

## **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** Exceptions to time limits
- NR 300.23** Inspection authority

**NR 300.01 Purpose.** This chapter describes procedures, timelines and fees for waterway and wetland regulatory decisions and services. This includes 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, 227 and ss. 281.36, 23.32 and 23.321, Wis. Stats.

**NR 300.03 Definitions.** In this chapter:

(1) "Application" means a form prescribed by the department to be completed by the owner, applicant or authorized agent for an activity which requires a permit or approval from the department, and any other information which can reasonably be required from an applicant and which the department

needs to make a decision under applicable provisions of law, such as plans, property deeds, technical analysis or, where required pursuant to s. 23.11 (5), Stats., an adequate environmental impact report.

(2) "Business day" or "working days" means each day except Saturday, Sunday and "Legal Holidays" as provided in s. 995.20. Stats.

(3) "Department" means the Wisconsin Department of Natural Resources.

(4) "Environmental damage" means the harming of any wildlife or their 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.

(5) "Environmental pollution" has the meaning specified in s. 299.01 (4), Stats.

(6) "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 ss. 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.

(7) "General permit" means a permit issued by the department for a single project that categorically authorizes certain activities regulated under ss. 30.206 and 30.12 (3) (a) and (d), 30.123 (7), 30.19 (3r) 30.20 (1t), and 281.36 (3g), Stats.

(8) "Individual permit" means a permit issued by the department for a single project under specific applicable provisions of s. 281.36(3m) and ch. 30, Stats., excluding s. 30.206, Stats. For purposes of this chapter, "individual permit" includes a contract issued under s. 30.20, Stats.

(9) "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 subsection applies to all of the waterway exemptions specified in Ch. 30, Sub. II, Stats.

(2) **ELIGIBILITY.** A person may only undertake a waterway exempt activity if they can confirm that a proposed activity complies with all of the following requirements:

- (a) The waterbody in which the proposed activity is to occur does not have a classification or designated use which precludes the activity from being exempt.
- (b) Reasonable installation practices will be used that minimize environmental impacts.
- (c) Reasonable construction and design requirements are met.
- (d) Proper disinfection protocols are complied with to avoid the spread of invasive species.
- (e) The proposed activity would not cause a significant adverse impact to the public rights and interests.
- (f) The proposed activity would not cause environmental pollution.
- (g) The proposed activity would not cause a material injury to the riparian rights of any riparian owners.
- (h) The proposed activity is reasonable for the site and use of the property.
- (i) Appropriate safety measures are put in place to ensure recreational safety such as appropriate lighting.
- (j) The proposed activity design and construction methods and timing will not adversely impact fish spawning or fish spawning habitat.

(k) For waterway structure exemptions authorized under s. 30.12, Stats., the project proponent must be a riparian owner.

(l) All other exemption requirements specified in ch. 30, Stats., and applicable administrative codes are 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 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 are 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) REVIEW REQUEST.** A person may submit an exemption determination request to the department to confirm if a proposed activity and site is eligible for an exemption. The exemption request must include the following:

- (a) A statement that describes the proposed activity.
- (b) The site location.
- (c) The construction timing and methods used.
- (d) The project scope and design.
- (e) A demonstration that the proposed activity would 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 about the project requested by the department to ensure the requirements in sub. (2) are met.

**(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 if the person wants department review prior to initiating this activity.

**(6) DECISION TIMELINE.** 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 make an exemption determination in which case the department may request additional information. 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.

(a) The department may not request additional information more than once unless additional information requests are agreed to by the requester and department.

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

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

**(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 appropriate for the project given the statutory conditions. The department shall include in its notice of decision which general or individual permit would be most appropriate for the project.

(a) 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 appears to be ineligible for an exemption because it is located in a public rights features as described in s. NR 1.06, a person may provide information to the department to re-evaluate this designation. If the person can provide sufficient site-specific information that determines that this designation is no longer appropriate, the department will update the designation and the project proponent may undertake the exempt activity so long as all other eligibility standards are met.

(a) 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 will consider applicable federal law and interpretation when making exemption decisions.

## **NR 300.05 Wetland exemptions.**

**(1) ELIGIBILITY.** A person may only undertake a wetland exempt activity if they are the property owner or have approval from the property owner to request the exemption on their behalf and can confirm that a proposed activity complies with all of the following requirements:

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

(b) The project will not flood adjacent property owners unless there is a signed flood easement with that adjacent owner.

(c) The project will not impede the flow or circulation of water in the remaining wetland complex or in surrounding wetlands.

(d) The secondary impacts of the project will not reduce the reach of the remaining wetland complex or in surrounding wetlands.

(e) The discharge will not negatively impact a rare or high quality wetland as defined in s. [281.36 \(4n\) \(a\) 3.](#), Stats.

(f) All applicable mitigation requirements are satisfied prior to the discharge.

**(2) RESPONSIBILITY.** A person is responsible for ensuring that the requirements specified in sub. (1) as well as all applicable statutory requirements for the specific exemption are 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.** A person may undertake an exempt activity authorized under ss. 281.36(4), (4m) or (4r), Stats., if the standards specified in sub. (1) are met. A stakeholder may submit an exemption request to the department to confirm if a proposed activity is eligible for an exemption. Exemption requests shall include all information specified in sub. (6).

(a) If the person who requests the determination is the person proposing the activity, the request shall be submitted not less than 15 working days before commencing the activity. 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 notification approval systems.

**(5) FEDERAL LAW.** When considering whether a project is eligible for an exemption under ss. 281.36 (4), (4n), or (4r), Stats., the department will make determinations consistent with existing and additional federal law and interpretation.

**(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 ss. 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 unless the department determines that the information provided in sub. (6) is inaccurate or insufficient to make an exemption determination. 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.

(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 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 or administrative code is not met or if the department finds that a permit is appropriate for the project given the statutory conditions. The

department shall include in its notice of decision which general or individual permit would be most appropriate for the project.

(a) 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 ss. 30.206, 30.12, 30.123, 30.19, 30.20, or 281.36, Stats., an activity shall meet all standards for the general permit in the statute that authorizes issuance of the general permit, the rules in this subchapter, and the rules promulgated under the statute that authorized issuance of the general permit.

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

(2) **APPLICATION.** A person who seeks a general 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 requested on the electronic form and accompanying instructions.

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

(a) The department shall maintain an application form for permitting requests and shall provide a copy of the form to any person upon request. This copy may be provided electronically.

(b) A person filing an application under subs. (1) and (2) shall submit the application to the department not less than 30 days before the proposed commencement of the activity.

(c) The permit application must include the following information:

1. A narrative that describes the proposed activity.
2. The site location.
3. The project scope and design.
4. Site photos.
5. A statement of consent to allow the department to inspect the site.



6. 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.

**(3) ELIGIBILITY DETERMINATION.** Except as provided in sub. (5), the department shall determine whether the activity qualifies for a general permit.

(a) The department shall use the complete application in sub. (2) 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 in pars. (e) and (f), the department shall determine if a general permit application is eligible for a general permit within 30 days from the date of receipt of the application.

(e) The department may request additional information if the department determines that the application is inaccurate or insufficient to make an eligibility determination.

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 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 to make an eligibility determination pursuant to par. (c), but a site visit is not feasible due to adverse weather conditions, the department may put the application on hold until the site visit can be completed.

1. The department shall notify the applicant in writing of the hold due to adverse weather. This notice may be provided electronically. The department shall include an anticipated timeline in this hold. This hold shall be based on the earliest time period weather conditions will be conducive to the site visit pursuant to s. [281.36 \(3g\) \(h\) 2m](#).

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

(g) The department shall notify the applicant of the eligibility determination based on the information available in pars. (a) - (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 may notify the applicant in writing that the applicant may revise the project so that the activity is eligible for a general permit, withdraw the application, or apply for an individual permit. In its notification, the department shall state why the project is ineligible for a general permit. 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.

#### (4) WETLAND SELF-REPORTING GENERAL PERMIT DETERMINATIONS.

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

1. The eligibility standards for the statewide general permit are well-defined.
2. The activity does not pose a flood risk to adjacent property owners.
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 such that the following determinations are consistent and clear:
  - a. The activity will not cause permanent secondary impacts to surrounding wetlands.
  - b. The proposed activity will not adversely impact fish spawning or fish spawning habitat.
5. The activity is completed consistent with applicable floodplain and shoreland zoning requirements.
6. A statement is provided 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 in writing and provide a copy of the general permit conditions. The date of the final decision is the date that written notification is sent to the applicant. The notification shall be provided to the applicant no later than 30 days after the date a complete application is submitted to the department.

(c) The project proponent shall comply with all applicable general permit conditions in accordance with their signed certification in sub. (a) 5. and the general permit coverage requirements specified in sub. (5).

(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 comply with the requirements of 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.

**(5) GENERAL PERMIT COVERAGE.** 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.

(a) 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.

(b) 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.

(c) The permittee shall complete the project within the timeframe specified in the permit decision. If the project is not completed by this date, the permittee may request the department to re-evaluate the project to determine if the project still complies with eligibility standards of a valid general permit. The request shall be provided to the department in writing and shall identify the 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.

(d) 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, and the rules specifying the standards for the regulated activity.

(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 NR 300 series of Wisconsin administrative code 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 requested on the electronic form and accompanying instructions.

**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."

(a) The department shall maintain an application form for permitting requests and shall provide a copy of the form to any person upon request. This may be provided electronically.

(b) The individual permit application shall include all of the following information:

1. A narrative that describes the proposed activity.
2. The site location.
3. The project scope and design.
4. A statement of consent to allow the department to inspect the site.
5. The preferred option to satisfy applicable mitigation requirements.
6. 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 may also be required. An applicant is responsible for obtaining all necessary local permits or approvals for their activity.

(3) COMPLETENESS REVIEW AND TIMELINES. The department shall review an individual permit application to determine if the application is technically complete. 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.

(a) The department shall determine if the application is complete within 30 days of receipt.

(b) If the application does not comply with the submittal requirements specified in sub. (2), 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.

(c) The application review timeline in par. (a) will be on hold until the applicant submits the necessary information described in par. (b).

(d) The department may make only one request for additional information during the 30-day period specified in par. (a). 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.

(e) 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:

1. Notice of closure letter
2. Notice of pending application letter

(f) 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 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.

(g) 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.

(4) INTERESTED PARTIES. The following are determined to be 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 activity 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 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 a permit.

**(5) DECISION DATE.** The department shall render a decision to approve, deny, or modify a permit or contract within the applicable statutory timelines.

(a) Timelines listed in s. 281.36(3m)(i), Wis. Stats., do not apply to wetland individual permits if compensatory mitigation requirements under s. 281.36(3r)(a), Wis. Stats., and NR 350, Wis. Adm. Code, have not been satisfied.

#### **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 (3), the department shall send the applicant and public a notice of pending application if the department has not already done so as part of the date of closure.

(b) The department shall publish the notice 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 notice in a newspaper identified by the department and shall notify interested and potentially interested members of the public as determined in s. NR 300.07 (4) of the notice provided in par. (a) unless the applicant has requested for the department to provide this service and submitted payment in accordance with s. 281.36 (3p) (d) 2m., Stats., in which case the department shall satisfy this 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.

**Note:** The public comment period is at least 30 days unless a hearing is requested in which case the timeline may be extended.

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

**(3) PUBLIC INFORMATION HEARINGS.**

(a) A person may submit a written request for public hearing or if the department determines that there is a significant public interest in holding a public hearing the department may complete a public hearing.

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

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

(d) The notice shall comply with the requirements pursuant to ch. 985.12, Stats.

(e) Public hearings shall comply with the protocols specified in ch. NR 2.

Note: Public informational hearings held pursuant to this subsection are not contested cases as defined in 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.** The department shall render a decision to approve, deny, or modify a permit or contract within the applicable statutory timelines.

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 national 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) Peer-reviewed published scientific research.
- (g) Section 1.11, Stats., and chs. NR 299 and NR 150.
- (h) Any other pertinent information.

**(3) NOTICE OF DECISION.** The department shall notify in writing of its decision on an individual permit application to all of the following:

- (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 this.

- (c) Any person who asks the department in writing for a copy of the final decision.
- (d) Effective date. Except as provided in sub. (4), the permit shall take effect upon notification of the decision to all parties listed in sub. (3).

**(4) PETITION FOR ADMINISTRATIVE REVIEW AND REQUEST FOR STAY.** A petition for administrative review may contain a request for a stay pursuant to ss. 30.209 (1m) and 281.36 (3q) (d), Stats. A petition for administrative review shall be filed with the department within 30 days of the department's decision to approve, deny, or modify a 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 ss. 30.209, 281.36 (3q), 227.42, Stats., or this section.



**NR 300.10 Dam permits, approvals and determinations.**

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

(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.

- (a) For a ch. 31 permit, approval or determination with an estimated time of 3 hours or less, the fee shall be \$50.
- (b) For a ch. 31 permit, approval or determination with an estimated time of more than 3 hours but not more than 9 hours, the fee shall be \$300.
- (c) For a ch. 31 permit, approval or determination with an estimated time of more than 9 hours, the fee shall be \$500.

**NR 300.11 Waterway and wetland permit fees.**

(1) WETLAND PERMIT FEES. For an authorization to proceed under a wetland general permit under s. 281.36 (3g), Stats., the application fee shall be \$600. For a wetland individual permit under s. 281.36 (3m), Stats., the application fee shall be \$1700.

(2) WATERWAY GENERAL PERMIT FEES. For an authorization to proceed under a waterway general permit under s. 30.206, Stats., the application fee shall be \$350.

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

(a) The application fee for regulatory decisions in s. 30.11, Stats., shall be \$900.

(b) The application fee for waterway individual permits in ss. 30.1335, 30.18, 30.195, 30.20 and 30.206, Stats. shall be \$900.

(4) NOTIFICATIONS. For Class 1 notices published by the department, the notification shall be \$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. After-the-fact permit fees 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 unless this 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 pursuant to 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 in 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 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 in 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 may request that the department provide any of the following determinations for the fee specified in 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 prepared by an independent third party shall include the exact location and information used to make the navigability determination. 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.

1. If the department does not agree with the preliminary navigability 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 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 prepared by the independent third party shall include the exact location and information used to make this determination. 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.

**Note:** For zoning purposes, a person should request this service from their local zoning authority.

1. 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.

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

(f) A person may request that the department complete a navigability-in-fact determination if they dispute the navigability determination in par. (a) or (c). The department shall use a watercraft to confirm the navigability of the waterway.

1. A requester shall comply with the declaratory ruling process specified in s. 227.41, Stats. .

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

For an ordinary high water mark determination under sub. (1) (a), the fee shall be \$200 for each project boundary.

For a navigability determination under sub. (1) (b), the fee shall be \$200 for each waterway within a project boundary.

(c) For a person that would like both an ordinary high-water mark and a navigability determination in subs. (a) and (b), the total fee shall be \$300 for each waterbody within a project boundary.

(d) For an ordinary high-water mark confirmation under sub. (1) (c), the fee shall be \$100 for each confirmation request.

(e) For navigability determinations under sub. (1) (d), the fee shall be \$100 for each confirmation request.

(f) For a navigability-in-fact determination under sub. (1) (f), the fee shall be \$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.

**(3) 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. (2) if all of the following apply:

The applicant requests in writing that the service be provided within a time period that is shorter than the time limit specified under sub. (4) for that type of service.

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

**(4) TIMELINE.** Except as provided under par. (b), the department shall do all of the following:

Provide a navigability determination or ordinary high-water mark determination in subs. (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.

(a) Provide a navigability confirmation or ordinary high-water mark confirmation in subs. (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.

(b) If adverse weather conditions, or other conditions at the site, prevent the department from conducting an accurate on-site inspection necessary for making this determination in sub. (1) in sufficient time to comply with the deadline under par. (a), 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.

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

**(5) 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 in subs. (2) - (4).

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

**(6) LENGTH OF VALIDITY.** Except as provided as s. [30.10\(2\)\(b\)](#), Stat., the determinations in sub. 1 are valid in perpetuity unless any of the following conditions apply that would significantly impact the determination:

1. Water levels fluctuations.
2. Land use changes.
3. Other factors that significantly change hydrology to the site.

**NR 300.18 Wetland determinations.**

**(1) WETLAND IDENTIFICATION AND CONFIRMATION SERVICE.** Any person who requests a wetland identification or confirmation service from the department pursuant to 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 pursuant to s. 281.36(2m).

(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 pursuant to s. 23.321 (4) (b) so long as the methods are consistent with federal United States of Army Corp of Engineers standards pursuant to s. 281.36(2m).

(2) EXPEDITED SERVICE FEES. In addition to the fees specified in s. 23.321 (3), Stats., the department shall charge an additional \$3,500 fee for stakeholders who wish to expedite their wetland identification or confirmation service requests pursuant to 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 in 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 HUC-12 watershed size.

(b) The person shall pay a fee of \$0.10 per acre for the request in par. (a).

(c) The department may enter into a memorandum of agreement with another organization or entity to incorporate wetland mapping conducted by an independent third party so long as it complies with the 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.** Except as provided in sub. (2), the department may process an after-the-fact permit application if a regulated activity is initiated or completed prior to seeking a permit authorizing that activity. The department may use a general or individual permit in these instances.

(1) If an after-the-fact permit is processed prior to the completion of an enforcement action, the department may continue the processing of the enforcement action, regardless of whether the after-the-fact permit is ultimately granted.

(2) 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 prior to the completion of any enforcement actions if:

(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 Exceptions to time limits.** (1) Where a contested case hearing is required because of objections to the granting of a permit or approval by the department, or where 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 by s. 227.116 (4), Stats. The decision may be provided to the applicant electronically or through 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 subch. 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 EIS 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 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 in 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 in subch. I shall be adjusted accordingly.

**NR 300.23 Inspection Authority.** For purposes of making a regulatory decision in subch. I-IV or determining compliance with a project authorized under a regulatory decision in subch. I-IV, the department may:

(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 in 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 section.

(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](#).

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