Form 1100-001
(R 2/07)

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. 3.B.17

SUBJECT: Emergency Rule Adoption for Revisions to NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, NR 345 Wisconsin Administrative Code

FOR: 06/27/2007 **BOARD MEETING**

TO BE PRESENTED BY: Russ Rassmussen

SUMMARY:

The department is proposing revised emergency rules that would create new exemption and general permit standard for the de-contamination of all equipment prior to use and after use for invasive species and virus for any project that is exempt or receiving a general permit under NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, NR 345. The proposed emergency rule establishes exemption and general permit standards for activities that would otherwise require an individual permit condition to which the same condition would apply.

Aquatic invasive species are non-native fish, aquatic animals, plants and viruses that have been introduced into Wisconsin's public waterways and threaten the ecological integrity and economic future of our water resources.Once in the system, it is almost impossible to eliminate these invaders. The best strategy is to prevent the introduction of new invasive species to Wisconsin and at the same time preventing the spread of invasive species and viruses that are already in the state.

One way to prevent the spread of invasive species and viruses is to ensure that these invaders are not moving from one waterbody to another through equipment used in projects that fall under waterway (Chapter 30) permits. Because invasive species get the best foothold in disturbed sites, it is critically important to take all possible measures to reduce the risk of introducing invaders where existing vegetation and substrates are to be disturbed by construction. A permenant rule will be developed.

Emergency administrative rules are necessary to establish procedures, clarify the scope of the general permit and to assure that their application will not erode public trust protections. Article IX, Section I of Wisconsin's Constitution and a large body of case law form the Public Trust Doctrine, which requires that the public interest in these waters be protected. To meet the stated goals of the Legislature and Governor in Act 118 - to streamline permit processes and not diminish public trust protections - the Department must adopt emergency rules to establish definitions and standards necessary for the administration of general permits under chapter 30, Stats.

RECOMMENDATION: Adoption of Emergency Rules

LIST OF ATTACHED MATERIALS:

No	☐	Fiscal Estimate Required	Yes ☑	Attached
No	☑	Environmental Assessment or Impact Statement Required	Yes ☐	Attached
No	☐	Background Memo	Yes ☑	Attached

APPROVED:

Bureau Director — Date 6/14/07

Administrator — Date 6/14/07

Secretary, Scott Hassett — Date 6/20/07

cc: Laurie J. Ross - AD/5
Mary Elen Vollbrecht- WT/4
Jeff Bode- WT/4
Martin Griffin- WT/4
Michael Cain- LS/5
Russell Rasmussen WT/2

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: June 14, 2007

TO: Natural Resources Board

FROM: Scott Hassett, Secretary

SUBJECT: Emergency Rule Adoption for Revisions to NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, NR 345 Wisconsin Administrative Code

1. Why are these emergency rules being proposed?

Under the direction of s. 30.13 sub (3), s.30.123 sub (7), s. 30.20 sub. (1t) Wis. Stats; and s. 30.206, Wis. Stats., the department is proposing emergency rules to create new exemption and general permit standards for the de-contamination of all equipment prior to use and after use for controlling the spread of invasive species and viruses for any project that is exempt or receiving a general permit under NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, NR 345.

The proposed emergency rule establishes exemption and general permit standards for activities that would otherwise require an individual permit condition to which the same condition would apply.

Background Information and Rationale for the Rule

Aquatic invasive species are non-native fish and other aquatic animals, aquatic plants and viruses that have been introduced into Wisconsin's public waterways and threaten the ecological integrity and economic future of our water resources. The impacts from these invaders to the ecosystem and economy are real. Invasive mussel species clog water intake pipes costing millions of dollars annually in maintenance costs. Aquatic invasive species compete with native species for food and habitat. Aquatic invasive viruses can damage crucial fauna populations, including sport fishing populations. Because there are no natural predators to keep them in check, they have a distinct advantage over native species. In many cases, their population explodes after just a few short years and they can dramatically alter the ecosystem.

Once in the system, it is almost impossible to eliminate these invaders. The best strategy is to prevent the introduction of new invasive species to Wisconsin and at the same time prevent the spread of invasive species and viruses that are already in the state.

One way to prevent the spread of invasive species and viruses is to ensure that these invaders are not moving from one waterbody to another through equipment used in projects that fall under waterway (Chapter 30) permits. Because invasive species get the best foothold in disturbed sites, it is critically important to take all possible measures to reduce the risk of introducing invaders where existing vegetation and substrates are to be disturbed by construction.

2. Summary of Rule Proposal

Considering the existing, new, and yet to be determined threats of invasive species and viruses, the Department proposes to revise chapters NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, NR 345 to create new exemption and general permit standards. These new standards would ensure that waterfront property owners exercising exemptions or general permits will take the necessary precautions to prevent the spread of invasive species and viruses by de-contaminating their equipment used in construction activities in and near the water.

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There are currently no requirements in the rules setting eligibility standards for waterway projects for de-contamination of equipment to remove invasive species and viruses. By promulgating new exemption and general permit standards for equipment decontamination we will be able to help ensure that the spread of invasive species and virus are controlled to the fullest possible extent and that the resulting economic and ecological impacts of these invasive species and viruses to the resource are avoided. The new exemption and general permit standard proposed requires any person conducting an exempt or general permit activity to:

- Inspect and remove aquatic plants, animals, and mud from equipment.
- Drain all water from equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps
- Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
- Wash equipment with hot (>104° F) and/or high pressure water OR allow equipment to dry thoroughly for 5 days.

3. How does this proposal affect existing policy?
The proposed emergency rule revision provides procedures and standards which are necessary to administer the regulation of activities in navigable waters under chapter 30, Stats. The rule revision makes the practice requirements to avoid spread of invasive species consistent across all authorizations for construction work in waterways.

4. Has the Board dealt with these issues before?
Yes, Emergency rules were put into effect April 8, 2007 by order FH-22-07(E) for the control and prevention of VHS in fish, and those rules were clarified and expanded by order FH-25-07(E)

5. Who will be impacted by the proposed rules? How?

All types of waterfront property owners along the shores of public waters- from private landowners to business, builders and developers; will benefit from the additional exemption and general permit standards provided in the emergency rules as they will become part of the solution and not inadvertently part of the problem. Aquatic plant managers, municipalities, NRCS and other agencies or contractors who work along the shoreline will also benefit from the additional exemption and general permit standard. The public who use and enjoy Wisconsin's navigable waters will certainly benefit from the new standard established to protect fisheries, water quality and similar public rights in lakes and streams.

6. Information on environmental analysis, if needed.
The Bureau of Environmental Analysis and Review has determined that these rule revisions are a Type III action under s. NR 150, Wis. Adm. Code, and no environmental analysis is required. [150.03 (6) (b)]

7. Recommendation.
Department staff recommends adoption of the proposed emergency rule revision to NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, NR 345 as described in the attached Natural Resource Board Order WT-32-07(E)

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Fiscal Estimate — 2007 Session

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental	LRB Number	Amendment Number if Applicable
	Bill Number	Administrative Rule Number WT-32-07(E)

Subject

Emergency rules package for controlling the spread of invasive species and viruses from construction projects on navigable waters

Fiscal Effect

State: ☐ No State Fiscal Effect
☒ Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs — May be possible to absorb within agency's budget. ☐ Yes ☐ No

☐ Decrease Costs

Local: ☐ No Local Government Costs
☒ Indeterminate

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected: ☒ Towns ☒ Villages ☒ Cities ☒ Counties ☐ Others ☐ School Districts ☐ WTCS Districts

Fund Sources Affected: ☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This emergency rule package establishes a new exemption and general permit standard to ensure that waterfront property owners take precautions to prevent the spread of invasive species or viruses. These precautions primarily involve the decontamination of equipment that is used for construction activities in or near navigable waters. The standard requires individuals who are working on a project in a navigable water to do the following:

1. Inspect and remove aquatic plants, animals and mud from equipment.
2. Drain all water from equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piling and pumps.
3. Dispose aquatic plants and animals in the trash and refrain from releasing or transferring aquatic plants, animals or water from one waterbody to another.
4. Wash equipment with hot and/or high pressure water or allow equipment to dry thoroughly for 5 days.

Fiscal effect: This rule package will increase operational costs for the state or for counties and municipalities to the extent that these precautionary practices are not already being implemented by these entities or by contractors acting on their behalf. However, since insufficient information is available to accurately estimate these costs, the Department is characterizing the state and local fiscal impact as "indeterminate" until more detailed cost information becomes available.

Long-Range Fiscal Implications

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature: [signature]	Telephone No. 266-2794	Date (mm/dd/ccyy) 06-18-07

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Fiscal Estimate — 2007 Session

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-32-07(E)

Page 2 Assumptions Narrative Continued

Assumptions Used in Arriving at Fiscal Estimate – Continued

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Fiscal Estimate Worksheet — 2007 Session

Detailed Estimate of Annual Fiscal Effect

☐ Original ☐ Updated	LRB Number	Amendment Number if Applicable
☐ Corrected ☐ Supplemental	Bill Number	Administrative Rule Number WT-32-07(E)

Subject

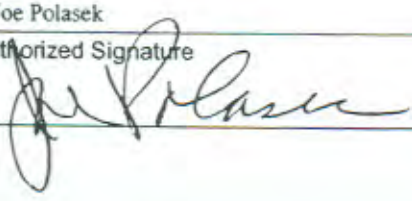
Emergency rules package for controlling the spread of invasive species and viruses from construction projects on navigable waters

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations — Salaries and Fringes	$	$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
Total State Costs by Category	$	$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	$	$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
State Revenues — Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes	$	$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	$	$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	$	$
Net Change in Revenues	$	$

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	06-18-07

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)4., 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-32-07(E)

Summary Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.20(1), (1k), (1t) and (2), 30.206, 227.11(2) and 227.24, Stats.

Statutes Interpreted: ss. 30.20(1), (1g), (1k), (1m), (1t) and (2) and 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 VHSv). 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. for invasive species and viruses. The proposed emergency rule establishes exemption and general permit standards for activities that would otherwise require an individual permit condition to which the same condition would apply.

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) 266-2996

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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

(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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

(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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

SECTION 2. NR 323.04 (1)(c)11. and (2)(c)4. 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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

(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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

(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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

(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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

(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 should be taken *every time* you move your equipment to avoid transporting invasive species and viruses. To the extent practicable, equipment and gear used on waters know to be infested with invasive species and viruses should not be used on other non-infested waters.

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 (>104° F) or high pressure water, or both, or allow your equipment to dry thoroughly for 5 days.

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 "VHSv"

SECTION 8. STATEMENT OF EMERGENCY. The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with

the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits standards that require decontamination of equipment for invasive species and viruses. Without emergency rules to create new general permit standards, any condition imposed would be limited to individual permits only with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits standards to be in effect for the 2007 summer season, with specific standards that require decontamination of equipment for invasive species and viruses.

In addition, The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

SECTION 9. EFFECTIVE DATE. This rule shall take effect the day of publication in the official state newspaper.

SECTION 10. 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 _____
Scott Hassett, Secretary

(SEAL)