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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 02-099

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

The statement of purpose in s. NR 328.01 attributes an opinion to the Legislature. This opinion is not expressed in specific statutory language, although the opinion can reasonably be inferred from the current statutes. Because this is a rule promulgated by the department, it might be more appropriate for the statement of purpose to describe the department’s interpretation of its mandate from the Legislature.

#### 2. Form, Style and Placement in Administrative Code

- a. In the note to s. NR 328.01, a colon should conclude the introduction to sub. (2).
- b. In s. NR 328.02, the first sentence should be renumbered as sub. (1) and the remaining subsections should be renumbered accordingly.
- c. The first sentence of the note after s. NR 328.03 (3) contains substantive requirements that should be part of the rule. Also, use of the term “vertical” in that definition is somewhat confusing, because the definition as continued in the note includes structures that are not vertical. It might be better to substitute “upright” for “vertical” in this definition.
- d. The note to s. NR 328.03 (1) provides that public notice under s. 30.02 (3) and (4), Stats., is required. The placement of this note after sub. (10) is questionable. Also, if this is a new requirement created by the department, the provision is substantive and should be placed in the body of the rule. [See also the definition of the word “fetch” in the note to s. NR 328.05 (1).]

e. In s. NR 328.05 (2), the word “following” in the first sentence should be deleted. Also, it appears that Table 1 should be placed following s. NR 328.05 rather than s. NR 328.06.

f. Section NR 328.06 (1) should be rewritten in the following format:

(1) LOW ENERGY SITES. At low energy sites all of the following apply:

(a) Permit applications may be made for all . . . breakwaters. Short-form permits shall be used.

(b) Permit applications may not be made for . . . methods, except . . . .

The entire section should be reviewed for this structure. Also in sub. (2) (c), the phrase “are required” should be replaced by the phrase “shall be used.” Finally, in sub. (4) (intro.), the phrase “all of” should be inserted before the phrase “the following settings.”

g. In s. NR 328.07 (intro.), the phrase “all of” should precede the phrase “the following factors.”

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

Section 227.14 (3), Stats., contains specific requirements regarding forms that are required by a proposed rule. Section NR 328.04 should comply with this requirement.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In the analysis, the phrase “erosion intensity” should be inserted before the first occurrence of the notation “(EI)” in the third to last paragraph. The phrase then can be deleted in the second to last paragraph. In the second to last paragraph, the word “be” should be inserted before the phrase “used to determine appropriate shoreline erosion” in the third sentence.

b. A note might be appropriate after s. NR 328.02 (1), indicating that some shore erosion control measures, such as grading of more than 10,000 square feet of the bank, may require other permits under ch. 30, Stats.

c. The applicability provision of s. NR 328.02 (2) states that repair of structures is not subject to the rule. This applicability provision also refers to replacement of structures. However, the distinction between these two terms is not clear. The definition of “replacement” in s. NR 328.03 (17) shows that, under some circumstances, repairs may be considered replacement.

d. Section NR 328.02 (3) refers to “pre-existing” permits. The rule should indicate what constitutes a pre-existing permit. In most cases, rules refer to permits that existed prior to the effective date of the rule.

e. The rule refers to a calculated score in s. NR 328.03 (8), but the cross-referenced methodology for making this calculation describes it as an estimate. [See s. 328.05 (2).] The use of “calculation” and “estimate” should be clarified. See also, s. 328.03 (11) and (13).

f. Section NR 328.04 should clarify who needs to make the request to cause a meeting to occur.