



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 04-66

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 October 2002.]

1. Statutory Authority

a. In s. NR 1.05 (2), the department requires a general or individual permit for the exempt activities listed under s. 30.123 (6) (d) and (e), Stats., in areas of special natural resource interest. However, s. 30.123 (6m), Stats. authorizes the department to require a permit for these activities after an investigation determines that site-specific conditions require such restrictions to prevent significant adverse impacts to the public rights and interests. In the alternative, s. 30.123 (6s), Stats., authorizes the department to promulgate rules concerning these exempt activities that establish “reasonable limitations” on the location of culverts at the site affected by the activity, but does not authorize the department to require a permit for these activities. Can the department identify the statutory authority to require permits for the exempt activities under s. 30.123 (6) (d) and (e), Stats., in areas of special natural resource interest?

b. In s. NR 1.06, the term “public rights features” is first used and is defined in sub. (4), after which it appears throughout the rule. This is a new term that is neither included nor defined in ch. 30, Stats., and appears to be substantially broader than the term “public rights and interests” provided in s. 30.12 (2m) (a), Stats. Can the department clarify why it is using this term and definition in the rule?

c. In s. NR 1.06 (2), permits are required for exempt activities under ss. 30.12 (1g) (f), 30.123 (6) (e), and 30.20 (1g) (b) 2., Stats., in locations of public rights features. However, ss. 30.12 (2m), 30.123 (6m), and 30.20 (1m), Stats., provide that the department may decide to require a permit for these exempt activities if the department has conducted an investigation,

visited the site, and determined that the site-specific conditions require restrictions on the activity to prevent significant adverse impacts to public rights and interests. What is the statutory authority for the department to require permits for certain exempt activities before this statutory process is conducted? Under ss. 30.12 (1p) (a) 3., 30.123 (6s) (a) 3., and 30.20 (1k) (a) 2., Stats., the department may promulgate rules concerning specified exempt activities that establish reasonable limitations on the location of those activities; does the department consider requiring a permit to be a “reasonable limitation” on the location of an activity?

d. In s. NR 1.07 (3) (a) and (c), all areas of special natural resource interest and all locations containing public rights features as defined in s. NR 1.06 are determined to be priority navigable waterways. However, s. 30.19 (1b) (c) 1., 2., and 4., Stats., specify that a priority navigable waterway means a navigable waterway or part of a navigable waterway identified as an outstanding or exceptional resource water under s. 281.15, Stats.; a navigable waterway, or part of a navigable waterway identified as a trout stream; and a navigable waterway, or part of a navigable waterway, that the department has determined contains sensitive fish and aquatic habitat. What is the statutory authority for the department to include all areas of special natural resource interest and all locations containing public rights features as priority navigable waterways?

2. Form, Style and Placement in Administrative Code

a. In s. NR 1.05 (3), “can” should be changed to “may.”

b. In s. NR 1.05 (4) (intro.), “hereby” should be deleted and the phrase “All of” should be inserted at the beginning of the sentence. This problem also occurs in s. NR 1.07 (3) (intro.).

c. Parenthetical abbreviations should be avoided in rules. For example, see s. NR 1.05 (4) (i) and (j). [See s. 1.01 (6) and (8), Manual.]

d. In s. NR 1.06 (2), the phrase “as described under sub. (4)” should be inserted after the first occurrence of the phrase “public rights features.” In sub. (3), “s. NR 1.06” should be changed to the notation “sub.” In sub. (4) (intro.), the phrase “all of the following” should be inserted before the colon.

e. The department should include a note after s. NR 1.06 (8) (b) indicating how a person may obtain a copy of the cited publication. Is it available on the department’s Web site?

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

a. In the Statutory Authority and Statutes Interpreted section of the Summary prepared by the department, “s. 30.206 (1c)” should be changed to “s. 30.206 (1) (c).”

b. In s. NR 1.016 (1), a second parenthesis should be inserted at the end of the *Diana Shooting Club* citation. In sub. (2), in the second *Waters of WI* citation, the notation “pps.” should be changed to “pp.” This problem also occurs in the third citation to *Waters of WI*. Also, in sub. (2), the second to last sentence is missing a quotation mark at the end of the sentence.

c. In s. NR 1.016 (5), the phrase “Recent legislative actions” in the first sentence should be changed to the more specific “2003 Act 118.” The word “Recent” should not be used in a rule since at some point in time, the actions will no longer be recent. In the second sentence, “the bill” should be changed to “the Act” and in the third sentence “the bill’s” should be changed to “the Act’s.” Also, does the department have sources for the quotes attributed to the Act sponsors and the Governor?

d. Section NR 1.05 (1) provides that “To fulfill its affirmative duty to protect public trust waters the department shall designate areas of special natural resources interest as defined in s. 30.01 (1am), Stats.” The rule should also specify that the department has the authority to designate areas of special natural resource interest under its authority to regulate activities in navigable waters under ch. 30, Stats. Also, in sub. (1), “resources” should be changed to “resource”; this problem also occurs in sub. (4) (intro.).

e. In s. NR 1.05 (2), it appears that the reference in the note to “ch. NR 320” is related to activities under s. 30.123 (6) (d) and (e), Stats., but the relationship is unclear and should be explained. In addition, the material in the note is substantive and should be moved to the text of the rule. Further, the material in the note should be changed to include the specific language used in ss. 30.12 (1g) (a) to (km) and 30.20 (1g) (b) 1. and 2., Stats.

f. In s. NR 1.05 (4), are the waters listed under sub. (4) (d) to (L) areas the department has determined possess “significant scientific value” under s. 30.01 (1am) (c), Stats.? If so, the department should note that in the rule. Also, can the department provide the criteria it uses to determine whether a water on this list possesses significant scientific value?

g. In s. NR 1.06 (1), the department is directed to identify “locations of public rights features” that require a general or individual permit for an otherwise exempt activity, and under sub. (2), a general or individual permit is required for certain exempt activities in locations of public rights features. The department should clarify whether it is the location or the activity that requires a permit instead of an exemption. Further, it is unclear whether “locations” of these features will encompass an entire water body or the parts of waters where these features specifically occur. The note to s. NR 1.06 (2) should include the statutory citations for the exemptions provided under ss. 30.123 and 30.20, Stats. In sub. (3), it is unclear how a person will know whether public rights features exist at a particular site before commencing an exempt activity. Can the department provide any guidance in the rule? In sub. (8) (a), “sensitive areas designated under ch. NR 107.” A more specific citation should be used.

h. In s. NR 1.06 (3), “the person has” should replace “they have” and “the” should replace “their.”

i. In s. NR 1.07 (1), the department should clarify that it also has authority under s. 30.19 (1b) (c) 4. and (1d), Stats., to designate priority navigable waterways. In sub. (2), “s. 30.19 (1d), Stats.,” should be changed to the more specific “s. 30.19 (1d) (a) 1., Stats.,” which specifically applies to priority navigable waterways. In sub. (3) (a), “resources” should be changed to “resource” and “interested” should be changed to “interest.”