

SUBJECT: Request for Adoption of permanent rule revisions to NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, NR 345 Wisconsin Administrative Code relating to invasive species decontamination standards

FOR: JANUARY 2008 BOARD MEETING

TO BE PRESENTED BY: Martin Griffin

SUMMARY:

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 to ensure that these invaders are not moving from one waterbody to another through equipment used in projects authorized by waterway (Chapter 30) permits.

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

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 during construction activities in and near waterways.

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.

RECOMMENDATION: Request Adoption of new exemption and general permit standards for the decontamination of equipment for controlling the spread of invasive species and virus

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:

<p style="text-align: right;">/s/</p> <hr/> <p>Bureau Director,</p>	<p style="text-align: right;">12/19/07</p> <hr/> <p>Date</p>
<p style="text-align: right;">/s/</p> <hr/> <p>Administrator,</p>	<p style="text-align: right;">12/19/07</p> <hr/> <p>Date</p>
<p style="text-align: right;">/s/</p> <hr/> <p>Secretary, Matt Frank</p>	<p style="text-align: right;">12/21/07</p> <hr/> <p>Date</p>

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

DATE: December 18, 2007

TO: Natural Resources Board

FROM: Matthew Frank, Secretary

SUBJECT: Adoption of Permanent Rule Revisions to NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, and NR 345 Wisconsin Administrative Codes related to the creating of exemption and general permit standards for the decontamination of equipment to stop the spread of invasive species and viruses

1. Why is this rule being proposed?

Under the direction of 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, Wis. Stats., the department is proposing permanent rule revisions to create new exemption and general permit standards for the decontamination 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, and NR 345.

The proposed 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.

Many aquatic invasive species are capable of survival out of water for extended periods. 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 authorized by waterway (Chapter 30) permits. In addition, because invasive species get the best foothold in disturbed sites (Hobbs and Huenneke 1992; OTA 1993; Grime 2001; among others), 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.

References

- Hobbs R. J. and L. F. Huenneke. 1992. Disturbance, Diversity and Invasion: Implications for Conservation. *Conservation Biology*. 6(3): 324-337
- Grime, J.P. 2001. *Plant strategies, vegetation processes, and ecosystem properties*. 2nd ed. John Wiley & Sons Ltd, Chichester.
- OTA. 1993. *Harmful Non-Indigenous Species in the United States*. Washington, DC: Office of Technology Assessment, United States Congress

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, and NR 345 to create new exemption and general permit standards. These new standards would ensure that waterfront property owners, as well as, builders and developers, public utility companies, and municipalities 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.

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 (>212° F- steam clean) or high pressure water or allow equipment to dry thoroughly for 5 days or rinse with a chlorine solution or follow the Department's most recent decontamination protocols.

3. How does this proposal affect existing policy?

The proposed permanent 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 required practices 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). In addition an emergency rule was put into effect July 12, 2007 by order WT-32-07(E) requiring decontamination of equipment for invasive species and viruses as a new exemption and general permit standard.

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, as well as, builders and developers, public utility companies, and municipalities 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, public utility companies, and other agencies or contractors who work along navigable waters 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 authorization of hearing on the proposed 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-33-07

RESPONSE TO COMMENTS

NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, and NR 345- creation of 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.

Legislative Council drafting items – All changes made as recommended.

Comments and Questions Regarding Rule

COMMENT 1 - “Item “d” as currently proposed is an unreasonable requirement for all construction projects...Requiring hot or high pressure water to clean equipment in remote locations would be difficult and costly if required prior to the equipment being moved from each stream.

RESPONSE 1 – We have restructured the rule so item “d” lists 4 options, only 1 of which are required. Having options will allow the operator to choose the one that best fits the situation or location that they are working in. We have also rule modified the rule language to require the disinfection before and after use OR prior to use within another waterbody. This wording modification allows equipment can be transported to an easier to clean location or a safe place to begin the drying period or decontamination methods, while still ensuring that invasive species and viruses are not transported from one waterbody to another.

COMMENT 2- We recommend that item “d” and the requirement to disinfect equipment with hot or high pressure water be moved as a sub-item under item “e”. This change would specify that the more stringent requirements for disinfection would only be required when there is a known infestation in the water affected by a project.

RESPONSE 2- We have decided to remove item “e” and have restructured item “d” to lists 4 options, only 1 of which are required, as a result, this change alleviates the confusion of having disinfection requirements that are different for different water bodies.

COMMENT3 - We request that the DNR consider an additional cleaning option that will allow the use of a disinfecting solution instead of hot or pressurized water or a five day drying period.

RESPONSE 3- We agree and have added a disinfecting solution cleaning option as item 3 under the restructured item “d”.

COMMENT 4- We recommend that the language:

“The following steps shall be taken every time you move your equipment to avoid transporting invasive species and viruses”

be changed to:

*“The following steps shall be taken **before the equipment is used within another waterbody** to avoid transporting invasive species and viruses”*

We believe that this wording accomplishes the same goals, however allows a contractor to remove their equipment from a customer’s residence to their own storage yard before the disinfecting or drying period begins.

RESPONSE 4

The rule language was modified to require the disinfection before and after use OR prior to use within another waterbody. This wording modification allows equipment can be transported to an easier to clean location or a safe place to begin the drying period, while still ensuring that invasive species and viruses are not transported from one waterbody to another.

COMMENT 5- The scope of the proposed rule is not clear... We recommend that the lack of clarity could be resolved by separating 1) routine actions that are to be preformed as preventive measures when moving boats and other equipment from one waterway to another, and 2) more extensive actions requiring specialized equipment or techniques to be preformed based on site specific conditions, including extent and type of invasive species infestation, magnitude of project waterway disturbance, etc.

RESPONSE 5- We have restructured the rule so items a-c outline the routine actions and item “d” lists 4 more extensive options, only 1 of which are required. Having options will allow the operator to choose the one that best fits the situation or location that they are working in. In addition, this change alleviates the confusion of having disinfection requirements that are different for different water bodies.

COMMENT 6- If we are applying for a general permit (for which these new rules will apply) do the proposed decontamination standards apply only to the specific location for which the exemption or general permit applies or the whole project? Many of our projects are linear in nature, and may involve multiple wetlands and waterways, not all of which require exemptions or general permits under Chapter 30.

RESPONSE 6- The decontamination procedures proposed for general permits issued under NR 310 only apply to that activity for which the general permit was issued under. For aspects of utility projects that do not require exemptions or general permits under Chapter 30, the Department’s Office of Energy expects that utilities will be implementing their own best construction practices for invasive species for those aspects of the project.

COMMENT 7- If we are applying for a utility permit under s. 30.025 do the proposed decontamination standards apply to the activities for which the utility permit was issued for?

RESPONSE 7- Since the proposed rule changes affect only general permit and exemption standards, the proposed decontamination standards do not apply to utility permits issued under s. 30.025. However, since utility permits are similar to individual permits that the Department issues, the utility permit itself may have conditions that require invasive species and viruses decontamination plan that is developed for that particular project.

COMMENT 8- Many construction and maintenance locations are remote and are not easily accessed from roads... the transportation and use of equipment to provide decontamination spraying could cause additional impacts to sensitive environments, such as greater traffic impacts... offsite decontamination may require us to containerize our decontamination fluids to ensure it does not reach other wetlands or waterways or cause hazardous or messy situations for landowners.

RESPONSE 8- We have restructured the rule so item “d” lists 4 options, only 1 of which are required. Having options will allow the operator to choose the one that best fits the situation or location that they are working in. We have also rule modified the rule language to require the disinfection before and after use OR prior to use within another waterbody. This wording modification allows equipment can be transported to an easier to clean location or a safe place to begin the drying period or decontamination methods instead of bringing additional equipment onsite, while still ensuring that invasive species and viruses are not transported from one waterbody to another. When decontaminating offsite, the options outlined in the proposed rule require low concentrations of chemicals or no chemicals at all. Therefore there is no need to containerize the decontamination wash off fluid. In addition, once the fluids reach the ground the concentrations are low enough that any organic material present will render the chemical inert.

COMMENT 9- Due to the linear nature of our projects no equipment is dedicated to any one site but rather ritually moves from one location to the next and therefore would trigger the decontamination requirements. Utilizing a five-day standby period to allow the equipment to dry may be costly and incur unacceptable delays. Currently, equipment resources are not available to support drying of equipment for five consecutive days.

RESPONSE 9- We have restructured the rule so item “d” lists 4 options, only 1 of which are required. Having options will allow the operator to choose the one that best fits the situation or location that they are working in

COMMENT 10- Requiring equipment to be washed with hot or high pressure water may lead to safety hazards and damaged equipment during freezing conditions (icy ground, frozen equipment).

RESPONSE 10- We have modified the language so that washing with water is not a requirement, but an option. There are now other options that are available that will not contribute to safety concerns (icy ground) or damaged equipment during freezing conditions. For example, one option the proposed rule identifies is the use of steam to clean equipment. Steam cleaning will not freeze equipment and contribute to icy ground (no water to drip off and freeze) and actually has been used in some cases to de-ice equipment. Other options involve the use of chlorine or other chemical solutions where the freezing point is below the freezing point of water and in most cases are double digits below zero degrees Fahrenheit.

COMMENT 11- Work during frozen conditions that does not disturb the soils or cause the liquefaction of frozen waters should be considered an appropriate method of reducing or eliminating the spread of invasive species and viruses.

RESPONSE 11-Doing construction activities during frozen conditions alone will not and cannot guarantee stopping the spread of invasive species and viruses for a variety of reasons. It is hard to predict if frozen soils will not be disturbed since the depth of soil freezing during the winter depends on a variety of factors. These factors include how cold the air temperature gets, how long the air temperature stays below freezing, how clear the sky is (clear skies allow the ground to cool more rapidly as energy is lost from the ground radiatively), and whether there is snow cover (and how deep it is) or not since long cold spells with no snow cover can cause the ground to freeze to a greater depth. So at any given time the ground could be frozen anywhere from 3 feet deep to only a few inches. This means that tracked vehicles and other equipment that disturb the soil as little as a few inches are at risk of spreading invasive species even during the winter months. In addition, most invasive viruses can persist in a frozen state and do not die in frozen conditions. Additionally many types of invasive plants have seeds that withstand freezing, only to become viable again when the weather gets warmer, and some invasive plants are related to evergreens and do not have a winter dormancy. In order to ensure that invasive species and viruses are not being spread from one place to another, disinfection is needed.

COMMENT 12- Decontamination procedures should apply only to equipment or parts of equipment that come into contact with wetlands or waterways. Equipment entering a wetland or waterway that does not touch the wetland or waterway does not present a risk of spreading invasive species. A barrier method that provides separation from the impacted waters or soils so that equipment does not contact them should be considered an appropriate protection so long as the barrier is either disposed of or decontaminated according to the procedures prior to re-use in another wetland or waterway.

RESPONSE 12- Unfortunately all it takes is one micro-sized spore, one DNA-sized virus, or one microscopic invertebrate, that can persist in a drop of water to spread an invasive species. Even though to the equipment operator it may appear that only one part of the equipment is in contact with the waterway, here can be no guarantee that other parts of the equipment have not been contaminated. Since these decontamination standards are part of general permits that are for a variety of activities to only way to have a consistent way of ensuring that invasive species and viruses are not being spread from one place to another, disinfection is needed.

Comments on Rule Notes

COMMENT 1- The Note after sub (e) of the proposed rule does not provide adequate direction for a reader to find the Disinfection Protocols or the list of VHS Affected Waterways on the DNR website. The Note should either provide a direct link to “Disinfection Protocols,” or send the reader to a VHS-specific page where “Disinfection Protocols” and a list of “VHS Affected Waterways” can be easily found.

RESPONSE 1- The note does not provide the direct link to the disinfection protocols or the affected waterway list documents, but rather the web page that the disinfection protocols can be found. Since the web is dynamic and web addresses change frequently, to ensure that the reader will not be faced with a broken link and not know where to find the necessary information, we feel that a better long term solution is to provide a way for the reader to find the web page that the protocols and affected waters list can be found. In addition we have changed the language of the note to reflect the location on the DNR website that

deals with all invasive species and viruses and not just VHSv therefore we can ensure that the information will always be easy to find, especially if VHSv mutates and is no longer viable or affects fauna populations.

COMMENT 2- We also recommend re-naming the disinfection protocol document to clarify that the reader has in fact found “Invasive / VHS Disinfection Protocols.” The current title, “Boat and Equipment Disinfection Protocol – 2007” is unclear and does not directly relate to invasive species and VHS decontamination.

RESPONSE 2- We have renamed the disinfection protocols document that is currently online to be titled: “*Equipment Disinfection Protocols: Invasive Species and Viruses- 2007*”. We feel that this title adequately describes what the document contents are.

Comments on Fiscal Note and Scope of Rule

COMMENT 1- The Green Sheet summary explains that the new standards will ensure that waterfront property owners take the proper precautions to avoid spreading invasive species through construction projects and other water uses... If, as we believe to be the case, the proposed rule revisions are intended to impact a much larger set of actors and a broader array of activities on navigable waterways, the Summary is misleading and should be revised to make that clear... A more in-depth analysis should be conducted of anticipated public and private sector costs that may be incurred because of the proposed rule revisions.

RESPONSE 1- The Green Sheet summary has been modified to reflect all types of projects and affected parties and the fiscal analysis summary on the board order and the fiscal estimate worksheet analysis summary have been modified to give clearer direction on the anticipated public and private sector costs.

Comments Regarding Legal Authority to Incorporate Invasive Species Requirements into Chapter 30 Administrative Rules

COMMENT #1- We question whether DNR has the requisite legal authority to incorporate these invasive species and virus requirements into the Chapter 30 administrative rule...The cited provisions of Chapter 30 only provide authority to regulate the specified activities and make no mention of and provide no authority for the incorporation of regulatory controls over invasive species or viruses into those rules...There is no language in Wis. Stat. Ch. 30 that authorizes the Department to adopt rules to address invasive species or viruses with respect to Chapter 30-related activities...We question the Department’s authority to proceed with the proposed rule revisions.

RESPONSE #1- The cited provisions of Chapter 30 in Board Order WT-33-07 include the authorities for exemptions and general permits for the various activities covered by the rule changes. The board order also cites s. 30.206. Wis. Stats. 30.206(1)(c) states that:

“To ensure that the cumulative adverse environmental impact of the activities authorized by a general permit is insignificant and that the issuance of the general permit will not injure public rights or interests, cause environmental pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any riparian owner, the department may impose any of the following conditions on the permit:

1. Construction and design requirements that are consistent with the purpose of the activity authorized under the permit.

This portion of the statute gives the department the authority to create construction requirements to ensure that the environmental impact of activities does not “injure public rights or interests.” The terms “public rights and interests” have long been interpreted to include the protection of flora and fauna and the conditions necessary for their continued survival. The proposed rule changes are construction requirements that address the decontamination of construction equipment used for the project to prevent the spread of invasive species and viruses which would be detrimental to existing flora and fauna and will injure public rights. It has been well documented that aquatic invasive species 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.

Fiscal Estimate — 2007 Session

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number Bill Number	Amendment Number if Applicable Administrative Rule Number WT-33-07
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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.

- | | |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> 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 (>212° F- steam clean) or high pressure water or allow equipment to dry thoroughly for 5 days or rinse with a chlorine solution or follow the Department's most recent decontamination protocols.

Fiscal effect: This rule package will increase operational costs for the state, for counties and municipalities, and for utilities, to the extent that these decontamination practices are not already being implemented by these entities or by contractors acting on their behalf. The costs will vary according to the type of entity affected, the frequency with which the entity works on projects in or near navigable waters as well as the scope and size of those projects, and the decontamination method or methods that the entity chooses to implement. Given this wide degree of variability, the Department is characterizing the state and local fiscal impact as "indeterminate".

Long-Range Fiscal Implications

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

Fiscal Estimate — 2007 Session

Page 2 Assumptions Narrative Continued

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

Assumptions Used in Arriving at Fiscal Estimate – Continued

Fiscal Estimate Worksheet — 2007 Session
 Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-33-07

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:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
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

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

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

Proposed Revisions to NR 345, Wisconsin Administrative Code
Small Business Analysis

A. Describe the compliance and/or reporting requirements imposed on small business and whether they can be made less stringent.

State statute requires that any person engaged in activities in navigable waters under NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, and NR 345 either qualify for an exemption or obtain a general or individual permit. Small businesses would need to do several activities to comply: (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; (3) complete an individual permit application. Permit applications are based on the business' construction plans and site features.

B. Describe the schedules or deadlines for compliance or reporting and whether these schedules/deadlines can be made less stringent for small business.

Any person engaged in activities in navigable waters under NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, and NR 345 will either qualify for an exemption or need to obtain a general or individual permit. If a business seeks an exemption determination, the request must be made 20 days before the planned start date. Applications for general permits must be made 35 days prior to planned start date. For an individual permit, a public notice and 30-day comment period is required. Interested parties may request a public informational hearing, which could extend the permit review period another 45 days. Permit applicants are generally asked to return requested information within 30 days of receiving the department's request. Once a permit is received, a permittee must notify the department in advance of starting construction, and photographs of finished projects are required for some activities. These schedules and deadlines are very basic for all applicants. A separate schedule or requirements for small businesses would likely make the system more confusing for small businesses, rather than simplifying. With less information the department may not be able to make determinations, resulting in unanticipated follow-up and potential delays.

C. Can compliance or reporting requirements for small business be consolidated or simplified?

The compliance and reporting requirements are very basic for all applicants. Separate compliance and reporting requirements for small businesses would likely make the system more confusing for small businesses, rather than simplifying. With less information the department may not be able to make determinations, resulting in unanticipated follow-up and potential delays.

D. Can performance standards be established for small businesses in lieu of design or operational standards?

Small businesses can design to meet general permit standards, or the individual permit process allows more latitude.

E. Can small businesses be exempted from any or all requirements of the rule?

Other than the exemptions provided for all projects, small businesses cannot be exempted. A small business activity in a lake or stream has the same impact as the same activity conducted by a larger business or an individual. To preserve habitat, natural scenic beauty and water quality in our state's waterways, anyone conducting a project in public waters must meet the performance standards.

F. Initial Regulatory Flexibility Analysis

1. Describe the type of small business that will be affected by the rule.

Small businesses affected by this rule will include contractors, developers, consultants, builders public utility companies, and municipalities who provide plans, design or engage in projects along public navigable waterways which may include any of the activities listed in NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, and NR 345

2. Briefly explain reporting, bookkeeping and other procedures required for compliance with the rule.

The person responsible for a project in or along a lake or stream must develop plans and occasionally conduct some analyses, submit an application, and observe the site and equipment during construction. For some activities, photographs of the completed project are required.

3. Describe the type of professional skills necessary for compliance with the rule.

Map reading, basic computer use, mathematics (to determine chemical concentrations), etc. are the skills needed to comply with these rules. While it may be helpful or efficient, hiring a consulting firm is not necessary to comply with these requirements. Many projects are planned and conducted by individuals with no professional

background. If the site has particularly challenging features, then professional ecological or engineering expertise may be helpful.

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)9. 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 lakes and streams 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: This rule package may increase operational costs to the extent that these decontamination practices are not already being implemented by these entities or by contractors acting on their behalf. The costs will vary according to the type of entity affected, the frequency with which the entity works on projects in or near navigable waters as well as the scope and size of those projects, and the decontamination method or methods that the entity chooses to implement. Given this wide degree of variability, the Department is characterizing the fiscal impact on the private sector as "indeterminate".

Effect on Small Business: Public utility companies, 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

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. An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

- a. Inspect all equipment and remove all aquatic plants, and animals, and mud.
- b. Drain all water from all equipment.
- c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.
- d. Do one of the following:
 - i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).
 - ii. Wash all equipment with soap and water or high pressure water of not less than 2000 pounds per square inch and allow all equipment to dry thoroughly for not less than 5 days.

iii. Disinfect all equipment with 200 parts per million (0.5 ounces per gallon) Chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

Note: Chlorine refers to either household bleach solution (5.25% chlorine) or granular chlorine (70% calcium hypochlorite)

iv. Follow the most recent disinfection protocols for infested waters. The department shall maintain on its website and make available at its offices the most recent disinfection protocols for invasive species and viruses and a consolidated list of infested waters containing known aquatic invasive species and viruses.

Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

(1)(d)7. An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

- a. Inspect all equipment and remove all aquatic plants, and animals, and mud.
- b. Drain all water from all equipment.
- c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.
- d. Do one of the following:
 - i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).
 - ii. Wash all equipment with soap and water or high pressure water of not less than 2000 pounds per square inch and allow all equipment to dry thoroughly for not less than 5 days.
 - iii. Disinfect all equipment with 200 parts per million (0.5 ounces per gallon) Chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

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(2)(c)10. An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

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

- b. Drain all water from all equipment.
- c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.
- d. Do one of the following:
 - i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).
 - ii. Wash all equipment with soap and water or high pressure water of not less than 2000 pounds per square inch and allow all equipment to dry thoroughly for not less than 5 days.
 - iii. Disinfect all equipment with 200 parts per million (0.5 ounces per gallon) Chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

Note: Chlorine refers to either household bleach solution (5.25% chlorine) or granular chlorine (70% calcium hypochlorite)
 - iv. Follow the most recent disinfection protocols for infested waters. The department shall maintain on its website and make available at its offices the most recent disinfection protocols for invasive species and viruses and a consolidated list of infested waters containing known aquatic invasive species and viruses.

Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

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

NR 323.04(1)(c)11. An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

- a. Inspect all equipment and remove all aquatic plants, and animals, and mud.
- b. Drain all water from all equipment.
- c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.
- d. Do one of the following:
 - i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).
 - ii. Wash all equipment with soap and water or high pressure water of not less than 2000 pounds per square inch and allow all equipment to dry thoroughly for not less than 5 days.
 - iii. Disinfect all equipment with 200 parts per million (0.5 ounces per gallon) Chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

Note: Chlorine refers to either household bleach solution (5.25% chlorine) or granular chlorine (70% calcium hypochlorite)

iv. Follow the most recent disinfection protocols for infested waters. The department shall maintain on its website and make available at its offices the most recent disinfection protocols for invasive species and viruses and a consolidated list of infested waters containing known aquatic invasive species and viruses.

Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

(2)(c)5. An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

- a. Inspect all equipment and remove all aquatic plants, and animals, and mud.
- b. Drain all water from all equipment.
- c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.
- d. Do one of the following:
 - i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).
 - ii. Wash all equipment with soap and water or high pressure water of not less than 2000 pounds per square inch and allow all equipment to dry thoroughly for not less than 5 days.
 - iii. Disinfect all equipment with 200 parts per million (0.5 ounces per gallon) Chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

Note: Chlorine refers to either household bleach solution (5.25% chlorine) or granular chlorine (70% calcium hypochlorite)

iv. Follow the most recent disinfection protocols for infested waters. The department shall maintain on its website and make available at its offices the most recent disinfection protocols for invasive species and viruses and a consolidated list of infested waters containing known aquatic invasive species and viruses.

Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

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

NR 328.04 (3)(j). An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

- a. Inspect all equipment and remove all aquatic plants, and animals, and mud.
- b. Drain all water from all equipment.
- c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.

d. Do one of the following:

i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).

ii. Wash all equipment with soap and water or high pressure water of not less than 2000 pounds per square inch and allow all equipment to dry thoroughly for not less than 5 days.

iii. Disinfect all equipment with 200 parts per million (0.5 ounces per gallon) Chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

Note: Chlorine refers to either household bleach solution (5.25% chlorine) or granular chlorine (70% calcium hypochlorite)

iv. Follow the most recent disinfection protocols for infested waters. The department shall maintain on its website and make available at its offices the most recent disinfection protocols for invasive species and viruses and a consolidated list of infested waters containing known aquatic invasive species and viruses.

Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

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

NR 328.05 (7)(i). An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

a. Inspect all equipment and remove all aquatic plants, and animals, and mud.

b. Drain all water from all equipment.

c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.

d. Do one of the following:

i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).

ii. Wash all equipment with soap and water or high pressure water of not less than 2000 pounds per square inch and allow all equipment to dry thoroughly for not less than 5 days.

iii. Disinfect all equipment with 200 parts per million (0.5 ounces per gallon) Chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

Note: Chlorine refers to either household bleach solution (5.25% chlorine) or granular chlorine (70% calcium hypochlorite)

iv. Follow the most recent disinfection protocols for infested waters. The department shall maintain on its website and make available at its offices the most recent disinfection protocols for invasive species and viruses and a consolidated list of infested waters containing known aquatic invasive species and viruses.

Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

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

NR 329.04(1)(c)5. An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

- a. Inspect all equipment and remove all aquatic plants, and animals, and mud.
- b. Drain all water from all equipment.
- c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.
- d. Do one of the following:
 - i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).
 - ii. Wash all equipment with soap and water or high pressure water of not less than 2000 pounds per square inch and allow all equipment to dry thoroughly for not less than 5 days.
 - iii. Disinfect all equipment with 200 parts per million (0.5 ounces per gallon) Chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

Note: Chlorine refers to either household bleach solution (5.25% chlorine) or granular chlorine (70% calcium hypochlorite)

- iv. Follow the most recent disinfection protocols for infested waters. The department shall maintain on its website and make available at its offices the most recent disinfection protocols for invasive species and viruses and a consolidated list of infested waters containing known aquatic invasive species and viruses.

Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

(2)(c)4. An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

- a. Inspect all equipment and remove all aquatic plants, and animals, and mud.
- b. Drain all water from all equipment.
- c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.
- d. Do one of the following:
 - i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).

ii. Wash all equipment with soap and water or high pressure water of not less than 2000 pounds per square inch and allow all equipment to dry thoroughly for not less than 5 days.

iii. Disinfect all equipment with 200 parts per million (0.5 ounces per gallon) Chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

Note: Chlorine refers to either household bleach solution (5.25% chlorine) or granular chlorine (70% calcium hypochlorite)

iv. Follow the most recent disinfection protocols for infested waters. The department shall maintain on its website and make available at its offices the most recent disinfection protocols for invasive species and viruses and a consolidated list of infested waters containing known aquatic invasive species and viruses.

Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

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

NR 341.08(3)(i). An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

a. Inspect all equipment and remove all aquatic plants, and animals, and mud.

b. Drain all water from all equipment.

c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.

d. Do one of the following:

i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).

ii. Wash all equipment with soap and water or high pressure water of not less than 2000 pounds per square inch and allow all equipment to dry thoroughly for not less than 5 days.

iii. Disinfect all equipment with 200 parts per million (0.5 ounces per gallon) Chlorine for not less than 10 minute contact time. Every effort should be made to keep the disinfection solution and rinse water out of surface waters.

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iv. Follow the most recent disinfection protocols for infested waters. The department shall maintain on its website and make available at its offices the most recent disinfection protocols for invasive species and viruses and a consolidated list of infested waters containing known aquatic invasive species and viruses.

Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

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

NR 343.07(3)(a)4. An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

- a. Inspect all equipment and remove all aquatic plants, and animals, and mud.
- b. Drain all water from all equipment.
- c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.
- d. Do one of the following:
 - i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).
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Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

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

NR 345.04(1)(c)6. An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

- a. Inspect all equipment and remove all aquatic plants, and animals, and mud.
- b. Drain all water from all equipment.
- c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.
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- i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).
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Note: Chlorine refers to either household bleach solution (5.25% chlorine) or granular chlorine (70% calcium hypochlorite)

- iv. Follow the most recent disinfection protocols for infested waters. The department shall maintain on its website and make available at its offices the most recent disinfection protocols for invasive species and viruses and a consolidated list of infested waters containing known aquatic invasive species and viruses.

Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

(1)(d)9. An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

- a. Inspect all equipment and remove all aquatic plants, and animals, and mud.
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- iv. Follow the most recent disinfection protocols for infested waters. The department shall maintain on its website and make available at its offices the most recent disinfection protocols for invasive species and viruses and a consolidated list of infested waters containing known aquatic invasive species and viruses.

Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

SECTION 9. NR 345.04(2)(c)9. is amended to read:

~~(2)(c)9. All equipment used for the project shall be de-contaminated following the most current protocols for invasive and exotic viruses and species prior to use and after use. All equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, sheet pile and pumps shall be thoroughly disinfected. To the extent practicable, equipment and gear used on outlying waters should not be used in inland lakes and rivers.~~

~~Note: The most current decontamination protocols can be found at the following website: <http://dnr.wi.gov/> under the topic "VHS"~~

An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody, as follows:

- a. Inspect all equipment and remove all aquatic plants, and animals, and mud.
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Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

SECTION 10. 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 11. 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

(SEAL)

By _____
Mathew J. Frank, Secretary