

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 320.06(1)(c)15 and (d)7. and (2)(c)10., 323.04(1)(c)11. and (2)(c)5., 328. 04(3)(j) and 328.05(7)(i), 329.04(1)(c)5. and (2)(c)4., 341.08(3)(i), 343.07(3)(a)4. and 345.04(1)(c)6. and (d)9. and (2)(c)11. relating to general permit criteria requiring decontamination of equipment for invasive species and viruses

WT-33-07

Summary Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.12(1g) and (3), 30.123(6) and (7), 30.19(1m) and (3r), 30.20(1r) and (1t) and s. 30.206, Stats.

Statutes Interpreted: ss. 30.12(1g) and (3), 30.123(6) and (7), 30.19(1m) and (3r), 30.20(1r) and (1t) and s. 30.206, Stats.

Explanation of Agency Authority:

The Department has authority under ss. 30.20 and 30.206, Stats., to promulgate rules to establish general permits.

Related statute or rule:

These rules relate directly to regulation of activities in navigable waters under ch. 30, Stats., waters designations in ch. NR 1, and the NR 300 series of rules.

Plain Language Analysis:

The purpose of this rule revision is to modify the existing rules to establish a new exemption and general permit criteria requiring decontamination of equipment for invasive species and viruses (including but not limited to VHS). This rule revision establishes an additional exemption and general permit requirement regarding decontamination of equipment used on activities in navigable waters under ch. 30, Stats. to control the spread of invasive species and viruses. The proposed rule establishes exemption and general permit standards for activities that would otherwise require an individual permit containing the same condition.

Federal Regulatory Analysis:

Any activity that results in a discharge (including deposits and structures) into "waters of the United States" is regulated by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. An Individual Permit from the Corps is required, unless Wisconsin regulates the project in its entirety under ch. 30, Stats., in which case the project is authorized by the Corps under general permits GP-01-WI or GP-LOP-WI.

Comparison with Adjacent States:

The four adjacent states have not yet adopted regulations addressing the VHS problem, but steps have been taken elsewhere, particularly in the lower Great Lakes where the Great Lakes form of the VHS virus was first discovered. In November of 2006 the New York State Department of Environmental Conservation announced emergency regulations prohibiting the commercial collection of bait fish from waters of the state where VHS has been detected, limiting the use of bait fish to the specific water from which they were collected, and prohibiting the placement of live fish into the waters of the State (including possessing, importing, and transporting live fish for purposes of placing them into the waters of the State) unless accompanied by a fish health inspection report issued within the previous 12 months. In January the Pennsylvania Fish and Boat Commission placed a temporary ban on the transportation of live fish from Lake Erie and its tributaries to inland waters, and permanent rule changes are expected. Michigan and other jurisdictions are also considering regulations to address this issue.

Summary of Factual Data and Analytical Methodologies: Substantial published scientific literature on the effects on fish, wildlife and water quality during and after physical alterations to lake and streambeds is the basis for the rule parameters. In addition, data on actual field conditions during and after such alterations from department files is applied.

Analysis and Documents Supporting Determination of Small Business Effect: Any person placing a structure or making similar physical modifications to public navigable waters either qualifies for an exemption or must obtain a general or individual permit under state statute. To comply, small businesses follow the same requirements as other waterfront property owners: (1) make a self-determination of exemption using web-based tools provided by the department or describe their activity on an exemption determination request form; (2) complete a general permit application; or (3) complete an individual permit application. Schedules, application steps and compliance/reporting requirements are very basic for all applicants, and most projects can be planned and conducted by individuals with no specific professional background.

Anticipated Private Sector Costs: No significant fiscal effect on the private sector is anticipated.

Effect on Small Business: Contractors, marinas and other waterfront businesses who wish to conduct Chap 30. regulated activities will be affected by the rule. Specific standards will provide clarity and consistency in the permitting process.

Agency Contact Person: Martin Griffin, MartinP.Griffin@wisconsin.gov, (608) 266-2997

Deadline for Written Comments: The deadline for written comments is November 19, 2007. Written comments may be submitted to Mr. Martin Griffin, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Written comments may also be submitted to the Department using the Wisconsin Administrative rules Internet Website at <http://adminrules.wisconsin.gov>.

SECTION 1. NR 320.06(1)(c)15., (1)(d)7. and (2)(c)10. are created to read:

NR 320.06(1)(c)15. All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

- a. Inspect and remove aquatic plants, animals, and mud from your equipment.
- b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps
- c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
- d. Wash your equipment with hot ($\geq 140^{\circ}$ F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days or follow the most current disinfection protocols.
- e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

Note: The most current disinfection protocols along with a VHS-affected waters list can be found at the following website <http://dnr.wi.gov/> under the topic "VHS"

(1)(d)7. All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

- a. Inspect and remove aquatic plants, animals, and mud from your equipment.
- b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps
- c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
- d. Wash your equipment with hot ($\geq 140^{\circ}$ F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days or follow the most current disinfection protocols.
- e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

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(2)(c)10. All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

- a. Inspect and remove aquatic plants, animals, and mud from your equipment.
- b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps
- c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
- d. Wash your equipment with hot ($\geq 140^{\circ}$ F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days or follow the most current disinfection protocols.
- e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

Note: The most current disinfection protocols along with a VHS-affected waters list can be found at the following website <http://dnr.wi.gov/> under the topic "VHS"

SECTION 2. NR 323.04 (1)(c)11. and (2)(c)5. are created to read

NR 323.04(1)(c)11. All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

- a. Inspect and remove aquatic plants, animals, and mud from your equipment.

b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps

c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.

d. Wash your equipment with hot ($\geq 140^{\circ}$ F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days or follow the most current disinfection protocols.

e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

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(2)(c)5. All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

a. Inspect and remove aquatic plants, animals, and mud from your equipment.

b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps

c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.

d. Wash your equipment with hot ($\geq 140^{\circ}$ F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days or follow the most current disinfection protocols.

e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

Note: The most current disinfection protocols along with a VHS-affected waters list can be found at the following website <http://dnr.wi.gov/> under the topic "VHS"

SECTION 3. NR 328.04 (3)(j) is created to read:

NR 328.04 (3)(j). All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

a. Inspect and remove aquatic plants, animals, and mud from your equipment.

b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps

c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.

d. Wash your equipment with hot ($\geq 140^{\circ}$ F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days or follow the most current disinfection protocols.

e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

Note: The most current disinfection protocols along with a VHS-affected waters list can be found at the following website <http://dnr.wi.gov/> under the topic "VHS"

SECTION 4. NR 328.05 (7)(i) is created to read:

NR 328.05 (7)(i). All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

- a. Inspect and remove aquatic plants, animals, and mud from your equipment.
- b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps
- c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
- d. Wash your equipment with hot ($\geq 140^{\circ}$ F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days or follow the most current disinfection protocols.
- e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

Note: The most current disinfection protocols along with a VHS-affected waters list can be found at the following website <http://dnr.wi.gov/> under the topic "VHS"

SECTION 5. NR 329.04(1)(c)5., and (2)(c)4. are created to read:

NR 329.04(1)(c)5. All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

- a. Inspect and remove aquatic plants, animals, and mud from your equipment.
- b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps
- c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
- d. Wash your equipment with hot ($\geq 140^{\circ}$ F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days or follow the most current disinfection protocols.
- e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

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(2)(c)4. All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

- a. Inspect and remove aquatic plants, animals, and mud from your equipment.
- b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps
- c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
- d. Wash your equipment with hot ($\geq 140^{\circ}$ F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days or follow the most current disinfection protocols.
- e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

Note: The most current disinfection protocols along with a VHS-affected waters list can be found at the following website <http://dnr.wi.gov/> under the topic "VHS"

SECTION 6. NR 341.08(3)(i) is created to read:

NR 341.08(3)(i). All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

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- c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
- d. Wash your equipment with hot ($\geq 140^{\circ}$ F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days or follow the most current disinfection protocols.
- e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

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SECTION 7. NR 343.07(3)(a)4. is created to read:

NR 343.07(3)(a)4. All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another

waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

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- b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps
- c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
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- e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

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SECTION 8. NR 345.04(1)(c)6., (1)(d)9., and (2)(c)11. are created to read:

NR 345.04(1)(c)6. All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

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- b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps
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- e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

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(1)(d)9. All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

- a. Inspect and remove aquatic plants, animals, and mud from your equipment.
- b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps

c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.

d. Wash your equipment with hot ($\geq 140^{\circ}$ F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days or follow the most current disinfection protocols.

e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

Note: The most current disinfection protocols along with a VHS-affected waters list can be found at the following website <http://dnr.wi.gov/> under the topic "VHS"

(2)(c)11. All equipment used for the project, including but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be de-contaminated for invasive species and viruses prior to use and after use. Specific disinfection measures are required on all waters infected with Viral Hemorrhagic Septicemia (VHS) and shall be taken prior to moving to another waterbody. The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses:

a. Inspect and remove aquatic plants, animals, and mud from your equipment.

b. Drain all water from your equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps

c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.

d. Wash your equipment with hot ($\geq 140^{\circ}$ F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days or follow the most current disinfection protocols.

e. To the extent practicable, equipment and gear used on waters known to be infested with invasive species and viruses should not be used on other non-infested waters unless properly de-contaminated or disinfected.

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SECTION 8. EFFECTIVE DATE. This 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..

SECTION 9. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Mathew J. Frank, Secretary

(SEAL)