

Summary of comments regarding rule revision for structures in public waters that were received by the Request for Comments deadline of November 17, 2008

In the interest of maintaining the natural characteristics of Public Waters, as well as the rights of the public to use the entire surface of Public Waters, and the rights and duties of riparian property owners who place private structures into Public Waters for reasonable use and access, the DNR has regulated structures in public waters for several decades. In recent years, there has been an increase in the number of “dock platforms” in public waters that exceed longstanding rules that limit docks to a maximum of eight feet in width. Such intensive shoreland development has been shown to deteriorate a lake’s ecosystem, negatively impact natural shoreline views, and cover an unreasonable amount surface area on public water. In response to this trend, the DNR is working to find an adequate balance between property owners’ reasonable access and the protection of public resources.

The DNR is required by 2008 legislation to revise the rules governing structures in public waters. A request for public comments on the rule amendment was published in the State Register. Twenty-two comments and suggestions were received in response to the request and they are summarized in this review. Twelve of the responses were based on a prepared form letter. A number of the comments pertain to specific parts of the proposed revisions and provided commentary on syntax of rule language.

Comments included:

- There is a nonpartisan desire to conduct meaningful, scientific investigations that can assist in the development of new regulations and rules. The DNR has no scientific conclusion that justifies the current (and possibly arbitrary) size restriction. The lack of consensus at the advisory meeting can be interpreted as no mandate for change. One individual referenced studies conducted by the Wisconsin and Iowa DNR in their respective regulation on public waters structures.
- There is a desire from both sides for structures on public waters to be regulated on a case-by-case basis (i.e., different lakes should have different regulations). The argument was made that not all lakeshore owners purchased property to enjoy “a pristine lake experience” and implementing new regulation for all lakes presents a prohibitively expensive enforcement cost. Instead, the focus should be on the outliers of the existing rules, not the general population. On the other side, it is suggested that dock structures should be limited in size according to lake classification (depth, vegetation, density of structure, etc.)
- There is concern about the proposed rules and the permissible limit of impacted shoreline, referred to as the Aquatic Impact Area (AIA). One comment requests that the DNR consider the cumulative impacts of many, lesser structures on the ecology; that is, not assessing the impacts according to the size of docks, but according to the number of docks per unit area. Additionally, there is a request that revisions to the rules should be compatible and consistent with other Minnesota rules that regulate nearshore areas (i.e., aquatic plant management and shoreland management rules, as well as provide additional needed protections to aquatic resources and the natural

character of Public Waters. On the other side, an item of concern is the proposed size of the AIA. A resident owning 100 ft. of shoreline is permitted to impact 50 ft. of the water perimeter, whereas a resident with more shoreline, say 300 ft. is limited to the same amount. Individuals are concerned about the impacts that this may have on property values.

- Several comments express concerns about the economic impacts that the new structure regulations could have on the local marine industry.
- Finally the concept of grandfather clauses is proposed for large structures that are out of compliance, but were in existence before the change takes place. Sixteen of the twenty-two comments support the grandfather clause and one comment thinks that the clause would be misapplied, effectively providing amnesty in a case where the law has been clearly present since 1983.