

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

The Wisconsin Natural Resources Board proposes an order to repeal ch. NR 322, amend NR 300.01, 300.04 (1), (2), (3) and (4)(a) and (b), 300.05(1) and 300.06(1) and create NR 300.04(4)(d) to (g) and 300.05(3)(e) and ch. NR 310 related to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways.

FH-37-04

Summary Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.12(1p); 30.123(6s); 30.20(1k), 30.206, 30.208, 30.209, 30.28, 30.291, 30.298, 227.11(2), 281.22, 281.36 and 281.37, Stats.

Statutes Interpreted: ss. 30.10 to 30.27, 30.291, 31.02 to 31.38, 281.22, 281.36 and 281.37, Stats.

Explanation of Agency Authority:

The Department has authority under ch. 30, Stats., to clarify statutory procedures and timelines in administrative rule.

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:

This action amends rules requiring the Department to establish time limits and fees for waterway and wetland permit decisions to bring those rules into compliance with new statutory requirements, and creates a rule to establish procedures for processing exemptions, general permits, and individual permits, issuing public notices, and conducting hearings for individual permits as authorized under ch. 30, Stats.

The amendments to existing ch. NR 300 establish timelines and fees for processing permits, based on significant statutory changes to timeline requirements in 2003 Wisconsin Act 118. The important changes include:

- Department must determine whether an application is complete within 30 calendar days (was 60 days)
- Department must act on a general permit within 30 calendar days or the permit is presumptively approved (previously there were no general permits).
- Department must make a final determination on individual permits not requiring a public hearing within 105 calendar days (was generally 120 days)
- Department must make a final determination on individual permits requiring a public hearing within 150 calendar days (was generally 180 days).
- Department must make determinations on exemption requests that grant permission to inspect the property within 15 days or the exemptions is presumptively approved (previously there were not exemption determination requests).

Chapter NR 310 establishes specific procedures used for exemptions, general permits and individual permits. These processes were written to be in strict conformance with procedures and timelines established in Act 118. The most complex changes are in the public notice and hearing process that was significantly changed. Important changes include:

- Individual permits are required for all activities which are not exempt and not covered by a general permit. A 30-day public notice is now required for all individual permits.
- The applicant will be responsible for providing adequate written notice to all interested persons and publishing the public notice.

- A public hearing option is added before the Department's decision, which is then subject to an administrative hearing.

Federal Regulatory Analysis:

The U.S. Army Corps of Engineers has comparable procedures for taking applications and making decisions on physical alterations to waters of the United States. A comparison of timelines is shown in the following table.

| Time Limit | U.S. Army Corps of Engineers | Wisconsin DNR |
|----------------------------|--|---|
| Exemption determinations | Not applicable | 15 calendar days |
| Completeness determination | 15 calendar days (no limit on the number of times they can request additional information) | 30 calendar days (one time request for additional information) |
| Issuance of public notice | 15 calendar days | 15 calendar days |
| Final decisions | 90 calendar days from receipt of initial application if no exceptions* are involved | 15 calendar days for exemption determinations |
| | 150 calendar days from receipt of initial application if exceptions* are involved | 30 calendar days for general permits |
| | | 105 calendar days from receipt of initial application for individual permits that do not include public hearing |
| | | 150 calendar days from receipt of initial application for individual permits that include public hearing |

*Exceptions: Final decision not later than 60 days after receipt of a complete application UNLESS: Final decision is precluded as a matter of law or procedures required by law. The following laws require procedures such as state or other federal agency certifications, public hearings, Environmental Impact Statements, consultation, special studies, and testing which may prevent District Engineers from being able to decide certain applications within 60 days:

Clean Water Act; Coastal Zone Management Act; National Environmental Policy Act; National Historic Preservation Act; Preservation of Historical & Archaeological Data Act; Endangered Species Act; Wild & Scenic Rivers Act; Marine Protection; Research and Sanctuaries Act

Once the Corps of Engineers has enough information to make a decision, they need to do so even though other agencies which may have regulatory jurisdiction have not yet granted their authorizations, except where such authorizations are, by federal law, a prerequisite to making a decision, unless:

- The case must be referred to higher authority
- The comment period is extended
- A timely submittal of information or comments is not received from the applicant
- The processing is suspended at the request of the applicant
- Information needed by the District Engineer for a decision on the application cannot reasonably be obtained within the 60-day period

Comparison with Adjacent States:

Minnesota, Michigan, Illinois and Iowa all have comparable procedures for taking applications and making decision on physical alterations to surface waters. A comparison of timelines is shown in the following table.

| Time Limit | Wisconsin | Illinois | Iowa | Michigan | Minnesota |
|--------------------------|------------------|-----------------|----------------|-----------------|------------------|
| Exemption determinations | 15 calendar days | Not applicable | Not applicable | Not applicable | Not applicable |

| | | | | | |
|-----------------------------|---|---|---------------|---|--|
| Completeness determinations | 30 calendar days | No time limit | No time limit | No time limit | No time limit |
| Issuance of Public Notice | 15 calendar days | Upon receipt of an application for an individual permit | No time limit | | |
| Final decisions | 15 calendar days for exemption determinations | | No time limit | | |
| | 30 calendar days for general permits | | No time limit | | |
| | 105 calendar days from receipt of initial application for individual permits that do not include a public hearing | 90 calendar days | No time limit | Normally acted upon within 60 days of completed application | 30 days from receipt of water diversion applications |
| | 150 calendar days from receipt of initial application for individual permits that include a public hearing | 150 calendar days | No time limit | | |

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; and if the activity is not exempt (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 300.01 is amended to read:

NR 300.01 Purpose. This chapter is developed pursuant to ss. 30.28, 31.39, 281.22, 281.36 and 281.37, Stats., to establish procedures for charging basic and supplemental fees for permits, approvals, determinations and hearings for projects in navigable waters and wetlands and to establish time limits for permits, approvals and determinations for projects in navigable waters and wetlands.

SECTION 2. NR 300.04 (1) is amended to read:

NR 300.04 Time limits (1) Except as provided in s. NR 300.05, time limits specified in sub. (4) shall be applied to decisions ~~on fully completed~~ applications for water regulatory permits, approvals or determinations listed in s. NR 300.02.

SECTION 3. NR 300.04(2), (3) and (4)(a) and (b) are amended to read:

NR 300.04(2) For any permit, approval or determination made pursuant to ss. 30.10 to 30.27, 281.36 or 281.37, Stats., the department shall initially determine whether a complete application has been submitted and, no later than ~~60~~ 30 calendar days after the application is submitted, notify the applicant in writing about the initial determination of completeness. ~~For any permit, approval or determination made pursuant to s. 281.37, Stats., the department shall initially determine whether a complete application has been submitted and, no later than 30 calendar days after the application is submitted, notify the applicant in writing about the initial determination of completeness.~~ If the department determines that the application is incomplete, the notice shall state the reason for the determination and the specific items of information necessary to make the application complete. For any permit, approval or determination made pursuant to ss. 30.10 to 30.27 and ~~281.37~~281.36, Stats., the department may not demand items of information that are not specified in the notice as a condition for determining whether the application is complete unless both the department and the applicant agree or unless the applicant makes material additions or alterations to the project for which the application has been submitted. ~~An application may not be considered complete until the requirements of the Wisconsin environmental policy act, s. 1.11, Stats., have been met and until all information necessary for associated permits, such as Wisconsin pollution discharge elimination permits under ch. 283, Stats., has been submitted to the department.~~

(3) For any permit, approval or determination made pursuant to ss. 31.02 to 31.38, ~~281.22 and 281.36~~281.37, Stats., the applicant shall submit as requested, at any time during the review process, additional information the department finds to be reasonably necessary for review of the application.

(4)(a) The department shall initially determine whether a complete application has been submitted and, no later than 30 calendar days after the application is submitted, notify the applicant in writing about the initial determination of completeness. For individual permits, the department shall provide to the applicant a notice of complete application within 15 days after the department determines that the application is complete.

(b) For determinations made pursuant to ss. ~~30.10 to 30.27~~, 31.02 to 31.28, 281.22, 281.36 and 281.37, Stats., 120 calendar days.

SECTION 4. NR 300.04(4)(d) to (g) are created to read:

NR 300.04(4)(d) A person wishing to proceed with an activity that may be authorized by a general permit promulgated under s. 30.206, Stats., shall apply to the department, with written notification of the person's wish to proceed, not less than 35 calendar days before commencing the activity. If within 30 calendar days after a notification is received, the department does not inform the applicant that an individual permit is required, the activity will be considered to be authorized and the applicant may proceed without further notice.

(e) For determinations made for individual permits without a request for hearing pursuant to ss. 30.10 to 30.27, Stats., 105 calendar days.

(f) For determinations made for individual permits with a request for public hearing pursuant to ss. 30.10 to 30.27, Stats., 150 calendar days.

(g) For exemption determinations made pursuant to ss. 30.10 to 30.27, Stats., 15 calendar days.

SECTION 5. NR 300.05(1) is amended to read:

NR 300.05(1) When a contested case hearing is required ~~because a substantive written objection to the granting of a permit or approval by the department has been received in response to a public notice, or when a hearing is scheduled on the department's own motion the department's decision shall be mailed to~~

~~the applicant within 45 business days after completion of the hearing, including preparation of a transcript if necessary, and subsequent filings under s. 30.03, Stats.~~

SECTION 6. NR 300.05(3)(e) is created to read:

NR 300.05(3)(e) If an exemption determination request is not made according to the procedures in s. NR 310.05 or the exemption determination request does not give consent to inspect, the 15 calendar day time limit does not apply.

SECTION 7. NR 300.06(1) is amended to read:

NR 300.06 Fee processing. (1) FEE REQUIRED. The department shall charge a fee for permits or approvals. The permit or approval fee shall accompany the permit application or request for approval. Projects funded in whole or in part by any federal agency or state agency ~~or any permits issued under s. 30.12 (3)(a)2., 2m. or 3., Stats.,~~ are exempt from fees. Except for federal or state agency dam projects, any construction, alteration, change in operation, transfer or abandonment of a dam requires a fee pursuant to s. 31.39 (3), Stats.

Note: Fees for general permits will be set at \$50.

SECTION 8. Chapter NR 310 is created to read:

**NR 310
PROCEDURES FOR EXEMPTIONS, GENERAL PERMITS, INDIVIDUAL PERMITS,
NOTICES, HEARINGS, AND ADMINISTRATIVE REVIEW**

**SUBCHAPTER I
GENERAL PROVISIONS**

NR 310.01 Purpose. This chapter establishes procedures for processing exemption determinations, general permits and individual permits for activities in navigable waterways, in order to provide consistent and efficient administration of the exemption and permit programs while assuring that the public trust in Wisconsin waterways is maintained.

NR 310.02 Applicability. This chapter applies to exemptions, general permits and individual permits regulated under subchs. I and II, ch. 30, Stats.

NR 310.03 Definitions. In this chapter:

(1) "Days" under this chapter means calendar days unless otherwise specified.

Note: See s. 990.001(4), Stats., for statutory standards on computing time.

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

(3) "General permit" means a permit issued by the department that categorically authorizes certain activities regulated under ss. 30.206 and 30.12(3)(a) and (br), 30.123(7), 30.19(3r) and 30.20(1t), Stats.

(4) "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. For purposes of this chapter, "individual permit" includes a contract issued under s. 30.20, Stats.

(5) “Navigable waterway” means any body of water with a defined bed and bank that is navigable under Wisconsin law. In Wisconsin a body of water is navigable if it is capable of floating on a regularly recurring basis the lightest boat or skiff used for recreation or any other purpose.

Note: This incorporates the definition at s. 30.01(4m), Stats., and current case law, which requires a watercourse to have a bed and banks, *Hoyt v. City of Hudson*, 27 Wis. 656 (1871), and requires a navigable waterway to float on a regularly recurring basis the lightest boat or skiff, *DeGayner & Co., Inc. v. DNR*, 70 Wis. 2d 936 (1975); *Village of Menomonee Falls v. DNR*, 140 Wis.2d 579 (Ct. App. 1987).

(6) “Riparian” means an owner of land abutting a navigable waterway.

SUBCHAPTER II EXEMPTIONS

NR 310.04 Eligibility for exemptions. (1) To be exempt under s. 30.12(1g), 30.123(6)(d) or (e), or 30.20(1g), Stats., from the requirement to obtain a general or individual permit under ch. 30, Stats., an activity shall meet all standards for installation, construction and location in the statute authorizing the exemption and the rules promulgated under s. 30.12(1p), 30.123(6s) or 30.20(1k), Stats.

Note: Some locations are not eligible for exemptions or general permits. See ss. NR 1.05 and 1.06.

Note: The rules specifying standards for exempted activities are chs. NR 1, 320, 323, 326, 328, 329 and 345.

(2) For those activities which are not allowed in locations where there are public rights features as described in s. NR 1.06, a person may only undertake an exempt activity after they have evaluated the site and determined that the structure or activity is not in the location of a public rights feature as described in s. NR 1.06(4).

(3) Pursuant to ss. 30.12(2m), 30.123(6m) and 30.20(1m), Stats., the department may require a person engaged in or proposing an activity for which an exemption is available to obtain a general or individual permit.

NR 310.05 Exemption determination requests. (1) Any person may request a determination from the department under s. 30.12(2r), 30.123(6r) or 30.20(1r), Stats., as to whether an activity or location is exempt under s. 30.12(1g), 30.123(6)(d) or (e) or 30.20(1g), Stats.

(2) A person who seeks a department determination as to whether an activity or location is eligible for an exemption under sub. (1) shall submit a written request to the department. The request shall be submitted on a form provided by the department, by delivery methods specified by the department, and shall provide all the information requested on the form.

(3) If the person who requests the determination is the person proposing the activity, the request shall be submitted not less than 20 days before commencing the activity to allow time for mailing between the applicant and department.

Note: Federal or local permits may be required. Applicants are responsible for obtaining all necessary federal or local permits or approvals for their activity.

NR 310.06 Department procedures for processing exemption determination requests. (1) The department shall develop and maintain a form for requesting an exemption determination under s. NR 310.05, and provide a copy of the form to any person on request.

Note: Form 3500-107, "Chapter 30 Exemption Determination Request" is available at department service centers and on the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

(2) Upon receipt of an exemption determination request under s. NR 310.05, the department shall determine whether an activity or location qualifies for an exemption under s. 30.12(1g), 30.123(6)(d) or (e) or 30.20(1g), Stats., and the rules promulgated under the applicable statute.

(3) The date of receipt of an exemption determination request shall be the date the form is received at the department office specified on the form.

(4) If the exemption determination request does not meet all the requirements of s. NR 310.05(2), the department shall notify the requester that the activity is not exempt and shall describe the information that a new exemption determination request must include in order for the information to be complete.

(5) Where an exemption determination request is filed for an activity for which an exemption is not available under s. 30.12(1g), 30.123(6)(d) or (e) or 30.20(1g), Stats., the department shall notify the requester within 15 days of receipt that an exemption is not available for the activity, and of any provisions of ch. 30, Stats., that apply to the activity.

NR 310.07 Exemption determinations. (1) The department shall determine whether an activity is exempt under s. 30.12(1g), 30.123(6)(d) or (e) or 30.20(1g), Stats., based on whether it complies with this chapter, all standards in the statute that create the specific exemption and all standards in any rules promulgated under that statute.

(2) The department may inspect activity sites as necessary to determine whether the activity qualifies for an exemption, or whether a general or individual permit is required.

(3) In determining whether an activity is eligible for an exemption, the department may rely on information and data gathered by the department in a prior inspection of the activity site or the waterbody adjacent to the activity site. The department is not required to make a new site inspection in response to receipt of an exemption determination request form.

(4) When a person who owns the property where an activity is or will be located files an exemption determination request, the department shall determine if the activity is exempt under sub. (1), notify the requester in writing within 15 days if it determines that an activity is not exempt, and inform the requester that a general or individual permit is required for the activity. The department also may notify a requester if it determines that an activity is exempt.

(5) When a person who does not own the property where an activity is or will be located files an exemption determination request, the department shall determine if the activity is exempt under sub. (1) and notify the requester in writing of its determination. If the activity is not exempt, the department shall inform the requester that a general or individual permit is required for the activity. If the department seeks permission from the landowner to access the property, the department shall notify the landowner of both the exemption determination request and its exemption determination. If the department is not able to obtain permission to access the property to inspect the site, and therefore unable to make a determination as to whether the activity is exempt, the department shall inform the requester of this fact. The department also may notify a requester if it determines that an activity is exempt.

(6) The department has provided notice of its exemption determination on the date the department mails the written determination to the person who requested the determination.

NR 310.08 Permits in lieu of exemptions. In making a determination under s. 30.12(2m), 30.123(6m) or 30.20(1m), Stats., that a general permit or individual permit is required in lieu of an exemption, the department may rely on information and data gathered by the department in a prior inspection of the activity site or waterbody adjacent to the activity site. The department is not required to make a new site inspection in response to receipt of an exemption determination request form.

SUBCHAPTER III GENERAL PERMITS

NR 310.09 Eligibility for general permits. (1) To be eligible for authorization under a general permit pursuant to ss. 30.206 and 30.12(3)(a) or (br), 30.123(7), 30.19(3r) or 30.20(1t), Stats., an activity shall meet all standards for the general permit in the statute that authorized issuance of the general permit, the rules in this subchapter and the rules promulgated under the statute that authorized issuance of the general permit and s. 30.206, Stats.

Note: The rules specifying standards for regulated activities for which general permits are available are chs. NR 320, 323, 326, 328, 329, 341, 343 and 345.

(2) Pursuant to ss. 30.12(2m), 30.123(6m), 30.20(1m) and 30.206(3r), Stats., the department may require a person engaged in or proposing an activity for which general permit authorization is available to obtain an individual permit.

NR 310.10 General permit applications. (1) Any person may apply for a general permit from the department under s. 30.206, Stats., and, as applicable, either s. 30.12(3), 30.123(7), 30.19(3r) or 30.20(1t), Stats.

(2) A person who seeks a general permit from the department under sub. (1) shall submit an application on a form provided by the department and shall provide all the information requested on the form and accompanying instructions.

Note: General permit application forms are available at department service centers and on the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

(3) A person filing an application under subs. (1) and (2) shall submit the application to the department not less than 35 days before commencing the activity to allow time for mailing between the applicant and department.

Note: Federal permits may also be required. Applications for general permits are joint applications for both state and federal permits. The applicant shall mail a duplicate copy of the completed general permit application form to the St. Paul district, U.S. Army Corps of Engineers to seek federal authorization. Applicants are responsible for obtaining all necessary federal permits or approvals for their activity.

Note: Local land use or building permits may also be required. Applicants are responsible for obtaining all necessary local permits or approvals for their activity.

NR 310.11 Department procedures for processing general permits. (1) The department shall develop and maintain application forms for requesting authorization under a general permit under s. NR 310.10 and shall provide a copy of a form to any person upon request.

(2) Upon receipt of a general permit application under s. NR 310.10(2), the department shall determine whether the activity qualifies for a general permit under s. 30.12(3), 30.123(7), 30.19(3r) or 30.20(1t), Stats.

(3) The date of receipt of a general permit application shall be the date an application which meets the requirements of s. NR 310.10(2) is received at the department office specified on the form or accompanying instructions.

(4) If the general permit application does not meet all the requirements of s. NR 310.10(2), it may be deemed incomplete. Within 30 days of receipt, the department shall notify the applicant in writing that the application is incomplete and shall describe the information that shall be submitted in order for the application to be complete.

(5) The department may investigate or visit a site to determine whether an activity meets the standards for a general permit or requires an individual permit under s. 30.206(3r), Stats.

(6) Where a general permit application is filed for an activity for which a general permit is not available under s. 30.12(3), 30.123(7), 30.19(3r) or 30.20(1t), Stats., the department shall notify the requester that a general permit is not available for the activity, and of any provisions of ch. 30, Stats., that apply to the activity.

(7) The department may dismiss a general permit application if the information needed to complete the application is not received within 30 days after the department notifies an applicant that its application is incomplete.

(8) If the department determines that an activity is not eligible for a general permit, the department shall notify the applicant in writing that the applicant may revise the project so that the activity is eligible for a general permit, withdraw the application or apply for an individual permit. In its notification, the department shall state why the project is ineligible for a general permit. The statement shall, where applicable, describe public rights features at the site or conditions specific to the site that require restrictions different than the general permit conditions in order to prevent significant adverse impacts to public rights and interests, environmental pollution as defined in s. 299.01(4), Stats., or material injury to the riparian rights of any riparian owner.

(9) If the department determines that an activity is eligible for a general permit, the department shall notify the applicant in writing.

(10) The department has provided notice of its determination under sub. (5), (7), (8) or (9) on the date the department mails the written determination to the applicant.

NR 310.12 General permit decisions. (1) All activities proceeding under a general permit issued under s. 30.206, Stats., shall be subject to any requirements in ss. 30.12(3), 30.123(7), 30.19(3r), 30.20(1t), and 30.206, Stats., rules promulgated under those statutes, and all of the following conditions:

(a) The permit does not authorize any work other than what is specifically described in the application and plans, and as limited by the conditions of the permit. A permittee shall obtain prior written approval of modifications from the department before modifying a project or amending permit conditions.

(b) The permittee shall notify the department before starting construction and again not more than 5 days after the project is complete.

(c) The permittee shall post a copy of this permit at a conspicuous location on the project site visible from the waterway, beginning at least 5 days prior to construction and remaining at least 5 days after construction. The permittee shall also have a copy of the permit and approved plan available at the project site at all times until the project is complete.

(d) Upon reasonable notice, the permittee shall allow access to the project site during reasonable hours to any department employee who is investigating the project's construction, operation, maintenance or permit compliance.

(e) The permittee shall complete the project on or before the expiration date established in the permit. If the project is not completed by the expiration date, the permittee shall submit to the department a written request for an extension prior to the expiration date of the permit. The request shall identify the requested extension date and the reason for the extension. The department may grant a permit extension for good cause shown. The permittee may not begin or continue construction after the original permit expiration date unless the department grants a new permit or permit extension in writing.

(f) The permittee shall submit a series of photographs to the department within one week of completion of work on the site. The photographs shall be taken from different vantage points and depict all work authorized by the permit.

(g) 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.

(h) The department may modify or revoke the permit if the project is not completed according to the terms of the permit or if the department subsequently determines the activity is detrimental to the public interest.

(i) Acceptance of a general permit and efforts to begin work on the activity authorized by the general permit signifies that the permittee has read, understood and agreed to follow all conditions of the general permit.

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

SUBCHAPTER IV INDIVIDUAL PERMITS, NOTICES, HEARINGS AND ADMINISTRATIVE REVIEW

NR 310.13 Eligibility for individual permits. (1) To be eligible under subchs. I and II of ch. 30, Stats., for authorization under an individual permit, an activity shall meet all standards for the individual permit in the statute that authorized issuance of the individual permit, the rules in this chapter and the rules promulgated under the statute that authorized issuance of the individual permit.

Note: The rules specifying standards for regulated activities for which individual permits are available are the NR 300 series of Wisconsin administrative code.

NR 310.14 Individual permit applications. (1) GENERAL PROVISIONS. (a) Any person may apply for an individual permit from the department under subch. II, ch. 30, Stats.

(b) A person who seeks an individual permit from the department under this section shall submit an application on a form provided by the department and shall provide all the information requested on the form and accompanying instructions.

Note: Individual permit application forms are available at department service centers and on the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

Note: Federal permits may also be required. Applications for individual permits are joint applications for both state and federal permits. The applicant shall mail a duplicate copy of the completed individual permit application forms to the St. Paul district, U.S. Army Corps of Engineers to seek federal authorization. Applicants are responsible for obtaining all necessary federal permits or approvals for their activity.

Note: Local land use or building permits may also be required. Applicants are responsible for obtaining all necessary local permits or approvals for their activity.

(c) An individual permit application is received by or submitted to the department on the date the application or additional information is received at the department office specified on the permit application form or accompanying instructions.

(d) Any additional information filed by an applicant to complete an individual permit application is received by or submitted to the department on the date the additional information is received at the department office where the additional information was requested to be submitted.

(e) The department has provided notice under this subchapter when it mails an applicant the initial determination of completeness, notice of complete application or notice of public hearing.

(f) The department has completed providing a notice of complete application pursuant to s. 30.208(3)(c) and (4)(a), Stats., on the later of the date that the applicant publishes notice or mails notice to all parties under sub. (2).

(2) INTERESTED AND POTENTIALLY INTERESTED MEMBERS OF THE PUBLIC. (a) The following are determined to be interested and potentially interested members of the public under s. 30.208(3), Stats.:

1. The adjacent riparian on each side of the property on which the activity is located.

2. The designated contact for any local lake or river organization for the waterway where the project is located.

Note: Directories of contact names and addresses are available at websites maintained by the Wisconsin Lakes Partnership and the River Alliance of Wisconsin.

3. The clerks of the county and the town, village or city in which the activity is located.

4. Any person who submits to the department a written request for notification regarding a specific application or any general type of application. If the department receives requests for notification from persons who identify themselves as members of a specific organization, notice to an officer of the organization shall constitute notice to all organization members.

5. Any additional interested members of the public identified by the department for a specific individual permit application.

(b) The department shall provide to the applicant with the notice of complete application a list of the names and addresses of the persons it has identified under par. (a)4. and 5.

(3) COMPLETENESS DETERMINATIONS. (a) Determining completeness under this subchapter means that the department determines if an applicant has submitted all items required in s. NR 310.14(1)(b). A determination that an application is complete is not a judgement that the submitted information is accurate or sufficient to prove that the activity meets the standards to obtain an individual permit.

(b) The department may dismiss an individual permit application without prejudice if the information needed to complete the application is not received within 45 days after the department notifies an applicant that its application is incomplete.

(c) The department may dismiss an individual permit application if the proof of publication required in s. NR 310.15(1)(f) is not received within 45 days after the department notifies an applicant that its application is complete.

(4) INITIAL DETERMINATION OF COMPLETENESS (APPLICATION DATE + 30 DAYS OR LESS). (a) Within 30 days after an individual permit application is submitted, the department shall initially determine whether the application is complete and notify the applicant as follows:

1. If the application is complete, the department shall notify the applicant in writing that the application is complete.

2. If the application is incomplete, the department shall notify the applicant in writing that the application is incomplete, identify all specific items of information needed to complete the application, and advise the applicant that the department may dismiss the application if the information needed to complete

the application is not received within 45 days after the department provides notice that the application is incomplete.

(b) The department may not determine an application is complete unless the department determines that the applicant has provided all information necessary for any environmental assessment or environmental impact statement required under s. 1.11, Stats., and ch. NR 150.

NR 310.15 Notices and public comment. (1) NOTICE OF COMPLETE APPLICATION (INITIAL DETERMINATION OF COMPLETENESS DATE + 15 DAYS). (a) Within 15 days after the department provides an initial determination of completeness under s. NR 310.14(4)(a)1., the department shall send the applicant a notice of complete application. The notice shall contain all the information required under s. 30.208(5)(b), Stats.

(b) If the applicant requests a public hearing in its individual permit application, the department shall include a notice of public hearing with the notice provided in par. (a).

(c) The applicant shall publish the notice in par. (a) or (b) in the newspaper identified by the department in the notice no later than 10 days before the scheduled hearing date.

(d) The applicant shall provide a copy of the notice to any person or group who requests a copy no later than 10 days before the scheduled hearing date.

(e) If the notice contains a list of names and addresses identified under s. NR 310.14(2), the applicant shall provide a copy of the notice to each person on the list. The notice shall be provided to each person via US mail with return receipt requested or delivered in person.

(f) The applicant shall provide proof of notice publication to the department prior to the scheduled hearing date. The proof of publication shall be an affidavit from the newspaper certifying publication and documenting the date of publication. If an affidavit cannot be obtained prior to the scheduled hearing date, the proof of publication shall be an original newspaper page, not a photocopy, which contains the notice and publication date.

(g) If the applicant is required to notify a list of persons in pars. (d) and (e), the applicant shall provide proof of notification prior to the scheduled hearing date. The proof of notification shall be proof of mailing from the U.S. postal service, or a signed and dated statement from the person delivering the notices that the notices were personally delivered.

(2) PUBLIC COMMENT PERIOD (NOTICE OF COMPLETE APPLICATION DATE + 30 DAYS, OR PUBLIC HEARING DATE + 10 DAYS). (a) Any person may submit written comments on an application to the address specified in the notice of complete application or notice of public hearing.

(b) Comments shall address facts relevant to whether an activity in an application will comply with the legal standards listed in the notice of complete application.

(c) The department shall consider all written public comments in evaluating an individual permit application.

(d) Comments are submitted on the date they are postmarked using U.S. mail or on the date they are hand-delivered to the address specified in the notice of complete application or notice of public hearing.

(3) NOTICE OF PUBLIC HEARING. (a) The department shall provide a notice of public hearing:

1. If an applicant requests a public hearing in their individual permit application.
2. If a person submits a written request for public hearing within 30 days after the date the department provided notice of complete application under sub. (1).

3. If the department determines within 30 days after the date the department provided notice of complete application under sub. (1) that there is a significant public interest in holding a public hearing.

(b) The notice of public hearing shall contain all the information required under s. 30.208(5)(b), Stats.

(c) The department shall provide the notice of public hearing required in par. (a)1. with the notice of complete application provided under sub. (1).

(d) The applicant shall publish the notice of public hearing in the newspaper identified by the department in the notice no later than 10 days before the scheduled hearing date.

(e) The applicant shall provide a copy of the notice of public hearing to any person or group that requests a copy of the notice no later than 10 days before the scheduled hearing date.

(f) If the notice contains a list of names and addresses identified under s. NR 310.14(2), the applicant shall provide a copy of the notice to each person on the list. The notice shall be provided to each person via US mail with return receipt requested or delivered in person.

(g) The applicant shall provide proof of notice publication to the department prior to the scheduled hearing date. The proof of publication shall be an affidavit from the newspaper certifying publication and documenting the date of publication. If an affidavit cannot be obtained prior to the scheduled hearing date, the proof of publication shall be an original newspaper page, not a photocopy, which contains the notice and publication date.

(h) If the applicant is required to notify a list of persons in pars. (e) and (f), the applicant shall provide proof of notification prior to the scheduled hearing date. The proof of notification shall be proof of mailing from the U.S. postal service, or a signed and dated statement from the person delivering the notices that the notices were personally delivered.

NR 310.16 Public informational hearings. (1) FORM AND TIMELINESS OF REQUEST FOR PUBLIC HEARING. Any request for a public informational hearing shall comply with all the following requirements:

(a) A request shall be in writing and dated.

(b) A request shall be submitted to the address in the notice of complete application and postmarked no later than 30 days following the date the department provided notice of complete application.

(c) A request shall include the docket number or applicant name and specify the issues that the party desires to be addressed at the public informational hearing.

(d) The issues specified in the hearing request shall relate to the legal standards listed in the notice of complete application.

(2) DATE AND LOCATION OF PUBLIC INFORMATIONAL HEARING. The department shall hold a public informational hearing within 30 days after notice of hearing has been provided to the applicant under s. 30.208(3)(d), Stats. The hearing shall be located in the vicinity of the property that is the subject of the individual permit application wherever possible and practicable.

(3) PARTICIPATION AT PUBLIC INFORMATIONAL HEARINGS. Any interested members of the public or representatives of government agencies may participate in a public informational hearing with respect to the issuance of the proposed permit subject to the procedures in sub. (5). Persons and government agencies participating need not be represented by legal counsel.

(4) CHANGES OR ADJOURNMENTS IN TIME OR PLACE OF HEARING. (a) Requests for changes in the time and place of a scheduled hearing will be granted only for good cause shown prior to any required newspaper publication of legal notice for the hearing. Failure to publish or notify as required by s. NR 310.15(3)(d) and (e) shall constitute good cause for changes or adjournment.

(b) The hearing examiner may adjourn a hearing for good cause shown, to be reconvened at the discretion of the department on 10 days' notice or at a time certain on agreement of all persons present.

(5) CONDUCT OF PUBLIC INFORMATIONAL HEARINGS. (a) *Informational hearings.* Public informational hearings held pursuant to this subsection are not contested cases as defined in s. 227.01(3), Stats.

(b) *Hearing examiner.* Public informational hearings held pursuant to this subsection shall be conducted by a hearing examiner designated by the secretary or secretary's designee.

(c) *Procedure.* 1. The hearing examiner shall open the hearing by concisely stating the scope and purpose of the hearing and explaining the procedures to be used in the hearing. The hearing examiner shall explain how and to whom notice of the final decision granting or denying a permit will be provided and how a person may seek administrative or judicial review of the final decision.

2. Appearance slips shall be distributed to all persons attending the hearing and the hearing examiner shall ask all persons present to indicate on their appearance slips whether they intend to present an oral or written statement at the hearing.

3. Any person may direct informational or clarifying questions through the hearing examiner to a person making oral statements, but cross-examination is not allowed at the hearing.

4. The hearing examiner may place time limits on individual oral statements to prevent undue repetition or insure that all persons wanting to make statements can do so in a reasonable period of time.

5. The hearing examiner may limit the number of representatives that may make oral statements on behalf of any individual or organized group.

6. When necessary to ensure maximum participation and adequately allot time for oral statements at hearing, the hearing examiner may schedule at set times for persons to make oral statements. Even if oral statements are scheduled, unscheduled oral or written statements also shall be allowed at hearing.

7. Any person submitting a written statement at hearing shall submit at least one legible copy to the hearing examiner.

8. Regardless of specific requirements of this paragraph, the hearing examiner may use any procedures necessary to insure that the hearing will be conducted in an orderly and expeditious manner, provided the measures are consistent with broad public participation in the hearing.

(d) *Contempt.* The hearing examiner may exclude from the hearing a person who engages in loud, noisy, disruptive or contemptuous conduct.

(6) RECORD OF PUBLIC PARTICIPATION. The department shall record public informational hearings electronically. The department may prepare a written report of public participation in the hearing.

NR 310.17 Individual permit decision. (1) DECISION DATE. The department shall render a decision issuing, denying or modifying a permit or approving a contract within 30 days after the public hearing is held, or if no public hearing is held, within 30 days after the end of the public comment period.

(2) STANDARDS AND INFORMATION. The department shall consider all the following information in deciding whether to approve, modify or deny an individual permit application:

- (a) Applicable standards in statutes, rules and common law.
- (b) Plans and information provided by an applicant.
- (c) Information gathered during site investigations.
- (d) Written or oral information provided during a public comment period or public hearing.
- (e) Statements or information provided by local, state and national government agencies.
- (f) Data or information found in natural resource inventories and plans, or maps collected by the department or others using commonly accepted methods.
- (g) Published scientific research.
- (h) Section 1.11, Stats., Wisconsin environmental policy act, and ch. NR 150.
- (i) Any other pertinent information.

(3) NOTICE OF DECISION. The department shall mail copies of its decision on an individual permit application to all of the following:

- (a) The applicant.
- (b) The city, town or village where the activity is located.
- (c) The county where the activity is located.
- (d) The United States army corps of engineers.
- (e) Any person who asks the department in writing for a copy of the final decision.

(4) EFFECTIVE DATE. (a) *Normal effective date.* Except as otherwise provided in this subsection, the permit shall take effect upon mailing of the decision to all the parties listed in sub. (3).

(b) *Delayed effective date based on objection.* 1. Within 3 days of the close of any public comment period, the department shall notify the applicant and objectors of any objections, based on substantive standards in the statute and rules relating to the project that it has received.

2. If the department has received objections under subd. 1, the individual permit shall take effect 30 days after the department mails its decision to all the parties listed in sub. (3).

3. If objections under subd. 1 are withdrawn, the permit shall take effect upon mailing of the decision to all the parties listed in sub. (3).

(c) *Delayed effective date based on petition for administrative review.* 1. If a petition for administrative review contains a request for a stay and the department denies the petition provided under s. 30.209(f) and (fm), Stats., an individual permit shall take effect the day after the date the department denies the petition.

2. If a petition for administrative review contains a request for a stay that contains information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment and the department grants the petition, the individual permit for which the petition has been granted shall take effect the day after any of the following occurs:

a. The hearing examiner assigned the case by the division of hearings and appeals lifts the stay because the hearing examiner has determined as provided in s. 30.209(2)(b), Stats., that continuation of the stay is not necessary to prevent significant adverse impacts or irreversible harm to the environment pending completion of the hearing.

b. The hearing examiner renders a decision approving, modifying or denying the individual permit.

(d) *Dates of decisions regarding permits, petitions for administrative review, and stays.* For purposes of this subsection, the department or hearing examiner has rendered a decision, granted or denied a petition for administrative review, or lifted a stay on the date that the department or examiner mails the applicant and the petitioner copies of the decision.

NR 310.18 Administrative review. (1) PETITION FOR ADMINISTRATIVE REVIEW AND REQUEST FOR STAY (PERMIT DECISION DATE + 30 DAYS). (a) Within 30 days after the department renders a decision under s. NR 310.17, any interested person may file with the department, and at the same time provide a copy to the applicant of, a petition seeking administrative review of the decision. The petition also may request a stay of the activity pending an administrative hearing.

(b) The petition shall be in writing, shall be dated and shall be signed by the petitioner.

(c) The petition shall be submitted to the secretary of the department at the address provided in ch. NR 2.

(d) The petition shall include as an attachment a copy of the decision for which administrative review is sought.

(e) A petition for administrative review and any request for stay in the petition shall comply with the format and be filed in the manner provided by s. 30.209(1m), Stats., and ch. NR 2.

(f) A petition is filed on the date it is received by the secretary of the department at the address specified in ch. NR 2.

(g) If a petition filed under s. 30.209(1m)(a), Stats., requests a stay under s. 30.209(1m)(c), Stats., and contains information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment, a stay shall take effect upon filing of the petition and remain in effect until the department denies the petition under sub. (3) and s. 30.209(1m)(d), Stats., or the hearing examiner lifts the stay as provided by s. 30.209(2)(b), Stats., or renders a decision approving, modifying or denying the individual permit.

(2) APPLICANT RESPONSE TO PETITION (PETITION RECEIPT DATE + 15 DAYS OR LESS) (a) Within 15 days after a petition is filed with the department, an applicant may file with the department, and at the same time shall provide to the petitioner seeking review, a response to the petition.

(b) A response to a petition shall comply with s. 30.209(1m)(e), Stats.

(c) A response to a petition is filed on the date it is received by the secretary of the department at the address specified in ch. NR 2.

(3) GRANT OR DENIAL OF ADMINISTRATIVE REVIEW PETITION (PETITION RECEIPT DATE + 30 DAYS OR LESS). (a) Within 30 days after the date that a petition is filed, the department shall grant or deny the petition in writing and, if the petition is denied, state the reasons for denial as provided in s. 30.209(1m)(f), Stats. Failure to dispose of the petition within 30 days is a denial.

(b) The department has granted or denied a petition under par. (a) when it mails a grant or denial to a petitioner.

(4) REFERRAL TO DIVISION OF HEARINGS AND APPEALS (PETITION GRANT DATE + 15 DAYS OR LESS). (a) Unless both the petitioner and applicant agree to an extension, the department shall refer the matter to the division of hearings and appeals within 15 days after granting the petition.

(b) The department has referred the matter under par. (a) when it mails to the division of hearings and appeals a hearing request form and copies of the permit application, the notice of completeness, the permit decision, the petition for administrative review, any petitioner's response to the petition, and the department letter granting the petition.

(5) NOTICE OF ADMINISTRATIVE HEARING. (a) At least 30 days before the date of the administrative hearing, the division of hearings and appeals shall notify the applicant as provided in par. (b).

(b) The division of hearings and appeals shall provide an applicant all the following:

1. A notice of administrative hearing that shall contain all the information required under s. 30.208(5)(b), Stats. The division of hearings and appeals may include any additional information that it deems necessary to provide adequate notice of an administrative hearing.

2. A letter accompanying the notice or notices that contains all the following:

a. A statement that an administrative hearing will be held and whether the applicant or an interested person requested the hearing.

b. A statement that the applicant must mail a copy of the notice to any person or group who asks for a copy and mail a copy via U.S. mail with return receipt requested to an enclosed list of persons that the department has determined are interested and potentially interested members of the public pursuant to s. 30.208(3), Stats., and s. NR 310.14(2).

c. A list of persons and groups that asked that a notice of hearing be mailed to them, a list of interested and potentially interested members of the public determined by the department under s. 30.208(3), Stats., and s. NR 310.14(2) and a statement that the applicant is required to mail a notice of hearing to any person or group that asks for the notice between now and the hearing date.

d. A statement that the applicant is required to publish the notice as a class I notice under ch. 985, Stats., and provide the division an affidavit of publication to prove the notice was published. The name of the newspaper in which the notice must be published shall also be provided to the applicant.

e. A statement that the applicant is required to furnish the division return receipts of mailing to or signed affidavits of receipt of notice from all persons under this subd. 2.c.

f. A statement that the applicant or an authorized representative must appear at the hearing to present testimony or the hearing will be rescheduled or the application dismissed.

g. A statement that the hearing may be rescheduled or the application dismissed if the hearing examiner does not receive the information specified under this subd. 2.d. and e. by the date requested by the hearing examiner.

h. A statement that if the application is dismissed, the applicant may resubmit an application for the individual permit.

(c) The division has provided the information in par. (b) when it mails an applicant the information.

(d) An applicant shall publish a notice provided under par. (b) as a class I notice under ch. 985, Stats., mail the notice or notices to all listed persons in par. (b)2.c., and provide to the division a copy of the notice, an affidavit of publication, and return receipts of mailing to or signed affidavits of receipt of notice from all persons under par. (b)2.c.

(e) The department has provided notice of an administrative hearing on the later of the date notice of hearing was published or mailed to all listed persons as required by par. (d).

(f) The division may reschedule a hearing or dismiss an application without hearing if the hearing examiner does not receive the information specified in par. (b)2. d. and e. by the date requested by the hearing examiner.

(g) If the application is dismissed, the applicant may resubmit an application for the individual permit.

(6) CONDUCT OF ADMINISTRATIVE HEARING. An administrative hearing shall be conducted in compliance with the requirements of ss. 30.209(2) and 227.42, Stats., and chs. NR 2 and HA 1.

(7) CONFLICTS OR OMISSIONS. In the event of conflicts between or omissions in the statutes and rules that govern requests for and conduct of administrative hearings, the applicable statutes and rules shall be applied in the following sequence:

(a) Section 30.209, Stats., shall apply notwithstanding any conflicting statutes or rules.

(b) Section 227.42, Stats., shall apply notwithstanding any conflicting statutes or rules except for s. 30.209, Stats., and shall apply to any issues not addressed by s. 30.209, Stats.

(c) This section applies notwithstanding any conflicting statutes or rules except for ss. 30.209 and 227.42, Stats., and shall apply to any issues not addressed by s. 30.209 or 227.42, Stats.

(d) Chapter NR 2 shall apply notwithstanding any conflicting statutes or rules except for ss. 30.209 and 227.42, Stats., and this section, and shall apply to any issues not addressed by s. 30.209 or 227.42, Stats., and this section.

(e) Chapter HA 1 shall apply to any issues not addressed by s. 30.209 or 227.42, Stats., or this section or ch. NR 2.

SECTION 9. Chapter NR 322 is repealed.

SECTION 10. 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. Any steps that the department, applicant or other parties have not yet begun to implement shall be conducted as provided in this rule for applications received after February 6, 2004. To the extent that the department or applicant have begun or completed procedural steps, those steps are not affected by this rule.

SECTION 11. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 8, 2004.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)