

NRB approves compromise emergency rules for waterway permits

MADISON – The State Natural Resources Board has unanimously approved compromise emergency rules to implement 2003 Wisconsin Act 118, which is intended to streamline the process for approving projects along public lakes and rivers.

The emergency rules approved at a special meeting Monday, Aug. 16, are a compromise package Department of Natural Resources officials reached with legislators, public interest groups, and other stakeholders on a list of high quality, sensitive waters where projects would continue to be required to receive some kind of permit and review from DNR.

Wisconsin Act 118 allows a small group of activities to be exempt from permitting, including repairing or replacing riprap, manual dredging and fish habitat structures, unless those activities are proposed to occur on certain waters designated as sensitive.

In April, the Natural Resources Board approved emergency rules that contained a list of designated waters where exemptions would not apply. People would still need to receive a DNR permit and review to pursue their projects on these waters. On waters not included on the list, people would still be required to follow specific standards for the design, construction and location of activities exempt under Act 118.

In June, the legislature's Joint Committee for the Review of Administrative Rules instructed DNR to reduce the number of designated waters where DNR review was still required or the list would automatically be suspended.

The compromise package approved Aug. 16 shortens the list of waters where DNR review is necessary but continues to protect those waters by adding more specific design and location standards people must follow to be exempt, as well as limits on when the work can be done, according to Mike Staggs, the director of the DNR fisheries management and habitat protection program. Naturally reproducing musky waters, naturally reproducing walleye waters in the ceded territory, sturgeon tributaries and rivers, and tributaries to trout streams are removed from the designated waters list.

The compromise rules restrict DNR from adding to the list of designated waters, or identifying portions of waters with critical habitat, for at least two years. The original emergency rules didn't restrict when the DNR could add to the list, but spelled out a process, similar to that DNR now follows for designating trout waters, for adding waters or portions of them to the designated waters list.

Staggs told the board members before their vote that if they did not approve the compromise package, the list of designated waters was due to be automatically suspended this week. If the full list was suspended, Staggs and other fisheries and habitat protection officials worried that many waters would be inadequately protected. Grading projects are of a particular concern. Of 5,000 alterations people propose for streams and rivers every year, grading is typically the second most common activity and potentially among the most environmentally damaging, if not done properly, habitat protection officials have said.

The emergency rules approved in April will be in effect until the compromise emergency rules are published in the state newspaper of record. The compromise rules are expected to be in effect through the first part of next year. In the meantime, DNR is developing permanent rules to bring back to the board later this fall for legislative review in January, Staggs says. At the earliest, the permanent rules would be in place in May or June of 2005.

Board members passed two motions directing DNR staff in future negotiation sessions with legislators and stakeholders on the permanent rules. The first motion was passed on a 6 to 1 vote, and instructed the staff to come back to the board with a permanent rule that modifies the restrictions on how long DNR must wait before adding waters to the list.

A second motion was passed unanimously, and instructed DNR staff to proceed in developing the permanent rules on the basis of maintaining the board's policy making authority. A preamble included in the original emergency rule that explains DNR's responsibility, and the board's responsibility, in protecting public waters under the Wisconsin Constitution, case law, and administrative rules, was eliminated from the compromise rules. The Natural Resources Board expressed concern that the elimination of the policy statement, and the restrictions on when the board could add to the designated waters list, represented inappropriate constraints on the board's authority.

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