

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** WW-06-22

**Relating to:** Navigable Waterways, Chs. NR 320, 323, 326, 328, and 329, Wis. Adm. Code

**Rule Type:** Permanent

### 1. Finding/nature of emergency (Emergency Rule only):

This rule will be proposed as a permanent rule.

### 2. Detailed description of the objective of the proposed rule:

The Waterways Program plans to repeal five related administrative code chapters that govern the placement of structures in or over navigable waterways and create one consolidated code chapter. The Waterways Program administers the standards for the placement of structures in or over navigable waters through chs. NR 320, 323, 326, 328, and 329, Wis. Adm. Code. This rulemaking is necessary to align the administrative code with statutory and programmatic changes and to consolidate these rules to improve administrative efficiency.

Potential Code revisions include:

- i. Consolidation of redundant exemption, general permit, and individual permit eligibility criteria across affected codes.
- ii. Clarify eligibility and implementation procedures for waterway exemptions including:
  - a. Inclusion of administrative code provisions to create exemptions for seasonally placed structures under s. 30.12(1g)(b), Wis. Stats.
  - b. Incorporation of a recently enacted statutory exemption for culvert replacement in navigable waterways under s. 30.123(6)(d), Wis. Stats., and establish reasonable installation practices for exempt culverts to minimize environmental impacts, establish reasonable construction and design requirements for exempt culverts that are consistent with the purpose of the activity, and establish reasonable limitations on the location of exempt culverts at the site affected by the activity.
  - c. Alignment of administrative code standards with recent statutory changes related to pier exemptions under s. 30.12(1k)(b), Wis. Stats.
  - d. Establishment of reasonable installation practices to minimize environmental impacts, reasonable construction and design requirements, and reasonable limitations on the location of the placement of exempt piers, wharves, and temporary boat shelters.

- e. Alignment of administrative code standards with statutory changes related to the allowed number of boat and personal watercraft slips under s. 30.12(1h), Wis. Stats.
  - f. Incorporation of a statutory exemption for rock riprap in waterways under s. 30.12(1g)(jm), Wis. Stats.
- iii. Establish reasonable standards for waterway structure permitting including:
- a. Alignment of administrative code standards with statutory changes related to the allowed number of boat and personal watercraft slips under s. 30.12(1j), Wis. Stats.
  - b. Incorporation of statutory changes related to the issuance of permits for piers and wharfs under s. 30.12(3m)(cm), Wis. Stats.
  - c. Incorporation of statutory changes related to the issuance of permits for the construction of permanent boat shelters under s. 30.12(3m)(cr), Wis. Stats.
  - d. Establishment of standards related to the issuance of permits for solid piers in outlying waters, harbors connected to outlying waters, the Fox River from the dam at De Pere to Lake Winnebago, Lake Winnebago, and the Mississippi River under s. 30.12(3m)(d)2., Wis. Stats.
  - e. Inclusion of administrative code provisions applicable to shoreline erosion control in the Great Lakes.
  - f. Consideration and potential incorporation of activity specific performance-based standards for permitting decisions.
  - g. Alignment of standards for previous rule based general permits with contemporary statewide general permits issued under s. 30.206(1)(a), Wis. Stats.
- iv. Incorporation of statutory definitions.
- v. Update other technical or administrative aspects of affected NR codes or applicable cross references in other administrative codes related to affected activities.

Additional changes may be included in the proposed rule to effectuate the goals described in this scope statement.

### **3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

The revised rule may change the department's existing practice. Presently, the department has multiple rule-based exemptions for activities addressed in administrative code chapters subject to this consolidation effort. However, the construction standards for these rule-based exemptions differ in many cases from newly enacted statutory exemptions for the same activity. Through this revision and consolidation effort, the department will consider aligning statutory and code standards associated with the placement of exempt structures.

The department also intends to evaluate the design standards for projects requiring department permit authorization and consider aligning administrative code language with current placement standards. Through this effort, the department will evaluate the use of complimentary performance-based standards and consider the incorporation of those standards to expand general permit eligibility for common activities.

Presently, the level of department oversight on a project is dependent on a waterway designation of Area of Special Natural Resource Interest (ASNRI), a Sensitive Area, or a Public Rights Feature (PRF). This rule will consider broadening the exemptions available for certain activities designed and installed according to recognized standards (e.g. Natural Resources Conservation Service design practices).

Presently, the department does not have any administrative code standards pertaining to shoreline erosion control structures on the Great Lakes or related to emergency erosion control requests. These revisions will consider establishing such standards.

Presently, the department does not have any administrative code standards pertaining to the construction of solid piers in outlying waters. These revisions will consider establishing such standards.

Presently, the department and US Army Corps of Engineers (Corps) regulate structures on navigable waterways. These revisions will consider aligning department and Corps standards and impact thresholds.

#### **4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

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

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

Section 227.11(2)(a) Wis. 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, Wis. Stats., and additional interpretation through rulemaking is required to effectuate the purpose of the statute.

#### **5. Estimate of a amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The department anticipates that the lead drafter of the rule will spend 2,000 hours on the rule development process, other waterway and wetland program staff will spend another 1,200 hours on the rule, and the following groups will spend a combined 500 hours on the rule development: rule coordinators, bureau director, division administrator, economist, board liaison, and program attorneys.

**6. List with description of all entities that may be affected by the proposed rule:**

State of Wisconsin riparian/waterfront property owners to include waterway exemption, general permit, and individual permit recipients, professional consultants, landscaping and construction contractors, department staff, U.S. Army Corps of Engineers staff, county land and water conservation departments, Department of Agriculture, Trade, and Consumer Protection (DATCP) cost share project administrators, the Natural Resources Conservation Service (NRCS), and the United States Forest Service (USFS).

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The US Army Corps of Engineers regulates similar activities through a tiered permitting process. Design standards and impact thresholds may differ from the department's present approach; however, the department will evaluate opportunities to align such standards and thresholds.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The economic impact of implementing the rule is expected to be minimal overall and minimal for small businesses (less than \$50,000 annually). The department believes that updates to exemption and permitting standards to bring the rules in line with statutory updates and current practices may result in minimally increased compliance costs to support some application submittals and potentially lower compliance costs for projects that qualify for exemptions or have reduced costs to support some application submittals.

**9. Anticipated number, month, and locations of public hearings:**

The department intends to hold two public hearings during the months of June and July 2023. The hearings will be conducted virtually on an online platform. There may also be an in-person option for the meetings, with one in Madison and one in Green Bay. The department will hold these hearings in these locations to get statewide input on the proposed revisions to the newly consolidated administrative code chapter consisting of chs. NR 320, 323, 326, 328, and 329, Wis. Adm. Code.

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