



April 1, 2025

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Subject: Citizens Petition for an Emergency and Permanent Regulation to Amend NR 19.055 Relating to Ballast System, dated February 9, 2024

Dear Petitioners:

The Department of Natural Resources received your *Citizens Petition for an Emergency and Permanent Regulation to Amend NR 19.055 Relating to Ballast System*, dated February 9, 2024. The Petition was filed pursuant to Wis. Stat. §§ 227.12 and 227.24. The Petition requests the Department amend Wis. Admin. Code § NR 19.055 to add specific language that would apply to any boat containing a ballast system.

The rule proposed in the Petition is similar to a rule adopted by the State of Vermont, commonly referred to as the “Home Lake Rule.” The Petitioners ask the Department to initiate a rule making process to adopt a rule that would apply to any boat with a ballast system to enhance waves (“wake boats”).

The Petition outlines a proposed rule that would allow the operation of a wake boat only if:

- (a) The operator of the boat possesses a written dated declaration from a boat dealer or a Department-approved facility that states the ballast system has been decontaminated in accordance with decontamination procedures prescribed by the Department;
- (b) The operator of the boat has a written dated declaration that identifies the only body of water in which the ballast system will be used;
- (c) The Department issues a decal to be affixed to the boat upon a boat owner’s submission of the declaration to the Department; and
- (d) The boat owner files the declaration with the clerk of any municipality where the body of water is located and provides on request a copy of the declaration to any warden, public official, or Clean Boats, Clean Waters person monitoring the boat landing.

An additional provision of the Petitioners’ proposed rule requires the Department to develop and publish on its web site:

- (1) A procedure for decontaminating ballast systems;
- (2) A procedure to become an approved decontamination facility;
- (3) A form that declares a ballast system to have been decontaminated; and
- (4) A form that the owner will use to declare the only lake that the ballast system will be used on following decontamination.

Petitioners state that the objective of the proposed rule is to prevent the spread of invasive species that may be caused by the discharge of ballast water from wake boat ballast systems. Petitioners contend that wake boat ballast systems cannot be completely drained and, because they are designed as closed systems, they are difficult to inspect for compliance with the current rule in Wis. Admin. Code NR § 19.055(1) (any person who removes a

boat from Wisconsin waters shall drain all water from the boat, including any water in any ballast tank immediately after removing the boat from the water). *See also* Wis. Admin, Code NR § 40.07.

Since the filing of the Petition, Petitioners have provided additional information to the Department, including in letters dated February 29, 2024, March 25, 2024, April 18, 2024, and September 6, 2024. In the September 6, 2024 additional rationale, the Petitioners note the recent discovery of quagga mussels in Lake Geneva and request that the Department promulgate an emergency rule to be effective in April 2025, prior to the next boating season. Petitioners have also appeared before the Natural Resources Board on multiple occasions and have proposed raising funds for a pilot program/decontamination equipment that could be implemented by a local unit of government.

The Department met with representatives of the Petitioners and has reviewed the information Petitioners have provided as well as the written comments and testimony regarding wake boats that have been provided to the Natural Resources Board since the filing of the Petition.

On October 14, 2024, Petitioner's counsel provided an email with a copy of a rule adopted in Utah, AR657-60, which prohibits the possession or transport of any *Dreissena* mussel, including zebra mussels and quagga mussels. Utah's rule applies to all boats operated within the state. The rule requires all boat owners to take a course, pay an annual fee, and take specified actions, including decontamination. Like Vermont, Utah has existing state-approved decontamination stations, which all boaters are required to use if the stations are open. [Decontamination & inspection stations | Aquatic Invasive Species \(utah.gov\)](#). Petitioners have not suggested what portions of the Utah rule they advocate for Wisconsin, but considerably more time and resources would be required for such an extensive program to be developed here.

The Petition requests the Department adopt both an emergency rule and a permanent rule mandating certain decontamination procedures. The emergency rule process does not require the public input and information gathering that the Department believes would be necessary for a rule that mandates additional requirements for boats with ballast water systems. See Wis. Stat. § 227.24(1)(e). Vermont did not use an expedited process to adopt its Home Lake Rule, and Petitioners have not clearly shown that the requirements under Wis. Stat. § 227.24(1)(a) for expedited rulemaking are met.

The Department has also considered whether a scope statement for a permanent rule should be developed for a Home Lake Rule as proposed by the Petitioners. While the Department appreciates that many people and organizations have expressed concern regarding the impact of wake boats on Wisconsin waterbodies, including the potential for transport of aquatic invasive species, the Department has determined that additional outreach and education is the first step that should be taken before undertaking a rulemaking process.

For the reasons described more fully below, the Department is denying the request for emergency and permanent rulemaking at this time. In accordance with Wis. Stat. § 227.12(3), this letter provides a brief statement of the reasons for denial.

In April 2024, Vermont adopted rules regarding wake boats. The rules include a Home Lake Rule provision similar to what the Petitioners propose for Wisconsin. Department staff contacted officials in Vermont's Department of Conservation to learn more about Vermont's regulations. Staff also reviewed Vermont's current rule and current implementation efforts.

Wake sports in Vermont can only occur on four shared waterbodies - Lake Champlain, Lake Memphremagog, the Connecticut River reservoirs, Wallace Pond - and 30 inland lakes. Wisconsin has over 2,000 lakes of similar size to the lakes in Vermont where wakesports could occur and where the proposed Home Lake Rule would apply.

Vermont has existing Agency-established decontamination services that boat owners are familiar with and currently use. Department staff surveyed Wisconsin boat dealers and service providers and found no businesses that currently offer ballast system decontamination services. While several studies have shown that the use of steam (212°F) or hot water (140°F) are effective decontamination techniques for aquatic invasive species, including quagga mussels, zebra mussels and spiny water fleas, development of approved procedures for wake boat ballast system decontamination and for DNR-approved decontamination facilities would require significant additional staff time and resources.

Vermont has yet to fully implement the Home Lake Rule provisions. During 2024, Vermont was not issuing Home Lake Rule decals and has simply issued guidance that wake boat users can follow for decontamination. [Wakeboat Decontamination Guidance.pdf \(vermont.gov\)](#). Vermont's guidance advises boat owners to drain the wakeboat thoroughly and to the fullest extent possible and offers boat owners alternatives for hot water rinsing/flushing, cold water rinsing/flushing, and drying when rinsing/flushing is not available.

Finally, while ballast systems in wake boats that are not fully drained may pose a risk for the spread of invasive species if boats with retained ballast water travel from one lake to another, the extent to which ballast tanks contribute to the spread is unclear. All types of watercraft with residual water in live wells and ballast tanks, as well as other recreational equipment, are potential pathways for aquatic invasive species spread. There are also various environmental factors that affect whether an aquatic invasive species that is introduced in a waterbody actually becomes established in the waterbody.

For all of these reasons, the Department does not believe rulemaking is the best path forward at this time. There are voluntary actions that wake boat owners and operators can take today. Wake boat operators who use their boat on a single lake and who drain and decontaminate their boat's ballast systems to the fullest extent possible can minimize the risk for the spread of aquatic invasive species. During the August 2024 NRB meeting, Department staff presented an information item on Wisconsin boating laws and regulations that apply to aquatic invasive species and wake boats. As discussed during that information item, the Department has prepared wake boat-specific information to educate and encourage boat owners to take steps to prevent the spread of aquatic invasive species if they move their boat from one lake to another over the course of a summer. This wake boat & AIS information has been added to the DNR's [AIS prevention](#) webpage. We have also created a link to a [PDF document](#) that outlines these prevention practices.

State law currently allows local authorities to adopt ordinances governing boating that are more restrictive than state law in the interest of public health, safety or welfare, including the public's interest in preserving the state's natural resources. Wis. Stat. § 30.77(3)(a). The Department appreciates local residents' concerns based on local conditions and will continue its role, as required by statute, to review the local ordinances that are submitted to the Department. *See* Wis. Stat. § 30.77(3)(d).

We understand that efforts may be undertaken to obtain a decontamination system similar to those used in Utah that could be employed by local authorities that adopt an ordinance with decontamination requirements. The Department would be happy to review and comment on any procedures developed for use of the system should the system be used by a local authority as part of their ordinance implementation.

Neighboring jurisdictions like Minnesota and Michigan, as well as other states around the country, are experiencing similar growth in the use and popularity of wake boats. The Department has and will continue to consider the ongoing and additional research we expect to see on wake boat impacts. As your counsel has recently noted, the Governor has proposed funding in his budget – \$62,300 and \$83,000 in FY26 and FY27, respectively – to provide the Department with expenditure and project position authority to collect and analyze data on Wisconsin water bodies in order to better evaluate the potential impact of wake boating on outdoor recreation and the environment in the state. And, as has also been noted in testimony before the Natural Resources Board, statutory changes are being considered by the legislature regarding wake boat use.

The Department is and will remain committed to engaging with you, and with all interested stakeholders, to determine what additional actions can and should be taken to minimize the environmental impacts of wake boat use in Wisconsin.

Sincerely,



Steven Little
Deputy Secretary

cc: Eric Schanowski
Michelle Nault
Darren Kuhn

Notice of Appeal Rights

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to Wis. Stat. §§ 227.52 and 227.53, you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to Wis. Stat. § 227.42, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be made in accordance with Wis. Admin. Code § NR 2.05(5), and served on the Secretary in accordance with Wis. Admin. Code § NR 2.03. The filing of a request for a contested case hearing does not extend the 30 day period for filing a petition for judicial review.