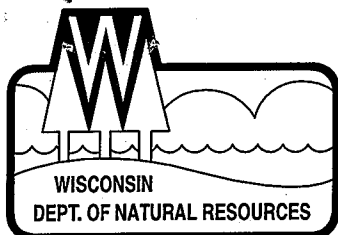


98-006

# Clearinghouse Rule 98-066

## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES



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

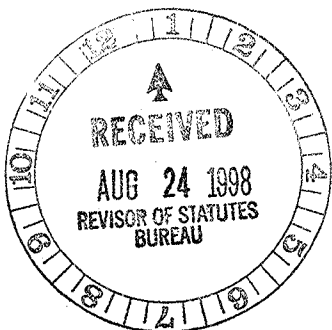
Box 7921  
101 South Webster Street  
Madison, Wisconsin 53707-7921  
TELEPHONE 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

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. FH-31-98 was duly approved and adopted by this Department on June 24, 1998. 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 19<sup>th</sup> day of August, 1998.



George E. Meyer  
George E Meyer, Secretary

(SEAL)



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 NR 300 relating to fees for waterway and wetland permit decisions.

FH - 31 - 98

Analysis prepared by the Department of Natural Resources

Statutory authority: ss. 30.28, 31.39, and 281.22, Stats.

Statutes interpreted: ss. 30.10 to 30.205, 30.21 to 30.27, 31.02 to 31.185, 31.33 to 31.38, and 281.22, Stats.

NR 300 sets standard timeframes for making decisions on proposed physical alterations affecting surface water resources, establishes a process for requesting expedited decision making, and sets fees for standard and expedited application review.

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SECTION 1. NR 300 is repealed and recreated to read:

**Chapter NR 300  
FEES FOR WATERWAY AND WETLAND  
PERMIT DECISIONS**

NR 300.01 Purpose  
NR 300.02 Applicability  
NR 300.03 Definitions

NR 300.04 Time limits  
NR 300.05 Exceptions to time limits  
NR 300.06 Fee processing

**NR 300.01 Purpose.** This chapter is developed pursuant to ss. 30.28, 31.39 and 281.22, Stats., to establish procedures for changing basic and supplemental fees for permits, approvals, determinations and hearings for projects in navigable waters.

**NR 300.02 Applicability.** This chapter is applicable to any application for a permit or approval pursuant to ss. 30.10 to 30.27 or ss. 31.02 to 31.38, Stats.

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

(1) "Application" means a form prescribed by the department to be completed by the owner, applicant or authorized agent for an activity which requires a permit or approval from the department, and any other information which can reasonably be required from an applicant and which the department needs to make a decision under applicable provisions of law, such as plans, property deeds, technical analysis or, where required pursuant to s. 23.11(5), Stats., an adequate environmental impact report.

(2) "Business day" means each day except Saturday, Sunday, January 1, the third Monday in January, the last Monday in May, July 4, the first Monday in September, the 4th Thursday in November, December 24, December 25 and December 31. If January 1, July 4, December 24,

December 25 or December 31 fall on either a Saturday or a Sunday, the day designated as a paid holiday in lieu of the specific date is not a business day.

(3) "Decision" means written permission, denial of permission or dismissal of an application in accordance with procedural and substantive requirements of law.

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

(5) "EA" means an environmental assessment as defined in s. NR 150.02(11).

(6) "EIR" means environmental impact report as defined in s. NR 150.02(9).

(7) "EIS" means environmental impact statement as defined in s. NR 150.02(10).

(8) "Field investigation" means a physical inspection of the location of a proposed action requiring a permit or approval under ch. 30 or 31 or s. 281.22, Stats., and surrounding areas that may be directly or indirectly affected by the proposed action, carried out by an employe or agent of the department for the purpose of determining whether the proposed action meets applicable requirements of law.

(9) "Permit or approval" means a permit or approval pursuant to ss. 30.10 to 30.27 or ss. 31.02 to 31.38, Stats.

**NR 300.04 Time limits.** (1) Except as provided in s. NR 300.05, the time limits specified in sub. (2) shall be applied to decisions on fully completed applications for the water regulatory permits or approvals listed in s. NR 300.02.

(2) The department shall review the application for completeness within 15 days of receipt of the application. The department shall notify the applicant of any additional information reasonably necessary to review the application. An application may not be considered complete until the requirements of the Wisconsin environmental policy act, s. 1.11, Stats., have been met and until all information necessary for associated permits, such as Wisconsin pollution discharge elimination permits under ch. 283, Stats., has been submitted to the department.

(3) The applicant shall submit as requested, at any time during the review process, additional information the department finds to be reasonably necessary for review of the application.

(4) For any permit listed in s. NR 300.02, a decision shall be mailed to the applicant within the following time limits, or the report required by s. 227.116 (4), Stats., shall be submitted:

(a) Permits where a class 1 legal notice under ch. 985, Stats., is required by law or deemed appropriate by the department, 150 business days.

(b) Other permits, 90 business days.

**NR 300.05 Exceptions to time limits.** When any of the following conditions are met, the time limits in s. NR 300.04 are not applicable:

(1) When a contested case hearing is required because a substantive written objection to the granting of a permit or approval by the department has been received in response to a public notice, or when a hearing is scheduled on the department's own motion, the department's decision

shall be mailed to the applicant within 45 business days after completion of the hearing, including preparation of a transcript if necessary, and subsequent filings.

(2) When the department has determined, due to an impending enforcement action, that it will not process after-the-fact permits or approval applications in accordance with s. NR 301.04 (1).

(3) The time limits specified in s. NR 300.04 do not include the number of business days between any of the following:

(a) The date a decision is made by the department to prepare an EIS and the date a final determination is made that the department has complied with s. 1.11, Stats..

(b) The date a request is made to an applicant for additional information necessary for the department to issue a decision under the applicable statute and the date that information is received by the department.

(c) The date a class 1 legal notice is mailed by the department and the date the department receives satisfactory proof of publication of that notice from the applicant.

(d) November 1 of any calendar year and April 1 of the succeeding calendar year for applications received after October 1 if a field investigation is required before the department has adequate information to make a decision.

(4) If the department determines pursuant to ch. NR 150 that an EA is required for compliance with s. 1.11, Stats., the time limits specified in s. NR 300.04 shall be increased by 60 business days.

(5) If the department's action on a requested permit or approval is delayed or prevented by an order or decision of a court of law, the time limit specified in s. NR 300.04 shall be adjusted to conform to the court's decision or order.

(6) If the department's action on a requested permit or approval is delayed or prevented by the action or failure to act of an agency or private party other than the department or the applicant, the time limit specified in s. NR 300.04 shall be adjusted accordingly.

**NR 300.06 Fee processing.** (1) **FEE REQUIRED.** The department shall charge a fee for permits or approvals. The permit or approval fee shall accompany the permit application or request for approval. Projects funded in whole or in part by any federal agency or state agency or any permits issued under s. 30.12(3)(a)2., 2m. or 3., Stats., are exempt from fees. Except for federal or state agency dam projects, any construction, alteration, change in operation, transfer or abandonment of a dam requires a fee pursuant to s. 31.39(3), Stats.

(2) **BASIC FEES.** For fees charged for permits and approvals under ss. 30.10 to 30.205 and 30.21 to 30.27, 31.02 to 31.185, 31.33 to 31.38, and 281.22, Stats., the department shall classify the types of permits and approvals based on the estimated time spent by the department in reviewing, investigating and making determinations whether to grant the permits or approvals. The fees are established as follows:

(a) For a permit or approval with an estimated time of 3 hours or less, the fee shall be \$50.

(b) For a permit or approval with an estimated time of more than 3 hours but not more than 9 hours, the fee shall be \$300.

(c) For a permit or approval with an estimated time of more than 9 hours, the fee shall be \$500.

(3) SUPPLEMENTAL FEES. When the applicant requests in writing that the permit be issued in a shorter time interval than the total time interval allowed in s. NR 300.04, the department shall respond in writing within 20 business days to state whether it can comply with the request. If the request to expedite the permit review is accepted by the department, the applicant shall submit \$2000 in supplemental fees for each expedited permit request which is accepted by the department, in addition to the applicable fees in sub. (2). If the department fails to make a decision on the completed application within the time limits requested, the department shall refund the supplemental fee.

(4) REFUNDS. The department shall refund a permit or approval fee if the applicant withdraws the application before the department determines that the application for the permit or approval is complete. The department may not refund a permit or approval fee after the department determines that the application is complete.

(5) LATE APPLICATION FEE. If the applicant applies for a permit or requests an approval after the project is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

(6) MULTIPLE FEES. If more than one fee is applicable to a project, the department shall charge only the highest fee of those that are applicable.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on June 24, 1998.

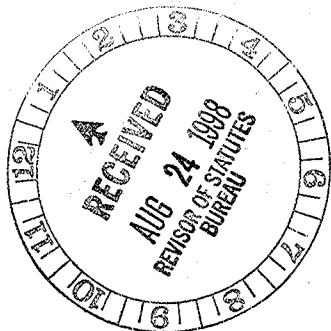
The rules contained herein shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

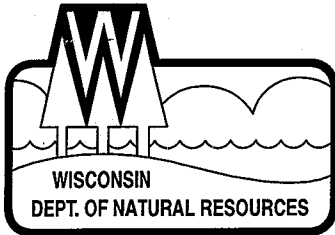
Dated at Madison, Wisconsin August 19, 1998

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary

(Seal)





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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

Box 7921  
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August 19, 1998

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

*George*  
Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. FH-31-98. 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*  
George E. Meyer  
Secretary

Enc.

