

**State of Wisconsin
Department of Natural Resources
Responses to Comments**

**Crossings or Deposits over Frozen Waters
April 2015**

The Wisconsin Department of Natural Resources (Department) issued a public notice on the proposed for “Crossings or Deposits over Waters” on March 30, 2015 for a 21 day public comment period. The Department received three comments on the proposed guidance. Thank you to all reviewers for taking the time to review and comment on the proposed guidance. A summary of the public comments and DNR response is provided below. The original email comments are attached to this summary. The Department made one change to the guidance in response to the guidance, which is noted below.

Comment #1 (Koehnke & Kafura): While deposits on the ice are not a structure on the bed that could be regulated under s. 30.12, a timber mat or portable bridge that spans a river should be regulated under s. 30.123 as a bridge.

DNR Response:

Under s. 30.12 the Department has the authority to authorize the placement of structures on the bed of a navigable waterway and s. 30.123 gives the Department the authority to regulate the placement of bridges or culverts across navigable waters. Neither of these statutes specify whether the Department’s authority extends only to permanent structures, bridges or culverts or whether the Department’s authority also extends to temporary structures, bridges or culverts. While the Department’s policy has generally required permits for temporary structures, s. 30.29 provides an exemption for crossings over frozen waters. Timber mats, portable bridges or other such structures placed across frozen waters facilitate access across frozen water and minimize the impacts to the bed and banks. Consequently, this guidance establishes that crossings temporarily placed to facilitate access across frozen water are not regulated unless the crossing is not removed prior to ice thaw.

Comment #2 (Kafura) Will the Department initiate rulemaking to amend the standards for a general permit to place a temporary in-stream crossing under NR 320.06(2)(g) to reflect the proposed guidance or will a note be added to the administrative code?

DNR Response:

The department has developed and issued a new statewide general permit for the placement of temporary in-stream crossings under s. 30.206(1)(am), Wis. Stats. Under s. 30.206(1r), Wis. Stats. when the department issues a statewide general permit for the same regulatory activity as a general permit, which was created through administrative code, the statute specifies that the general permit, created by the rule, is no longer valid. Therefore, there is no need to amend NR

320.06(2)(g), Wis. Adm. Code. However, it is the Department's standard practice to insert a note into the administrative code to indicate that the portion of the rule that specifies the standards for a general permit have been overridden by a statewide general permit and are no longer valid.

Comment #3 (Kafura) Does this guidance prevent staff from investigating complaints that structures or materials placed on frozen are obstructing navigation?

DNR Response:

No, this guidance does not prevent the Department from investigating a complaint to determine if the structure or deposits are obstructing navigation or violating any other provision in state statute or administrative code. This guidance merely provides the department's policy in regulating crossings over frozen waters, due to the lack of clarity in state statutes, and in no way prohibits or prevents staff from investigating a complaint and determining whether a violation exists and what if any enforcement is necessary.

Comment #4 (Pericak) Can the Department require that these materials be placed on a mat or similar device? In many cases these materials cannot be easily removed and material can end up on the bed of a waterway.

DNR Response:

A statement has been added that staff should ask that deposits be placed on a mat to enable removal.

The final guidance was approved on June 17, 2015.

If you have any questions, please contact Heidi Kennedy at (608) 261-6430 or heidi.kennedy@wisconsin.gov.

From: Koehnke, Scott E - DNR
Sent: Monday, March 30, 2015 1:02 PM
To: Kennedy, Heidi - DNR
Subject: RE: Proposed guidance posted for public comment

Hey Heidi,

The guidance references [30.12](#) and I agree that under 30.12 authority the structure must be on the bed. However, what about [30.123](#) authority? If the crossing meets the definition of a bridge (timber mat/portable bridge crossing from bank to bank on top of ice perpendicular to flow) I believe that a permit should be issued under 30.123 which meets the new GP criteria for temporary crossings. I would say that mats/poles/similar laid parallel to flow would not be a bridge and therefore not on the bed; exempt from permits. Am I correct in this belief?

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Scott E. Koehnke

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From: Kafura, David J - DNR
Sent: Monday, March 30, 2015 3:36 PM
To: Kennedy, Heidi - DNR
Cc: Hardin, Carmen R - DNR
Subject: Frozen Water Guidance

Heidi;

I've read the frozen water deposit and crossing draft guidance and have a few comments to offer for consideration. These comments are strictly from a silvicultural aspect, but have other broader reaching application too.

- 1). The guidance continues to refer to 30.12/30.29 as the overall authority addressing the issue as presented. Yet, some of the examples for which the exemption is addressing are actual crossing structures for which 30.123 is the authorizing statute (not 30.12). Will the guidance be amended to specifically cite 30.123 for these types of waterway crossings that are placed on ice and meet the definition in Ch. 30; "Bridge" means a structure used to convey people, animals and vehicles over navigable waters and includes pipe arches and culverts. From a forestry standpoint, this is an important distinction to make as frozen crossings of streams/rivers using timber mats or other structure to support equipment/displace weight are usually continuous from OHWM to OHWM, therefore a bridge (30.123) and not a deposit (30.12).
- 2). Will NR 320.06(2)(g) be amended, or include a note, that such ice crossings will not need a GP or IP if placed on ice and removed prior to ice-out? See NR 320.06(2)(g)6.
- 3). Will this guidance (when approved) provide exemption to persons from complaint/investigation under alleged material obstruction of navigable waterways (i.e.; 30.15)? Or will it be on a case-by-case situation/evaluation like pier attached aerators?

Thank you for the opportunity to comment on this draft guidance. Let me know if you need further clarification of submitted comments.

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Dave Kafura

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From: Pericak, David M - DNR
Sent: Tuesday, April 07, 2015 10:10 AM
To: Kennedy, Heidi - DNR
Cc: Hon, David F - DNR
Subject: RE: Proposed guidance posted for public comment

Great guidances Heidi-

With regards to the deposits on frozen waters , I would like to see a policy that sand , soil , wood chips ,rock with fines, etc cannot be placed directly on the ice and must be placed instead on a mat to enable proper removal. I think we have enough experience to show that these materials are a s. 29 violation if not placed on some type of mat or similar containing device. I can't see very many scenarios where 100% of these types of deposits can be removed and not end up in the water and possibly on the bed if placed directly on the ice. This should also be a permit condition for Gp's and IP's that would eliminate many non-compliance issues that eat up a lot of staff time.

What do you think ?

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David M. Pericak

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