

Chapter NR 327

BARGE FLEETING IN NAVIGABLE WATERWAYS

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NR 327.01 Purpose and policy. (1) Pursuant to ss. 29.604 (4), 30.10 (2), 30.15, 30.19, 30.20, 30.61 (6) (a), 30.68 (8), 30.74 (2), and 281.31, Stats., the department of natural resources promulgates this chapter regulating the practice of barge fleeing in order to protect public rights and interest in navigable waters; to protect the public health, safety and welfare; to protect fish and wildlife habitat; and to preserve the scenic beauty of the navigable waters of the state of Wisconsin.

(2) It is the natural resources board policy to permit strategically located barge fleeing facilities on the navigable waters of the state of Wisconsin in a manner consistent with the state's role as trustee of its navigable waters and with the Wisconsin environmental policy act. To achieve this objective, the department will coordinate, to the fullest extent practicable, the promulgation and administration of these administrative rules with affected municipalities, the Wisconsin department of transportation, the U.S. army corps of engineers, the U.S. coast guard, the states of Illinois, Iowa and Minnesota, and other agencies and interest groups.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; corrections in (1) made under s. 13.93 (2m) (b) 7., Stats., Register January 2002 No. 553; **correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register April 2005 No. 592.**

NR 327.02 Applicability. This chapter is applicable to existing and future barge fleeing activities in the Wisconsin portions of the Mississippi river and its tributaries. It regulates the use of those waters for barge fleeing, including the installation of structures, physical site modification such as dredging, and operation of fleeing equipment and maneuvering of barges within the fleet. This chapter applies in addition to any federal or local regulations which also regulate barge fleeing.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

NR 327.03 Definitions. (1) "Anchor" means a device placed in the bed of a waterway or on the adjacent upland and used to hold barges or other vessels in place while in the fleeing area.

(2) "Barge fleeing" means the temporary storage of barges and the disassembly and assembly of barge tows. It does not include the temporary mooring of line tows or loading or unloading operations.

(3) "Deadman" means an anchor buried in the upland adjacent to a fleeing area.

(4) "Department" means the Wisconsin department of natural resources.

(5) "Dolphins" means a closely grouped cluster of piles driven into the bed of a waterway and tied together so that the group acts as a unit to withstand lateral forces from vessels or other floating objects.

(6) "Fleeing area" means an area delineated in a permit which is used for barge fleeing.

(7) "Mooring barge" means a barge held in place by anchors or spuds and used to moor other barges during their stay in the fleeing area.

(8) "Mooring cell" means a sheet pile structure, usually filled with earth, stone, or concrete and used to hold barges or other vessels in place.

(9) "Operator" means any person who operates a barge fleeing area.

(10) "Person" means any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, municipality, cooperative, estate, trust, receiver, executor, administrator, fiduciary and any representative appointed by order of any court or otherwise acting on behalf of others.

(11) "Riparian rights" means the legal rights that assure the owner of land abutting a stream or lake access to or use of the water.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

NR 327.04 Application. (1) No operator may engage in barge fleeing activities in navigable waters of the state without complying with this chapter, except that fleeing activities in existence on December 1, 1982 may continue without a permit until a final permitting decision is made, provided a permit application is filled with the department by April 1, 1983. An applicant for a barge fleeing permit for either an existing or proposed activity shall submit an application to the department on forms provided by the department.

(2) The following information shall be included in the application:

(a) Proof that the applicant has riparian rights on the navigable waterway at the location of the proposed fleeing area. Proof may include fee simple title, a lease of riparian or mooring rights from the riparian owner, or written permission from the riparian owner. The department shall be notified by the operator of any action to terminate a lease or written permission.

(b) A map extending at least $\frac{1}{4}$ mile up and downstream from the proposed fleeing area showing the location of the proposed fleeing area by section, township, range, and river mile and by major identifiable features in the immediate area such as locks and dams, incorporated areas, roads, bridges, and county lines. The map shall indicate designated fish and wildlife areas and refuges; existing recreational areas; historical, archeological and cultural sites, if known; residential housing locations; and existing adjacent water or shoreland uses which, together with fleeing operations, would present an unusual risk of fire, explosion, collision, contamination or other serious safety hazards. The map shall also show the following navigation-related features:

1. Docks,
2. Landings,
3. Harbors,
4. Marinas,
5. Dikes,
6. Revetments,
7. Islands,
8. Navigation or warning lights,
9. Left and right channel line buoy,
10. Wing dams, and
11. Submerged cable and pipeline crossings.

(c) A description of local land use and zoning in the vicinity of the proposed fleeing area.

(d) A drawing of the proposed fleeing area which contains the following: plan view and cross-sections to show existing pertinent topographic and hydrographic features; referenced government datum plane; scale, both vertical and horizontal (not smaller than 1" = 400' horizontal); north arrow; current directions; flow area; property lines and adjacent property owners by name and address; proposed features including dolphins, anchors, deadmen, mooring barges, mooring cells and buoys, and other devices; mooring facility size and configuration; and maximum number and size of barges to be moored, and routes used by any tow entering or leaving the fleeing area.

(e) A list of undeveloped alternative fleeing sites considered by the applicant and the reasons why the proposed site was preferred over them.

(3) An application for renewal of an existing barge fleeing permit shall include a description of all changes in the information submitted with the previous application, and additional information requested by the department to act on the request for renewal.

(4) An application may not be considered complete until the appropriate environmental impact review is completed under s. 1.11, Stats., and ch. NR 150.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

NR 327.05 Procedure. (1) The applicant shall provide general information on forms provided by the department.

(a) Technical information shall be initially submitted on 8½" × 11" reproducible sheets.

(b) Final technical information shall be submitted on full-sized (24" × 36") drawings before the public notice is issued under sub. (2) or (3).

(2) The department shall issue a 30-day notice of the proposal to establish a barge fleeing area and the applicant shall publish the notice under s. 31.06, Stats., unless the department proceeds directly to hearing under sub. (3). Notice shall go to the Wisconsin department of development, the Wisconsin department of transportation and to interested parties who have specifically requested that they receive notices issued under this chapter.

(3) If no request for a hearing on the proposed barge fleeing area is received within 30 days after the date of publication of the notice of proposal, the department may issue the requested permits without hearing. If a request for hearing is received within the 30-day period, or if the department objects to the proposed barge fleeing area, the matter shall be scheduled for hearing and notice shall be provided under s. 31.06 (2), Stats.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

NR 327.06 Standards. The following standards apply to operation of fleeing areas:

(1) No entity or person may engage in barge fleeing without meeting the requirements of s. NR 327.04 (2) (a) on the navigable waterway at the site of the fleeing area.

(2) Operators shall utilize navigation aids and markers which meet the requirements in s. NR 5.09.

(3) Upstream and downstream ends of the fleet shall be lighted at the inbound corner, the outbound corner, and each barge width between, in addition to all external corners of the fleet, with U.S. coast guard approved white lights visible 360' for a distance of one mile.

Note: The lighting standards must be approved by the U.S. coast guard prior to being in effect in Wisconsin. The standards have been submitted to the coast guard for their approval. Until such time as that approval is obtained, U.S. coast guard standards set forth in Annex V, Pilot Rules, 33 CFR Part 88.13 (b) (2) remain in effect in Wisconsin. After approval of the above standards is obtained, this note will be deleted.

(4) Barge fleeing areas may not be established or operated in a manner which materially obstructs navigation or reduces the effective flood flow capacity of a stream.

(5) Barge fleeing may not be conducted in a manner which is detrimental to public rights in the waterway or to the public inter-

est. Specific public rights or components of the public interest may include but are not limited to: commercial and recreational navigation, economic development, hunting, sport or commercial fishing, swimming, and the enjoyment of natural scenic beauty.

Note: While the department may limit the number of barges to be permitted in a specific barge fleeing area because of environmental and navigational concerns associated with such specific barge fleeing area, the department may not, except as stated previously in this note, under existing legal authority, determine the need for fleeing capacity or otherwise limit the number of barges in a barge fleeing area nor the total number of barge fleeing areas.

(6) Barge fleeing areas shall be used by the operator only for barge fleeing.

(7) Designated fleeing areas may be used for incidents of navigation only to the extent that such use does not interfere with fleeing activities. Other waterway users may not obstruct barge fleeing activities within designated fleeing areas.

(8) The right of entry of barges into a fleeing area may be refused under the following circumstances:

(a) By the operator;

(b) As a condition of the permit;

(c) An order issued pursuant to s. 30.03, Stats.; or

(d) By the department, after conferring with the operator, when there is an imminent hazard to the public interest, or to public health, safety or welfare.

(9) Barges may not be moored to trees or other natural features of an area except with the approval of the riparian property owner or during an emergency except that such mooring may be prohibited by the department as a permit condition or by order to prevent unsafe conditions or bank erosion.

(10) Fleeing activities may not have a material adverse effect on threatened or endangered species, their habitat, or other fish and wildlife habitat.

(11) Barge fleeing activities may not have a material adverse effect on commercial clamming or fishing areas.

(12) Operators may not fleet more than the maximum number of barges approved in the permit.

(13) Fleeing areas shall be established and operated in a manner consistent with applicable local zoning ordinances.

(14) A barge fleeing permit issued hereunder may not be exercised until all other necessary permits or approvals have been issued by local, state or federal agencies having jurisdiction over the proposed project.

(15) Operators shall notify the department of plans to discontinue use of the fleeing area for any period in excess of one navigation season.

(16) Upon the expiration of a barge fleeing permit all structures and devices shall be removed by the operator unless the department determines some structures and devices must remain in place to correct existing problems or to prevent future problems that could cause environmental damage.

(17) Operators shall respond to spills of hazardous substances as required by ch. NR 158.

(18) Washing or cleaning of barges which results in a discharge to a waterway may not occur in fleeing areas unless authorized by and conducted in conformance with ch. 283, Stats., where applicable.

(19) Barge fleeing permits may not be transferred without written notice to the department.

(20) Operators shall at all times operate the fleeing area in a safe manner.

(21) Operators shall notify the department of the name, current address, and day and night telephone numbers of the person directly responsible for supervising the fleeing area who is to be notified in case of emergency.

(22) Barge fleeing shall be conducted in a manner which minimizes bank erosion attributable to the fleeing operation.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.; correction in (18) made under s. 13.93 (2m) (b) 7., Stats., Register January 2002 No. 553.

NR 327.07 Barge fleeting permits. (1) A barge fleeting permit shall be required to authorize barge fleeting activities under and consistent with ss. 30.10, 30.12, 30.15, 30.19, 30.20, 30.61 (5), 30.68 (8), 30.74 (2) and 281.31, Stats.

(2) Facilities in existence on December 1, 1982 shall be permitted if they substantially comply with the provisions of s. NR 327.06. If the department refuses to permit such a facility, it shall notify the operator of such refusal and the reasons thereof. The department shall hold a hearing if the operator requests a hearing within 30 days of such refusal. If a request for hearing is made, the department must establish that the site or facility does not substantially comply with the provisions of s. NR 327.06.

(3) The issuance or renewal of a barge fleeting permit shall be conditioned on the operation of the fleeting area in compliance with statutory standards and this chapter.

(4) The initial barge fleeting permit issued to an operator shall be valid for a period not less than 5 years nor greater than 10 years. If no proceeding for revocation or violation of the permit has been initiated during the term of the permit and there are no other changed or previously unknown circumstances, including environmental considerations, the permit shall, after notice and opportunity for hearing, be renewed for succeeding periods of up to 10 years.

(5) Failure by an operator to substantially exercise the rights granted in a permit issued under this chapter within a period of 2 years from the issuance of the permit shall render the permit null and void unless extended by the department. Failure by an operator to substantially exercise the rights granted in a permit issued under this chapter for any period of 2 consecutive years shall cre-

ate a rebuttable presumption that the operator intends to abandon and forfeit the permit and shall be cause for a review of the barge fleeting permit by the department.

(6) A permit shall remain in force during the processing of an application for renewal, including any appeals process, provided that the application for renewal was made prior to the expiration of the permit.

Note: See s. 227.51, Stats.

(7) The department retains jurisdiction to modify a permit as appropriate to protect public rights and interest in navigable waters after notice and opportunity for hearing.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; renum. (5) and (6) to be (6) and (7), cr. (5), Register, January, 1983, No. 325, eff. 2-1-83.

NR 327.08 Enforcement. (1) Operators shall notify the department within 5 days after the arrival of the first barge into the fleeting area and within 5 days after the departure of the last barge from the fleeting area each year so that the department may inspect the fleeting area for conformance with permit conditions.

(2) Any agent or employee of the department shall at all times be given reasonable access to any and all parts of any fleeting area. Every reasonable effort shall be made to notify the operator or operator's agent in advance.

(3) Violations of this chapter may be prosecuted by the department under ss. 23.50, 23.79, 30.03, and 30.68 (2) and (7), Stats.

(4) The department, after investigation and notice under s. 30.03, Stats., may revoke a barge fleeting permit for failure to comply with permit conditions.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.