

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 329 relating to miscellaneous structures in navigable waterways.

FH-44-04

Summary Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.12(1), (1p) and (3)(br), 30.206 and 227.11(2), Stats.

Statutes Interpreted: ss. 30.12(1g)(a), (g), (h) and (km), (2m), (2r), (3) and (3m), 30.20(1g)(b)2., and 30.206, Stats.

Explanation of Agency Authority:

The Department has authority under s. 30.12, Stats., to promulgate rules that establish installation practices, construction and design requirements and limitations on the location of structures placed under statutory exemptions. The Department has authority under ss. 30.12 and 30.206, Stats., to promulgate rules to establish general permits.

Related Statute or Rule:

These rules relate directly to regulation of activities in navigable waters under ch. 30, Stats., waters designations in ch. NR 1, and the NR 300 series of rules.

Plain Language Analysis:

The purpose of this rule is to establish construction, design and placement standards for projects to be eligible for statutory exemptions, to establish general permits with appropriate conditions, and to establish standards for projects that may be authorized under an individual permit.

Chapter NR 329 establishes standards for exemptions for dry fire hydrants, intake and outfall structures, and piling. Exemptions are not allowed in "areas of special natural resource interest" (ASNRIs) and must follow technical standards similar to those previously used for short form permits. The rule establishes general permits for these same projects in ASNRIs.

This rule also establishes general permits for fords across navigable waterways, weed rakes in navigable waterways, and public boat landings. These general permits allow limited activities in ASNRIs but must follow technical standards similar to those previously used for short form permits or in Department guidance.

Federal Regulatory Analysis:

Any activity that results in a discharge (including deposits and structures) into "waters of the United States" is regulated by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. An individual permit from the Corps is required, unless Wisconsin regulates the project in its entirety under ch. 30, Stats., in which case the project is authorized by the Corps under general permit GP-01-WI or GP-LOP-WI. Dredging or discharge into waters declared navigable under Section 10, Rivers and Harbors Act, 1899 is also regulated, and requires an individual permit from the Corps.

Comparison with Adjacent States:

Activity	Wisconsin	Illinois	Iowa	Michigan	Minnesota
Boat landing	Exempt for projects not located in an “area of special natural resource interest”, then authorized under GP for public boat landings only	General permit, except if located in Cook, DuPage, Kane, Lake, McHenry and Will Counties (regulated by Co.)	Exempt on non-state owned lands, general permit on state owned lands. Must match natural contours	General permit, must match existing contours	Exempt. Private boat landings also exempt if < 12’ wide and < 10’ waterward
Dry fire hydrants	Exempt for projects not located in an “area of special natural resource interest”, then authorized under GP	General permit	General permit provided does not obstruct flood flows.	General permit	General permit
Fords	Exempt for projects not located in an “area of special natural resource interest”, then authorized under GP	General permit	General permit	General permit	General permit but top of bank cannot exceed 4’
Intake and outfall structures	Exempt for projects not located in “area of special natural resource interest”, if adversely affects public trust values, or extends more than 25 % stream width	General permit. Cannot extend waterward beyond the natural bank.	General permit in state owned waters only. Can not impact flood flows	General permit if not located on a trout stream, otherwise individual permit.	General permit, must be screened with natural plants, energy dissipation at outfall
Piling	Exempt for projects not located in an “area of special natural resource interest”, then authorized under GP	General permit, cannot obstruct navigation.	General permit provided does not obstruct navigation	General permit, may not obstruct navigation	Exempt provided not an obstruction to navigation

Summary of Factual Data and Analytical Methodologies: Not applicable.

Analysis and Documents supporting determination of Small Business Effect: Any person placing a structure or making similar physical modifications to public navigable waters either qualifies for an exemption or must obtain a general or individual permit under state statute. To comply, small businesses follow the same requirements as other waterfront property owners: (1) make a self-determination of exemption using web-based tools provided by the department or describe their activity on an exemption determination request form; (2) complete a general permit application; or (3) complete an individual permit application. Schedules, application steps and compliance/reporting requirements are very basic for all applicants, and most projects can be planned and conducted by individuals with no specific professional background.

Anticipated Private Sector Costs: No significant fiscal effect on the private sector is anticipated.

Effect on Small Business: Small businesses who wish to conduct regulated activities on or near navigable waterways will be affected by the rule. Specific standards will provide clarity and consistency in the permitting process.

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SECTION 1. Chapter NR 329 is created to read:

Chapter NR 329
MISCELLANEOUS STRUCTURES IN NAVIGABLE WATERWAYS

NR 329.01 Purpose. The purpose of this chapter is to establish reasonable procedures and limitations for exempt activities, general permits and individual permits for placement of boat landings, dry fire hydrants, fords, intake and outfall structures and pilings in navigable waterways as regulated under ss. 30.12(1g)(a), (g), (h), (km), 30.12(1p), 30.12(3)(a)4., 5., 30.12(3)(br) and 30.12(3m), 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.

NR 329.02 Applicability. This chapter applies to construction, placement and maintenance of boat landings, dry fire hydrants, fords, intake and outfall structures, pilings and weed rakes regulated under ss. 30.12 (1g)(a), (g), (h) and (km), (3)(a)4., 5., (3)(br), (3m) and 30.20(1g)(b)2., Stats. Any person who intends to construct, place or maintain a boat landing, dry fire hydrant, ford, intake or outfall structure, piling or weed rake in any navigable waterway shall comply with all applicable provisions of this chapter and any permit issued under this chapter.

NR 329.03 Definitions. In this chapter:

(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).
- (c) A surface water identified as an outstanding or exceptional resource water under s. 281.15, Stats.
- (d) 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 www.dnr.wi.gov, under the topic "Waterway and Wetland Permits".

(2) "Boat landing" means a structure installed on the bed and bank of a navigable waterway for the purpose of launching and landing watercraft.

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

(4) "Dry fire hydrant" means a structure or device to which a fire hose can be connected, which is constructed in and adjacent to a navigable waterway for the purpose of providing water for fighting fires.

(5) "Ford" means a structure consisting of rock or gravel, placed on the bed of a navigable waterway to facilitate crossing the waterway.

(6) "Intake or outfall structure" means a structure located on the bank or bed of a navigable waterway below the horizontal plane of the ordinary high water mark that is used to divert water from the waterway for purposes other than irrigation or to discharge water to the waterway. An intake or outfall structure shall include rock riprap toe protection not to exceed 2 cubic yards.

(7) "Open to the general public" means available to any person conditioned only upon the payment of a reasonable fee. "Open to the general public" does not include conditions that require purchase of a boat, boat slip, parcel of property, condominium unit or membership in a club or organization.

(8) "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.

(8) "Piling" has the meaning in s. 30.01(5m), Stats.

(10) "Reasonable fee" means a fee comparable to those charged the general public for similar facilities on the waterway or a similar waterway in the vicinity.

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

(12) "Weed rake" means an appurtenance, attached to a structure such as a pier or piling, designed to mechanically remove aquatic plants by the movement of rake tines attached to a floating boom without grubbing, lifting or rolling of the bottom sediments.

(13) "Wetland" means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

NR 329.04 Miscellaneous structures. (1) EXEMPTIONS. (a) *Procedures.* Exemptions shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* A dry fire hydrant that meets the standards in par. (c) and (d) shall be exempt under s. 30.12(1g)(g), Stats. An intake or outfall structure that meets the standards in par. (c) and (e) shall be exempt under s. 30.12(1g)(km), Stats. A piling that meets the standards in par. (c) and (f) shall be exempt under s. 30.12(1g)(h), 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 [see non-reporting and 404 GP activities in the table at <http://www.mvp.usace.army.mil/docs/regulatory/WIMATRIX.htm>] or a general permit under s. 281.36(8), 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(2), Stats. and carried out under NR103 and NR299, Wis. Adm. Code. For further instructions, see the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

(c) *General standards.* 1. Exempt activities under this section may not be located in an area of special natural resource interest or within a public rights feature as described in s. NR 1.06.

2. 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 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/org/water/wm/nps/stormwater/techstds.htm>

3. 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 construction or installation shall be restored.

4. To protect fish habitat during spawning seasons, no exempt activity may take place during the following time periods:

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

b. For all waters not identified under this subd. 4.a. and located south of State Highway 29, March 15 through May 15.

c. For all waters not identified under this subd. 4.a. and located north of State Highway 29, April 1 through June 1.

(d) *Dry fire hydrant standards.* 1. A dry fire hydrant may be placed and maintained only by a riparian, or by a municipality with the permission of the riparian.

2. A dry fire hydrant shall be placed entirely within the riparian's zone of interest, as determined by one of the methods outlined in ch. NR 326.

3. A dry fire hydrant may not be placed in a wetland or in a manner that adversely impedes surface or subsurface flow into or out of any wetland.

4. A dry fire hydrant shall have a perforated inlet screen with cap on the inlet end.

5. A dry fire hydrant shall be installed with the riser landward of the ordinary high water mark except where installed on a bridge or culvert.

6. A dry fire hydrant located in a lake, pond or flowage shall be installed so that the inlet pipe is at least 3 feet below the surface water level during normal low water level conditions. A dry fire hydrant in rivers and streams shall be installed so that the inlet pipe is at least one foot below the surface water level during normal low water flow conditions.

7. A dry fire hydrant may not result in the permanent or temporary deposition of fill in any floodway or wetland.

Note: Installation of a dry fire hydrant does not authorize the placement of any fill material to access the hydrant.

8. A dry fire hydrant may not result in the waterward extension of the upland.

9. Any grading, excavation and land disturbance shall be confined to the minimum area necessary for the construction and may not exceed 10,000 square feet.

10. All equipment used for the project shall be designed and properly sized to minimize the amount of sediment that can escape into the water.

11. A deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., may be associated with the placement of a dry fire hydrant provided the deposit is limited to the area underneath the structure and is less than 2 cubic yards.

12. Dredging under s. 30.20(1g)(b)1., Stats., may be associated with the placement of a dry fire hydrant provided the dredging does not exceed 2 cubic yards.

(e) *Intake or outfall structure standards.* 1. An intake or outfall structure may be placed and maintained only by a riparian, or by a municipality with the permission of the riparian.

2. An intake or outfall structure shall be placed entirely within the riparian's zone of interest, as determined by one of the methods outlined in ch. NR 326.

3. An intake or outfall structure, including any wingwalls and rock riprap, shall be less than 6 feet from the water side of the ordinary high water mark and less than 25% of the width of the channel in which it is placed.

4. An intake or outfall structure may not be placed in a manner that adversely impedes surface or subsurface flow into or out of any wetland.

5. An intake or outfall structure may not result in the permanent or temporary deposition of fill in any floodway or wetland.

6. An intake or outfall structure may not result in the waterward extension of the upland.

7. Any grading, excavation and land disturbance shall be confined to the minimum area necessary for the construction and may not exceed 10,000 square feet.

8. All equipment used for the project shall be designed and properly sized to minimize the amount of sediment that can escape into the water.

9. A deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., may be associated with the placement of an intake or outfall structure provided the deposit is limited to the area underneath or within 4 feet of the structure and is less than 2 cubic yards.

10. Dredging under s. 30.20(1g)(b)1., Stats., may be associated with the placement of an intake or outfall structure provided the dredging does not exceed 2 cubic yards.

11. Outfall structures may not exceed 24 inches in diameter, and in streams, may not result in a discharge of more than 50% of the stream's base flow (80% exceedence flow) at any given time.

12. Intake structures may not exceed 12 inches in diameter and the invert of the culvert shall be located above the public rights stage elevation as determined by the department under s. 31.02, Stats.

(f) *Piling standards.* 1. A piling may be placed and maintained only by a riparian.

2. A piling shall be placed entirely within the riparian's zone of interest, as determined by one of the methods outlined in ch. NR 326.

3. A piling may not be placed in a manner that adversely impedes surface or subsurface flow into or out of any wetland.

4. A piling may not result in the permanent or temporary deposition of fill in any floodway or wetland.

5. A piling shall be placed only for the purposes of deflecting ice to protecting an existing or proposed structure, or providing a pivot point for turning watercraft.

Note: A piling as described in this rule may not be used for the purpose of constructing, repairing or maintaining a retaining wall, seawall or similar structure, or for any purpose other than described above.

6. A piling may not be placed or used for mooring a water craft, except in Lake Michigan, Lake Superior or on the Mississippi River.

7. A piling may consist of a group of not more than 5 individual piles placed adjacent to each other and firmly bound together.

8. Any grading, excavation and land disturbance shall be confined to the minimum area necessary for the construction and may not exceed 10,000 square feet.

9. All equipment used for the project shall be designed and properly sized to minimize the amount of sediment that can escape into the water.

10. A deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., may be associated with the placement of piling provided the deposit is limited to the area underneath the piling and is less than 2 cubic yards.

11. Dredging under s. 30.20(1g)(b)1., Stats., may be associated with the placement of piling provided the dredging does not exceed 2 cubic yards.

12. Pilings shall have a minimum side setback of 10 feet from the riparian zone.

(g) *Permit required.* 1. Activities which do not meet the standards in par. (c) and either (d), (e) or (f) or are otherwise determined ineligible for an exemption by the department under s. 30.12(2m), Stats., shall require a general permit or individual permit.

2. The department has the authority under 30.12(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 310.

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 a general 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 the 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 a general permit.

(b) *Applicable activities.* A ford that meets the standards in pars. (c) and (d) shall be eligible for a general permit under ss. 30.12(3)(a)4. and 30.206, Stats. A boat landing that meets the standards in pars. (c) and (e) shall be eligible for a general permit under ss. 30.12(3)(a)5. and 30.206, Stats. A weed rake that meets the standards in pars. (c) and (f), a dry fire hydrant that meets the standards in pars. (c) and (g), an intake or outfall structure that meets the standards in pars. (c) and (h), or a piling that meet the standards in pars. (c) and (j) shall be eligible for a general permit under ss. 30.12(3)(br) 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 maybe eligible for authorization under a U.S. Army Corps of Engineers general permit which has already been granted state water quality certification [see non-reporting and 404 GP activities in the table at <http://www.mvp.usace.army.mil/docs/regulatory/WIMATRIX.htm>] or a general permit under s. 281.36(8), 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(2), Stats. and carried out under NR103 and NR299, Wis. Adm. Code. For further instructions, see the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

(c) *General standards.* 1. 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 or ripped 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/org/water/wm/nps/stormwater/techstds.htm>

2. 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 construction or installation shall be restored.

3. To protect fish habitat during spawning seasons, no general permit activity shall take place during the time period specified:

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 under this subd. 3.a. and located south of state highway 29, March 15 through May 15.

c. For all waters not identified under this subd. 3.a. and located north of state highway 29, April 1 through June 1.

d. The applicant may request that the requirements in this subd. 3.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 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.

(d) *Ford standards.* 1. A ford may not be located in an area of special natural resource interest except for fords constructed for an agricultural use as defined in s. 30.40(1), Stats. However, no ford may be placed within a public rights feature as described in s. NR 1.06.

2. A ford may be placed and maintained only by a riparian.

3. A ford shall be placed entirely within the riparian's zone of interest, as determined by one of the methods outlined in ch. NR 326.

4. A ford shall be designed and constructed to prevent structural failure and shall be maintained in good condition at all times.

5. A ford shall only be located in a stream.

6. A ford shall only be constructed where the stream width is less than 100 feet, the normal stream depth is less than 2 feet, and where the streambed does not contain more than 6 inches of soft sediment.

7. A ford shall consist of a 6- to 24-inch thick layer of 2- to 4-inch diameter rock or pre-cast reinforced concrete planks over a base of crushed rock with a total thickness not exceeding 24 inches.

8. A ford shall be no more than 16 feet wide in a direction parallel to the flow of the stream.

9. A ford shall have its top surface at the same level as the natural streambed immediately upstream and downstream from the ford. The placement of the ford may not result in the creation of an impoundment or dam upstream or a waterfall or riffle area downstream.

10. The approach road to the ford may not have bank slopes steeper than 5-foot horizontal to one-foot vertical (5H:1V) toward the stream, or side slopes exceeding 2-foot horizontal to one-foot vertical (2H:1V).

11. The approach road to the ford may not be constructed in or across a wetland.

12. The approach road to the ford may not be raised above the elevation of the surrounding natural ground elevation.

13. Any grading, excavation and land disturbance shall be confined to the minimum area necessary for the construction and may not exceed 10,000 square feet.

14. All equipment used for the project shall be designed and properly sized to minimize the amount of sediment that can escape into the water.

15. Material excavated from the streambed or banks may not be placed in any surface water body or wetland and may not be placed in a floodway.

16. Construction of the ford may not occur during periods of high stream flow or high water conditions where the flow is not confined to the immediate stream channel.

(e) *Public boat landing standards.* 1. A boat landing shall be open to the general public.

2. A boat landing may not be located in an area of special natural resource interest, except for boat landings constructed and maintained by a local, state or federal agency. However, no boat landing may be placed within a public rights feature as described in s. NR 1.06.

3. A boat landing may be placed and maintained only by a riparian.

4. A boat landing shall be placed entirely within the riparian's zone of interest, as determined by one of the methods outlined in ch. NR 326.

5. A boat landing shall be designed and constructed to prevent structural failure caused by wave, wind or ice action and shall be maintained in good condition at all times.

6. Material removed or excavated to construct the boat landing may not be placed in a wetland, floodway or below the ordinary high water mark of any navigable waterway.

7. A boat landing shall consist of a 6- to 24-inch layer of crushed rock, a 6- to 18 inch layer of crushed rock capped with a 4-inch minimum thickness pre-cast reinforced concrete planks or a cast-in-place reinforced concrete slab, each with a 6- to 18-inch crushed rock base. Pre-cast planks shall be connected to prevent displacement.

8. A boat landing shall have a slope no steeper than 7 foot horizontal to one foot vertical (7H:1V) and may not exceed 50 feet in length or beyond the line of navigation, whichever is less.

9. A boat landing may not be located in or across a wetland.

10. A boat landing shall have rock riprap toe protection at the lakeward end of the landing which may not extend above the natural level of the bottom of the waterway.

11. The side slopes of the excavated banks on either side of the boat landing may not exceed 2 feet horizontal to one foot vertical (2H :1V).

12. Cofferdams used for site de-watering shall consist only of clean recoverable materials such as sandbags or plywood sheeting, and all materials shall be removed immediately following project completion.

13. Any grading, excavation and land disturbance shall be confined to the minimum area necessary for the construction and may not exceed 10,000 square feet.

14. All equipment used for the project shall be designed and properly sized to minimize the amount of sediment that can escape into the water.

15. Construction of the boat landing shall minimize the removal of trees, shrubs and other shoreline vegetation above the ordinary high water mark.

Note: Local zoning ordinances may place restrictions on cutting trees in the shoreland zone. The riparian is responsible for ensuring that their project is in compliance with any local zoning requirements.

(f) *Weed rake standards.* 1. A weed rake may not be located in an area of special natural resource interest or within a public rights feature as described in s. NR 1.06 and may not be located within a floating bog.

2. The weed rake shall be placed and maintained only by a riparian.

3. The weed rake shall be placed entirely within the riparian's zone of interest, as determined by one of the methods outlined in ch. NR 326.

4. The weed rake shall be attached, as an appurtenance to a pier or structure that has been authorized by the department or is otherwise exempt from the permit requirements of ch. 30, Stats.

5. The weed rake boom radius may not exceed 24 feet in length, may not be operated in a manner as to alter the natural configuration of the bed of the waterway and may not disturb bottom sediments in water depths greater than 3 feet.

6. The weed rake may only be attached or operated on a single side of a pier or structure and may not be moved from side to side of a pier within the same open water season.

7. The weed rake may not be operated unattended for more than 5 days of continuous operation.

8. The riparian is responsible for removing vegetation that has been dislodged or cut within their riparian zone as required under s. NR 109.08 (3).

9. The weed rake may not result in the disturbance or removal of more than 1,200 square feet of native hydrophytic vegetation.

(g) *Dry fire hydrant standards.* A dry fire hydrant may be authorized under a general permit if the activity meets all of the requirements of subs. (1)(c) and (d) and (2)(c) with the exception of sub. (1)(c)1.

(h) *Intake or outfall structure standards.* An intake or outfall structure may be authorized under a general permit if the activity is not located in a public rights feature as described in s. NR 1.06, and meets all the requirements of sub. (1)(c)2., 3. and 4., (1)(e) and (2)(c).

(i) *Piling standards.* Piling may be authorized under a general permit if the activity meets all the requirements of subs. (1)(c) and (f) and (2)(c) with the exception of sub. (1)(c)1.

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

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

(3) INDIVIDUAL PERMITS. (a) *Procedures.* 1. Individual permits shall be processed according to the procedures in ch. NR 310.

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 structure which is not exempt under sub. (1), or is not authorized by a general permit under sub. (2), requires authorization by an individual permit pursuant to s. 30.12(3m)(c), Stats.

(c) *Standards.* A structure meeting the standards in s. 30.12(3m), Stats., may be authorized under an individual permit.

(4) EXISTING PERMITS. A structure regulated under this chapter which is authorized by an existing department permit shall continue to be authorized, provided the structure is maintained in compliance with all the conditions of the original permit. Any modifications to the structure that do not comply with the original permit conditions shall require a new individual permit and shall comply with all standards in this section.

NR 329.05 Enforcement. (1) Noncompliance with the provisions of ss. 30.12, 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, fine or imprisonment. The department may seek abatement under s. 30.294, Stats., for any activity in violation of ss. 30.12, 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 the 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 301 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 place a boat ramp, dry fire hydrant, ford, intake or outfall structure, weed rake or piling in 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.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 8, 2004.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)