

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 328, subch. II relating to department standards for erosion control in lakes and impoundments.

FH-31-01

Analysis prepared by the Department of Natural Resources

Statutory authority: s. 30.2035, Stats.

Statutes interpreted: s. 30.12(2) and (3)(a)3., Stats.

This order codifies the findings of a department study on shoreline protection measures as required under s. 30.2035, Stats., to prevent adverse effects caused during and after shore protection construction activities and to achieve consistency in the application of navigable water laws for the construction of erosion control structures.

SECTION 1. Chapter NR 328, subch. II is created to read:

Chapter NR 328
Standards for Shore Erosion Control
in Lakes and Impoundments

Subchapter II – Municipal Breakwater Permits

NR 328.20 Purpose. The purpose of this subchapter is to establish when deposits of material constitute structures for the purpose of controlling shore erosion and to set criteria for determining when structures will be authorized under s. 30.12, Stats.

NR 328.21 Applicability. (1) ELIGIBLE WATERWAYS. Permits for breakwaters may be issued for placement in the following water bodies: Castle Rock and Petenwell flowages, Adams and Juneau counties; Lake Koshkonong, Dane, Jefferson, and Rock counties; Beaver Dam lake, Fox lake, and Lake Sinissippi, Dodge county; Lake Puckaway Green Lake county; Lake Nokomis – Rice River reservoir, Lincoln and Oneida counties; Big Eau Pleine reservoir, Marathon county; Lake DuBay, Marathon and Portage counties; Rainbow and Willow flowages, Oneida county; Lake Poygan, Winnebago and Waushara counties; Lake Winneconne and Lake Buttes des Morts, Winnebago county; Lake Winnebago, Calumet, Fond du Lac, and Winnebago counties; and impoundments of the Mississippi river.

Note: The listed waters are generally typified by following conditions – artificially impounded; 2500 acres and larger; extensive water level fluctuation; high rate of wetland/shoreline loss from erosion; and historic loss of shoreline vegetation.

(2) WHO MAY APPLY. (a) Permits for breakwaters may be issued to municipalities and similar public entities, including but not limited to, state and federal government, inland lake protection and rehabilitation districts or similar special purpose units of government and public utilities. Owners of riparian upland adjacent to, or flowed lands underlying, the structures shall be co-applicants if the municipality or public utility is not the riparian owner.

(b) As part of the permit application, a public entity shall provide information to demonstrate to the satisfaction of the department that the public entity has all of the following:

1. Statutorily assigned duties, authorities or requirements that may reasonably be construed to include control of shore erosion and protection of aquatic habitat.
2. A system of governance that allows participation in decision making by a range of public interests.
3. Institutional permanence of a duration similar to the life of the structure.

NR 328.22 Definitions. As used in this subchapter:

(1) "Breakwater" means the placement of stone, concrete or similar inert material 10 or more horizontal feet offshore, generally parallel to the shoreline for the purpose of controlling shore erosion and preserving or restoring aquatic habitat. Breakwater designs may include, but are not limited, to stone dikes, stone islands, barrier islands and submerged offshore shoals.

(2) "Comprehensive plan" means a plan that includes data on water resources, including public rights and interests in navigable waters; data on existing and potential uses of the water body and any use impairments; alternatives and recommended actions to protect or restore water resources or allocate uses of the water body.

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

(4) "Municipality" means any town, village, city or county in this state.

(5) "Structure" means anything man-made, having shape, form and utility either permanently or temporarily attached to or extending above the ground or lakebed.

NR 328.23 Standards. Breakwaters may be authorized where all of the following apply:

(1) They are determined by the department to be the best management practice to control shore erosion and preserve or restore aquatic habitat.

(2) The structure be designed by a licensed professional engineer to be stable under stated maximum water level and wave conditions in order to avoid a failed structure that quickly becomes a hazard to users of the waters.

(3) The practice is specifically recommended for the purpose specified in sub. (1) in a comprehensive plan approved by the department for management of a specific water body and its watershed.

(4) The requirements of s. 1.11, Stats., are met.

(5) The department has complied with the notice and hearing procedures in s. 30.02 (3) and (4), Stats.

NR 328.24 Conditions of permits. In addition to any conditions deemed necessary to protect public rights and interests in navigable waters under s. 30.12, Stats., any authorization issued by the department under this subchapter shall contain the following conditions:

(1) The structure shall remain under public ownership or control. Public ownership and control shall be established by documentation of at least one of the following as part of the permit application:

(a) Fee title ownership of the structure by a municipality or public entity.

(b) Lease with a term of 25 years or more of the structure to a municipality or public entity.

(c) Conservation easement on the structure held by a municipality or public entity that includes the rights to construct and maintain the structure, right of public access to the structure.

(d) Title to, lease of, or conservation easement securing necessary rights to use and management of the structure and the area to be protected from wave energy.

(2) No ancillary structures or facilities, other than scientific measuring devices and navigational markers, shall be located on or attached to the breakwater.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on December 5, 2001.

The rules 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.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)