

JUL 09 REC'D

ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create ch. NR 328 relating to regulation of water ski platforms and water ski jumps.

FH-29-99(E)

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 30.135, 227.11(2)(a) and 227.24, Stats.  
Statutes interpreted: ss. 30.66, 30.69 and 30.135, Stats.

Chapter NR 328 describes the conditions where a water ski jump or platform will require a permit. It explains what constitutes a substantive written objection to a water ski jump or platform and provides a list of reasons that support a substantive written objection. It specifies the contents of a public notice and the process for making a substantive written objection. It details how the department will respond to complaints about an existing water ski jump or platform.

SECTION 1. Chapter NR 328 is created to read:

**Chapter NR 328**  
**REGULATION OF WATER SKI JUMPS AND WATER SKI PLATFORMS**

NR 328.01	Purpose	NR 328.06	Factors constituting substantive written objection
NR 328.02	Applicability	NR 328.07	Complaints to existing structures
NR 328.03	Definitions	NR 328.08	Modifications to existing structures
NR 328.04	When permit required	NR 328.09	Enforcement
NR 328.05	Contents of public notice		

**NR 328.01 Purpose.** These rules are promulgated under s. 30.135, Stats., in order to comply with s. 30.135(2)(a) and (b), Stats., regarding the construction and location of water ski platforms and water ski jumps. Recreational, competition, and exhibition water skiing are incidences of navigation that provide public benefit. Water ski platforms and water ski jumps and their use can also have adverse impacts on other public uses of a waterway, including: fish and wildlife habitat; sediment resuspension; water quality; natural scenic beauty; other navigation; and other riparians. Wisconsin law, emanating from Article IX, Section 1 of the Wisconsin Constitution, provides that public waters are held in trust for "the inhabitants of the state". It is necessary, in administering these statutory provisions, that we recognize the common law and balance these competing public rights in the state's navigable waters.

Note: One of the purposes of this chapter is to assist in the application of the common law to these statutory provisions. The Wisconsin Courts have stated, in a case addressing water skiing uses of a lake, "...no single public interest in the use of navigable waters, though afforded the protection of the public trust doctrine, is absolute. Some public uses must yield if others public uses are to exist at all. The uses must be balanced and accommodated on a case by case basis." State v. Village of Lake Delton, 93 Wis. 2d. 78 (Ct. App., 1979). The Courts have also consistently held that the State of Wisconsin has an affirmative duty to consider the cumulative impacts of activities in our navigable waters on the natural resources and other public uses. In Sterlingworth v. DNR, 205 Wis. 2d 710 (Ct. App. 1996), the Court stated, in reviewing a decision dealing with the placement of structures in a navigable water, "Whether it is one, nine or ninety boat slips, each slip allows one

more boat which inevitably risks further damage to the environment and impairs the public's interest in the lakes. The potential ecological impacts include direct impacts on water quality and sediment quality alteration, as well as direct and indirect influences on flora and fauna. For this very reason, the consideration of "cumulative impact" must be taken into account... Our navigable waters are a precious natural heritage; once gone they disappear forever.... In our opinion, the DNR...carried out its assigned duty as protector of the overall public interest in maintaining one of Wisconsin's most important natural resources."

**NR 328.02 Applicability.** This chapter applies to all water ski jumps and water ski platforms constructed or maintained by riparians on the beds of navigable waters.

**NR 328.03 Definitions.** As used in this chapter:

(1) "Department" means the department of natural resources.

(2) "Performance area" means an identifiable area of tow-boat traffic which may include travel areas between the performance platform, ski jump and slalom course.

(3) "Pull-zone" means a identifiable area adjacent to the water ski platform which originates at the tow-boat starting point and continues to a location where the tow boat has achieved a constant towing speed.

(4) "Substantive written objection" means a written statement giving specific reasons why a proposed project may violate the statutory provisions applicable to the project and specifying that the person making the objection will appear and present information supporting the objection in a contested case hearing.

(5) "Water ski jump" means a human-made, inclined-plane structure especially prepared for jumping by skiers towed behind boats.

(6) "Water ski platform" means a human made structure especially prepared for starting or landing water skiers, and temporary set-up of tow ropes, skis, and other water ski equipment, during public exhibition or competition events.

Note: Water ski platforms are also commonly known as starting docks or performance platforms.

**NR 328.04 When permit required: determination of interference with public rights and riparian proprietor rights.** (1) LEGISLATION. Section 30.135, Stats., allows a riparian proprietor to place a water ski platform or water ski jump in a navigable waterway without obtaining a permit if all of the following requirements are met:

(a) The platform or jump does not interfere with public rights in navigable waters;

(b) The platform or jump does not interfere with rights of other riparian proprietors; and

(c) The platform or jump is located at a site that ensures adequate water depth and clearance for safe skiing.

(2) CRITERIA. The department shall apply the following criteria to determine if a water ski jump or platform requires a permit. If any of the following conditions are met, the riparian shall submit a permit application to construct the water ski platform or jump:

(a) Interference with navigation and its incidents. Permits will be required where structures and their associated activities are located in areas that meet any of the following conditions:

1. Conflict with other navigational activities or public uses. The site is within 100 feet of a marked swimming area, public boat landing, dock, anchored raft, pier or buoy restricted area.

Note: Except in pickup and drop areas that are marked with regulatory buoys, Sections 30.66 and 30.69, Stats., forbid water skiing within 100 feet of an anchored occupied boat, marked swimming area, public boat landing, dock, raft, pier or buoy restricted area.

2. Poorly lit ski-jumps are detrimental to safe navigation. Water ski jumps not lit from sunset to sunrise by a white light and visible all around the horizon at a distance of at least 2 miles on a dark night with clear atmosphere.

Note: Section 30.61, Stats., prescribes this lighting standard for moored watercraft and other structures.

3. Are of excessive size. The water ski platform is of excessive size (larger than 720 sq. feet.)

(b) Impacts on littoral zone habitat, flora and fauna –Permits will be required where structures and their associated activities are located in areas that:

1. Are susceptible to sediment resuspension. The pull zone adjacent to the starting platform is located in water depths less than 7-8 feet and the dominant bottom substrate (upper 2 inches) is composed primarily fine sediments (grain size less than sand). This subdivision does not apply to rivers where substrates are composed of sand or larger grain sizes (cobble, rubble, and gravel).

2. Contain extensive rooted aquatic plant beds. The pull zone adjacent to the starting platform has more than 25% of its area covered by rooted aquatic plant growth.

3. Are inhabited by threatened or endangered species. Survey information indicates that threatened or endangered species are found near the site.

4. Are designated as a sensitive area or are spawning or nursery habitats. The structure and its associated activity located in or near spawning/nursery habitats or designated sensitive areas.

(c) Impacts on natural scenic beauty. Permits will be required if development near the site is less than the ch. NR 326 standard. This paragraph does not apply if the site is adjacent to public land such as city or county parks, and agreements with local units of government are formalized.

Note: Section NR 326.055(4)(f)1. identifies developed shorelines as those where there are at least 5 principal structures including at least one on the applicant's property which are located within 500 feet of the proposed water ski platform or jump, and are visually intrusive as viewed from the water.

Note: Less developed areas of the lake or less developed lakes in general will experience greater impacts on natural scenic beauty from the structure and its activity than other more developed areas or lakes.

(d) Cumulative impacts. Cumulative impacts of additional structures and their associated activities result in lake-wide changes. Lake morphometry and lake size is an approximate measure to assess cumulative lake impact, which meets Wisconsin appellate court ruling in Sterlingworth v.

DNR ,205 Wis. 2d 702 (Ct. App., 1996). Permits will be required for water ski jumps or water ski platforms where either:

1. Lake size is between 500 and 1,000 acres and has more than 80% of its surface area shallower than 10 feet in depth, or lake size is between 100 and 499 acres and has more than 50% of its surface area shallower than 10 feet in depth, or lake size is less than 99 acres. This subdivision does not apply to rivers where substrates are composed of sand or larger grain sizes (cobble, rubble, and gravel).

2. The structure is not used by a recognized competition or exhibition ski organization, or the structure is being utilized as a "private deck" when ski shows are not occurring.

Note: While examination of public benefits (or lack of) associated with the structure in of itself is not test of interference with the public interest, analysis of cumulative impact of "non-club/individual riparians" indicates potential interference with the public interest.

(e) Impacts on other riparians. . Permits will be required for water ski jumps or water ski platforms where either:

1. The structure is located outside the applicant's riparian zone of influence.
2. Written approval from any riparian adjacent to the performance area is absent.

**NR 328.05 Contents of public notice of proposed water ski jump or water ski platform.**

Under s. 30.135(2)(a), Stats., notice of a proposed water ski jump or water ski platform shall include all of the following:

- (1) Name and address of the applicant.
- (2) Description of the activity and its location.
- (3) A statement apprising the public of the opportunity to request a hearing under s. 30.135(2), Stats.
- (4) A statement of what constitutes a substantive written objection.
- (5) A list of specific reasons that support a substantive written objection.
- (6) A statement that the department may decide to proceed on the application without a hearing.
- (7) A statement that a decision to proceed on an application without a hearing is subject to review under ch. 227, Stats.

**NR 328.06 Substantive written objection.** (1) PROCESS. Notwithstanding ch. NR 2, any person objecting to a proposed water ski jump or water ski platform may request a contested case hearing by letter to the department employee whose name and address appears in the public notice. The request must be received within 30 days of the publication of the notice. An objection shall include a written statement giving specific reasons as described in sub. (2) why the proposed activity should not be allowed. The request for hearing shall also include a written statement specifying that the petitioner will appear and present information supporting the objections in a contested case hearing. The department may request additional information to support allegations in the objection prior to granting or denying the hearing request.



(2) **SPECIFIC REASONS.** In order to qualify for a hearing under s. 30.135(2), Stats., an objector shall allege that the water ski jump or water ski platform has an adverse effect on one or more of the following factors:

- (a) Navigation or its incidents, including but not limited to swimming, boating, fishing and hunting.
- (b) Water quality or quantity.
- (c) Fisheries or wildlife.
- (d) Aquatic or terrestrial habitat.
- (e) Shoreline stability.
- (f) Natural scenic beauty.
- (g) Rights of riparians.
- (h) Water safety.
- (i) Other public rights in navigable waters established by law.

**NR 328.07 Complaints about an existing water ski jump or platform.** (1) **PERMITTED WATER SKI JUMP OR PLATFORM.** Existing water ski jumps or platforms may remain if a ch. 30, Stats., permit was issued. Upon receipt of a complaint the department shall conduct an investigation to determine if all permit conditions are met and whether physical or ecological conditions have changed, resulting in a new public interest impact.

(a) If permit conditions are unmet, or physical or ecological conditions have changed, the department shall work with the permittee and the complainant to amend the permit to include conditions to address the public interest impact. If the permit cannot be amended and agreed to by the department, permittee and complainant, a hearing shall be scheduled.

(b) If permit conditions are met and no physical or ecological conditions have changed the department shall report the findings and conclusion that no further action is required to the permittee and the complainant.

(2) **UNPERMITTED WATER SKI JUMP OR PLATFORM.** When the department receives a complaint and the water ski jump or platform does not have a ch. 30, Stats., permit, the department shall apply the criteria in s. NR328.04 to determine whether a permit is required. Based on the determination, the department shall:

(a) Notify the complainant and the person who placed the jump or platform of the determination that a permit is not required and that no further action will be taken.

(b) Require the person who placed the jump or platform to submit a permit application as required by s. 30.135, Stats.

**NR 328.08 Modification to an existing water ski jump or platform.** If the department is notified that an existing water ski jump or platform has been modified, the department shall conduct an investigation.

(a) If the water ski jump or platform has an existing ch. 30, Stats., permit, the department shall determine whether the permit needs to be amended as in s. NR 328.07(1)(a).

(b) If the water ski jump or platform does not have an existing ch. 30, Stats., permit, the department shall determine, based on the criteria in s. NR 328.04, whether a permit is required.

**NR 328.09 Enforcement.** If the department determines that a water ski jump or platform is not consistent with requirements of ch. 30, Stats., and the rules adopted thereunder, it may pursue enforcement under the provisions of chs. 23 and 30, Stats.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 30, 1999.

The rule shall take effect on the date of publication in the official state newspaper.

Dated at Madison, Wisconsin

July 1, 1999

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

George E. Meyer  
George E. Meyer, Secretary

(SEAL)

ORIGINAL  UPDATED  
 CORRECTED  SUPPLEMENTAL

**FISCAL ESTIMATE**  
DOA-2048 N(R10/94)

Subject

Regulation of Waterski Platforms and Jumps

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

- Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No
- Decrease Costs

Local:  No local government costs

- 1.  Increase Costs
  - Permissive  Mandatory
- 2.  Decrease Costs
  - Permissive  Mandatory
- 3.  Increase Revenues
  - Permissive  Mandatory
- 4.  Decrease Revenues
  - Permissive  Mandatory

5. Types of Local Government Units Affected:

- Towns  Villages  Cities
- Counties  WTCS Districts
- School Districts  Others

Fund Sources Affected

- GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

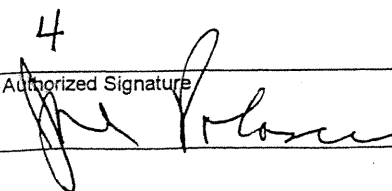
**SUMMARY OF RULE** - The 1997-99 Biennial Budget Bill (1997 Wisconsin Act 27) amended statutory law to allow riparians to place water ski platforms and ski jumps in navigable waters without a permit under certain conditions and directed the Department to promulgate rules for placing water ski platforms and jumps in navigable waters. The rule being promulgated, NR 328, identifies the factors constituting a substantive written objection to placement and use of a water ski jump or platform and specifies the required contents of a public notice and the process for making a substantive written objection and requesting a contested case hearing. The rule is based on biological and sociological findings and public comments and will have no adverse impact on the fisheries and habitat of the state.

Following a 4/27/99 hearing, the legislative Joint Committee for the Review of Administrative Rules (JCRAR) directed the Department to use the emergency rulemaking process to promulgate as an emergency rule the program guidance concerning permit application determinations for water ski jumps and platforms. In addition to the above-listed aspects of NR 328, the emergency rule also incorporates Department guidance that details criteria that determine when a permit is required.

FISCAL IMPACT - None anticipated.

Long-Range Fiscal Implications

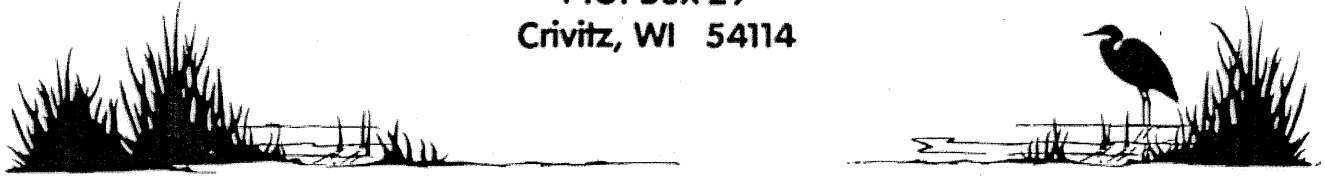
None.

Agency	Prepared By	Phone No.	Authorized Signature	Phone No.	Date
DNR	Joe Polasek	(608) 266-2794		(608) 266-2794	05/17/1999

4

# LAKE NOQUEBAY REHABILITATION DISTRICT

P.O. Box 29  
Crivitz, WI 54114



## ANNUAL MEETING NOTICE

LAKE NOQUEBAY REHABILITATION DISTRICT

SEPT. 5, 1998 — 9:00 A.M.

ST. MARY'S PARISH CENTER

### PROPOSED AGENDA:

1. Approval of Agenda
2. Minutes of 1997 Annual Meeting
3. Treasurer's Report
4. Audit of Finances as of Dec. 31, 1997
5. Project reports:
  - A. This year's harvesting operation — Marlin Falkenrath, Foreman
  - B. Update of Watershed Project — Chuck Druckry, Land & Water Conservation Office
6. Presentation of proposed Harvesting Program for 1999
7. Project approval
8. Presentation of proposed 1999 Budget
9. Budget approval
10. Election of one Commissioner
11. Other business
12. Adjournment

### VOTER ELIGIBILITY:

The following persons are eligible to vote at the annual meeting:

1. RESIDENT ELECTORS: Every resident of the district who is eligible to vote in a General Election.
2. "NON-RESIDENT MULTIPLE OWNERS": Joint tenants or tenants in common shall select no more than two of the co-owners who shall represent them and who shall cast one vote each.

### REGISTRATION:

Persons eligible to vote must register upon entering the meeting. Only such registered voters shall receive voting materials.

### ELECTION OF COMMISSIONER:

Nominees are as follows:

Rev. D. Burkart — property owner on Lake Noquebay

PROJECT PROPOSAL — 1999:

The board of Commissioners recommends the following programs for 1999 season:

1. That harvesting be continued, utilizing two harvesters with a three man crew working 50 hours per week. Harvesting shall continue for 15 weeks or less.
2. That spring cleanup be continued to clean up the floating vegetation from the shorelines for a total of three weeks, or as needed.
3. That a limited shore cleanup be carried out each week harvesting is in progress, consisting of three employees working 24 hours per week for 15 weeks or less.
4. That a working foreman will oversee the harvesting and shoreline crews under the direction of the Board of Commissioners.

BUDGET FOR HARVESTING PROGRAM -- 1999:

It is estimated the above programs will cost the District \$86,070. We expect to receive about \$2115 in interest on our invested funds. This means we must raise \$83,955. The Board recommends that \$67,854 of this amount be raised by district tax levy; \$7,000 comes from county assistance and \$9101 will have to come from our reserves. The mill rate remains at .0025.

SUMMARY OF PROPOSED BUDGET

<u>Revenue</u>		<u>Expenses</u>	
Interest	\$ 2,115	Fixed Costs	\$24,920
Tax Levy	67,854	Labor	35,300
County	7,000	Taxes	13,850
Reserves	<u>9,101</u>	Cap. Equip.	<u>12,000</u>
	\$86,070		\$86,070

(A detailed copy of the proposed budget may be obtained from Chairman Rev. D. Burkart, 808 Henriette St., Crivitz, WI 54114 after August 25, 1998.

COMMISSIONERS:

Your present commissioners are:

- Rev. D. Burkart, P. O. Box 159, Crivitz, WI 54114 (Chairman)
- Rick Smith, Crivitz, WI 54114 (Secretary)
- Tom Conard, W5589 Pines Lane, Wausaukee, WI 54177 (Treasurer)

Ex-Officio Board Members:

- David Setunsky, Rt. 2, Wausaukee, WI 54177 (County Supervisor)
- Jerry Dal Santo, Rt. 1, Porterfield, WI 54159 (Town of Lake Chairman)

PLEASE BRING THIS NOTICE TO THE ANNUAL MEETING

9:00 A.M. SATURDAY, SEPT. 5, 1998

ANNUAL MEETING NOTICE

LAKE NOQUEBAY REHABILITATION DISTRICT

AUGUST 30, 1997 -- 9:00 A.M.

ST. MARY'S PARISH CENTER

PROPOSED AGENDA:

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2. Minutes of 1996 Annual Meeting
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  - B. Update of Watershed Project -- Chuck Druckry, Land & Water Conservation Office
6. Presentation of propose Harvesting Program for 1998
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REGISTRATION:

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ELECTION OF COMMISSIONER:

Nominees are as follows:

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PROJECT PROPOSAL -- 1998

The Board of Commissioners recommends the following programs for the 1998 season:

1. That harvesting be continued, utilizing two harvesters with a three man crew working 50 hours per week. Harvesting shall continue for 15 weeks or less.

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3. That a limited shore cleanup be carried out each week harvesting is in progress, consisting of three employees working 24 hours per week for 15 weeks or less.
4. That a working foreman will oversee the harvesting and shoreline crews under the direction of the Board of Commissioners.

BUDGET FOR HARVESTING PROGRAM -- 1998:

It is estimated the above programs will cost the District \$66,520. We expect to receive about \$1615 in interest on our invested funds. This means we must raise \$64,905. The Board recommends that \$49,650 of this amount be raised by district tax levy; \$7,000 comes from county assistance and \$8255 will have to come from our reserves. The mill rate remains at .0025.

SUMMARY OF PROPOSED BUDGET

<u>Revenue</u>		<u>Expenses</u>	
Interest	\$ 1,615	Fixed Costs	\$18,870
Tax Levy	49,650	Labor	33,800
County	7,000	Taxes	<u>13,850</u>
Reserves	<u>8,255</u>		\$66,520
	\$66,520		

\$172,000

(A detailed copy of the proposed budget may be obtained from chairman, Rev. D. Burkart, 808 Henriette St., Crivitz, WI 54114 after August 25, 1997.)

COMMISSIONERS:

Your present commissioners are:

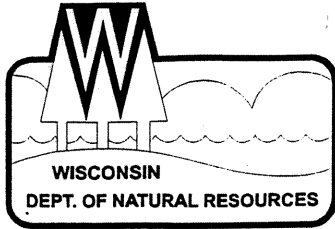
Rev. D. Burkart, P. O. Box 159, Crivitz, WI 54114 (Chairman)  
 Rick Smith, Crivitz, WI 54114 (Secretary)  
 Tom Conard, W5589 Pines Lane, Wausaukee, WI 54177 (Treasurer)

Ex-Officio Board Members:

David Setunsky, Rt. 2, Wausaukee, WI 54177 (County Supervisor)  
 Jerry Dal Santo, Rt. 1, Porterfield, WI 54159 (Town of Lake Chairman)

PLEASE BRING THIS NOTICE TO THE ANNUAL MEETING

9:00 A.M. SATURDAY, AUGUST 30, 1997



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

May 12, 1999

Subject: Water Ski Jump/Platform Rules and Policy Development

Dear Interested Persons:

As you may recall the Department held three hearings (Madison, Wausau, and Green Bay) last fall on an administrative rule proposal pertaining to water ski jumps and platforms. This letter is an update on activities related to development of administrative rules for water ski jumps/platforms and Department policy.

**A Brief Review of the Issue**

**Administrative Code NR 328**

The proposed code does three things as required by S. 30.135, Wisconsin Statutes: 1) it identifies the factors which constitute a substantive written objection to placement and use of a water ski jump or platform; in other words formalizes a standard for determining whether the objector's allegations are substantive; 2) it specifies the contents of a public notice; and 3), it identifies steps for making a substantive written objection and requesting a contested case hearing.

**Departmental Guidance**

The test for potential interference with public rights in navigable waters has been defined by common law, and we describe common law in guidance to field staff who implement S. 30.135; In this case, guidance is used by field staff to aid in determination of whether a proposed ski jump/platform requires a permit application.

At the fall hearings the Department received opposition to the collective issue, much of which focused on the Department's guidance. The Department received very little specific comment on the administrative rule itself.

In early November 1998, the Department modified its internal guidance to address four primary concerns received from the Wisconsin Water Ski Federation (WWSF) and from hearing comments.

A summary of the hearing comments received, a revised Department guidance, and other materials were presented to the WWSF at their Wisconsin Dells meeting on 11/9/98.

On November 11<sup>th</sup> the Department asked WWSF to notify the Department if measurable steps to closure were taken, or, if fundamental disagreements existed between the Wisconsin Water Ski Federation and the Department of Natural Resources (e.g. Chapter 227.42 issues, content of a substantive written objection, or a serious and substantial departure from the guidance revision). WWSF was also notified that if substantial differences remained, the Department would consider assembling a group of lake property owners, water skiing representative, angling group representative, and local officials to help specify and advise on the issues.



On November 12<sup>th</sup>, 1998 the Department notified Joint Committee for the Review of Administrative Rules (JCRAR) of the need to modify our rule adoption timelines in order to reach mutual understanding and resolve issues with WWSF.

Since then, Department staff have phoned Wisconsin Water Ski Federation Leadership requesting feedback to the Department's guidance revisions and rule, however, we have not heard back.

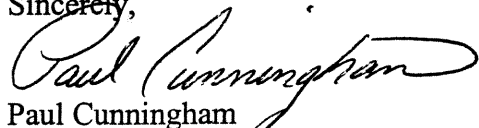
On April 27<sup>th</sup>, 1999 JCRAR held a hearing on water ski platform/jump rules development. Department staff testified that the Department is ready and willing to adopt the administrative rule and move forward, however, staff currently await a response from WWSF on this issue. Much of the other testimony centered on local controversies concerning Lake Noquebay. Peter Peshek (on behalf of Wisconsin Dells Visitor and Convention Bureau) recommended that S. 30.135, Wisconsin Statutes be repealed, because the statute language does not provide what the sponsors intended.

Shortly thereafter JCRAR directed the Department to use the emergency rule making process to promulgate the program guidance concerning permit application determinations for water ski jumps and platforms as an administrative rule.

At the present Department staff are adapting Department guidance into administrative rule. Approval of emergency rules relating to water ski jumps/platforms is scheduled for the **Natural Resource Board meeting held May 26<sup>th</sup>** at the Holiday Inn Convention Center and Expo (1501 North Point Drive) in Stevens Point. We anticipate the Natural Resources Board will address this issue on their agenda sometime after 10:00 am, and before 11:30 am. Persons interested in testifying before the NRB should contact Judy Scullion (608-267-7420) by Friday May 21<sup>st</sup>.

If you have any further questions please feel free to call Paul Cunningham at (608) 267-7502.

Sincerely,



Paul Cunningham

*Ecologist, Bureau of Fisheries Management and Habitat Protection*

Cc: Mike Staggs, FH/3

Cc: Susan Sylvester, FH/3

# Investigations of Motor Boat Impacts on Wisconsin's Lakes



September 1997

by **Tim Asplund**

**Wisconsin Department of Natural Resources  
Bureau of Integrated Science Services,  
1350 Femrite Dr., Monona, WI, 53716**

**E-mail: [asplut@dnr.state.wi.us](mailto:asplut@dnr.state.wi.us)  
Phone: (608) 221-6357**

## Introduction

Boating on Wisconsin's lakes and reservoirs is one of the state's most popular and highly valued recreational activities. According to a 1989 survey, one out of every ten people in Wisconsin own a registered recreational boat (Penaloza 1991). Engine sizes and crowding have increased in recent years, resulting in user conflicts and accidents. Not surprisingly, escalating boat traffic, motor sizes, and user conflicts prompt questions about the ecological impacts of boats on lakes. Concerns include the effects of boat wake on shoreline erosion, inputs of hydrocarbons and trace metals from engine exhaust, increases in turbidity and release of nutrients caused by propeller scour of bottom sediments, and physical disturbance of aquatic plants, fish, and wildlife. Much of the research on these issues has been reviewed in Liddle and Scorgie (1980) and Wagner (1991).

At the Bureau of Integrated Science Services, we have focused our research efforts on boating impacts in shallow littoral areas, specifically on sediment resuspension, water clarity, and aquatic plants. This article highlights our findings and updates our continuing involvement with boating impact issues. More information can be found in Asplund (1996) and Asplund and Cook (1997).

## Sediment Resuspension in Shallow Lakes and Littoral Areas

Propellers from outboard engines create turbulence and wake that can impinge upon bottom sediments at depths down to ten feet (Gucinski 1982). The extent of disturbance depends upon several factors including propeller size, speed of operation, draft of the boat, and sediment characteristics. Studies have shown that

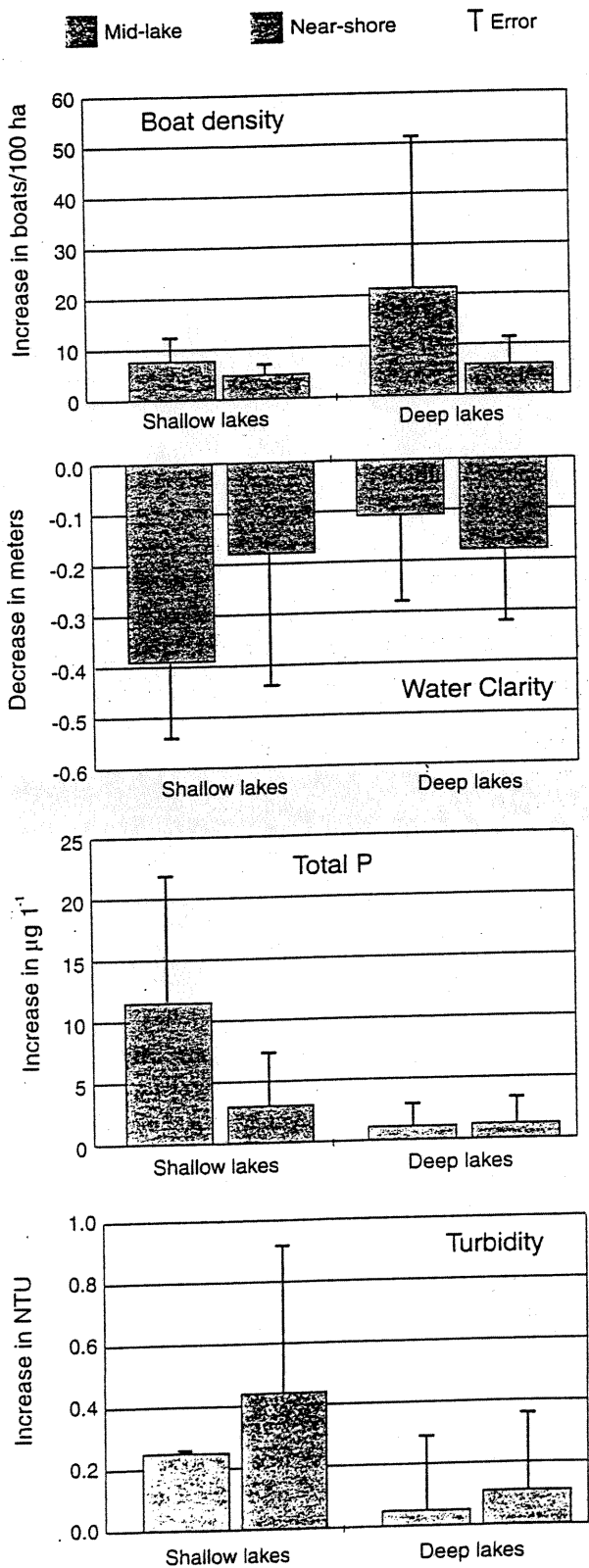
boats increase turbidity and phosphorus concentrations in rivers, channels connecting lakes, and shallow experimental ponds (Yousef et al. 1980, Johnson 1994, USACE 1994).

We examined how much water clarity, turbidity, phosphorus, and chlorophyll concentrations increased in lakes following weekends of heavy boating. In the summer of 1994, we collected water samples and assessed motor boat activity on ten lakes with varying trophic conditions, depths, and boating activity. The data were gathered before and after the Memorial Day weekend, the July 4 weekend, and an August weekend. Secchi disk readings and boat counts were made at mid-lake and near-shore sites, and water samples were collected and analyzed for turbidity, chlorophyll (chl *a*), and total phosphorus (total P). Volunteers collected weekday/ weekend water clarity and motor boat data on 14 additional lakes throughout the summer. Boat activity was assessed as the total number of boats observed operating on the lake in a 15-minute period, generally in mid-afternoon.

Results are summarized in Figure 1 as the average change from weekday to weekend for shallow lakes (< 4 m mean depth) and deep lakes. Motor boat density increased on almost every lake on weekends, sometimes by as much as 11 times. Water clarity decreased by about 40 cm in the shallow lakes and about 20 cm in the near-shore areas of all lakes. Turbidity and total P increased more in the shallow lakes than in the deep lakes. Near-shore areas tended to show greater declines in water quality than mid-lake areas, except for total P and water clarity on shallow lakes. (Shallow lakes often had poor water clarity and elevated levels of total P in the near-shore areas on weekdays as well as weekends.) Note that while boat density increased the most on deep lakes, declines in water quality were most pronounced on shallow lakes.

The changes in water clarity, turbidity, and total P were significant but small relative to seasonal changes normally seen in lakes due to food web interactions, water temperature, and wind events. The maximum change in water clarity was 1.2 m, but the average was just 0.2 m. Turbidity generally increased by less than 1 standard turbidity unit (NTU). Total P ranged from an 8  $\mu\text{g/L}$  decrease to a 43  $\mu\text{g/L}$  increase; however, the average change in the mid-lake site was a 4  $\mu\text{g/L}$  increase. Thus, while boats appear to affect water quality on weekends, these effects must be considered in the context of ambient conditions and seasonal variability.

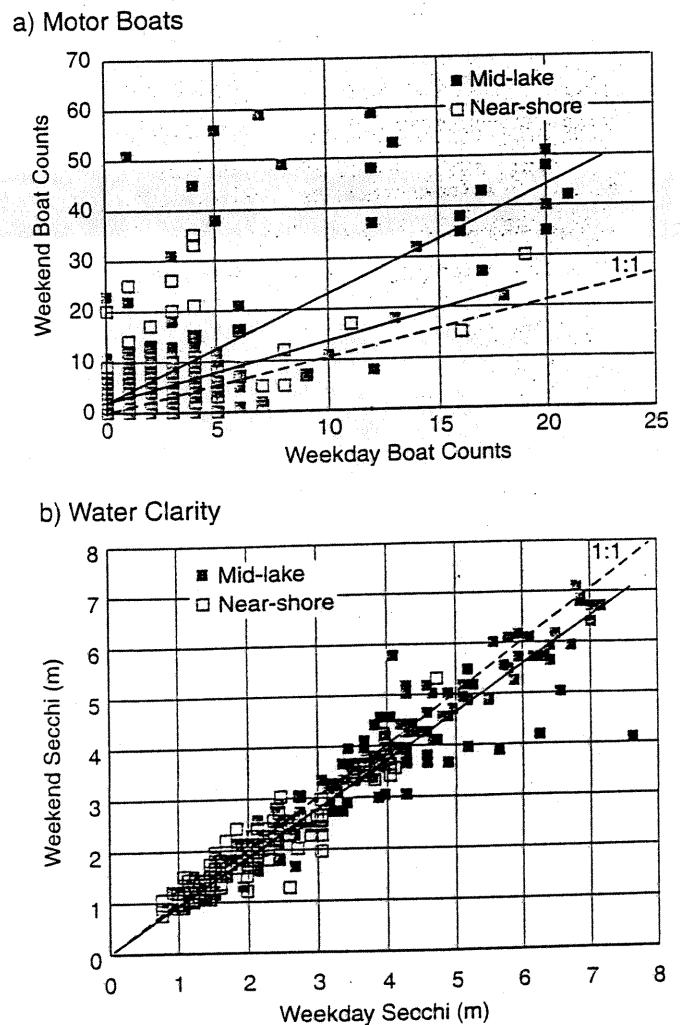
**Figure 1.** Average change from weekday to weekend in boat density, water clarity, total P, and turbidity on three summer weekends for three shallow lakes (<4 m mean depth) and seven deep lakes (mid-lake and near-shore sites). Error bars are  $\pm 1$  standard deviation.



In our 20-lake volunteer survey, water clarity was about 10% lower on summer weekends than on weekdays (Fig. 2). The largest differences in water clarity occurred on lakes with high weekday water clarity. However, it was not consistently worse on all weekends for each lake, nor were water clarity changes associated with boat numbers. Other factors, such as location of boating activity, seasonal trends, and weather conditions likely complicated the relationship between water clarity and motor boat use.

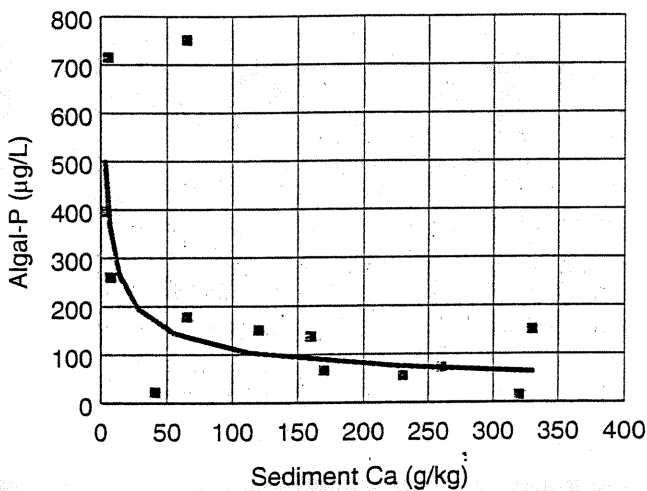
Chl *a* concentrations (an index of algal growth) also fluctuated on weekends, but no consistent trends emerged. There was no relationship to boating activity, despite the increases in total P observed on some lakes. Time lags between elevated P concentration and algal growth may explain part of the lack of chl *a* increase. Another explanation may be linked to the biological availability of P in the sediments. Algal assays performed on sedi-

**Figure 2.** Comparison between all weekday and weekend boat counts (a) and Secchi disk depths (b) for 20 lakes monitored by volunteers in 1994. The dashed line indicates a 1:1 ratio and represents no change. Regression lines are significantly different from the 1:1 line.



ments from the study lakes showed a wide range of responses to the available P. Algal growth was most pronounced in the assays of sediments from soft-water lakes (low calcium), and almost non-existent in hard-water lakes (Fig. 3). By chance, many of the lakes with high boating activity also had high calcium concentrations. Further work on lakes with low calcium and high boating activity will clarify whether a relationship exists between boating and algal growth.

**Figure 3.** Relationship between P available in sediments for algal uptake (Algal-P) and sediment calcium (Ca) content as determined by laboratory bioassays. The line represents a best-fit power function to the data.



## Aquatic plants

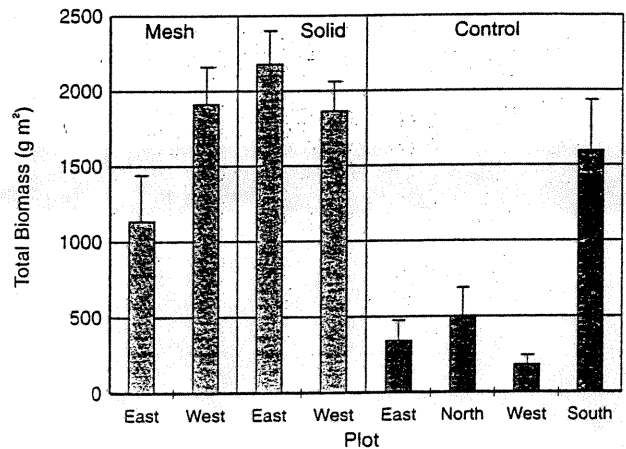
Another boating impact in shallow littoral areas is disturbance to plant communities and near-shore aquatic habitat. In recent years, Lake Ripley (Jefferson Co.) has experienced a decline in aquatic plant abundance along with increased motor boat activity. In 1995, we used a set of experimental enclosures to examine possible connections between these two phenomena, and to evaluate the effects of motor boats on submerged aquatic plants.

We built a total of eight 36 m<sup>2</sup> enclosures in about 1 m of water in two sites adjacent to high boat traffic. Four enclosures were located in each site (two of solid plastic and two of mesh fencing). These enclosures excluded motor boat access and, in the solid-walled enclosures, blocked the turbidity generated by boat-induced sediment resuspension. Plant growth was sparse and homogeneous when the enclosures were constructed in early June. In late August, we measured plant biomass, species composition, canopy height, and areal coverage inside the enclosures and in plots situated 50 m to each side of the enclosures. These "control" plots were subject to normal boating activity.

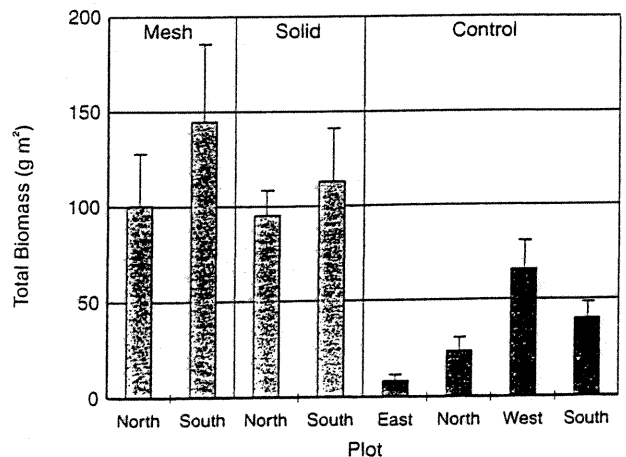
The results were quite dramatic. Plant biomass was almost 3-fold higher in the mesh and solid-walled enclosures compared to control plots (Fig. 4). The larger biomass arose from both a higher plant canopy and greater areal coverage. The three dominant species, *Chara* sp., *Najas marina* (spiny naiad), and *Potamogeton pectinatus* (sago pondweed), grew taller inside the enclosures and covered a greater area. We found that the plant distribution was more patchy in the control plots, and that plants did not grow as tall, particularly where close to boat traffic lanes. Also, plant biomass was greatest in the control plot between the enclosures and the shoreline in both sites, suggesting that plants here were protected from boating activity. However, plant growth did not differ between the solid-walled and mesh-walled enclosures, and turbidity was not appreciably lower inside either enclosure. These results suggest that motor boats reduce plant growth primarily through scouring of the sediment substrate and direct cutting, but not from increasing turbidity.

**Figure 4.** Mean plant biomass after a summer of boating activity in two replicate mesh plots, two replicate solid-walled plots, and each of the control plots for two different sites on Lake Ripley. Error bars represent the standard error for nine sub-samples within each plot.

### a) Marina Site



### b) Sill Site



⊥ Standard error

## Further Research

Our research thus far indicates that boats may significantly impact shallow littoral areas, both by reducing water clarity through sediment resuspension and by directly damaging plant beds through sediment scouring and cutting of plant shoots. However, the spatial extent of disturbance within a waterbody and long-term consequences for aquatic habitat and ecosystem processes remain difficult to evaluate. For example, sediment disturbance in near-shore areas may affect plant species composition by allowing exotic species such as Eurasian water milfoil or curly leaf pondweed to flourish. Also, these species can easily spread through fragmentation of leaves and shoots by boat propellers. Over time, water quality may suffer as sediment disturbance and plant bed destruction increase nutrient inputs to the lake and fuel

algal growth. These impacts require long-term assessment and would not be evident in a weekday-to-weekend or one-year study.

We are continuing to investigate boating impacts on aquatic habitat, in part to address some of these long-term issues. In 1996, we began a study on the impacts of multiple-slip pier development on littoral zone habitat. This project will continue for several years and assess habitat changes associated with a newly constructed pier. We are also investigating the effectiveness of no-wake zones for protecting aquatic plant habitat. The results from these studies will aid in developing management alternatives which balance recreational use of our lakes with protection of our aquatic resources.

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## Acknowledgments

Thank you to Chad Cook, Paul Garrison, Terry Schenck, and Bob Wakeman for critical reviews of this document, Julia Barrett for editing assistance, and Georgine Price for layout and design.



May 11, 1999

State Senator Judy Robson, Co-Chairperson  
State Representative Glenn Grothman, Co-Chairperson  
Members, Joint Committee on Administrative Rules  
Wisconsin State Legislature

**RE: FUTURE REGULATION OF WATER SKI PLATFORMS**

Dear Co-Chairs and Members:

We are writing to you in our respective capacities as President of the Wisconsin Water Ski Club Federation (the "Federation") and as President and principal owner of Wisconsin's largest and best-known private water ski show. The Federation is the umbrella volunteer trade association for Wisconsin's thirty (30) not-for-profit water ski clubs, comprised principally of young people, who are often also associated with the scouting movement.

Under the able and aggressive leadership of State Representative Lorraine Seratti, the Wisconsin Legislature created Wis. Stats. § 30.135, by way of 1997 Act 27, as a preliminary effort to fundamentally shift regulation of water ski platforms and jumps to local units of government rather than the State of Wisconsin. Since the enactment of this statute, the water ski show not-for-profit and for-profit industry has struggled with attempting to implement this legislation.

The issue before the Joint Committee on Administrative Rules is whether to proceed with attempting to implement the provisions of Wis. Stats. § 30.135 or to repeal the existing statute. In a strong and unqualified voice, we recommend the immediate repeal of the statute! We believe that there is absolutely no reasonable expectation that administrative rules can be developed which will adequately protect water ski shows under the existing statute.

We have shared our conclusions with Wisconsin Department of Natural Resources Secretary George E. Meyer. He has no objections to this regulatory course of action. The proposed administrative rules package and draft manual code will be withdrawn by the Department if the enabling statute is repealed.

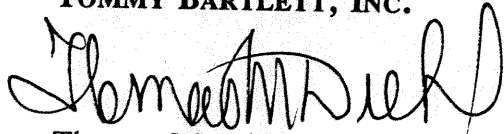
Therefore, on behalf of almost every major water ski show in Wisconsin, both for-profit and not-for-profit, we recommend the repeal of Wis. Stats. § 30.135. If you

State Senator Judy Robson, Co-Chairperson  
State Representative Glenn Grothman, Co-Chairperson  
Members, Joint Committee on Administrative Rules  
May 11, 1999  
Page 2

have any questions, please call either Tom Diehl at 608/254-2525 or Bob Marx at 715/424-2034.

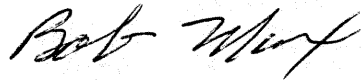
Thank you very much for your consideration of this matter.

**TOMMY BARTLETT, INC.**



Thomas M. Diehl  
President and Owner

**WISCONSIN WATER SKI FEDERATION**



Bob Marx, President

cc: George E. Meyer, Secretary, WI Department of Natural Resources



Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

---

Petition of the Department of Natural Resources to  
Revoke Permit No. 3-LM-84-308, Issued to Robert  
Kalke and the Boy Scouts of America and Now  
Claimed by Jack Scheels, for a Ski Jump on the  
Bed of Lake Noquebay, Town of Lake, Marinette  
County, Wisconsin

Case No. 3-LM-84-308

---

NOTICE OF INVESTIGATION AND PUBLIC HEARING

The Department of Natural Resources issued Permit No. 3-LM-84-308 to Robert Kalke and the Boy Scouts of America in 1984. The permit is for a ski jump on the bed of Lake Noquebay, at or near the SW  $\frac{1}{4}$ , NW  $\frac{1}{4}$ , Section 7, Township 32 North, Range 21 East, Town of Lake, Marinette County, Wisconsin. Jack Scheels, Box 45, Crivitz, Wisconsin, now alleges that he holds this permit by virtue of the purchase of a portion of riparian property originally associated with the ski jump, and subsequent deeds and transfers.

The Department of Natural Resources Northeastern Region staff conducted field investigations and allege that the situation surrounding the permit has dramatically changed since the permit was first issued. To wit, the location of the ski jump is different than originally permitted; the riparian zone of Mr. Scheels is 150 feet wide compared to 1600 feet wide of the original permittees; the use has changed from public to private; the ski jump has created navigation and water use conflicts with the public and adjoining riparians; environmental concerns have arisen since the original permit was issued, including impacts upon endangered and special status species; and public safety concerns exist regarding lighting of the structure. Thus, the Department contends that the ski jump as currently placed and operated interferes with the rights and interest of the public on Lake Noquebay and is detrimental to the public interest in violation of Chapter 30 of the Wisconsin Statutes and requests that the permit for the ski jump be revoked.

The Department further alleges the maintenance of said ski jump in Lake Noquebay is in violation of secs. 30.12, 30.135 and 30.15, Stats., and Ch. NR 326, Wis. Admin. Code, and should be declared to be a public nuisance pursuant to sec. 30.294, Stats.

NOTICE IS HEREBY GIVEN that the State of Wisconsin Division of Hearings and Appeals will hold a public hearing pursuant to sec. 30.03(4)(a), Stats., to determine whether the permit for the aforesaid ski jump should be revoked. The hearing may result in an order



permit for the aforesaid ski jump should be revoked. The hearing may result in an order revoking the permit for the ski jump, or the issuance of an order enjoining the placement of the ski jump and abating the maintenance of the ski jump in its current configuration, and directing the Respondent to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the interests of the public in these navigable waters.

NOTICE IS FURTHER GIVEN that the hearing will be held on **Wednesday, June 3, 1998 at 1:00 p.m.** at the U.W. Marinette, Main Building, Room 104, 750 West Bay Shore Street, Marinette, Wisconsin. The hearing will be continued on **Thursday, June 4, 1998**, if necessary, at the same location

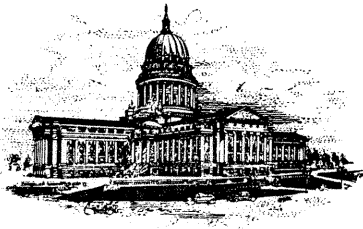
The hearing is a Class 2 contested case pursuant to sec. 227.01(3)(b), Stats., and the fair play provisions of Ch. 227, Stats., will apply. The procedures relating to contested cases set forth in Ch. NR 2, Wis. Admin. Code, will be followed. The procedure that will be followed at the public hearing will closely resemble that normally followed at court hearing. All parties are advised that they have the right to seek the aid and assistance of legal counsel and to be represented by legal counsel at the public hearing.

Pursuant to the Americans With Disabilities Act, reasonable accommodations will be made to any qualified individual upon request. Please call the Division of Hearings and Appeals at (608) 266-3865 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin on April 29, 1998.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 267-2744

By: Mark Kaiser  
MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE



# Wisconsin State Assembly

P.O. BOX 8952 • MADISON, WI 53708

April 22, 1999

The Honorable Glen Grothman  
Co-Chair  
Joint Committee for  
Review of Administrative Rules  
59<sup>th</sup> Assembly District  
15 North State Capitol  
Madison, WI 53708

The Honorable Judy Robson  
Co-Chair  
Joint Committee for  
Review of Administrative Rules  
15<sup>th</sup> Senate District  
15 South State Capitol  
Madison, WI 53708

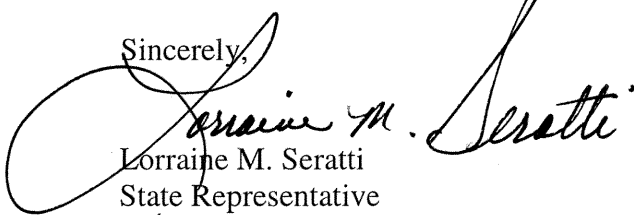
Dear Co-Chairs Grothman and Robson,

We are writing to request a hearing on the Department of Natural Resources (DNR) program guidance for water-ski jumps and platforms. We specifically request this item be added to the agenda for the Joint Committee on Review of Administrative Rules hearing on Tuesday, April 22, 1999. Many ski teams have decisions pending which warrant immediate resolution in order to prepare for competition this summer.

There are many ski teams in Wisconsin that have been subjected to prolonged bureaucratic red tape and inconsistency in DNR's application of internal program guidance policy. It is our desire to entertain a thorough review by JCRAR of DNR's application of internal policy. On a specific note, Wisconsin is the host site of the national water-ski tournament in Janesville Wisconsin. The problems our Wisconsin teams have had to deal will have a direct effect on the future success of the competitiveness and representation by Wisconsin teams at this national event.

Your willingness to schedule this in a timely manner would be greatly appreciated.

Sincerely,



Lorraine M. Seratti  
State Representative  
36<sup>th</sup> Assembly District

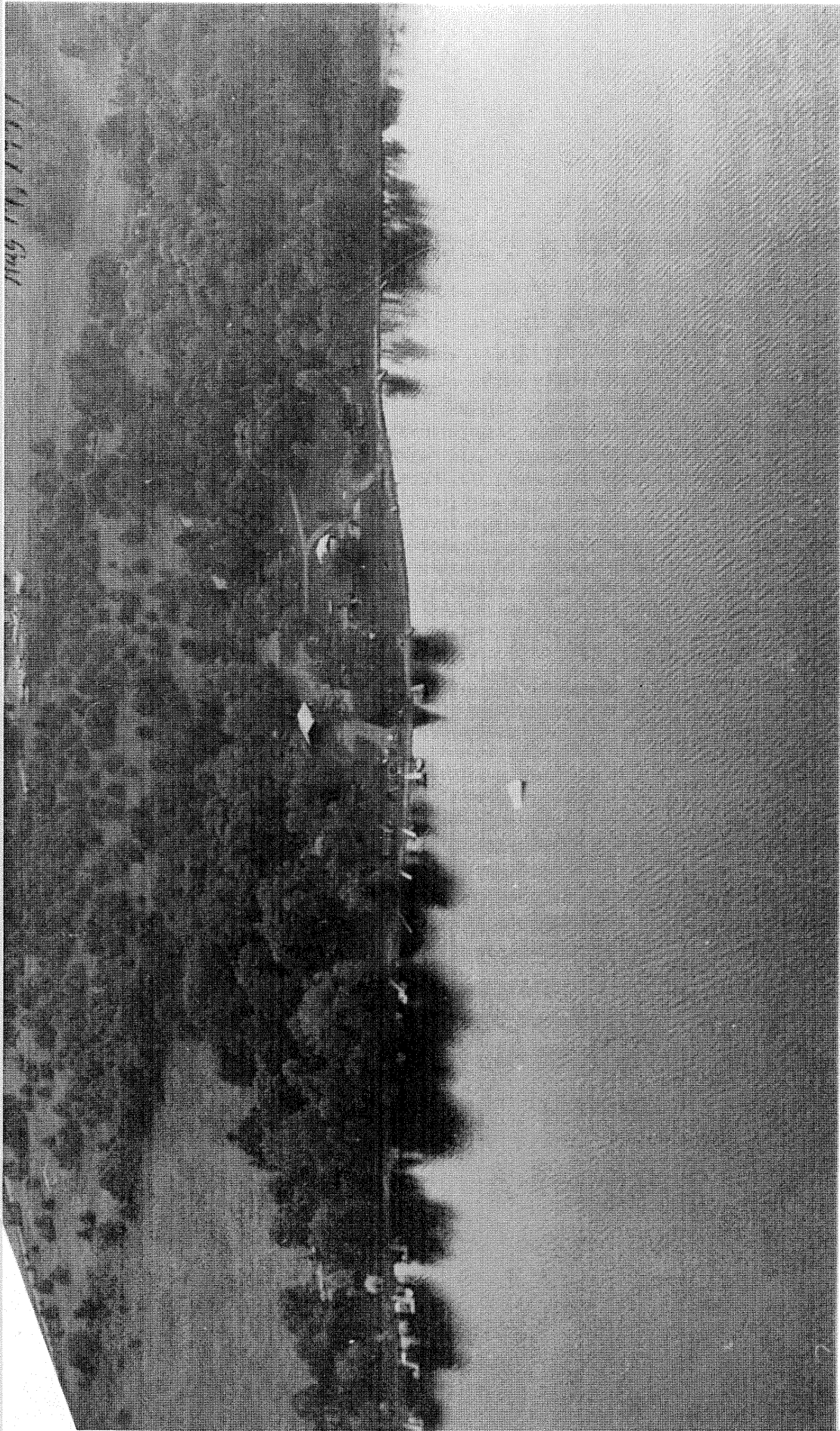


James Kreuser  
State Representative  
64<sup>th</sup> Assembly District

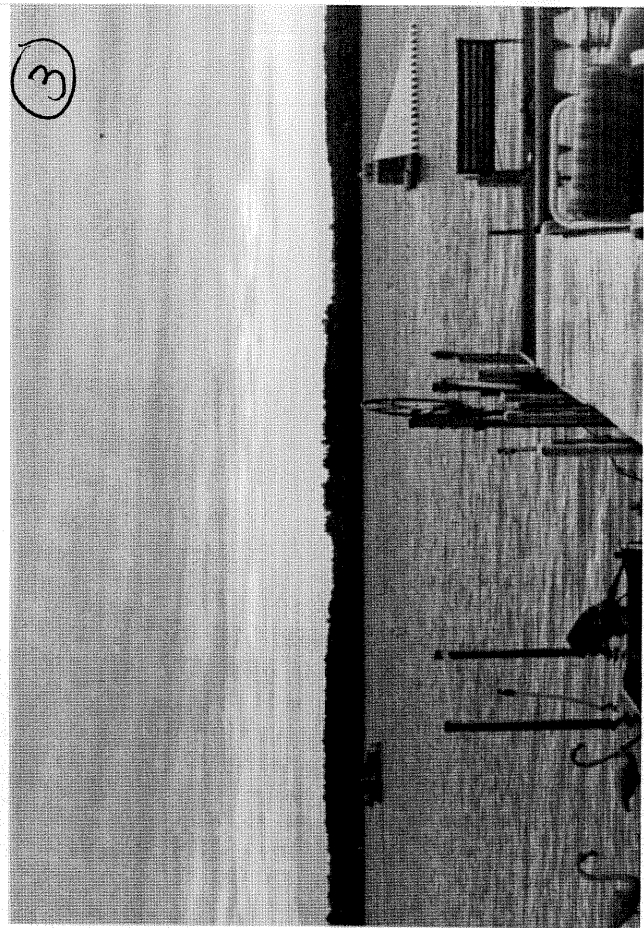
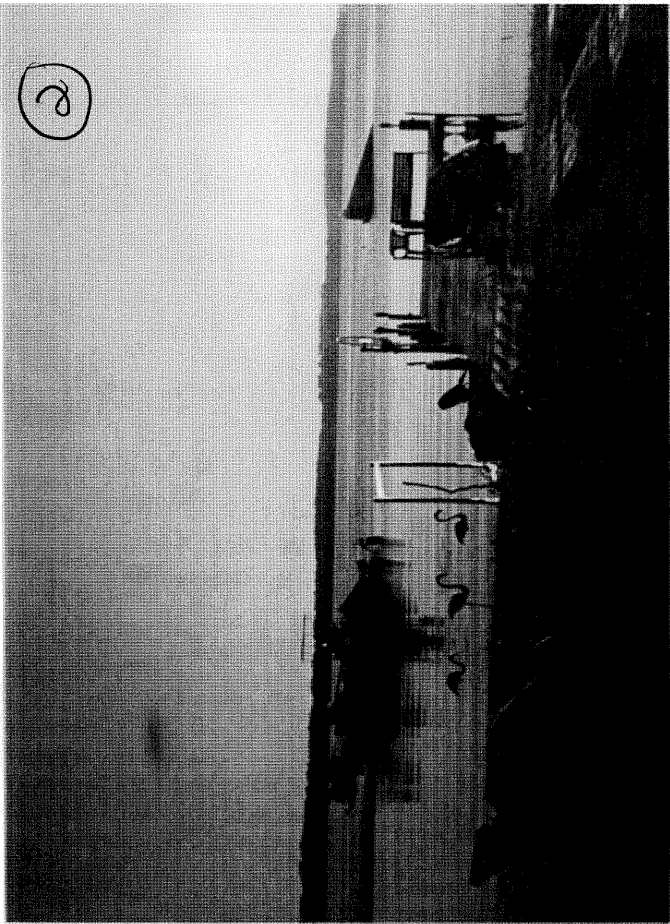
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## Noquebay Weeds: Effort is working

and in 1982, it was 10.25 tons. Now, it's 6 to 8 tons an acre and sometimes, even 4 to 6 tons."

The most loads the two cutters ever filled in a 10-hour day was 26, but most days averaged 18 to 20 in the early years. "Now, we're lucky to get 10 loads in a day."

The cutters have a front deck that drops down into the water. On the front edge are teeth that go back and forth to cut the weeds and a conveyor deck that brings the weeds up to the main, flat deck of the cutter.

Once enough weeds pile up below the driver, another conveyor takes them to the back of the boat. When the deck is filled, the cutter returns to the shore, where it

unloads the weeds onto an elevated conveyor that filled a small dump truck.

The crews used to work five 10-hour weekdays, but because the weed growth is starting to decline, the district board recently voted to go to four 10-hour days, with Friday scheduled as a weather make-up day. Rain usually isn't as much of a problem to cutting as is wind, Falkenrath said.

Using the predetermined grid system, areas are usually cut once a year "and it's under control. Some we've been able to skip and cut every two to three years. Years ago, we couldn't keep up with it," Falkenrath said.

# Weed-cutting operation has been major success

**By PENNY MULLINS**

EagleHerald staff writer

**LAKE NOQUEBAY** — If you want to know about the weed-cutting operation on Lake Noquebay, talk to Martin Falkenrath.

He is the foreman of the three-man crew hired by the Lake Noquebay Rehabilitation District to remove the weeds from the 2,409-acre lake, and he's been there since the district bought the first cutters 19 years ago.

Using a chart that maps the water's depth as well as the sections of intense weed growth, Falkenrath and his crew work 15 weeks each year in a planned rotation to remove the weeds that affect

the aesthetic quality of the lake.

He operates the newest cutter, purchased about five years ago for \$88,000. It is 40-foot long and cuts a 10-foot-wide, 5-foot-deep path through the weeds. The older cutter doesn't have as wide a cutter, but is 50-foot long and can hold more weeds on its deck.

He and the other cutter place buoys out on the water to mark their starting points each day, and by looking into the water, they can find the edge of the area they already cut to start their next row.

The cutting is intended to remove the weeds such as Eurasian milfoil, without removing too much of the beneficial weeds, such as cabbage weed. "We never saw the cabbage weed before because it



**Weed harvester operator Clayton Carlson of the Lake Noquebay Rehabilitation District keeps an eye on things as he harvests weeds like the troublesome Eurasian milfoil from the county's largest inland lake.**

EagleHerald/Karin Emond

cabbage weed."

Cutting weeds is his only job. "We keep track of the acreage we fill and the tonnage. I turn in weekly and annual reports," said Falkenrath, who became foreman about 12 years ago.

He said it is those figures that show the cutting is working. "Our annual average yield in 1980 was 12 tons in an acre,

Please see Noquebay Weeds, A5

[EDITOR'S NOTE: Chapter 30 of the Wisconsin Statutes requires various permits for activities in or near surface waters. State permit jurisdiction extends to the ordinary high-water mark and is usually limited to navigable waters. Permits are required for such activities as placing structures in the bank or bed of navigable waters, constructing or enlarging waterways, grading or removing top soil for more than 10,000 square feet from the banks of any navigable stream, lake or other navigable water and changing or straightening a navigable stream. These state regulations are administered by the Wisconsin Department of Natural Resources.]

## CHANGE MAKES STATE WATER LAW UNWORKABLE

BY PETER A. PESHEK, ESQ.<sup>1</sup>

What is wrong with the following story line?

- *The number one complaint received by Wisconsin Department of Natural Resources (DNR) regional managers from citizens involves the administration of Chapter 30 to long-standing uses of public waters;*
- *DNR employees frequently ask to be reassigned out of the Chapter 30 program because of lack of adequate time to handle the immense workload and low job satisfaction;*
- *Builders and developers can not get timely service on permits and approvals issued under Chapter 30 or find antiquated water-law concepts being applied arbitrarily to fast-growing and ever-changing marketplaces;*
- *There has been a major reluctance by DNR staff to accept a major rewrite to the Chapter 30 statutes, despite the program's inherent flaws.*

The use of Wisconsin's waters by the public, for recreation and other uses, has increased at a dramatic rate over the past several decades. At the same time, we have increased our demand for preserving and improving water quality. The inherent limitations of Chapter 30 are becoming increasingly evident to all involved.

The origins of Chapter 30 date back to the beginning of this century. At that time, the regulation of surface water resources was critical for the purpose of promoting commerce. Water was predominantly used for two commercial uses: (1) water power from dams and (2) transportation of watercraft and sawlogs.

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<sup>1</sup>This article is adapted from a paper first prepared by this author and Attorney Paul G. Kent.

While Chapter 30 has evolved over the decades, its fundamental structure has remained unchanged. Individual permits are required for structures, deposits and other activities in and/or near navigable waters. Those permits are issued if the applicant can demonstrate that the permit does not impair navigability and is in the public interest.

### **REDIRECTING THE PURPOSE OF CHAPTER 30**

Beginning in the 1960s, various efforts were made to adapt Chapter 30 to meet new demands. Water resources were no longer primarily used for purposes of water power and transportation. Other means of power and transportation had long since replaced water. Water resources were now becoming of greater use for recreation and tourism. At the same time, we realized the need to control sources of pollutants to those waters to maintain and improve water quality.

Thus, it is not surprising that, when the Department of Natural Resources was created in the mid-1960s, it assumed responsibility for administration of the Chapter 30 program. In 1973, a separate statutory program was created to control the discharge of point source pollutants into waters of the State, but Chapter 30 remained in place. In part, Chapter 30 served as an adjunct to the water discharge program and, in part, it served to regulate the increased use that surface waters were receiving from recreation, lake shore development and agricultural practices.

Unfortunately, the program that was designed to promote the commercial uses of navigable waters is poorly suited to these new objectives. The principal problems include jurisdictional limitations, administrative limitations and lack of integration with other programs.

- **Jurisdictional Limitations.**

Defined water law terms that were appropriate for promoting commerce a century ago are not, today, appropriate for protecting the water resource, itself. As a result of judicial and administrative construction, many of these old terms have been judicially or administratively expanded. The term "navigability" now has little to do with navigation, except as that term is understood by the most knowledgeable DNR official. Small roadside ditches and depressions which collect springtime runoff are now considered "navigable," so that they can be included within Chapter 30 jurisdiction. Similarly, jurisdiction over artificial streams, which had historically been outside of Chapter 30's purview, has been expanded dramatically over the past several years.

Another definitional problem arises with the term "lake." Recent administrative efforts have attempted to broadly define the term "lake" to include areas that a layperson would consider, at best, wetlands.

There are obvious shortfalls to this method of expanding state jurisdiction. Chief among these problems is the confusion and uncertainty it causes to the public. At the same time, these archaic jurisdictional concepts also result in artificial restraints on the DNR's ability to address legitimate watershed management concerns.

- **Outdated Regulatory Mechanisms.**

In the days when the promotion of commerce was the overall regulatory objective, a permit scheme made sense. It is now time to realize that there may be more effective regulatory tools than individual permits to deal with today's demands. There are at least three fundamental problems with the application of the permit scheme to the contemporary situation.

First, the volume of activity subject to permits has grown dramatically. As the definition of waters subject to State jurisdiction has grown and the pressures for growth and development activities in and near navigable waters has grown, the activities that technically fall within the ambit of requiring permits has increased expedientially. In part, this has meant a dramatic increase in workload on the DNR and increased burdens on the public. Because comprehensive enforcement is not practical, the program appears to be arbitrary in its implementation and enforcement.

Second, the standards for granting such permits are ill-defined. Navigability which was the determinative factor for evaluating activities is now a non-factor. Thus, most permits are issued based upon the consideration of ill-defined "public interest" considerations. In some cases, the public interest is defined by rule but in many more instances, the criteria for determining the public interest is set forth in unpublished guidance documents. Here again, this system promotes the appearance of a program that is arbitrary in its implementation and enforcement.

Third, for all of the stretching and pulling that has been done to expand the permit program, it still is an unsatisfactory regulatory vehicle to achieve broader water quality protection objectives. Chapter 30 has become a surrogate for more effective and comprehensive regulations on land use, public access, non-point water pollution sources and a myriad of other concerns. Yet, using Chapter 30 as a surrogate for more comprehensive regulatory approaches is as unsatisfactory to the department as it is frustrating to the public.



- **Lack of Integration with Other Water Quality Programs.**

Chapter 30 currently exists as an independent regulatory tool apart from the water discharge program and the myriad of other programs administered by the DNR, the Department of Agriculture, Trade and Consumer Protection, the Department of Workforce Development, and the Department of Administration to address surface water management concerns. In addition, the role that local government plays is also not well integrated. Here again, in the days when the objective of Chapter 30 was promoting commerce throughout the State, this program could exist as a separate piece of a larger commercial development effort. However, now that the objective has changed to be one of protecting the State's water resources, the need to integrate Chapter 30 in with the other state and local initiatives is much more critical.

#### **ARE THERE ANY SOLUTIONS ON THE HORIZONS?**

During the past two decades, most of Wisconsin's major environmental initiatives have been passed in a general spirit of consensus and partnership between the regulator, the regulated and the environmental community. There appears to be little prospect that the initial initiative to reform Chapter 30 will come from a consortium of interests. It is reasonable to assume, therefore, that the Wisconsin Legislature is likely to commence its inquiry into reinventing Chapter 30 as an independent policy initiative.

Such a legislative initiative is long overdue and very warranted. It is critical to define the public policy objective of Chapter 30 for the next millennium. It is equally imperative that we create a water-law regulatory framework which integrates local, state and privatized initiatives to protect Wisconsin's valuable water resources. It is important that we explore the ability of state and local regulators to regionalize water regulatory programs to better fit public policy objectives. The people of this state have long recognized that economic development and sound environment go hand in hand. Wisconsin's citizens also know when a given law is no longer meeting public needs.

CRIVITZ  
*Ski Cats*  
WISCONSIN

May 18, 1999

Wisconsin National Resources Board:

Trygve A. Solberg, Chair  
James E. Tiefenthaler, Jr., Sectry.  
Herbert F. Behnke  
Howard D. Poulson

Neal W. Schneider, Vice Chair  
Stephen D. Willett  
Francis W. Murphy

RE: WATER SKI JUMPS/PLATFORM RULES AND POLICY DEVELOPMENT

Dear Chair and Members:

We are writing this letter as a members and officers of the Crivitz Ski Cats, a non-profit, youth serving, Scouting organization who perform a water ski show on Lake Noquebay in Northeastern Wisconsin. Our organization has been locked in conflict with the Department of Natural Resource for the past several years related to the permitting of our water ski jumps and platform, which followed the necessary relocation of our show to the opposite side of the Lake from our twenty-three year home site, four years ago. Representative Lorraine Serrati's sponsorship of 1997 Act 27 was an attempt to help water ski teams in their efforts to obtain these permits in a reasonable manner and to prevent the future difficulties for other Wisconsin water ski teams in this regard.

Even though we were instrumental in the development and passage of the enabling statute, Wis. Stats. ss 30.135, by way of 1997 Act 27, we strongly opposed to the adoption of Wis. Admin.Code NR 328 and, more importantly, the internal guidance document that is required to interpret the administrative code. Further, we believe that the underlying enabling statute, Wis. Stats. ss 30.135 should be repealed. The original purpose for the enabling statute was to transfer primary responsibility for regulation of water ski jumps to local land use authorities. Clearly, the language of the enabling statute fails to accomplish that objective and now water ski shows and water ski jump activities are at very substantial and unnecessary regulatory risk. We are advised that we are joined in this concern by the Wisconsin Water Ski Club Federation, Tommy Bartlett, Inc. and the Wisconsin Dells Visitors and Convention Bureau.

We strongly encourage the Board not to approve the emergency rules. Instead, we encourage the Board to send a letter to the Joint Committee on Administrative

Rules, urging repeal of the underlying enabling statute. The basis for the appeal would be the strong and unified recommendation of the industry group most impacted by both the enabling statute and proposed administrative rule and internal guidance document.


Please feel free to contact us at the numbers provided if we may provide further information or clarification of our request.

Thank you.

Sincerely,



Aaron Sikowski  
President  
(715) 854-7161



Jeff Mursau  
Vice President  
(715) 854-3477



David A. Kwiatkowski  
Past President  
Crivitz Ski Cats  
(715) 854-7887

cc: George E. Meyer, Secretary, WI. Department of Natural Resources  
Francis M. Fennessy, Executive Assistant to the Secretary  
Paul Cunningham  
Judy Scullion



State of Wisconsin \ NATURAL RESOURCES BOARD

May 27, 1999

Senator Judy Robson, Co-Chair  
Joint Committee for Review of Administrative Rules  
C A P I T O L

Representative Glenn Grothman, Co-Chair  
Joint Committee for Review of Administrative Rules  
C A P I T O L

Dear Senator Robson and Representative Grothman:

At its April 27, 1999 meeting, the Joint Committee for Review of Administrative Rules directed the Natural Resources Board to adopt as emergency rules Department program guidance on water ski jumps and platforms.

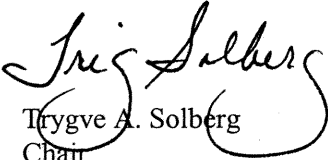
The Natural Resources Board, at its May meeting yesterday, held a public hearing on the draft emergency rule. Representatives from the Wisconsin Water Ski Club Federation, Tommy Bartlett, Inc., the Wisconsin Dells Convention & Visitors Bureau, the Rock Aqua Jays of Janesville, the Wisconsin Wildlife Federation, the Green Bay Area Great Lakes Sport Fisherman and several lakeshore property owners testified at the public hearing. These people represent very diverse perspectives on the issue of water ski jumps and platforms. They did agree strongly on the issue that the permitting system for ski jumps prior to the adoption of Section 30.135, Wis. Stats., was far more preferable than the system under the current statute. They recommended that Section 30.135, Wis. Stats., be formally repealed by the Legislature.

After hearing this broad based testimony, the Natural Resources Board, by motion, authorized me to send this letter to your committee to formally request that the Legislature consider repealing section 30.135, Wis. Stats.

The Board is retaining the proposed emergency rules implementing the statute. We await your decision and will follow through on your direction after your decision.

Thank you for your consideration of this public testimony.

Sincerely,

  
Trygve A. Solberg  
Chair

Cc: Natural Resources Board  
Governor Thompson  
Secretary George Meyer

TRYGVE A. SOLBERG, CHAIR  
Box 50  
Minocqua 54548

NEAL W. SCHNEIDER, VICE-CHAIR  
Box 71  
Janesville 53547-0071

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W228 N683 Westmound Drive  
Waukesha 53186

HERBERT F. BEHNKE  
N5960 Wolf River Road  
Shawano 54166

FRANCIS W. MURPHY  
Box 92  
Portage 53901

HOWARD D. POULSON  
1212 Deming Way  
P.O. Box 5550  
Madison 53705

STEPHEN D. WILLETT  
Box 89  
Phillips 54555

SENATOR JUDITH B. ROBSON  
CO-CHAIR

PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

PO BOX 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

May 27, 1999

Secretary George Meyer  
Department of Natural Resources  
101 South Webster Street  
PO BOX 7921  
Madison, WI 53707-7921

Dear Secretary Meyer:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing on May 27, 1999. At that meeting, JCRAR received public testimony regarding **Administrative Rule NR 328**, relating to water ski jumps.

The Joint Committee for the Review of Administrative Rules met in Executive Session on May 27, 1999 and adopted the following motion:

Carried unanimously, pursuant to §227.19(1)(b) 4, *Stats.*, the Joint Committee for Review of Administrative Rules suspend **Administrative Rule NR 328**, effective July 5, 1999.

Ayes: (10) Senators Robson, Grobschmidt, Shibilski, Welch, and Darling; Representatives Grothman, Seratti, Gunderson, Kreuser, and Black

Noes: (0)

Absent: (0)

**Motion Carried.**

10 Ayes, 0 Noes, 0 Absent.

Pursuant to §227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District



Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District

JBR:chmiv

cc: Secretary of State La Follette  
Revisor of Statutes Gary Poulson

SENATOR JUDITH B. ROBSON  
CO-CHAIR  
PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR  
PO BOX 8952  
MADISON, WI 53708-8952  
(608) 264-8486

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

***Administrative Rule Suspension Motion Form***

*Last Modified March, 1999*

Date: May 27, 1999

Location: 417 North; GAR Room; Wisconsin State Capitol; Madison, WI

Moved by Robson, Seconded by Seratti

**THAT**, pursuant to § 227.19(1)(b) 4, *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules, effective on the publication date, suspend Administrative Rule NR 328, *effective July 5,*

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	X		
2. Senator GROBSCHMIDT	X		
3. Senator SHIBLISKI	X		X
4. Senator WELCH	X		
5. Senator DARLING	X		X
6. Representative GROTHMAN	X		
7. Representative GUNDERSON			
8. Representative SERATTI	X		
9. Representative KREUSER	X		
10. Representative BLACK	X		
Totals			

Motion Carried

Motion Failed

May 11, 1999

State Senator Judy Robson, Co-Chairperson  
State Representative Glenn Grothman, Co-Chairperson  
Members, Joint Committee on Administrative Rules  
Wisconsin State Legislature

**RE: FUTURE REGULATION OF WATER SKI PLATFORMS**

Dear Co-Chairs and Members:

We are writing to you in our respective capacities as President of the Wisconsin Water Ski Club Federation (the "Federation") and as President and principal owner of Wisconsin's largest and best-known private water ski show. The Federation is the umbrella volunteer trade association for Wisconsin's thirty (30) not-for-profit water ski clubs, comprised principally of young people, who are often also associated with the scouting movement.

Under the able and aggressive leadership of State Representative Lorraine Seratti, the Wisconsin Legislature created Wis. Stats. § 30.135, by way of 1997 Act 27, as a preliminary effort to fundamentally shift regulation of water ski platforms and jumps to local units of government rather than the State of Wisconsin. Since the enactment of this statute, the water ski show not-for-profit and for-profit industry has struggled with attempting to implement this legislation.

The issue before the Joint Committee on Administrative Rules is whether to proceed with attempting to implement the provisions of Wis. Stats. § 30.135 or to repeal the existing statute. In a strong and unqualified voice, we recommend the immediate repeal of the statute! We believe that there is absolutely no reasonable expectation that administrative rules can be developed which will adequately protect water ski shows under the existing statute.

We have shared our conclusions with Wisconsin Department of Natural Resources Secretary George E. Meyer. He has no objections to this regulatory course of action. The proposed administrative rules package and draft manual code will be withdrawn by the Department if the enabling statute is repealed.

Therefore, on behalf of almost every major water ski show in Wisconsin, both for-profit and not-for-profit, we recommend the repeal of Wis. Stats. § 30.135. If you




State Senator Judy Robson, Co-Chairperson  
State Representative Glenn Grothman, Co-Chairperson  
Members, Joint Committee on Administrative Rules  
May 11, 1999  
Page 2

have any questions, please call either Tom Diehl at 608/254-2525 or Bob Marx at 715/424-2034.

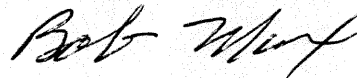
Thank you very much for your consideration of this matter.

**TOMMY BARTLETT, INC.**



Thomas M. Diehl  
President and Owner

**WISCONSIN WATER SKI FEDERATION**



Bob Marx, President

cc: George E. Meyer, Secretary, WI Department of Natural Resources

**WATER SKI RULE DOCUMENTS**

- 1) Legislative Directive in 1997 Act 27.
- 2) Order to Create Rules.
- 3) Natural Resource Board Packet - August 13, 1998.
- 4) Program Guidance Memo – August 27, 1998.
- 5) Wisconsin Water Ski Federation Memo
- 6) Letter to Governor Thompson – November 6 1998.
- 7) Letter to Senator Welch and Representative Grothman – November 10, 1998.
- 8) Testimony of Wisconsin Dells Visitor and Convention Bureau to DNR – October 19, 1998.
- 9) Letter to DNR from Representative Seratti – November 6, 1998.
- 10) Letter to Wisconsin Water Ski Federation from DNR – November 11, 1998.
- 11) Water Ski Club Permit Analysis.

*ask  
held hearing  
of concern of water ski Federation*



Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

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Petition of the Department of Natural Resources to  
Revoke Permit No. 3-LM-84-308, Issued to Robert  
Kalke and the Boy Scouts of America and Now  
Claimed by Jack Scheels, for a Ski Jump on the  
Bed of Lake Noquebay, Town of Lake, Marinette  
County, Wisconsin

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Case No. 3-LM-84-308

NOTICE OF INVESTIGATION AND PUBLIC HEARING

The Department of Natural Resources issued Permit No. 3-LM-84-308 to Robert Kalke and the Boy Scouts of America in 1984. The permit is for a ski jump on the bed of Lake Noquebay, at or near the SW  $\frac{1}{4}$ , NW  $\frac{1}{4}$ , Section 7, Township 32 North, Range 21 East, Town of Lake, Marinette County, Wisconsin. Jack Scheels, Box 45, Crivitz, Wisconsin, now alleges that he holds this permit by virtue of the purchase of a portion of riparian property originally associated with the ski jump, and subsequent deeds and transfers.

The Department of Natural Resources Northeastern Region staff conducted field investigations and allege that the situation surrounding the permit has dramatically changed since the permit was first issued. To wit, the location of the ski jump is different than originally permitted; the riparian zone of Mr. Scheels is 150 feet wide compared to 1600 feet wide of the original permittees; the use has changed from public to private; the ski jump has created navigation and water use conflicts with the public and adjoining riparians; environmental concerns have arisen since the original permit was issued, including impacts upon endangered and special status species; and public safety concerns exist regarding lighting of the structure. Thus, the Department contends that the ski jump as currently placed and operated interferes with the rights and interest of the public on Lake Noquebay and is detrimental to the public interest in violation of Chapter 30 of the Wisconsin Statutes and requests that the permit for the ski jump be revoked.

The Department further alleges the maintenance of said ski jump in Lake Noquebay is in violation of secs. 30.12, 30.135 and 30.15, Stats., and Ch. NR 326, Wis. Admin. Code, and should be declared to be a public nuisance pursuant to sec. 30.294, Stats.

NOTICE IS HEREBY GIVEN that the State of Wisconsin Division of Hearings and Appeals will hold a public hearing pursuant to sec. 30.03(4)(a), Stats., to determine whether the permit for the aforesaid ski jump should be revoked. The hearing may result in an order

permit for the aforesaid ski jump should be revoked. The hearing may result in an order revoking the permit for the ski jump, or the issuance of an order enjoining the placement of the ski jump and abating the maintenance of the ski jump in its current configuration, and directing the Respondent to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the interests of the public in these navigable waters.

NOTICE IS FURTHER GIVEN that the hearing will be held on **Wednesday, June 3, 1998 at 1:00 p.m.** at the U.W. Marinette, Main Building, Room 104, 750 West Bay Shore Street, Marinette, Wisconsin. The hearing will be continued on **Thursday, June 4, 1998**, if necessary, at the same location

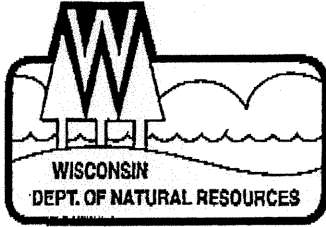
The hearing is a Class 2 contested case pursuant to sec. 227.01(3)(b), Stats., and the fair play provisions of Ch. 227, Stats., will apply. The procedures relating to contested cases set forth in Ch. NR 2, Wis. Admin. Code, will be followed. The procedure that will be followed at the public hearing will closely resemble that normally followed at court hearing. All parties are advised that they have the right to seek the aid and assistance of legal counsel and to be represented by legal counsel at the public hearing.

Pursuant to the Americans With Disabilities Act, reasonable accommodations will be made to any qualified individual upon request. Please call the Division of Hearings and Appeals at (608) 266-3865 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin on April 29, 1998.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 267-2744

By: Mark Kaiser  
MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE



State of Wisconsin \ D

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

Post-It® Fax Note	7671	Date	2/1	# of Pages	1
To	MISSY	From	DNR		
Co./Dept.	Rep. Gerratti	Co.			
Phone #	1	Phone #			
Fax #	282-3636	Fax #			

November 11, 1998

Bob Marx, President  
Wisconsin Water Ski Federation  
3720 Lake Ave  
Wisconsin Rapids, WI 54494

10.

SUBJECT: Rule and Guidance Development Discussion at November 7<sup>th</sup> WWSF Meeting

Dear Mr. Marx:

We appreciate the opportunity to have met with the Wisconsin Water Ski Federation on Saturday, November 7<sup>th</sup>. We understand you had to juggle your busy agenda to fit us in. Also, thank you for your group's thoughtful consideration of our revisions to the guidance document that we shared with you. We expected that WWSF would need some time to review the information and formulate a position.

In consultation with you, we need to begin to revise our timeline for completing rule development (see the attached letter to Representatives Welch and Grothmann, Co-Chairpersons for Joint Committee on Review of Administrative Rules).

To begin to revise the timeline we are asking you to let us know within the next two weeks if we are making measurable steps to closure ( e.g. WWSF believes the Department has addressed their primary concerns in guidance revisions). Or, are there fundamental disagreements between the Wisconsin Water Ski Federation and the Department of Natural Resources (e. g. content or threshold for a substantive written objection, or a serious and substantial departure from the guidance revision)? If there are substantial differences over these issues, we will need to consider assembling a group of lake property owners, water skiing representatives, angling group representatives, and local officials to negotiate the issues.

Thanks again, and please give us a call if you have any questions. Paul's phone number is (608) 267-7502 and Mel's phone number is (608) 265-8554.

Sincerely,

*Paul Cunningham*  
Paul Cunningham  
*Mary Ellen Vollbrecht*  
Mary Ellen Vollbrecht

cc: Mike Staggs, FH/4

# Water Ski Club Permit Analysis

11.

Club	Location	Permit Status	Structure(s)	Dimensions
Kwahamots	Lake Mohawksin Tomahawk	Granted May 27, 1983	Ski jump	W - 20 feet maximum, 14 feet minimum L - 24 feet H - 6 feet 155 feet from shore, in 10- 12 feet of water
Aqua Skiers	Biron Flowage Wisconsin River Wood County	Granted March 18, 1982	Ski Jump	W - 14 feet L - 24 feet H - 6 feet 15 feet of water
Central Wisconsin Water Ski Show	Lake DuBay, Wisconsin River	<b><u>Pending</u></b>	Ski jump	W - 24 feet maximum 14 feet minimum L - 24 feet H - 6 feet 150 feet from shore in 10 feet of water
Shermalot Water Ski Club	Lake Arrowhead, Adams County	<b><u>Pending</u></b>	Performance Platform	W - 9 feet L - 30 feet Connected to shore by 9 foot by 4 foot access pier, in 2 to 4 feet of water

Club	Location	Permit Status	Structure(s)	Dimensions
Shermclat Water Ski Club	Lake Arrowhead, Adams County	Granted December 7, 1983	Performance Platform	W - 8 L - 24 feet
			Ski jump	W - 18 feet maximum 14 feet minimum L - 25 feet H - 6 feet 170 feet from shore in 18 feet of water
Rock Aqua Jays Water Ski Club	Rock River	Granted March 14, 1985	Ski jump	W - 30 maximum 14 minimum L - 24 feet H - 5 ½ feet 120 feet from shore in 12-15 feet of water
City of Madison Parks Division	Lake Monona	Granted April 19, 1983	Ski jump	W - 23 maximum 14 minimum H - 8 feet L - 18 feet 275 feet from shore
Lake Mendota Ski Club	Lake Mendota	Granted November 17, 1980	Ski jump	W - 14 feet L - 24 feet H - 6 feet 300 feet from shore in 8-10 feet of water

Club	Location	Permit Status	Structure(s)	Dimensions
City of Madison Parks Division - Capital City Ski Team	Lake Mendota	Granted July 2, 1981	Ski jump 1	W - 19 feet L - 22 feet H - 6 feet 165 feet from shore in 40 feet of water
		Granted September 26, 1983	Ski jump 2	W - 12 feet L - 24 feet H - 6 feet 200 feet from shore in 40 feet of water
(Note - they had two jumps going at the same time!)				
Wausaquua Water Ski Show	Lake Wausau Marathon County	Granted April 29, 1997	Two performance platforms - attached	1 - 24x16 2 - 24-14 8 feet offshore connected to shore
River City Water Skiers	Black River LaCrosse	<b><u>Pending</u></b>	Ski jump 1	24 x 26 x 6
Skiing Patriots	Oconto River Oconto	Withdrawn	Ski jump - 1	8 x 20
Shawano Ski Sharks	Wolf River	Dismissed	Piers & Stage	huge



**Page 4**

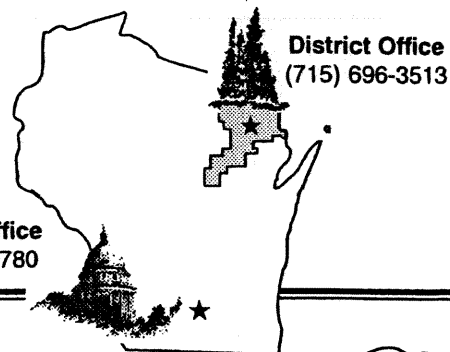
Twin Bridge Ski Club	High Falls Flowage	Granted June 8, 1993	Ski jump 1	16 x 20 x 8
Twin Bridge Ski Club	High Falls Flowage	Granted August, 1997	Platform Dock	21 x 30 30 x 4
Crivitz Ski Cats	Lake Noquebay	Granted December 20, 1986	Ski jump 1 Boat Jump	23 x 22 20 x 9
Crivitz Ski Cats	Lake Noquebay	WITHDRAWN	Platform	14 x 22
Chain Skimmers Water Ski Team	Pleasant Lake Eagle River	Granted June 13, 1980	Boat Ramp	12 x 25
Chain Skimmers		Granted July 25, 1983	Ski jump 1	14 x 20

June 26, 1997

**LORRAINE M.  
SERATTI**

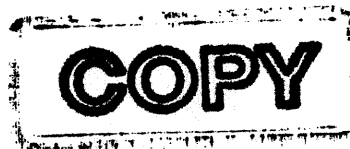
STATE REPRESENTATIVE  
36TH ASSEMBLY DISTRICT

P.O. Box 8953, State Capitol • Madison, Wisconsin 53708-8953  
Toll-Free: (888) 534-0036 • Fax: (608) 282-3636 • Rep.Seratti@legis.state.wi.us



November 6, 1998

Mary Ellen Vollbrecht, Chief  
Rivers and Regulations Section  
Wisconsin Department of Natural Resources  
101 S. Webster, FH/4  
Madison, WI 53707



**RE: PROPOSED ADMINISTRATIVE RULES CHAPTER NR 328 -  
REGULATION OF WATER SKI JUMPS AND PLATFORMS**

Dear Ms. Vollbrecht,

As you are well aware, there has been overwhelming concern expressed regarding the proposed administrative rules package cited above. In addition, it is clear that the 30-plus water ski show clubs of Wisconsin have very strong reservations regarding the Department's August 27, 1998 internal guidance document on the above-captioned subject.

The Department has previously been admonished by members of the Wisconsin Legislature to move expeditiously in resolving its regulatory issues with the state's water ski clubs. Very substantial frustration has been expressed to me regarding the Department's inability to resolve these ongoing conflicts.

At the same time, it makes absolutely no sense to advance an administrative rules package and publish internal guideline documents which have met with the level of criticism and resistance that these two pieces of paper have seen.

Therefore, I strongly request that you meet and consult with the impacted water ski show clubs before moving forward with the administrative rules package and/or further drafting of the internal guidance documents. If this means that it will take extra time to present the rules package to the Natural Resources Board, so be it. We should not be issuing guidance documents or drafting administrative rules without first consulting and attempting to reach consensus with the groups to be most affected.

(continued)

Ms. Mary Ellen Vollbrecht  
November 6, 1998  
page 2

The proposal outlined in this letter makes a great deal of sense to me. I look forward to hearing from you in regard to this matter.

Sincerely,

Lorraine M. Seratti  
State Representative  
36<sup>th</sup> Assembly District

cc: Governor Tommy G. Thompson  
Secretary George Meyer, Wisconsin Department of Natural Resources  
Peter Helland, Sr., Wisconsin Dells Visitor and Convention Bureau  
David Kwiatkowski, Crivitz Ski Cats

BEFORE THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
OCTOBER 19, 1998

8.

RE: CHAPTER NR 328, RELATING TO REGULATION  
OF WATER SKI PLATFORMS AND WATER SKI JUMPS

BY: PETER HELLAND, SR.

MY NAME IS PETER HELLAND. I AM AN ACTIVE MEMBER OF THE WISCONSIN DELLS VISITOR AND CONVENTION BUREAU (THE BUREAU). ON BEHALF OF THE BUREAU, I HAVE BEEN ASKED TO PROVIDE THE FOLLOWING TESTIMONY REGARDING THE ABOVE-CAPTIONED RULES PACKAGE. THE BUREAU IS OPPOSED TO THE RULES PACKAGE FOR THE FOLLOWING THREE REASONS.

FIRST, THE RULES PACKAGE WAS DEVELOPED ABSENT ANY CONSULTATION WITH THE IMPACTED INDUSTRY. IN THIS DAY AND AGE, AN ADMINISTRATIVE RULES PACKAGE WHICH AFFECTS THE VERY EXISTENCE OF VARIOUS REGULATED GROUPS -- AND PARTICULARLY THOSE WHICH ARE ULTIMATELY USED TO FOSTER WISCONSIN TOURISM -- SHOULD NOT BE ADVANCED WITHOUT CONSULTATION WITH THE CONSTITUENT GROUP TO BE AFFECTED. WE BELIEVED THAT THIS STANDARD OF RULE DEVELOPMENT HAD BEEN WELL-ESTABLISHED AT THE DEPARTMENT. THE BUREAU DOES NOT UNDERSTAND WHY IT WAS NOT FOLLOWED IN THE INSTANT CASE.

SECOND, THE RULES PACKAGE AS PROPOSED IS, IN THE BUREAU'S OPINION, INCONSISTENT WITH THE LEGISLATIVE INTENT WHICH DIRECTED THE DEPARTMENT TO DEVELOP THIS RULES PACKAGE. THE LEGISLATURE FUNDAMENTALLY BELIEVED THAT AS MANY DECISIONS AS POSSIBLE REGARDING WATER-SHOW FACILITIES SHOULD BE HANDLED AT THE LOCAL LEVEL. TO FACILITATE THIS RESULT, THE LEGISLATURE ASKED THE DNR TO CLEARLY DEFINE IF AND WHEN AN OBJECTOR TO A CHAPTER 30 PERMIT DESIGNED TO FACILITATE WATER SKI SHOWS, IN FACT, HAD A "SUBSTANTIVE OBJECTION." SINCE THE DEPARTMENT HAS DEVELOPED STANDARDS WHICH ARE, IN FACT, SUBSTANTIALLY LESS STRINGENT THAN THOSE FOUND IN Wis. STATS. § 227.42, RELATIVE TO THE REQUEST FOR A CONTESTED CASE HEARING, IT IS CLEAR THAT THE LEGISLATURE'S MESSAGE HAS NOT BEEN FOLLOWED IN THE DRAFT ADMINISTRATIVE RULES PACKAGE.

THIRD, UNKNOWN TO THE INDUSTRY, WAS THE CONCURRENT DEVELOPMENT BY DEPARTMENT STAFF OF A SET OF CRITERIA FOR THE

LOCATION OF WATER-SHOW FACILITIES. AGAIN, THERE WAS ABSOLUTELY NO CONSULTATION WITH INDUSTRY REGARDING THESE STANDARDS. THIS PROBLEM IS FURTHER EXACERBATED BY THE FACT THAT THESE STANDARDS WILL, TO THE BEST OF THE INDUSTRY'S UNDERSTANDING, REQUIRE EVERY MAJOR WATER SKI SHOW IN WISCONSIN TO GET A CHAPTER 30 PERMIT. IN ADDITION, THESE INTERNAL GUIDELINES WOULD NOT BE SUBJECT TO EITHER (1) REVIEW BY THE NATURAL RESOURCES BOARD OR (2) REVIEW BY THE STANDING COMMITTEES OF THE WISCONSIN LEGISLATURE WHO RENEW DNR'S POLICY INITIATIVES. THE COMBINATION OF ALL THESE SHORTCOMINGS -- COUPLED WITH THE RELATIONSHIP BETWEEN THESE NEW GUIDELINES AND THE ABILITY TO ASK FOR A CONTESTED CASE HEARING PURSUANT TO THE RULES PACKAGE WHICH IS THE SUBJECT OF TODAY'S HEARING -- MAKES FOR A SUBSTANTIALLY-FLAWED PROCESS.

IN LIGHT OF THE ABOVE FACTORS, THE BUREAU STRONGLY RECOMMENDS THAT

- (1) THE PROPOSED RULES PACKAGE BE WITHDRAWN AND
- (2) A TECHNICAL ADVISORY COMMITTEE, COMPRISED OF INTERESTED PARTIES, BE FORMED TO CONSIDER NOT ONLY THE PROPOSED RULES PACKAGE BUT ALSO THE UNDERLYING GUIDANCE DOCUMENTS THAT WERE ADOPTED BY DEPARTMENT STAFF IN AUGUST OF 1998.

ONCE THE UNDERLYING GUIDANCE DOCUMENTS AND PROPOSED RULES PACKAGE HAVE BEEN CONSIDERED IN CONCERT, THE MATTER SHOULD BE RE-REFERRED TO THE NATURAL RESOURCES BOARD FOR FURTHER CONSIDERATION.

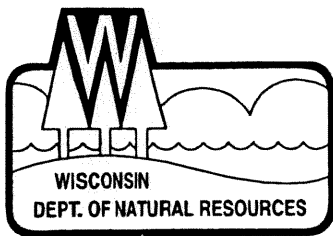
THANK YOU VERY MUCH FOR YOUR CONSIDERATION OF THE BUREAU'S TESTIMONY.

RESPECTFULLY SUBMITTED ON BEHALF OF THE

**WISCONSIN DELLS VISITOR AND  
CONVENTION BUREAU**

BY: PETER HELLAND, SR.

NOV 13 1998

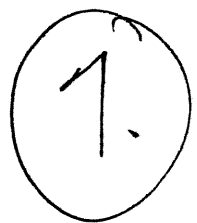


State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

Box 7921  
101 South Webster Street  
Madison, Wisconsin 53707-7921  
TELEPHONE 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

November 10, 1998



The Honorable Robert Welch  
Wisconsin State Senate  
1 East Main Street, Suite 201  
Madison, WI 53707

The Honorable Glenn Grothman  
Wisconsin State Assembly  
125 West, State Capitol  
Madison, WI 53707

SUBJECT: Administrative Rule on Water Ski Jumps and Platforms

*Bob Glenn*

Dear Senator Welch and Representative Grothman:

As you know, Department staff are conducting rule making on aspects of placing water ski jumps and platforms in public waterways in response to s. 30.135 as adopted in the last budget. In response to the request of the Joint Committee on Review of Administrative Rules, we committed to having a rule in effect in January 1999. My staff shared advance copies of the draft rule and staff guidance with the Wisconsin Water Ski Federation (WWSF) and a number of other interest groups, met with WWSF, and held three rule hearings around the state. The level of controversy on this issue is high. We intend to slow our rule process in order to work with all parties to reach mutual understanding and resolve the issues. We intend to have the right rule in place by bringing in the involved public. My staff met with the Wisconsin Water Ski Federation again Saturday, November 7<sup>th</sup>. I have directed them to work out an agreeable schedule and process for completing the rule making process with the Federation and other interest groups over the next few months. We will inform you of the schedule as soon as we have agreement.

While I share your interest in having a rule in place well in advance of the next open water season, the statute is very clear about the rule requirements - to clarify the public notice and hearing procedures. We will be able to accomplish permitting for any new water ski jumps or platforms proposed for construction next season as described in the statute. The issue of when water ski structures can be placed without a permit is controversial but is not a part of the required rule making, nor do we expect it to have any effect on the continued operation of Wisconsin's many water ski clubs and shows.

