

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING AND RECREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal and recreate ch. NR 326 related to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swimming rafts in navigable waterways.

FH-42-04

Summary Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.12(1), (1p), and (3)(br), 30.13(1) and (1m), 30.206, and 227.11(2), Stats.

Statutes interpreted: ss. 30.12(1), (1g)(a), (b), (e) and (f), (1p), (2m), (3), and (3m), 30.13(1) and (1m), 30.134, 30.20(1g)(b)2., and 30.206, Stats.

Explanation of Agency Authority:

The Department has authority under s. 30.12, Stats., to promulgate rules that establish installation practices, construction and design requirements and limitations on the location of structures placed under statutory exemptions. The Department has authority under ss. 30.12 and 30.206, Stats., to promulgate rules to establish general permits.

Related statute or rule:

These rules relate directly to regulation of activities in navigable waters under ch. 30, Stats., and to the NR 300 series of rules.

Plain Language Analysis:

The purpose of this rule proposal is to interpret and administer the exemption, general permit and individual permit requirements provided by statute, as revised by 2003 Wisconsin Act 118 which went into effect on February 6, 2004. The order proposes to repeal the existing NR 326 and replace it, as most sections of the existing rule are renumbered and/or formatted, and several sections are substantially revised. This rule establishes definitions and procedures; establishes construction, design, placement and location standards for projects to be eligible for statutory exemptions; establishes general permits for specific types of piers and for permanent boat shelters; and establishes standards for projects that may be authorized under an individual permit.

Subchapter I includes general information that applies to the entire rule. Following a detailed Purpose statement and applicability, the rule contains a Definitions section that provides clear explanations of terms used in the rule. A section on Riparian rights determinations is virtually unchanged from the existing rule. The Procedures, Complaints and Enforcement sections explain the responsibilities of property owners and DNR under the rule. The rule establishes that structures with existing permits continue to be authorized so owners don't need to obtain a new permit. The last section explains Impoundment Determinations for waterway access under s. 30.134, Stats.

Subchapter II addresses piers and wharves. The rule establishes standards for a pier or wharf to be eligible for an exemption from state permit requirements, based on the statutory criteria and standards. Key requirements for a pier or wharf to be exempt include:

- Length - no more than the 3-foot water depth, or length needed to moor a boat or use a boat hoist/lift; pier may extend to the pierhead line if one is established by local ordinance; may not extend more than 25% across a river, stream or channel
- Width - maximum width of 6' wide
- Number of boats - 2 boat slips for the first 50' of shoreline, 1 more for each additional full 50'
- Not a solid structure or on rock-filled cribs
- Not located in a sensitive area designated by the Department under NR 107
- Must not block water movement, cause sedimentation, or accumulate debris

For a pier or wharf that does not meet the exemption standards, the rule establishes five general permits with specific standards:

1. a “grandfathering” general permit to authorize most non-exempt piers and wharves that existed before the effective date of Act 118
2. a general permit for 8-foot piers on rock-filled cribs in Lake Geneva, Walworth County
3. a general permit for 8-foot wide piers on the Lower St. Croix River, Pierce and St. Croix Counties
4. a general permit for a pier in a sensitive area designated by the Department under NR 107
5. a general permit for a public pier - for fishing, swimming or transient docking

For any piers and wharves that don't qualify for an exemption or general permit, or are located in critical habitat, this order sets some additional standards and outlines factors for consideration in review, to provide for consistent and orderly review of individual permit applications. The following types of individual permits are available in this rule:

- Solid piers – only in specific waters; only for either maintenance, repair or modification of existing solid piers, or for new solid piers for public or commercial purposes
- Piers on rock-filled cribs – only in Lake Michigan, Lake Superior or Lake Geneva
- Commercial and municipal marinas
- Piers and wharves in sensitive areas designated by the Department under NR 107
- Other piers and wharves where different design or dimensions may be allowed for preexisting facilities, navigational stability, or to accommodate a disability

Subchapter III deals with boat shelters, hoists and lifts. The rule sets forth standards for exemptions for seasonally-placed boat shelters, and for boat hoists and boat lifts. These exemption standards are similar to those for piers and wharves, and include:

- dimensional and design requirements
- must be placed adjacent to a pier, wharf or shoreline

The rule creates a general permit for permanent boat shelters, using standards that are in the existing NR 326, with the exception that the standard for “developed shoreline” has been revised to be more objective. The rule prohibits boat shelters, hoists or lifts placed after February 6, 2004, if they do not qualify for the exemption or general permit.

Finally, Subchapter IV establishes standards for swimming rafts (including water trampolines), consistent with the standards that are currently in NR 326. To qualify for an exemption, a swimming raft must meet several standards, including:

- shall be placed within 200 feet of shore (statutory requirement)
- may not exceed 200 square feet or 38” in height, except that size and height restrictions do not apply to rafts removed from the water daily or placed in marked swim areas.
- shall be seasonally placed (removed between December 1 and April 1)

For a swimming raft that doesn't qualify for an exemption, this order outlines factors for permit evaluation.

Federal Regulatory Analysis

Any activity that results in a discharge (including deposits and structures) into “waters of the United States” is regulated by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. An Individual Permit from the Corps is required, unless Wisconsin regulates the project in its entirety under chapter 30, Stats., in which case the project is authorized by the Corps under general permits GP-01-WI or GP-LOP-WI. Dredging or discharge into waters declared navigable under Section 10, Rivers and Harbors Act, 1899 is also regulated, and requires an Individual Permit from the Corps.

Comparison with Adjacent States

Minnesota is comparable to Wisconsin, with some regulations being slightly less restrictive, some slightly more. Their decision-making criteria are more subjective. Docks, floating or temporary structures, watercraft lifts and mooring facilities are allowed without a permit if they meet width and length standards and do not obstruct navigation or free flow of water. All wharves and marina mooring facilities require an individual permit from the Minnesota DNR.

Michigan is comparable to Wisconsin in their restrictions, though their decision-making criteria are more subjective. Permanent docks or boat hoists require a permit from the Michigan Department of Environmental Quality. Seasonal docks and hoists do not require a permit if they are for private, non-commercial use by a landowner, do not unreasonably interfere with the use of the water by others, and do not interfere with water flow. Marina operating permits are required.

Illinois is generally less restrictive and their decision-making criteria are more subjective. A statewide permit is available for minor docks that meet dimensional and other standards. Otherwise, an individual permit is required from Illinois DNR for structures in public waters or in the floodways of rivers, lakes and streams.

Iowa is generally more restrictive, though their decision-making criteria are subjective. A general permit is available for certain private docks that meet dimensional standards. Otherwise, a Sovereign Lands Construction Permit from the Iowa DNR is required for all other piers, and for all other structures in public waters or in the floodway. The applicant must analyze the availability of alternatives and measures to prevent, minimize or mitigate adverse impacts to natural resources or public use of the affected area.

Summary of Factual Data and Analytical Methodologies:

The literature on the ecological and related impacts of piers and similar structures is well-summarized in Research Report 177, The Construction, Aesthetics and Effects of Lakeshore Development: A Literature Review, Sandy Engel and Jerry L. Pederson, Jr., December 1998; and Waters of Wisconsin: The Future of Our Aquatic Ecosystems and Resources. Madison, WI: Wisconsin Academy of Sciences, Arts and Letters, 2003. In addition, data on actual field conditions from Department files is used.

Analysis and Documents supporting determination of Small Business Effect: Any person placing a structure or making similar physical modifications to public navigable waters either qualifies for an exemption or must obtain a general or an individual permit under state statute. To comply, small businesses follow the same requirements as other waterfront property owners: (1) make a self-determination of exemption using web-based tools provided by the department or describe their activity on an exemption determination request form; (2) complete a general permit application; or (3) complete an individual permit application. Schedules, application steps and compliance/reporting requirements are very basic for all applicants, and most projects can be planned and conducted by individuals with no specific professional background.

Anticipated Private Sector Costs: No significant fiscal effect on the private sector is anticipated.

Effect on Small Business: Pier and building contractors, commercial marinas and other waterfront businesses will be affected by the rule revisions. However, the rule does not directly regulate pier and building contractors as the primary impact of the rule is on the riparian owner. Marinas and solid piers have been subject to a permit requirement for many years and the new rules do not add any significant requirements to this process. Specific standards will provide clarity and consistency in the permitting process.

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SECTION 1. Chapter NR 326 is repealed and recreated to read:

**PIERS, WHARVES, BOAT SHELTERS, BOAT HOISTS, BOAT LIFTS,
AND SWIMMING RAFTS IN NAVIGABLE WATERWAYS**

**SUBCHAPTER I
GENERAL PROVISIONS**

NR 326.01 Purpose. (1) The purpose of this chapter is to define terms and establish standards for placement of piers, wharves, boat shelters, boat hoists, boat lifts and swimming rafts in navigable waterways as regulated under ss. 30.12 and 30.13, Stats., and to define terms used in ss. 30.133 and 30.134, Stats. These standards reflect statutory changes to ch. 30, Stats., which became effective on February 6, 2004, and are established in order to protect the public rights and interest in the navigable, public waters of the state as defined in s. 30.10, Stats.

(2) The standards for exemptions, general permits and individual permits in this chapter balance the riparian right to place a pier, wharf, boat shelter, boat hoist, boat lift or swimming raft, with the public rights and interests in navigable waters. Standards protect navigable waters from the direct and cumulative impacts of these structures. The public rights and interest in navigable waters include navigation, recreation, fish and wildlife habitat, water quality, and natural scenic beauty.

(3) Standards for exemptions provide clear and consistent requirements so that individuals can determine whether they qualify, and easily design projects to meet the requirements. To achieve this, exemption standards establish reasonable installation practices to minimize environmental impacts, establish reasonable construction and design requirements consistent with the purpose of the activity, and establish reasonable limitations on location.

(4) Standards for general permits ensure that cumulative adverse environmental impact of authorized activities is insignificant and that issuance of the general permit will not injure public rights or interests, cause environmental pollution as defined in s. 299.01(4), Stats., or result in material injury to the rights of any riparian owner. To achieve this, general permit standards establish construction and design requirements consistent with the purpose of the activity, location requirements that ensure that the activity will not materially interfere with navigation or have an adverse impact on the riparian property rights of adjacent riparian owners, and restrictions to protect areas of special natural resource interest.

(5) Standards and factors for individual permits provide direction for detailed evaluation of permit applications, and balance case-by-case review with consistent decision-making. Individual permit standards and factors allow greater flexibility in size and dimension for structures which will be open to the general public or where the owner can document the structure's historic existence and use. Individual permits may only be granted where the department determines that the structure will not materially obstruct navigation, will not be detrimental to the public interest, and will not materially reduce the flood flow capacity of a stream.

(6) The general permit for preexisting piers and wharves recognizes existing structures and historic uses, and authorizes their continued placement and maintenance with some limitations, unless they are found to be detrimental to the public interest. The general permit for preexisting piers and wharves does not authorize expansion or re-configuration. The rule provides a 3-year period to allow individuals to apply for this general permit, and no permit application fee is required.

NR 326.02 Applicability. This chapter applies to construction, placement and maintenance of piers, wharves, boat shelters, boat hoists, boat lifts and swimming rafts regulated under ss. 30.12(1), (1g)(a), (b), (e) and (f), (3) and (3m), 30.13(1) and (1m) and 30.20(1g)(b)2., Stats. Any person that intends to construct, place or maintain a pier, wharf, boat shelter, boat hoist, boat lift or swimming raft in any navigable waterway shall comply with all applicable provisions of this chapter and any permit issued under this chapter.

NR 326.03 Definitions. As used in this chapter:

(1) "Area of special natural resource interest" has the meaning in s. 30.01(1am), Stats., and as identified by the department in s. NR 1.05.

Note: "Area of special natural resource interest" means any of the following:

- (a) A state natural area designated or dedicated under ss. 23.27 to 23.29, Stats.
- (b) A surface water identified as a trout stream by the department under s. NR 1.02(7).
- (bm) A surface water identified as an outstanding or exceptional resource water under s. 281.15, Stats.
- (c) An area that possesses significant scientific value, as identified by the department in s. NR 1.05.

Information and lists can be obtained by contacting the department, or found on the department's website at www.dnr.wi.gov, under the topic "Waterway and Wetland Permits".

(2) "Boat" has the meaning in s. 30.50(2), Stats.

Note: In s. 30.50(2), Stats., "boat" or "vessel" means every description of watercraft used or capable of being used as a means of transportation on water, except a seaplane on the water and a fishing raft.

(3) "Boat hoist" means a structure attached to a pier or wharf or shoreline, that is designed and placed for the purpose of lifting one or 2 docked boats out of the water. A boat hoist with a roof or cover is a boat shelter.

(4) "Boat lift" means a structure placed on the bed of a waterway adjacent to a pier or wharf or shoreline, that is designed and placed for the purpose of lifting one or two docked boats out of the water. A boat lift with a roof or cover is a boat shelter.

(5) "Boat shelter" has the meaning given in s. 30.01(1c), Stats.

Note: In s. 30.01(1c), Stats., "boat shelter" means a structure in navigable waters designed and constructed for the purpose of providing cover for a berth place for watercraft, which has a roof but does not have walls or sides. Such a structure may include a device for lifting a boat.

(6) "Boat slip" means any place where a boat is docked in the water adjacent to a pier, wharf or shoreline, including a space outlined by catwalks or created by placement of a boat shelter, boat lift or boat hoist. A boat slip does not include a space occupied for less than 24 hours by a guest at a pier or wharf that is not part of a commercial or municipal marina. A berth or a berth place is the same as a boat slip.

(7) "Commercial marina" means a facility containing piers, wharves and other mooring spaces, where the riparian property is not owned by a municipality, but is open to the general public, and the primary purpose of the facility is to provide boats or boat slips either for rental or for free.

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

(9) "Impoundment" for purposes of s. 30.134, Stats., means the pool of water created by a dam. "Impoundment" does not include waters upstream of the pool which are raised, but within the original river channel. "Impoundment" includes the entire Mississippi river in Wisconsin.

(10) "Line of navigation" means the point where the water is 3 feet deep at its maximum depth based on the normal summertime low levels on the waterway or summer minimum levels where established by department order, or the point where there is adequate depth for mooring a boat or using a boat hoist or boat lift, whichever is greatest. Where a municipality has adopted an ordinance establishing a municipal pierhead line authorized under s. 30.13, Stats., the line of navigation is the municipal pierhead line.

(11) "Littoral drift" means the sedimentary material which moves in the zone of waves breaking on the shore because of waves and current.

(12) "Municipal marina" means a facility containing piers, wharves and other mooring spaces, where the riparian property is owned by a municipality and the primary purpose of the facility is to provide boats or boat slips for rental or for free.

(13) "Navigable waterway" means any body of water with defined bed and banks, which is navigable under the laws of the state. In Wisconsin, a navigable body of water is capable of floating the lightest boat or skiff used for recreation or any other purpose on a regularly recurring basis.

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).

(14) "Open to the general public" means available to any person conditioned only upon the payment of a reasonable fee. "Open to the general public" does not include conditions that require purchase of a boat, boat slip, parcel of property, condominium unit or membership in a club or organization; and does not include conditions that require rental of a room, apartment, condominium unit, residence, campsite or parcel of property.

(15) "Ordinary high water mark" means the point on the banks or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognizable characteristics.

(16) "Outlying waters" as defined in s. 29.001(63), Stats., means Lakes Superior and Michigan, Green Bay, Sturgeon Bay, Sawyer's harbor, and the Fox river from its mouth up to the dam at DePere.

(17) "Pier" has the meaning given in s. 30.01(5), Stats. A dock is the same as a pier.

Note: In s. 30.01(5), Stats., "pier" means any structure extending into navigable waters from the shore with water on both sides, built or maintained for the purpose of providing a berth for watercraft or for loading or unloading cargo or passengers onto or from watercraft. Such a structure may include a boat shelter which is removed seasonally. Such a structure may include a boat hoist or boat lift, and the hoist or lift may be permanent or may be removed seasonally.

(18) "Pierhead line" means a line established in the water adjacent to and roughly parallel to the shoreline under s. 30.13, Stats., by municipalities, and subject to approval by the department, for the purpose of creating uniformity in the length of piers extending from the shoreline into the waterway.

(19) "Reasonable fee" means a fee comparable to those charged the general public for similar facilities on the waterway or a similar waterway in the vicinity.

(20) "Riparian" means an owner of land abutting a navigable waterway.

(21) "Seasonal" for the purposes of this chapter means a pier, wharf, boat shelter, boat lift, boat hoist or swimming raft which is removed from the water between December 1 and April 1 annually.

(22) "Similar conveyance" for purposes of s. 30.133, Stats., means any transfer in excess of 2 years. "Similar conveyance" does not include a lease of a marina facility to an operator of the facility.

(23) "Solid pier" means a structure, not allowing for the free flow of water beneath, extending into the water from the shore to serve as an aid to navigation. For the purposes of this chapter, the term solid pier does not include piers that utilize rock filled cribs or similar types and size devices as foundation. Such foundations require permits under s. 30.12, Stats.

(24) “Swimming raft” has the meaning given in s. 30.01(6e), Stats., and includes a water trampoline.

Note: In s. 30.01(6e), Stats., “swimming raft” means a floating platform without railings, roof or walls that is adequately anchored to the bed of navigable waters and is designed for swimming, diving and related activities.

(25) “Watercraft” has the meaning in s. 30.01(7), Stats.

Note: In s. 30.01(7), Stats., “watercraft” means any device used and designed for navigation in water.

(26) “Wharf” has the meaning given in s. 30.01(8), Stats.

Note: In s. 30.01(8), Stats., “wharf” means any structure in navigable waters extending along the shore and generally connected with the uplands throughout its length, built or maintained for the purpose of providing a berth for watercraft or for loading or unloading cargo or passengers onto or from watercraft. Such a structure may include a boat hoist or boat lift, and the hoist or lift may be permanent or may be removed seasonally.

NR 326.04 Determination of riparian rights lines. (1) In order to determine whether a pier, boat shelter or other structure interferes with the rights of an adjacent riparian, the department and riparian shall use the method outlined in this subsection which it determines most fully meets the Wisconsin supreme court ruling in *Rondesvedt v. Running*, 19 Wis. 2d 614 (1962), that “. . . each must have his due proportion of the line bounding navigability and a course of access to it from the shore exclusive of every other owner, and that all rules for apportionment or division are subject to such modification as may be necessary to accomplish substantially this result.”

(2) The alternative methods of apportionment for identifying the riparian rights lines include:

(a) *Apportionment of the line of navigation.* The general procedure for the apportionment of the line of navigation is to measure the whole shoreline of the cove or bay and the line of navigation in front of the shoreline and to apportion the line of navigation among the riparians in proportion to the length of their respective holdings on the shoreline. The area of water within which each riparian may place a pier to reach the line of navigation is determined by drawing straight lines between the corresponding points of division on the shoreline and the line of navigation.

(b) *Coterminous riparian rights lines.* Chords are drawn to connect points established at the intersection of each lot line with the ordinary high water mark. The lines which bisect the angle formed by adjacent chords are the coterminous riparian rights lines. The extension of the coterminous riparian rights lines to the line of navigation describes the portion of the water within which each riparian may place a pier to gain access to the line of navigation. If the coterminous riparian rights lines intersect before the line of navigation is reached, another method of apportionment will be used.

(c) *Extended lot lines.* Under the extended lot line method the area of water within which each riparian may place a pier to reach the line of navigation is determined by extending the lot lines along the same alignment from the upland to the line of navigation.

(d) *Other method.* Any other method for determining the rights of riparians to gain access to the line of navigation that is compatible with the general rule adopted in sub. (1).

(3) To provide each riparian with sufficient room to place a pier and moor a boat along the common line between adjacent riparians the following technique shall be used:

(a) Each riparian shall back their respective pier away from the common line or point of intersection of that line with the line of navigation in proportion to the riparian’s share of the 2 adjacent shoreline lengths until sufficient room is provided to moor each riparian’s boat at their respective pier and to provide safe maneuvering room for each boat to approach or leave the respective pier.

(b) If a riparian cannot move sufficiently from one side without violating the rule on the other side, then the riparian shall position the pier in that location which best satisfies the rule on both sides and each riparian shall then move far enough to the side regardless of shoreline proportions to afford the necessary clearance.

NR 326.05 Procedures. (1) NR 310 REQUIREMENTS. Exemptions, general permits and individual permits shall be processed according to the procedures in ch. NR 310.

(2) EXISTING PERMITS. A structure or structures regulated under this chapter which is authorized by an existing department permit shall continue to be authorized, provided the structures are maintained in compliance with all the conditions of the original permit. Any modifications to the structure or structures that do not comply with the original permit conditions shall be subject to the requirements of this chapter.

(3) APPLICATION INFORMATION REQUIREMENTS. Applications for a permit for a pier or wharf shall include all the information specified in s. NR 326.25. Applications for all other permits shall include the information specified on the application materials provided by the department.

Note: Exemption Determination Request forms and Permit Application forms can be obtained by contacting the department, or found on the department's website at www.dnr.wi.gov, under the topic "Waterway and Wetland Permits".

(4) BURDEN OF PROOF. The burden of proving that a pier or wharf meets all the requirements to qualify for a general permit or an individual permit shall be on the applicant.

(5) SEEK TO ACHIEVE COMPLIANCE. The Department and the applicant will seek to achieve compliance with statutory and rule standards through various measures including design alternatives, relocation and down-sizing of structures where possible and where consistent with protection of the public interest, during the application and review process for a general permit or an individual permit.

(6) PERMIT APPLICANT. The permit applicant shall be the riparian for the property where the structure will be placed. When the riparian consists of multiple owners, the permit application shall be signed either by an authorized agent of the riparian owners, or by 100% of the individual riparian owners.

(7) COMPLIANCE WITH LOCAL ORDINANCES. The riparian is responsible for ensuring that the structure complies with all local ordinance requirements. Issuance of an exemption determination or a permit by the department under this chapter does not waive or constitute a determination of compliance with local ordinance requirements.

(8) COMPLIANCE WITH OTHER LAWS. The riparian is responsible for ensuring that the structure complies with s. 30.133, Stats., and applicable case law including *ABKA Limited Partnership v. DNR*, 2001 WI App 223, 247 Wis. 2d 793, 635 N.W.2d 168 (*ABKA I*), and *ABKA Ltd. Partnership v. DNR*, 2002 WI 106, 255 Wis. 2d 486, 648 N.W.2d 854 (*ABKA II*). Issuance of an exemption determination or a permit by the department under this chapter does not waive or constitute a determination of compliance with s. 30.133, Stats., and applicable case law.

(9) PROHIBITION. A structure which is not eligible for an exemption, general permit, or an individual permit, or otherwise authorized under this chapter is prohibited.

NR 326.06 Complaints. (1) Upon receipt of a complaint by any municipality or person under s. 30.14, Stats., regarding a structure regulated under this chapter, the department shall investigate and may inspect the structure mentioned in the complaint to determine whether it conforms to applicable provisions of s. 30.12 or 30.13, Stats., and this chapter.

(2) The burden of proving that a structure is in violation of ss. 30.12 or 30.13, Stats., and this chapter, is ordinarily on the complainant. The department may request any additional information as may be required from the complainant.

(3) For a complaint that a structure violates the riparian rights lines provisions of s. NR 326.04, the complainant shall provide a survey prepared by a registered land surveyor, showing at a minimum all of the following:

(a) The location of the shoreline at the ordinary high water mark.

(b) The property boundary and location of the lot lines on the property that is the subject of the complaint, and on the adjacent property on each side.

(c) The location of any easement that provides access to the water.

(d) The location and dimensions of the structure or structures that are the subject of the complaint, and all other in-water structures on the property that is the subject of the complaint and on the adjacent property on each side.

(e) The location of the line of navigation at normal summer water levels.

(4) Upon completion of the investigation, the department shall provide all known parties with the results of the investigation. The department may conduct a hearing under s. 30.14, Stats.

(5) This section does not limit in any manner the authority of the department to require a permit or bring an enforcement action alleging that a pier, wharf, boat shelter, boat hoist, boat lift or swimming raft adversely affects public rights in navigable waters.

NR 326.07 Enforcement. (1) Noncompliance with the provisions of s. 30.12, 30.13, 30.20 or 30.206, Stats., this chapter, or any conditions of an exemption, general permit or an individual permit issued by the department, constitutes a violation and may result in a forfeiture. The department may seek abatement under s. 30.294, Stats., for any activity in violation of s. 30.12, 30.13, 30.20 or 30.206, Stats.

(2) The department will seek to achieve compliance with statutory and rule standards through various measures including design alternatives, relocation and down-sizing of structures where possible and where consistent with protection of the public interest, before seeking removal of a noncompliant structure.

(3) If the activity may be authorized by a general permit under s. 30.206, Stats., the failure of the applicant to follow procedural requirements may result in a forfeiture but may not, by itself, result in abatement of the activity until a reasonable opportunity to comply with the procedural requirements has been provided.

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

(5) Any violation of these rules shall be treated as a violation of the statutes they interpret or are promulgated under.

(6) No person may place a pier, wharf, boat shelter, boat hoist, boat lift or swimming raft in a navigable waterway if the activity is not eligible for an exemption, authorized by a general permit or an individual permit issued under this chapter, or otherwise authorized under this chapter.

NR 326.08 Impoundment determination. The boundaries of the pool of an impoundment shall be determined at normal summer water levels.

SUBCHAPTER II PIERS AND WHARVES

NR 326.21 General standards. In addition to the standards identified in s. NR 326.22, 326.23 or 326.24, all piers and wharves shall meet the following conditions:

(1) The pier or wharf may be placed and maintained only by a riparian, or an easement holder that meets the requirements of s. 30.131, Stats. The pier or wharf may be placed, installed or maintained for the riparian or qualifying easement holder by an authorized agent or contractor.

Note: Section 30.131, Stats., allows a “grandfathering” of wharves or piers placed or maintained by non-riparians if the requirements of the statute are met. These requirements include that the non-riparian must have a written easement that was recorded prior to December 31, 1986, and that the pier or wharf was not expanded and was placed seasonally at least once every 4 years since the easement was recorded.

(2) The pier or wharf and any boats, boat shelters, hoists or lifts associated with it shall be located entirely within the riparian rights lines, as determined under s. NR 326.04.

(3) The pier or wharf may not totally enclose any portion of a navigable waterway, unless it is placed in a swim area marked and approved pursuant to s. NR 5.09.

(4) The pier or wharf may not interrupt the free movement of water nor cause deposition of littoral drift upon the bed of the waterway.

(5) The pier or wharf may not be constructed or maintained with a screen or similar structure underneath or in any other manner which would trap or accumulate aquatic plants or other debris.

NR 326.22 Exemptions. (1) APPLICABLE ACTIVITIES. A pier or wharf that meets all the standards in s. NR 326.21 and this section shall be exempt under ss. 30.12(1g)(f) and 30.13, Stats.

(2) **EXEMPTION STANDARDS.** A pier or wharf may be placed pursuant to s. 30.13(1), Stats., without a permit under s. 30.12(1), Stats., provided that the structure meets the standards in s. NR 326.21 and all the following requirements:

(a) The pier or wharf may not be located in a sensitive area designated under ch. NR 107.

Note: Information and lists of sensitive areas can be obtained by contacting the department, or found on the department's website at www.dnr.wi.gov by going to the Index and selecting "Lakes ", then choosing "Sensitive Areas".

(b) Large woody cover that exists at the site may not be removed in order to place the pier or wharf.

(c) Placement of the pier or wharf may not involve removal of aquatic plants other than in compliance with the provisions for waiver of the permit requirement under s. NR 109.06, or exemptions in s. 23.24 (4), Stats.

(d) The pier or wharf may be located in an area of special natural resource interest.

(e) The pier or wharf may not extend beyond the line of navigation. A pier or wharf on a river, stream or channel may extend no further than the line of navigation, and may not extend out more than 25% of the width across the river, stream or channel.

(f) The pier or wharf may be no more than 6 feet wide, as measured across the shortest horizontal distance of any portion of the pier or wharf surface.

Note: A pier or wharf may be straight, or configured in an “L” or “T” or similar shape, and may include catwalks.

(g) The riparian property shall have no more than 2 boat slips for the first 50 feet of riparian owner’s shoreline footage, and no more than one additional boat slip for each additional full 50 feet of the riparian owner’s shoreline. A boat shelter, boat hoist or boat lift may be placed as a boat slip, provided that the boat shelter, boat hoist and boat lift meets the requirements of subch. III.

(h) The pier or wharf may not be a solid pier, or constructed on rock-filled cribs or similar size and type devices serving as a foundation.

(i) The pier or wharf may not have a roof, canopy, second story, building, shed or storage unit placed upon it.

Note: This provision means that items such as a flagpole, flower pot or bench may be placed.

(j) A pier or wharf on a river or stream shall be securely anchored to the shoreline to prevent it from becoming a floating hazard.

(k) Except in an area of special natural resource interest, a deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., may be associated with the placement of any pier or wharf provided the deposit is limited to the area underneath or within one foot of the posts or pilings and is less than 2 cubic yards.

(L) Except in an area of special natural resource interest, dredging under s. 30.20(1g)(b)1., Stats., is allowed for the placement of a pier or wharf, provided it is limited to incidental dredging not to exceed one cubic yard associated with jet-installation of permanent posts or pilings.

Note: Removal of aquatic vegetation is limited to the amount necessary for placement of the pier or wharf under ch. NR 109.

(3) SOLID PIER. A solid pier originally constructed prior to April 1, 1981 that was not authorized by a permit issued under ch. 30, Stats., may continue to be maintained pursuant to s. 30.13(1), Stats., without a permit under s. 30.12(1), Stats., provided no repair, replacement or modification is required. Any repair, replacement or modification requires a permit under s. NR 326.24. The burden of proving that a solid pier was originally constructed prior to April 1, 1981 shall be on the riparian.

(4) HISTORIC PIER. A pier or wharf that is “historic property” as defined in s. 87.304(1)(a), Stats., may be maintained, repaired or replaced pursuant to s. 30.13(1), Stats., without a permit under s. 30.12(1), Stats., provided that use of the structure meets the limitations in sub. (2)(g). To qualify for this exemption, the riparian shall submit information to the department to document that the structure is a “historic property” within the meaning of this subsection, and that the Wisconsin Historical Society State Historic Preservation Officer has reviewed the proposed maintenance, repair or replacement work and certified that this work preserves the historic integrity of the property.

(5) SHARED PIER. A shared pier may be placed for use by 2 contiguous riparians pursuant to s. 30.13(1), Stats., without a permit under s. 30.12(1), Stats., provided that the pier meets all the following requirements:

(a) No other pier may be placed on either of the 2 contiguous riparian properties.

(b) The pier complies with the standards in s. NR 326.21 and sub. (2), except that the pier and any boats, boat shelters, hoists or lifts associated with it shall be located entirely within the outer riparian rights lines of the 2 contiguous properties, as determined under s. NR 326.04.

(c) The pier does not exceed the sum of the number of boat slips that each riparian would separately be allowed under sub. (2)(g) of this section.

(6) CONSENT ORDER. A pier or wharf may be placed under s. 30.13(1), Stats., without a permit under s. 30.12(1), Stats., if it is placed pursuant to a stipulation or consent order entered into with the department.

(7) PERMIT REQUIRED. (a) Activities which do not meet the standards in sub. (2), (3), (4), (5) or (6), or are otherwise determined ineligible for an exemption by the department shall require a general permit or an individual permit.

(b) The department has the authority under s. 30.12(2m), Stats., to require a permit in lieu of exemption.

Note: Section 30.12(2m), Stats., states that the department may decide to require a person engaged in an exempt activity to apply for an individual permit or seek authorization under a general permit if the department has conducted an investigation and visited the site of the activity and has determined that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest, environmental pollution, as defined in s. 299.01(4), Stats., or material injury to the riparian rights of any riparian owner.

NR 326.23 General permits. (1) PROCEDURES. (a) Applications for a general permit for a preexisting pier or wharf under sub. (3) shall be submitted no later than 36 months after the effective date of this rule ...[revisor insert date]. A pier or wharf which qualifies for a general permit for a preexisting pier or wharf under sub. (3) may not be subject to formal enforcement action by the department provided an application is received by the department by 36 months after the effective date of this rule ... [revisor insert date].

(b) Applications for a general permit for a preexisting pier or wharf under sub. (3) do not require a permit application fee.

(2) APPLICABLE ACTIVITIES. A pier or wharf that meets the standards in s. NR 326.21 and all the criteria in sub. (3), (4), (5), (6) or (7) shall be eligible for general permit coverage under ss. 30.12(3)(br) and 30.206, Stats.

(3) GENERAL PERMIT FOR PREEXISTING PIER OR WHARF. A preexisting pier or wharf shall be authorized under a general permit if it meets all of the following requirements:

(a) The pier or wharf was originally placed at the waterfront property before February 6, 2004.

(b) The pier or wharf dimensions and configuration were not expanded or relocated after February 6, 2004.

Note: This provision allows a seasonal pier to be placed and removed from the same waterfront property each year, provided it is placed in essentially the same location each year.

(c) The pier may not have a roof, canopy, second story, building, shed or storage unit placed upon it.

Note: This provision means that items such as a flagpole, flower pot or bench may be placed.

(d) The pier or wharf may be no more than 8 feet wide, as measured across the shortest horizontal distance of any portion of the pier or wharf surface, except that a pier may have a single area as a loading platform that exceeds 8 feet in width, provided the area is located at the lakeward end of the pier, and does not exceed 200 square feet in surface area. See Figure 1.

Note: A pier or wharf may be straight, or configured in an “L” or “T” or similar shape, and may include catwalks.

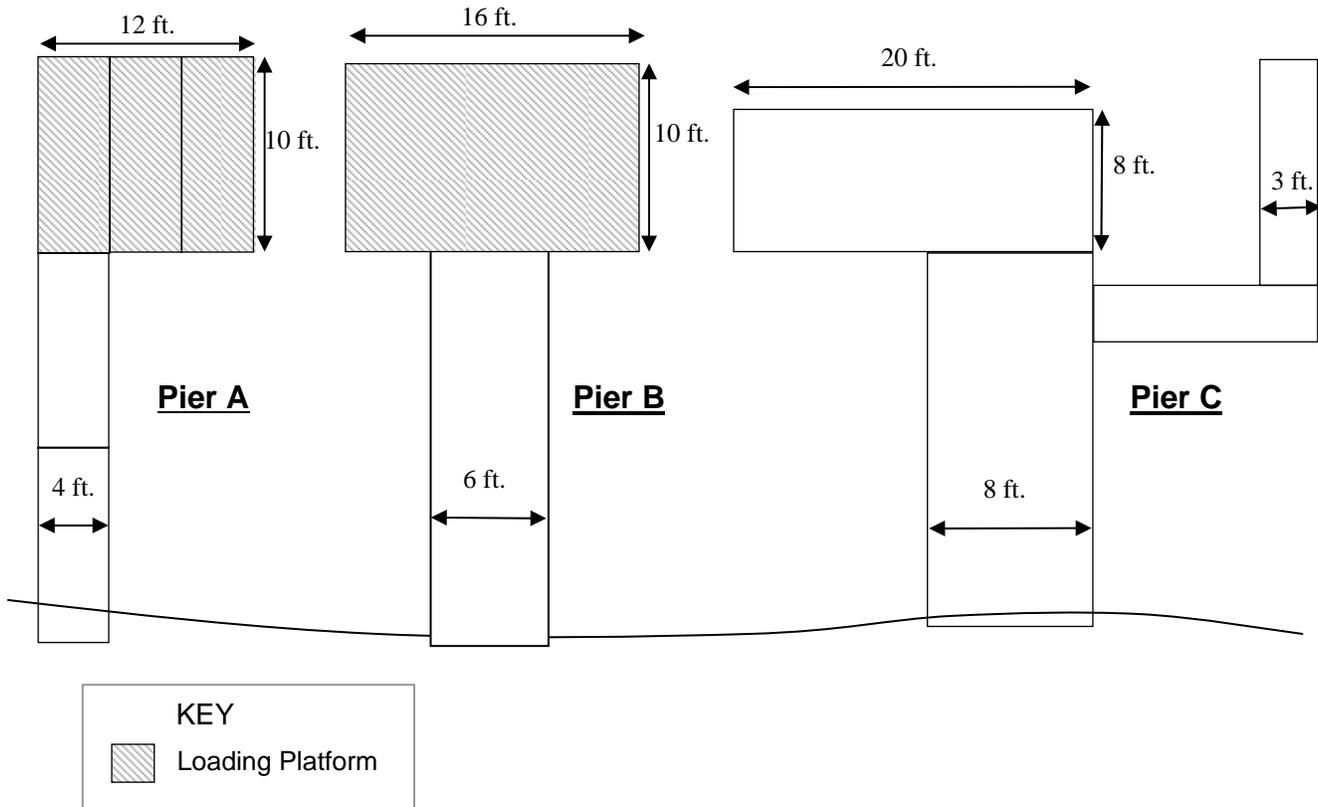


Figure 1. Examples of Width for Preexisting Pier General Permit

This figure shows 3 preexisting piers that meet the general permit standard for width. Pier A has a main stem made up of 3 sections that are each 4-feet wide by 10-feet long. The loading platform on Pier A is 120 square feet, consisting of 3 sections that are each 4-feet wide by 10-feet long. Pier B has a main stem that is 6 feet wide and a loading platform that is 160 square feet. Pier C has a main stem and “L” section that are 8 feet wide, and 2 catwalks that are each 3-feet wide creating a boat slip.

(drawings not to scale)

(e) The pier or wharf is not a solid pier.

(f) The pier or wharf is not the subject of a department enforcement action, including issuance of a citation, referral for contested case hearing under ss. 30.03 and 227.42, Stats., enforcement of a ruling by a court or administrative tribunal, or referral to the department of justice.

(g) If the pier is a shared pier, it shall be located entirely within the outer riparian rights lines of the 2 contiguous properties, as determined under s. NR 326.04.

(4) GENERAL PERMIT FOR A PIER IN A MAPPED SENSITIVE AREA. A pier located in a sensitive area designated under ch. NR 107 may be authorized under a general permit if it meets all of the following requirements:

(a) The pier or wharf shall meet all the requirements in ss. NR 326.21 and 326.22(2), except as provided in pars. (b) and (c).

(b) The pier or wharf may extend beyond the line of navigation as needed to avoid or minimize impacts to the sensitive area, but may not extend beyond the 5-foot water depth.

(c) The pier or wharf may be no more than 4 feet wide, as measured across the shortest horizontal distance of any portion of the pier or wharf surface.

Note: A pier or wharf may be straight, or configured in an "L" or "T" or similar shape, may include catwalks, but may not include any area wider than 4 feet.

(5) GENERAL PERMIT FOR A PIER ON LAKE GENEVA. A pier on rock-filled cribs may be authorized under a general permit if it meets all of the following requirements:

(a) The pier or wharf shall meet all the requirements in ss. NR 326.21 and 326.22(2), except as provided in pars. (b) to (e).

(b) The pier is located on Lake Geneva in Walworth county.

(c) The pier may be constructed on rock-filled cribs.

(d) The pier may not exceed 8 feet in width, as measured across the shortest horizontal distance of any portion of the pier surface.

Note: A pier or wharf may be straight, or configured in an "L" or "T" or similar shape, and may include catwalks.

(e) Any existing pier cribs adjacent to the riparian property shall be either re-used in place, removed and the material re-used for pier cribs in new locations, or completely removed from the waterway for upland disposal.

(6) GENERAL PERMIT FOR A PIER ON THE LOWER ST. CROIX RIVER. A pier may be authorized under a general permit if it meets all of the following requirements:

(a) The pier or wharf shall meet all the requirements in ss. NR 326.21 and 326.22(2), except as provided in pars. (b) to (f).

(b) The pier is located on the Lower St. Croix River in Pierce or St. Croix county, and is located south of the Arcola sandbar.

(c) The pier may not exceed 40 feet in length.

(d) The pier may not exceed 8 feet in width, as measured across the shortest horizontal distance of any portion of the pier surface.

Note: A pier or wharf may be straight, or configured in an "L" or "T" or similar shape, and may include catwalks.

(e) Riparian property in common association ownership may have no more than one boat slip for the first 200 feet of riparian owner's shoreline footage, and no more than one additional boat slip for each additional full 200 feet of the riparian owner's shoreline.

(f) The pier shall be a floating dock, and the pier, spud poles, posts and all other components may only be placed on the bed of the river on a seasonal basis. Flotation shall be attached to the pier. Metal barrel flotation is not permitted. Plastic barrel flotation is allowed, provided that the barrels are cleaned of any product residue. Polystyrene used for flotation shall be encased.

Note: This general permit is consistent with the January 2002 Lower St. Croix National Scenic Riverway Cooperative Management Plan, and the policy resolutions of the Lower St. Croix Management Commission, the primary policy body for joint management of the riverway under the plan.

(7) GENERAL PERMIT FOR PUBLIC PIER OR WHARF. A pier or wharf may be authorized under a general permit if it meets the following requirements:

(a) The pier or wharf shall meet all the requirements in ss. NR 326.21 and 326.22(2), except as provided in pars. (b) to (f).

(b) The pier or wharf is part of a commercial or municipal marina, or placed for commercial purposes.

(c) The pier or wharf is open to the public.

(d) The pier or wharf is for fishing, swimming or transient docking of boats for less than 24 hours.

(e) The pier may not exceed 8 feet in width, as measured across the shortest horizontal distance of any portion of the pier surface.

Note: A pier or wharf may be straight, or configured in an "L" or "T" or similar shape, and may include catwalks.

(f) The riparian property may have no more than 2 boat slips for the first 50 feet of riparian owner's shoreline footage, and no more than 2 additional boat slips for each additional full 50 feet of the riparian owner's shoreline. A boat shelter, boat hoist or boat lift may be placed as a boat slip, provided that the boat shelter, boat hoist and boat lift meets the requirements of subch. III.

(8) INDIVIDUAL PERMIT REQUIRED. (a) Activities which do not meet the standards in sub. (3), (4), (5), (6) or (7), or are otherwise determined ineligible for a general permit by the department shall require an individual permit.

(b) The department has authority under s. 30.206(3r), Stats., to require an individual permit in lieu of a general permit.

Note: Section 30.206(3r), Stats., states that the department may decide to require a person who has applied for a general permit to apply for an individual permit, if either of the following applies:

1. The department determines that the proposed activity is not authorized under the general permit.

2. The department has conducted an investigation and visited the site and has determined that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest, environmental pollution, as defined in s. 299.01(4), Stats., or material injury to the riparian rights of any riparian owner.

NR 326.24 Individual permits. (1) APPLICABLE ACTIVITIES AND PROCEDURES. (a) Any pier or wharf which is not exempt under s. NR 326.22 and is not authorized by a general permit under s. NR 326.23, requires authorization by an individual permit pursuant to s. 30.12(1), Stats.

(b) A pier or wharf placed prior to February 6, 2004 which qualifies for an individual permit under this section may not be subject to formal enforcement action by the department provided an application is received by the department by 36 months after the effective date of this rule ... [revisor insert date].

(2) STATUTORY STANDARDS. An individual permit may only be granted for piers or wharves which meet the standards in s. 30.12 (3m), Stats. Individual permits may only be granted where the department determines that the structure will not materially obstruct navigation, will not be detrimental to the public interest, and will not materially reduce the flood flow capacity of a stream.

(3) INDIVIDUAL PERMIT FOR SOLID PIERS. (a) A solid pier may be authorized under an individual permit provided it meets the statutory standards in sub. (2) and all of the following conditions:

1. For a solid pier constructed or placed before the effective date of this rule ...[revisor insert date], the permit shall only authorize maintenance, repair, modification or replacement of the existing solid pier, and the solid pier shall be located on one of the following waters: outlying waters; harbors connected to outlying waters; Fox river from the DePere dam to Lake Winnebago; Lake Winnebago; and Mississippi river.

2. For a solid pier constructed or placed after the effective date of this rule ...[revisor insert date], the solid pier shall be part of a commercial or municipal marina, public boat landing, or placed for commercial purposes, and the solid pier shall be located on one of the following waters: outlying waters; harbors connected to outlying waters.

3. Solid piers shall be provided with a sufficient opening to provide for the passage of littoral drift. The opening size shall be adequate to prevent the deposition of littoral drift considering wave energy, littoral drift supply and near-shore water depths. The department may waive this requirement on a case-by-case basis for solid piers constructed prior to the effective date of this rule ...[revisor insert date], considering factors such as the cost of modifying the existing solid pier, the ongoing environmental impacts occurring at a solid pier without sufficient openings, the potential environmental impacts of the modification, and whether the original construction of the solid pier was prior to April 1, 1981.

4. Project plans for a solid pier shall be prepared and approved by a registered professional engineer.

(b) Design of a solid pier, and evaluation of a permit application for a solid pier, shall take into consideration the following factors:

1. Wave heights that are expected to occur in the vicinity of the solid pier.

2. Ice action including moving ice floes in the vicinity of the solid pier.

3. Minimum distance between the water surface and top of structure necessary to accomplish the project purpose.

4. Structural components, including foundation design, necessary to withstand the calculated natural forces, including overtopping by waves and ice pushes.

5. The minimum footprint and fill necessary to accomplish the project purpose.

6. The potential for wave energy and wave reflection to cause increased erosion to adjacent shorelines or damage to other properties.

(c) A solid pier that is not authorized under s. NR 326.22(3) or this subsection is prohibited.

(4) INDIVIDUAL PERMIT FOR A COMMERCIAL OR MUNICIPAL MARINA. (a) Piers or wharves for a commercial or municipal marina may be authorized under an individual permit, provided they meet the statutory standards in sub. (2) and all of the following conditions:

1. The marina is open to the general public.
2. The marina may place boat shelters, boat hoists or boat lifts as boat slips, provided that each boat shelter, boat hoist and boat lift meets the requirements of subch. III.
3. The marina piers or wharves may not exceed 8 feet in width, as measured across the shortest horizontal distance of any portion of the pier or wharf surface, unless the applicant demonstrates that greater width is needed to address safety, engineering design, or stability, or is needed to provide specific services related to operation of the marina such as a loading platform or fueling dock.

(b) Design of a marina, and evaluation of a marina permit application, shall take into consideration the following factors:

1. The potential for overcrowding of boats on the waterway.
2. The potential impacts of the marina on neighboring riparians and users of the waterway.
3. The number of boat slips existing or proposed, relative to the amount of frontage owned by the applicant and to other similar properties on the waterway.
4. Whether the marina is in an area of special natural resource interest and the impacts of the marina on that area.
5. Whether the marina is in a sensitive area designated under ch. NR 107, and the impacts of the marina on the sensitive area.

(c) A commercial or municipal marina that is not authorized under this subsection is prohibited.

(5) INDIVIDUAL PERMIT FOR A PIER OR WHARF IN A SENSITIVE AREA. (a) A pier or wharf in a sensitive area designated under ch. NR 107 may be authorized under an individual permit provided it meets the statutory standards in sub. (2).

(b) The pier or wharf shall be designed to comply with the exemption standards in s. NR 326.22(2).

(c) The department may require an alternative design or location for the pier or wharf to avoid or minimize potential impacts to public rights and interests in navigable waters, including reduced size, reduced number of boats or increased length.

(d) A pier or wharf in a sensitive area that is not authorized under s. NR 326.23(4) or this subsection is prohibited.

(6) INDIVIDUAL PERMIT FOR ALL OTHER PIERS AND WHARVES. (a) For a pier or wharf that does not qualify for an exemption under s. NR 326.22, is not authorized by a general permit under s. NR 326.23, and is not authorized by any other individual permit under this section, the pier or wharf may only be authorized under an individual permit if it meets the statutory standards in sub. (2) and all of the following requirements:

1. For a pier or wharf placed prior to February 6, 2004, an application for a pier or wharf that does not meet the exemption standards in s. NR 326.22(2) may only be authorized if the applicant demonstrates that the pier or wharf was originally placed at the waterfront property before February 6,

2004, and that the pier or wharf dimensions, configuration and number of boat slips were not expanded or relocated after February 6, 2004.

Note: This provision allows a seasonal pier that is placed and removed from the same waterfront property each year, provided it is placed in essentially the same location each year.

2. For a pier or wharf placed on or after February 6, 2004, a pier or wharf with dimensions that exceed what is allowed under the exemption standards in s. NR 326.22(2) may only be authorized if the applicant demonstrates one of the following:

a. That the requested dimensions and design for the pier or wharf are required for stability of the structure or to adequately moor the boat or boats, based on the specific boat or boats that will be using the structure or the specific conditions on the waterway where the pier or wharf will be located.

b. That the requested dimensions and design are to accommodate a physically disabled person who is a resident of the riparian property. For the purposes of this provision, a physically disabled person is a person who has been determined by the department of transportation to have a permanent disability and who has been issued a disabled registration plate or special identification card under s. 353.51, Stats.

3. For a pier or wharf placed on or after February 6, 2004, a pier or wharf with a number of boat slips that exceeds what is allowed under the exemption standards in s. NR 326.22(2) is prohibited.

4. For an application for a pier placed on or after February 6, 2004 and placed on rock-filled cribs, the pier may only be located on Lake Michigan, on Lake Superior, on any bay or harbor of Lake Michigan or Lake Superior, or on Lake Geneva in Walworth county.

(b) In addition to the requirements of par. (a), design of the pier or wharf, and evaluation of the individual permit application, shall take into consideration the following factors:

1. The potential for overcrowding of boats on the waterway.

2. The potential impacts on neighboring riparians and users of the waterway.

3. The size of the pier or wharf and the number of boat slips existing or proposed, relative to the amount of frontage owned by the applicant and to other similar properties on the waterway.

4. Whether the pier or wharf is in an area of special natural resource interest and the impacts of the structure on that area.

5. Whether the pier or wharf is in a sensitive area designated under ch. NR 107, and the impacts of the structure on that area.

6. Requirements of any local ordinance.

7. Recommendations of any local, regional, state, federal or waterway management plan.

8. For a pier or wharf placed prior to February 6, 2004, the length of time the pier or wharf in its existing configuration has been placed at the waterfront property.

NR 326.25 Permit application requirements. (1) ALL APPLICATIONS. Except where modified by sub. (2), any application for a general permit or an individual permit under this subchapter shall include the following information:

(a) The applicant's name, mailing address, local address where the pier or wharf is located if different, and telephone number.

- (b) The name, mailing address and telephone number for any contractor or agent.
- (c) A description of the purpose and need for the pier or wharf.
- (d) A top view diagram of the project, showing:
1. The location of the shoreline and the length of shoreline owned by the applicant.
 2. The location of each existing or proposed pier or wharf at the applicant's property.
 3. The dimensions of each pier or wharf that is existing or proposed at the applicant's property.
 4. The water depth contours at one-foot intervals from the shoreline to one contour beyond the end of the longest existing or proposed pier or wharf, based on normal water levels.
 5. The location of the property lines for the applicant's property, and other information necessary to identify the location of the applicant's riparian rights lines.
 6. The names of the adjacent riparians on each side.
 7. A north arrow.
- (e) A cross-sectional view of each existing pier or wharf, showing:
1. The length of the existing or proposed pier or wharf.
 2. The location of any pier or wharf supports.
 3. The contour of the lakebed or streambed from the shoreline to beyond the end of the pier or wharf, based on normal water levels.
 4. The height of the structure above the normal water level.
 5. The scale of the diagram.
- (f) A description of the boat or boats that will be moored at each pier or wharf, including length, type of boat, and water depth requirements for mooring.
- (g) A description of the equipment to be used for construction, if any, and how the equipment will gain access to the project site.
- (h) A description of any other piers, wharves, boathouses or other in-water structures at the applicant's property and at the adjacent riparian property on each side.
- (i) A description of the type of bottom substrate, such as sand, rock, gravel, or silt, at the location of the pier or wharf.
- (j) A description of the materials to be used in construction of the pier or wharf.
- (k) A description of how the boat slips are assigned if the pier or wharf will have multiple users.
- (L) A description or diagram of the historic use and placement of piers, wharves and boat slips at the applicant's property.

(m) All other information necessary to show that the project will comply with the requirements of this subchapter to be eligible for a general permit or an individual permit.

(2) APPLICATION FOR A PREEXISTING PIER OR WHARF. An application for a general permit under s. NR 326.23 (3) for a preexisting pier or wharf shall include the information required in sub. (1)(a) and (d). In addition, the application shall include written and photographic documentation to show that the structure meets the general permit standards in s. NR 326.23(3)(a) and (b). In the absence of sufficient written or photographic evidence, the applicant shall submit a signed statement verifying that each of the general permit standards in s. NR 326.23(3)(a) and (b) have been met.

SUBCHAPTER III BOAT SHELTERS, BOAT HOISTS AND BOAT LIFTS

NR 326.31 Exemptions. (1) APPLICABLE ACTIVITIES. A seasonal boat shelter that meets all the criteria in sub. (2) shall be exempt under ss. 30.12(1g)(e) and (f), Stats. A boat hoist or boat lift that meets all the criteria in sub. (2) shall be exempt under s. 30.12(1g)(f), Stats.

(2) EXEMPTION STANDARDS. (a) The boat shelter, boat hoist or boat lift shall comply with all local ordinance requirements.

(b) The boat shelter, boat hoist or boat lift may not be located in a sensitive area designated under ch. NR 107.

(c) The boat shelter, boat hoist or boat lift may be placed and maintained only by a riparian, or an easement holder that meets the requirements of s. 30.131, Stats. The boat shelter, boat hoist or boat lift may be placed, installed or maintained for the riparian or qualified easement holder by an authorized agent or contractor.

(d) The boat shelter, boat hoist or boat lift shall allow the free movement of water underneath and may not cause deposition of littoral drift on the bed of the waterway.

(e) The boat shelter, boat hoist or boat lift may not be placed in any federal or state wild or scenic rivers designated under ss. 30.26 and 30.27, Stats.

(f) The boat shelter, boat hoist or boat lift shall be located entirely within the riparian rights lines, as determined under s. NR 326.04.

(g) All boat shelters shall be designed and used exclusively for the berthing of watercraft. Any boat shelter originally placed or permitted after September 1, 1991 may not exceed an outside dimension of 12 feet wide by 28 feet long on waters under 1000 acres in size and may not exceed an outside dimension of 14 feet wide by 34 feet long on waters 1000 acres and larger in size. The burden of proving that a boat shelter was placed prior to September 1, 1991 shall be on the owner. A seasonal boat shelter originally placed prior to September 1, 1991 and which does not comply with this subsection may not be expanded in size.

(h) A boat shelter, boat hoist or boat lift shall be attached to a pier, wharf or shoreline, or placed within 5 feet of a pier, wharf or shoreline.

(i) A boat shelter may include a roof or canopy, and may have a valance not to exceed 24-inches in height, but may not include walls, sides or equivalent construction such as canvas side drops. A boat shelter roof shall be pitched not less than one foot nor more than 2.5 feet from the roof peak to the bottom of the eaves. Only the size and number of vertical components required to support the watercraft and any roof are permitted.

(j) Storage facilities may only be included within the boat shelter above the height of the eaves.

(k) A boat shelter may include only a single sign necessary to identify the property and may only include lighting essential for safety and mooring.

(L) A boat shelter, boat hoist or boat lift may be placed as a boat slip.

(m) Permanent and seasonal boat shelters shall be placed as close together as practicable at a single location adjacent to each property. Adjacent lots in common ownership shall be considered a single property for the purpose of this subchapter.

(n) Except in an area of special natural resource interest, a deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., may be associated with the placement of any boat shelter, boat hoist or boat lift provided the deposit is limited to the area underneath or within one foot of the posts or supports and is less than 2 cubic yards.

(o) Dredging under s. 30.20(1g)(b)1., Stats., is not allowed for the placement or maintenance of any boat shelter, boat hoist or boat lift.

(p) The boat shelter, boat hoist or boat lift may not extend beyond the line of navigation. On a river, stream or channel, the boat shelter, boat hoist or boat lift may extend no further than the line of navigation, and may not extend out more than 25% of the width across the river, stream or channel.

(q) A boat shelter shall be seasonal. A boat hoist or boat lift may be permanent, provided it is attached to or within 5 feet of a pier, wharf or shoreline.

Note: This means that a boat shelter shall be removed between December 1 and April 1 annually. A boat hoist or boat lift that may also serve as a boat shelter may be placed year-round, provided that any roof or cover is removed between December 1 and April 1 annually.

(3) PERMIT REQUIRED. (a) Activities which do not meet the standards in sub. (2) or are otherwise determined ineligible for an exemption by the department shall require a general permit or an individual permit.

(b) The department has the authority under s. 30.12(2m), Stats., to require a permit in lieu of exemption.

Note: Section 30.12(2m), Stats., states that the department may decide to require a person engaged in an exempt activity to apply for an individual permit or seek authorization under a general permit if the department has conducted an investigation and visited the site of the activity and has determined that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest, environmental pollution, as defined in s. 299.01(4), Stats., or material injury to the riparian rights of any riparian owner.

NR 326.32 General permits. (1) APPLICABLE ACTIVITIES. A permanent boat shelter that meets all the criteria in sub. (2) shall be eligible for general permit coverage under ss. 30.12(3)(a)6. and 30.206, Stats.

(2) PERMANENT BOAT SHELTERS. A boat shelter which is not seasonal may be authorized as a permanent boat shelter under this general permit if the project complies with s. NR 326.31(2) (a) through (p) and all of the following requirements:

(a) No permit may be granted for a permanent boat shelter constructed after May 3, 1988 if the owner's riparian property also contains a boathouse over navigable waters or within 75 feet of the ordinary high water mark. Each permit issued for a permanent boat shelter shall contain a condition which provides that the permit becomes void if there is any subsequent construction of a boathouse over

navigable waters adjacent to the owner's property or within 75 feet of the ordinary high water mark on the owner's property.

(b) A permit may not be granted for a permanent boat shelter to be placed on lakes or flowages of less than 500 acres or on rivers except the Mississippi river, the Wolf river from Lake Butte des Morts to the upstream limits of the village of Fremont, and the Fox river from the DePere dam to Lake Winnebago. For the purpose of this paragraph, a series of lakes or flowages which have a connection which is commonly navigated by motorized craft and which have a common water level shall be considered a single lake or flowage. For the purpose of this paragraph, artificial mooring basins and navigation channels and reaches of rivers where water levels are controlled by a dam are considered part of the lake or flowage to which they are connected.

(c) No more than one permanent boat shelter may be permitted for each riparian property. Contiguous riparian properties which are owned by the same riparian shall be considered one property for the purpose of this paragraph.

(d) Permits for permanent boat shelters may only be granted for locations adjacent to developed shorelines. Developed shorelines are those where there are at least 5 contiguous riparian properties, including the applicant's property, which each have a principal residential structure located within 500 feet of the proposed permanent boat shelter.

(3) INDIVIDUAL PERMIT REQUIRED. (a) Activities which do not meet the standards in sub. (2) or are otherwise determined ineligible for a general permit by the department shall require an individual permit.

(b) The department has authority under s. 30.206(3r), Stats., to require an individual permit in lieu of a general permit.

Note: Section 30.206(3r), Stats., states that the department may decide to require a person who has applied for a general permit to apply for an individual permit, if either of the following applies:

1. The department determines that the proposed activity is not authorized under the general permit.
2. The department has conducted an investigation and visited the site and has determined that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest, environmental pollution, as defined in s. 299.01(4), Stats., or material injury to the riparian rights of any riparian owner.

NR 326.33 Individual permits. (1) APPLICABLE ACTIVITIES. Any boat shelter, boat hoist or boat lift which is not exempt under s. NR 326.31 and is not authorized by a general permit under s. NR 326.32 requires authorization by an individual permit pursuant to s. 30.12(1), Stats.

(2) INDIVIDUAL PERMIT FOR A BOAT SHELTER, BOAT HOIST OR BOAT LIFT. A boat shelter, boat hoist or boat lift meeting the standards in s. 30.12(3m), Stats., may be authorized under an individual permit.

NR 326.34 Prohibition. A boat shelter, hoist or lift placed after February 6, 2004 that does not qualify for an exemption under s. NR 326.31 and is not authorized by a general permit under s. NR 326.32 is prohibited.

SUBCHAPTER IV SWIMMING RAFTS

NR 326.41 Finding. The natural resources board finds that near shore areas are the most heavily used areas of a water body and are the most valuable ecological areas. Extensive and large structures on an individual and cumulative basis interfere with the public's ability to use and enjoy near shore areas and affect the growth of aquatic vegetation necessary for fish and wildlife habitat.

Accordingly, the natural resources board finds that the use of swim rafts in excess of 200 square feet in surface area or 38 inches in height may interfere with public rights as used in s. 30.13(1m), Stats., and thereby require a permit under s. 30.12, Stats.

NR 326.42 Exemptions. (1) APPLICABLE ACTIVITIES. A seasonal swimming raft that meets all the criteria in sub. (2) shall be exempt under ss. 30.12(1g)(b) and 30.13(1), Stats.

(2) EXEMPTION STANDARDS. (a) Pursuant to s. 30.13(1m)(c), Stats., the swimming raft shall be placed within 200 feet of shore.

(b) The swimming raft may be placed and maintained only by a riparian. The swimming raft may be placed, installed or maintained for the riparian by an authorized agent or contractor.

(c) The swimming raft may not exceed 200 square feet in surface area or 38 inches in height above the water level.

(d) A deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., may not be associated with the placement of any swimming raft.

(e) Dredging under s. 30.20(1g)(b)1., Stats., is not allowed for the placement or maintenance of any swimming raft.

(f) The size and height limitations of par. (b) do not apply to swimming rafts which are pulled onto shore and completely removed from the water on a daily basis or that are placed in swim areas marked and approved pursuant to s. NR 5.09.

(g) The height limitation of par. (b) does not apply to protective covers, diving boards, ladders and slides.

(3) PERMIT REQUIRED. (a) Activities which do not meet the standards in sub. (2) or are determined ineligible for an exemption by the department shall require an individual permit.

(b) The department has the authority under s. 30.12(2m), Stats., to require a permit in lieu of exemption.

Note: Section 30.12(2m), Stats., states that the department may decide to require a person engaged in an exempt activity to apply for an individual permit or seek authorization under a general permit if the department has conducted an investigation and visited the site of the activity and has determined that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest, environmental pollution, as defined in s. 299.01(4), Stats., or material injury to the riparian rights of any riparian owner.

NR 326.43 Measurements. Calculations to determine the square footage of a swimming raft shall include diving boards, ramps, slides and similar accessories.

NR 326.44 Individual permits. (1) APPLICABLE ACTIVITIES. Any swimming raft which is not exempt under s. NR 326.42 requires authorization by an individual permit pursuant to s. 30.12(1), Stats.

(2) INDIVIDUAL PERMIT FOR A SWIMMING RAFT. A swimming raft meeting the standards in s. 30.12(3m), Stats., may be authorized under an individual permit.

(3) PERMIT EVALUATION. Design and placement of the swimming raft, and evaluation of the individual permit application, shall take into consideration all of the following factors:

1. The potential impacts on neighboring riparians and users of the waterway.
2. The size of swimming raft relative to the amount of frontage owned by the applicant.
3. Whether the swimming raft is in an area of special natural resource interest and the impacts of the structure on that area.
4. Whether the swimming raft is in a sensitive area designated under ch. NR 107, and the impacts of the structure on that area.
5. Requirements of any local ordinance.
6. Recommendations of any local, regional, state, federal or waterway management plan.
7. The length of time the swimming raft has been placed at the waterfront property.

NR 326.45 Prohibitions. (1) A swimming raft may not be attached to a pier, wharf, boathouse, boat shelter, boat hoist or boat lift.

(2) A swimming raft may not be located within 10 feet of any pier, wharf, boathouse, boat shelter, boat hoist or boat lift.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 28, 2005 and December 7, 2005.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)