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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 04-62

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]**

#### **1. Statutory Authority**

In s. NR 329.04 (2) (e) 1., a weed rake may not be located in a public rights feature as identified under s. NR 1.06. Under s. 30.206 (1) (c), Stats., in order to ensure that the cumulative adverse environmental impact of activities authorized by a general permit is insignificant and that the issuance of a general permit will not injure public rights or interests, cause environmental pollution, or result in material injury to the rights of any riparian owner, the department may impose construction and design requirements, location requirements that ensure the activity will not materially interfere with navigation or have an adverse impact on riparian property rights of adjacent riparian owners, and restrictions to protect areas of special natural resource interest. These statutory criteria seem to be narrower than the rule prohibition regarding weed rakes in “public rights features” as described in s. NR 1.06. In addition, ch. 30 Stats., does not include the term “public rights features.”

#### **2. Form, Style and Placement in Administrative Code**

a. In s. NR 329.01, the term “boat ramp” is used; however, s. 30.12 (3) (a) 5. Stats., uses the term “boat landing.” In order to be consistent with the statute, “boat ramp” should be changed to “boat landing.” This problem also occurs in ss. NR 329.02, 329.03 (2), 329.04 (2) (b) and (d) and (3) (a) 5., and 329.05 (4).

b. In s. NR 329.04 (1) (e) 6., the information contained in the note is substantive and should be moved to the text of the rule. In sub. (1) (f), “under s. 30.12 (2m), Stats.,” should be

inserted between “department” and “shall.” In sub. (2) (c) 9., “cannot” should be changed to “may not.”

### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. NR 329.01, the rule should note that in addition to protecting public rights and interest in navigable public waters of the state, the department is promulgating ch. NR 329 as part of a regulatory permit program under ch. 30, Stats.

b. In s. NR 329.02, the word “that” in the second sentence should be changed to “who.”

c. In s. NR 329.03 (4), it appears that a word or words are missing after the first comma. Could this be corrected by changing “that” to “to which”? In sub. (6), the comma should be deleted. In sub. (11), the phrase “e.g. pier, piling, etc.” should be changed to “such as a pier or piling.”

d. In s. NR 329.04 (1) (c) 1. to 9., “The” should be changed to “A”. Also, sub. (1) (c) 4. refers to both “a wetland” and “any wetland”; one term should be used consistently throughout the rule.

e. In s. NR 329.04 (2) (c) 19., can the department clarify how a person can determine when a period of high stream flow is occurring? In sub. (2) (d) 11., “etc.” should be deleted. In sub. (2) (i), it appears that the second occurrence of “or” should be changed to “for.”

f. In s. NR 329.05 (1), the phrase “authorized under” should be inserted in the second sentence in between “is” and “a.” In sub. (4), “hydrants” should be changed to “hydrant.” Also, it is unclear how any of the listed activities can be “otherwise authorized under this chapter” if the activity is not eligible for an exemption, authorized by a general permit, or authorized by an individual permit. Can the department clarify what other type of authorization is available?