

Clearinghouse Rule 10-016

Report to Legislative Council Rules Clearinghouse NR 40 , Wis. Adm. Code Natural Resources Board Order No. IS-07-10

Wisconsin Statutory Authority

Sections 23.09 (2) (intro), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 23.28 (3), 27.01 (2) (j), 29.014 (1), 29.039 (1) 29.041, and 227.11 (2) (a), Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

The proposed rule makes several “housekeeping” changes to ch. NR 40 relating to the identification, classification and control of invasive species.

SECTION 1. of the proposed Order creates a definition for the term “aquatic invasive species.” The definition is needed for clarification of an existing rule that authorizes the department to remove detrimental fish and other aquatic invasive species from waters of the state.

SECTION 2. revises the current definitions of “established ” and “propagules,” to clarify that they apply to organisms other than plants, such as disease-causing microorganisms. It also modifies the definition of “wild animal” to clarify that crayfish as well as fish are excluded from that term, consistent with the regulatory approach taken in the rest of ch. NR 40 regarding invasive fish and crayfish species.

SECTIONS 3. and 8. of this proposed Order revise the descriptions of the boundary lines for 6 split-listed invasive plant species (i.e., plants that are listed both as “prohibited” in one part of the state and as “restricted” in another part of the state). In order to be consistent with other split-listed invasive plant species described in ch. NR 40, the prohibited and restricted area descriptions for these 6 plants are changed from areas marked by boundary lines consisting of highways to areas that are defined by named counties. SECTIONS 3. and 8. also revise the “prohibited” and “restricted” invasive plant species listings for *Conium maculatum* (Poison hemlock). The plant currently is listed as “prohibited” in all counties except Iowa and Grant counties, where it is listed as “restricted.” The plant’s status in Crawford, Dane, Green, Lafayette, Rock, Richland and Sauk counties is changed from “prohibited” to the reduced regulatory status of “restricted” due to its recently discovered relative abundance in those counties. The revisions also correct the order of the county names to be alphabetical.

SECTION 4. corrects the scientific name of snakehead fish, corrects inconsistencies in the use of Italic font for species scientific names, corrects the revised list of prohibited fish species to be in alphabetical order, specifically lists or names the snakehead fish species that are considered viable in Wisconsin waters, and adds an informational Note that identifies nonnative fish species that the department has determined are not viable.

SECTIONS 5., 6., 7., 9., 10., 11., 12., 13. and 15. create or amend informational Notes to various provisions of ch. NR 40. The Notes are created or revised to reflect changes made by 2009 Wisconsin Act 55 or changes made elsewhere in this proposed rule, or to correct staff position titles, email addresses or Internet links or other similar information.

SECTION 14. revises the current bans in ch. NR 40 on the highway transport or launching of any vehicle, boat, boat trailer or other equipment that has an aquatic plant or aquatic animal attached. The revisions remove code language made largely redundant by the adoption of s. 30.07, Stats., as created by 2009 Wisconsin Act 55, effective November 12, 2009. Section 30.07, Stats., includes a ban on the placement or operation in navigable waters of any vehicle, watercraft or equipment with aquatic plants or aquatic animals attached to the exterior. As a compliment to s. 30.07, Stats., the proposed rule retains and revises language in ch. NR 40 banning the placement or operation in wetlands or non-navigable waters of any vehicle, watercraft or equipment with aquatic plants or aquatic animals attached to the exterior. The proposed rule exempts native duckweed and wild rice like s. 30.07, Stats., but unlike the statute, the proposed rule retains an exemption for vehicles, watercraft and equipment engaged in fire suppression.

SECTION 16. of the proposed rule removes an unnecessary regulatory permit requirement that duplicated an existing statutory requirement relating to the introduction of nonnative aquatic plants. References to nonnative aquatic plants are removed from s. NR 40.07 (7) and the remaining rule is revised, for consistency, to require a ch. NR 40 permit instead of a “written exemption” to introduce nonnative algae and cyanobacteria to waters of the state. A Note is added referring to the existing statutory permit requirement under s. 23.24, Stats., for introduction of nonnative aquatic plants.

Agency Procedures for Promulgation

Public hearing, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Contacts

Peter D. Flaherty, 266-8254 (program contact and program attorney)

Linda Haddix, 266-1959 (Bureau rules coordinator)

Submitted on

February 5, 2010