stats., the dredging may not be located where there are public rights features as described in s. NR 1.06.

3. Dredging shall comply with s. ATCP 48.32.

4. Maintenance of the district ditch and any structures in the ditch shall comply with the established specifications and compliance plan under ss. ATCP 48.20 and 48.22.

5. Dredging may not exceed the volume or extend beyond the dimensions of the previously dredged project.

(f) *Standards for manual dredging.* 1. A general permit, subject to all of the following limitations may authorize manual dredging activities that do not meet the exemption standards in s. NR 345.04 (1) (d).

2. The dredging operation meets the definition of manual dredging in s. NR 345.03 (5).

3. For each riparian property, the amount of bottom material removed from a waterbody may not exceed 10 cubic yards in a calendar year.

4. The project may not be located where there are public rights features as described in s. NR 1.06.

Note: When the state is the riparian property owner, the requirements of ch. NR 45 shall be met.

(g) *Standards for maintenance dredging of previously dredged areas.* Maintenance dredging of material from an area from which material has previously been removed is eligible for a general permit subject to all of the following limitations:

1. Unless the department previously authorized the project under s. 30.20, Stats., the dredging may not be located in an area of special natural resource interest, or where there are public rights features as described in s. NR 1.06.

3. Dredging may not exceed the volume or extend beyond the dimensions of the previous dredge project.

4. The applicant has provided information that the area meets the requirements of "previously dredged area" as follows:

a. The applicant can demonstrate that previous removal of material was authorized by the department; or

b. The applicant can demonstrate historical information documenting the previous removal of material including the date of removal, the volume of material removed and location of the material disposal.

5. Unless the dredging project is for the removal of material associated with maintenance of a harbor or marina located on Lake Michigan or Superior, the material removed may not exceed 50,000 cubic yards.

(h) *Standards for jetting to harvest aquatic plants, tubers or seeds.* Jetting of the bottom sediments during the harvesting of aquatic plants is eligible for a general permit which will meet the substantive requirements of ch. NR 109, subject to all of the following limitations:

1. The project shall be in a location where the bed of the waterway is privately-owned or a location where the bed of the waterway is publicly-owned if the department determines that the project is consistent with the aquatic plant management activities authorized under ch. NR 109.

Note: Under Wisconsin law, the bed of natural lakes is publicly-owned, and the bed of rivers and streams is owned by the adjacent riparian to the center of the river or stream. For impoundments or raised lakes, the bed is privately owned to the edge of the natural lakebed.

2. The applicant shall be licensed by the department of agriculture, trade and consumer protection as a nursery grower under s. 94.10, Stats.

3. All dislodged aquatic plants and floating debris shall be removed from the waterbody at the end of each day.

4. The equipment and motors used for jetting loose the aquatic plants shall conform to the following specifications:

a. The pumps may not exceed 6 ½ horsepower.

b. The hoses may not exceed 3 inches inside diameter.

c. The intake strainer may not exceed $^{3}/_{8}$ inch mesh.

5. To provide for re-growth of aquatic plants, the area dredged may not exceed 50 feet by 15 feet and an area 5 feet in width shall be left undisturbed around all dredge sites regardless of its size. Multiple areas 50 feet by 15 feet may be dredged within a waterbody if consistent with subd. 6.

6. The general permit authorizes up to 5 acres of jetting, but no more than 50% of the aquatic vegetation from the waterbody.

7. Only one general permit shall be issued for each area of a waterbody on an annual basis.

(i) *Standards for dredging less than 25 cubic yards from a river or stream.* Dredging less than 25 cubic yards is eligible for a general permit subject to all of the following limitations:

1. The dredging may not be located on a lake or impoundment, in an area of special natural resource interest, or where there are public rights features as described in s. NR 1.06.

2. The bottom material shall be dredged by mechanical operation of a bucket excavator or backhoe.

3. The dredged material may not be temporarily stockpiled within 75 feet of the ordinary high water mark.

4. The removal of bottom material shall be located in less than 3 feet of water and within 50 feet of the ordinary high water mark.

5. The dredging may not result in water depth greater than 5 feet.

6. For each riparian property, the amount of bottom material dredged from a waterbody may not exceed 25 cubic yards in a calendar year.

(im) *Standards for removal of plant and animal nuisance deposits.* All of the following are standards for removal of plant and animal nuisance deposits.

1. The removal shall only be located in outlying waters.

2. This general permit is for the one time removal of the plant and animal nuisance deposit. Only 3 general permits for plant and animal nuisance deposits may be issued for any area of a waterbody on an annual basis. For the general permit requirements listed under this paragraph, an area of a waterbody is the geographical location of the project as indicated on the general permit application form.

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

3. The project area to which this general permit applies shall be under the same ownership as the applicant.

4. The removal may not be located where there are public rights features as described in s. NR 1.06 or in waters in ecologically significant coastal wetlands along Lakes Michigan and Superior as identified in the Coastal Wetlands of Wisconsin (DNR-CMP project).

Note: The Coastal Wetlands of Wisconsin's Great Lakes can be found at the following website http://dnr.wi.gov/topic/nhi/projects.html under the topic "Coastal Wetlands".

5. The removal shall only be located within the swash zone of the waterway.

6. The removal is limited to the plant and animal nuisance deposit only. The removal of material other than plant and animal nuisance deposits should be limited to the extent practicable and may not exceed a de minimus amount.

Note: The material may contain trash which should be removed along with the plant and animal nuisance deposit.

7. The total amount of material removed shall be less than 3000 cubic yards.

8. This general permit does not authorize the redistribution of native lakebed material which includes sand, cobble, silt, detritus, and other organic material or the placement of additional sand/stone, etc.

9. Equipment used shall be designed to skim only the plant and animal nuisance deposit off of the native lakebed. The equipment shall be used in a manner that minimizes the impacts to the native lakebed and surrounding vegetation.

10. Equipment used shall be low ground pressure equipment, including wide-tire vehicles, and tracked equipment, to minimize rutting. The equipment shall remove the material along a path parallel to the shore within the swash zone. Equipment operation shall cease when rutting occurs. Any rutting of the lakebed shall be immediately restored by the operator of the vehicle.

Note: The depth of the rut is measured from the original lakebed surface to the bottom of the depression. If individual lug depressions are visible, the depth would be measured to the lesser of the two depths (e.g., the top of the lug). Measurements are not cumulative.

11. If the removed material will be disposed of by landspreading, the material shall be incorporated into the soil by plowing or disking within 24 hours.

12. Unless using a developed boat launch, equipment used in the removal shall access the swash zone along one path perpendicular to the shore. The chosen route shall minimize the impact to the shoreline and vegetated lakebed.

Note: Note: Effective Aug. 1, 2012, s. 30.20(1t)(b), Stats., is repealed. As provided by s. 30.206(1r), Stats., the General Permit for Removal of Plant and Animal Nuisance Deposits authorized by s. 30.20(1t) (b), Stats., and s. NR 345.04(2)(b), (c), and (im) is invalid effective June 6, 2013. This permit is replaced with Statewide General Permit GP5-2013-WI (WDNR-GP5-2013), which is found on the department website http://dnr.wi.gov under the topic "Waterway." WDNR-GP5-2013-WI expires June 5, 2018, unless renewed, modified, or revoked on or before that date.

(ir) *Standards for using motor vehicles for the management of non-native and invasive plant species growing on the exposed lakebed of outlying waters.* All of the following are standards for using motor vehicles, as defined in s. 30.29, Stats., for the management of non-native and invasive emergent plant species growing on exposed lakebed.

1. The project shall be located on the exposed lakebed of outlying waters.

2. The project shall be conducted when the exposed lakebed is dry.

3. The project area to which this general permit applies shall be under the same ownership as the applicant.

4. The use of the motor vehicle is for the purpose of controlling emergent invasive or nonnative aquatic plant species as designated by the department under s. 23.24, Stats., and s. NR 109.07.

5. The use of the motor vehicle is for mowing or spreading herbicide in conformance with a written invasive or nonnative aquatic plant species control plan approved by the department.

Note: An invasive or nonnative aquatic plant species control plan, as required under s. NR 109.04 (3) and described in s. NR 109.09, must contain the following items: a description of the existing condition including the types of plants present and their abundance; a strategy for the control of the invasive or nonnative aquatic plant species; a plan for the re-establishment of the native plant community; and a monitoring plan to assess the success or failure of the control plan.

6. For projects requiring a permit under ch. NR 107 or 109, before the department can consider the application complete or issue a general permit under this section, the applicant shall submit documentation to demonstrate that a permit under ch. NR 107 or 109 has been applied for.

Note: The chemical treatment of aquatic plants may require a permit under ch. NR 107 and physical removal of aquatic plants may require a permit under ch. NR 109.

7. The motor vehicle may only be operated in the specific area that is detailed in the approved invasive species control plan or permit. This permit does not authorize the operation of any motor vehicle in areas outside of those designated in the approved plan or permit.

8. Equipment used shall be low ground pressure equipment, including wide-tire vehicles, and tracked equipment, to minimize rutting. Equipment operation shall cease when rutting occurs. Any rutting of the lakebed shall be immediately restored by the operator of the vehicle.

Note: The depth of the rut is measured from the original lakebed surface to the bottom of the depression. If individual lug depressions are visible, the depth would be measured to the lesser of the 2 depths (e.g., the top of the lug). Measurements are not cumulative.

9. The motor vehicle shall be used in a manner that minimizes the impacts to the native lakebed material and any surrounding native vegetation.

10. To minimize impacts to small animals and native plants and to prevent soil disruption and rhizome spread, the mowing

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deck shall be set no lower than 4 inches above the ground when operating equipment.

11. To protect wildlife habitat during nesting seasons, the use of a motor vehicle to control emergent invasive or nonnative aquatic plant species may only occur between August 1st and March 15th of the subsequent year.

12. The applicant may request that the requirement in subd. 11. be waived by the department on a case-by-case basis, by submitting a written statement signed by the local department wildlife biologist, documenting consultation about the proposed control plan, and that the local department wildlife biologist has determined that the requirements of subd. 11. are not necessary to protect wildlife habitat during the nesting season for the proposed project.

(j) *Individual permit or contract required.* 1. Activities which do not meet the standards in par. (c) and either par. (d), (e), (f), (g), (h), (i), (im), (ir) or (j) shall require an individual permit or contract.

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

(3) INDIVIDUAL PERMITS. (a) *Procedures.* 1. Individual permits shall be processed according to the procedures in ch. NR 300.

2. 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 an individual permit until the applicant submits documentation to demonstrate one of the following:

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

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

3. If the applicant modifies their project plans to meet the requirements of subd. 2., the modified plans shall be submitted before the department can consider the application complete or issue an individual permit.

(b) *Applicable activities.* Any dredging which is not exempt under sub. (1) and is not authorized by a general permit under sub. (2), requires authorization by an individual permit pursuant to s. 30.20 (1), Stats.

(c) *Standards.* 1. Dredging which meets the standards in s. 30.20 (2), Stats., may be authorized under an individual permit or contract.

2. All applicable provisions in chs. NR 346 and 347 shall be met.

History: CR 04-087: cr. Register April 2005 No. 592, eff. 5-1-05; CR 05-037: am. (1) (d), cr. (2) (a) 4., and (2) (f) to (i), am. (2) (b), renum. (2) (f) to be (2) (j) and am. Register December 2005 No. 600, eff. 1-1-06; CR 07-112: cr. (2) (a) 2m., (im) and (ir), am. (2) (a) 3., (b), (c) (intro.), 7., 9. and (j) 1. Register July 2008 No. 631, eff. 8-1-08; correction in (2) (im) 2. made under s. 13.92 (4) (b) 7., Stats., Register July 2008 No. 631; CR 07-094: cr. (1) (c) 6. and (d) 9., r. and recr. (2) (c) 9. Register November 2008 No. 635, eff. 12-1-08; correction to (2) (b) made under s. 13.92 (4) (b) 7., Stats., Register May 2013 No. 689; CR 13-022: r. (2) (e) 6., (g) 2. Register March 2014 No. 699, eff. 4-1-14; CR: 22-013: am. (1) (a), (2) (a) 1., (3) (a) 1. Register June 2023 No. 810, eff. 7-1-23.

NR 345.05 Enforcement. (1) Noncompliance with the provisions of ss. 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. The department may seek abatement under s. 30.294, Stats., for any violation of ss. 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 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 300 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 remove material from the bed of 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.

History: CR 04-087: cr. Register April 2005 No. 592, eff. 5-1-05; CR 22-013: am. (3) Register June 2023 No. 810, eff. 7-1-23.