

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

The Wisconsin Natural Resources Board proposes an order to amend NR 16.71(3), 16.73(1), 16.75; to repeal and recreate NR 16.74(5); and to create NR 16.71(1m) and 16.74(6m) related to the permitting the use of natural bodies of water as fish farms.

FH-16-01

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 29.733(2)(f) and 227.11(2), Stats.
Statutes interpreted: s. 29.733, Stats.

In this order:

Section 1 creates a definition of “department fish hatching and rearing facilities” for the purpose of this subchapter.

Section 2 amends the definition of “natural bodies of water” providing an exemption to private waterbodies permitted under ch. NR 299 water quality certification. This exemption is consistent with the existing exemption for water bodies permitted as private under chs. 30 and 31, Stats.

Section 3 amends the note under s. NR 16.71 clarifying the definition of natural bodies of water as defined in s. NR 16.71(3).

Section 4 amends the permit application cut-off date from May 1, 1999 to June 30, 2002.

Section 5 repeals and recreates language describing the criteria and the conditions for permit renewal under s. 29.733(2)(a) and (b), Stats., and creates a note clarifying what is meant by historical conditions for the purpose of permit renewals.

Section 6 clarifies that a single permit may be issued for natural bodies of water located on contiguous parcels of property.

Section 7 adds language clarifying that the general enforcement provisions of s. 29.971, Stats., are applicable to this subchapter.

SECTION 1. NR 16.71(1m) is created to read:

NR 16.71(1m) “Department fish hatching and rearing facilities” means all fish hatching and rearing waterbodies owned by the department, or leased or controlled through a cooperative agreement between the property owner and the department and where the department owns all the fish.

SECTION 2. NR 16.71(3) is amended to read:

NR 16.71(3) “Natural body of water” means any spring, stream, pond, lake or wetland that was historically present in a natural state but may have been physically altered over time ~~and has not been permitted as an artificial and private water body~~ except any waterbody that has been permitted by the department under ch. 30 or 31 Stats., or ch. NR 299 water quality certification and not declared public under s. 30.19(5), Stats.

SECTION 3. NR 16.71 Note is amended to read:

Note: For purposes of this subchapter, a natural body of water does not include ~~a physically altered body of water that has been permitted as an artificial and private body of water under ch. 30 or 31, Stats.~~ an artificial wetland, as defined under s. NR 103.02(1m) or any swale, bermed area or excavation that is not located in a wetland, pond, lake, stream or spring that was historically present in a natural

state, if the artificial wetland, swale, bermed area or excavation retains water as the result of human modification of the landscape or is constructed of man-made materials.

SECTION 4. NR 16.73(1) is amended to read:

NR 16.73(1) For permits reauthorized under s. 29.733(2)(b), Stats., the applicant shall complete and submit an application form provided by the department and the appropriate permit fee ~~within 60 days from May 1, 1999~~ by June 30, 2002.

SECTION 5. NR 16.74(5) is repealed and recreated to read:

NR 16.74(5) The department shall renew under s. 29.733(2)(c), Stats., a permit issued under s. 29.733(2)(a) and (b) Stats., for use of a natural body of water as a fish farm or any part of a fish farm in a natural body of water unless the department determines there has been a substantial adverse change affecting one or more of the criteria specified in s. NR 16.74(1)(a) to (e) resulting from the operation of the fish farm. The department shall consider the historical condition of the natural water body prior to the presence and operation of the fish farm as part of their permit renewal decision under s. 29.733(2)(c), Stats.

Note: Under this paragraph, historical conditions refer to known uses of the natural body of water prior to the inception of the fish farm.

SECTION 6. NR 16.74(6m) is created to read:

NR 16.74(6m) A single permit shall be issued for multiple natural bodies of water located on the same contiguous parcel of property under the same ownership or leasehold.

SECTION 7. NR 16.75 is amended to read:

NR 16.75 Enforcement. The department may suspend or revoke a permit issued under this subchapter subject to the provisions of s. 29.733(2)(e), Stats. A fish farmer operating a fish farm in a natural body of water as defined in s. NR 16.71(3) without a valid permit under this subchapter may be penalized under s. 29.971, Stats.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on February 27, 2002.

The rules shall take effect on the 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)