

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
RENUMBERING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to renumber NR 329.03(8) to (13); to renumber and amend NR 329.04(2)(j) and 345.04(2)(f); to amend NR 329.01, 329.02, 329.04(2)(b), 345.04(1)(d)5. and 345.04(2)(b); and to create NR 329.03(9), 329.04(2)(j), 345.03(7k), 345.04(2)(a)4. and 345.04(2)(f) to (i) relating to miscellaneous structures and dredging in navigable waterways.

FH-12-05

Summary Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.12(1), (1p) and (3)(br), 30.20(1), (1k), (1t) and (2), 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(1), (1g), (1k), (1m), (1t) and (2), and 30.206, Stats.

Explanation of Agency Authority:

The Department has authority under ss. 30.12, 30.20 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 five additional general permits for waterway activities, with appropriate conditions. Revisions to ch. NR 329 establish a general permit for pea gravel blankets. Revisions to ch. NR 345 establish general permits for non-exempt manual dredging, maintenance dredging, jetting to remove aquatic plants, and dredging less than 25 cubic yards from a river or stream. All activities authorized by general permits must follow technical standards similar to those previously used for short form permits, in Department guidance, or as developed with key stakeholders.

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:

**Minnesota** – Individual permit required – joint application with Corps for dredging; general permit available for pea gravel blanket with some limitations. Exempts dredging in watercourses with total drainage area of less than 5 square miles and no trout water. Prohibits dredging in a number of cases including where dredging would not provide an effective solution to the problem. Similar information requirements and permit conditions to Wisconsin.

**Michigan** – Individual dredging permit required from MDEQ for all dredging from inland lakes and streams (Section 404 program has been assumed by state, so state permit serves as federal permit). Individual dredging permit required from MDNR and Corps for dredging from Great Lakes waters and connecting waterways. General permit available for pea gravel blanket with some limitations.

**Iowa** – Individual permit (joint application with Corps) required for all dredging projects in Iowa waters. Similar information requirements. Standards Corps permit conditions for federal permit. General permit available for pea gravel blanket with some limitations.

Illinois – Individual permit required to dredge from navigable waters. Disposal may require separate permit from Illinois EPA. Separate dredging permit required from Corps in navigable waters of the U.S. General permit available for pea gravel blanket with some limitations.

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. NR 329.01 and 329.02 are amended to read:

**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~~ structures placed in navigable waterways as regulated under ss. 30.12(1g) ~~(a), (g), (h), (km), (1p), (3)(a) 4., 5., (br) and (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, pea gravel blankets and weed rakes regulated under ss. 30.12 (1g)(a), (g), (h) and (km), (3)(a) 1., 4., 5., (br) and (3m) 1. and 30.20(1g)(b)2., Stats., and to all other structures constructed, placed or maintained in navigable waterways unless regulated under another chapter. Any person who intends to construct, place or maintain a ~~boat landing, dry fire hydrant, ford, intake or outfall structure, piling or weed rake structure~~ in any navigable waterway shall comply with all applicable provisions of this chapter and any permit issued under this chapter.

**Note:** Currently, culverts and bridges are regulated under ch. NR 320; habitat structures are regulated under ch. NR 323; boathouses and fixed houseboats are regulated under ch. NR 325; piers, wharves, boat shelters, boat lifts, boat hoists and swimming rafts are regulated under ch. NR 326; shore erosion control structures are regulated under ch. NR 328.

SECTION 2. NR 329.03 (9) to (13) are renumbered (11) to (15) respectively.

SECTION 3. NR 329.03(9) and (10) are created to read:

**NR 329.03 (9)** "Pea gravel" means an open graded coarse aggregate formed by the natural disintegration of numerous types and colors of rocks by glacial or river bed action into primarily round

particles that are produced by washing and screening natural gravel . The particles are sized from ½” (12.5 mm) to #8 mesh (2.36 mm).

**(10)** “Pea gravel blanket” means a layer of pea gravel less than 6 inches in depth that is placed on the bed of a navigable lake, pond or flowage to facilitate wading for recreational purposes under s. 30.12(3)(a)1., Stats. A pea gravel blanket does not include the placement of sand or filter fabric.

SECTION 4. NR 329.04(2)(b) is amended to read:

**NR 329.04(2) (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 pea gravel blanket that meets the standards in pars. (c) and (j) shall be eligible for a general permit under ss. 30.12(3)(a)1. 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 structure that meets the standards in pars. (c) and either (f), (g), (h), (i) or (j) shall be eligible for a general permit under ss. 30.12(3)(br) and 30.206, Stats.~~

SECTION 5. NR 329.04(2)(j) is renumbered to (2)(k) and is amended to read:

**NR 329.04(2) (k) *Individual permit required.*** 1. Activities which do not meet the applicable standards in par. (c) and either (d), (e), (f), (g), (h), ~~(i) or (j)~~ 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.

SECTION 6. NR 329.04(2)(j) is created to read:

**NR 329.04(2) (j) *Pea gravel blanket standards.*** 1. A pea gravel blanket may not be located in an area of special natural resource interest or in a public rights feature.

2. A pea gravel blanket shall only be placed in a lake, pond or flowage, and only by a riparian.

3. A pea gravel blanket 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 pea gravel blanket shall be less than 6 inches thick.

5. A pea gravel blanket shall consist of clean, washed stone and may not contain any fine materials.

6. A pea gravel blanket may not exceed 1,200 square feet in area.

7. A pea gravel blanket shall only be placed in water depths not to exceed 3 feet under normal summer water level conditions.

8. A pea gravel blanket may not include the placement of any fabric below the gravel.

9. A pea gravel blanket may not be placed in an area where the muck depth is less than 6 inches.

10. A pea gravel blanket may not be placed in an area of naturally occurring sand, rock or gravel bottom.

11. A pea gravel blanket may not be placed in an area where native aquatic plants are present or have been known to be present.

12. A pea gravel blanket may not be in an area where sand, rock or gravel has been placed in the past.

13. A pea gravel blanket permit is for a one-time placement of pea gravel only.

**Note:** Additional pea gravel placement requires an individual permit.

SECTION 7. NR 345.03 (7k) is created to read:

**NR 345.03 (7k)** "Jetting" means the action of dredging bottom sediments, including disturbing or resuspending sediment, while using a water or air forced through a hose by means of a pump or vacuum to dislodge and collect aquatic plants, tubers or seeds.

SECTION 8. NR 345.04(1)(d)5. is amended to read:

NR 345.04(1)(d)5. ~~The~~ Any dredged material removed from the waterbody may not be temporarily or permanently placed in a wetland, floodway or re-deposited below the ordinary high water mark of a navigable waterway.

SECTION 9. NR 345.04(2)(a)4. is created to read:

NR 345.04(2)(a)4. General permit applications under par. (i) for licensed aquatic nursery growers may be submitted to the department of agriculture, trade and consumer protection. Applications shall be considered received on the date they are received by the department.

**Note:** Applications may be obtained from the department's regional headquarters or service centers, or on the department's website at [www.dnr.wi.gov](http://www.dnr.wi.gov) under the topic "Waterway and Wetland Permits." DATCP has agreed to send application forms and instructions provided by the department to aquatic nursery growers along with license renewal forms. DATCP will forward all applications to the department for processing.

SECTION 10. NR 345.04(2)(b) is amended to read:

NR 345.04(2)(b) *Applicable activities.* Dredging that meets all of the standards in pars. (c) and either (d), (f), (h) or (i) is eligible for a general permit under ss. 30.20(1t)(b) and 30.206, Stats. Dredging that meets all of the standards in pars. (c) and either (e) or (g) is eligible for a general permit under ss. 30.20(1t)(a) and (am) and 30.206, Stats.

SECTION 11. NR 345.04(2)(f) is renumbered to (2)(j) and is amended to read:

**NR 345.04(2) (j) Individual permit or contract required.** 1. Activities which do not meet the standards in par. (c) ~~or and either (d), (e), (f), (g), (h), (i) or (j) and therefore are not eligible for authorization by a general permit~~ shall require an individual permit or contract.

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

SECTION 12. NR 345.04(2) (f) to (i) are created to read:

**NR 345.04(2) (f) Standards for manual dredging.** 1. A general permit, subject to all of the following limitations may authorize manual dredging activities that do not meet the exemption standards in s. NR 345.04(1)(d).

2. The dredging operation meets the definition of manual dredging in s. NR 345.03(5).

3. For each riparian property, the amount of bottom material removed from a waterbody may not exceed 10 cubic yards in a calendar year.

4. The project may not be located where there are public rights features as described in s. NR 1.06.

**Note:** When the state is the riparian propertyowner, the requirements of ch. NR 45 shall be met.

(g) *Standards for maintenance dredging of previously dredged areas.* Maintenance dredging of material from an area from which material has previously been removed is eligible for a general permit subject to all of the following limitations:

1. Unless the department previously authorized the project under s. 30.20, Stats., the dredging may not be located in an area of special natural resource interest, or where there are public rights features as described in s. NR 1.06.

2. The total amount of material removed from the area shall be less than 3000 cubic yards or, if equal to or greater than 3000 cubic yards, a previous environmental assessment or environmental impact statement shall meet the requirements of s. NR 150.20(2)(c).

3. Dredging may not exceed the volume or extend beyond the dimensions of the previous dredge project.

4. The applicant has provided information that the area meets the requirements of "previously dredged area" as follows:

a. The applicant can demonstrate that previous removal of material was authorized by the department; or

b. The applicant can demonstrate historical information documenting the previous removal of material including the date of removal, the volume of material removed and location of the material disposal.

5. Unless the dredging project is for the removal of material associated with maintenance of a harbor or marina located on Lake Michigan or Superior, the material removed may not exceed 50,000 cubic yards.

(h) *Standards for jetting to harvest aquatic plants, tubers or seeds.* Jetting of the bottom sediments during the harvesting of aquatic plants is eligible for a general permit which will meet the substantive requirements of ch. NR 109, subject to all of the following limitations:

1. The project shall be in a location where the bed of the waterway is privately-owned or a location where the bed of the waterway is publicly-owned if the department determines that the project is consistent with the aquatic plant management activities authorized under ch. NR 109.

**Note:** Under Wisconsin law, the bed of natural lakes is publicly-owned, and the bed of rivers and streams is owned by the adjacent riparian to the center of the river or stream. For impoundments or raised lakes, the bed is privately owned to the edge of the natural lakebed.

2. The applicant shall be licensed by the department of agriculture, trade and consumer protection as a nursery grower under s. 94.10, Stats.

3. All dislodged aquatic plants and floating debris shall be removed from the waterbody at the end of each day.

4. The equipment and motors used for jetting loose the aquatic plants shall conform to the following specifications:

a. The pumps may not exceed 6 ½ horsepower.

b. The hoses may not exceed 3 inches inside diameter.

c. The intake strainer may not exceed 3/8 inch mesh.

5. To provide for re-growth of aquatic plants, the area dredged may not exceed 50 feet by 15 feet and an area 5 feet in width shall be left undisturbed around all dredge sites regardless of its size. Multiple areas 50 feet by 15 feet may be dredged within a waterbody if consistent with subd. 6.

6. The general permit authorizes up to 5 acres of jetting, but no more than 50% of the aquatic vegetation from the waterbody.

7. Only one general permit shall be issued for each area of a waterbody on an annual basis.

(i) *Standards for dredging less than 25 cubic yards from a river or stream.* Dredging less than 25 cubic yards is eligible for a general permit subject to all of the following limitations:

1. The dredging may not be located on a lake or impoundment, in an area of special natural resource interest, or where there are public rights features as described in s. NR 1.06.

2. The bottom material shall be dredged by mechanical operation of a bucket excavator or backhoe.

3. The dredged material may not be temporarily stockpiled within 75 feet of the ordinary high water mark.

4. The removal of bottom material shall be located in less than 3 feet of water and within 50 feet of the ordinary high water mark.

5. The dredging may not result in water depth greater than 5 feet.

6. For each riparian property, the amount of bottom material dredged from a waterbody may not exceed 25 cubic yards in a calendar year.

SECTION 13. 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 14. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 17, 2005.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Scott Hassett, Secretary

(SEAL)