

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

Item No. 4.C.5

SUBJECT:

Request adoption of Board Order WT-22-19, proposed rules affecting chapters NR 300, NR 301, NR 305, NR 310, related to administration, procedures, and enforcement of the Wetland and Waterway Permit Program.

FOR: April 2022 Board meeting**PRESENTER'S NAME AND TITLE:** Amanda Minks, Public Trust and Zoning Manager**SUMMARY:**

The purpose of this rule is to reduce the administrative code redundancy through consolidation of chs. NR 300, 301, 305, and 310. This rulemaking updates administrative procedures for wetland and waterway regulations to align with statutory requirements (as specified in chs. 30, 31, 227, and ss. 281.36, 23.32, and 23.321, Wis. Stats.).




The new rule: creates consistent definitions; articulates regulatory processes for requesting waterway and wetland exemption reviews, general permits, and individual permits; outlines application requirements, process for review, and general standards for which the department will make decisions; updates the fee structure for waterway, wetland, and dam regulatory decisions; and clarifies the water quality certification process in order to align it with applicable federal 401 Clean Water Act requirements.

The purpose of this rule is to revise and consolidate administration, procedures, and enforcement of the Waterways Program. Procedures and timelines for general permits, individual permits, exemption requests, navigability determinations, ordinary high water mark determinations, and wetland mapping services are updated to align with statutory requirements and to be consistent with federal wetland and waterway regulations. Additionally, the fee structure for wetland and waterway permits and services is updated to account for inflation and increased costs to perform these tasks.

The Board last acted on this rule on February 26, 2020, when it approved the scope statement. The department has completed the external review process for Board Order WT-22-19, which includes holding a public hearing and review by the Legislative Council Rules Clearinghouse. The final draft rule reflects changes made based on public comments and Legislative Council Rules Clearinghouse comment. The 30-month time frame for submission of a final rule to the legislature for approval expires on June 16, 2022.

RECOMMENDATION: That the Board adopt Board Order WT-22-19**LIST OF ATTACHED MATERIALS (check all that are applicable):**

- | | |
|---|---|
| <input checked="" type="checkbox"/> Background Memo | <input type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input checked="" type="checkbox"/> Board order/rule |
| <input checked="" type="checkbox"/> Response summary | <input checked="" type="checkbox"/> Memo:fee analysis |

Approved by	Signature	Date
Dan Helsel, Waterways Program Director	<small>DocuSigned by:</small> 	3/30/2022 1:36 PM CDT
Dave Siebert, EX Division Administrator	<small>DocuSigned by:</small> 	3/30/2022 1:46 PM CDT
Preston D. Cole, Secretary	<small>DocuSigned by:</small> 	3/30/2022 3:25 PM CDT

cc: Board Liaison - AD/8

DS


Program attorney – LS/8

by Sarah Barry

Department rule officer – LS/8

This page was intentionally left blank.

CORRESPONDENCE/MEMORANDUM

DATE: March 18, 2022

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on Board Order WT-22-19, NR 300, relating to the administration, procedures and enforcement of the Wisconsin wetland and waterway regulatory program (previously addressed in chapters 300, 301, 305, and 310, Wis. Adm. Code).

1. Subject of Proposed Rule:

The proposed rule consolidates four rules into one rule related to the administration, procedures and enforcement of the wetland and waterway permitting programs. The proposed rule repeals three rules and repeals and recreates NR 300.

2. Background:

The department is responsible to implement waterway and wetland permitting, exemption and other determinations for a number of activities including wetland fill, dam construction/reconstruction, waterway structure placement, dredging, water withdrawals, etc. This rule aligns administrative processes and procedures with statutory expectations and reflect current protocols. This rule also seeks to update the fee structure for various activities to reflect inflation and increased travel and administrative costs since the fee schedule was last changed in 2011.

3. Why is the rule being proposed?

The purpose of this proposed rulemaking is to 1.) establish procedures, timelines and fees for permitting, exemption and other regulatory determinations within the waterway and wetland program; 2.) update administrative procedures to align with statutory requirements; 3) clarify the wetland identification and confirmation process and fee system; and 4) other administrative updates. Legislative and programmatic changes have occurred since the original code language was drafted, necessitating the need to update these rules. The proposed rule includes procedural revisions and updates, removal of obsolete language, updates to ensure rule language is consistent with the statutes, updates to permit fees and approval processes, and language related to jurisdictional determinations.

4. Summary of the rule.

The purpose of this rule is to reduce the administrative code redundancy through consolidation of chs. NR 300, 301, 305, and 310. This rulemaking also seeks to update administrative procedures for waterway regulations to align with statutory requirements specified in chs. 30, 31, 227, and ss. 281.36, 23.32, and 23.321, Wis. Stats. The purpose of ss. NR 300.01 to 300.03 is to specify this purpose and to create consistent definitions for use. The purpose of subchapter I is to articulate regulatory processes for requesting waterway and wetland exemption reviews, general permits, and individual permits. This subchapter outlines application requirements, process for review, and general standards for which the department will make decisions. This subchapter also articulates the fee structure for waterway, wetland, and dam regulatory decisions. This purpose of subchapter II is to clarify that the water quality certification process must align with applicable 401 Clean Water Act requirements. Additionally, this subchapter clarifies that the department shall waive water quality certification that are eligible for an

exemption under subchapter I. Subchapter III articulates the process for stakeholders that request the department to complete an ordinary high water mark, navigability determination or wetland determination on their property. These services are options for property owners that want this information for planning purposes. This subchapter includes a description of the service, the process for a service request, service fees, and timelines. Subchapter IV clarifies the process and timeline for projects that require multiple permits under Subchapter I. This subchapter also outlines the process for after-the-fact permit process, general enforcement process and inspection authority.

5. How does this proposal affect existing policy?

The revised rule clarifies and codifies the department's current practice and implementation in alignment with applicable state statutes. The department will also better define the implementation and process for statutory authorities specified in ch. 30, ss. 23.321 and 281.36, Wis. Stats. The proposed rule also updates fees and creates new services for navigability and ordinary high water mark determinations.

6. Has Board dealt with these issues before?

The Board approved the scoping statement for this rule at the February 2020 Board meeting.

7. Who will be impacted by the proposed rule? How?

The proposed rule will benefit stakeholders seeking services for ordinary high water mark and navigability determinations. It will also help provide consistent implementation of waterway and wetland regulations in alignment with statute. Permitting fees proposed in this rulemaking will impact entities that wish to pursue a project that requires a waterway or wetland permit or approval.

8. Soliciting public input on economic impact synopsis

A public comment period on the draft Economic Impact Analysis (EIA) was held from October 17 to November 16, 2021, during which the Department received two written comments.

9. Small Business Analysis

Implementation of the proposed rule will reflect current statutes, standards, and procedures for administration of waterway and wetland permits and exemptions requests, waterways services requests, wetland identification and mapping requests, and program enforcement. The proposed rule results in fee increases for small business that wish to pursue a project in waterways or wetland that require a permit or approval. The proposed rule may also impact small businesses that want the department staff to complete or confirm an ordinary high water mark or navigability determination. Based on permit data collected from 2017-2020, it is estimated that approximately 10% of applications are for small business, and as such the increased fees for those businesses are estimated at \$24,000 per year.

Drafter: Amanda Minks

CORRESPONDENCE/MEMORANDUM

DATE: March 16, 2022

TO: Dave Siebert, Administrator, External Services Division
Dan Helsel, Interim Director, Waterways Bureau

FROM: Amanda Minks, Public Trust and Zoning Section Chief

SUBJECT: Fee analysis related to proposed rule changes to ch. NR 300, 301, 305 and 310 (WT-22-19)

Rule package WT-22-19 seeks to establish procedures, timelines and fees for permitting, exemption and other regulatory determinations within the waterway and wetland program. The scope statement that outlined the intent to update this rule, including evaluating the fee structure, were approved by the Governor on December 5, 2019. The Fiscal Estimate and Economic Impact Analysis was published for public comment on November 16, 2021. Included in the proposed rule package is an increase in the application fees for several waterway and wetland permits. One comment was received during the EIA comment period from Wisconsin Wetland Association. This organization confirmed that their comment was resolved in the response to comments in the EIA.

The rule package was released for public comment period from January 26, 2022, to March 7, 2022. No public comments were provided with concerns about inflation-based fee increases. One comment was provided by WMC provided concern about proposed fee increases that go beyond inflation. It is noted that we did receive one public comment in favor of the proposed fee structure as well.

The purpose of this memo is to clarify the information reviewed to support the proposed increase in fees.

Excerpt from EIA regarding proposed fee structure:

Stats	Fee Type	Current Fee	Proposed	Current Fee, Adjusted for Inflation	Average Number of Entities per Year	Average Annual Compliance Cost	Proposed Annual Compliance Cost	Change In Annual Compliance Cost
281.36	Wetland GP	500	600	619.83	274	137,000	164,400	27,400
281.36	Wetland IP	800	1,700	991.73	107	85,600	181,900	96,300
30.11	Bulkhead line/lakebed lease	600	900	743.8	1	600	900	300
30.12	Structures GP	300	350	371.9	200	60,000	70,000	10,000
30.12	Structures IP	600	750	743.8	255	153,000	191,250	38,250
30.1335	Marina IP	600	900	743.8	1	600	900	300
30.18	Withdrawal IP	600	900	743.8	1	600	900	300
30.19	Enlargement GP	300	350	371.9	103	30,900	36,050	5,150
30.19	Enlargement IP	600	750	743.8	37	22,200	27,750	5,550

30.195	Realignment IP	600	900	743.8	11	6,600	9,900	3,300
30.2	Dredging GP excluding GP20	300	350	371.9	101	30,300	35,350	5,050
30.2	Dredging IP	600	900	743.8	61	36,600	54,900	18,300
30.206	Other Waterway GPs	300	350	371.9	221	66,300	77,350	11,050
30.208	Other Waterway IPs	600	750	743.8	45	27,000	33,750	6,750
	WQC	600	750	743.8	7	4,200	5,250	1,050
	Declaratory ruling	800	800	991.73	0	0	0	0
						<i>Total Predicted Change for permits and approvals:</i>		229,050

Analysis

The Department is authorized to increase fees based on costs. Pursuant to ss. 30.28(1) and [281.36\(12\)\(c\)3.](#), Wis. Stats., the Department may increase any fee if the increase is necessary to meet the costs incurred by the Department in performing permitting decisions. The statute also stated that the fee includes reviewing, investigating, and making decisions on determinations and on whether to issue or grant permits, contracts, authorizations, or other approvals (ss. [30.28\(2m\)\(d\)](#) and [281.36\(12\)\(a\)](#), Wis. Stats.).

The current fee structure has not been updated since 2011.

Since there were no comments about proposed fee increases that reflect changes due to inflation, we will focus only on those proposed fee increase that are based on inflation plus additional factors. The table below provides the proposed fees in question:

Stats	Fee Type	Current Fee	Proposed	Current Fee, Adjusted for Inflation
281.36	Wetland IP	800	1,700	991.73
30.11	Bulkhead line/lakebed lease	600	900	743.8
30.1335	Marina IP	600	900	743.8
30.18	Withdrawal IP	600	900	743.8
30.195	Realignment IP	600	900	743.8
30.2	Dredging IP	600	900	743.8

The proposed fee structure would cover only 60% of program costs. On average, fee revenue currently provides approximately 44% (\$890,260 annually) of costs incurred by the Department to perform the regulatory tasks in ch. 30 and s. 281.36, Wis. Stats. This means that 56% of the regulatory program is subsidized by General Purpose Revenue (GPR) from taxpayers. The proposed fee structure does not recommend a true cost accounting model which would ensure that fees fully offset costs incurred by the Department to perform these regulatory tasks. Rather, this rule recommends increasing fees for

specific permit types where costs are incurred at a higher rate than other permit types. This permit type driven model helps ensure that the subsidized rate is commensurate across all permit types. If this proposed rule were to become effective, permit revenue would cover approximated 60% of the costs for ch. 30 and s. 281.36, Wis. Stats. regulated activities. This rulemaking did not pursue a true cost accounting model to compensate for all program costs because the permit fees would need to be significantly higher and would likely have a burdensome impact on businesses and private property owners.

Costs incurred by the Department for wetland permitting are statutorily driven. Wetland individual permits have higher costs than other individual permits because the Department must adhere to the Department review requirements specified in s. 281.36(3n)(b), Wis. Stats. This review includes considering practicable alternatives to avoid the wetland impacts; all practicable measures to minimize the adverse impacts to wetland functional values; and a review to ensure that significant adverse impact to wetland functional values, water quality, or other significant adverse environmental consequences do not occur. To complete this analysis, site investigation, detailed documentation and review of avoidance and minimization measures is required.

Nonfunded mandates for exempt activities requires the reallocation of GPR funding. 2017 Act 183 created the artificial and nonfederal wetland exemption and required the Department to review exemptions requests within 15 working days of receiving an exemption determination request (s. 281.36(4n)(e), Wis. Stats.). There is no mechanism to offset costs incurred for these exemption reviews so it is critical that permit revenue is generated so GPR funding can be reallocation to these nonfunded mandates. The exemption service has been a significant benefit to businesses, developers, and private property owners. Without this fee increase, these stakeholder groups may be adversely impacted as the service timelines may not be met.

Costs incurred by the Department for complex waterway projects are statutorily driven. Complex determinations for regulatory decisions authorized under ss. 30.11, 30.1335, 30.18, 30.195, and 30.20, Wis. Stats., have higher costs than other ch. 30, Wis. Stats., permits because they require more intensive resource manager review, increased travel expense for site reviews, and increased coordination requirements with applicant. Specific statutory requirements where costs are incurred include:

- Public interest findings (ss. 30.11(5), 30.18(5)(a), 30.195(2)(c)4., 30.20(1m)(a), Wis. Stats.)
- Review of in-water BMPs to ensure that environmental damage is minimized outside of the project footprint (ss. 30.195(2)(c)4., 30.20(1k)(a)1., 30.20(1m)(b), Wis. Stats.)
- Establish a public rights stage to specify surplus water amounts (s. 30.18(5)(a), Wis. Stats.)
- Review of economic or aesthetic information provided by the applicant (ss. 30.1335(3)(b), 30.195(2)(c)2., Wis. Stats.)
- Flood flow capacity review (s. 30.195(2)(c)3., Wis. Stats.)
- Ensuring the lease or sale of any material from the bed of any navigable lake or of any outlying waters is consistent with public rights (s. 30.20(2)(a), Wis. Stats.)
- Pre-application meeting to comply with ch. NR 347, Wis. Adm. Code, sediment testing requirements to ensure hazardous materials are not released into the environment (ss. 30.20(1k)(a)1., 30.20(1m)(b), Wis. Stats.)
- Site investigation to ensure no environmental caps are present (s. 30.20(1m)(b), Wis. Stats.)
- Review of dredge disposal plan to ensure no other waterways or wetlands are impacts and water quality is adequately protected in alignment with ch. NR 151, Wis. Adm. Code (s. 30.20(1k)(a)2., Wis. Stats.)
- Reviewing information regarding property title and history, rental information, and other related property information (ss. 30.1335(3)(b), 30.18(6), 30.195(2)(c)1., Wis. Stats.)

- Performing all necessary water quality certification actions under §401 of the federal Clean Water Act

Increasing fees will allow the program to provide a more consistent level of service to permit applicants. Currently, the program relies heavily on GPR to fund its activities which is problematic when state funds are lapsed or cut. Shifting to a more fee-based financial structure will allow the program to be more stable and maintain a level of service commensurate with the demand for waterway and wetland permitting. This fee revenue is also critically important to ensure that statutorily driven timelines pursuant to s. 281.36 and ch. 30, Wis. Stats., are satisfied. Compliance with these statutory timelines not only is a mandate of the state regulatory process but it also has a direct benefit on federal permitting timelines and processes as well. Wetland mitigation is a regulatory tool to offset wetland losses associated with certain types of permitted and exempt activities and is a requirement pursuant to s. 281.36(3n)(d), Wis. Stats. Mitigation is required by state and federal law and is jointly implemented by the Department and the United States Army Corps of Engineers (ACOE). Because the Department implements wetland permitting on a more aggressive timeline, Department staff often work with the ACOE in advance of their process deadlines to ensure that consistent mitigation decisions are made. This ensures that permittees satisfy both state and federal mitigation requirements through the same mechanism and helps streamline and expedite the federal regulatory process.

Inflation rates will continue to increase costs. The Department considered inflation from 2011 to 2021 for the basis for estimating permit fees for this rulemaking. These fees will be fixed in administrative code and not variable to account for future inflation. If inflation rates were to remain constant at 2.13%, the fee increases proposed in this rule would be offset by inflation within 10 years. It is noted that recent inflation rates have actually been much higher so this timeframe is projected to be shorter if current inflation rate and trends persist. The standard rulemaking process takes approximately 3 years to complete. The Department does not have adequate staffing to pursue fee increasing on a triennial basis to maintain fees based on inflation.

Fees are a small portion of overall project costs. Wetland mitigation is required by both state and federal wetland regulations (s. 281.36(3n)(d), Wis. Stats.). In conformance with s. 281.36(3r), Wis. Stats., wetland mitigation banking is the preferred mechanism to resolve mitigation requirements. Currently the average market price for wetland mitigation ranges from approximately \$75,000-\$110,000 per credit. This means that the proposed wetland fees would be approximately 2% of the regulatory costs necessary to impact an acre of wetlands. When considering the project costs in addition to mitigation, the percent of wetland permit fees is minimal compared to overall project budgets.

Comments and DNR Responses

Natural Resources Board Order WT-22-19

March 18, 2022

This document presents a summary of public comments received on proposed rules affecting chapters NR 300, 301, 305 and 310 related to the administration, procedures and enforcement of the Wisconsin Wetland and Waterway regulatory program. The proposed rule involves consolidating 4 rules into one by repealing chs. NR 300, 301, 305 and 310 and creating one new ch. NR 300.

Overview

Pursuant to the approved scope statement, this rulemaking seeks to: 1.) establish procedures, timelines and fees for permitting, exemption and other regulatory determinations within the waterway and wetland program; 2.) update administrative procedures to align with statutory requirements; 3) clarify the wetland identification and confirmation process and fee system; and 4) other administrative updates. The proposed rule seeks to consolidate four administrative codes into one administrative code by removing obsolete language, updating the rule language to ensure consistency with the statutes, updating permit fees and review processes, and other procedural and administrative updates and improvements.

Opportunities for Public Participation and Input

Opportunities for public participation in this rulemaking process are listed below:

- The Department engaged with the Wetland Study Council (members include Wisconsin Wetlands Assn, Ducks Unlimited, Wisconsin Realtors Assn, League of Municipalities, Wisconsin Farm Bureau Federation, the Water Council, wetland consultants, and wetland delineators) and an informational meeting on the proposed rule occurred on September 16, 2021. Members of the general public were also invited to attend this meeting. No comments were received at this informational meeting.
- A public comment period on the draft Economic Impact Analysis (EIA) was held from October 17 to November 16, 2021, during which the Department received two written comments.
- A public hearing on the proposed rule was held on March 7, 2022. Six members of the public attended the hearing and 1 member of the public provided verbal testimony.
- A comment period on the proposed rule was held from January 26, 2022 to March 7, 2022. Five written comments were submitted during the public comment period.

Legislative Council Rules Clearinghouse

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement in administrative code; adequacy of reference; and clarity, grammar, punctuation and use of plain language. Changes to the proposed rule were made to address these comments. Additionally, the Legislative Council Rules Clearinghouse provided several specific comments that were incorporated into the draft rule.

Comment 1: Section NR 300.04 (2) establishes eligibility criteria for exemptions provided under subch. II of ch. 30, Stats. This rule should ensure that NR 300.04 appropriately limits Department review based on statutory eligibility criteria for exemptions.

Response: Chapter 30, Wis. Stats., exemptions are specified in ss. 30.12, 30.123, 30.19 and 30.20, Wis. Stats. The intention of the s. NR 300.04 was to bring together some common technical elements of exemptions specified elsewhere in the NR 300 Administrative Code series. However, the Department appreciates that these exemptions cover a range of statutory provisions which each have important detail and nuance. The Department agrees that it is appropriate for this rulemaking to continue to focus on the administrative process for exemptions and focusing on the process for exemption reviews and when permits in lieu of exemptions is appropriate. Other rulemaking efforts will seek to align the technical elements of other administrative codes effectuating exemptions with applicable statutory authority. Section NR 300.04 has been updated to align with this intention.

Comment 2: It is not clear that the statutes authorize the Department to require a person to affirmatively confirm that an activity satisfies eligibility criteria before undertaking an exempt activity in ch. 30, Wis. Stats. The Department should explain its authority for the above provisions in greater detail.

Response: The Department agrees that stakeholders are not required to seek confirmation prior to completing eligible waterway exempt projects. For this reason, s. NR 300.04(4) states that a person **may** submit an exemption determination request form (emphasis added). To avoid confusion, the title of s. NR 300.04(4) has been updated to “voluntary review request” and additional clarifying language has been added that this is an optional service that a stakeholder can pursue if they would like to ensure that a proposed activity is edibility for a ch. 30, Wis. Stats., eligible waterway exemption.

Comment 3: The Department should clarify its statutory authority to require “other technical information” in s. NR 300.04(4).

Response: The Department has clarified that other technical information will only be requested if it is necessary to ensure compliance with applicable statutory requirements. The Department is authorized under s. 227.11(2)(a), Wis. Stats., to promulgate a rule which requests information to make exemption decisions pursuant to ss. 30.12 (2r), 30.123 (6r), and 30.20 (1r), Wis. Stats. This information is necessary to properly effectuate the purpose of the statutes. If the Department does not have sufficient information, it may determine a general permit or individual permit is necessary based on a lack of understanding of the project. Having an appropriate level of detail will ensure that stakeholders have an appropriate review and determination for exemption eligibility when they request this service.

Comment 4: Section NR 300.04 (6) provides an exception to the 15-day window provided in the statutes for Department review of a proposed activity, if the Department determines that information a person has provided is inaccurate or insufficient. It is not clear that ss. 30.12 (2r), 30.123 (6r), and 30.20 (1r), Wis. Stats., authorize such an exception.

Response: If the Department does not have sufficient information to make an exemption decision, it is not feasible for it to determine if a project is eligible for an exemption or not. This may result in the Department requiring a general permit or individual permit for the project or place a stakeholder at a higher risk for regulatory noncompliance for a project that may have been determined to be exempt if the appropriate information was supplied. Having a reasonable opportunity to request additional information helps protect both the Department and stakeholder from burdensome regulatory process due to a lack of information. If the Department does not have the opportunity to obtain appropriate information to determine a project is exempt, it must deny the request and stakeholders would need to submit a new request at their own expense once additional information is available. This puts additional administrative burden on the project proponent. Modifications were made to this section to clarify that the department will make an exemption determination within the 15-day window, but will allow a project proponent the opportunity to provide the necessary additional information to support the exemption request.

Comment 5: Proposed s. NR 300.04 (7) instead appears to authorize the Department to require a permit in lieu of any exemption in subch. II of ch. 30, Wis. Stats., on the basis that a proposed activity does not meet an “eligibility standard prescribed in statute or rule”, and states that, in doing so, the Department “may rely” on an inspection. Because it allows the Department to require a permit in lieu of exemption for all rather than only some exemptions, on a broader basis than the statutes allow, and with a voluntary rather than mandatory inspection, that provision appears to exceed the Department’s statutory authority. The Department should explain its authority for the provision in greater detail.

Response: The department is authorized to require permits in lieu of the exemptions under ss. 30.12(1g), 30.123(6)(d) and (f), and 30.20(1g), Wis. Stats. The department must have visited the site and made specific determinations in order to require a permit for an otherwise exempt activity. The proposed rule does not alter this requirement, but instead allows the department to rely on past site visits to meet this requirement. This section and s. NR 300.04(2) have been amended to clarify the scope of otherwise exempt activities for which the department may require a permit in lieu of an exemption. The department is not required to visit a site to determine that an activity is not eligible for exemption on the basis that eligibility standards prescribed in statute or rule are not met. Sections 30.12(1), 30.123(2) and 30.20(1), Wis. Stats., require a permit to conduct an activity that is not exempt; the department is not altering this requirement.

Comment 6: The Department should review the proposed provisions relating to wetland exemptions to ensure they are authorized.

Response: The Department updated s. NR 300.05(1) to ensure that it appropriate aligned with statutory exemptions specified in s. 281.36, Wis. Stats. Specifically, the Department reformatted and updated s.

NR 300.05(1) to ensure that the provisions in s. 281.36(5), Wis. Stats., only apply to the exemptions specified in s. 281.36(4), Wis. Stats. Pursuant to s. 281.36(6), Wis. Stats., the Department also has the authority to promulgate rules to incorporate any applicable federal law or interpretations into rule. Federal regulation 33 CFR § 323.4 is applicable to wetland exemptions specified in s. 281.36(4), Wis. Stats. Pursuant to 33 CFR § 323.4(c):

[A] discharge of dredged or fill material must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion. A conversion of a section 404 wetland to a non-wetland is a change in use of an area of waters of the United States. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.

Section NR 300.05(1) was updated to more specifically align with this and other federal rule language specified in 33 CFR § 323.4. The Department did not make additional changes to s. NR 300.05 after confirming that the requirements in this section are authorized under ss. 227.11(2)(a) and 281.36, Wis. Stats.

Comment 7: In s. NR 300.06, it appears that the Department may have applied certain procedures applicable to wetland general permits to general permits issued under ch. 30, Wis. Stats. For example, the statutes allow the Department to temporarily toll the 30-day review period for wetlands general permits based on adverse weather, but ch. 30, Stats., does not appear to provide analogous authority to do so.

Response: The Department is authorized under s. 30.206(3)(a), Wis. Stats., to request additional information to determine whether a proposed activity is authorized by a general permit. If the department makes a request for additional information, the 30-day period is tolled until the date the department receives the information. The Department has modified s. NR 300.06(4)(e) to clarify that the Department may request site-specific information as part of its request for additional information.

Comment 8: The Department should more specifically explain its authority to provide for the dismissal of a person's request after 30 days under s. NR 300.06 (4) (e) 3. or after 45 days under s. NR 300.07 (4) (a) 6.

Response: Sections NR 300.06(4)(e)3. and 300.07(4)(a)6. state that the Department may dismiss the application after 30 or 45 days, respectively. This is not a prescriptive requirement. In addition, the Department has authority under ss. 227.11(2)(a) and 281.36, Wis. Stats., to promulgate rules facilitating

efficient application processing, including the ability to dismiss permit applications for failure to provide information necessary to evaluate the application. Under s. 281.36(3)(h)1., 3., and (3m)(d), Wis. Stats., the Department may request additional information regarding an application, and application review will not proceed until the applicant has provided all requested information. Having a general timeframe in administrative code helps set expectations for both applicants and the Department. While many applicants seek to provide information in a timely fashion, some applicants have changes in funding, project scope, or timelines which can drastically extend the permitting process. The risk of removing this general timeline is that stakeholders may feel that their application was arbitrarily or capriciously dismissed. Having a general expectation helps provide transparency in the process, while also giving flexibility for project-specific timelines and needs. No changes were made based on this comment.

General Public Comments

Comment 1: There are concerns that requests from the private sector for navigability and ordinary high water mark (OHWM) confirmations will outpace the capacity of Department staff to meaningfully review and confirm preliminary third party determinations.

Response: The Department has added exclusions in s. NR 300.17(8) to clarify situations where the navigability and OHWM service would not be appropriate to address this concern.

Comment 2: The Department must institute robust quality assurance measures to ensure the integrity of navigability and OHWM confirmations.

Response: The Department agrees that quality assurance measures are critical to ensure program integrity of navigability and OHWM confirmations. While training, auditing and oversight systems are necessary, they are not appropriate to include in this rule but rather guidance to help implement this rule should it become effective. No changes were made based on this comment.

Comment 3: DNR should remove “who owns or leases land” from NR 300.17(1) and otherwise make these regulatory services available to the general public.

Response: Section NR 300.17 was updated to clarify that agents on behalf of property owners may also request the navigability and OHWM services. Other changes were not made to this section to ensure that Department staff do not trespass on private property.

Comment 4: DNR should amend NR 300.17(9) to provide itself with the discretion to revisit navigability and OHWM determinations when new information indicates that the information upon which the original determination was made may not be credible or is otherwise suspect in some way.

Response: Since the Department is the responsible party to make final navigability and OHWM determinations and confirmations, it has the responsibility to ensure data accuracy before making these final decisions. If data accuracy is in question, the service request may be dismissed pursuant to s. NR 300.17(4). The Department seeks to provide the regulated public with confidence that the Department

decision is not subject to change unless site conditions change as articulated in s. NR 300.17(9). The Department believes this confidence is needed for program integrity of these services and no changes were made based on this comment.

Comment 5: DNR should amend NR 300.17(9)(a) to provide itself the discretion to revisit navigability determinations when there are significant changes in fluvial geomorphology instead of hydrology.

Response: The Department agrees that changes to fluvial geomorphology can impact navigability and OHWM determinations in streams and rivers and amended s. NR 300.17(9)(a) to include both fluvial geomorphology and hydrology.

Comment 6: DNR should amend NR 300.17(2) and (3) to require photographs, which show scale, and require the “[e]xact location of the preliminary determination” to be expressed in terms of latitude and longitude, and 1/4, 1/4, Section, Township, Range.

Response: The Department finds that s. NR 300.17(2) and (3) already states that the applicant must provide an exact location of the preliminary determination and it is not necessary to specify a single format to gather this exact location in this rule. No change was made based on this comment.

Comment 7: Comments were provided that NR 300.04 limits eligibility of waterway exemptions specified in statute and contained vague regulatory language.

Response: The intention of the s. NR 300.04 was to bring together some common technical elements of exemptions specified elsewhere in the NR 300 Administrative Code series but not to unlawfully limit waterway exemption applicability specified in statute. The Department appreciates that these exemptions cover a range of statutory provisions which each have important detail and nuance. The Department agrees that it is appropriate for this rulemaking to continue to focus on the administrative process for exemptions reviews and when permits in lieu of exemptions are appropriate. Other rulemaking efforts will seek to align the technical elements of other administrative codes effectuating exemptions with applicable statutory authority. Section NR 300.04 has been updated to align with this intention.

Comment 8: The proposed rule is more restrictive than the wetland exemptions specified in statute.

Response: The Department updated s. NR 300.05(1) to ensure that it appropriately aligns with statutory exemptions specified in s. 281.36, Wis. Stats. Specifically, the Department reformatted and updated s. NR 300.05(1) to ensure that the provisions in s. 281.36(5), Wis. Stats., only apply to the exemptions specified in s. 281.36(4), Wis. Stats. Section NR 300.05(1) was also updated to more closely reflect federal requirements specified in 33 CFR § 323.4 as the Department has the authority to promulgate rules to incorporate any applicable federal law or interpretations into rule pursuant to s. 281.36(6), Wis. Stats.

Comment 9: The definition of “rare or high quality wetland” must be revised to “rare and high quality wetland” [see the proposed NR 300.05(1)].

Response: This term has been removed from this rule.

Comment 10: NR 300.05(6)(e) authorizing the DNR to seek “other technical information specified by the Department” is vague and should be updated or removed.

Response: Section NR 300.05(6)(f) requires the submittal of technical information that is necessary to ensure that the statutory requirements of the requested exemption are satisfied. The Department has authority under s. 227.11(2)(a), Wis. Stats., to promulgate a rule requiring information to implement the exemptions recognized in s. 281.36, Stats. If the Department does not have sufficient information to make an exemption decision, it is not feasible for it to determine if a project is eligible for an exemption or not. This may result in the Department recommending a general permit or individual permit for the project or place a stakeholder at a higher risk for regulatory noncompliance. Having a reasonable opportunity to request additional information helps protect both the Department and stakeholder from inappropriate decision-making due to a lack of information. Absent this authority, an increased number of exemptions may be dismissed given a lack of completeness. This puts an administrative burden on applicants as they would need to resubmit the exemption once this additional information is available. No changes were made based on this comment.

Comment 11: The proposed fee increases exceed what was explicitly authorized by the scope statement to go beyond inflation.

Response: The objective of the proposed rule as stated in the approved scoping statement is provided for convenience below (*emphasis added*):

The waterway and wetland program plans to revise chs. NR 300, 301, 305 and 310, Wis. Adm. Code related to the administration, procedures and enforcement of their permit program. The purpose of these codes is to 1.) *establish procedures, timelines and fees for permitting, exemption and other regulatory determinations within the waterway and wetland program*; 2.) update administrative procedures to align with statutory requirements; 3) clarify the wetland identification and confirmation process and fee system; and 4) other administrative updates. Legislative and programmatic changes have occurred since the original code language was drafted necessitating the need to update these rules.

The proposed rule changes may include procedural revisions and updates, removal of obsolete language, updates to ensure rule language is consistent with the statutes, *updates to permit fees and approval processes*, and language related to jurisdictional determinations. Additional rule changes may be

The scope statement does include reference to updating fees authorized under ch. 30, ss. 23.321 and 281.36, Wis. Stats. There is also no mention within the scoping statement to limit the fee increases to

solely reflect inflation. Pursuant to ss. 30.28(1) and [281.36\(12\)\(c\)3.](#), Wis. Stats., the Department may increase any fee if the increase is necessary to meet the costs incurred by the Department in performing permitting decisions. The statute also states that the fee includes reviewing, investigating, and making decisions on determinations and on whether to issue or grant permits, contracts, authorizations, or other approvals (ss. [30.28\(2m\)\(d\)](#) and [281.36\(12\)\(a\)](#), Wis. Stats.) For these reasons the Department finds that the scope statement has not changed in any meaningful or measurable way and a revised scope statement is not required.

Comment 12: The Department should better identify the increased services that will be offered to the regulated community as a result of the increase.

Response: *The proposed fee structure would cover only 60% of program costs.* Pursuant to ss. 30.28(1) and [281.36\(12\)\(c\)3.](#), Wis. Stats., the Department may increase any fee if the increase is necessary to meet the costs incurred by the Department in performing permitting decisions. The statute also stated that the fee includes reviewing, investigating, and making decisions on determinations and on whether to issue or grant permits, contracts, authorizations, or other approvals (ss. [30.28\(2m\)\(d\)](#) and [281.36\(12\)\(a\)](#), Wis. Stats.) The current fee schedule has not been updated since 2011. On average, fee revenue currently provides approximately 44% (\$890,260 annually) of costs incurred by the Department to perform the regulatory tasks in ch. 30 and s. 281.36, Wis. Stats. This means that 56% of the regulatory program is subsidized by General Purpose Revenue (GPR) from taxpayers. The proposed fee structure does not recommend a true cost accounting model which would ensure that fees fully offset costs incurred by the Department to perform these regulatory tasks. Rather, this rule recommends increasing fees for specific permit types where costs are incurred at a higher rate than other permit types. This permit type driven model helps ensure that the subsidized rate is commensurate across all permit types. If this proposed rule were to become effective, permit revenue would cover approximated 60% of the costs for ch. 30 and s. 281.36, Wis. Stats. regulated activities. This rulemaking did not pursue a true cost accounting model to compensate for all program costs because the permit fees would need to be significantly higher and would likely have a burdensome impact on businesses and private property owners.

Costs incurred by the Department for wetland permitting are statutorily driven. Wetland individual permits have higher costs than other individual permits because the Department must adhere to the Department review requirements specified in s. 281.36(3n)(b), Wis. Stats. This review includes considering practicable alternatives to avoid the wetland impacts; all practicable measures to minimize the adverse impacts to wetland functional values; and a review to ensure that significant adverse impact to wetland functional values, water quality, or other significant adverse environmental consequences do not occur. To complete this analysis, site investigation, detailed documentation and review of avoidance and minimization measures is required.

Nonfunded mandates for exempt activities requires the reallocation of GPR funding. Act 183 created the artificial and nonfederal wetland exemption and required the Department to review exemptions requests within 15 working days of receiving an exemption determination request (s. 281.36(4n)(e), Wis. Stats.) There is no mechanism to offset costs incurred for these exemption reviews so it is critical that permit revenue is generated so GPR funding can be reallocation to these nonfunded mandates. The

exemption service has been a significant benefit to businesses, developers, and private property owners. Without this fee increase, these stakeholder groups may be adversely impacted as the service timelines may not be met.

Costs incurred by the Department for complex waterway projects are statutorily driven. Complex determinations for regulatory decisions authorized under ss. 30.11, 30.1335, 30.18, 30.195, and 30.20, Wis. Stats., have higher costs than other ch. 30, Wis. Stats., permits because they require more intensive resource manager review, increased travel expense for site reviews, and increased coordination requirements with applicant. Specific statutory requirements where costs are incurred include:

- Public interest findings (ss. 30.11(5), 30.18(5)(a), 30.195(2)(c)4., 30.20(1m)(a), Wis. Stats.)
- Review of in-water BMPs to ensure that environmental damage is minimized outside of the project footprint (ss. 30.195(2)(c)4., 30.20(1k)(a)1., 30.20(1m)(b), Wis. Stats.)
- Establish a public rights stage to specify surplus water amounts (s. 30.18(5)(a), Wis. Stats.)
- Review of economic or aesthetic information provided by the applicant (ss. 30.1335(3)(b), 30.195(2)(c)2., Wis. Stats.)
- Flood flow capacity review (s. 30.195(2)(c)3., Wis. Stats.)
- Ensuring the lease or sale of any material from the bed of any navigable lake or of any outlying waters is consistent with public rights (s. 30.20(2)(a), Wis. Stats.)
- Pre-application meeting to comply with ch. NR 347, Wis. Adm. Code, sediment testing requirements to ensure hazardous materials are not released into the environment (ss. 30.20(1k)(a)1., 30.20(1m)(b), Wis. Stats.)
- Site investigation to ensure no environmental caps are present (s. 30.20(1m)(b), Wis. Stats.)
- Review of dredge disposal plan to ensure no other waterways or wetlands are impacts and water quality is adequately protected in alignment with ch. NR 151, Wis. Adm. Code (s. 30.20(1k)(a)2., Wis. Stats.)
- Reviewing information regarding property title and history, rental information, and other related property information (ss. 30.1335(3)(b), 30.18(6), 30.195(2)(c)1., Wis. Stats.)
- Performing all necessary water quality certification actions under §401 of the federal Clean Water Act

Increasing fees will allow the program to provide a more consistent level of service to permit applicants. Currently, the program relies heavily on GPR to fund its activities which is problematic when state funds are lapsed or cut. Shifting to a more fee-based financial structure will allow the program to be more stable and maintain a level of service commensurate with the demand for waterway and wetland permitting. This fee revenue is also critically important to ensure that statutorily driven timelines pursuant to s. 281.36 and ch. 30, Wis. Stats., are satisfied. Compliance with these statutory timelines not only is a mandate of the state regulatory process but it also has a direct benefit on federal permitting timelines and processes as well. Wetland mitigation is a regulatory tool to offset wetland losses associated with certain types of permitted and exempt activities and is a requirement pursuant to s. 281.36(3n)(d), Wis. Stats. Mitigation is required by state and federal law and is jointly implemented by the Department and the United States Army Corps of Engineers (ACOE). Because the Department implements wetland permitting on a more aggressive timeline, Department staff often work with the ACOE in advance of their process deadlines to ensure that consistent mitigation decisions are made. This ensures that permittees satisfy both state and federal mitigation requirements through the same mechanism and helps streamline and expedite the federal regulatory process.

Inflation rates will continue to increase costs. The Department considered inflation from 2011 to 2021 for the basis for estimating permit fees for this rulemaking. These fees will be fixed in administrative code and not variable to account for future inflation. If inflation rates were to remain constant at 2.13%, the fee increases proposed in this rule would be offset by inflation within 10 years. It is noted that recent inflation rates have actually been much higher so this timeframe is projected to be shorter if current inflation rate and trends persist. The standard rulemaking process takes approximately 3 years to complete. The Department does not have adequate staffing to pursue fee increasing on a triennial basis to maintain fees based on inflation.

Fees are a small portion of overall project costs. Wetland mitigation is required by both state and federal wetland regulations (s. 281.36(3n)(d), Wis. Stats.) In conformance with s. 281.36(3r), Wis. Stats., wetland mitigation banking is the preferred mechanism to resolve mitigation requirements. Currently the average market price for wetland mitigation ranges from approximately \$75,000-\$110,000 per credit. This means that the proposed wetland fees would be approximately 2% of the regulatory costs necessary to impact an acre of wetlands. When considering the project costs in addition to mitigation, the percent of wetland permit fees is minimal compared to overall project budgets.

Comment 13: Under the fiscal estimate and economic impact analysis provided by the division of executive budget and finance, the estimated cost of implementation would be 239,050 dollars annually, is very reasonable compared to the social and economic values associated with wetlands and waterways, and it is reasonable to reflect the cost to the Wisconsin DNR associated with the permitting review process. For context, according to the Wisconsin DNR, fishing related economic activity alone accounts for almost 2.3 billion dollars annually.

Response: Thank you for your comment. No changes made

Comment 14: The proposed rule requires the applicant to submit electronic applications for an individual or general permit. Use of electronic applications should be optional, not mandatory, under the rule.

Response: The rule state that applicants must use the Department electronic permitting system or through other Department-approved systems (emphasis added). The Department finds that this language does not create a mandate to use the e-permitting system. The rule was updated to remove reference to electronic forms in addition to electronic permitting systems to avoid confusion in response to this comment.

Comment 15: NR 300.06 should be updated to also include s. 30.2065 (General Permits for Certain Wetland Restoration Activities).

Response: This change has been made.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date 03/21/2022</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 300, Administration, Procedures and Enforcement of the Wetland and Waterway Permit Program, WT-22-19</p>	
<p>4. Subject Administration, Procedures and Enforcement of the Wetland and Waterway Permit Program</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$239,050 annually (breakdown provided in Question 14 below)</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule Current chs. NR 300, 301, 305, and 310 have outdated language and are missing administrative and procedural steps for Waterways Program activities. This rule would establish procedures, timelines, and fees for permitting, exemptions, and other regulatory determinations in the Program. The proposed rule revisions would align administrative procedures with current statutes and repeal process language redundant with statute. This rule also proposes to adjust fees to reflect costs incurred by the Wisconsin Department of Natural Resources to conduct permit reviews consistent with ch. 30 and s. 281.36, Wis. Stat. Adjustments for general permit and some individual permit fees are based solely on inflation. Individual permit applications and approvals for bulkhead line/lakebed lease, marinas, water withdrawals, and dredging projects are the most complex and time consuming waterway reviews which is reflected in the proposed adjustment from a \$600 to \$900 fee for these activities. Costs for wetland individual permits in s. 281.36, are adjusted from \$800 to \$1700 to reflect mitigation review and permit decisions and travel expenses associated with those reviews and decisions. This rule also proposes the creation of new fees for stakeholders that request the department to complete a navigability determination or an ordinary high water mark determination outside of the permit or compliance process.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The Department engaged with the Wetland Study Council (members include Wisconsin Wetlands Association, Ducks Unlimited, Wisconsin Realtors Association, League of Municipalities, Wisconsin Farm Bureau Federation, the Water Council, wetland consultants, and wetland delineators) and an informational meeting on the proposed rule occurred on September 16, 2021 regarding the economic impact analysis.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. The department intends to notify the League of Wisconsin Municipalities, the Wisconsin Towns Association, and the Wisconsin Counties Association so that counties and other local government units will be consulted as part of the solicitation process via email or phone.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local</p>	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The expenses incurred by the department to process waterway and wetland permits and approvals have significantly increased since they were enacted in 2011 Act 118. Fee increases are necessary to account for inflation, travel costs, and application mitigation review and approval decisions in order to provide program funding to implement statutory requirements in ch. 30, and s. 281.36, Wis. Stats., and provisions of the Clean Water Act's Section 401.

2011 Act 118 specified the fee structure for waterway and wetland permits and approvals in statute. This Act also provided the department the ability to adjust the fees through rulemaking based on costs. This rulemaking will update waterway and wetland fees for inflation for the following permit and approval types: wetland general permits; waterway structure general and individual permits; waterway enlargement general and individual permits; dredging general permits and water quality certification decisions. This rule also will update the fee structure for the following waterway and wetland permit and approval types to reflect inflation, travel costs and applicable mitigation processing costs: wetland individual permits; bulkhead line/lakebed lease approvals; marina individual permits; water withdrawal permits; stream realignment permits; and dredging individual permits.

The proposed rule also recommends fees be created for navigability determinations and ordinary high water mark determinations for private entities who are not pursuing a permit or engaged in a compliance issue with WDNR, but request this information for their use. This is a voluntary service only and is not a requirement of the permit process.

(A) Economic Impact on Specific Businesses, Business Sectors

This rulemaking will only impact entities that wish to pursue a project that requires a waterway or wetland permit or approval. Private businesses and municipalities currently pay an annual estimate of \$137,000 on 274 of wetland general permits (GPs); \$187,500 on 625 waterway GPs; \$85,600 on 107 of wetland individual permits (IPs), and \$247,200 on 412 waterway IPs. The proposed rule and new fee structure (see table below) would result in an additional \$27,400 for wetland GPs, \$31,250 for waterway GPs, \$96,300 for wetland IPs, \$73,050 for waterway IPs, and \$1,050 for water quality certification decisions. It is also estimated that specific business will request approximately 50 ordinary high water mark and navigability confirmations a year and 25 ordinary high watery mark and navigability determinations a year. This would result in an estimated \$10,000 in additional fees paid by the business sector.

(B) Economic Impacts on Local Governments, Utility Rate Payers and Public Entities

The proposed rule and new fee structure would not result in a change to the fee exemption structure for waterway projects that have state or federal funding or for wetland projects that are conducted by a state or federal agency. For projects that require a fee (see table below) this rulemaking is estimated to result in an additional estimated \$4,000 for wetland GPs, \$3,000 for waterway GPs, \$9,000 for wetland IPs and \$12,600 for waterway IPs. This estimate is based on the estimated number of local government projects that require a fee: 40 wetland GPs, 60 waterway GPs, and 60 waterway IPs. Because local governments can complete their own navigability and ordinary high water mark determinations, there is no estimated fiscal impact for the new fee for these services.

(C) State Economy

The department does not anticipate negative impacts to the state's economy.

(D) Fiscal Impacts:

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Under the proposed changes to fee structure for permits, exemptions, and services provided, the DNR Waterways Program would receive an additional \$239,050 annually for program operations cost. This increase would address increased costs to the program due to inflation since the statute was enacted.

Total Compliance Costs:

\$229,050 for all waterway and wetland approvals annually

\$10,000 for users of all ordinary high water mark and navigability services annually

Stats	Fee Type	Current Fee	Proposed	Current Fee, Adjusted for Inflation	Average Number of Entities per Year	Average Annual Compliance Cost	Proposed Annual Compliance Cost	Change In Annual Compliance Cost
281.36	Wetland GP	500	600	619.83	274	137,000	164,400	27,400
281.36	Wetland IP	800	1,700	991.73	107	85,600	181,900	96,300
30.11	Bulkhead line/lakebed lease	600	900	743.8	1	600	900	300
30.12	Structures GP	300	350	371.9	200	60,000	70,000	10,000
30.12	Structures IP	600	750	743.8	255	153,000	191,250	38,250
30.1335	Marina IP	600	900	743.8	1	600	900	300
30.18	Withdrawal IP	600	900	743.8	1	600	900	300
30.19	Enlargement GP	300	350	371.9	103	30,900	36,050	5,150
30.19	Enlargement IP	600	750	743.8	37	22,200	27,750	5,550
30.195	Realignment IP	600	900	743.8	11	6,600	9,900	3,300
30.2	Dredging GP excluding GP20	300	350	371.9	101	30,300	35,350	5,050
30.2	Dredging IP	600	900	743.8	61	36,600	54,900	18,300
30.206	Other Waterway GPs	300	350	371.9	221	66,300	77,350	11,050
30.208	Other Waterway IPs	600	750	743.8	45	27,000	33,750	6,750
	WQC	600	750	743.8	7	4,200	5,250	1,050
	Declaratory ruling	800	800	991.73	0	0	0	0
						<i>Total Predicted Change for permits and approvals:</i>		229,050

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

Proposed Serves	Proposed Fee	Estimated Service requests	Costs
OHWM determination	\$200	15	\$3,000
Navigability determination	\$200	10	\$2,000
OHWM confirmation	\$100	30	\$3,000
Navigability confirmation	\$100	20	\$2,000
		<i>Total Predicted Costs for OHWM and Navigability Services:</i>	\$10,000

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Implementation of the proposed rule will reflect current statutes, standards, and procedures for administration of waterway and wetland permits and exemptions requests, waterways services requests, wetland identification and mapping requests, and program enforcement.

Alternatively, if the revised rule is not promulgated, insufficient program revenue may be available to meet the requirements of ch. 30 and s. 281.36, Wis. Stats., and the Clean Water Act Section 401.

16. Long Range Implications of Implementing the Rule

The long range implications of the rule are the same as the short range implications.

17. Compare With Approaches Being Used by Federal Government

The USACE - St. Paul District regulates waterway and wetland impacts under the Clean Water Act s. 404. This rule proposal is intended to bring Waterways Program administrative procedures in line with the permitting program as much as is practicable given statutory requirements. The EPA regulates water quality certification under the Clean Water Act s. 401. This rule update aims to provide consistency with recent changes to the federal water quality certification process.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois Administrative Code 17, 1090 regulates exemption and permitting for state wetlands; Admin Code 3704 regulates public waters permitting and fees are tied annually to Consumer Price Index inflation rates. Ill. Admin Code 3702 provides the process for dam regulations.

Iowa relies on the federal water quality certification program for wetland regulations for Outstanding State Waters. Iowa does not have similar administrative code for a waterways and wetland program.

Michigan Rule 281.1300 regulates dam permits and fees, while 281.10 regulates permitting for inland lakes and streams, and 281.900 provides the administrative framework for wetland permitting and identification services.

Minnesota Chapter 8420 provides comprehensive regulations for wetland permitting, including local government roles and responsibilities, mitigation requirements, and enforcement procedures. MN Chapter 6115 regulates public waterways permitting and exemptions, including dam projects.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

19. Contact Name	20. Contact Phone Number
Amanda Minks	608-220-0368

This document can be made available in alternate formats to individuals with disabilities upon request.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

-
1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule results in fee increases for small business that wish to pursue a project in waterways or wetland that require a permit or approval. The proposed rule may also impact small businesses that want department staff to complete or confirm an ordinary high water mark or navigability determination. These costs are anticipated to have a minimal impact on small businesses.

Based on permit data collected from 2017-2020, it is estimated that approximately 10% of fee revenue is generated from small business based on the number of applications that needed to pay a fee and that were associated with an organization. This means that the total compliance cost increase to small business permittees would be approximately \$24,000.

-
2. Summary of the data sources used to measure the Rule's impact on Small Businesses
DNR Waterways Program database permit data over 2017-2020

-
3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☐ Less Stringent Compliance or Reporting Requirements
☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
☐ Consolidation or Simplification of Reporting Requirements
☐ Establishment of performance standards in lieu of Design or Operational Standards
☐ Exemption of Small Businesses from some or all requirements
☐ Other, describe:

-
4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The revised rule clarifies the administrative processes for waterways and wetland permit review, providing clear expectations for permittees with regard to application requirements, timelines, public notice, and decisions. The rule also outlines how to request and use department wetland identification, confirmation, and mapping services so that stakeholders can conveniently use these services.

-
5. Describe the Rule's Enforcement Provisions

The proposed rule revisions do not include enforcement provisions. Wetland and waterways permit violations are subject to enforcement in chs. 23, 30, 31, 281, and 283, Wis. Stats., and permittees and exempt applicants shall allow reasonable access to the department for site inspections.

-
6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No

3/22/22

The statement of scope for this rule, SS 122-19, was approved by the Governor on December 5, 2019, published in Register No. 763A3 on December 9, 2019, and approved by the Natural Resources Board on February 26, 2020. This rule was approved by the Governor on insert date.

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

The Wisconsin Natural Resources Board proposes an order to **repeal and recreate** Chapter NR 300; to **repeal** Chapters NR 301, 305, and 310; and to **amend** NR 320.06(1), NR 320.06(2), NR 320.06(3), NR 320.08(3), NR 323.04(1)(a), NR 323.04(2)(a), NR 323.04(3)(a), NR 323.05(1)(a), NR 323.05(2)(a), NR 323.05(3)(a), NR 323.06(3), NR 325.13(3), NR 328.04(1), NR 328.05(1), NR 328.06(1), NR 328.09(3), NR 328.35(1), NR 328.36(1) NR 328.39(3), NR 329.04(1)(a), NR 329.04(2)(a), NR 329.04(3)(a), NR 329.05(3), NR 341.02(1), NR 341.08(1)(a), NR 341.09(1)(a), NR 341.10(3), NR 343.02(1), NR 343.07(1)(a), NR 343.08(1), NR 343.10(3), NR 345.04(1)(a), NR 345.04(2)(a)1., NR 345.04(3)(a)1., NR 345.05(3) related to administrative processes and fees for waterway and wetland permitting and affecting small business minimally through an updated fee structure.

WT-22-19

Analysis Prepared by the Department of Natural Resources

1-3. Statute Authority, Interpretation and Explanation: This rule seeks to clarify administrative processes, procedures and fees specified in chs. 30, 31, 227 and ss. 281.36, 23.32 and 23.321, Wis. Stats. The department is responsible to implement waterway and wetland permitting, exemption and other determinations for a number of activities including wetland fill, dam construction/reconstruction, waterway structure placement, dredging, water withdrawals, etc. This rule aligns administrative processes and procedures with statutory expectations and reflect current protocols. This rule also seeks to update the fee structure for various activities to reflect inflation and increased travel and administrative costs.

4. Related Statutes or Rules: The existing chs. NR 300, 301, 305, and 310 rules are references throughout the ch. NR 300 rule series.

5. Plain Language Analysis:

The purpose of this rule is to reduce the administrative code redundancy through consolidation of chs. NR 300, 301, 305, and 310. This rulemaking also seeks to update administrative procedures for waterway regulations to align with statutory requirements specified in chs. 30, 31, 227, and ss. 281.36, 23.32, and 23.321, Wis. Stats. The purpose of ss. NR 300.01 to 300.03 is to specify this purpose and to create consistent definitions for use. The purpose of subchapter I is to articulate regulatory processes for requesting waterway and wetland exemption reviews, general permits, and individual permits. This subchapter outlines application requirements, process for review, and general standards for which the department will make decisions. This subchapter also articulates the fee structure for waterway, wetland, and dam regulatory decisions. This purpose of subchapter II is to clarify that the water quality certification process must align with applicable 401 Clean Water Act requirements. Additionally, this subchapter clarifies that the department shall waive water quality certification that are eligible for an exemption under subchapter I. Subchapter III articulates the process for stakeholders that request the department to complete an ordinary high water mark, navigability determination or wetland determination on their property. These services are options for property owners that want this information for planning

purposes. This subchapter includes a description of the service, the process for a service request, service fees, and timelines. Subchapter IV clarifies the process and timeline for projects that require multiple permits under Subchapter I. This subchapter also outlines the process for after-the-fact permit process, general enforcement process and inspection authority.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: The USACE - St. Paul District regulates waterway and wetland impacts under the Clean Water Act s. 404. This rule proposal is intended to bring Waterways Program administrative procedures in line with the permitting program as much as is practicable given statutory requirements. The EPA regulates water quality certification under the Clean Water Act s. 401. This rule update aims to provide consistency with recent changes to the federal water quality certification process.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

The department received no comments at the preliminary public hearing and during the comment period for the statement of scope.

8. Comparison with Similar Rules in Adjacent States: Illinois Administrative Code 17, 1090 regulates exemption and permitting for state wetlands; Admin Code 3704 regulates public waters permitting and fees are tied annually to Consumer Price Index inflation rates. Ill. Admin Code 3702 provides the process for dam regulations.

Iowa relies on the federal water quality certification program for wetland regulations for Outstanding State Waters. Iowa does not have similar administrative code for a waterways and wetland program.

Michigan Rule 281.1300 regulates dam permits and fees, while 281.10 regulates permitting for inland lakes and streams, and 281.900 provides the administrative framework for wetland permitting and identification services.

Minnesota Chapter 8420 provides comprehensive regulations for wetland permitting, including local government roles and responsibilities, mitigation requirements, and enforcement procedures. MN Chapter 6115 regulates public waterways permitting and exemptions, including dam projects.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

This rule will align with standard application submittal processes such as the WDNR Water ePermitting System with online geolocation mapping system called the Surface Water Data Viewer (SWDV) to provide regulators, EPA and stakeholders with transparent permit decision information that can be downloaded to GIS and handheld devices for implementation reports, compliance monitoring, landscape-scale water quality analyses, and Clean Water Act reporting, among other benefits. This system is connected with the waterway and wetland permit database which has an established workflow to ensure data accuracy and consistency in alignment with the department Quality Management Plan (QMP). Information regarding number of permitted activities, service requests and timelines was collected from these standard systems. Inflation costs for fee adjustments was based on standard adjustment rates provided by the Bureau of Labor Statistics.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

The proposed rule results in fee increases for small business that wish to pursue a project in waterways or

wetland that require a permit or approval. The proposed rule may also impact small businesses that want the department staff to complete or confirm an ordinary high water mark or navigability determination.

Based on permit data collected from 2017-2020, it is estimated that approximately 10% of applications are from small business. As such, we estimate the total compliance cost increase to small business permittees to be approximately \$24,000 per year.

11. Effect on Small Business (initial regulatory flexibility analysis):

Implementation of the proposed rule will reflect current statutes, standards, and procedures for administration of waterway and wetland permits and exemptions requests, waterways services requests, wetland identification and mapping requests, and program enforcement.

12. Agency Contact Person: Amanda Minks; 101 S. Webster St., Madison, WI, 53703;
Amanda.Minks@Wisconsin.gov; 608-220-0368

13. Place where comments are to be submitted and deadline for submission:

A public comment period for the rule occurred from January 26, 2022 to March 7, 2022, with a public hearing held on March 7, 2022.

RULE TEXT

SECTION 1. NR 300 is repealed and recreated to read:

Chapter NR 300 Administration of Waterway and Wetland Permits, Exemptions, and Regulation Enforcement

- NR 300.01** Purpose
- NR 300.02** Applicability
- NR 300.03** Definitions

Subchapter I – Regulatory Decisions

- NR 300.04** Waterway exemptions
- NR 300.05** Wetland exemptions
- NR 300.06** Waterways and wetland general permits
- NR 300.07** Waterways and wetland individual permits
- NR 300.08** Notices and public comment
- NR 300.09** Individual permit decision
- NR 300.10** Dam individual permits
- NR 300.11** Waterway and wetland permit fees

Subchapter II – Water Quality Certification

- NR 300.12** General
- NR 300.13** Notification
- NR 300.14** Process
- NR 300.15** Waiver
- NR 300.16** Individual water quality certification decisions

Subchapter III – Regulatory Services

- NR 300.17** Navigability and ordinary high water mark determinations
- NR 300.18** Wetland determinations

Subchapter IV – Enforcement and Permit Proceedings

- NR 300.20** After the fact permits
- NR 300.21** Relationship of enforcement and permit proceedings
- NR 300.22** Relationship of enforcement and confirmations
- NR 300.23** Exceptions to time limits
- NR 300.24** Inspection authority

NR 300.01 Purpose. This chapter prescribes procedures, timelines, and fees for waterway and wetland regulatory decisions and services including exemption, permitting, and enforcement decisions as well as wetland mapping, wetland identification, wetland confirmation, and waterway jurisdictional decisions.

NR 300.02 Applicability. This chapter applies to regulatory services and decisions for waterway and wetland activities pursuant to chs. 30, 31, and 227 and ss. 281.36, 23.32, and 23.321, Stats.

NR 300.03 Definitions. In this chapter:

(1) “Business day” or “working day” means each day except Saturday, Sunday and “Legal Holidays” as provided in s. 995.20, Stats.

(2) “Department” means the department of natural resources.

(3) “Environmental damage” means the harming of any wildlife or wildlife habitat including fish, bird, animal, or plant life, or degradation of the air, land, and waters within the state.

Note: The definition of environmental damage is necessarily general as it must be subjectively applied in conformance with applicable statutes.

(4) “Environmental pollution” has the meaning specified in s. 299.01 (4), Stats.

(5) “Field investigation” means a physical inspection of the location of a proposed action requiring a permit or approval under ch. 30 or 31, Stats., or s. 23.321 or 281.36, Stats., and surrounding areas that may be directly or indirectly affected by the proposed action, carried out by an employee or agent of the department for the purpose of determining whether the proposed action meets applicable requirements of law.

(6) “General permit” means a permit issued by the department to allow a category of regulated activities regulated under ss. 30.206, 30.12 (3), 30.123 (7), 30.19 (3r) 30.20 (1t), or 281.36 (3g), Stats.

(7) (a) “Individual permit” means a permit issued by the department for a single project under specific applicable provisions of s. 281.36 (3m) or ch. 30, Stats., excluding s. 30.206, Stats.

(b) “Individual permit” includes a contract issued under s. 30.20, Stats.

(8) “Navigable waterway” has the same meaning specified in s. 30.01 (4m), Stats.

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).

(10) “Person” means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency, or federal agency.

(11) “Secondary impacts” means impacts to wetlands that are causally linked to the proposed project.

Note: Secondary impacts may include, but are not limited to, hydrologic impacts, changes in wildlife use due to habitat fragmentation or habitat conversion, erosion (sedimentation/siltation) due to inadequate or missing site stabilization, or the introduction or increase of invasive or non-native plant species to a wetland.

(12) “Waters of the state” has the meaning specified in s. 281.01 (18), Stats.

Subchapter I

Regulatory Decisions

NR 300.04 Waterway exemptions.

(1) **APPLICABILITY.** This section applies to all of the waterway exemptions specified in subch. II of ch. 30, Stats.

(2) **ELIGIBILITY.** A person may only undertake a waterway activity that is exempt from permitting under ch. 30, Stats., if the proposed activity complies with all applicable chapter 30, Stats., statutory requirements and administrative code provisions promulgated thereunder. A permit is appropriate in lieu of an exemption specified in ss. 30.12 (1g), 30.123 (6) (d) and (f), and 30.20, Stats., to prevent any of the following:

- (a) Significant adverse impacts to the public rights and interests.
- (b) Environmental pollution, as defined in s. 299.01 (4), Stats.
- (c) Material injury to the riparian rights of any riparian owner.
- (d) Impacts to a waterbody that has a classification or designated use that precludes the activity from being exempt pursuant to ch. 30, Stats.
- (e) Other exemption requirements specified in ch. 30, Stats., and applicable administrative codes are not satisfied.

Note: Examples of waterbodies that may not be eligible to be exempt include areas of special natural resource interest and public right features. See ss. NR 1.05 and 1.06 for more information.

Note: Exemption requirements are specified in the ch. NR 300 Administrative Code series.

(3) RESPONSIBILITY. A person is responsible for ensuring that the requirements specified in sub. (2) as well as all applicable statutory requirements for the specific exemption will be met.

Note: Federal or local permits or approvals may be required. The requester is responsible for obtaining all necessary federal or local permits or approvals for their activity.

Note: The department may develop guidance, checklists, or other materials to help stakeholders make an eligibility determination.

(4) VOLUNTARY REVIEW REQUEST. A person may submit an exemption determination request to the department if a stakeholder would like to ensure that proposed activity and site is eligible for an exemption. The exemption request shall include the following:

- (a) A statement that describes the proposed activity.
- (b) The site location.
- (c) The construction timing and methods that will be used.
- (d) The project scope and design.
- (e) A demonstration that the proposed activity will not cause a material injury to the riparian rights of any riparian owners.
- (f) If the exemption request is from the project proponent, a statement of consent to allow the department to inspect the site.
- (g) Other technical information necessary to ensure that the project complies with applicable statutory requirements. Additional information may be necessary for waterway exemption projects specified in ss. 30.12, 30.123, and 30.20, Stats., to ensure that the project does not have a significant adverse impact to the public rights and interests, cause environmental pollution as defined in s. 299.01 (4), Stats., or cause material injury to the riparian rights of any riparian owner.

(5) REVIEW DEADLINE. The exemption request in sub. (4) must be submitted through standard submittal procedures specified by the department and not less than 15 working days before commencing the activity in order to receive department review prior to initiating this activity. Except as provided in sub. (6), if the department does not take action within 15 days, the project proponent may proceed with the activity so long as the activity complies with the specific eligibility standards for the exemption.

(6) DECISION TIMELINE. (a) The department shall make a decision within 15 days after receiving the exemption determination request unless the department determines that the information provided in sub. (4) is inaccurate or insufficient to determine that the project is exempt, in which case the department may request additional information, subject to all of the following:

1. The department may not request additional information more than once unless additional information requests are agreed to by the requester and department.
2. The department will notify the requester in writing that the department cannot determine

that the activity is exempt unless the additional information is satisfied and inform the requester of applicable individual or general permits that would be required for the activity. Written notification may be provided electronically by the department.

(b). Within 30 days of the request for additional information, the department shall provide the project proponent with written notification of the decision. Written notification may be provided electronically by the department.

(c) If the project proponent fails to provide the additional information to the department within 30 days of the request for additional information, or an alternative reasonable period of time agreed to by the department and requester, the department may notify the requestor in writing that the department's exemption original exemption determination stands.

(7) PERMITS IN LIEU OF EXEMPTIONS. The department shall deny an exemption request if it determines that an eligibility standard prescribed in statute or administrative code is not met or if the department finds that a permit is necessary for the project in order to meet statutory standards under s. 30.12 (2r), 30.123 (6m) or 30.20 (1m), Stats. The department shall include in its notice of decision which general or individual permit would be most appropriate for the project. 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 to make this determination.

(8) PUBLIC RIGHTS FEATURES. If a project is initially determined to be ineligible for an exemption because it is located in a public rights feature as described in s. NR 1.06, a person or the department may provide information to re-evaluate this designation. If sufficient site-specific information can be provided that demonstrates that this designation is no longer appropriate, the department shall update the designation and the project proponent may undertake the exempt activity so long as all other eligibility standards are met. The standards and process specified in s. NR 1.06 (6) shall be used when making these determinations.

(9) DECISION NOTICE. If the person who submits the exemption request is not the landowner, the department shall provide written notice of the decision to the landowner in addition to the person requesting the exemption. This notice may be provided electronically.

(10) FEDERAL LAW. When considering whether a project is eligible for an exemption under ch. 30, Stats., the department shall consider applicable federal law and interpretation when making exemption decisions.

NR 300.05 Wetland exemptions.

(1) ELIGIBILITY. No property owner or person on behalf of a property owner may discharge dredged material or fill material into a wetland unless all of the following requirements are met:

(a) The proposed activity complies with all applicable eligibility standards specified in s. 281.36 (4), (4m), (4n), or (4r), Stats.

(b) All applicable mitigation requirements will be satisfied prior to the discharge.

(c) Eligible discharges pursuant to s. 281.36 (4), Stats. shall also ensure that all of the following requirements are met:

1. The discharge will not flood the property of adjacent property owners unless there is a signed flood easement with that adjacent owner.

2. The discharge will not impede the flow or circulation of water in the remaining wetland or in surrounding wetlands.

3. Secondary impacts of the discharge will not reduce the reach of the remaining wetland or in surrounding wetlands.

4. The proposed activity will not convert the wetland into a use to which it was not previously subject, where the flow or circulation of water may be impaired or the reach of such waters reduced.

Note: A change in use may include a discharge of fill into a wetland that results in a conversion of the wetland to another wetland type.

(2) RESPONSIBILITY. The project proponent shall ensure that the requirements specified in sub. (1) as well as all applicable statutory requirements for the specific exemption will be met.

Note: Federal or local permits or approvals may be required. A requester is responsible for obtaining all necessary federal or local permits or approvals for their activity.

(3) VOLUNTARY EXEMPTION REVIEWS. The project proponent may undertake an exempt activity authorized under s. 281.36 (4), (4m), or (4r), Stats., if the standards specified in sub. (1) are met. A person may submit an exemption determination request to the department if a stakeholder would like to ensure that proposed activity and site is eligible for an exemption if the exemption request includes all of the information in sub. (6). The request must be submitted not less than 15 working days before commencing the activity if the stakeholder would like to benefit from this service. The request shall be submitted using standard procedures established by the department.

(4) MANDATORY EXEMPTION REVIEWS. A project proponent shall notify the department no fewer than 15 working days prior to initiating a project that may affect a wetland or landscape feature under s. 281.36 (4n), Stats. The notification shall contain all information specified in sub. (6) and shall be submitted through the department electronic permitting system or through other department-approved systems.

(5) FEDERAL LAW. When considering whether a project is eligible for an exemption under s. 281.36 (4), (4n), or (4r), Stats., the department shall make determinations consistent with existing and additional federal law and interpretation as defined in s. 281.36 (1) (a) and (b), Stats.

(6) SUBMITTAL REQUIREMENTS. The exemption request must include all of the following:

(a) The site location.

(b) A statement issued by a professional who has investigated the wetland and who is qualified to give such an opinion that the proposed activity is eligible for the exemption.

(c) All definitive evidence requested by the department on a request form or accompanying instruction to justify and document the applicable eligibility standards specified in s. 281.36 (4), (4m), (4n), and (4r), Stats., or other applicable administrative rules are satisfied.

(d) If the exemption request is not submitted by the landowner, a statement of consent by the landowner to allow the department to inspect the site if necessary.

(e) Other technical information specified by the department to ensure that all statutory requirements of the exemption are satisfied.

(7) **TIMELINE.** The department shall make a decision within 15 working days after receiving the exemption request. If the department does not take action within 15 working days, the project proponent may proceed with the activity if the activity complies with the specific eligibility standards for the exemption and s. 281.36 (5), Stats., unless the department determines that the information provided in sub. (6) is inaccurate or insufficient to make an exemption determination in which case the department may request additional information, subject to all of the following:

(a) The department may notify the person one time to request additional information.

(b) The review timeline will be on hold until the request for additional information is satisfied. The review timeline will resume once the request for additional information is satisfied.

(c) The department may perform a site visit if it is necessary to gather additional information to make a determination. The department shall perform the site visit within 15 working days after receiving the exemption request unless inclement weather prevents the site visit from occurring. In this instance the review timeline will be on hold until the site visit can be completed.

(d) The department shall provide the project proponent with written notification of the decision. Written notification may be provided electronically.

(e) If the project proponent fails to provide the additional information to the department within 30 days of the request for more information, or an alternative reasonable period of time agreed to by the department and requester, the department may dismiss the request.

(8) **PERMITS IN LIEU OF EXEMPTIONS.** The department shall deny an exemption request if it determines that an eligibility standard prescribed in statute is not met or if the department finds that a permit is necessary for the project in order to meet statutory standards. The department shall include in its notice of decision which general or individual permit would be most appropriate for the project. 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 to make this determination.

(9) **DECISION NOTICE.** If the person who submits the exemption request is not the landowner, the department shall provide written notice of the decision to the landowner in addition to the requester. This notice may be provided electronically.

NR 300.06 Waterway and wetland general permits.

(1) **ELIGIBILITY.** To be eligible for authorization under a general permit pursuant to s. 30.206, 30.2065, 30.12, 30.123, 30.19, 30.20, or 281.36, Stats., an activity shall meet all applicable standards of the general permit and shall comply with all applicable statutory standards and requirements in this subchapter.

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

(2) APPLICATION. A person who seeks to proceed with an activity under a general permit in sub. (1) shall submit an application through the department electronic permitting system or other submittal process specified by the department and shall provide all the information requested in sub. (3). The department shall maintain the application form for permitting requests and shall provide a copy of the form to any person upon request. This copy may be provided electronically.

Note: General permit application forms are available on the department's website at <http://dnr.wi.gov> under the topic "Water Permits."

(3) APPLICATION REQUIREMENTS. A person filing an application under sub. (2) shall submit the application to the department not less than 30 days before the proposed commencement of the activity. The permit application must include the following information:

- (a) A narrative that describes the proposed activity.
- (b) The site location.
- (c) The project scope and design.
- (d) Site photos.
- (e) A statement of consent to allow the department to inspect the site.
- (f) All other information specified in the general permit and accompanying application form.

Note: Other permits may also be required. An applicant is responsible for requesting and obtaining all necessary federal, state, and local permits or approvals for their activity.

(4) ELIGIBILITY DETERMINATION. Except as provided under sub. (6), the department shall determine whether the activity qualifies for a general permit, subject to all of the following:

- (a) The department shall use the complete application under sub. (3) to make this determination.
- (b) The department may use information and data gathered by the department in a prior inspection of the activity site or waterbody adjacent to the activity site to make this determination.
- (c) The department may investigate or visit a site to determine whether an activity meets the standards for a general permit.

(d) Except as provided under pars. (e) and (f), the department shall determine if an applicant is eligible for a general permit within 30 days from the date of receipt of the application.

(e) The department may request additional information or a site visit if the department determines that the application is inaccurate or insufficient to make an eligibility determination, subject to all of the following:

1. The review timeline will be on hold until the request for additional information is satisfied. The review timeline will resume once the request for additional information is satisfied.

2. The department shall provide the applicant with written notification of the request for more

information. This request may be provided electronically.

3. The department may dismiss the request if the project proponent fails to provide the additional information to the department within 30 days of receiving the request for more information, or an alternative reasonable period of time agreed to by the applicant and department.

(f) If the department determines that a site visit is necessary as part of the request for additional information pursuant to par. (e) to make an eligibility determination under sub. (4), the site visit shall occur within 30 days unless site conditions are not feasible due to adverse weather conditions, property access issues or other similar issues. The application will remain on hold until the site visit can be completed, subject to all of the following:

1. The department shall notify the applicant in writing of the need for the site visit. This notice may be provided electronically. The department shall include an anticipated timeline in this notice based on the earliest time period conditions are anticipated to be conducive to complete the site visit.

2. The department may not put a project on hold for adverse weather more than once.

Note: Adverse weather may include frozen ground, extreme drought or flood conditions.

(g) The department shall notify the applicant of the eligibility determination based on the information available under pars. (a) to (f) and the general permit conditions. The date of the final decision is the date that written notification is sent to the applicant. Written notification may be provided electronically.

(h) If the department does not take action under par. (d), the applicant may proceed with the activity if the activity complies with the conditions of the general permit, and the department may not require the applicant at any time to apply for an individual permit or apply to enter a contract unless required to do so by a court or hearing examiner.

(i) 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 or apply for an individual permit. In its notification, the department shall state why the project is ineligible for a general permit. If the applicant is not the landowner, the landowner shall also receive a copy of this decision. This notification may be provided to the applicant and landowner electronically.

(5) WETLAND SELF-REPORTING GENERAL PERMIT DETERMINATIONS. (a) The department may waive the review process specified in sub. (4) for activities that are authorized under s. 281.36 (3g), (b), or (c), Stats., and meet all of the following requirements:

1. The activity will clearly meet the eligibility standards for the statewide general permit.

2. The activity will comply with applicable stormwater management requirements.

3. The activity will not impede the flow or circulation of water in adjacent or surrounding wetland complexes.

4. The activity poses a limited environmental risk which shall include all of the following:

a. The activity will not cause significant permanent secondary impacts to surrounding wetlands.

b. The activity will not adversely impact fish spawning or fish spawning habitat.

5. The activity will be completed consistent with applicable floodplain and shoreland zoning requirements.

6. A statement is provided in the application in sub. (3) from the project proponent certifying that the proposed project is compliant with all applicable eligibility standards in the proposed general permit.

(b) The department shall notify the project proponent that a project has been self-reported under this subsection in writing and provide a copy of the general permit conditions. The notification shall be provided to the applicant no later than 30 days after the date a complete application is submitted to the department. The notice may be provided electronically to the project proponent.

(c) The project proponent shall comply with all applicable general permit conditions in accordance with the signed certification in par. (a) 6. and the general permit coverage requirements.

(d) The department may require at any time that the person proposing to engage in the activity apply for an individual permit if the project proponent fails to maintain eligibility for the general permit.

(e) If the department does not take action under par. (b), the project proponent may proceed with the activity if the activity complies with the specific general permit standards.

(6) GENERAL PERMIT COVERAGE. (a) A general 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. In addition, the permittee shall comply with all other permit terms and conditions during construction and implementation of the project.

(b) 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.

(c) 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.

(d) The permittee shall complete the project within the timeframe specified in the permit decision. If the project is not completed by the date in the permit decision, the permittee may request the department to re-evaluate the project to determine if the project fails to comply with eligibility standards of a valid general permit. The request shall be provided to the department in writing and shall identify the proposed modified timeline, any changes from the originally permitted design, and the reason the project did not meet the original timeline. The department may consider this information and offer general permit coverage if good cause is 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.

(e) The permittee shall maintain the project in good condition and in compliance with the terms and conditions of the permit and this chapter.

NR 300.07 Waterway and wetland individual permits.

(1) APPLICABILITY. To be eligible for authorization under an individual permit, an activity shall meet all standards for the individual permit in ch. 30 and s. 281.36, Stats., the rules in this chapter, the rules specifying the standards for the regulated activity, and all of the following, if applicable:

(a) For activities that impact navigable waters of the state below the ordinary high water mark, ch. 30, Stats., shall apply.

Note: Examples of activities that impact navigable waters include dredging, placement of fill materials or structures, enlargements, and diverting water.

(b) For discharges of dredged material or fill material into wetlands and above the ordinary high water mark of a navigable waterway, s. 281.36, Stats., shall apply.

Note: The rules specifying standards for regulated activities for which waterway and wetland individual permits are available are the ch. NR 300 series and chs. NR 103 and 299, Wis. Adm. Code.

(2) APPLICATION. A person who seeks an individual permit from the department under sub. (1) shall submit an application through the department electronic permitting system or other submittal process specified by the department and shall provide all the information specified in sub. (3). The department shall maintain the application form for permitting requests and shall provide a copy of the form to any person upon request. This copy may be provided electronically.

Note: Individual permit application forms are available at department service centers and on the department's website at <http://dnr.wi.gov> under the topic "Water Permits."

(3) APPLICATION REQUIREMENTS. The individual permit application shall include all of the following information:

- (a) A narrative that describes the proposed activity.
- (b) The site location.
- (c) The project scope and design.
- (d) A statement of consent to allow the department to inspect the site.
- (e) The preferred option to satisfy applicable mitigation requirements.
- (f) All other information specified in the individual permit application form.

Note: Federal permits may also be required. An applicant is responsible for obtaining all necessary federal permits or approvals for their activity.

Note: Local land use or building permits or other approvals may also be required. An applicant is responsible for obtaining all necessary local permits or approvals for their activity.

(4) COMPLETENESS REVIEW AND TIMELINES. (a) The department shall review an individual

permit application to determine if the application is technically complete, subject to all of the following:

1. The department shall determine if the application is complete within 30 days of receipt.
2. If the application does not comply with the submittal requirements specified under sub. (3), 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.
3. The application review timeline in subd. 1. will be on hold until the applicant submits the necessary information described in sub. (3).
4. The department may make only one request for additional information during the 30-day period specified in subd. 1. The department may request additional information from the applicant to supplement the application, but the department may not request items of information that are outside the scope of the original request unless the applicant and the department both agree. A request for any such additional information may not affect the 30-day review timeline.
5. The department shall notify the applicant in writing that the application is complete, which may be provided to the applicant electronically. This notice may include any of the following:
 - a. Notice of closure letter.
 - b. Notice of pending application letter.
6. The department may dismiss an individual permit application 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 or within an alternative timeline as agreed to by the applicant and department. The department shall notify the applicant of the parts of the application that are incomplete. This notification may be provided electronically.
7. The department may not determine an application is complete unless the department determines that the applicant has provided all information necessary for any environmental analysis required under ch. NR 150, and water quality certification under subch. II and ch. NR 299.
 - (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.

(5) INTERESTED PARTIES. All of the following are interested and potentially interested members of the public under ss. 30.208 (3) and 281.36 (3m) (g) 1., Stats.:

- (a) The adjacent riparian on each side of the property on which the project is located.
- (b) 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.

- (c) The clerks of the county and the town, village, or city in which the activity is located.

(d) Any person who submits to the department a formal 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.

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

(f) Any other person or group who requests a copy of the application no later than 10 days before the scheduled hearing date.

(g) Other agencies or units of government as specified by an interagency agreement.

Note: Other agencies or units of government including affected American Indian tribes or bands, the county or applicable municipal zoning authority, the U.S. army corps of engineers and others may also be copied on electronic notifications of a permit.

NR 300.08 Notices and public comment.

(1) NOTICE OF PENDING APPLICATION. (a) Within 15 days after the date of closure under s. NR 300.07 (4) (a) 5., the department shall send the applicant a public notice of pending application if the department has not already done so as part of the notice of closure.

(b) The department shall publish the notice under par. (a) on the department website. The date of the notice shall be the date on which the department first publishes the notice on its website.

(c) The applicant shall publish the class 1 notice in a newspaper identified by the department and shall notify interested and potentially interested members of the public as determined under s. NR 300.07 (4) of the notice provided under par. (a) unless the applicant has requested the department to publish the notice and notify interested and potentially interested members of the public. The applicant shall submit payment in accordance with s. 281.36 (3p) (d) 2m., Stats., with the request for the department to satisfy the publication and notification requirement.

(d) The notice shall comply with the requirements of ch. 985, Stats.

(2) PUBLIC COMMENT PERIOD. (a) The public comment period shall comply with the applicable statutory timelines in ss. 30.208 and 281.36 (3m), Stats.

Note: Pursuant to statute, the public comment period is never less than 30 days and will be extended if a hearing is requested.

(b) During the public comment period any person may submit written comments as specified in ss. 30.208 (3) to (5) and 281.36 (3m), Stats., on the pending application. Public comment may be submitted electronically or to the mailing address specified in the notice of complete application or notice of public hearing.

(3) PUBLIC INFORMATION HEARINGS. (a) Any person may submit a request for public hearing to the department or if the department determines that there is a significant public interest in holding a

public hearing, the department may hold a public hearing. The department shall hold a hearing upon request by any person.

(b) The notice of public hearing shall contain all the information required under ss. 30.208 (5) (b) and 281.36 (3p), Stats., as applicable.

(c) The applicant shall publish the class 1 notice in a newspaper identified by the department and shall notify interested and potentially interested members of the public as determined under s. NR 300.07 (4) of the notice provided under par. (b) unless the applicant has requested and paid for the department to complete the notice in which case the department shall satisfy this requirement.

(d) The notice under par. (c) shall comply with the requirements under ch. 985.12, Stats.

(e) A public hearing held under par. (a) shall comply with the protocols specified under ch. NR 2.

Note: Public informational hearings held pursuant to this subsection are not contested cases as defined under s. 227.01 (3), Stats.

(f) In lieu of an in-person hearing, the department may conduct a public informational hearing through telepresence for good cause, which may include all of the following:

1. The applicant and any interested member of the public that requested the public informational hearing agree to this hearing format.

2. A telepresence hearing will provide for efficient and effective means to gather public comment and information.

3. All hearing materials are readily available electronically.

NR 300.09 Individual permit decision.

(1) DECISION DATE. (a) The department shall render a decision to approve, deny, or modify an individual permit within the applicable statutory timelines.

(b) Timelines listed in s. 281.36 (3m) (i), Stats., may be modified to individual permits if compensatory mitigation requirements under s. 281.36 (3r) (a), Stats., and ch. NR 350 have not been satisfied.

Note: The decision timeline is 30 days unless a hearing is requested.

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

- (a) Plans and information provided by an applicant.

- (b) Information gathered during site investigations.

- (c) Written or oral information provided during a public comment period or public hearing.

(d) Statements or information provided by local, state, and federal government agencies.

(e) Data or information found in natural resource inventories and plans, or maps collected by the department or others using commonly accepted methods.

(f) Scientific research.

(g) Section 1.11, Stats., and chs. NR 299 and 150.

(h) Any other pertinent information.

(3) NOTICE OF DECISION. The department shall notify all of the following, in writing or through electronic notification, of its decision on an individual permit application:

(a) The applicant.

(b) Other agencies as specified by an interagency agreement.

Note: Other agencies including affected American Indian tribes or bands, the county or applicable municipal zoning authority, the U.S. army corps of engineers, and others may also be copied on electronic notifications of the decision.

(c) Any person who asks the department in writing for a copy of the final decision.

(4) EFFECTIVE DATE. Except as provided under sub. (5), the individual permit shall take effect upon notification of the decision to all parties listed under sub. (3).

(5) PETITION FOR ADMINISTRATIVE REVIEW AND REQUEST FOR STAY. A petition for administrative review of the individual permit decision may contain a request for a stay under ss. 30.209 (1m) or 281.36 (3q) (d), Stats., as applicable. A petition for administrative review shall be filed with the department within 30 days of the department's decision to approve, deny, or modify an individual permit or contract.

(a) The petition shall comply with applicable requirements of ch. NR 2.

(b) The process and timelines pursuant to ss. 30.209 (1m) and 281.36 (3q), Stats., shall be followed.

(c) Chapter HA 1 shall apply to any administrative review procedures not addressed by s. 30.209, 281.36 (3q), or 227.42, Stats., or this section.

NR 300.10 Dam permits, approvals, and determinations.

(1) For any permit, approval, or determination made under ss. 31.02 to 31.38, Stats., the applicant shall submit, as requested by the department, at any time during the review process, additional information the department finds to be reasonably necessary for review of the application.

(2) 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 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., as follows:

(a) For a permit, approval, or determination with an estimated time of 3 hours or less, the fee is \$50.

(b) For a permit, approval, or determination with an estimated time of more than 3 hours but not more than 9 hours, the fee is \$300.

(c) For a permit, approval, or determination with an estimated time of more than 9 hours, the fee is \$500.

NR 300.11 Waterway and wetland permit fees.

(1) WETLAND PERMIT FEES. The application fee for an authorization to proceed under a wetland general permit under s. 281.36 (3g), Stats., is \$600. The application fee for a wetland individual permit under s. 281.36 (3m), Stats., is \$1,700.

(2) WATERWAY GENERAL PERMIT FEE. The application fee for an authorization to proceed under a waterway general permit under ss. 30.206 and 30.2065, Stats., is \$350.

(3) WATERWAY INDIVIDUAL PERMIT FEES. (a) Except as provided in pars. (b) and (c), the application fee for a waterway individual permit under s. 30.208, Stats., is \$750.

(b) The application fee for a regulatory decision under s. 30.11, Stats., is \$900.

(c) The application fee for a waterway individual permit under ss. 30.1335, 30.18, 30.195, 30.20, 30.206, Stats., is \$900.

(4) NOTIFICATIONS. The fee for a class 1 notice in s. NR 300.08 (1) (c) or (3) (c) published by the department is \$150.

(5) EXPEDITED SERVICE FEES. The department shall charge an additional \$3,500 if an applicant requests in writing that the permit, approval authorization, or determination be issued, or the contract be granted within a time period that is shorter than what is statutorily specified.

(6) AFTER-THE-FACT FEES. The fee for an after-the-fact permit under s. NR 300.20 shall be double the original permit fee.

(7) WATER QUALITY CERTIFICATION. The department shall charge a \$750 fee to process a water quality certification request under ch. NR 299 unless the request also requires a state permit, in which case this fee is waived.

(8) GENERAL PERMIT REFUND. If an applicant withdraws a general permit application prior to the department making a decision, the permit fee shall be refunded to the applicant. The fee shall not be refunded to the applicant if a permit decision is issued or the permit application is dismissed.

(9) INDIVIDUAL PERMIT REFUND. A refund for individual permit fees may only be granted if an

applicant withdraws an individual permit application before the application is determined to be complete under s. NR 300.07 (3).

(10) PAYMENT. The department may utilize an electronic payment system for collecting payment. The department may impose a \$3 service fee to use the electronic payment system.

Subchapter II. Water Quality Certification

NR 300.12 General. Regulatory decisions under subch. I may require water quality certification.

Note: Clean Water Act Section 402 and 404 permits may require state certification.

NR 300.13 Notification. It is the responsibility of the U.S. army corps of engineers to inform the department as the certifying agency when a water quality certification action is required.

NR 300.14 Process. The department shall work with persons and the U.S. army corps of engineers to ensure that all procedural requirements of Clean Water Act Section 401 are implemented. The department may enter into a memorandum of understanding with the U.S. army corps of engineers to specify this process.

NR 300.15 Waiver. The department shall waive water quality certification requirements for projects authorized under ss. NR 300.04 and 300.05. The department shall also waive water quality certification requirements for projects that do not impact waters of the state. The department may waive water quality certification for other projects on a case-by-case basis in alignment with ch. NR 299.

NR 300.16 Individual water quality certification decisions. If the U.S. army corps of engineers determines that an individual water quality certification decision is required, the department shall use the individual permit review process and comply with the applicable timelines specified under s. NR 300.07. The fee shall be \$700 for these determinations.

Subchapter III. Regulatory Services

NR 300.17 Navigability and ordinary high water mark determinations.

(1) TYPES OF DETERMINATIONS. Any person who owns or leases land or acting as an agent of the property owner may request that the department provide any of the following determinations for the fee specified under sub. (3):

(a) A navigability determination based on an on-site inspection of the land by the department of whether a waterbody is navigable. The department shall provide a navigability determination in writing for an individual waterbody within a project boundary.

Note: A navigability determination is the appropriate service for a stakeholder seeking a watercourse determination.

(b) An ordinary high water mark determination based on an on-site inspection of the land by the department of the ordinary high water mark for an individual waterbody on a property.

(c) A navigability confirmation, which is a service the department provides to concur with the navigability of a waterbody as preliminarily determined by an independent third party. The preliminary navigability determination is prepared by an independent third party and meets the minimum submittal requirements specified in sub. (2). If the department concurs with the preliminary navigability determination completed by the independent third party, the department's confirmation becomes the state's legal determination and the confirmation shall also include the exact location and summarize the information used to make this determination. If the department does not agree with the preliminary navigability determination as presented by the independent third party, the department may request the necessary information from the independent third party needed for the determination decision to be concluded by the department, or the department may follow up with a site inspection to make the final determination for navigability.

(d) An ordinary high water mark confirmation, which is a service the department provides to concur with an ordinary high water mark determination of a waterbody as determined by an independent third party. The ordinary high water mark determination is prepared by an independent third party and meets the minimum submittal requirements specified in sub. (3). If the department concurs with the ordinary high water mark determination completed by an independent third party, the department's confirmation shall also include the exact location and summarize the information used to make this determination. If the department does not agree with the preliminary ordinary high water mark determination as presented by the independent party, the department may request the necessary information from the third party needed for the determination decision to be concluded by the department, or the department may follow up with a site inspection to make the final determination for the ordinary high water mark.

Note: For zoning purposes, a person should request services in this section from their local zoning authority.

Note: An ordinary high water mark or navigability determination must be either completed by the department or confirmed by the department before it can be used for department regulatory decisions.

(e) Requests for a service under pars. (a) to (d) shall be submitted in the manner and form specified by the department, for the service.

(f) A person may request that the department complete a navigability-in-fact determination if the person disputes the navigability determination under par. (a) or (c). The department shall use a watercraft to confirm the navigability of the waterway. A requester shall comply with the declaratory ruling process specified in s. 227.41, Stats.

(2) MINIMUM NAVIGABILITY SUBMITTAL REQUIREMENTS. Minimal submittal requirements must be provided to the department in order to submit a navigability confirmation request under s. NR 300.17 (1) (c). The minimum submittal requirements shall include all of the following:

(a) Exact location of the preliminary determination.

(b) Summary of findings and preliminary result.

(c) Historical data including aerial imagery, topography, and survey data.

(a) Current topographic information.

(b) Hydrologic conditions including bank height, bed width, and water depth.

- (c) Weather conditions prior to gathering field data.
- (d) Biological characteristics of the waterway.
- (e) Site photos.
- (f) Other information specified by the department.

(3) MINIMUM ORDINARY HIGH WATER MARK SUBMITTAL REQUIREMENTS. Minimal submittal requirements must be provided to the department in order to submit an ordinary high water mark confirmation request under s. NR 300.17 (1) (d). The minimum submittal requirements shall include all of the following:

- (a) Exact location of the preliminary determination.
- (b) Summary of findings and preliminary result.
- (c) Vegetation types above and below the preliminary ordinary high water mark.
- (d) Factors affecting location of the ordinary high water mark such as structures, shore protection and shore configuration.
- (e) Weather conditions prior to gathering field data.
- (f) Distance from ordinary high water mark to water's edge.
- (g) Preliminary ordinary high water mark elevation and benchmark information.
- (h) Site photos.
- (i) Other information specified by the department.

(4) SERVICE REQUESTS. (a) Except as provided in par. (b), a person who seeks a service from the department under sub. (1) shall submit this request through the department electronic permitting system or other submittal process specified by the department and shall provide all the information in sub. (2) or (3). The department shall maintain service requests forms consistent with the minimal submittal requirements in subs. (2) and (3) and shall provide a copy of the form to any person upon request. This copy may be provided electronically.

(b) The department may dismiss service requests for requests that do not have proper site indicators or information to meet the minimum submittal requirements.

(5) GENERAL FEES. The department may charge the following fees for services:

(a) The application fee for an ordinary high water mark determination under sub. (1) (b) is \$200 for each project boundary.

(b) The application fee for a navigability determination under sub. (1) (a) is \$200 for each waterway within a project boundary.

(c) The total application fee for both an ordinary high water mark and a navigability determination under pars. (a) and (b) is \$300 for each waterbody within a project boundary.

(d) The application fee for an ordinary high water mark confirmation under sub. (1) (d) is \$100.

(e) The application fee for a navigability determination under sub. (1) (c) is \$100.

(f) The application fee for a navigability-in-fact determination under sub. (1) (f) is \$800.

(g) The department may utilize an electronic payment system for collecting payment. The department may impose a \$3 service fee to use the electronic payment system.

(6) EXPEDITED FEES. The department shall charge the following fees for services:

(a) The department may charge a supplemental fee for service under sub. (1) that is an additional expedited service fee of \$3,500 charged under sub. (5) if all of the following apply:

1. The applicant requests in writing that the service be provided within a time period that is shorter than the time limit specified under sub. (7) for that type of service.

2. The department verifies that it will be able to comply with the request.

(7) TIMELINE. Except as provided under pars. (c) and (d), the department shall do all of the following:

(a) Provide a navigability determination or ordinary high water mark determination under sub. (1) (a) or (b) no later than 60 days after a person files a request, in the manner and form required by the department, for the service.

(b) Provide a navigability confirmation or ordinary high water mark confirmation under sub. (1) (c) or (d) no later than 30 days after a person files a request, in the manner and form required by the department, for the service.

(c) If adverse weather conditions, or other conditions at the site, prevent the department from conducting an accurate on-site inspection necessary for making the determination under sub. (1) in sufficient time to comply with the deadline under par. (a) or (b), the department shall give notice to the person requesting the service that adverse weather conditions, or other conditions at the site, will prevent the department from complying with the deadline and give notice to the person that the department will provide the service as soon as possible when weather conditions, or other conditions at the site, allow the department to conduct an accurate on-site inspection.

Note: Adverse weather conditions may include severe flood or drought conditions or other weather patterns that make gathering accurate on-site information infeasible.

(d) If a person fails to submit all information required for the service request under sub. (1) (c) or (d), the department may request additional information. The department may not ask for additional information more than once. The timeline under par. (a) will be on hold until this additional information request is satisfied.

Note: An ordinary high water mark or navigability determination must be either completed by the department or confirmed by the department before it can be used for department regulatory decisions.

(8) EXCLUSIONS. The services specified in sub. (1) are not available if any of the following apply:

(a) The waterbody in question is on Lake Michigan, Lake Superior, outlying waters as defined in s. 29.001 (63), Stats., waterbodies subject to submerged land lease pursuant to s. 24.39 (4) (d), Stats., or waterbodies with approved bulkhead line pursuant to 30.11, Stats.

(b) A court order has specified the ordinary high water mark or navigability determination for the area in question.

(c) The request is related to a project where only local regulations are applicable.

Note: Projects only subject to shoreland setback should pursue compliance with local regulations only and would not be appropriate for this service.

(9) MEMORANDUM OF AGREEMENT. The department may negotiate with municipalities, the U.S. army corps of engineers, and other governmental entities to enter into a memorandum of agreement that provides navigability and ordinary high water mark determinations through alternative means and methods in lieu of the process, timelines, and fees specified subs. (2) to (7).

Note: Municipalities may make ordinary high water mark or navigability determinations for the purposes of implementing their own regulatory or zoning programs.

(10) LENGTH OF VALIDITY. (a) Except as provided under s. 30.10 (2) (b), Stats., navigability determinations and confirmations under sub. (1) (a) and (c) are valid in perpetuity unless a requestor or the department can demonstrate that water level fluctuations, land use changes, or other factors that significantly change hydrology or fluvial geomorphology at the site have caused the characteristics of a navigable waterway to be substantially altered since a previous department determination.

(b) Ordinary high water mark determinations and confirmations under sub. (1) (b) and (d) are valid for a period of 5 years unless a requestor or the department can demonstrate that physical ordinary high water mark indicators have substantially changed due to natural processes since a previous department determination was made.

NR 300.18 Wetland determinations.

(1) WETLAND IDENTIFICATION AND CONFIRMATION SERVICE. Any person who requests a wetland identification or confirmation service from the department under s. 23.321, Stats., shall use standard request protocols and submittal requirements that are established by the department. The department will complete these service requests as soon as practicable consistent with s. 23.321 (4), Stats., and may use off-site review methods consistent with U.S. army corps of engineers wetland determination protocols as provided under s. 281.36 (2m), Stats.

(a) The department may develop and utilize off-site review methods for non-growing season wetland identification and confirmation services in lieu of putting these requests on hold under s. 23.321 (4) (b), Stats., so long as the methods are consistent with U. S. army corps of engineers standards as provided under s. 281.36 (2m), Stats.

(2) EXPEDITED SERVICE FEES. In addition to the fees specified under s. 23.321 (3), Stats., the department shall charge an additional \$3,500 fee for stakeholders who wish to expedite a wetland identification or confirmation service request under s. 23.321 (3m), Stats.

(3) WETLAND MAPPING. The department shall develop and maintain standard mapping methods and quality assurance protocols that align with applicable federal fish and wildlife service standards to complete the mapping requirements under s. 23.32, Stats.

(a) A person may request that a watershed be mapped by the department using the standards in this subsection. A request shall be for a watershed no smaller than a 12-digit hydrologic unit code (HUC) watershed.

(b) The department will establish mapping priorities based on available funding and may enter into a memorandum of agreement with the person in par. (a) to secure adequate funding for the mapping request.

(c) The department may enter into a memorandum of agreement with another organization or entity to incorporate wetland mapping conducted by the organization or entity so long as the memorandum of agreement and mapping outputs comply with applicable state and federal standards and s. 23.32, Stats.

Note: The current mapping standards are available at <https://dnr.wisconsin.gov/topic/Wetlands/inventory.html>.

Subchapter IV. Enforcement and Permit Proceedings

NR 300.20 After-the-fact permits. (1) Except as provided under sub. (3), the department may process an after-the-fact permit application for a regulated project that was initiated or completed prior to receiving a permit authorizing that activity. The after-the-fact permit may be a general or individual permit.

(2) If an after-the-fact permit is processed prior to the completion of an enforcement action against the person who initiated or completed the regulated activity, the department may continue the processing of the enforcement action, regardless of whether the after-the-fact permit is ultimately granted.

(3) This section shall not preclude the department from scheduling a permit application for public hearing on the same day as an abatement hearing under s. 30.03 (4) (a), Stats.

NR 300.21 Relationship of enforcement and permit proceedings. The department shall not process after-the-fact permit or approval applications under s. NR 300.20 prior to the completion of any enforcement actions if any of the following apply:

(a) The project is causing or is likely to cause environmental damage.

(b) Department staff have an objection to the issuance of the permit or approval based on the relevant statutory standards for issuance of the permit or approval.

(c) The prosecuting attorney in the enforcement action has not given consent to the processing of the application prior to the completion of the enforcement action.

NR 300.22 Relationship of enforcement and confirmations. The department shall not process an ordinary high water mark or navigability confirmation request pursuant to s. NR 300.17 prior to the completion of any enforcement action if any of the following apply:

(a) Department staff have an objection to the confirmation based on the relevant statutory standards.

(b) The information provided is not reflective of site conditions or does not meet the minimal submittal requirements in s. NR 300.17 (2) or (3).

(c) The prosecuting attorney in the enforcement action has not given consent to the processing of the confirmation request prior to the completion of the enforcement action.

NR 300.23 Exceptions to time limits. (1) When a contested case hearing is required because of objections to the granting of a permit or approval by the department, or when such a hearing is scheduled on the department's own motion, the department's decision shall be provided to the applicant within 45 business days after completion of the hearing or the report required under s. 227.116 (4), Stats. The decision may be provided to the applicant electronically or by mail.

(2) When an applicant's proposed project requires more than one department approval for which a time limit has been established pursuant to s. 227.116 (1r), Stats., decisions to which this chapter applies shall be made by the last day of the longest applicable time limit or the report required by s. 227.116 (4), Stats.

Note: For example, if an applicant requests both a general permit and an individual permit for a single and complete project, the individual permit timeline is the applicable regulatory timeline for the project.

(3) The time limits specified in subchs. I and II do not include the number of business days between any of the following:

(a) The date a decision is made by the department to prepare an environmental impact analysis under s. 1.11, Stats., and the date a final determination is made that the department has complied with s. 1.11, Stats.

(b) The date a request is made to an applicant for additional information necessary for the department to issue a decision under the applicable statute and the date that information is received by the department.

(c) The date a class I legal notice under ch. 985, Stats., is mailed by the department and the date the department receives satisfactory proof of publication of that notice from the applicant.

(d) Time delays necessary due to adverse weather.

(4) If the department's action on a requested permit or approval is delayed or prevented by an order or decision of a court of law, the time limit specified under subch. I shall be adjusted to conform to the court's decision or order.

(5) If the department's action on a requested permit or approval is delayed or prevented by the

action or failure to act of an agency or private party other than the department or the applicant, the time limit specified under subch. I shall be adjusted accordingly.

NR 300.24 Inspection Authority. (1) For purposes of making a regulatory decision under subchs. I to IV or determining compliance with a project authorized under a regulatory decision under subchs. I to IV, the department may do any of the following:

(a) Enter and inspect any property on which is located a wetland or part of a wetland or a waterway for which an application or request under subch. I or II has been submitted.

(b) Enter and inspect any property on which is located a wetland or waterway to investigate a discharge that the department has reason to believe is in violation of this chapter.

(c) Gain access to and inspect any records that a holder of a wetland or waterway individual permit or a person acting under the authority of a wetland general permit is required by the department to keep.

(2) The department shall provide reasonable advance notice to the property owner before entering and inspecting property as authorized under sub. (1).

(3) If the owner of the property refuses to give consent for the entry and inspection, the department may do any of the following:

(a) Apply for, obtain, and execute a special inspection warrant under s. 66.0119, Stats.

(b) Deny an application for a waterway or wetland individual permit or deny authorization to proceed under a waterway or wetland general permit.

SECTION 2. NR 301, 305 and 310 are repealed.

SECTION 3. NR 320.06(1) is amended to read:

(1) EXEMPTIONS. (a) *Procedures.* Exemptions shall be processed according to the procedures in ch. ~~NR 310~~ NR 300.

SECTION 4. NR 320.06(2) is amended to read:

(2) GENERAL PERMITS. (a) *Procedures.* 1. General permits shall be processed according to the procedures in ch. ~~NR 310~~ NR 300.

SECTION 5. NR 320.06(3) is amended to read:

(3) INDIVIDUAL PERMITS. (a) *Procedures.* 1. Individual permits shall be processed according to the procedures in ch. ~~NR 310~~ NR 300.

SECTION 6. NR 320.08(3) is amended to read:

(3) When an after-the-fact permit application has been filed with the department, the department shall follow the procedures in ch. ~~NR 301~~ NR 300 for violations.

SECTION 7. NR 323.04(1)(a) is amended to read:

(a) *Procedures.* Exemptions shall be processed according to the procedures in ch. ~~NR 310~~ NR 300.

SECTION 8. NR 323.04(2)(a) is amended to read:

(a) *Procedures.* 1. General permits shall be processed according to the procedures in ch. ~~NR 310~~ NR 300.

SECTION 9. NR 323.04(3)(a) is amended to read:

(a) *Procedures.* 1. Individual permits shall be processed according to the procedures in ch. ~~NR 310~~ NR 300.

SECTION 10. NR 323.05(1)(a) is amended to read:

(a) *Procedures.* Exemptions shall be processed according to the procedures in ch. ~~NR 310~~ NR 300.

SECTION 11. NR 323.05(2)(a) is amended to read:

(a) *Procedures.* General permits shall be processed according to the procedures in ch. ~~NR 310~~ NR 300.

SECTION 12. NR 323.05(3)(a) is amended to read:

(a) *Procedures.* Individual permits shall be processed according to the procedures in ch. ~~NR 310~~ NR 300.

SECTION 13. NR 323.06(3) is amended to read:

(3) When an after-the-fact permit application has been filed with the department, the department shall follow the procedures in ch. ~~NR 301~~ NR 300 for violations.

SECTION 14. NR 325.13(3) is amended to read:

(3) When an after-the-fact permit application has been filed with the department, the department shall follow the procedures in ch. ~~NR 301~~ NR 300 for violations.

SECTION 15. NR 328.04(1) is amended to read:

(1) PROCEDURES. Exemptions shall be processed according to the procedures in ch. ~~NR 310~~
NR 300.

SECTION 16. NR 328.05(1) is amended to read:

(1) PROCEDURES. (a) General permits shall be processed according to the procedures in ch. ~~NR~~
~~310~~ NR 300.

SECTION 17. NR 328.06(1) is amended to read:

(1) PROCEDURES. (a) Individual permits shall be processed according to the procedures in ch.
~~NR 310~~ NR 300.

SECTION 18. NR 328.09(3) is amended to read:

(3) When an after-the-fact permit application has been filed with the department, the department
shall follow the procedures in ch. ~~NR 301~~ NR 300 for violations.

SECTION 19. NR 328.35(1) is amended to read:

(1) PROCEDURES. (a) General permits shall be processed according to the procedures in ch. ~~NR~~
~~310~~ NR 300.

SECTION 20. NR 328.36(1) is amended to read:

(1) PROCEDURES. (a) Individual permits shall be processed according to the procedures in ch.
~~NR 310~~ NR 300.

SECTION 21. NR 328.39(3) is amended to read:

(3) When an after-the-fact permit application has been filed with the department, the department
shall follow the procedures in ch. ~~NR 301~~ NR 300 for violations.

SECTION 22. NR 329.04(1)(a) is amended to read:

(a) *Procedures*. Exemptions shall be processed according to the procedures in ch. ~~NR 310~~ NR
300.

SECTION 23. NR 329.04(2)(a) is amended to read:

(a) *Procedures*. General permits shall be processed according to the procedures in ch. ~~NR 310~~
NR 300.

SECTION 24. NR 329.04(3)(a) is amended to read:

(a) *Procedures*. Individual permits shall be processed according to the procedures in ch. ~~NR 310~~ NR 300.

SECTION 25. NR 329.05(3) is amended to read:

(3) When an after-the-fact permit application has been filed with the department, the department shall follow the procedures in ch. ~~NR 301~~ NR 300 for violations.

SECTION 26. NR 341.02(1) is amended to read:

(1) GRADING SITES. This chapter applies to activities regulated under s. 30.19 (1g) (c), Stats. An application for a grading permit shall be filed with the department pursuant to ch. ~~NR 310~~ NR 300 by any person that intends to grade or remove soil from the bank of any navigable waterway where the area exposed by the grading or removal will exceed 10,000 square feet on the surface of the bank as determined in s. NR 341.035. This includes areas that are part of a larger common plan of development or sale where multiple separate and distinct grading activities may be taking place at different times on different schedules, but under one plan, such that the total area exposed by grading or removal will exceed 10,000 square feet on the bank.

SECTION 27. NR 341.08(1)(a) is amended to read:

(a) General permits shall be processed according to the procedures in ~~subch. III of ch. NR 310~~ ch. NR 300.

SECTION 28. NR 341.09(1)(a) is amended to read:

(a) Individual permits shall be processed according to the procedures in ~~subch. IV of ch. NR 310~~ ch. NR 300.

SECTION 29. NR 341.10(3) is amended to read:

(3) When an after-the-fact permit application has been filed with the department, the department shall follow the procedures in ch. ~~NR 301~~ NR 300 for violations.

SECTION 30. NR 343.02(1) is amended to read:

(3) POND OR ARTIFICIAL WATER BODY SITES. This chapter applies to activities regulated under s. 30.19 (1g) (a) and (am), Stats. An application to construct, dredge or enlarge any part of a pond or artificial water body shall be filed with the department pursuant to ch. ~~NR 310~~ NR 300 by any person for any artificial water body that either:

SECTION 31. NR 343.07(1)(a) is amended to read:

(a) General permits shall be processed according to the procedures in ~~subch. III of ch. NR 310~~ ch. NR 300.

SECTION 32. NR 343.08(1) is amended to read:

(a) Individual permits shall be processed according to the procedures in ~~subch. IV of ch. NR 310~~ ch. NR 300.

SECTION 33. NR 343.10(3) is amended to read:

(3) When an after-the-fact permit application has been filed with the department, the department shall follow the procedures in ~~ch. NR 301~~ NR 300 for violations.

SECTION 34. NR 345.04(1)(a) is amended to read:

(a) *Procedures.* Exemptions shall be processed according to the procedures in ~~ch. NR 310~~ NR 300.

SECTION 35. NR 345.04(2)(a)1. is amended to read:

1. General permits shall be processed according to the procedures in ~~ch. NR 310~~ NR 300.

SECTION 36. NR 345.04(3)(a)1. is amended to read:

1. Individual permits shall be processed according to the procedures in ~~ch. NR 310~~ NR 300.

SECTION 37. NR 345.05(3) is amended to read:

(3) When an after-the-fact permit application has been filed with the department, the department shall follow the procedures in ~~ch. NR 301~~ NR 300 for violations.

SECTION 38. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 39. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston Cole, Secretary