



NR 320 Waterways Structures Rulemaking and Economic Impact Analysis Background

The DNR Waterways Program reviews project applications for work below the ordinary high water mark in lakes, impoundments, rivers, and streams. Commonly regulated activities include dredging, installing crossings, and placing structures on the beds of waterways. When a permit is required, DNR Waterways staff review permit applications to evaluate the potential impacts to the public interest in navigable waters, including navigation and recreation, water quality, and habitat.

The NR 320 rulemaking effort proposes to update and consolidate five existing DNR administrative rules that set policy for placing structures on and crossings over navigable waterways. The existing rules (NR 320, 323, 326, 328, and 329) were adopted in 2004/05. Changes to state statutes have made some rule provisions obsolete or in direct conflict with current regulations and practices. The NR 320 rule update is intended to align rule policy with current statutes and practices, including updating exempt project standards and removing general permit standards from the rules in lieu of statewide general permit statutory authority.

Language in the proposed rule related to review of individual permits would allow the DNR to require engineering and/or modeling for some erosion control structures (such as riprap, seawalls, piers, and groins) placed on the Great Lakes in limited scenarios (see draft s. NR 320.06). DNR believes that engineering and modeling is sometimes necessary to evaluate public interest factors for erosion control structures at sites where a principal structure lies within 75 ft. of the lake, where the bluff is 10 feet tall or greater, grading is necessary to access the site, and other scenarios that involve very high risks to adjacent landowners if a structure fails. See proposed rule s. NR 320.06 (7) for the full list of site criteria where DNR may require engineering and modeling.

In current policy and practice, applicants are already providing engineering and/or modeling for some erosion control structure projects on the Great Lakes. This is because landowners often hire consultants and engineers to design their projects and engineering is necessary for successful construction. Also, in some instances, the DNR is currently requiring engineering and/or modeling to be submitted for applications for sites with criteria noted above to evaluate whether those projects would have a detrimental impact to the public interest, especially to neighboring riparian owners' shorelines.

For the purposes of this economic impact analysis (EIA) phase of the rulemaking, the DNR is comparing the economic impact of the proposed rule compared to existing statute and rule language. Since the existing rule (NR 326 regulates shore erosion control structures) does not have specific language regarding study requirements for applications for Great Lakes structures, the EIA considers the full additional cost of those studies, even though in practice engineering and/or modeling studies are already being submitted and required for some projects. Therefore, the estimates provided below are believed to be greater than the actual predicted additional costs to landowners, small businesses, and public/utility applicants.

The summary of additional costs is \$450,000 spread across 25 individual permit applicants annually. Permit data shows that there are on average 122 individual permit applications for riprap, seawalls, piers, and groins on Lakes Michigan and Superior annually. DNR estimates conservatively that 20% of these applications, or 25, would be required to submit studies. Five would be required to submit engineering and modeling at a high end cost of \$50,000 each, while 20 would be required to submit engineering only at a high end cost of \$10,000 each.

Notice Soliciting Comments Regarding an Economic Impact Analysis

Subject: Rules relating to structures placed in navigable waterways, WW-06-22

Notice Date: April 16, 2024

Comment Period: April 17 – May 17, 2024

The Department of Natural Resources (department) is in the process of preparing an economic impact analysis (EIA) for proposed rules relating to structures placed in navigable waterways, WW-06-22. A preliminary draft of the EIA and a draft of the board order are available for download as a clickable link by going to the following site: <https://dnr.wisconsin.gov/news/input/ProposedPermanent>, keyword “Administrative Rules,” and scroll down to “WW-Waterways.”

If you are not able to access or download the information, please send an email to the contact person below.

Public Comment

Pursuant to s. 227.137, Wis. Stats., the department is required to solicit comments on the economic impact of proposed rule WW-06-22 and, if requested, to coordinate with local governments in the preparation of the EIA. Notice is hereby given that the department will accept written comments on the EIA until May 17, 2024.

Comments may be submitted to:

Tom Pearce
 thomas.pearce@wisconsin.gov
 Wisconsin Dept. of Natural Resources,
 101 S. Webster St
 Madison, WI 53703

Kyle McLaughlin
 kyle.mclaughlin@wisconsin.gov
 Wisconsin Dept. of Natural Resources,
 101 S. Webster St
 Madison, WI 53703

Any local governmental unit that is affected by the rule may also request to coordinate with the department on preparation of the EIA. If a local governmental unit wishes to coordinate with the department on preparation of the EIA, the governmental unit must notify the department of its request to coordinate at the time comments on the EIA are submitted. The department will then contact all local governmental units requesting an opportunity to coordinate and incorporate their comments into the EIA to the extent feasible.

Under s. 227.137, Wis. Stats., the department must include the information listed below in an EIA. When submitting comments, please provide specific information in these areas and include any supporting economic data, studies or reports. Please do NOT submit comments on revisions to the rule language at this time. The department is soliciting information on the following from you and others:

Would you, your business, your association, or your local unit of government be affected in a material economic way by the implementation of these rules?

Additionally, the department is seeking comments on the following from people who indicate they will be affected economically:

1. Any implementation or compliance costs that are reasonably expected to be incurred.
2. Actual quantifiable benefits of the proposed rule.
3. Whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state.
4. Economic impacts of specific alternatives to the proposed rule.
5. Whether the proposed rule will have an economic impact (savings or increased costs) on public utilities or their ratepayers.

Instructions for Small Businesses

If you are a small business as defined in s. 227.114(1), Wis. Stats., please identify yourself as a small business in your comments. Small business means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

Please refer to s. 227.19(3)(e)3. and 4., Wis. Stats., for further information when you are preparing your comments as a small business. Following the public comment period for the EIA, a revised "Fiscal Analysis and Economic Impact Analysis" will be prepared containing relevant information that the department receives. Once the EIA process is completed, the department will submit the rule package and economic impact analysis to the Wisconsin Legislative Council under s. 227.15, Wis. Stats., and hearings on the proposed rule will be held by the department after proper notice in accordance with ss. 227.17 and 227.18, Wis. Stats.

Summary of Rule Economic Impact Analysis

Under s. 227.137(3)(b), Wis. Stats., the department must provide an estimate of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local government units, and individuals, expressed as a single dollar figure. The department must also make a determination as to whether \$10,000,000 or more in implementation or compliance costs are reasonably expected to be incurred by or passed along to businesses, local government units, and individuals over any 2-year period as a result of the proposed rule.

A public comment period for the full proposed rule language will follow the economic impact solicitation and comment. This public comment period is planned for later in 2024. The department will then prepare a final proposed rule language economic impact analysis along with the final proposed rule language for submittal for approval by the Natural Resources Board, Governor, and Legislature.

NOTE: Chapter 227 of the statutes may be found at the following web site:

<https://docs.legis.wisconsin.gov/statutes/statutes/227.pdf>.