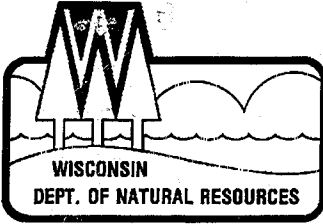


Clearinghouse Rule 95-012

95-012



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

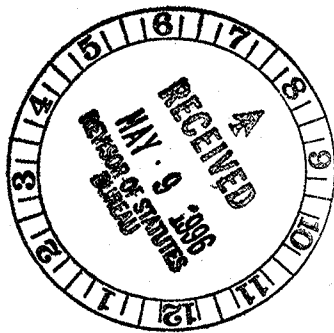
Tommy G. Thompson, Governor
George E. Meyer, Secretary

Box 7921
101 South Webster Street
Madison, Wisconsin 53707-7921
TELEPHONE 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

STATE OF WISCONSIN)
) ss
DEPARTMENT OF NATURAL RESOURCES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WZ-15-95 was duly approved and adopted by this Department on February 28, 1996. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 6th day of May, 1996.

George E. Meyer
George E. Meyer, Secretary

(SEAL)

7-1-96



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create ch. NR 323 relating to bird nesting and similar habitat structures in navigable waters.

WZ-15-95

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 30.12(3)(d) and 227.11(2)(a), Stats.
Statutes interpreted: ss. 30.12(3)(a)2m and (3)(bn), Stats.

Chapter NR 323 establishes an authorization process for the placement of bird nesting platforms, wood duck houses and similar structures on the beds of navigable waters for the purpose of improving wildlife habitat. NR 323 also establishes: 1) Minimum design standards and locational criteria for bird nesting and similar habitat structures in navigable waters, and; 2) Project proponent notification requirements to the department.

Chapter NR 323

BIRD NESTING AND SIMILAR HABITAT STRUCTURES

IN NAVIGABLE WATERS

NR 323.01 Purpose.	NR 323.05 Notification requirements to the department.
NR 323.02 Applicability.	NR 323.06 Enforcement.
NR 323.03 Definitions.	
NR 323.04 Minimum standards and location criteria.	

NR 323.01 Purpose. This chapter is promulgated under s. 30.12(3)(d), Stats., to establish standards for the placement of bird nesting and similar habitat structures on the beds of navigable waters for the purpose of improving wildlife habitat.

NR 323.02 Applicability. This chapter applies to riparian owners that construct, place and maintain bird nesting and similar habitat structures in navigable waters for the purpose of improving wildlife habitat without application for a permit under s. 30.12(2) or (3), Stats., as authorized under s. 30.12(3)(bn), Stats.

NR 323.03 Definitions. In this chapter: (1) "Department" means the department of natural resources.

(2) "Nesting structure" means any structure or device constructed for the purpose of improving nesting habitat for wildlife, including birds, mammals, amphibians and reptiles. Nesting structures include but are not limited to wood duck houses and nesting platforms.

(3) "Riparian owner" means an owner of land adjacent to navigable waters.

(4) "Riparian zone of interest" means that area within a waterbody where a riparian owner has special rights under Wisconsin water law. The riparian zone of interest is determined using the criteria in s. NR 326.07.

NR 323.04 Minimum standards and location criteria. (1) A riparian owner may place and maintain a nesting structure on the bed of navigable waters without first obtaining a permit under s. 30.12(2) and (3), Stats., if the nesting structure complies with the standards in this section and if the riparian owner submits the notification required under s. NR 323.05.

(2) Nesting structures shall be designed and constructed to prevent structural failure caused by wave, wind or ice action and shall be maintained in good condition at all times.

(3) The surface area of a nesting structure may not exceed 25 square feet.

(4) Nesting structures shall be placed within the owner's riparian zone of interest.

(5) Nesting structures shall be designed and constructed of unpainted wood or of materials that are non-gloss earthtone colors, that blend into a natural shoreline setting during leaf-on conditions.

(6) Nesting structures may not result in a material obstruction or hazard to navigation.

(7) Nesting structures may not be treated with wood preservatives or compounds that may be harmful to wildlife using the structure or a potential pollutant to the waterway.

(8) Nesting structures authorized under the authority of this chapter and s. 30.12(3) (bn), Stats., are the responsibility of the riparian owner and the riparian owner shall assume all liability associated with the structures.

Note: Wood duck houses and nesting platforms attached to or supported by existing trees in their natural condition are not a regulated activity under ch. 30, Stats.

NR 323.05 Notification requirements to the department. (1) A riparian owner proposing to construct a nesting structure in navigable waters for the purpose of improving wildlife habitat under s. 30.12(3)(bn), Stats., shall notify the department in writing at least 10 working days before the structure is placed in navigable waters.

(2) Written notification to the department shall include all of the following:

- (a) Name, address and telephone number of riparian owners.
- (b) Location of the riparian owner's property identified by county, township, range, section and quarter, quarter section.
- (c) The name of the water body involved.
- (d) Number and type of nesting structures to be installed.
- (e) A written statement from the project proponent certifying that he or she understands the requirements of this chapter and the nesting structures will be built in accordance with them.

NR 323.06 Enforcement. Nesting structures constructed in navigable waters in violation of this chapter and s. 30.12(3)(a)2m or 30.12(3)(bn), Stats., are considered a public nuisance under s. 30.294, Stats., and are subject to penalty provisions under s. 30.298, Stats.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 28, 1996.

The 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.

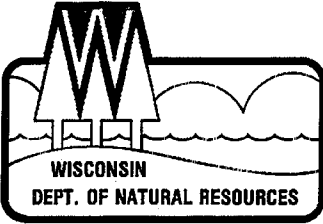
Dated at Madison, Wisconsin May 6, 1996

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary

(SEAL)





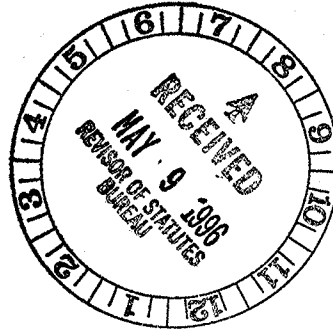
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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May 6, 1996

Mr. Gary L. Poulson
Assistant Revisor of Statutes
131 West Wilson Street - Suite 800
Madison, WI

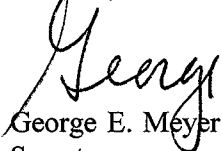


Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WZ-15-95. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


George E. Meyer
Secretary

Enc.