

Chapter NR 329

MISCELLANEOUS STRUCTURES IN NAVIGABLE WATERWAYS

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Note: Chapter NR 329 was created as an emergency rule effective April 19, 2004; emergency repeal and recreate ch. NR 329, effective August 24, 2004.

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 s. 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.

History: CR 04-062; cr. Register April 2005 No. 592, eff. 5-1-05.

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., (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.

History: CR 04-062; cr. Register April 2005 No. 592, eff. 5-1-05.

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.

(9) "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.

History: CR 04-062; cr. Register April 2005 No. 592, eff. 5-1-05.

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 pars. (c) and (d) shall be exempt under s. 30.12 (1g) (g), Stats. An intake or outfall structure that meets the standards in pars. (c) and (e) shall be exempt under s. 30.12 (1g) (km), Stats. A piling that meets the standards in pars. (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 chs. NR 103 and 299. 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 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>

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 subd. 4. a. and located south of state highway 29, March 15 through May 15.

c. For all waters not identified under 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 par. (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 s. 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 meets 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 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 chs. NR 103 and 299. 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 subd. 3. a. and located south of state highway 29, March 15 through May 15.

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

d. The applicant may request that the requirements in 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 shoreline 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 subs. (1) (c) 2., 3. and 4., (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 par. (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.

History: CR 04-062: cr. Register April 2005 No. 592, eff. 5-1-05.
- 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.

History: CR 04-062: cr. Register April 2005 No. 592, eff. 5-1-05.