

The attached draft guidance entitled “Dredging Artificial Waterbodies” was developed to help Department of Natural Resources staff understand and apply consistent requirements under the newly enacted 2015 Wisconsin Act 387 when implementing artificial waterbody requirements and decisions under s. 30.19, Wis. Stats., to construct, dredge, or enlarge an artificial waterbody.

The Department is proposing guidance clarifying the Department’s scope of jurisdiction over dredging artificial waterbodies. This guidance only applies to jurisdictional artificial waterbodies regulated under s. 30.19 Wis. Stats. These are artificial waterbodies that do not fall under the requirements and descriptions of s. 30.053 Wis. Stats. and thus are regulated under s. 30.19 Wis. Stats.

This draft guidance was developed by staff from the Department’s Bureau of Watershed Management and has been reviewed internally. The Department is now soliciting comments from external stakeholders. Once the 21 day notice period is complete, the Department will consider all comments, revise the guidance if needed, and make a copy of the final guidance available to the appropriate internal and external stakeholders.

Comments related to this draft guidance should be provided to Martye Griffin via e-mail at [dnrwywzguidance@wisconsin.gov](mailto:dnrwywzguidance@wisconsin.gov) .



# **BUREAU OF WATERSHED MANAGEMENT PROGRAM GUIDANCE**

## **Waterway and Wetland Protection**

### **Dredging Artificial Waterbodies**

Effective Date: September 1, 2016  
Guidance #: WW-2016-009

*Notice: This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.*

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APPROVED:

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Pam Biersach, Director  
Bureau of Watershed Management

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Date

## A. Statement of Problem Being Addressed

Why did we have to do this guidance?

The guidance is expected to improve consistency when implementing artificial waterbody requirements and decisions under s. 30.19, Wis. Stats., to construct, dredge, or enlarge an artificial waterbody. This includes decisions on artificial waterbodies on privately owned property as well as projects involving artificial waterbodies as part of a Department led project under MC 1755.1. It will also be used to ensure that consistent messaging is being conveyed through website information, e-permit submittals, and statewide general permit creation and modification.

The guidance will help property owners and their consultants, and DNR staff, by clarifying the Department's scope of jurisdiction over dredging artificial waterbodies. This guidance only applies to jurisdictional artificial waterbodies regulated under s. 30.19 Wis. Stats. These are artificial waterbodies that do not fall under the requirements and descriptions of s. 30.053 Wis. Stats. and thus are regulated under s. 30.19 Wis. Stats.

## B. Background & Discussion

2015 Act 387 modified when general or individual permits are required for activities involving artificial waterbodies defined in s. 30.19(1b)(a) and regulated under s. 30.19(1g), Wis. Stats. Subsection (1g) lists the activities that are prohibited without a permit. For ease in understanding how the changes in 2015 Act 387 affect permit requirements, the below citation shows the 2015 Act 387 changes as strike through and underline. Underlined text represents new portions of the law in effect (additions), and the strike through text represents portions of the law that are no longer in effect (deletions).

30.19(1g) *PERMITS REQUIRED. Unless an individual or a general permit has been issued under this section or authorization has been granted by the legislature, no person may do any of the following:*

*30.19 (1g) (a) Construct, dredge, or enlarge any artificial water body that connects with ~~an existing~~ navigable waterway*

*30.19 (1g) (am) Construct, ~~dredge,~~ or enlarge any part of an artificial water body that is or will be located within 500 feet of the ordinary high-water mark of, but that does not or will not connect with, an existing navigable waterway, ~~including,~~ An artificial water body that meets the requirements of this paragraph includes a stormwater management pond that does not discharge into a navigable waterway except as a result of storm events.*

The modification of 30.19 (1g)(am) eliminates the need for a permit to dredge certain artificial waterbodies. As a result, the s. 30.19 permit requirements no longer applies to any dredging activities related to artificial waterbodies (as defined in s. 30.19(1b)(a)) that are within 500 ft. but that do not or will not connect with an existing navigable waterway.

In addition, to further clarify the Department's dredging jurisdiction related to artificial waterbodies, 2015 Act 387 also created a new statutory exemption under 30.19(1m)(dm) related to the dredging of artificial waterbodies.

*30.19(1m)(dm) The dredging of any part of an artificial water body that does not connect with a navigable waterway. An artificial water body that meets the requirements of this paragraph includes a stormwater management pond that does not discharge into a navigable waterway except as a result of storm events*

This new statutory exemption means that dredging an unconnected artificial waterbody (which includes certain stormwater management ponds) no longer requires a permit. This is in addition to the already established statutory exemptions for certain artificial waterbodies listed in s. 30.19(1m).

### **C. Guidance**

The statutory changes outlined above in the background section means that landowners no longer need to obtain permits when seeing to undertake dredging activities for *certain* artificial waterbodies.

#### Existing authorized artificial waterbodies.

- Artificial waterbodies authorized under s. 30.19(1g)(a), Wis. Stats., that connect with existing navigable waterways still need a permit for dredging activities, unless the dredging activities fall under the statutory exemption listed under s. 30.19 (1m)(e), Wis. Stats., which allows any work required to maintain the original dimensions of the artificial waterbody.
- Artificial waterbodies authorized under s. 30.19(1g)(am), Wis. Stats., that are located within 500 ft. of an existing navigable waterway, but does not or will not connect with an existing navigable waterway, do not need a permit for dredging activities. This means dredging of these types of artificial waterbodies are not limited to the statutory exemption listed under s. 30.19(1m)(e), Wis. Stats., which limits activities to maintain the original dimensions of the artificial waterbody. However the dredging activities or result of dredging activities cannot alter or be in conflict with the existing authorized permit conditions.

Existing un-authorized artificial waterbodies

Artificial waterbodies, as defined in s. 30.19(1b)(a), Wis. Stats., that meet the criteria of needing a permit under s. 30.19 (1g), Wis. Stats., are considered un-authorized artificial waterbodies, *unless they were constructed under a statutory exemption listed in s. 30.19(1m), Wis. Stats.* The following guidance does not apply to artificial waterbodies that were *constructed* under a statutory exemption listed in s. 30.19(1m), Wis. Stats.

- Un-authorized artificial waterbodies that connect with existing navigable waterways cannot be constructed, dredged, or enlarged without a permit.
- Un-authorized artificial waterbodies that are located within 500 ft. of an existing navigable waterway, but does not or will not connect with an existing navigable waterway, do not need a permit for dredging activities. This includes stormwater ponds that only discharge into existing navigable waterways as a result of a storm event. This means that unconnected artificial waterbodies (including stormwater ponds) with no previous permit authorization can be maintained by dredging with no permits. However, a permit is still needed to construct or enlarge artificial waterbodies within 500 ft. of an existing navigable waterway.
- Un-authorized artificial waterbodies *constructed in wetlands* that are located within 500 ft. of an existing navigable waterway, but do not or will not connect with an existing navigable waterway, may require a wetland disturbance permit if the dredging activities results in a discharge of fill that is regulated under s. 281.36, Wis. Stats.

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| Statewide Policy Team | 8/22/2016 |
| _____                 | _____     |
| Creator, Title        | Date      |

APPROVED:

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|----------------|-----------|
| Martin Griffin | 8/22/2016 |
| _____          | _____     |
| Section Chief  | Date      |

Policy Management Team approved on \_\_\_\_\_ (date).