

CR 89-76



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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RECEIVED

JAN 25 1990
9:45 am
Revisor of Statutes
Bureau

STATE OF WISCONSIN)
DEPARTMENT OF NATURAL RESOURCES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WZ-34-89 was duly approved and adopted by this Department on November 16, 1989. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building in
the City of Madison, this 19th
day of January, 1990.

Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

4-1-90

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ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

JAN 25 1990

Revisor of Statutes
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IN THE MATTER OF CREATING ch. NR 322 of the
Wisconsin Administrative Code pertaining to the
establishment of a general permit program for certain
water regulatory activities.
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WZ-34-89

Analysis Prepared by Department of Natural Resources

Authorizing statutes: ss. 30.206 and 227.11(2)(a), Stats.
Statutes interpreted: s. 30.206, Stats.

Section 30.206, Stats., authorizes the department to issue a general permit for activities which normally require a permit or approval under ss. 30.12(3)(a) and 30.19(1)(a), Stats., and to promulgate rules for implementing the general permit program. However, prior to the issuance of any general permits, the department shall determine, after an environmental analysis and notice and hearing under ss. 227.17 and 227.18, that the cumulative adverse impact of the class of activity is insignificant and that the issuance of the general permit will not injure public rights or interests, cause environmental pollution, as defined in s. 144.01(3), or result in material injury to the rights of any riparian owner.

The proposed rule: 1) Identifies those specific activities that are eligible for a general permit under this rule; 2) Establishes minimum design, construction and performance standards that must be complied with for a project to be eligible for a general permit; 3) Identifies projects that are not eligible for a general permit; 4) Specifies the procedural requirements that must be followed by the department and project sponsors; and, 5) Summarizes the procedure for enforcement actions for violations of s. 30.206, Stats.

SECTION 1. Chapter NR 322 is created to read:

Chapter NR 322

WISCONSIN'S GENERAL PERMIT PROGRAM
FOR CERTAIN WATER REGULATORY ACTIVITIES

- NR 322.01 Purpose
- NR 322.02 Applicability
- NR 322.03 Definitions
- NR 322.04 General design standards and specifications
- NR 322.05 Design standards and specifications for riprap
- NR 322.06 Design standards and specifications for fords
- NR 322.07 Design standards and specifications for artificial waterways
- NR 322.08 Projects requiring individual permits
- NR 322.09 Plan and information requirements
- NR 322.10 Department procedures for processing general permits
- NR 322.11 Enforcement

NR 322.01 PURPOSE. (1) The Wisconsin legislature in enacting s. 30.206, Stats., recognized that some activities regulated under ss. 30.12(3)(a) and 30.19(1)(a), Stats., could be permitted under a general permit if it was determined that the class of activities would not result in significant cumulative adverse environmental impacts and would not injure public rights or interest, cause environmental pollution as defined in s. 144.01(3), Stats., or result in material injury to the rights of any riparian owner.

(2) The rules contained in this chapter are intended to:

(a) Identify those activities regulated under s. 30.206, Stats., that are eligible for a general permit in compliance with this chapter and s. 30.206, Stats.;

(b) Establish minimum design standards and specifications for projects permitted under a general permit;

(c) Identify those projects that would not qualify for a general permit under this chapter and s. 30.206, Stats.;

(d) Establish procedures for sponsors of general permit projects;

(e) Establish department procedures for implementing and administering a general permit program in compliance with s. 30.206, Stats.; and

(f) Minimize the expenditure of time and resources by sponsors of general permit projects.

NR 322.02 APPLICABILITY. The provisions of this chapter are applicable to certain activities presently regulated under ss. 30.12(3)(a)3 and 4, and 30.19(1)(a), Stats. Activities eligible for a general permit shall comply with the provisions of this chapter and s. 30.206, Stats.

NR 322.03 DEFINITIONS. In this chapter: (1) "Artificial waterway" means any canal, ditch, lagoon, pond, lake or similar waterway, created by human activity, which is located in part or entirely within 500 feet of the ordinary high water mark of, but is not connected to, an existing navigable waterway, and which is not included in the exceptions listed in s. 30.19(1m), Stats.

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

(3) "Floodplain" means the land which has been or may be covered by flood water during the regional flood, as defined in s. NR 116.03.

(4) "Ford" means a crossing of a navigable stream, constructed in the bank and bed of a waterway of crushed or uncrushed rock or pre-cast reinforced concrete planks, for animals or for vehicles in compliance with s. 30.29, Stats.

(5) "General permit" means a permit issued by the department that categorically permits certain activities normally regulated under ss. 30.12(3)

and (4) and 30.19(1), Stats., that comply with the requirements of this chapter and s. 30.206, Stats.

(6) "Individual permit" means a permit issued by the department for a single project under specific applicable provisions of ch. 30, Stats., excluding s. 30.206, Stats.

(7) "Navigable waters" or "navigable waterway" means any body of water which is navigable under the laws of this state.

(8) "Ordinary high water mark" or "OHWM" means the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristics.

(9) "Riprap" means the planned placement of quarry rock or field stone along the shoreline of navigable waters for the purpose of preventing bank erosion.

(10) "Surface waters" means all natural and artificial lakes and streams, except for artificial cooling lakes, agricultural or irrigation ponds, and facilities constructed for the treatment of wastewaters.

(11) "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 322.04 GENERAL DESIGN STANDARDS AND SPECIFICATIONS. To be eligible for a general permit under the provisions of this chapter and s. 30.206, Stats., only those activities which clearly will not have any material individual or cumulative adverse effects on the environment may be approved under a general permit provided the activities are constructed in compliance

with the following general standards and specifications, in addition to any other requirements of this chapter and s. 30.206, Stats.:

(1) The project shall be constructed in such a manner as to minimize upland soil losses and avoid sediment deposition into surface waters.

(2) All grading and excavation shall be confined to the minimum area necessary for construction. Banks and other erodible areas shall be riprapped, seeded, mulched or sodded to prevent erosion. Temporary and final erosion control measures shall be installed immediately and kept in place until site stabilization is completed.

(3) Construction may not occur before May 1 nor after October 1 of any calendar year. This requirement may be waived by the department on a case-by-case basis.

(4) The project may not be a material obstruction to navigation.

(5) The project may not reduce the effective flood flow capacity of a stream.

(6) The project may not result in the permanent or temporary deposition of fill in any surface water or wetland.

(7) All projects permitted by the department under this chapter and s. 30.206, Stats., shall be completed no later than October 1 of the year following the date of permit issuance.

NR 322.05 DESIGN STANDARDS AND SPECIFICATIONS FOR RIPRAP. To be eligible for a general permit to place riprap, the following design standards and specifications shall be met:

(1) The overall length of the riprap may be no more than 500 feet.

(2) The thickness of the riprap layer may be no less than 12 inches,

consisting of 3 inch to 24 inch diameter rock, plus a 6 inch filter rock layer, consisting of 1/2 inch to 1 inch diameter rock or synthetic, sun resistant, filter cloth.

(3) The finished slope of the riprap on the bank may be no steeper than 2 feet horizontal to 1 foot vertical (2H:1V).

(4) The base (toe) of the riprap may not extend waterward more than 4 feet or 25% of the stream width, whichever is less, from the OHWM, to provide a stable footing for the riprap.

(5) If the bank will be graded to meet the requirement of sub. (3), grading shall be toward the upland and the area of bank graded may not exceed 10,000 square feet.

(6) The project may not result in the waterward extension of the upland other than what is created by the necessary placement of rock riprap to stabilize or protect the existing shoreline.

(7) No riprap may be placed in a manner that it adversely impedes surface or subsurface flow into or out of any wetland.

(8) The riprap project shall comply with the general design standards and specifications in s. NR 322.04.

NR 322.06 DESIGN STANDARDS AND SPECIFICATIONS FOR FORDS. To be eligible for a general permit to construct a ford, the following design standards and specifications shall be met:

(1) The ford shall be constructed in such a manner that the amount of material removed from the streambed is equal to the amount of material replaced with rock or reinforced precast concrete planks. The surface elevation of the ford shall conform to the natural preconstruction streambed contours immediately upstream and downstream of the ford.

(2) The material removed from the bed of the stream for construction of the ford may not be placed in any surface water or wetland and may not reduce the effective flood flow capacity of a stream. The material shall be disposed of and stabilized at an upland site.

(3) The width of the ford, measured parallel to the direction of stream flow, may be no more than 16 feet.

(4) The width of the stream at the project site may be no more than 100 feet.

(5) The normal depth of the water at the project site may be no more than 2 feet.

(6) The slope of the finished roadway leading to the ford may be no steeper than 5 feet horizontal to 1 foot vertical (5H:1V). The grading associated with the roadway on the banks of the stream may not exceed 10,000 square feet.

(7) The side slopes of the roadway leading to the water may not be steeper than 2 feet horizontal to 1 foot vertical (2H:1V).

(8) The thickness of the ford may be no less than 6 inches nor more than 24 inches, including a minimum 6 inch top layer consisting of crushed rock 2 inches to 4 inches in diameter or reinforced concrete planking.

(9) If pre-cast reinforced concrete planks are used, a crushed rock base of no less than 6 inches nor more than 20 inches in thickness shall be required.

(10) The roadway leading to the ford may not be constructed in a wetland.

(11) The roadway may not be elevated above the existing natural ground elevation.

(12) Fords may not be constructed on the beds of navigable streams where the bed material is predominantly peat or muck that is more than 2 feet in depth.

(13) The ford project shall comply with the general design standards and specifications in s. NR 322.04.

NR 322.07 DESIGN STANDARDS AND SPECIFICATIONS FOR ARTIFICIAL WATERWAYS.

To be eligible for a general permit to construct an artificial waterway, the following design standards and specifications shall be met:

(1) The artificial waterway may not be connected with surface waters, may not be located within 50 feet of the OHWM of any navigable waterway, and may not be subject to flooding from a navigable waterway on an annually recurring basis.

(2) The maximum surface area of the artificial waterway may not exceed 2 acres.

(3) The material removed to create the artificial waterway may not be placed in any surface water or wetland and may not reduce the effective flood flow capacity of a stream. All material shall be disposed of and stabilized at an upland site.

(4) The side slopes of the artificial waterway may not be steeper than 3 feet horizontal to 1 foot vertical (3H:1V).

(5) The artificial waterway shall be for the purpose of improving wildlife or fish habitat or recreational opportunities and may not be associated with any commercial use.

(6) The artificial waterway may not be constructed in a wetland.

(7) The artificial waterway project shall comply with the general design standards and specifications in s. NR 322.04.

NR 322.08 PROJECTS REQUIRING INDIVIDUAL PERMITS. Riprap, ford and artificial waterway project proposals meeting any of the following provisions are excluded from this chapter and shall be processed as individual permits.

(1) Projects located in or adjacent to:

(a) Class I and II trout streams and trout lakes as identified by the department (Wisconsin Trout Streams, publication 6-3600(80), Wisconsin Trout Lakes, publication 3-3600(73)), and adjacent wetlands;

(b) Lakes Michigan and Superior, and adjacent wetlands;

(c) Navigable waters designated as state or federal wild and scenic rivers or state designated urban waterways or the lower St. Croix river or the lower Wisconsin state riverway (ss. 30.26 and 30.27, Stats., 16 USC 1271 to 1287, s. 30.275, Stats., and s. 30.027, Stats.), and adjacent wetlands;

(d) Navigable waters within state scientific or natural areas (ss. 23.27, 23.28, 29.175 and 29.415, Stats.), and adjacent wetlands;

(e) Navigable waters identified as outstanding and exceptional resource waters under ch. NR 102, and adjacent wetlands;

(f) Calcareous fens that have been identified by the department; and

(g) Habitat used by state or federally designated threatened or endangered species (s. 29.415, Stats., and the federal endangered species act of 1973, as amended).

(2) Projects that have been in part or completely constructed without prior approval from the department.

(3) Projects that are a part of or associated with another project where a potential for significant individual or cumulative adverse environmental impacts may result.

(4) Projects that have resulted in the filing of substantive objections, verbal or written, by any person, to the department prior to or within the 10 business day time limitation under s. NR 322.10(2).

(5) Projects that are subject to ch. NR 340.

(6) Projects that the department determines, prior to or within the allotted time period under s. NR 322.10(2), have the potential to injure public rights and interest, cause environmental pollution, as defined in s. 144.01(3), Stats., or result in material injury to the rights of any riparian owner.

NR 322.09 PLAN AND INFORMATION REQUIREMENTS. (1) A person wishing to proceed with an activity permitted by a general permit shall apply to the department not less than 20 business days before commencing the activity.

(2) The applicant shall provide, at a minimum, the following information to the local department district or area office:

(a) A 3 inch by 5 inch, or larger, color photograph accurately depicting the project site free of snow and ice, and taken during normal or below normal water level conditions;

(b) A description of the type, size and volume of material to be used to construct the project and the location where spoil material will be disposed of;

(c) The appropriate permit fee as required by s. 30.28, Stats. A permit fee is not required for riprap projects;

(d) The appropriate completed general permit application/approval form or forms certifying that the proposed project will be located on riparian (for riprap or ford projects) property owned by the applicant, and constructed in compliance with the provisions of this chapter and s. 30.206, Stats.

(3) The applicant shall mail a duplicate copy of the completed general permit application/approval form or forms to the local zoning office, and the St. Paul district, U.S. army corps of engineers, not less than 20 business days before the date construction is supposed to begin.

(4) No later than 2 weeks after project completion, the permittee shall provide the department a 3 inch by 5 inch or larger color photograph of the completed work, taken from the same location as that required under sub.

(2)(a).

NR 322.10 DEPARTMENT PROCEDURES FOR PROCESSING GENERAL PERMITS. (1)

Upon request, the department shall provide general permit application/approval forms for activities described under this chapter and s. 30.206, Stats.

(2) The department may request additional information from the applicant to determine whether the activity complies with the requirements of this chapter and s. 30.206, Stats. The department's determination of compliance or noncompliance with this chapter and s. 30.206, Stats., shall be accomplished no later than 10 business days after receipt of a completed application/approval form.

(3) Except as provided in sub. (4), the receipt by the department of a general permit application/approval form that complies with the requirements of this chapter and s. 30.206, Stats., shall be construed as issuance of a general permit under this chapter and s. 30.206, Stats.

(4) Determination of non-compliance. (a) If the department determines that the project does not meet the requirements for a general permit, the department shall notify the applicant in writing within 10 business days from receipt of a completed application/approval form. In addition, the department shall notify the applicant of his or her option to:

1. Apply for an individual permit;
2. Revise the project to comply with the requirements of this chapter and s. 30.206, Stats.;
3. Withdraw the request for a general permit; or
4. Appeal the department's determination under s. 227.42, Stats.

(b) If the department does not notify an applicant of its determination of noncompliance with this chapter and s. 30.206, Stats., within 10 business days from the date a completed general permit application/approval form is received by the department, then the applicant may presume that the general permit is issued.

(5) All complete general permit application/approval forms submitted to the department that comply with all provisions of this chapter and s. 30.206, Stats., shall be approved, subject to the following conditions:

(a) The submittal of a complete and signed general permit application/approval form by the applicant is an agreement that the applicant will conduct the proposed project in compliance with this chapter and s. 30.206, Stats., and the conditions in the general permit application/approval form or any supplemental approval form which has been transmitted to the applicant.

(b) The permittee shall maintain the project in good condition and in compliance with the terms and conditions of the permit, this chapter and s. 30.206, Stats.

(c) Permits issued in compliance with this chapter and s. 30.206, Stats., are not valid unless all other necessary approvals are received from local, state or federal jurisdictions.

(d) The permittee shall allow department employees access to make periodic inspections at any time to assure that the activity being performed under the general permit is in compliance with the applicable provisions of law.

(6) The department shall retain continuing jurisdiction over any project permitted under this chapter and s. 30.206, Stats.

(7) The department shall monitor permitted activities under the general permit program and shall evaluate the need to repeal or amend this chapter.

(8) The department shall, upon written request, provide a list of all general permits issued on an annual basis that identifies the permittee's name, type of activity permitted, water body, county, date of issuance and permittee compliance with s. NR 322.09(4).

NR 322.11 ENFORCEMENT. (1) Noncompliance with the provisions of this chapter, s. 30.206, Stats., and any conditions of a general permit issued by the department, constitutes a violation and may result in a forfeiture but may not, by itself, result in abatement of the activity. Unless there is good cause shown, the department shall seek abatement of any activity in violation of s. 30.206, Stats.

(a) Any person who violates s. 30.206, Stats., or any provision of this chapter shall forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit not less than \$50 nor more than \$500 upon conviction for the same offense a second or subsequent time.

(b) In addition to a forfeiture, the court may order abatement of a nuisance, restoration of a natural resource or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant.

(2) A person concerned in the commission of a violation of s. 30.206, Stats., or any provisions of this chapter, may be charged and convicted as a party to the violation subject to the provisions of ss. 30.292 and 30.298, Stats.

(3) General permits may not be issued for after-the-fact permit applications. 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 of ss. 30.12(3)(a)3 and 4, and 30.19(1)(a), Stats.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on November 16, 1989.

The rules 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.

Dated at Madison, Wisconsin.

January 19, 1990

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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JAN 25 1990

Revisor of Statutes
Bureau

January 19, 1990

IN REPLY REFER TO: 1020

Mr. Gary Poulson
Assistant Revisor of Statutes
Suite 702
30 West Mifflin St.
Madison, WI

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WZ-34-89. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Urban Affairs, Environmental Resources, Utilities and Elections pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


C. D. Besadny
Secretary

Enc.

