

Report From Agency

REPORT TO LEGISLATURE

NR 320, 323, 326, 328, and 329, Wis. Adm. Code

Board Order No. WW-06-22
Clearinghouse Rule No. 24-051

Basis and Purpose of the Proposed Rule

The department Waterways Permitting Program (Program) implements laws under ch. 30, Stats., that regulate the placement of structures and crossings in, removal of bed material from, and other activities that may impact navigable waterways. The Program protects riparian rights and public interests in lakes and streams, including navigation, fishing and hunting, water quality, recreation, and natural scenic beauty.

The purpose of this rule is to update administrative procedures and standards for the Program to align with current statutory requirements in chs. 30 and 227, Stats. Several current statutory exemptions, as well as several statewide general permits issued by the Program are in conflict with the current rule language. This has resulted in confusion and uncertainty for project proponents applying for permits and Program staff.

The proposed rule would update exemption standards to be consistent with ch. 30 and current Program practice and remove activity specific general permit standards which are instead written into statewide general permits under s. 30.206, Stats. The proposed rule would also outline updated public interest review process steps and review factors for individual permits, consistent with ch. 30 and current Program practice. Finally, this effort would consolidate chs. NR 320, 323, 326, 328, and 329 to reduce administrative code redundancy and make Program regulations for structures and crossings in navigable waterways available in one space. These changes would reduce regulatory uncertainty and make all code language for structures and crossings in waterways consistent with current statutes and program practice.

Summary of Public Comments

See attached “Summary of Comments and DNR Responses - Natural Resources Board Order WW-06-22.”

Modifications Made

See attached “Summary of Comments and DNR Responses - Natural Resources Board Order WW-06-22.”

Appearances at the Public Hearing

- July 30, 2024 – Public hearing on proposed ch. NR 320. Two people attended. No formal comments were received.
- July 31, 2024 – Public hearing on proposed ch. NR 320. Eight people attended. Two formal comments were received. Elise Ashby, speaking for Midwest Environmental Advocates, and Mel Volbrecht, speaking for Wisconsin’s Green Fire, provided brief verbal comments on the proposed rule which highlighted aspects of their more detailed written comments.

7/30/2024 Participants:

Attendee Name	Affiliation	Provided Verbal Comments
Anonymous	Unknown	
Mel Volbrecht	Wisconsin’s Green Fire	

7/31/2024 Participants:

Attendee Name	Affiliation	Provided Verbal Comments
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Elise Ashby	Midwest Environmental Advocates	X
Mel Volbrecht	Wisconsin's Green Fire	X
Kurt Rubsam	Stantec	
Evan Miller	Office of State Senator Robert Cowles	
Kathleen Angel	DOA Coastal Management Program	
Lydia Salus	DOA Coastal Management Program	
Beth Pilouras	Stafford Rosenbaum	
Kaley Simonis	Ruekert and Milke	

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the rule analysis or fiscal estimate in response to public comments received.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement in administrative code and clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for the seven comments documented with responses in the attached "Summary of Comments and DNR Responses - Natural Resources Board Order WW-06-22."

Final Regulatory Flexibility Analysis

The proposed rule changes are not expected to result in a significant economic impact on small businesses. Small business applicants account for an estimated 10% of all waterways permit applicants. Language related to exemption standards and permit requirements and review factors in the proposed rule is not predicted to significantly change exemption or permit eligibility or application requirements. The proposed changes bring the rule language up to date with current statutory requirements and program practices. This rule does not affect administrative fees associated with permit applications.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.