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excavation retains water as the result of human modification of the landscape or is constructed of man-made materials.

**History:** Cr. Register, April, 1999, No. 520, eff. 5-1-99; CR 01-128: cr. (1m), am. (3) Register June 2002 No. 558, eff. 7-1-02; CR 03-030: renum. from s. NR 16.71 Register October 2003 No. 574, eff. 11-1-03; correction made under s. 13.93 (2m) (b) 1., Stats., Register October 2003 No. 574.

**NR 19.92 Natural body of water permit application fees.** Permit application fees for the use of natural bodies of water for fish farms for a period of 10 years shall be as follows:

(1) Permit applicants for natural bodies of water reauthorized for use as fish farms under s. 29.733 (2) (b) and (c), Stats., shall pay a non-refundable renewal fee of \$50.00.

(2) Permit applicants for the initial use of freeze-out ponds as fish farms shall pay a \$500.00 non-refundable permit application fee.

(3) Recipients of permit transfers shall pay a non-refundable permit transfer fee of \$100.00. The expiration date of the original permit shall remain in effect for the transferred permit.

**History:** Cr. Register, April, 1999, No. 520, eff. 5-1-99; CR 03-030: renum. from s. NR 16.72 Register October 2003 No. 574, eff. 11-1-03; correction made under s. 13.93 (2m) (b) 1., Stats., Register October 2003 No. 574.

**NR 19.93 Applicant permit procedures for use of natural bodies of water for fish farms.** (1) For permits reauthorized under s. 29.733 (2) (b), Stats., the applicant shall complete and submit an application form provided by the department and the appropriate permit fee by January 1, 2003.

(2) For renewal of permits under s. 29.733 (2) (c), Stats., the applicant shall submit a new application to the department not more than 16 months before the expiration date of the permit granted under this chapter but not less than 2 months from the expiration date of the permit.

(3) Applications for permits under this subchapter shall include documents verifying all of the following:

(a) The land that is riparian to the body of water is owned, leased or controlled by the owners of the fish farm.

(b) None of the owners of the fish farm or of the riparian lands provides access to the body of water to the public by means of an easement or other right-of way or by means of a business open to the public, except that the owners of the fish farm may allow fishing by the public for a fee.

(c) Documentation that the natural body of water may be a freeze-out pond or that the natural body of water is a preexisting fish rearing facility that is barrier equipped.

(d) Copies of any other permits or authorization required by ch. 30 or 31, Stats., the Army corps of engineers and any other federal, state or local laws and zoning ordinances.

(e) All applicants shall identify the water source and quantity used for the fish farm and whether there is any discharge to a water of the state.

(f) Any other information requested by the department to determine whether a permit would or would not be granted by the department.

**Note:** Permit application forms are available from the Bureau of Fisheries Management and Habitat Protection, 101 South Webster St., P.O. Box 7921, Madison, WI 53707.

(4) The department shall issue a notice of intent to use a natural body of water as a fish hatching or rearing facility that was not being used as of January 1, 1998 by the department. The department shall comply with all provisions of s. NR 19.94 before it may use a natural body of water as a fish hatching or rearing facility.

**History:** Cr. Register, April, 1999, No. 520, eff. 5-1-99; CR 01-128: am. (1) Register June 2002 No. 558, eff. 7-1-02; CR 03-030: renum. from s. NR 16.73 Register October 2003 No. 574, eff. 11-1-03; corrections made under s. 13.93 (2m) (b) 1. and 7., Stats., Register October 2003 No. 574.

**NR 19.94 Department determinations.** (1) The department shall issue a permit for use of a natural body of water as a fish farm or as a part of a fish farm if all requirements of this subchapter have been met and if the department determines that no substantial public interest exists in the body of water and that

### Subchapter III — Permitting the Use of Natural Bodies of Water as Fish Farms

**NR 19.90 Purpose and applicability.** (1) **PURPOSE.** The purpose of this subchapter is to establish fees, criteria and procedures to be used for permitting the use of natural bodies of water as fish farms as required under s. 29.733 (2) (f), Stats.

(2) **APPLICABILITY.** The provisions of this subchapter are applicable to:

(a) Fish farms and state-owned hatcheries located in or proposed to be located in freeze-out ponds.

(b) Natural bodies of water that were licensed as a private fish hatchery or licensed as a part of a private fish hatchery in 1997.

(c) A freeze-out pond or more than one freeze-out pond that is proposed as a fish farm at the time of application and is located on the same contiguous parcel of property under the same ownership or leasehold.

**History:** Cr. Register, April, 1999, No. 520, eff. 5-1-99; CR 03-030: renum. from s. NR 16.70 Register October 2003 No. 574, eff. 11-1-03; correction made under s. 13.93 (2m) (b) 1., Stats., Register October 2003 No. 574.

**NR 19.91 Definitions.** In this subchapter:

(1) “Barrier equipped” means the placement of a structure or device which prevents the movement of fish or bait from a fish farm to a natural body of water.

(1m) “Department fish hatching and rearing facilities” means all fish hatching and rearing waterbodies owned by the department, or leased or controlled through a cooperative agreement between the property owner and the department and where the department owns all the fish.

(2) “Freeze-out pond” has the meaning specified in s. 29.001 (29), Stats.

(3) “Natural body of water” means any spring, stream, pond, lake or wetland that was historically present in a natural state but may have been physically altered over time except any waterbody that has been permitted by the department under ch. 30 or 31, Stats., or ch. NR 299 water quality certification and not declared public under s. 30.19 (5), Stats.

(4) “Preexisting fish rearing facility” has the meaning specified in s. 29.001 (64), Stats.

(5) “Transfer of permit” means the conveyance of a permit from one party to another as a result of change in ownership or leasehold interest of a fish farm.

(6) “Wetland” has the meaning specified under s. 23.32, Stats.

**Note:** For purposes of this subchapter, a natural body of water does not include an artificial wetland, as defined under s. NR 103.02 (1m) or any swale, bermed area or excavation that is not located in a wetland, pond, lake, stream or spring that was historically present in a natural state, if the artificial wetland, swale, bermed area or

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no public or private rights in the body of water will be adversely impacted. Among the factors considered, the following are indicative of public rights and interests including but not limited to:

- (a) Plant and wild animal habitat or plant and wild animal populations.
- (b) Threatened or endangered species or their habitat.
- (c) Water quality related functional values or uses of wetlands identified in s. NR 103.03.
- (d) Surface water quality standards identified in chs. NR 102, 104, 105, 106 and 107 and minimum water quantity requirements identified in s. 31.02, Stats.
- (e) The public's right to navigate and associated incidents to navigation including fishing, swimming, wading and canoeing.

**(2)** Fish farms may not introduce or propagate any non-native fish species if the department has determined that having the fish in that particular self-contained fish rearing facility or preexisting fish rearing facility will pose a risk of being detrimental to the waters of the state.

**(3)** Physical improvements or modifications to natural bodies of water used as fish farms shall comply with all federal, state and local laws and ordinances.

**(4)** Permits approved under this subchapter may be transferred to another party if the department determines that all conditions of this subchapter and s. 29.733, Stats., have been satisfied.

**(5)** The department shall renew under s. 29.733 (2) (c), Stats., a permit issued under s. 29.733 (2) (a) and (b), Stats., for use of a natural body of water as a fish farm or any part of a fish farm in a natural body of water unless the department determines there has been a substantial adverse change affecting one or more of the criteria specified in sub. (1) (a) to (e) resulting from the operation of the fish farm. The department shall consider the historical condi-

tion of the natural water body prior to the presence and operation of the fish farm as part of their permit renewal decision under s. 29.733 (2) (c), Stats.

**Note:** Under this paragraph, historical conditions refer to known uses of the natural body of water prior to the inception of the fish farm.

**(6)** The department shall deny a permit for use of a natural body of water as a fish farm or as part of a fish farm if the requirements of this subchapter have not been met.

**(6m)** A single permit shall be issued for multiple natural bodies of water located on the same contiguous parcel of property under the same ownership or leasehold.

**(7)** Upon receipt of a complete permit application, the department shall either schedule a hearing or provide notice stating that it will proceed on the application without a hearing if no substantive written objections to issuance of the permit is received within 30 days after publication or notice. The notice shall be provided to news media and other persons according to the procedures in s. NR 27.07 (1) (b) and (c). The department may provide notice to other persons as it deems appropriate. The department will assume the cost of publishing the notice.

**History:** Cr. Register, April, 1999, No. 520, eff. 5-1-99; CR 01-128: r. and recr. (5), cr. (6m) Register June 2002 No. 558, eff. 7-1-02; CR 03-030: renum. from s. NR 16.74 Register October 2003 No. 574, eff. 11-1-03; corrections made under s. 13.93 (2m) (b) 1. and 7., Stats., Register October 2003 No. 574.

**NR 19.95 Enforcement.** The department may suspend or revoke a permit issued under this subchapter subject to the provisions of s. 29.733 (2) (e), Stats. A fish farmer operating a fish farm in a natural body of water as defined in s. NR 19.91 (3) without a valid permit under this subchapter may be penalized under s. 29.971, Stats.

**History:** Cr. Register, April, 1999, No. 520, eff. 5-1-99; CR 01-128: am. Register June 2002 No. 558, eff. 7-1-02; CR 03-030: renum. from s. NR 16.75 Register October 2003 No. 574, eff. 11-1-03; corrections made under s. 13.93 (2m) (b) 1. and 7., Stats., Register October 2003 No. 574.