

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis</p> <p><input checked="" type="checkbox"/>Original <input type="checkbox"/>Updated <input type="checkbox"/>Corrected</p>	<p>2. Date</p> <p>3/1/2024</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</p> <p>NR 320, Structures in Navigable Waterways, WW-06-22</p>	
<p>4. Subject</p> <p>Structures in Navigable Waterways</p>	
<p>5. Fund Sources Affected</p> <p><input type="checkbox"/>GPR <input type="checkbox"/>FED <input type="checkbox"/>PRO <input type="checkbox"/>PRS <input 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</p> <p><input checked="" type="checkbox"/>No Fiscal Effect <input 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)</p> <p><input type="checkbox"/>State's Economy <input 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).</p> <p>\$450,000 annually, across 25 project applications and a maximum of about \$900,000 in a two-year period. Estimated high costs per project application would be \$10,000 (for 20 applications) or \$50,000 (for 5 applications), depending on the project activity, scope, size, and location.</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)?</p> <p><input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p>	
<p>11. Policy Problem Addressed by the Rule</p> <p>Current chs. NR 320, 323, 326, 328, and 329 have outdated language that conflicts with statutory updates over the past ~20 years. Exemption standards for certain activities will be updated to align with the statutes, and general permitting standards will be removed per statewide permit authority under s. 30.206, Wis. Stats. The permit engineering and modeling requirements that may be required for some individual permits (IPs) for shoreline erosion control structures on the Great Lakes will reduce the risk of significant impacts to adjacent shorelines and properties.</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.</p> <p>Riparian owners, development interests, counties, towns, and consultants have been communicated with directly during the development of the rule and will be consulted as part of the public comment solicitation process via email or phone.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA.</p> <p>The League of Wisconsin Municipalities, the Wisconsin Towns Association, and the Wisconsin Counties Association will be notified so that counties and other local government units will be consulted directly as part of the public comment 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 Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)</p> <p>The proposed rule largely matches exemption and permitting processing with current statutes and Department Waterways Program operations. The proposed language allows the Department to require engineering or modeling for a waterway IP application for erosion control structures in specific</p>	

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

circumstances to be placed on the Great Lakes. Engineered structures are more likely to be successful at providing shoreline erosion control, and modeling shoreline and near shore area impacts is sometimes necessary to ensure that certain structures do not have a detrimental impact on neighboring riparian areas. Cost estimates were developed through discussions with coastal contractors and publicly advertised costs for similar projects. Based on permitting data, the Waterways Program receives an average of 122 applications annually for shoreline erosion control structures on the Great Lakes. Engineering or modeling studies are expected to be required for 20% of, or 25, IP applications for certain Great Lakes structures. Five projects would be required to submit engineering and modeling, while 20 projects would be required to submit engineering to meet the public interest review standards for waterways structures. This will result in an increased annual compliance cost of \$450,000.

Language in the proposed rule related to review of IP applications 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 are 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.

SUMMARY OF ANNUAL COST ESTIMATE

	Number of Applications	Cost Per Application	Total Cost
Annual IP applications for Great Lakes structures	122	-	-
20% of applications require engineering/modeling	25	-	-
# required to submit engineering and modeling	5	\$50,000.00	\$250,000.00
# required to submit engineering	20	\$10,000.00	\$200,000.00
Total Annual Cost Estimate			\$450,000.00

DETAILS

Annual Average - 122 erosion control structure IP applications on the Great Lakes. Structure types for this analysis include riprap, seawalls, groins, and solid piers.

Proportion Requiring Studies - We estimate that 20% of applications annually, or 25 applications, would be required to provide engineering and/or modeling to demonstrate a high likelihood of success and no detrimental impacts to the public interest, including neighboring property shorelines. We estimate that 5 applications would require engineering and modeling, at an estimated high end cost of \$50,000 per application. We estimate that the other 20 applications would require engineering, at an estimated high end cost of \$10,000 per application.

Summary and Average Costs - 122 applications annually. Five would be required to have engineering and modeling at an estimated \$50,000 per application (\$250,000), and 20 would be required to have

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

engineering at an estimated \$10,000 per application (\$200,000), for a total of \$450,000 annually for 25 IP applications for placing erosion control structures on the Great Lakes.

Compliance Costs - Total compliance costs annually would be \$450,000.

(A) Economic Impact on Specific Businesses, Business Sectors

The majority of applicants for structures on Great Lakes are private landowners. Small businesses apply for an average of 8 of these permits annually. It is estimated that 20%, or 2 applications, would require a study with an application under the proposed rule. Per the information above, the average additional cost would be \$20,000-\$100,000 leading to a compliance cost increase of \$20,000-\$100,000 annually for small business owners.

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

Local government units and public entities apply for an average of 8 IPs for structures on the Great Lakes annually. It is estimated that 20%, or 2 applications, would require a study with an application under the proposed rule. Per the information above, the additional cost would be \$20,000-\$100,000, leading to a compliance cost increase of \$20,000-\$100,000 annually for public entity applicants.

(C) State Economy

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

(D) Fiscal Impacts:

Under the proposed rule, the DNR Waterways Program budget would remain the same.

Total Compliance Costs:

\$450,000 for all permittees annually

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 structures and crossings projects. Alternatively, if the proposed rule is not implemented, the existing rules will continue to be in conflict with current statutes, statewide general permits, and program procedures.

16. Long Range Implications of Implementing the Rule

This rule effort updates and consolidates five administrative codes that were last updated in 2004-05. Many provisions in the existing rules are obsolete or in direct conflict with current state statutes. This updated rule will match current exemption and permit processing operations and align with state statutes, resulting in better regulatory certainty and communications between the Department and project proponents.

17. Compare With Approaches Being Used by Federal Government

The USACE - St. Paul District regulates waterway impacts under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. This rule proposal is intended to bring Waterways Program permitting procedures in line with the permitting program as much as is practicable given statutory requirements.

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

Neighboring states each have fairly different regulatory programs for lakes, rivers, and streams with unique permitting structures, program organization, and staffing capacity. Direct comparison to activities in NR 320 is difficult for this reason, but Michigan has somewhat similar regulations and over 3,000 miles of Great Lakes coastline.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

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. Water resources permit guidance from the IL DNR states that permit applications for shore-perpendicular or offshore structures in Lake Michigan must include a professional analysis of the wave climate, impacts to littoral drift, and potential impacts to adjacent structures, to ensure that structures do not trap littoral drift sand.

Iowa relies on the federal water quality certification program for wetland regulations for Outstanding State Waters. Iowa does not have a 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. Michigan EGLE separates waterway activity coverage into general permits, minor projects, and IPs. and Michigan EGLE regulates structures on Great Lakes coastlines and requires engineering for erosion control structures in mapped High-Risk Erosion Areas, which cover the majority of the eastern Lake Michigan coast.

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. Minnesota has somewhat similar waterway permitting tiers, offering exemptions, general permit authorizations, and individual public waters work permits.

19. Contact Name Tom Pearce	20. Contact Phone Number 608-800-1643
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ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

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ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

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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 largely matches exemption and permitting processing with current statutes and Department Waterways Program operations. The Department already receives engineering and/or modeling for a portion of IP applications for Great Lakes erosion control structures. Compared to the current rule language, the proposed rule will only affect project proponents that wish to pursue a project that requires a waterway IP on the Great Lakes. Small businesses apply for an average of 8 of these IPs annually. It is estimated that 20% of these, or 2 applications, would require a study under the proposed rule. The additional cost is estimated at between \$20,000-\$100,000, leading to a compliance cost increase of \$20,000-100,000 annually for small business owners.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Department Waterways Program waterway and wetland permitting database, Program contacts at UW Sea Grant, consultant price estimates for erosion control structures projects.

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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:

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

The proposed rule clarifies exemption eligibility standards for activities in navigable waterways that were previously in conflict with statutes and not codified by rule. The proposed rule also removes obsolete general permit standards to move towards statutorily mandated statewide general permits and corresponding performance standards that may be updated every 5 years. The proposed allowance to require engineering or modeling for some IP applications for erosion control structures on the Great Lakes is targeted towards sites with high risk of significant environmental impacts and impacts to adjacent shorelines and properties.

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5. Describe the Rule's Enforcement Provisions

Waterways permit violations are subject to enforcement in chs. 30 and 31, Wis. Stats., and permittees and exempt applicants shall allow reasonable access to the department for site inspections.

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

- Yes No
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