

September 28, 2005

Mr. Gerald O'Brien, Chair
Natural Resources Board
PO Box 7921
Madison, WI 53707-7910

Dear Chair O'Brien and Natural Resources Board Members,

Re: Proposed rule 326

I am writing on behalf of the Wisconsin Association of Lakes ("WAL"). As WAL's Executive Director, I served on the Department's advisory group on the revisions to NR 326. The department should be commended for its work on this rule package and the process it used to obtain public input on the proposed pier rules. Its advisory group represented diverse interests, its public hearings were well publicized and well attended.

More than 100,000 riparian property owners, businesses, and individuals throughout Wisconsin are a part of the Wisconsin Association of Lakes membership. Before 2003 Act 118 was enacted, very few of our member's had complaints about piers. Our members found that the complaint process under Sections 30.13 and 30.14 provided a reasonable way to resolved the relatively rare "problem piers" in the state.

Although we did not believe 2003 Act 118 was necessary to protect Wisconsin's waters or the rights of waterfront property owners, WAL agreed to serve on this stakeholder advisory group, because we recognized there were different interests among the people of Wisconsin, as different as the individual lakes where they reside. We were prepared to compromise to achieve a rule that would satisfy all but a few private interests.

Representative Gunderson and other members of the Legislature have repeatedly stated that the provisions of 2003 Act 118 were intended to simply codify the Department's informal "Pier Planner". In fact, Act 118 created s. 30.12(1g)(f), which establishes an exemption from permit requirements for piers that meet standards for pier width, length and mooring density that are consistent with the Pier Planner.

The proposed rule includes general permit standards for piers that effectively establish a second exemption with somewhat different standards for piers. Many of those pier standards reflect a broad consensus of stakeholders. Others represent the policy preferences of some DNR staff, but are not so widely endorsed by affected citizens.

WAL continues to believe that authorizations for piers without permits under Sections 30.12(1g)(f) and 30.13, together with the existing statutory complaint process,

are sufficient to regulate piers in the state. Unlike many other specific areas of regulation, the Legislature did not mandate that DNR establish a general permit for piers in Act 118. WAL is not persuaded that another standard for piers will better protect the state's waters or contribute to the simplification of state regulations that Act 118 aimed to accomplish. If the Board continues to believe that an additional general permit standard is necessary, WAL endorses the proposed rule with the following exceptions:

- 1. Exempt Piers (326.22).** WAL does not support the proposed authorization for piers to be placed without a permit in an Areas of Special Natural Resource Interest (ASNRI). These waters – a small fraction of all the waters in the state -- are defined under 2003 Act 118, and accorded special treatment under the amended statutes and the proposed rules governing navigable waters. Section 30.12 (1g) specifies that: “A riparian owner is exempt from the permit requirements under this section for the placement of a structure or the deposit of material if the structure or material is located in an area *other than an area of special natural resource interest...*” These waters need greater protection than other waters if they are to continue to be “special.” WAL does not support the provision of the proposed rule that authorizes the placement of piers in ASNRI waters without a site investigation and the issuance of an individual permit..
- 2. Grandfathered Piers – General Permits (326.23).** 2003 Act 118 does not direct or even authorize the Department to “grandfather” any piers. Yet, the proposed rule would permanently protect many existing piers, regardless of their length or the number of boat moorings they provide. This goes far beyond “codification of the Pier Planner” and appears to conflict with the Legislature’s purpose in establishing a Legislative pier exemption under Section 30.12(1g)(f). WAL supports the use of the general permit approach to provide standards for specific situations, like the proposed general permits for Lake Geneva (326.23 (5)(a), the Lower St. Croix River (326.23(6)(a) and public piers (326.23(7)(a). But we do not support the broad use of “grandfathering” to address piers that exceed the new statutory standards for piers. Piers that do not meet the exemption standard in Section 30.12(1g)(f) may remain in place under Section 30.13. If a particular pier threatens public or private rights it will be subject to a complaint under Section 30.14(4). There is no need to categorically protect existing piers without evidence to ensure that these are not inconsistent with public rights. The broad grandfathering provisions proposed in the rule, together with the multiple pier exemption and general permit standards, can only lead to future confusion and uncertainty.
- 3. Grandfathered Piers – General Permits (326.22 and 326.23).** If the Board is determined to promulgate a rule that grandfather’s existing piers, it should consider two modifications to the language proposed:

- a. **First, section 326.23(3)(d)** permits a loading platform at the lakeward end of an existing pier as long as it is not more than 160 square feet in size. The example drawings under section 326.23(3)(f) should have the shading of the loading platform include the “stem” portion of the pier to which the loading platform is attached. Because the department and the stakeholders agreed with this approach after an extended discussion, we assume this is an oversight. As drawn, the example permits a loading platform of 240 square feet (as indicated in drawing B).

- b. **Second, section 326.22(4)** exempts piers designated as “historic property” from individual permit requirements. The department has indicated there are very few of these piers, but some are much larger than piers granted exemption under the proposed rule. These piers should be required to get a general or an individual permit, depending on their size, so the department has a record of its size and shape.

We thank you for your consideration.

Sincerely,

Peter T. Murray
Executive Director

Cc: Wisconsin Association of Lakes Board of Directors