

Aerators

The use of an aerator has become a popular method of protecting waterway structures such as docks and piers from ice damage. Aerators are considered structures and are regulated by WDNR pursuant to s. 30.12, Wis. Stats., if placed below the ordinary high water mark of a public (navigable) waterway. Like other structures, aerators and their operation cannot materially obstruct navigation or be detrimental to the public interest [s. 30.12(3m)(c), Wis. Stats.]. While aerators may provide some benefits to an individual riparian owner, they can often impact neighbors and the public.

1.

Permit required: An aerator that is placed, anchored, or resting on the bed of navigable waterways requires a miscellaneous structure permit from WDNR under s. 30.12, Wis. Stats.

2.

No permit required: It is the Department's policy not to require permits for an aerator that is attached to a legal structure such as a dock, pier or seawall.

3.

Operation requirements: The operation of an aeration system under above subs. 1. or 2. cannot adversely impact the public or neighbors who may be accessing the lake near the aerator's location. The owner/operator of an aerator must ensure that it does not impact the adjoining neighbor's property or create unsafe ice conditions for ice skaters, fishermen, snowmobilers, etc. (This can often be accomplished by installing temporary "skirts" around the area to be protected. The "skirts" are commonly made out of a material that will stop the flow of water from the aerator. Any material placed in conjunction with the aerator must be removed immediately after lake/river ice-out.)

Additional Information relating to aerator and other man-made ice holes

1.

Marking requirements for aerator holes: Ice holes created by an aerator in a public waterway must be marked and maintained pursuant to s. 167.26(1g) or 167.26(2), Wis. Stats. as follows:

167.26(1g) Any person who removes ice or causes its removal from any stream, pond or lake shall place around the margin of the opening made by such removal a fence, by setting posts of not less than 2 by 4 in size with any of the following fences:

(a) A fence board attached not less than 3 1/2 feet above the surface of the ice on the stream, pond or lake.

(b) Colored plastic construction roll fencing attached to the posts.

167.26(2) (a) Instead of the requirements under sub. (1g), any person creating ice holes by aeration of water may do any of the following:

1. Erect and maintain a barricade around the holes consisting of uprights that are spaced at adequate intervals to maintain the barricade and that are connected by a continuous rope, cord, or similar material placed at least 2.5 feet and not more than 4.5 feet off the surface.
2. Erect and maintain a visual warning mechanism that is highly visible and that is reflectorized, fluorescent, or lighted.

(b) The connecting rope, cord, or similar material specified in par. (a) 1. shall have reflectorized, fluorescent, or lighted ribbon or tape or other reflectorized devices attached to it, so as to be highly visible, and shall be of sufficient strength to permit retrieval of the barricade following melting of the ice.

(c) Any person erecting a barricade or warning mechanism under this subsection shall remove the barricade and all parts of the barricade or mechanism immediately after the ice has melted.

Note: Under s. 167.26(2m), Wis. Stats., instead of the requirements under subs. (1g) and (2), any public inland lake protection and rehabilitation district or any nonprofit membership corporation that is creating ice holes for a lake by aeration of water for purposes of a water quality project that has been approved by the department of natural resources may provide alternative warning methods by doing all of the following:

1. Posting highly visible warning notices at each shoreline area through which the public has access to the lake.
2. Providing a written warning notice to each owner of riparian property on the lake.

Owners/operators of aerators should be advised that they may be held liable for accidents or injuries that occur due to improperly marked ice holes.