

Chapter NR 326

PIERS IN NAVIGABLE WATERWAYS

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NR 326.01 Purpose. (1) These rules are promulgated under ss. 30.03, 30.12, 30.13, 30.14, 30.15, and 227.014 (2) (a) and (b), Stats., in order to provide consistency in the application of ss. 30.12 and 30.13, Stats., to the construction of piers and structures on the beds of navigable waterways as aids to navigation.

(2) A secondary purpose of this chapter is to define terms set forth in ss. 30.12, 30.13, 30.14, and 30.15, Stats.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81.

NR 326.02 Applicability. (1) This chapter shall apply to all piers, solid piers, or any other pier which requires a permit under s. 30.12, Stats., constructed or maintained by riparians on the beds of navigable waterways for the purpose of providing improved navigation access to those waterways.

(2) The department shall apply this chapter only in response to:

(a) Complaint by a riparian, municipality, or any other person that a pier exists in navigable waters in violation of s. 30.12 or 30.13, Stats.;

(b) Complaint by a riparian that an adjacent riparian's pier interferes with access to navigable water;

(c) Complaint by a riparian or any other person that a pier interferes with rights of navigation;

(d) Request by a riparian for information regarding standards to be applied to pier construction;

(e) Application by a riparian for authority to construct a solid pier or any other pier requiring a permit under s. 30.12, Stats.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81.

NR 326.03 Definitions. (1) "Department" means the department of natural resources.

(2) "Line of navigation" means the 3 foot depth contour or a greater depth contour if required for boats in use or appropriate for use on the waterway, based on the normal summertime low levels on the waterway or summer minimum levels where established by department order.

(3) "Littoral drift" means the sedimentary material which moves in the zone of waves breaking on the shore because of waves and current.

(4) "Ordinary highwater mark" has the definition contained in s. NR 320.03 (4).

(5) "Outlying waters" as defined in s. 29.01 (4), Stats., means Lakes Superior and Michigan, Green Bay, Sturgeon Bay, Sawyer's harbor, and the Fox river from its mouth up to the dam at DePere.

(6) "Pier" as defined in s. 30.01 (4), Stats., means any structure extending channelward from the shore with water on both sides, built or maintained for the purpose of providing a berthing or mooring place for watercraft or for loading or unloading cargo or passengers onto or from watercraft and may include a temporary boat hoist without roof or walls.

(7) "Pierhead line" means a line established in the water adjacent to and roughly parallel to the shoreline under s. 30.13, Stats., by municipalities, and subject to approval by the department, for the purpose of creating uniformity in the length of piers extending from the shoreline into the waterway.

(8) "Riparian" means an owner or lessee of land adjacent to a stream or lake.

(9) "Solid pier" means a structure, not allowing for the free flow of water beneath, extending into the water from the shore to serve as an aid to navigation. For the purposes of this chapter, the term solid pier does not include piers that utilize rock filled cribs or similar types and size devices as foundation. Such foundations require permits under s. 30.12, Stats.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81.

NR 326.04 Standards. (1) Except as provided in sub. (2) or (8), piers shall not extend into the water from the shoreline beyond the line of navigation or the length of the boat using the pier unless a need can be demonstrated by the riparian that boats using the pier require a greater depth of water. The depth of water necessary for nonfixed keel sailboats shall be measured with the centerboard or dagger boards raised.

(2) Piers may extend out to any pierhead line.

(3) (a) Solid piers may be permitted under s. 30.12 (2), Stats., only on the following waters:

1. Outlying waters;
2. Harbors connected to outlying waters;
3. Fox river from the DePere dam to Lake Winnebago;
4. Lake Winnebago; and
5. Mississippi river.

(b) Solid piers shall be provided with a sufficient opening to provide for the passage of littoral drift. The opening size shall be adequate to prevent the deposition of littoral drift considering wave energy, littoral drift supply and near-shore water depths.

(4) A pier shall not totally enclose any portion of a navigable waterway.

(5) Piers shall not unreasonably obstruct navigation or otherwise interfere with public rights in navigable waters.

(6) Piers shall not interfere with the rights of other riparians.

(7) Piers shall not interrupt the free movement of water nor cause the formation of land by deposition of littoral drift upon the bed of the water.

(8) Piers associated with marinas and other similar mooring facilities shall not extend into the water from the shoreline beyond the line of navigation unless a permit is obtained under s. 30.12 (2), Stats. Such marinas shall be open to the public. Use of the facility by the public may be conditioned only on the payment of a reasonable mooring or anchoring fee.

Note: As an example, the use of such an extended pier shall not be conditioned upon membership in a private club or organization, purchase of a parcel or property, or purchase of a boat.

(9) Piers shall not be constructed or maintained with a screen or in any other manner which would trap or accumulate aquatic plants.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81.

NR 326.05 Permits required. Riparians intending to construct solid piers, rock-filled cribs or similar types and size devices used as foundations, piers which extend beyond established pierhead lines, or piers not conforming to s. NR 326.04 (1) or (9), shall apply for permits under s. 30.12 (2), Stats.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81.

NR 326.06 Complaints. (1) Upon receipt of a complaint by any municipality or person under s. 30.14, Stats., the department shall investigate the pier or piers mentioned in the complaint to determine if the pier conforms with s. 30.13, Stats., and this chapter, and shall provide all known parties with the results of the investigation. The department may request such additional information as may be required from the complainant.

(2) Upon completion of the investigation, the department shall conduct a hearing under s. 30.14, Stats.

(3) The burden of proving that the pier is in violation of s. 30.13, Stats., and this chapter, is ordinarily on the complainant.

(4) This section does not limit in any manner the authority of the department to bring any enforcement action alleging that a pier adversely affects public rights in navigable waters.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81.

NR 326.07 Riparian rights determinations. (1) In response to a complaint under s. NR 326.06 relating to interference with the rights of an adjacent riparian, the department shall use the method outlined in this subsection which it determines most fully meets the Wisconsin supreme court ruling in *Rondesvedt v. Running*, 19 Wis.2d 614 (1962), that ". . . each must have his due proportion of the line bounding navigability and a course of access to it from the shore exclusive of every other owner, and that all rules for apportionment or division are subject to such modification as may be necessary to accomplish substantially this result."

Register, October, 1983, No. 334
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(2) The alternative methods of apportionment include:

(a) *Apportionment of the line of navigation.* The general procedure for the apportionment of the line of navigation is to measure the whole shoreline of the cove or bay and the line of navigation in front of the shoreline and to apportion the line of navigation among the riparians in proportion to the length of their respective holdings on the shoreline. The area of water within which each riparian may place a pier to reach the line of navigation is determined by drawing straight lines between the corresponding points of division on the shoreline and the line of navigation.

(b) *Coterminous riparian rights lines.* Chords are drawn to connect points established at the intersection of each lot line with the ordinary highwater mark. The lines which bisect the angle formed by adjacent chords are the coterminous riparian rights lines. The extension of the coterminous riparian rights lines to the line of navigation describes the portion of the water within which each riparian may place a pier to gain access to the line of navigation. If the coterminous riparian rights lines intersect before the line of navigation is reached, another method of apportionment will be used.

(c) *Extended lot lines.* Under the extended lot line method the area of water within which each riparian may place a pier to reach the line of navigation is determined by extending the lot lines along the same alignment from the upland to the line of navigation.

(d) *Other method.* Any other method for determining the rights of riparians to gain access to the line of navigation that is compatible with the general rule adopted in sub. (1).

(3) To provide each riparian with sufficient room to place a pier and moor a boat along the common line between adjacent riparians the following technique will be used:

(a) Each riparian shall back their respective pier away from the common line or point of intersection of that line with the line of navigation in proportion to the riparian's share of the 2 adjacent shoreline lengths until sufficient room is provided to moor each riparian's boat at their respective pier and to provide safe maneuvering room for each boat to approach or leave the respective pier.

(b) If a riparian cannot move sufficiently from one side without violating the rule on the other side, then the riparian shall position the pier in that location which best satisfies the rule on both sides and each riparian shall then move far enough to the side regardless of shoreline proportions to afford the necessary clearance.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; reprinted to correct error, Register, May, 1981, No. 305.

NR 326.08 Severability. If any provision of this chapter is declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81.