

Report to
Legislative Council Rules Clearinghouse
NR 320, 323, 326, 328, and 329, Wis. Adm. Code
Natural Resources Board Order No. WW-06-22

Wisconsin Statutory Authority

Chapter 30, Stats., regulates structures placed in navigable waterways, including but not limited to boat houses, boat shelters, bridges and culverts, fish habitat structures, waterfowl habitat structures, wharves, piers, swimming rafts, pierhead lines, marina condominiums, water ski platforms and jumps, shoreline erosion control structures, pilings, intake or outfall structures, dry fire hydrants, fords, pea gravel blankets, and weed rakes.

Section 30.12 (1p), Stats., grants authority to the department to promulgate rules concerning exempt activities under s. 30.12 (1g), and (1j), Stats.

Section 30.123 (6s), Stats., grants authority to the department to promulgate rules concerning exempt activities found in s. 30.123 (6), Stats.

Section 30.12 (3), Stats., grants authority to the department to promulgate rules concerning individual permits for solid piers to outlying waters.

Section 227.11 (2) (a), Stats., grants authority to the department to promulgate rules to interpret the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute. Structures in navigable waterways are subject to ss. 30.12, 30.123, 30.206, and 30.208, Stats., and additional interpretation through rulemaking is required to effectuate the purpose of the statute.

Federal Authority

The US Army Corps of Engineers regulates similar activities in Wisconsin on waters of the United States under Section 10 of the Rivers and Harbors Act through a tiered permitting process, including regional permits, nationwide permits, and individual permits.

Comparison of Adjacent States

For this rule revision, comparisons were made to four other states in EPA Region 5 – Illinois, Iowa, Michigan, and Minnesota. All these states are subject to the Clean Water Act and EPA and USACE regulations.

Iowa – Chapter 16 of IA Admin. Code 571 sets permitting standards for docks, including location and construction requirements. Chapter 13 of IA Admin. Code 571 describes permitting standards for shoreline erosion control structures including impact minimization, requirements regarding location and placement, and permit application requirements. Iowa does not have further administrative code regulating structures placed in navigable waterways.

Illinois – Title 17 Ill. Admin Code 3704 is the state rule for regulation of public waters including permitting

administration for construction and placing structures in state-determined public waters. Specific project types and their standards are then regulated through statewide, regional, and general permits.

Michigan – Michigan Rule 281.8 establishes permitting standards for structure placement in inland lakes and streams and MR 322.1 establishes permitting standards for structure placement in the Great Lakes.

Minnesota – Minnesota Chapter 6115 provides procedures for permitting, exemption criteria, fees, inspection, and enforcement for public waterways projects. Chapter 8420 provides the administrative and procedural framework for wetland regulations including roles and responsibilities of local governments to administer the wetlands conservation act. The rule covers exemptions, permitting, wetland identification, wetland mitigation, and enforcement procedures.

Court Decisions Directly Relevant

- *Hoyt v. City of Hudson*, 27 Wis. 656 (1871)
- *DeGayner & Co., Inc. v. DNR*, 70 Wis. 2d 936 (1975)
- *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987)
- *Timm v. Bear*, 29 Wis. 254, 265 (1871)
- *Sterlingworth Condominium Ass'n v. DNR*, 205 Wis. 2d 710, 556 N.W. 2d 791 (1996)
- *Sea View Estates Beach Club, Inc. v. DNR*, 223 Wis. 2d 138, 588 N.W.2d 667 (1998)
- *Hilton ex rel. Pages Homeowners' Ass'n v. DNR*, 2006 WI 84, 293 Wis. 2d 1, 717 N.W.2d 166.
- *Rondesvedt v. Running*, 19 Wis. 2d 614 (1962)

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

This rule seeks to align administrative code for structures placed in navigable waterways with statutory and programmatic changes and to consolidate these rules to improve administrative efficiency. The existing rules were adopted in 2004-5. Since then many statutory changes to waterways permitting and exemptions have been made. The Department Waterways Program proposes these changes to remove statutory conflicts and to align this rule with current practices for exemptions, statewide general permits, and individual permits for structures and crossings placed in navigable waterways.

Agency Procedures for Promulgation

The Waterways Program will issue four statewide general permits according to public input and current programmatic practices in parallel with the rulemaking effort. These statewide general permits will replace existing activity standards from the current set of rules.

Description of any Forms (attach copies if available)

There are no forms associated with this rulemaking that will be required for submittal to meet agency process requirements. Exempt activity checklists will be updated per the final rule language but are not required to be submitted. Statewide general permit documents and application requirements will be developed in parallel, but outside of this rulemaking process.

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