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NR 115 and 116

Relating to the Regulation of Nonconforming Structures.

The Department of Natural Resources will present testimony regarding these rules.

Bis letter?

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Chapter NR 115

WISCONSIN'S SHORELAND MANAGEMENT PROGRAM

NR 115.01 Purpose.
NR 115.02 Applicability.
NR 115.03 Definitions.

NR 115.05 Shoreland regulation standards and criteria.
NR 115.06 Department duties.

Note: Chapter NR 115 as it existed on July 31, 1980, was repealed and a new chapter NR 115 was created effective August 1, 1980.

NR 115.01 Purpose. (1) Section 59.692, Stats., requires counties to adopt zoning and subdivision regulations for the protection of all shorelands in unincorporated areas by January 1, 1968, and provides that if the department of natural resources determines, after notice and hearing, that a county has not adopted a shoreland ordinance by January 1, 1968, or that a county has adopted an ordinance which fails to meet reasonable minimum standards in accomplishing the shoreland protection objectives found in s. 281.31, Stats., the department is to adopt a shoreland ordinance to be administered by that county.

(2) Section 281.31, Stats., provides that shoreland subdivision and zoning regulations shall: "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty."

(3) It is the responsibility of the department of natural resources, in the discharge of its mandate under ss. 59.692 and 281.31, Stats., to require adherence to specific standards and criteria for navigable water protection regulations and their administration. Section 281.31, Stats., provides that: "Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations."

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; reprinted to correct error, Register, December, 1980; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

NR 115.02 Applicability. The provisions of this chapter are applicable to county regulation of the use and development of unincorporated shoreland areas. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats., applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance and repair of state highways and bridges, carried out under the direction and supervision of the Wisconsin department of transportation are not subject to local shoreland zoning ordinances, if s. 30.12 (4) (a), Stats., applies.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. Register, October, 1980, No. 298, eff. 11-1-80.

NR 115.03 Definitions. For the purpose of this chapter.

(1) "Boathouse" means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

(2) "County zoning agency" means that committee or commission created or designated by the county board under s. 59.69

(2) (a), Stats., to act in all matters pertaining to county planning and zoning.

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

(4) "Flood plain" means the land which has been or may be hereafter covered by flood water during the regional flood. The flood plain includes the floodway and the flood fringe as those terms are defined in ch. NR 116.

(5) "Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31 (2) (d), Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Stats., and this chapter do not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not adjacent to a natural navigable stream or river;

(b) Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

(c) Such lands are maintained in nonstructural agricultural use.

Note: In *Muench v. Public Service Commission*, 261 Wis. 492 (1952), the Wisconsin Supreme Court held that a stream is navigable in fact if it is capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreational purposes. In *DeGayner and Co., v. Department of Natural Resources*, 70 Wis. 2d 936 (1975), the court also held that a stream need not be navigable in its normal or natural condition to be navigable in fact. The DeGayner opinion indicates that it is proper to consider artificial conditions, such as beaver dams, where such conditions have existed long enough to make a stream useful as a highway for recreation or commerce, and to consider ordinarily recurring seasonal fluctuations, such as spring floods, in determining the navigability of a stream.

(6) "Ordinary high-water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

(7) "Regional flood" means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics once in every 100 years.

Note: The regional flood is based upon a statistical analysis of streamflow records available for watershed and/or an analysis of rainfall and runoff characteristics in the general watershed region. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a 1% chance that the regional flood may occur. During a typical 30-year mortgage period, the regional flood has a 26% chance of occurring.

(8) "Shorelands" means lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater.

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(9) "Shoreland-wetland zoning district" means a zoning district, created as a part of a county shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory maps prepared by the department.

(10) "Special exception (conditional use)" means a use which is permitted by a shoreland zoning ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the board of adjustment or, where appropriate, the planning and zoning committee or county board.

(11) "Unnecessary hardship" means that circumstance where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the zoning ordinance.

(12) "Variance" means an authorization granted by the board of adjustment to construct, alter or use a building or structure in a manner that deviates from the requirements of a shoreland zoning ordinance.

(13) "Wetlands" means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; renum. (2) to (12) to be (3) to (13), cr. (2), r. and recr. (7), am. (11) and (13), Register, October, 1980, No. 298, eff. 11-1-80; corrections in (2) (a) 1. and (b) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

NR 115.05 Shoreland regulation standards and criteria. (1) ESTABLISHMENT OF APPROPRIATE ZONING DISTRICTS. Counties shall adopt shoreland ordinances that include, at a minimum, zoning regulations for shoreland-wetland zoning districts. Other types of districts (such as general purpose, agricultural, industrial, commercial, residential, recreational, conservancy, or wetlands districts) may be created in addition to shoreland-wetland zoning districts.

(2) ESTABLISHMENT AND REGULATION OF SHORELAND-WETLAND ZONING DISTRICTS. (a) *County review of preliminary wetland inventory maps.* Before the department prepares final Wisconsin wetland inventory maps:

1. The department shall transmit to the county zoning agency designated under s. 59.69 (2) (a), Stats., copies of preliminary wetland inventory maps for that county.

2. The county zoning agency shall have 90 days to review the preliminary maps unless the review period is extended by written approval of the department, but in no case shall the review period extend for more than 180 days.

3. The county zoning agency shall hold a public hearing to solicit public comments on the preliminary wetland inventory maps. Notice of the time and place of the hearing shall be mailed to the town clerk of each town in the county and shall be published as a class 1 notice, under ch. 985, Stats.

4. On or before the last day of the review period, the county zoning agency shall return the preliminary maps to the department. If the county zoning agency believes that the preliminary maps are inaccurate, discrepancies shall be noted on the maps with an accompanying narrative explaining the problem areas.

5. The department shall schedule a meeting with the county zoning agency within 30 days of the return of the preliminary maps if the county zoning agency has indicated that they believe that there are inaccuracies on the maps.

6. After meeting with the county zoning agency to discuss apparent map inaccuracies, the department shall, at department expense, consult available soil survey maps and conduct on-site inspections, if appropriate, in order to evaluate the county recommendations, and shall then prepare the final Wisconsin wetland inventory maps for that county.

7. The adoption of a final Wisconsin wetland inventory map is a final decision of the department and may be reviewed as provided in ch. 227, Stats.

(b) *County adoption of shoreland-wetland zoning.* 1. Each county shall, within 6 months after receipt of final Wisconsin wetland inventory maps for that county from the department, zone all shorelands within the county that are designated as wetlands on the Wisconsin wetland inventory maps, in a shoreland-wetland zoning district.

2. Ordinance text and map amendments creating shoreland-wetland zoning districts shall be referred to the county zoning agency for public hearing as required by s. 59.69 (5) (e) 2., Stats.

3. The appropriate district office of the department shall be provided with a copy of the proposed text and map amendments and with written notice of the public hearing at least 10 days prior to such hearing.

(c) *Permitted uses in shoreland-wetland zoning districts.* Within shoreland-wetland zoning districts, counties shall permit the following uses subject to the general requirements of sub. (3), the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

1. Hiking, fishing, trapping, hunting, swimming and boating.

2. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

3. The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required to construct and maintain roads which are necessary to conduct silviculture activities, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse impact upon the natural functions of the wetland, or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected.

Note: Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated, i.e. regulations and management practices applicable to state and county forests and lands entered under the forest cropland and woodland tax law programs.

4. The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

5. The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of the wetland through ditching, tiling, dredging or excavating except that flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting cranberries. The maintenance and repair of existing drainage systems (such as ditching and tiling) shall be permitted. The construction and maintenance of roads shall be permitted if the roads are necessary for agricultural cultivation, cannot as a practical matter be located outside the wetland, and are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

6. The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

7. The construction and maintenance of nonresidential buildings used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation if such building cannot as a practical matter be located outside the wetland, not to exceed 500 square feet, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

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8. The construction and maintenance of piers, docks and walkways, including those built on pilings, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done.

9. The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose. The owner or operator of a new private recreation or wildlife area to be located in a shoreland-wetland zoning district shall be required to notify the county zoning agency of the proposed project before beginning construction. Ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

10. The construction and maintenance of electric, gas, telephone water and sewer transmission and distribution lines, and related facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members, which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

Note: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

11. The construction and maintenance of railroad lines which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

12. The maintenance, repair, replacement, and reconstruction of existing town and county highways and bridges.

(d) *Prohibited uses in shoreland-wetland zoning districts.* Any use not permitted in par. (c) is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance in accordance with s. 59.69 (5) (e), Stats., and the procedures outlined in par. (e).

(e) *Rezoning of shoreland-wetland zoning districts.* 1. Official ordinance amendments are required for any change in shoreland-wetland zoning. Such amendments shall be made upon petition in accordance with provisions of s. 59.69 (5) (e), Stats.

2. The county clerk shall submit a copy of every petition for an amendment to a shoreland-wetland zoning district to the appropriate district office of the department within 5 days of the filing of such petition with the clerk.

3. All proposed text and map amendments to shoreland-wetland zoning districts shall be referred to the county zoning for a public notice and hearing as required by s. 59.69 (5) (e) 2., Stats. The appropriate district office of the department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

4. In order to ensure that the shoreland protection objectives found in s. 281.31, Stats., will be accomplished by the county shoreland ordinance, a county shall not rezone a shoreland-wetland zoning district, or portion thereof, if the proposed rezoning may result in a significant adverse impact upon any of the following:

a. Storm and flood water storage capacity;

b. Maintenance of dry season stream flow, or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;

c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;

d. Shoreline protection against soil erosion;

e. Fish spawning, breeding, nursery or feeding grounds;

f. Wildlife habitat; or

g. Areas of special recreational, scenic or scientific interest, including scarce wetland types.

5. If the department determines that the proposed rezoning may have a significant adverse impact upon any of the criteria listed in subd. 4., the department shall notify the county zoning agency of its determination either prior to or during the public hearing held on the proposed amendment.

6. As soon as possible after holding a public hearing, the county zoning agency shall submit its written findings and recommendations to the county board. Said findings shall outline the reason for the agency's recommendations. After receipt of the county zoning agency's findings and recommendations, the board may approve or disapprove of the proposed amendment.

7. The appropriate district office of the department shall be provided with:

a. A copy of the county zoning agency's findings and recommendations on the proposed amendment within 10 days after the submission of those findings and recommendations to the county board; and

b. Written notice of the board's decision on the proposed amendment within 10 days after it is issued.

8. If the county board approves of the proposed amendment and the department determines, after review as required by s. NR 115.06 (2) (c), that the county shoreland zoning ordinance if so amended would no longer comply with the requirements of s. 59.692, Stats., and this chapter, the department shall, after notice and hearing, adopt a complying ordinance for the county, under s. 59.692 (6), Stats.

9. If the department has notified the county zoning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subd. 4., that proposed amendment, if approved by the county board, shall not become effective until more than 30 days have elapsed since written notice of the county board's approval was mailed to the department, as required by subd. 7. If within the 30-day period the department notifies the county board that the department intends to adopt a superseding shoreland zoning ordinance for the county under s. 59.692 (6), Stats., the proposed amendment shall not become effective while the ordinance adoption procedure is proceeding, but shall have its effect stayed until the s. 59.692 (6), Stats., procedure is completed or otherwise terminated.

(3) **ESTABLISHMENT OF ZONING REGULATIONS FOR SHORELAND AREAS.** The shoreland zoning ordinance adopted by each county shall provide sufficient control of the use of shorelands to afford the protection of water quality as specified in chs. NR 102 and 103. At a minimum, the ordinance shall include the following provisions:

(a) *Minimum lot sizes.* Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

1. Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet.

2. Lots not served by public sanitary sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

(b) *Building setbacks.* Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution.

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1. Unless an existing development pattern exists, a setback of 75 feet from the ordinary high-water mark of an adjacent body of water to the nearest part of a building or structure, shall be required for all buildings and structures, except piers, boat hoists and boat-houses.

2. Buildings and structures to be constructed or placed in a flood plain shall be required to comply with any applicable flood plain zoning ordinance.

3. The use of boathouses for human habitation and the construction or placing of boathouses beyond the ordinary high-water mark of any navigable waters shall be prohibited.

(c) *Trees and shrubbery.* The cutting of trees and shrubbery shall be regulated to protect natural beauty, control erosion and reduce the flow of effluents, sediments and nutrients from the shoreland area.

1. In the strip of land 35 feet wide inland from the ordinary high-water mark, no more than 30 feet in any 100 feet shall be clear-cut.

2. In shoreland areas more than 35 feet inland, trees and shrub cutting shall be governed by consideration of the effect on water quality and consideration of sound forestry practices and soil conservation practices.

3. The tree and shrubbery cutting regulations required by this paragraph shall not apply to the removal of dead, diseased or dying trees or shrubbery.

(d) *Filling, grading, lagooning, dredging, ditching and excavating.* Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of sub. (2), the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.

(e) *Nonconforming uses.* 1. Under s. 59.69 (10), Stats., the continuation of the lawful use of a building, structure or property, existing at the time an ordinance or ordinance amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment, including routine maintenance of such a building or structure, shall not be prohibited, but the alteration of, addition to, or repair, over the life of the building or structure, in excess of 50% of the equalized assessed value of an existing nonconforming building or structure may be prohibited. If a county prohibits alteration, addition or repair in excess of 50% of the equalized assessed value of an existing nonconforming building or structure, the property owner may either appeal the decision to the county board of adjustment and seek court review if the board's determination is unfavorable, under s. 59.694 (4) and (10), Stats., or petition to have the property rezoned under sub. (2) (e) and s. 59.69 (5) (e), Stats.

2. The continuance of the nonconforming use of a temporary structure may be prohibited.

3. If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.

4. The maintenance and repair of nonconforming boathouses which extend beyond the ordinary high-water mark of any navigable waters shall be required to comply with s. 30.121, Stats.

(4) **ESTABLISHMENT OF LAND DIVISION REVIEW.** Each county shall review, pursuant to s. 236.45, Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review the following factors should be considered:

- Hazards to the health, safety or welfare of future residents.
- Proper relationship to adjoining areas.
- Public access to navigable waters, as required by law.
- Adequate storm drainage facilities.
- Conformity to state law and administrative code provisions.

(5) **ESTABLISHMENT OF SANITARY REGULATIONS.** Each county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.

(a) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812.

(b) Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall, prior to July 1, 1980, be required to comply with ch. Comm 83, and after June 30, 1980, be governed by a private sewage system ordinance adopted by the county under s. 59.70 (5), Stats.

(6) **ADOPTION OF ADMINISTRATIVE AND ENFORCEMENT PROVISIONS.** The shoreland ordinance adopted by each county shall provide for:

(a) The appointment of an administrator and such additional staff as the workload may require.

(b) The creation of a zoning agency, as authorized by s. 59.69, Stats., a board of adjustment, as authorized by s. 59.694, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.692 (3), Stats.

(c) A system of permits for all new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of all applications shall be required to be filed in the office of the county zoning administrator.

(d) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.

(e) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, as long as the granting of a variance does not have the effect of granting or increasing any use of property which is prohibited in that zoning district by the shoreland zoning ordinance.

(f) A special exception (conditional use) procedure for uses presenting special problems.

(g) The county shall keep a complete record of all proceedings before the board of adjustment, zoning agency and planning agency.

(h) Written notice to the appropriate district office of the department at least 10 days prior to hearings on proposed variances, special exceptions (conditional uses), appeals for map or text interpretations, and map or text amendments, and submission to the same office of the department of copies of decisions on variances, special exceptions (conditional uses), appeals for map or text interpretations, and map or text amendments within 10 days after they are granted or denied.

(i) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.

(j) The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

(k) The prosecution of violations of the shoreland ordinance.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; r. and recr. (2) (a) 3, am. (2) (a) 6., (2) (c) 3., 5., 7., 9., 10., (3) (d), (3) (e) 1. and cr. (2) (c) 11. and 12., Register, October, 1980, No. 298, eff. 11-1-80; correction in (5) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; corrections in (2) (a) 1., (b) 2., (d), (e) 1. to 4. (intro.), 8. and 9., (3) (e) 1., (5) (b), (6) (b) and (j) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

NR 115.06 Department duties. (1) **ASSISTANCE TO COUNTIES.** To the full extent of its available resources, the department shall provide advice and assistance to counties in the development, adoption, administration and enforcement of their shoreland zoning and land division ordinances, seeking the highest

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practicable degree of uniformity consistent with the shoreland protection objectives found in s. 281.31, Stats. As a part of this effort, the department shall prepare a model shoreland zoning ordinance which counties may use in meeting the requirements of s. 59.692, Stats., and this chapter.

(2) REVIEW AND APPROVAL OF SHORELAND ZONING AND LAND DIVISION ORDINANCES. (a) Compliance with the requirements of s. 59.692, Stats., will be determined by the department by comparing the shoreland zoning and land division ordinance that has been enacted by a county with the minimum standards for shoreland regulation contained in s. NR 115.05. The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.692, Stats., and this chapter.

(b) The department shall periodically reevaluate shoreland zoning and land division ordinances to ascertain their continuing compliance with s. NR 115.05. A county shall keep its shoreland ordinance current, effective and workable to retain its status of compliance.

(c) The department shall review all proposed amendments to shoreland wetland zoning districts pursuant to s. NR 115.05 (2) (e) 5., to ensure that an ordinance which is amended as proposed will retain its status of compliance with s. 59.692, Stats., and this chapter.

(3) DETERMINATION OF NONCOMPLIANCE. (a) Counties which do not have a shoreland zoning and land division ordinance in effect shall be deemed to be in noncompliance with s. 59.692, Stats., and this chapter. The department shall, pursuant to s. 59.692 (6), Stats., adopt an ordinance, after notice and hearing, if a county fails to either:

1. Proceed with the drafting and enactment of shoreland regulations within a given time period, or,

2. Contact with a consultant to draft the regulations within a given time period, or,

3. Cooperate with the staff of the department to draft the shoreland ordinance to be enacted by the county within a given time period. All costs for such action by the department shall be borne by the noncomplying county.

(b) Counties which have shoreland zoning and land division ordinances that do not meet the minimum standards contained in s. NR 115.05 shall be deemed to be in noncompliance with the requirements of s. 59.692, Stats., and this chapter. If a county fails to modify its ordinance to meet the minimum standards within 6 months after receipt of final Wisconsin wetland inventory maps for that county, the department shall adopt an ordinance for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

(4) MONITORING. It is the responsibility of the department, to aid in the fulfillment of the state's role as trustee of its navigable waters, to monitor the administration and enforcement of shoreland zoning and land division ordinances. In so doing, the department:

(a) Shall review decisions granting special exceptions (conditional uses), variances and appeals to ensure compliance with the applicable shoreland zoning ordinances and this chapter;

(b) May appeal the actions of county zoning officials to county boards of adjustment, under s. 59.694 (4), Stats.; and

(c) May seek court review of the decisions of boards of adjustment, under s. 59.694 (10), Stats.

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Chapter NR 116

WISCONSIN'S FLOODPLAIN MANAGEMENT PROGRAM

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NR 116.12	Development standards in floodway areas.		
NR 116.13	Development standards in floodfringe areas.		

Note: Chapter NR 116 as it existed on February 28, 1986 was repealed and a new chapter NR 116 was created effective March 1, 1986.

NR 116.01 Purpose. (1) The Wisconsin legislature in enacting chapter 614, laws of 1965, recognized that floodplain zoning is a necessary tool to protect human life, health and to minimize property damages and economic losses. Municipalities are required by s. 87.30 (1), Stats., to adopt reasonable and effective floodplain zoning ordinances within their respective jurisdictions to regulate all floodplains where serious flood damage may occur within one year after hydraulic and engineering data adequate to formulate the ordinance becomes available. If a municipality has a floodplain zoning ordinance already in effect, the provisions in s. NR 116.05 shall apply.

(2) The purpose of these rules is to provide a uniform basis for the preparation and implementation of sound floodplain regulations for all Wisconsin municipalities, to:

- (a) Protect life, health and property;
- (b) Minimize expenditures of public monies for costly flood control projects;
- (c) Minimize rescue and relief efforts, generally undertaken at the expense of the general public;
- (d) Minimize business interruptions;
- (e) Minimize damage to public facilities such as water mains, sewer lines, streets and bridges;
- (f) Minimize the occurrence of future flood blight areas;
- (g) Discourage the victimization of unwary land and home buyers; and
- (h) Prevent increases in the regional flood from occurring which will increase flood damage and may result in conflict and litigation between landowners.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.02 Applicability. The provisions of this chapter are applicable to all municipalities. Unless otherwise specifically exempted by law, all state agencies are required to obtain permits required by local zoning ordinances if s. 13.48 (13), Stats., applies.

Note: Corps of engineers dredged material disposal activities which are authorized pursuant to s. 30.202 (2), Stats., are exempt from the requirements of this chapter.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.03 Definitions. In this chapter:

(1) "Accessory structure or use" means any facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building.

(1e) "Campground" means any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.

(1s) "Camping unit" means any portable device, no more than 400 square feet in area, used as a temporary shelter, including but

not limited to a camping trailer, motor home, bus, van, pick-up truck or tent.

(2) "Certificate of compliance" means a document that is issued to a property owner by a municipality certifying that the use of land or a building is in conformance with provisions of the floodplain zoning ordinance.

(3) "Channel" means a natural or artificial watercourse with definite bed and banks to confine and conduct the normal flow of water.

(4) "Coastal floodplain" means an area along the coast of Lake Michigan or Lake Superior which is inundated by the regional flood and which is also subject to additional hazards due to wave runoff.

(5) "Conditional use" or "special exception" means a use which is not allowed unless certain conditions specified in the zoning ordinance are met and a permit is granted by the board of adjustment or appeals or, where appropriate, the zoning agency.

(6) "Dam" as defined in s. NR 333.03 (2) means any artificial barrier, together with appurtenant works, built across a waterway and which has the primary purpose of impounding or diverting water.

(7) "Department" means the Wisconsin department of natural resources.

(8) "Developed area" means an area within a floodplain designated by a municipality and approved by the department which contains a minimum of 20 potential residential lots or a minimum of 5 acres of land zoned commercial, industrial or institutional wherein existing structures constitute a minimum of 50% of the structures that could be accommodated by the respective zoning density. The limits of the developed area are defined by a line connecting the existing structures on the outer perimeter of the majority of the structures. Vacant lots within that boundary are treated the same as lots with existing structures.

(9) "Development" means any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial improvements to buildings, structures or accessory structures; the placement of buildings or structures; mining, dredging, filling, grading, paving, excavation or drilling operations; and the storage, deposition or extraction of materials.

(10) "Dryland access" means a vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain.

(11) "Erosion" means a wearing away of land by the action of natural forces such as wind or water; on a coastal floodplain, the carrying away of soil by wave action.

(12) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas caused by:

- (a) The overflow or rise of inland waters;

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(b) The rapid accumulation or runoff of surface waters from any source;

(c) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; and

(d) The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

(13) "Flood frequency" means the probability of a flood occurrence. A flood frequency is generally determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent (%) chance of occurring in any given year.

Note: For example, a 100-year flood event is expected to occur, or be exceeded, on the average of once in every 100 years, or which has a 1% chance of occurring or being exceeded in any given year. Any particular flood event could, however, occur more frequently than once in any given year.

(14) "Floodfringe" means that portion of the floodplain outside of the floodway, which is covered by flood water during the regional flood. The term, "floodfringe" is generally associated with standing water rather than flowing water.

(15) "Flood of record" means the highest known flood, the elevation of which can be determined through the use of physical or photographic data.

(16) "Floodplain" means that land which has been or may be covered by flood water during the regional flood. The floodplain includes the floodway, floodfringe, shallow depth flooding, flood storage and coastal floodplain areas.

(17) "Floodplain island" means a natural geologic land formation within the floodplain that is surrounded, but not covered, by flood water during the regional flood.

(18) "Floodplain management" means the full range of public policy and action for insuring wise use of floodplains. It includes everything from the collection and dissemination of flood data to the acquisition of floodplain lands and the enactment and administration of codes, ordinances and statutes for land use in the floodplain.

(19) "Floodproofing" means any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.

(20) "Flood protection elevation" means an elevation 2 feet above the regional flood elevation.

(21) "Flood storage" means those floodplain areas where storage of flood waters has been taken into account in reducing the regional flood discharge.

(22) "Floodway" means the channel of a river or stream, and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

(23) "Freeboard" means a flood protection elevation requirement designed as a safety factor which is usually expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for the effects of many factors that contribute to flood heights greater than those calculated. These factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and aggradation of the river or stream bed.

(24) "Habitable building" means any building, or portion thereof used for human habitation.

(25) "High flood damage potential" means potential damage as a result of flooding that is associated with any danger to life or health or any significant economic loss to a structure or building and its contents.

(26) "Human habitation" means a human residence or dwelling.

(27) "Hydraulic floodway lines" means those lines that delineate those portions of floodplain including the channel which are required to convey the regional flood discharge without any increase in regional flood heights.

(28) "Increase in regional flood height" means a calculated upward rise in the regional flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

(29) "Levee" means a continuous dike or embankment of earth constructed to prevent flooding of certain areas of land.

(30) "Littoral drift" means the movement of sedimentary material along the Lake Michigan or Lake Superior shoreline due to wave action and water currents.

(30m) "Mobile recreational vehicle" means a recreational vehicle that is carried, towed or self-propelled; is licensed for highway use, if registration is required; and is always capable of being driven or towed by a licensed vehicle.

(31) "Municipality" or "municipal" means a county, city or village.

(32) "NGVD" or "National Geodetic Vertical Datum" means elevations referenced to mean sea level datum, 1929 adjustment.

(33) "Nonconforming building" means an existing lawful building which is not in conformity with the dimensional or structural requirements of the floodplain zoning ordinance for the area of the floodplain which it occupies.

(34) "Nonconforming use" means an existing lawful use or accessory use of a structure, building or development which is not in conformity with the provisions of the floodplain zoning ordinance for the area of the floodplain which it occupies.

(35) "Obstruction to flow" means any development which physically blocks the conveyance of flood waters such that this development by itself or in conjunction with any future similar development will cause an increase in regional flood height.

(36) "Official floodway lines" means those lines which have been approved by the department, adopted by the municipality, and which are shown on the official floodplain zoning maps and used for regulatory purposes. The official floodway lines are established assuming that the area landward of the floodway lines will not be available to convey flood flows.

(37) "Open space use" means a use which has a relatively low flood damage potential, such as uses associated with agriculture, recreation, parking, storage yards, or certain sand and gravel operations.

(38) "Private sewage system" means a sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same parcel as the structure. This term also means an alternative sewage system approved by the department of industry, labor and human relations including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.

(39) "Public utilities" means those utilities which employ underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.

(40) "Rapidly urbanizing watershed" means a watershed where more than 20% of the land area of the watershed has been developed for residential, commercial or industrial uses or where development of the watershed is projected to grow at a rate of 10% or more in the next 10-year period.

(41) "Regional flood" means a flood determined to be representative of large floods known to have occurred in Wisconsin or

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which may be expected to occur on a particular lake, river or stream once in every 100 years.

Note: The regional flood is based upon a statistical analysis of lake level or stream-flow records available for the watershed or an analysis of rainfall and runoff characteristics in the watershed or both. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a 1% chance that the regional flood may occur or be exceeded. During a typical 30-year mortgage period, the regional flood has a 26% chance of occurring.

(42) "Shallow depth flooding areas" means those areas where the maximum depth of flooding does not exceed one foot in depth nor 6 hours in duration during the regional flood.

(43) "Special exception" or "conditional use" has the meaning designated in sub. (5).

(44) "Stormwater management" means public policy and action to control stormwater runoff associated with development within a rapidly urbanizing watershed in order to prevent the occurrence of, or an increase in, flood damage potential. It includes, but is not limited to, development of stormwater runoff data, flood profiles and enactment and administration of ordinances regulating land use in a watershed.

(45) "Structure" means any man-made object with form, shape and utility, either permanently or temporarily attached to or placed upon the ground, river bed, stream bed or lakebed.

(46) "Study" means any analysis that results in the calculation of discharge or elevation of the regional flood or the determination or delineation of boundary lines for any area within a floodplain.

(47) "Undeveloped area" means an area which is not a developed area.

(48) "Unnecessary hardship" means that circumstance where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.

(49) "Variance" means an authorization by the board of adjustment or appeals under s. NR 116.21 (4), for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards contained in the floodplain zoning ordinance.

Note: A variance can only be granted by the board of adjustment or appeals. A variance may not permit a use of property otherwise prohibited by the floodplain zoning ordinance or allow construction not protected to the flood protection elevation; it may, however, permit deviations from dimensional standards.

(50) "Watershed" means the entire region or area contributing runoff or surface water to a particular watercourse or body of water.

(51) "Water surface profile" means a graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

(52) "Well" means an excavation or opening in the ground made by digging, boring, drilling, driving or other methods, for the purpose of obtaining groundwater regardless of its intended use.

(53) "Zoning agency" means a commission, board, committee or agency created or designated by the governing body of a municipality which acts on matters pertaining to planning or zoning. Under the provisions of s. 62.23 (7) (d) 2., Stats., the term "zoning agency" also includes the governing body of a city or village.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; cr. (1e), (1s), (30m), Register, June, 1996, No. 486, eff. 7-1-96.

NR 116.05 Adoption and upgrading of floodplain zoning ordinances. (1) **ADOPTION.** Municipalities shall adopt, administer and enforce reasonable floodplain zoning ordinances for all floodplains where serious flood damage may occur within their respective jurisdictions. These ordinances shall meet or exceed the standards in this chapter.

(2) **INCLUSION IN LOCAL REGULATIONS, CODES AND PROGRAMS.** Where necessary, to insure the effectiveness of floodplain management and zoning objectives, the standards in this chapter shall be included in subdivision regulations, building and sanitary codes, flood insurance regulations, stormwater management regulations and other related programs.

(3) **SUBSTITUTION.** Where the department finds that one or more of the following regulations, codes or programs will accomplish the purpose of s. NR 116.01, these regulations, codes or programs may be substituted in lieu of all or portions of floodplain zoning ordinances:

(a) Zoning, acquisition of flooding easements or purchase of floodplain lands to permit only open space uses in floodplain areas.

(b) Flood warning systems.

(c) Building codes.

(d) Subdivision regulations.

(e) Private sewage system ordinances.

(f) Stormwater management regulations.

(4) **UPGRADING ORDINANCES.** Within 6 months from the time any of the information listed below is made available to a municipality by the department, the municipality shall upgrade its floodplain zoning ordinance, using the amendment procedure in s. NR 116.21, to reflect current floodplain information, including, but not limited to, the following:

(a) Changes in floodplain management statutes.

(b) Changes in floodplain management rules.

(c) Changes in floodplain management case law.

(d) New study data.

(e) Improved technical information and methods.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.06 Areas to be regulated. Municipalities shall develop floodplain zoning maps, reflecting the best available data, which show the areas to be regulated. They shall also develop floodplain zoning ordinances to define proper uses in those regulated areas. These floodplain maps and zoning ordinances shall regulate all floodplains where serious flood damage may occur. The minimum limits for regulatory purposes shall be all those areas covered by water during the regional flood.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.07 Standards for hydrologic and hydraulic studies. (1) **GENERAL.** The standards contained in this section shall be the basis for developing both hydrologic and hydraulic information to be used by municipalities for developing floodplain zoning maps and flood profiles, as defined in s. NR 116.09, and for administration of existing floodplain zoning ordinances as defined in s. NR 116.20 (2). The department shall review and approve all studies performed or completed under this section prior to use by any municipality.

(2) **CERTIFICATION AND RESPONSIBILITY OF THE STUDY CONTRACTOR.** Studies shall be completed under the direct supervision of the study contractor who is a registered professional engineer in the state of Wisconsin. The study contractor shall be responsible for the technical adequacy of the study.

(3) **HYDROLOGIC ANALYSIS - DETERMINATION OF REGIONAL FLOOD DISCHARGE.** (a) **Techniques.** Studies to determine the regional flood flow discharge may use the following techniques, if done in accordance with the requirements of par. (b):

1. The log-Pearson Type III distribution method as described in Bulletin #17B of the Hydrology Committee, U.S. Water Resources Council, entitled "Guidelines For Determining Flood Flow Frequency", September, 1981.

2. The current USGS empirical equations, developed from regression analysis of stream gaging data. (See USGS publication

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entitled "Technique for Estimating Magnitude and Frequency of Floods in Wisconsin", by Conger, March, 1981.)

3. Synthetic hydrographs, which are combined and routed through the basin to the downstream end of the study area.

4. When using the synthetic hydrograph technique in subd. 3., the results shall be calibrated to past events where such information is available.

5. Technical Release No. 55 (TR55), entitled "Urban Hydrology For Small Watersheds", Engineering Division, SCS, U.S.D.A., January, 1975.

6. Comparison of similar drainage basins at gaged sites.

7. Historic flood data.

8. Other methods with department approval.

(b) *Required use of techniques.* The following shall be the minimum standards for determining the regional flood flow discharge:

1. The techniques to determine skew under par. (a) 1. may not be used if data from a gaging station in the watershed is not available or is available for a period of less than 10 years. In other cases, the technique to determine skew in par. (a) 1. shall be modified as follows:

a. If data from a gaging station in the watershed is available for 10 or more years but less than 26 years, the station skew shall be weighted with zero skew in accordance with Bulletin #17B.

b. If data from a gaging station in the watershed is available for 26 or more years, the station skew shall be used.

c. Skew values differing from those obtained in subd. 1. a. or b. may be used if they are approved by the department.

2. If the difference in the drainage area at the study site and the drainage area at a gaging station on the same watershed is less than or equal to 50%, the regional flood discharge at the study site shall be determined by transferring the calculated regional flood discharge at the gage by using Bulletin #17B techniques to the study site using a drainage area ratio taken to the "n" power, from page 12 of "Techniques for Estimating Magnitude and Frequency of Floods for Wisconsin Streams", U.S.G.S., Open File Report 80-1214, March 1981.

3. If the difference in the drainage area at the study site and the drainage area at a gaging station in the watershed is more than 50%, or if there is no gaging station in the watershed, at least 2 of the techniques described in par. (a) 2. to 7. shall be used to determine a weighted value of the regional flood discharge.

4. Comparison of similar drainage basins under par. (a) 5. shall be based on basin characteristics using Bulletin #17B 100-year discharges.

5. When using USGS empirical equations under par. (a) 2., the results shall be compared with Bulletin #17B 100-year discharges at gaged sites on similar drainage basins.

6. In all cases where dams or reservoirs, floodplain development or land use upstream have significantly altered the storage capacity or runoff characteristics of the watershed so as to affect the validity of any of the techniques listed in par. (a), the synthetic hydrograph technique in par. (a) 3. or the Technical Release No. 55 in par. (a) 4. shall be used for the determination of the regional flood flow discharge.

7. In rapidly urbanizing watersheds, the municipality shall require that computations for regional flood flow discharges reflect increased runoff from all projected future development. These computations shall be made using one of the following techniques:

a. A synthetic hydrograph based upon projected watershed development shall be produced and routed to critical locations within the study limits.

b. A mathematical model shall be developed to determine the effects of all projected future development in the watershed on the regional flood flow discharge. Local units of government shall

project what percentage of watershed development may occur under existing land use or subdivision ordinances and regional flood discharges shall be based upon that data. Where there are no existing land use or subdivision ordinances which control or regulate future development, total projected development shall be assumed to occupy 70% of the watershed. Where watersheds contain more than one municipality, agreements between those municipalities may be necessary to restrict future watershed development. In order to insure that future regional flood flows do not exceed the regional flood flow discharges used in local regulations, changes in existing land use or subdivision ordinances which may allow an increase or decrease in the projected development in the watershed shall be reflected in regional flood flow discharge values.

(4) **HYDRAULIC ANALYSIS - DETERMINATION OF THE REGIONAL FLOOD ELEVATION.** The following criteria shall be the basis for determining the regional flood profile:

(a) *Reconnaissance.* The study contractor is responsible for the collection of all existing data with regard to flooding in the study area. This shall include a literature search of all published reports in the study area and adjacent communities and an information search to obtain all unpublished information on flooding in the immediate and adjacent areas from federal, state and local units of government. This information shall include specific information on past flooding in the area, drainage structures such as bridges and culverts that affect flooding in the area, available topographic maps, available community maps, photos of past flood events and general flooding problems within the community. The study contractor will coordinate the collection of all available data and published reports with the department. A field reconnaissance shall be made by the responsible engineer to determine hydraulic conditions of the study area including type and number of structures, locations of cross sections and other parameters including roughness values which are necessary for the hydraulic analysis.

(b) *Base data.* Cross sections to be used for the hydraulic analysis may be obtained by one of several methods, including surveying or aerial photography. New or previously surveyed cross sections or topographic information obtained from aerial photographs may be used independently or in combination as the base data to be used in hydraulic analysis. The elevation datum of all of the information to be used in the hydraulic model shall be verified. All information used shall be referenced directly to NGVD unless the elevation datum is otherwise approved by the department.

(c) *Methodology.* Flood profiles shall be calculated by the standard step method, using the Corps of Engineers HEC-2 computer model. Other methods may be used with prior department approval provided that any computer models submitted to the department for review are in a form acceptable for entry into the department's floodplain data repository.

(d) *Floodway determination.* The hydraulic floodway lines shall be determined from the limits of effective flow based on the calculated regional flood water surface profile. Transitions shall take into account obstructions to flow such as road approach grades, bridges or natural restrictions. General guidelines for transitions may be found in "HEC-2, Water Surface Profiles-Users Manual, appendix IV, Application of HEC-2 Bridge Routine" published by the Hydrologic Engineering Center, Davis, California. All areas of the floodplain including overbank areas that can be assumed to convey flood waters shall be included in the hydraulic floodway.

(e) *Previous floodplain studies.* If differences exist between a study previously approved by the department and the contractor's calculated hydraulic floodways or flood profiles, the study contractor shall document justification and obtain departmental approval for these differences. Where the contractor's study differs from existing flood profiles or hydraulic floodways for adja-

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cent communities, verification of the differences will be necessary for department approval of the hydraulic analysis.

(f) *Calculation of the regional flood profile.* The regional flood profile and changes to that profile caused by development in the floodplain, as determined by the hydraulic model, shall be calculated to the nearest 0.01 foot.

(g) *Adequacy of the hydraulic model.* The following factors shall be considered by the department to determine the adequacy of the hydraulic model and the regional flood profile. Upon written request by the department the study contractor shall submit written justification for the following factors:

1. Cross section spacing.
2. Differences in energy grade.

Note: Significant differences in the energy grade from cross section to cross section are an indication that cross sections should be more closely spaced or that other inaccuracies exist in the hydraulic model.

3. Methods for analyzing the hydraulics of structures such as bridges and culverts.
4. Lack of flow continuity.
5. Use of gradually varied flow model.

Note: In certain circumstances, rapidly varied flow techniques shall be used in combination with a gradually varied flow model such as weir flow over a levee or dike, flow through the spillway of a dam or special applications of bridge flow.

6. Manning's "n" values.
7. Calibration of the hydraulic model with past flood events.

(h) *Special applications.* The methods defined in par. (c) shall be used except in special cases, including circumstances where sediment transport, 2 dimensional flow or valley storage affects the accuracy of the hydraulic model. Where the standard step method is unwarranted, the department shall approve the method used for establishing the final water surface profile.

(i) *Base mapping.* In the preparation of a floodplain zoning map to be used by the municipality, the study contractor shall use the best available mapping to delineate floodplain limits.

(j) *Final report.* A narrative report shall accompany the maps and profiles and shall include the following:

1. Purpose of the study and description of the study area.
2. Coordination with other agencies.
3. Data collection.
4. Past flooding.

5. Engineering methods including a detailed description of the methodology used for hydrology, hydraulics and any special applications used in this study.

6. A floodway data table showing cross sections, drainage area, distance between cross sections, floodway top width, discharge, cross sectional area, mean velocity and regional flood elevation.

7. Previous studies on the same watercourse.

8. An appendix which includes:

- a. Drainage basin maps.
- b. Precipitation maps.
- c. Pertinent photographs.
- d. Soil and vegetation maps.

e. Sample calculations of the hydrologic analyses including all unit hydrographs.

- f. Stream flow records.

g. Channel roughness values.

h. Any other data required by the department.

(k) *Wave action on the Great Lakes.* Standards used to determine the regional flood elevation for all municipalities adjacent to the Great Lakes shall be those specified in the publication, "Guidelines and Specifications for Study Contractors, Federal Emergency Management Agency, September 1982, appendix 1B, Wave Runup Analysis".

(5) **DOCUMENT AVAILABILITY.** The materials listed in this subsection are incorporated by reference in the corresponding sub-

sections noted. The document referred to in sub. (3) (a) 1. may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (mention title and stock number 052-045-00031-2). The document referred to in sub. (3) (a) 2. is available for inspection at the Geological Survey - Water Resource Division, U.S. Department of the Interior, 1815 University Avenue, Madison, Wisconsin 53706. The document referred to in sub. (3) (a) 5. is available for inspection at the Soil Conservation Service, U.S. Department of Agriculture, 4601 Hammersley Road, Madison, Wisconsin 53711; it may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22151 (mention title and appropriate accession number: TR55 = PB 244531/AS). The document described in sub. (4) (c) and (d) is available for inspection at the United States Army Corps' Hydrologic Engineering Center, 609 2nd Street, Davis, California 95616. The document referred to in sub. (4) (k) is available for inspection at the Federal Emergency Management Agency Region V Office, 300 South Wacker Drive, Chicago, Illinois 60606 (mention title, date and appropriate appendix number).

(6) **INSPECTION OF DOCUMENTS.** Copies of the documents referred to in sub. (5) are also available for inspection in the following offices:

(a) The department of natural resources, 101 South Webster Street, Madison, Wisconsin;

(b) The office of the secretary of state, 30 W. Mifflin Street, Madison, Wisconsin;

(c) The office of the revisor of statutes, 131 W. Wilson Street, Madison, Wisconsin.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; corrections made under s. 13.93 (2m) (b) 6., Stats., Register, September, 1995, No. 477.

NR 116.08 Uses downstream of dams. (1) GENERAL.

Adequately designed, constructed and maintained dams provide reduced damages and relief from flooding for developed areas. Areas downstream of dams shall be zoned and regulated by municipalities with floodplain zoning ordinances in compliance with the standards in this section, to reduce potential loss of life and property located downstream of the dams. Except as provided in sub. (2), areas downstream of all dams shall be delineated on floodplain maps in accordance with s. NR 116.09 (1) (b) 5. Flood studies and related mapping, completed and adopted prior to August 1, 2001, which calculated flood flow attenuation based on the existence of the dam structures within the contributing basin, may continue to use the dam in-place, no failure, profile.

(2) **EXEMPTIONS.** All dams having a structural height of 6 feet or less, or a storage capacity of 15 acre feet or less, and all dams having a structural height of more than 6 feet but less than 25 feet with a storage capacity of less than 50 acre feet are exempt from the requirements of this section unless the department determines pursuant to s. 31.19, Stats., that the dam is likely to endanger life, health or property.

(3) **COMPLIANT DAMS.** (a) A dam is considered compliant if all the following requirements are met:

1. The dam is structurally adequate to meet the conditions in ss. NR 333.05 (2) (k) and 333.07 (3) (b).

2. The dam is hydraulically adequate to meet the standards in s. NR 333.07 (1).

3. The dam has been certified by a professional engineer, registered in Wisconsin, to meet the requirements of subs. 1. and 2.

4. Written assurance of the dam owner's ability to operate and maintain the dam in good condition is obtained from the dam owner.

5. An emergency action plan to minimize loss of human life has been developed for the area downstream of the dam based on the assumption that the dam fails during the regional flood.

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6. The department reviews and approves the material submitted under subds. 1. to 5.

(b) Developed areas downstream of compliant dams shall be zoned and regulated as follows:

1. For high hazard dams, assuming that the dam is nonexistent during the regional flood.

2. For significant or low hazard dams, assuming the dam fails during the regional flood.

(c) Undeveloped areas downstream of a compliant dam shall be zoned and regulated assuming that the dam fails during the regional flood.

(4) NONCOMPLIANT DAMS. (a) If an existing dam does not meet the standards in sub. (3) (a), the dam is considered noncompliant.

(b) Both developed and undeveloped areas downstream of a noncompliant dam shall be zoned and regulated assuming that dam failure occurs during the regional flood.

(c) The regional flood profile of the area downstream of the dam shall be calculated in accordance with s. NR 333.05 (2) (b).

(5) CONSTRUCTION OF NEW DAMS. (a) Dams constructed after August 1, 2001, shall be considered compliant if the requirements in sub. (3) (a) are met.

(b) Developed areas downstream of the construction of a new dam shall be zoned and regulated as if the dam does not exist until construction is 100% complete and all the conditions of sub. (3) (a) are met.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; CR 00-136: am. (1), (2), (3) (a) 1. to 5., (b), (c), (4) (a) and (b) and (5) (a), Register July 2001, No. 547 eff. 8-1-01.

NR 116.09 Data required to be shown on floodplain zoning maps. Municipalities shall delineate the entire floodplain on their floodplain zoning maps.

(1) If the regional flood profile has been determined, the profile shall be used to develop the floodplain zoning maps which the municipality shall use as the basis for floodplain zoning.

(a) The maps shall show the following:

1. The floodway district;

2. The floodfringe district;

3. The regional flood elevation consistent with the regional flood profile shall be clearly lettered at identifiable positions on the official floodplain zoning maps. If for any reason that elevation is not shown on the maps, the profile shall be attached to and made a part of the maps; and

4. Source and date of study.

(b) In addition to the information in par. (a), the floodplain zoning maps shall include the following information, where applicable:

1. The shallow depth flooding district.

2. The flood storage district.

3. The coastal floodplain district.

4. Floodplain islands.

5. For developed and undeveloped areas downstream of dams, the floodway and floodfringe districts based on 3 conditions:

a. Assuming the dam is in place,

b. Assuming the dam is not in place, and

c. Assuming failure of the dam during the regional flood.

6. For areas adjacent to levees, floodwalls and channel improvements, the floodway and floodfringe districts based on 2 conditions:

a. Assuming the levee, floodwall or channel improvement is not in place, and

b. Assuming the levee, floodwall or channel improvement is in place.

(c) If technical information is available to ascertain the magnitude of floods larger than the regional flood the floodplain limits of these large floods may be reflected on the official floodplain zoning maps and used for either public information purposes or for regulation.

(2) If the regional flood profile has not been determined, maps based upon historical floods, flood prone area maps, flood hazard boundary maps, aerial photos or detailed soils maps may initially serve as a basis for floodplain delineation, provided that the associated text of the zoning ordinance provides for a procedure similar to ss. NR 116.20 (2) and 116.21 (3) to ascertain the effects of all development upon flood flows and the regional flood elevation.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.10 Conflicts between water surface profiles and floodplain zoning maps. Accepted engineering principles and techniques shall govern the transfer of profile elevation for use in delineation of the floodplain limits on the official floodplain zoning maps. If a conflict exists between the floodplain limits illustrated on the maps and the actual field conditions, the elevations from the water surface profile shall be the governing factor in locating the official floodplain limits.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.11 Criteria for establishing and rezoning floodplain districts. **(1) DELINEATION OF FLOODWAY, FLOODFRINGE AND COASTAL FLOODPLAIN DISTRICTS.** Except as provided in sub. (2), the following criteria shall apply to the delineation of floodway, floodfringe and coastal floodplain districts.

(a) *Floodway district.* The official floodway lines shown on floodplain zoning maps shall be the hydraulic floodway lines. These hydraulic floodway lines shall be determined by studies complying with the standards contained in s. NR 116.07.

(b) *Floodfringe district.* All areas within the floodplain landward of the official floodway lines shall be shown as a "floodfringe district."

(c) *Coastal floodplain district.* All areas adjacent to Lake Superior or Lake Michigan within the regional floodplain shall be designated as a coastal floodplain district.

(2) REDELINEATION OR REZONING FLOODPLAIN DISTRICTS. In accordance with the criteria of sub. (3), the following redelineations or rezonings may occur:

(a) *Redelineation or rezoning the floodway district to floodfringe district.* Riverward delineations of the official floodway lines established in accordance with sub. (1) (a) are permissible provided the following criteria are satisfied:

1. Any increase in regional flood height due to the delineation of the official floodway lines riverward from the hydraulic floodway lines shall be approved by the department prior to becoming effective. Increases may only be approved by the department if the provisions of sub. (3) are satisfied.

2. The effects of delineating the official floodway lines riverward from the hydraulic floodway lines shall be calculated by comparing the regional flood profile determined from the hydraulic floodway lines to that profile determined by assuming that the area landward of the revised floodway lines is not available to convey flood flows. Calculations shall conform to the standards contained in s. NR 116.07.

(b) *Redelineation or rezoning floodfringe district to floodway district.* Landward modifications of hydraulic floodway lines to delineate official floodway lines may be permitted provided the following conditions are satisfied:

1. The redelineation of the floodway lines is consistent with other municipal codes, ordinances, and ch. 30, Stats.; and

2. The current hydraulic floodway lines, which reflect the water surface profile used for regulation, shall be kept on file by the municipality.

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(c) *Redelineation or rezoning floodway district to shallow depth flooding district.* For areas subject to shallow depth flooding, the official floodway lines may be delineated riverward of the hydraulic floodway lines, provided all of the criteria in this paragraph are satisfied:

1. The maximum depth of flooding during the regional flood in the shallow depth flooding district may not exceed one foot in depth nor 6 hours in duration. The duration shall be determined by a synthetic hydrograph developed for the watershed and routed through the area;

2. The area is developed complete with existing streets and sewers and is subject to a land use plan, which includes provisions for drainage ways through the area with the capacity to convey that percentage of the regional flood which is flowing through the area under existing conditions;

3. The municipality shall adopt standards outlined in s. NR 116.14 (1) pertaining to shallow depth flooding district;

4. All areas within the hydraulic floodway landward of the official floodway lines shall be designated as "shallow depth flooding district"; and

5. All areas within the floodplain landward of the hydraulic floodway lines shall be delineated as "floodfringe district".

(d) *Redelineation or rezoning floodfringe district to flood storage district.* A "flood storage district" may be established for the area landward of the floodway in lieu of the floodfringe designation where floodplain storage will decrease the calculation of discharge and therefore the regional flood elevation, provided the following criteria are met:

1. The department shall approve the methodology used to analyze floodplain storage to determine revised regional flood elevations.

2. The municipality shall adopt standards outlined in s. NR 116.14 (2) pertaining to the flood storage district.

(e) *Rezoning flood storage district to floodfringe district.* Any proposal to rezone flood storage district to floodfringe district shall comply with the following conditions:

1. Any increase in regional flood height shall be approved by the department prior to becoming effective. Increases in the regional flood elevation may only be approved by the department if the provisions in sub. (3) are satisfied; and

2. The effect of rezoning the flood storage district to the floodfringe district shall be calculated by comparing the regional flood profile used as the basis for zoning to the regional flood profile determined by assuming that the area to be rezoned is not available to store floodwater.

(f) *Rezoning the shallow depth flooding district to floodfringe district.* Any proposal to rezone the shallow depth flooding district to floodfringe district shall comply with the following conditions:

1. Any increase in regional flood height shall be approved by the department prior to the rezoning becoming effective. Increases in the regional flood elevation may only be approved by the department if the provisions in sub. (3) are satisfied;

2. The entire shallow depth flooding district shall be rezoned to floodfringe district; and

3. The effect of rezoning the shallow depth flooding district to the floodfringe district shall be calculated by comparing the regional flood profile determined by the hydraulic floodway lines to the regional flood profile determined by assuming that the entire shallow depth flooding district is not available to convey floodflows. Calculations shall conform to the standards contained in s. NR 116.07.

(3) **CRITERIA FOR REDELINEATION OR REZONING FLOODPLAIN DISTRICTS.** (a) *Initial determinations.* Prior to redelineation or rezoning any floodplain district a municipality shall:

1. Assure that the applicable provisions of sub. (2) are met;

2. Require adequate technical data from the applicant or the municipality and submit such data to the department for review and concurrence in the effect of the proposed amendment on the height of the regional flood;

3. Assure that the proposed amendments meet the purpose of s. NR 116.01;

4. Assure that the appropriate legal arrangements have been made with all property owners affected by the increased flood elevations; and

5. Notify all affected municipalities of increased regional flood elevations.

(b) *Amendment process.* Upon completion of the steps in par. (a), the municipality and any affected municipality shall meet all legal requirements for amending its water surface profiles, floodplain zoning maps and zoning ordinances as established in s. NR 116.21 (6).

(c) *Submission to the department for approval.* If the municipality amends its official floodplain map, it shall also amend its water surface profiles and floodplain zoning ordinance and submit these amendments to the department for approval pursuant to s. NR 116.21 (6). Prior to department approval, all municipalities affected by the increased regional flood elevation shall amend their water surface profiles, floodplain zoning maps and zoning ordinances to reflect the increased regional flood elevations.

(4) **EXCEPTION TO CRITERIA FOR REDELINEATING OR REZONING FLOODPLAIN DISTRICTS.** If, as a result of improved data generated by a revised study approved by the department, and not as a result of changes due to encroachments in the floodplain, the hydraulic floodway line is revised landward of the official floodway lines, the municipality may continue to regulate on the basis of the official floodway lines provided the municipality meets all of the requirements of sub. (3), except the requirement of sub. (3) (a) 4.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.12 Development standards in floodway areas. (1) **PROHIBITED USES.** Municipalities shall prohibit the following uses in floodway areas:

(a) Except as provided in sub. (2), any development which will cause an obstruction to flood flows or an increase in regional flood discharge or will adversely affect the existing drainage courses or facilities.

(b) A structure is always prohibited in, on or over floodway areas if the structure is:

1. Designed for human habitation;
2. Associated with high flood damage potential; or
3. Not associated with permanent open space uses.

(c) Any storage of materials that are buoyant, flammable, explosive or injurious to human, animal, plant, fish or other aquatic life.

(d) Any use which is not in harmony with, or which may be detrimental to, the uses permitted in the adjoining districts.

(e) Any sewage system, whether public or private, except portable latrines that are removed during flooding, or systems associated with recreational areas that meet the applicable provisions of local ordinances and ch. Comm 83.

(f) Any well, whether public or private, which is used to obtain water for ultimate human consumption, except systems associated with recreational areas that meet the applicable provisions of municipal zoning ordinances and chs. NR 811 and 812.

(g) Any solid or hazardous waste disposal facility.

(h) Any wastewater treatment pond or facility except as permitted in s. NR 110.15 (3) (b).

(i) Any sanitary sewer or water line except those used to service existing development or proposed development located outside of the floodway and which comply with the requirement for the floodplain area on which it is located.

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(2) **PERMITTED USES AND STRUCTURES.** Municipalities, using the appropriate procedure described in s. NR 116.21, may issue permits in floodway areas allowing open space uses having a relatively low flood damage potential, such as those uses associated with agriculture, recreation, surface parking lots, storage yards or certain sand and gravel operations. Permits for the following uses or structures may be allowed only if such uses or structures are consistent with all of the standards contained in this subsection and sub. (3) and such uses or structures are not prohibited in sub. (1) (b) to (i).

(a) Certain structures which are accessory to permitted open space uses or historical areas, if the structures meet all of the following criteria:

1. Are not designed for human habitation;
2. Have a low flood damage potential;
3. Are associated with an open space use or are functionally dependant on a waterfront location:

Note: For example, an unloading structure is functionally dependant on a waterfront location to unload boats or barges, but a storage facility is not.

4. Except as provided in sub. (3), are to be constructed and placed on the building site so as to offer no obstruction to flood flows;

5. Are firmly anchored to prevent them from floating away and restricting bridge openings or other constricted sections of the stream or river; and

6. All service facilities, such as electrical and heating equipment, shall be at or above the flood protection elevation for the particular area.

(b) Campgrounds, provided all of the following criteria are met and approval is granted by the department:

1. The character of the river system and the elevation of all portions of the campground are such that 72 hours warning of an approaching flood can be given to all persons using that campground;

2. An adequate flood warning system is in existence which will provide for adequate advance notice to all persons in the campground and make evacuation mandatory. Such a system shall involve an annual renewable written agreement between the campground owner, the emergency government coordinator, the national weather service and the chief municipal law enforcement official which shall specify a flood elevation at which evacuation shall occur;

3. The campground complies with all applicable local and state laws and regulations, including those of the department of health and social services;

4. The campground shall have signs at all entrances warning of the flood hazard involved;

5. Only mobile recreational vehicles with self-contained holding tanks or easily removable tents or camper units are allowable. No other habitable structures or buildings are permitted; and

6. Litter collection facilities shall be placed at or floodproofed to the flood protection elevation or be removed during flooding.

(c) Uses permitted by the department pursuant to chs. 30 and 31, Stats., provided that the necessary permits are obtained from the department and necessary amendments are adopted by the municipality to the official floodway lines, regional flood profiles, floodplain zoning maps and floodplain zoning ordinances.

(d) Public utilities, roads, streets and bridges provided that:

1. Adequate floodproofing measures are provided to the flood protection elevation; and

2. Except as provided in sub. (3), construction may not cause any obstruction to flood flows as reflected in the water surface profile based upon existing conditions.

(2m) **PERMITTED USES, NO PERMIT REQUIRED.** Camping in a camping unit in a floodway area outside of approved campgrounds under sub. (2) (b) is allowed without a permit if the camp-

ing unit consists of nothing more than an easily removable tent or if the following criteria are met:

(a) The camping unit is a mobile recreational vehicle;

(b) The camping unit is on a parcel of land that has less than 4 camping sites and the parcel is not advertised, represented or used as a camping area; and

(c) The camping unit may not occupy the site for a period of more than 180 consecutive days.

(3) **FLOODWAY DEVELOPMENT REQUIRING AMENDMENTS.** Any development in a floodway which will cause an obstruction to flood flows may be authorized by the municipality, but only if amendments are made to the official floodway lines, regional flood profile, floodplain zoning maps and floodplain zoning ordinances in accordance with the criteria established in s. NR 116.11. All such amendments shall meet the provisions of s. NR 116.21 (6).

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; correction made in (1) (f) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; cr. (2m), Register, June, 1996, No. 486, eff. 7-1-96; correction in (1) (e) made under s. 13.93 (2m) (b) 7., Stats., Register July 2001, No. 547.

NR 116.13 Development standards in floodfringe areas. (1) GENERAL.

(a) Municipalities, using the appropriate procedure described in s. NR 116.21, may issue permits allowing uses in floodfringe areas which are compatible with the criteria in this section.

(b) All floodfringe developments shall be compatible with local land use plans. In the absence of formal plans, development shall be compatible with the uses permitted in adjoining districts.

(c) Floodfringe developments may be permitted only if such developments do not cause an obstruction to flood flows of any tributaries to the main stream, drainage ditches, or any other drainage facilities or systems or if amendments are made to the affected official floodway lines, water surface profiles, floodplain zoning maps and floodplain zoning ordinances in accordance with the provisions of ss. NR 116.11 and 116.21 (6).

(d) Floodfringe developments may be permitted only if such developments do not affect the conveyance capacity by causing an obstruction to flow or storage capacity of the floodplains, such that it causes any increase in the regional flood height or discharge.

(2) **RESIDENTIAL USES.** (a) Any structure or building used for human habitation (seasonal or permanent), which is to be erected, constructed, reconstructed, structurally altered or moved into the floodfringe area shall be placed on fill with the finished surface of the lowest floor, excluding basement or crawlway, at or above the flood protection elevation. If any such structure or building has a basement or crawlway, the surface of the floor of the basement or crawlway shall be at or above the regional flood elevation and shall be floodproofed to the flood protection elevation in accordance with s. NR 116.16. No variance may be granted to allow any floor below the regional flood elevation. An exception to the basement requirement may be granted by the department, but only in those communities granted such exception by the federal emergency management agency (FEMA) on or before March 1, 1986.

(b) For all uses under this subsection:

1. Fill shall be not less than one foot above the regional flood elevation;

2. Fill shall extend at such elevation at least 15 feet beyond the limits of any structure or building erected thereon; and

3. Dryland access shall be provided.

(c) If existing streets or sewer lines are at elevations which make compliance with par. (b) impractical, the department may approve the use of other floodproofing measures or methods in accordance with s. NR 116.16. The structure or building shall be floodproofed to the flood protection elevation.

(d) If existing streets or sewer lines are at elevations which make compliance with par. (b) 3. impractical, the municipality

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may permit new development and substantial improvements where access roads are at an elevation lower than the regional flood elevation, provided:

1. The municipality has an adequate natural disaster plan which has been concurred in by the division of emergency government and approved by the department; or

2. The municipality has written assurance from the appropriate units of police, fire and emergency services that rescue and relief can be provided by wheeled vehicles to the structures during regional flooding, taking into account the anticipated depth, duration and velocity of the regional flood event in the area, thereby protecting human life and health and minimizing property damage and economic loss.

(3) **ACCESSORY USES.** Accessory structures not connected to a principal structure, including nonresidential agricultural structures, shall meet the applicable provisions of s. NR 116.12 (2) (a) 1., 2., 5. and 6. and sub. (6). Any such accessory structure may be constructed at elevations lower than the flood protection elevation. However, no accessory structure may be inundated to a depth greater than 2 feet or subject to flood velocities greater than 2 feet per second upon the occurrence of the regional flood.

(3m) **PERMITTED USES, NO PERMIT REQUIRED.** Camping in a camping unit in a floodfringe area outside of an approved campground under s. NR 116.12 (2) (b) is allowed without a permit if the camping unit consists of nothing more than an easily removable tent or if the following criteria are met:

(a) The camping unit is a mobile recreational vehicle;

(b) The camping unit is on a parcel of land that has less than 4 camping sites and the parcel is not advertised, represented or used as a camping area; and

(c) The camping unit may not occupy the site for a period of more than 180 consecutive days.

(4) **COMMERCIAL USES.** Any commercial structure or building which is to be erected, constructed, reconstructed, altered or moved into the floodfringe area shall meet the requirements of sub. (2). Certain yards, parking lots and other accessory structures or uses may be at elevations lower than the flood protection elevation. However, no such area in general use by the public may be inundated to a depth greater than 2 feet or subjected to flood velocities greater than 2 feet per second upon the occurrence of the regional flood. Inundation to depths greater than 2 feet may be approved provided an adequate warning system exists to protect life and property.

(5) **MANUFACTURING AND INDUSTRIAL USES.** Any manufacturing or industrial structure or building which is to be erected, constructed, reconstructed, altered or moved into the floodfringe district shall be protected to the flood protection elevation utilizing fill, adequate floodproofing measures or any combination thereof. On streams or rivers having protracted flood durations, greater protection may be required to minimize interference with normal plant operations. A lesser degree of protection, compatible with these criteria and the criteria in sub. (4), may be permissible for storage yards, parking lots and other accessory structures or uses.

(6) **STORAGE OF MATERIALS.** Storage of any materials which are buoyant, flammable or explosive, or which in times of flooding could be injurious to property, water quality or human, animal, plant, fish or aquatic life, shall be either floodproofed to or placed at or above the flood protection elevation. Adequate measures shall be taken to assure that these materials will not enter the river or stream during flooding.

(7) **PUBLIC UTILITIES, STREETS AND BRIDGES.** (a) If failure or interruption of public facilities would result in danger to the public health or safety or if such facilities are essential to the orderly functioning of the area, adequate floodproofing measures shall be provided to the flood protection elevation; a lesser degree of protection may be provided for minor or auxiliary roads or utilities if these conditions do not exist.

(b) Public utilities, roads, streets and bridges within the floodfringe shall be designed to be compatible with the local floodplain development plans.

(8) **PRIVATE SEWAGE SYSTEMS.** All private sewage systems shall meet the applicable provisions of the local ordinances and ch. Comm 83.

(9) **WELLS.** All wells, whether public or private, shall be floodproofed to the flood protection elevation and shall meet the applicable provisions of chs. NR 811 and 812.

(10) **SOLID OR HAZARDOUS WASTE DISPOSAL FACILITIES.** All solid or hazardous waste disposal facilities, whether public or private, are prohibited in floodfringe areas.

(11) **DEPOSITION OF MATERIALS.** Any deposition of materials for any purpose may be allowed only if the provisions of this section are met.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; correction in (9) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; cr. (3m), Register, June, 1996, No. 486, eff. 7-1-96; correction in (8) made under s. 13.93 (2m) (b) 7., Stats., Register July 2001, No. 547.

NR 116.14 Development standards in other floodplain areas. In cooperation with municipalities, and to insure sound floodplain management, the department may designate or approve the following floodplain districts, in addition to those established in ss. NR 116.12 and 116.13, providing the criteria in s. NR 116.11 are met:

(1) **SHALLOW DEPTH FLOODING DISTRICT.** The standards for permitting development in a floodfringe area under s. NR 116.13 shall be applicable to a shallow depth flooding area except that such development may not result in an obstruction to flood flows. If development does cause an obstruction to flood flows, the development may not be permitted unless the entire shallow depth flooding district is rezoned to floodfringe district according to the criteria established in s. NR 116.11 (2) (f).

(2) **FLOOD STORAGE DISTRICT.** (a) *General.* Municipalities using the appropriate procedure described in s. NR 116.20, may issue permits for development in flood storage areas which are compatible with the criteria for floodfringe areas, as described in s. NR 116.13, providing the provisions of par. (b) are met.

(b) *Flood storage modifications.* When any proposed development would remove flood storage volume, an equal volume of storage, as defined by the ground surface and the regional flood elevation, shall be provided to compensate for the volume of storage which is lost. Excavation below the groundwater table is not considered as providing an equal volume of storage.

(c) *Rezoning of flood storage district.* If compensatory storage cannot be provided, the area may not be developed unless the entire flood storage district is rezoned to floodfringe district utilizing the criteria established in s. NR 116.11 (2) (e).

(3) **COASTAL FLOODPLAIN DISTRICT.** The standards for permitting development in a floodfringe area under s. NR 116.13 shall be applicable in a coastal floodplain area, except that no development may be allowed which:

(a) Will be adversely affected by wave runup along the shore of Lake Michigan or Lake Superior; or

(b) Is associated with a high flood damage potential.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.15 Nonconforming uses and nonconforming buildings. (1) **GENERAL.** Insofar as the standards in this section are not inconsistent with the provisions of ss. 59.69 (10) and 62.23 (7) (h), Stats., they shall apply to all uses and buildings that do not conform to the provisions contained within a floodplain zoning ordinance. These standards apply to the modification of, or addition to, any building and to the use of any building or premises which was lawful before the passage of the ordinance. The existing lawful use of a building or its accessory use which is not in conformity with the provisions of a floodplain zoning ordinance may be continued subject to the following conditions:

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(a) No extension of a nonconforming use, or modification or addition to any building with a nonconforming use or to any nonconforming building, may be permitted unless they are made in conformity with the provisions of this section. For the purposes of this section, the words "modification" and "addition" shall include, but not be limited to, any alteration, addition, modification, rebuilding or replacement of any such existing building, accessory building or accessory use. Ordinary maintenance repairs are not considered structural repairs, modifications or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling, the replacement of doors, windows and other nonstructural components; and the maintenance, repair or replacement of existing private sewage systems, water supply systems or connections to public utilities;

(b) If a nonconforming use or the use of a nonconforming building is discontinued for 12 consecutive months, it is no longer permitted and any future use of the building shall conform with the appropriate provisions contained in ss. NR 116.12, 116.13 and 116.14;

(c) No modification or addition to any nonconforming building or any building with a nonconforming use, which over the life of the building would exceed 50% of its present equalized assessed value, may be allowed unless the entire building is permanently changed to a conforming building with a conforming use in compliance with the applicable requirements of this chapter; and

(d) If any nonconforming building or any building with a nonconforming use is destroyed or is so badly damaged that it cannot be practically restored, it cannot be replaced, reconstructed or rebuilt unless the provisions of ss. NR 116.12, 116.13 and 116.14 are met. For the purpose of this subsection, restoration is deemed impracticable where the total cost of such restoration would exceed 50% of the present equalized assessed value of the building.

(2) FLOODWAY AREAS. (a) No modifications or addition to any nonconforming building or any building with a nonconforming use in a floodway area may be allowed, unless such modification or addition has been granted by permit, special exception, conditional use or variance and meets all of the requirements of sub. (1) and the following criteria:

1. The modification or addition to a building may not increase the amount of obstruction to flood flows; and

2. Any addition to a building shall be floodproofed in accordance with the requirements of s. NR 116.16, by means other than the use of fill, to the flood protection elevation.

(b) No new private sewage system, or addition to an existing private sewage system, may be allowed in a floodway area. Any maintenance, repair or replacement of a private sewage system in a floodway area shall meet the applicable requirements of all municipal ordinances and ch. Comm 83.

(c) No new well, or modifications to an existing well, which is used to obtain water for ultimate human consumption may be allowed in a floodway area. Any maintenance, repair or replacement of an existing well in a floodway area shall meet the applicable requirements of all municipal ordinances and chs. NR 811 and 812.

(3) FLOODFRINGE AREAS. (a) Except as provided in par. (b) or (c), no modification or addition to any nonconforming building or any building with a nonconforming use in the floodfringe area may be allowed unless such modification or addition has been granted by permit, special exception, conditional use or variance and the modification or addition is placed on fill or is floodproofed in compliance with the applicable regulations contained s. NR 116.13 (2).

(b) If compliance with the fill or floodproofing provisions of par. (a) would result in unnecessary hardship, and only if the building will not be used for human habitation and will not be

associated with a high flood damage potential, the county board of adjustment or the city or village board of appeals, using the procedures established in s. NR 116.21 (4), may grant a variance for modifications or additions which are protected to elevations lower than the flood protection elevation if:

1. Human lives will not be endangered;
2. Water or private sewage systems will not be installed;
3. Flood depths will not exceed 2 feet;
4. Flood velocities will not exceed 2 feet per second; and
5. The building will not be used for storage of materials described in s. NR 116.13 (6).

(c) An addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in a floodfringe area on a one time basis only if:

1. The addition has been granted by permit, special exception, conditional use or variance;
2. The addition does not exceed 60 square feet in area; and
3. The addition, in combination with other modifications or additions to the building, does not exceed 50% of the present equalized assessed value of the building.

(d) All new private sewage systems, or additions to, maintenance, repair or replacement of a private sewage system, in a floodfringe area shall meet the applicable requirements of all municipal ordinances and ch. Comm 83.

(e) All new wells, or additions to, replacement, repair or maintenance of a well, in a floodfringe area shall meet the applicable provisions of the floodplain zoning ordinance and chs. NR 811 and 812.

(4) SHALLOW DEPTH FLOODING AREA. No structural repairs, modifications or additions to an existing building, the cost of which exceeds, over the life of the existing building, 50% of its present equalized assessed value, may be allowed in a shallow depth flooding area unless the entire building is permanently changed to conform with the standards prescribed in s. NR 116.14 (1).

(5) FLOOD STORAGE AREA. No structural repairs, modifications or additions to an existing building, the cost of which exceeds, over the life of the existing building, 50% of its present equalized assessed value, may be allowed in a flood storage area unless the entire building is permanently changed to conform with the standards prescribed in s. NR 116.14 (2).

(6) COASTAL FLOODPLAIN AREA. No structural repairs, modifications or additions to an existing building, the cost of which exceeds, over the life of the existing building, 50% of its present equalized assessed value, may be allowed in a coastal floodplain area unless the entire building is permanently changed to conform with the standards prescribed in s. NR 116.14 (3).

(7) MUNICIPAL RESPONSIBILITIES. (a) Municipal floodplain zoning ordinances shall regulate nonconforming uses and nonconforming buildings in a manner consistent with this section and the applicable state statutes. These regulations shall apply to the modification or addition of any building or to the extension of the use of any building or premises which was lawful before the passage of the floodplain zoning ordinance or any amendment thereto.

(b) As permit applications are received for modifications or additions to nonconforming buildings in the floodplain, municipalities shall develop a list of those nonconforming buildings, their present equalized assessed value and a list of the costs of those activities associated with changes to those buildings enumerated in sub. (2) (a) or (3) (a), (b) and (c).

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; correction in (2) (c) and (3) (e) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; correction in (1) (intro.) was made under s. 13.93 (2m) (b) 7., Stats., Register July 2001, No. 547.

NR 116.16 Floodproofing. (1) GENERAL STANDARDS. When floodproofing measures are required by either a municipal

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floodplain zoning ordinance or some other regulation which incorporates by reference the floodproofing requirements of this chapter, such measures shall be designed to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regional flood, to assure that the structures are watertight and completely dry to the flood protection elevation without human intervention during flooding.

(2) **CERTIFICATION.** (a) Whenever floodproofing measures are required, a registered professional engineer or architect shall certify that the following floodproofing measures will be utilized, where appropriate, and are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regional flood:

1. Anchorage of structures, or addition of mass or weight to structures, to prevent flotation.
2. Reinforcement of walls and floors to resist rupture or collapse caused by water pressures or floating debris.
3. Construction of wells, water supply systems and waste treatment systems so as to prevent the entrance of flood waters into such systems.
4. Subsurface drainage systems to relieve external pressures on foundation walls and basement floors.
5. Cutoff valves on sewer lines or the elimination of gravity flow basement drains.
6. Placement of essential utilities above the flood protection elevation.

(b) Whenever floodproofing measures are required, a permit, special exception, conditional use or variance may not be issued until the certification required in par. (a) is submitted to the municipal zoning administrator.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.17 Levees, floodwalls and channel improvements. (1) **GENERAL.** The following standards shall apply to municipal floodplain zoning regulations for areas landward of levees, floodwalls and channel improvements.

(2) **LEVEES OR FLOODWALLS.** (a) A levee or floodwall shall be considered adequate if all of the following criteria and the requirements of par. (b) are met:

1. The minimum top elevation of the levee or floodwall shall be calculated using whichever of the following provides the greater protection from floods:

a. The profile of the regional flood with that regional flood confined riverward of the proposed levee or floodwall, plus 3 feet of freeboard; or

b. The standard project flood and/or the 500 year flood confined riverward of the proposed levee or floodwall.

c. Exceptions to the standards in subd. 1. a. and b. may be granted by the department on a case-by-case basis for levees and floodwalls not used to protect human life.

2. U.S. army corps of engineers standards for design and construction of levees and floodwalls shall be the minimum standard for levees and floodwalls.

3. Interior drainage shall be provided using designated ponding areas, pumps or other similar means, in accordance with U.S. army corps of engineers standards.

4. An emergency action plan, concurred in by the division of emergency government and approved by the department, shall be in effect for the area behind the levee or floodwall that would be in the floodplain without the proposed levee or floodwall in place.

5. The municipality shall provide notification to all persons receiving construction permits in the area behind the proposed levee or floodwall that would be in the floodplain without the proposed levee or floodwall in place that they are in an area protected by a levee or floodwall which is subject to flooding if the levee or floodwall is overtopped.

6. The levee or floodwall shall be annually inspected and certified, by a professional engineer registered in Wisconsin, that the levee or floodwall meets the standards in subds. 1. to 5. Annual reports of the inspection and certification shall be sent to the department for review.

7. The department reviews and approves the material submitted under subds. 1. to 5.

(b) No obstruction to flood flows caused by construction of levees or floodwalls may be allowed unless amendments are made to the floodway lines, regional flood profiles, floodplain zoning maps and floodplain zoning ordinances in accordance with the provisions of ss. NR 116.11, 116.12 (3) and 116.21 (6). Calculations of the effect of the levee or floodwall on regional flood heights shall compare existing conditions with the condition of the regional flood confined riverward of the proposed levee or floodwall.

(c) Floodplain areas protected by the adequate levee or floodwall shall be designated as flood fringe but may be regulated as areas outside of the floodplain unless the department determines that the levee or floodwall is no longer adequate.

(3) **INADEQUATE LEVEES OR FLOODWALLS.** If the department determines that an existing levee or floodwall does not meet the criteria of sub. (2) (a), all floodplain areas landward of the inadequate levee or floodwall shall be regulated as if the levee or floodwall does not exist.

(4) **CHANNEL IMPROVEMENTS.** (a) Channel improvements shall be considered to reduce flooding potential provided the following criteria are met:

1. The channel improvements are designed and constructed in accordance with acceptable standards.

2. Velocities resulting from the channel improvements will not increase downstream erosion.

3. An engineer registered in Wisconsin certifies that the criteria in subds. 1. and 2. are met.

4. The municipality submits a plan detailing how the channel improvements will be maintained.

5. The department reviews and approves the material submitted under subds. 1. to 4.

6. The necessary permits under ch. 30, Stats., are obtained for construction of the channel improvements.

(b) Floodplain areas adjacent to channel improvements approved under par. (a) shall be zoned and regulated in accordance with the reduced regional flood profile provided the channel improvements are maintained in accordance with the plan submitted by the municipality under par. (a) 4.

(c) If the department determines that the channel improvements are not being maintained in accordance with the plan submitted by the municipality under par. (a) 4., the floodplain zoning map shall be amended to reflect existing channel conditions.

(5) **NEW CONSTRUCTION OF LEVEES, FLOODWALLS OR CHANNEL IMPROVEMENTS.** No anticipated changes in the flood protection elevations or floodplain and floodway limits, based upon proposed levees, floodwalls or channel improvements, may be effective until the improvements are constructed, operative and approved by the department.

(6) **AGRICULTURAL LEVEES.** (a) Municipalities may permit agricultural levees which meet all applicable provisions of this subsection. For purposes of this subsection, an agricultural levee is one constructed to protect agricultural lands from floods that occur on a 10-year frequency or more often.

(b) Agricultural levees shall be designed and constructed so that the levees will overtop upon the occurrence of the 10-year frequency flood.

(c) Increases in flood heights in the area upstream from agricultural levees may not exceed 0.5 foot (15 cm.) for the 10-year

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frequency flood. No increase is allowed unless the written consent of the affected property owners is obtained prior to construction.

(d) Agricultural levees shall be designed and constructed to be overtopped and to cause no increase in flood elevation during the occurrence of the regional flood.

(e) The municipality's zoning administrator shall notify the department of the construction of any agricultural levees.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.18 Procedures for changing floodplain, floodway, floodfringe, shallow depth flooding, flood storage and coastal floodplain district limits. Municipalities may not change the limits of the floodplain or the floodway, floodfringe, shallow depth flooding, flood storage or the coastal floodplain district without first amending the applicable portions of the water surface profiles, floodplain zoning maps and floodplain zoning ordinances in accordance with s. NR 116.11 and securing department approval for such amendments. No area in the floodplain may be removed from the floodplain unless it can be shown that the area has been filled to the flood protection elevation and is contiguous to other lands lying outside the floodplain.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.19 Appointment and duties of zoning administrator, zoning agency and board of adjustment or appeals. (1) **APPOINTMENT POWERS.** Municipalities shall provide in their floodplain zoning ordinances for the appointment of appropriate boards and staff, and the development of necessary policies and procedures, to administer the floodplain zoning ordinance in accordance with this section. If a zoning administrator, zoning agency or a board of adjustment or appeals has already been appointed to administer a zoning ordinance adopted under s. 59.69, 59.692 or 62.23 (7), Stats., these officials shall also administer the floodplain zoning ordinance.

(2) **ZONING ADMINISTRATOR.** A zoning administrator and such additional staff as needed shall be appointed and given the duties and powers to:

(a) Advise applicants of the provisions of the floodplain zoning ordinance and provide assistance in preparing permit applications and appeals;

(b) Issue permits and inspect properties for compliance with the floodplain zoning ordinance;

(c) Keep the official records of, and any changes to, all water surface profiles, floodplain zoning maps, floodplain zoning ordinances, nonconforming buildings and nonconforming uses and the official records of all permit applications, permits, appeals, variances and amendments related to the floodplain zoning ordinance;

(d) Submit copies of any required data, special exception permits, variances, amendments, case-by-case analyses, annual reports and any other required information to the department. An annual summary showing only the number and types of zoning actions taken by the municipality shall be submitted to the department by the zoning administrator; and

(e) Investigate, prepare reports and report violations of the floodplain zoning ordinance to the appropriate municipal committee and to the municipal attorney, corporation counsel or district attorney, with copies to the appropriate department district office.

(3) **ZONING AGENCY.** (a) A zoning agency shall be appointed and given the duties and powers to:

1. Oversee the functions of the office of the zoning administrator;

2. Review and act upon all proposed amendments to the floodplain zoning ordinance; and

3. Maintain a complete public record of all its proceedings.

(b) In some cases, a zoning agency may act in place of the board of adjustment or appeals, if so designated by the municipal-

ity, to hear and decide special exception or conditional use permits. However, a zoning agency cannot act upon requests for a variance.

(4) **BOARD OF ADJUSTMENT OR APPEALS.** A board of adjustment, in counties or board of appeals, in cities and villages shall be appointed and given the duties and powers in accordance with ss. 59.694 and 62.23 (7), Stats., to:

(a) Hear and decide appeals where there is an alleged error in any interpretation, order, requirement, decision, or determination made by the zoning administrator in the enforcement or administration of the floodplain zoning ordinance;

(b) Hear and decide all requested special exceptions or conditional uses to the terms of the floodplain zoning ordinance, using the criteria found in s. NR 116.21 (3);

(c) Hear and decide all requested variances to the terms of the floodplain zoning ordinance;

(d) Maintain a complete public record of all its proceedings; and

(e) Make all of its decisions within a reasonable time and in the form of a written statement, resolution or order signed by the secretary. The zoning administrator may not be the secretary of the board of adjustment or appeals.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; corrections in (1) and (4) (intro.) were made under s. 13.93 (2m) (b) 7., Stats., Register July 2001, No. 547.

NR 116.20 Municipal responsibilities. (1) **JURISDICTION.** (a) The floodplain zoning ordinance shall require authorization through permits, special exceptions, variances and amendments, from the appropriate municipality for any of the following activities in floodplain areas:

1. Any new use or change in use of land or water.

2. Any new use or change in use of a structure or building.

(b) The activities in par. (a) include, but are not limited to, the following:

1. Any structure, building or accessory structure or building which is to be erected, constructed, reconstructed, altered or moved into the floodplain area;

2. Any alteration, addition, modification, rebuilding or replacement of any existing structure, building or accessory structure or building;

3. Any deposition of materials for any purpose; and

4. Any sewage disposal system or water supply facilities, both public and private.

(2) **ADMINISTRATIVE PROCEDURES.** The floodplain zoning ordinance shall establish administrative procedures for obtaining all required permits, special exceptions, conditional uses, variances, appeals and amendments. These procedures shall provide for the following:

(a) An application shall be made to the zoning administrator for all zoning permits, special exceptions, conditional uses, variances and amendments. The application shall include, but not be limited to, the following information:

1. The name and address of the applicant and property owner;

2. The legal description of the property and the type of proposed use;

3. A map plan which accurately locates or describes the proposal with respect to the floodway and floodplain, and which provides all pertinent information such as the fill dimensions and elevations, building floor elevations, and floodproofing data; and

4. For all subdivision proposals, as defined in s. 236.02 (8), Stats., and for other land divisions or proposed developments which have a total area that exceeds 5 acres or which have an estimated cost that exceeds \$125,000, the applicant shall provide all of the computations which are required to show the effect of the proposal on flood heights, velocities and floodplain storage. The municipality may transmit this data to the department for review. For the purpose of this paragraph, the cost of the proposal shall be

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estimated to include all structural development and landscaping improvements such as access and road development, electrical and plumbing services development, and other similar items, which can be reasonably applied to the overall development costs, but may not include the cost of the land.

(b) For land divisions and proposed developments which do not exceed 5 acres in area and which have an estimated cost of \$125,000 or less, if the regional flood profile has not been determined and the conditions in par. (a) 4. are not present, the municipality may transmit the information required in par. (a) 1. to 3. to the department for a determination of flood protection elevations and for an evaluation of the effects of the proposal upon flood heights, velocities and floodplain storage. Additional information, such as valley cross sections or survey data, may be required by the department when needed to determine the effects of the proposal; this information shall then be obtained from the applicant by the municipality. The department shall advise the municipality of its findings within 30 days after receiving the data, or within 30 days after receiving all requested additional information. Failure of the department to respond within 30 days shall be construed to mean it has no comment.

(c) Public hearings shall be held by municipalities on all special exceptions, conditional uses, variances, appeals and amendments. Proper notice shall be given of such public hearings in accordance with appropriate statutes; mailed notice of such public hearings and a copy of the application shall be given to the appropriate department district office. Such notice shall specify the time and place of the hearing and give sufficient details concerning the subject matter of the public hearing.

(d) A copy of all decisions granting or denying a special exception, conditional use, variance or amendment to the floodplain zoning ordinance shall be mailed within 10 days to the appropriate department district office.

(3) **CERTIFICATE OF COMPLIANCE.** No vacant land in the floodplain, and no building hereafter erected, altered or moved into the floodplain, may be occupied or used until the applicant obtains a certificate of compliance from the municipality. Municipalities shall require that the certificate be issued only after the applicant has submitted, prior to occupancy, to the municipal zoning administrator or building inspector a certification by a registered professional engineer or architect that the floodproofing requirements in the floodplain zoning ordinance have been met and a certification by a registered professional engineer, architect or registered land surveyor that the following are in compliance with the floodplain zoning ordinance:

- (a) The elevation of fill; and
- (b) The elevation of the lowest floor including basement floor.

(4) **ENFORCEMENT AND PENALTIES.** Each floodplain zoning ordinance shall include a separate section establishing appropriate penalties for violations of various provisions of the ordinance. An appropriate penalty, as reflected in s. 87.30 (2), Stats., may include an injunction for abatement or removal, and a fine or forfeiture. Any violation of the provisions of the floodplain zoning ordinance shall be investigated and reported to the appropriate municipal attorney, corporation counsel or district attorney for the prosecution of the violator.

(5) **PUBLIC INFORMATION.** (a) Where useful, marks on bridges or buildings or other markers may be set to show the depth of inundation during the regional flood at appropriate locations within the floodplain.

(b) All available information in the form of maps, engineering data and regulations shall be readily available and should be widely distributed.

(c) All legal descriptions of property in the floodplain should include information relative to the floodplain zoning classification when such property is transferred.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.21 Permits, special exceptions, conditional uses, variances, appeals and amendments. (1) **GENERAL.** The floodplain zoning ordinance shall list the specific types of uses which may be authorized by permit, special exception or conditional use, indicating the particular authorization required for each type of use. These authorizations may not be contrary to the provisions of this chapter or other state law, or to applicable municipal ordinances.

(2) **PERMITS.** Municipalities shall issue permits for uses in floodplain areas which are in compliance with the applicable provisions for permitted uses in their floodplain zoning ordinances. These permits shall be issued by the zoning administrator.

(3) **SPECIAL EXCEPTIONS OR CONDITIONAL USES.** Any use requiring a special exception or conditional use permit may be allowed only upon application to the zoning administrator, public hearing and issuance of a special exception or conditional use permit by the board of adjustment or appeals or, where appropriate, the zoning agency. When determining whether to grant or deny a special exception or conditional use permit, the board of adjustment or appeals shall assure compliance of the proposal with:

- (a) The provisions of the floodplain zoning ordinance;
- (b) The purpose and objective of floodplain management, as enumerated in s. NR 116.01; and
- (c) Local land use plans and other land use controls.

(4) **VARIANCES.** Any prohibited deviation from the dimensional standards of the floodplain zoning ordinance, for which a permit has been denied by the zoning administrator, may be allowed only upon written request for a variance submitted to the zoning administrator, public hearing and issuance of a variance by the board of adjustment or appeals. The board of adjustment or appeals may, after a written request for a variance has been submitted and a public hearing has been held, authorize in specific cases such a variance from the dimensional standards of the ordinance which will not be contrary to the public interest if, owing to special conditions and the adoption of the floodplain zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship. A variance:

- (a) Shall be consistent with the spirit of the floodplain zoning ordinance.
- (b) May not permit a lower degree of flood protection in the floodplain area than the flood protection elevation.
- (c) May not be granted for a use that is common to a group of adjacent lots or premises. In such a case, the zoning ordinance would have to be amended through proper amendment procedures.
- (d) May not be granted unless it is shown that the variance will not be contrary to the public interest and will not be damaging to the rights of other persons or property values in the area.
- (e) May not be granted for actions which require an amendment to the floodplain zoning ordinance as described in sub. (6).
- (f) May not have the effect of granting, increasing or extending a use of property which is prohibited in that zoning district by the floodplain zoning ordinance.
- (g) May not be granted solely on the basis of economic gain or loss.
- (h) May not be granted for a self-created hardship.

(5) **APPEALS.** Appeals to the board of adjustment or appeals or zoning agency may be taken by any party aggrieved by any decision of the zoning administrator. Requests for special exception or conditional use permits may be considered as appeals. Such appeals shall specify the grounds thereof and be filed within a reasonable period of time with the zoning administrator. The floodplain zoning ordinance shall set forth the time limitations for filing appeals. The zoning administrator shall forthwith transmit to the board of adjustment or appeals or zoning agency all records of the matter concerning the appeal. After public hearing, the board's or agency's decision shall either affirm, reverse, vary or modify in

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whole or in part the order, requirement, decision or determination appealed from. All appeal decisions shall conform to the applicable provisions of the floodplain zoning ordinance. The board's or agency's decision may be appealed to the courts in accordance with applicable state law.

(6) AMENDMENTS. (a) Official amendments are required for any changes in the official floodway lines, water surface profiles, floodplain zoning maps or floodplain zoning ordinance. Actions which require an amendment by the municipality include, but are not limited to, the following:

1. Any change in the official floodway lines or in the boundary of the floodplain area;
2. Settlement of conflicts between the water surface profiles and floodplain zoning maps, in accordance with s. NR 116.10;
3. Any fill, encroachment or development into the floodway which will result in obstructing flood flows; and
4. Any upgrading of floodplain zoning ordinances in accordance with s. NR 116.05.

(b) Amendments may be made upon petition of any interested party in accordance with the appropriate provisions of ss. 59.69 (3) and (4) and 62.23 (7) (d), Stats.

(c) All proposed amendments shall be referred to the appropriate municipal zoning agency for a public hearing and recommendation to the governing body which shall approve or disapprove the proposed amendment.

(d) Amendments of official floodway lines shall meet the provisions of s. NR 116.11.

(e) No amendments to official floodway lines, water surface profiles, floodplain zoning maps or floodplain zoning ordinances may become effective until they have been approved by the department.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; corrections in (6) (b) were made under s. 13.93 (2m) (b) 7., Stats., Register July 2001, No. 547; reprinted to restore dropped copy in (4), Register October 2002 No. 562.

NR 116.22 Department duties. (1) ASSISTANCE TO MUNICIPALITIES. The department shall provide assistance to municipalities in the development, adoption and administration of their official floodway lines, water surface profiles, floodplain zoning maps and floodplain zoning ordinances. Such assistance shall include, but not be limited to, the activities described in this subsection.

(a) The department shall establish and upgrade standards for local floodplain zoning ordinances.

(b) When requested by a municipality, the department shall evaluate flood hazards and the effects of proposals in floodplain areas upon water surface profiles, floodway limits and flood velocities as provided in s. NR 116.20 (2) (b). Requests for such evaluations shall come from a municipality, not from individual property owners or applicants. Information needed to conduct the evaluation shall be provided by the applicant or the municipality.

(c) The department shall work with federal agencies to provide technical guidance and computer facilities for certain hydrologic, hydraulic and engineering studies. Generally, the necessary topographic and other base maps and field surveys will be the responsibility of the municipality.

(d) The department shall establish priorities for engineering studies to be done in municipalities by federal agencies.

(e) The department shall respond to the requests from municipalities to provide them assistance in enforcement actions against violations of their floodplain zoning ordinances.

(f) The department shall respond to requests from municipalities for assistance in developing hydraulic and official floodway lines.

(g) The department shall review all studies. No studies may be used until department approval has been secured.

(2) REVIEW AND APPROVAL OF FLOODPLAIN ZONING ORDINANCES. The department shall issue a certificate of approval to a municipality upon a finding that the adopted floodplain zoning ordinance meets the provisions of this chapter. The department review of floodplain zoning ordinances may include, but is not limited to, determinations that:

(a) The most accurate maps were utilized in delineating the floodplains;

(b) All floodplain zoning maps and floodplain zoning ordinances are compatible with all other shoreland regulations, existing zoning and land use plans;

(c) All water surface profiles, floodplain zoning maps and floodplain zoning ordinances are compatible with those of the adjoining municipalities on the same streams or rivers; and

(d) The floodway and floodplain lines shown on the floodplain zoning maps are accurate.

(3) MONITORING. The department shall monitor the administration and enforcement of floodplain zoning ordinances in municipalities. In so doing, the department may:

(a) Establish and upgrade standards for the review and evaluation of the administration and enforcement of floodplain zoning ordinances.

(b) Review and approve or deny proposed amendments to water surface profiles, floodplain zoning maps and floodplain zoning ordinances.

(c) Review floodplain zoning permits and all special exceptions, conditional uses, variances and amendments to floodplain zoning ordinances, to ensure in each instance compliance with the applicable floodplain zoning ordinances and this chapter.

(d) Review state and federal projects to assure that public works proposals in floodplains are compatible with local floodplain zoning ordinances and the provisions of this chapter.

(4) ENFORCEMENT. The department shall assist municipalities in achieving a consistent statewide approach to floodplain enforcement. This assistance may include, but is not limited to, the measures listed in this subsection.

(a) The department may request that corrective action be taken by the municipality where construction is occurring in a floodplain area which is either contrary to an existing floodplain zoning ordinance or which would be contrary to an approved floodplain zoning ordinance. Such corrective action may include, where appropriate, the following:

1. Active prosecution of violations of the floodplain zoning ordinance;

2. An injunction to stop construction until an adequate floodplain zoning ordinance can be adopted and approved by the department; and

3. Adoption of an adequate floodplain zoning ordinance and submittal to the appropriate department district office for approval.

(b) The department may seek an injunction to stop construction in the floodplain area until an adequate floodplain zoning ordinance is adopted and approved.

(c) The department may seek an injunction to stop construction in the floodplain area when the construction would violate an approved floodplain zoning ordinance or the provisions of this chapter.

(d) The department may seek adoption of an adequate floodplain zoning ordinance in accordance with the provisions of s. 87.30 (1), Stats., or an upgrading of a floodplain zoning ordinance in accordance with s. NR 116.05.

(e) The department may seek an injunction for abatement or removal or a fine or both for any violation of a floodplain zoning ordinance in accordance with s. 87.30 (2), Stats.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.



DuWayne Johnsrud

State Representative

December 5, 2002

Representative Glenn Grothman, Assembly Co-Chair
Joint Committee on Review of Administrative Rules
Interdepartmental mail, Room 15 North

Senator Judy Robson, Senate Co-Chair
Joint Committee on Review of Administrative Rules
Interdepartmental mail, Room 15 South

Dear Co-Chairs Grothman and Robson:


A constituent of mine is seeking relief from an administrative rule relating to shoreland zoning ordinances that is overly burdensome and unnecessary. Currently, NR 115.05 (3)(e) prohibits the improvement (in excess of 50% of the assessed value) of a non-conforming structure in shoreline areas except that routine maintenance may be done. I think that the flood proofing of an existing structure should be considered routine maintenance that is not limited to 50% of the buildings value.

Flood proofing should not be considered an "improvement" to the building because it is not done for the enjoyment of the building. Flood proofing is done merely to preserve a building from water damage. It is similar to putting new shingles on a roof; it is routine maintenance that is necessary for the preservation of the structure and is clearly not considered to be an improvement.

The legislative remedy that is available to correct this situation is for the Joint Committee for Review of Administrative Rules to suspend NR 115.05 (3)(e). The legislature would eventually have to pass a bill that would require the Governor's signature in order to permanently repeal the rule.

Flood proofing is an important part of building maintenance for many people. I ask you to consider holding a hearing on this rule and voting to suspend NR 115.05 (3)(e).

Sincerely,


DuWayne Johnsrud
State Representative
96th Assembly District



DuWayne Johnsrud

State Representative

December 5, 2002

Thomas F. Peterson
110 East Haydn Street
PO Box 430
Prairie du Chien, WI 53821

Dear Mr. Peterson:


Thank you for writing to tell me about the unfortunate situation that you are in relating to shoreland zoning ordinances. I think that flood proofing an existing structure should not be considered an "improvement" to the building because it is not done for the enjoyment of the building. Flood proofing is done merely to preserve a building from water damage. It is similar to putting new shingles on the roof; which is a routine maintenance practice that is necessary for the preservation of the structure and is clearly not considered to be an improvement.

The legislative remedy that is available to correct this situation is to bring it to the attention of the Joint Committee for Review of Administrative Rules and ask that they hold a hearing and vote to suspend the rule upon which Crawford County's ordinance is based. The legislature would eventually have to pass a bill that would require the Governor's signature in order to permanently repeal the rule, unless the DNR agreed to suspend it under the agency's own rule making authority.

The rule that applies in your situation is Chapter NR 115.05 (3)(e). I will bring this provision to the attention of the committee and ask that they take action to suspend the rule because it causes and unnecessary hardship for you and for other people with whom I am familiar. A copy of my request to the Co-chairs of the Joint Committee for Review of Administrative Rules is attached.

I agree that flood proofing is an important part of building maintenance for many people. It is of far greater importance than adding new rooms to a building. I will ask the Joint Committee on Administrative Rules to repeal NR 115.05 (3)(e).

Sincerely,


DuWayne Johnsrud
State Representative
96th Assembly District



Gabe Loeffelholz
STATE REPRESENTATIVE

January 6, 2003

Representative Glenn Grothman, Co-Chair
Joint Committee on Review of Administrative Rules
State Capitol, Room 15 North
Madison, WI

Senator Joe Leibham, Co-Chair
Joint Committee on Review of Administrative Rules
State Capitol, Room 409 South
Madison, WI

Dear Co-Chairs Leibham and Grothman,

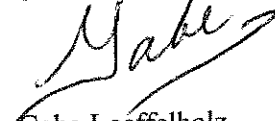
A constituent of mine is seeking relief from an administrative rule relating to a shoreland zoning ordinance. NR 115.05 (3) (e) prohibits the improvement in excess of 50% of the assessed value of a non-conforming structure in shoreline areas except for routine maintenance. It is my belief flood proofing should be considered part of routine maintenance and exempted from NR 115.05 (3) (e).

Flood proofing should not be considered an improvement to a building because it is not undertaken to improve the aesthetics of the building. Flood proofing is done to protect the building from water damage. Just like putting new shingles on a roof is routine maintenance necessary for the preservation of the home's structure, flood proofing is undertaken to protect the home not to add to the homeowner's enjoyment.

I would like to formally request the Joint Committee on Review of Administrative Rules suspend NR 115.05 (3)(e). I understand the Legislature would eventually have to pass a bill, requiring the Governor's signature, to permanently repeal the rule.

Co-Chairs Grothman and Leibham, this rule is causing a great hardship for homeowners in western Wisconsin. Please consider acting on my request as soon as possible. If you have any questions or would like additional information please do not hesitate to contact me.

Sincerely


Gabe Loeffelholz
State Representative

CC: Steve Walker

49th Assembly District

Post Office Box 8952 • Madison, WI 53708-8952 • (608) 266-1170 • Toll-Free: 1 (888) 872-0049

E-mail: Rep.Loeffelholz@legis.state.wi.us

Forest County Zoning

From: Forest County Zoning <fczone@co.forest.wi.us>
To: <Sen.Lazich@legis.state.wi>; Senator Welch <Sen.Welch@legis.state.wi.us>; Rep Leibham <Rep.Liebham@legis.state.wi.us>; Rep Carpenter <Rep.Carpenter@legis.state.wi.us>; Senator Robson <Sen.Robson@legis.state.wi.us>
Cc: Rep Seratti <Rep.Seratti@legis.state.wi.us>
Sent: Monday, January 20, 2003 2:36 PM
Subject: hearing, DNR

Members of the Joint Committee for Review of Administrative Rules,

On Thursday you will meet to hear the Department (DNR), present testimony regarding Nr 115(shoreland rules)and NR 116 (wetland rules) that deal with the issue of "nonconforming structures".

Until the DNR started using "common law" the term "non-conforming" ment, a bar in a residential area or a mill in a commercial zone. After the Department began utilizing common law, a non conforming use grew to include all pre-existing legal residences in the shoreland set back area. Notation in State Statute read: "Zoning ordinances, being in derogation of common law, are to be construed in favor of the free use of private property. Cohen v. Dane Co. Brd. of Adjustment, 74 Wis. 2d87, 246 N.W.2d 112"

The Counties have learned to live with NR 115 & 116. It should remain the County's choice how much private property to label non-conforming and what to do with that property, if they choose to designate it as such. Their argument, that homes on the shore land degrade water quality, are unproven.

Our County has 82% of its lands in public ownership. Further mandated designations of non-conforming will strangle the remaining tax base.

At this time of budget crisis it would be more prudent to leave NR 115 & 116 as is. Counties have spent large sums fine tuning their zoning ordinances. If it wasn't right, they were un-elected, and the next board would aim for that perfect balance of property rights and property responsibility.

Sincerely,
Pam LaBine
Forest County Zoning Administrator, NR 115 Re-Write Committee

JCRAR JANUARY 23RD HEARING ADDITIONAL INFORMATION

TO: JCRAR MEMBERS
FROM: REP. GROTHMAN, JCRAR CO-CHAIR
SUBJECT: CLARIFICATION OF NR 115 AND 116
DATE: 01/22/2003

Please find the following materials enclosed:

1. An amended hearing notice to clarify that JCRAR will be looking at NR 115 and NR 116's regulation of nonconforming structures *only with regard to flood proofing*.
2. Letters from Representatives Johnsrud and Loeffelholz stating their concerns with the abovementioned rule.

If you have any questions or require additional information, please do not hesitate to contact my office at 4-8486.

Thank you.



DuWayne Johnsrud

State Representative

January 23, 2003

Joint Committee on the Review of Administrative Rules

Dear Co-chairs Grothman and Leibham and committee members:

I am here to ask you to suspend portions of Chapters NR 115 and NR 116 because the DNR is arbitrarily (*based on random choice or impulse and despotic, unrestrained power*) and capriciously (*guided by a whim, impulsively*) using these rules to push people out of their homes.

Hundreds of people reside at least part of the year in the flood plain of wonderful rivers like the Mississippi, the Wisconsin, the St. Croix, and the list goes on. In 1980, the federal government attempted to alleviate property loss during flooding by managing the way these areas were developed.

But the DNR went a step farther and said the people who were already living in the shadow of these great rivers had to go. By forcing property owners to neglect maintenance of their homes and cabins, the DNR wants these people and their buildings to just fade away with no compensation for the land they are losing.

These people should be able to stay and today the legislature can offer relief.

- Federal Code does not prohibit the improvements that many people have made. FEMA rules prohibit substantial improvements only if they will result in an increase in flood levels (44 CFR Ch. 1).
- FEMA's 50% rule applies to individual projects and *not* to improvements over the life of the building or structure.
- **Minnesota** is consistent with federal rules, **Iowa** even encourages floodproofing.
- But our DNR says that improvements to nonconforming structure may not exceed 50% of the structure's assessed value *over the life of the structure*.
- Flood proofing is not a substantial improvement, it only moves the building up and out of floodwaters and would actually decrease the flood level.
- Flood proofing really is just maintenance because it does not expand the footprint of a building, does not create a different type of use and, does not increase the owner's enjoyment of the property.

-MORE-



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2056

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 24, 2003

P. Scott Hassett, Secretary
Department of Natural Resources
101 South Webster Street
Madison, WI 53707-7921

Dear Secretary Hassett:

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 23, 2003 and adopted the following motion:

NR 116

Relating to Wisconsin's Floodplain Management.

1. That, the Joint Committee for Review of Administrative Rules (JCRAR) requests the Department of Natural Resources (DNR) amend s. NR 116.15(1)(c) to provide that ordinary maintenance repairs, in a floodplain, to a nonconforming building or a building with a nonconforming use includes floodproofing.
 2. If DNR does not indicate in writing, by 5:00 p.m. on February 7, 2003, that it will comply with the request made in item 1., above, then JCRAR, pursuant to s. 22.26(2)(d), Stats.,:
 - a. Determines that DNR's current policy, providing that floodproofing is a modification or addition under s. NR 116.15(1)(c), meets the definition of a rule; and
 - b. Directs DNR, as of February 7, 2003, to promulgate the policy relating to floodproofing as an emergency rule under s. 227.24(1)(a), Stats., within 30 days.
- Motion Carried 10 Ayes, 0 Noes, 2 Absent.

Pursuant to s. 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,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

Vander Sanden, Patrick

From: Delaporte, Maggie
Sent: Tuesday, January 21, 2003 5:27 PM
To: *Legislative Assembly Democrats; *Legislative Assembly Republicans; *Legislative Senate Democrats; *Legislative Senate Republicans; Sklansky, Ron; Nussbaum, Jody; Burhop, Sarah; Kluesner, Elizabeth M
Subject: AMENDED Joint Committee for Review of Administrative Rules Notice

AMENDED
JOINT
COMMITTEE HEARINGS

Joint Committee for Review of Administrative Rules

The Joint Committee for Review of Administrative Rules will hold a **PUBLIC HEARING** and may hold an **EXECUTIVE SESSION** on the following items at the time specified below:

Thursday, January 23, 2003

9:00 AM

Room 225 Northwest

State Capitol

Madison, Wisconsin

Emergency Rule DOC 316

Relating to Medical, Dental and Nursing

Co-payment Charge. The Department of Corrections requests an extension of the effective period of this emergency rule for 60 days.

Emergency Rule HFS 109

Relating to Seniorcare. The Department of Health and Family Services requests an extension of the effective period of this emergency rule for 60 days.

NR 115 and 116

Relating to the Regulation of Nonconforming Structures with regard to flood proofing. The Department of Natural Resources will present testimony regarding these rules.

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2056

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 24, 2003

The Honorable Alan Lasee
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable John Gard
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Lasee and Speaker Gard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 23, 2003 and adopted the following motions:

Emergency Rule DOC 316 Relating to Medical, Dental and Nursing Co-payment Charge.
Moved by Representative Grothman, seconded by Senator Leibham that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends DOC 316 at the request of Department of Corrections by 60 days. Motion Carried 10 Ayes, 0 Noes, 2 Absent.

Emergency Rule HFS 109 Relating to Seniorcare.
Moved by Representative Grothman, seconded by Senator Leibham that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends HFS 109 at the request of Department of Health and Family Services by 60 days. Motion Carried 10 Ayes, 0 Noes, 2 Absent.

NR 116 Relating to Wisconsin's Floodplain Management.
1. Moved by Representative Glenn Grothman and seconded by Senator Robert Welch that, the Joint Committee for Review of Administrative Rules (JCRAR) requests the Department of Natural Resources (DNR) amend s. NR 116.15(1)(c) to provide that ordinary maintenance repairs, in a floodplain, to a nonconforming building or a building with a nonconforming use includes floodproofing.
2. If DNR does not indicate in writing, by 5:00 p.m. on February 7, 2003, that it will comply with the request made in item 1., above, then JCRAR, pursuant to s. 22.26(2)(d), Stats.:
a. Determines that DNR's current policy, providing that floodproofing is a modification or addition under s. NR 116.15(1)(c), meets the definition of a rule; and
b. Directs DNR, as of February 7, 2003, to promulgate the policy relating to floodproofing as an emergency rule under s. 227.24(1)(a), Stats., within 30 days.

Motion Carried 10 Ayes, 0 Noes, 2 Absent.

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,



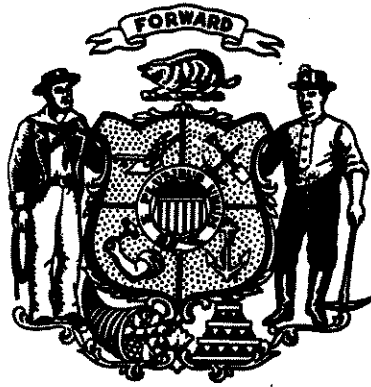
Senator Joseph Leibham
Senate Co-Chair



Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

END



END

NR 302

NR 302

JCRAR – AUGUST 19, 2003
9:00 a.m. – 412 East

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter NR 302

MANAGEMENT OF WISCONSIN'S WILD RIVERS

NR 302.01	Purpose.	NR 302.05	Department cooperation.
NR 302.02	Definitions.	NR 302.06	Utility corridors.
NR 302.03	Management of lands adjacent to wild rivers.	NR 302.07	Municipal and department of transportation public highway bridges.
NR 302.04	Wild rivers alteration.		

NR 302.01 Purpose. The purpose of this chapter is to establish a management program designed to protect legislatively designated wild rivers from development so as to afford the people of this state an opportunity to enjoy those rivers in their natural and free-flowing condition and to assure the well-being of Wisconsin's tourist industry by attracting out-of-state visitors, which the legislature has deemed to be in the public interest.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79.

NR 302.02 Definitions. (1) "Wild rivers" for the purpose of this chapter are those rivers designated by the legislature in s. 30.26, Stats., namely:

(a) The Pike river in Marinette county from its mouth in section 3, township 34 north, range 21 east, upstream to the headwater branches; one branch beginning at the outlet of Coleman lake in section 17, township 36 north, range 18 east, and the other branch beginning at the outlet of North pond in section 20, township 37 north, range 18 east.

(b) The Pine river in Florence and Forest counties from its mouth in section 28, township 39 north, range 19 east, upstream to the headwater branches; one branch beginning at the outlet of Butternut lake in section 27, township 40 north, range 12 east, and the other branch beginning in section 11, township 38 north, range 12 east.

(c) The Popple river in Florence and Forest counties from its mouth in section 23, township 39 north, range 17 east, upstream to the headwater branches; one branch beginning in section 10, township 38 north, range 13 east, one branch beginning in section 23, township 38 north, range 13 east, and one branch beginning in section 24, township 38 north, range 14 east.

(2) "Free flowing condition" means waters which do not contain dams or other artificial development or structures which serve to materially impede the flows of the stream.

(3) "Natural condition" means free from development or alteration, except as specifically authorized by this chapter.

(4) "Protection zone" is that area of land within 400 feet of the waters or to the visual horizon from the water whichever is greater on either side of the wild river.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79.

NR 302.03 Management of lands adjacent to wild rivers. (1) On lands owned or under control of the department by lease, easement or agreement, the department may:

(a) Carry out erosion control measures necessary to protect the lands within the protection zone from erosion caused by human disturbance using natural materials not foreign to the immediate surroundings.

(b) Carry out restoration activities necessary to restore the natural appearance of river areas previously modified by man, without introduction of materials foreign to the immediate surroundings, implementing a natural evolutionary process.

(c) Carry out forest fire suppression activities.

(d) Develop limited walk-in access areas to allow or accommodate the launching of water craft.

(e) Except as provided in pars. (a) and (b) provide no vegetative control within 150 feet from the bank on either side of a wild river. Outside timber cutting in accord with the guidelines established in the department's silvicultural and forest aesthetics handbook shall be practiced.

(f) Erect signs or markers on the perimeter of the protection zone necessary for guidance and regulation of recreational use or users.

(g) Control insect outbreaks that endanger land or vegetation outside of the protection zone.

(h) Locate primitive campsites well screened by vegetation or topography from the wild rivers. Such campsites shall not provide public vehicular access.

(i) Except as otherwise provided in this section, conduct no grading on the banks of the wild rivers.

(2) On those lands owned or under control of the department by lease, easement or agreement there shall be no development, including campgrounds adjacent to shorelines in any protection zones; and there shall be no development, other than that necessary to accommodate the users of the wild river areas, beyond the protection zone and up to at least 1/4 of a mile from either side of the wild rivers.

(3) Pursuant to and to the extent possible under s. 28.11, Stats., the comprehensive county forest land use plan shall designate management practices to assure the preservation, protection and enhancement of the natural beauty, unique recreational and other inherent values in and along wild rivers.

(4) (a) *Forest croplands.* Pursuant to and to the extent possible under ch. 77, Stats., department supervision or management advice shall recognize the presence of wild rivers running through such entered lands and protect wild rivers values.

(b) *Woodland tax law lands.* Pursuant to and to the extent possible under s. 77.16, Stats., the management plan shall recognize the presence of wild rivers running through such entered lands and protect wild river values.

(5) The department shall prepare a memorandum of understanding in cooperation with the United States forest service regarding its management of lands and waters in the wild rivers area. This memorandum of understanding shall take into consideration the guidance by s. 30.26, Stats., public law 88-577, and public law 90-542 and the guidelines established by this chapter.

(6) The department shall provide information and land use recommendations regarding development on, or adjacent to wild rivers whenever requested by private citizens or groups, as well as industry, and shall seek to provide such information, without request, when such proposed development in those areas come to the department's attention.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79.

NR 302.04 Wild rivers alteration. (1) DAMS. To preserve the free flowing state of wild rivers, no man-made dams or other man-made structures which impound water shall be permitted on such rivers with the exception of those projects, licensed by the federal energy regulatory commission, in existence prior to November 18, 1965.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(2) **BULKHEAD LINES, STRUCTURES OR DEPOSITS.** Except as otherwise provided in s. NR 302.03, to protect and preserve the public rights including maintenance of natural condition, beauty, and rights incident to navigation no permits or approvals for bulkhead lines or other structures or deposits as defined in ss. 30.11 and 30.12, Stats., shall be permitted.

(3) **CHANNEL CHANGES, ENLARGEMENTS, DREDGING AND GRADING.** Except as otherwise provided in s. NR 302.03 or the removal of man-made or constructed objects and structures, no dredging of materials from the bed of any wild river shall be permitted, nor shall channels be connected to a wild river, nor shall any pond or enlargement be permitted within 400 feet of the ordinary high watermark of any wild river. Further, no channel changes pursuant to s. 30.195, Stats., shall be permitted, nor any grading or other removal of topsoil on the bank of a wild river.

(4) **SHORE PROTECTION.** Shoreline protection measures defined in s. 30.12 (3) (a), Stats., may be permitted if:

(a) Natural materials not foreign to the immediate surroundings are used; and

(b) Are necessary only to restore man-induced erosion areas to a more natural state.

(5) **BRIDGES.** To preserve the natural condition and beauty and other incidents of navigation in the wild rivers, no bridges, except as provided in s. NR 302.07, shall be permitted unless they comply with the following requirements:

(a) Reasonable access to a residential dwelling is not available without use of a bridge crossing and the applicant proves a need as defined in par. (b).

(b) Bridges shall be designed to accommodate foot traffic only unless an applicant proves a need, other than convenience, for vehicle passage over the bridge. Provided, the obtaining of property rights or ownership, or development of property to which access is sought, subsequent to the effective date of these rules does not prove need for vehicle passage over a bridge.

(c) Bridges shall be clear span and provide a minimum clearance of 5 feet between the ordinary high watermark and the stringer or lowest portion of the bridge, unless the department determines a lesser clearance is appropriate due to aesthetic conditions will not infringe on public rights in navigation on the wild river in the area of the proposed bridge placement.

(d) Bridges shall be constructed in a manner that results in the least impact on the natural condition and beauty of the river, taking into consideration materials necessary for the traffic and weight the bridge is to support.

(6) **PIERS.** To protect and preserve public rights in the maintenance of the natural condition and beauty, no piers shall be constructed in the wild rivers.

(7) **NATURAL OBSTRUCTIONS.** In order to maintain the wild character of a river, natural obstructions shall not be removed by the department.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79; correction in (4) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register January 2002 No. 553.

NR 302.05 Department cooperation. The department shall consult with state, federal and local governmental bodies and their planning agencies in the development of a program for the preservation, protection and enhancement of the wild rivers.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79.

NR 302.06 Utility corridors. (1) On other than department owned or controlled land, the department shall, to the best of its ability coordinate with all interested governmental units and other interested persons in the location of proposed utility corridors crossing or affecting wild rivers so as to avoid crossing those rivers and reduce or minimize the impact of such utility corridors on them.

(2) On department owned or controlled land, the department shall exercise its authority in a manner consistent with s. 30.26, Stats.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79.

NR 302.07 Municipal and department of transportation public highway bridges. (1) The provisions of this chapter do not apply to the replacement, reconstruction, maintenance or repair of department of transportation public highway bridges falling within the provisions of s. 30.12 (4), Stats., and the replacement and reconstruction of municipal public highway bridges falling within the provisions of s. 30.122, Stats.

(2) Consistent with the legislative direction in ss. 30.12(4), 30.122 and 84.01 (23), Stats., the department shall actively consult with the department of transportation in the development of standards for the design and replacement of state, county, town, village and city bridges, arches or culverts to prevent undue impairment of public rights in the wild rivers. It shall further act under cooperative agreements with the department of transportation so that adverse affects of bridge replacement, reconstruction, maintenance and repair on the wild rivers and lands adjacent thereto are minimized to the fullest extent practicable under legislative mandates. In the development and implementation of such standards for wild rivers, necessary new structures should cross the stream in the same location as the old crossing or adjacent to it when practical, consonant to highway safety and a practical alternative site with lesser impacts on the wild river is not available.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79.

**Glenn
Grothman**
STATE REPRESENTATIVE
58TH ASSEMBLY DISTRICT

Office:
Post Office Box 8952 • Madison, Wisconsin 53708-8952
(608) 264-8486 • Toll-Free: (888) 534-0058
Rep.Grothman@legis.state.wi.us
www.legis.state.wi.us/assembly/asm58/news/index.html

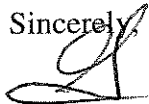
Home:
111 South 6th Avenue
West Bend, Wisconsin 53095
(262) 338-8061

March 14, 2003

Representative Lorraine Seratti
17 North State Capitol
Madison, WI 53702

Dear Lorraine:

Thanks much for your letter regarding NR 302. I'd be happy to hold a hearing, but I need more information and specifically what portion of NR 302 you would like to suspend.

Sincerely,


Glenn Grothman
State Representative
58th Assembly District

GG/mjd

Cc: Senator Joe Leibham



Office of the
County Clerk
Geraldine L. Meyer
County Clerk
Florence County
Board of Supervisors

August 8, 2003

Representative Lorraine Seratti
Room 18 North State Capitol
P.O. Box 8953
Madison, WI 53708-8953

Dear Representative Seratti,

Thank you in advance for the opportunity to provide comment in regard to the need for review of State Administrative Code NR 302.

Based on our experience in Florence County, NR 302, "Management of Wisconsin's Wild Rivers", is a clear candidate for review. This Administrative Rule approved in 1978, has proved a valuable tool for the protection and management of our Wild Rivers. However, since 1978, several issues dealing with recreational user groups, Public Health and Safety, and restoration of the ecological health of the Wild Rivers itself have been delayed, postponed, or denied. Our primary concern is not with NR 302 as a rule but with a lack of clarifying language.

Due to the generic nature of some of this well intended Administrative Code, the DNR has been able to provide follow-up legal opinions that have compromised Florence County, recreational users, and the rivers themselves.

We support review of NR 302 to eliminate this "Opinion" driven management style. The DNR will continue to experience conflict, opposition, and controversy concerning the Wild Rivers Program without NR 302 review.

Florence County supports a review effort and looks forward to involvement in the process.

Sincerely,

Ed Kelley, Chairman
Florence County Board of Supervisors

EK/lw

Hard copy to Follow



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

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

TESTIMONY OF DEPARTMENT OF NATURAL RESOURCES ON WILD RIVERS

Before Joint Committee on Review of Administrative Rules
August 19, 2003

In 1965, Wisconsin's wild river statute, along with several similar water resource protection laws, was passed in recognition of the economic importance of lakes and rivers to Wisconsin communities – and the visible impacts of intensive development on the water quality, fisheries and natural scenic beauty of urbanizing southeastern Wisconsin's lakes and rivers.

The wild river law, section 30.26, Wisconsin Statutes, begins with this statement of legislative intent:
“In order to afford the people of this state an opportunity to enjoy natural streams, to attract out-of-state visitors and assure the well-being of our tourist industry, it is in the interest of this state to preserve some rivers in a free-flowing condition and to protect them from development...”

By statute the legislature designated the Pike, Pine and Popple Rivers in Marinette, Florence and Forest Counties as wild, and prescribed that other wild rivers be designated by statute. These three rivers are the only ones thus far to be designated under the state wild rivers law. [Several other state rivers are protected with similar intent by different mechanisms (the Namekagon and St. Croix as federally designated wild and scenic rivers; the Bois Brule as a state forest corridor; and the Lower Wisconsin as a state scenic riverway).]

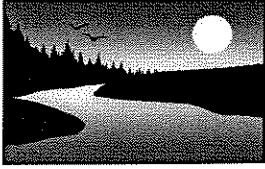
Chapter NR302, Wisconsin Administrative Codes, was adopted in 1979 to clearly establish the management program required by the state wild rivers statute. The rule sets standards for DNR's management of state lands as well as DNR regulatory decisions on comparable private lands.

The Natural Resources Board approved a master plan for the acquisition and management of state land along the three wild rivers in 1981.

Local governments and a range of river user groups advised the Department in the development of the rule and the master plan. In October 2002, participants in a session held in Florence to gather comments on the master plan generally recommended continuing with the 1981 master plan.

The Department of Natural Resources believes that select communities across the state could benefit from protection of tourist-attracting, natural river features as envisioned by the legislature when it adopted the wild rivers law. The legislature could designate additional rivers under section 30.26, the other forms of protection in use on our rivers already, or new mechanisms developed in Wisconsin or elsewhere.

River Alliance of Wisconsin



306 E. Wilson St., Ste. 2W
Madison, WI 53703
(608) 257-2424
wisrivers@wisconsinrivers.org
www.wisconsinrivers.org

TO: The members of the Joint Committee for the Review of Administrative Rules

FROM: Richard Bogovich, Policy Project Manager

DATE: April 29, 2003

RE: Support for NR 302, relating to Wisconsin's Wild Rivers

The River Alliance of Wisconsin is a strong supporter of NR 302, the Department of Natural Resources' rule that applies to the Pine, Popple and Pike Rivers. Wisconsin's three designated "wild rivers" are some of the crown jewels among our state's many rivers. Thirty-eight years ago – five years before the budding environmental movement coalesced around the first Earth Day – these waterways were given special status because our state recognized their rarity and value, as well as the need to protect their pristine nature. Given that tourism is more important to the economy of northern Wisconsin than ever before, protecting these relatively unique waters is all the more critical.

The River Alliance is a non-profit, non-partisan group of citizens, organizations, and businesses dedicated to advocating for the protection, enhancement, and restoration of the 40,000 miles of rivers and streams in our state. River advocates from around the state, including anglers, hunters, paddlers, landowners and business people, founded the River Alliance in 1993 to build an informed and active constituency for Wisconsin's rivers. Our current statewide network of river advocates includes more than 1,800 individual and business members and more than 45 organizations – one of the largest memberships of statewide river advocacy groups in the country. We also have a number of members in Illinois, which reflects the fact that Wisconsin offers rustic and sometimes rugged recreational opportunities that just aren't available to our south. We are very interested in the short- as well as the long-term fate of the three state-designated wild rivers, and we look for every opportunity to partner with diverse stakeholders in their watersheds.

River Alliance members have been involved in recent discussions regarding the Pine River. The Pine is a Class II trout stream, meaning that it "contains a population of trout made up of one or more age groups, above the age one year, in sufficient numbers to indicate substantial survival from one year to the next" though some stocking is necessary. Instead of moving toward

becoming a Class I trout stream with a self-sustaining population of trout, at a March forum Jim Swanson, president of the Florence County Lakes and Rivers Association (FCLARA) noted that this wild river has seen a decline in the trout population since his boyhood. At that same forum, Warren "Bucko" Soderberg, who was characterized as a "legendary local fisherman" in the *Florence Mining News*, made a heartfelt plea to prevent damage to the rivers: "Please allow me to pass this fishing experience on to my grandchildren." Members of both Trout Unlimited and FCLARA are investing their time and financial resources to help improve and restore the fishery. This can only benefit tourism in the region.

Such sentiments and commitments in Florence County are not new. In 1924, the County developed a land use plan that specified types of uses allowed along the Pine and the Popple, for the specific purpose of "optimum outdoor experience."

The popularity of the trio of state-designated wild rivers is also evident statewide. For example, a story in the *Milwaukee Journal Sentinel* on April 28, 2002, touted the virtues of the Pike River in Marinette County. Don Clewley, executive director of the Marinette County Association for Business and Industry, noted that the Pike is classified as a wild river and that the "free flow adds to the beauty." He also said that, "Seeing the waterfalls is really a popular thing. It brings in a lot of people."

About two years earlier, Dennis McCann of the *Journal Sentinel* staff sang the praises of LaSalle Falls on the Pine River in one of his columns. A story in *Wisconsin State Journal*, Madison's morning paper, on July 9, 1997, promoted the whitewater paddling virtues of both the Pine and the Popple. Natural Resources Board members visited the area about two years earlier. In the autumn of 1998 the Department of Tourism under Governor Tommy Thompson also recognized the statewide appeal of the Pine and Popple when it awarded \$20,000 to the Friends of the Wild Rivers Interpretive Center in Florence County to increase spring tourism. However, we would encourage the Department of Tourism to do more to promote the three state-designated wild rivers. A description of Wisconsin attractions that the Department provided to the *Wisconsin State Journal* on May 4 of this year read, "Maybe whitewater rafting, canoeing or kayaking is your thrill. Wisconsin has plenty of wild rivers to choose from." It then listed the Wolf and the Peshtigo in the northeast, plus two rivers in the northwest, but didn't mention the Pine, Popple, or Pike.

The River Alliance of Wisconsin expects the DNR to maintain its commitment to gradual restoration of these wild rivers, and toward that end we recommend that the Department, consistent with NR 302.03(1)(b), dismantle the abandoned railroad trestle that crosses the Pine River less than a mile to the east of State Highway 139. In a letter to the DNR in mid-March of this year, the Sierra Club and the River Alliance endorsed an alternate route for the Nicolet Trail that would incorporate a crossing suitable for all-terrain vehicles at Hwy 139.

It is our understanding from DNR field staff that there is ongoing illegal access and crossing of this bridge. A sign and board barrier are not keeping traffic off the bridge. In the short term, DNR must at least post "no trespass" signs and remove decking so the bridge is not passable. The DNR could also put concrete pillars at either end of the bridge to help block motorized access. We are concerned about whether this would actually work and how this could be enforced. We also expect that this would not address the pressures from the ATV community. Having the trail approach the bridge from both directions but with barriers or impediments on the bridge might encourage unauthorized river fords that would be harmful to the river and sensitive

wetland areas. Under no circumstances should DNR return the bridge to the Department of Transportation or attempt to turn it over to the County. It would be unwise to saddle the County with legal liabilities it can ill afford. Under NR 302 the DNR cannot delegate or shirk its duty to protect state-designated wild rivers. Ultimately, it is the DNR's responsibility to protect these rivers and to provide a responsible and sustainable solution to this question. We assert that an ATV crossing at Hwy 139 would be a responsible and sustainable solution.

Other concerns we have were expressed in the Sierra Club/River Alliance letter to the DNR in mid-March:

To step back and briefly examine this difficulty in a broader context, we remain highly concerned by the DNR's Nicolet Trail master planning process. It seems the process failed to recognize the potential conflict of this trail right-of-way with the Pine and Popple Wild Rivers and their existing legal protections. This clearly indicates a need for improved master planning processes, to be conducted in a way that involves broader interdepartmental input, as well as input from other agencies and external stakeholders such as local citizen groups and statewide organizations.

We are concerned that the Department's staffing shortages have inappropriately compromised the protection of this valuable resource. The Department's lack of acknowledgement for the Wild Rivers, and its historic lack of staffing commitment to Wild Rivers and to river programs in general, highlights an area that has been of great concern to our organizations for some time, and calls for greater commitment on the part of the agency in the future. With Wisconsin's lake development "maxed out," our rivers are truly the "last frontier," and we fear that attacks to shorelands and rivers will increase without increased departmental vigilance and support.

As the department works to resolve this, our organizations would welcome the opportunity to partner in the process and see a resolution that would provide a model for resolving other similar conflicts elsewhere. We believe that the best way to move forward is with multi-agency support and commitment to sustainable solutions and policies for the future.

The Department needs to respond expeditiously to resolve this issue. This will demonstrate that the Department acknowledges its responsibilities under the state Wild Rivers law and administrative rules and that it respects the concerns of local governments and our groups.

In conclusion, we respectfully ask the members of the Joint Committee for the Review of Administrative Rules to keep in mind that the Pine, Popple and Pike constitute a very small percentage of the 40,000 miles of rivers and streams in Wisconsin. There are so few rivers like them in our state, and therefore there should be no retreat from the policies that protect them.



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2056

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

August 20, 2003

The Honorable Alan Lasee
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable John Gard
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Lasee and Speaker Gard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on August 19, 2003 and adopted the following motions:

NR 302 **Relating to the Management of Wisconsin's Wild Rivers.**
Pursuant to s. 227.24(2)(d) and 227.19(4)(d)(5&6), stats. the Joint Committee for Review of Administrative Rules suspends NR 302(5)(a)(b).

Clearinghouse Rule 03-017 **Relating to the regulation of baiting and feeding to control and manage chronic wasting disease.** The Joint Committee for Review of Administrative Rules moved:

1. Pursuant to s. 227.19 (5) (b) 2., Stats., the Joint Committee for Review of Administrative Rules recommends that the Department of Natural Resources (DNR) modify Clearinghouse Rule 03-017 by providing that the rule will not apply after June 30, 2004.
2. Pursuant to s. 227.19 (5) (b) 2., Stats., the Joint Committee for Review of Administrative Rules recommends that DNR modify Clearinghouse Rule 03-017 by providing that:
 - a. Baiting for the purpose of hunting deer be allowed only when all of the following conditions have been met:
 - (1) Baiting occurs during an open season for hunting deer.
 - (2) Baiting occurs outside of a chronic wasting disease eradication zone, a chronic wasting disease management zone, or an intensive harvest zone.
 - (3) No more than two gallons of bait are spread daily by a scattering method or a broadcast method at no more than two sites in a 40 acre parcel. The two gallon limit is a daily limit at both sites so that no more than four gallons may be spread in a 40 acre parcel.

- b. Feeding for the purpose of viewing deer be allowed only when all of the following conditions have been met:
- (1) Feeding occurs north of state highway 54.
 - (2) Feeding occurs outside of a chronic wasting disease eradication zone, a chronic wasting disease management zone, or an intensive harvest zone.
 - (3) No more than two gallons of feed are spread daily by a scattering method or a broadcast method within 50 yards of an owner occupied residence.
3. If DNR fails to indicate in writing, by 5:00 on Friday, August 29, 2003, that the it will make the recommended modifications described in Motions 1 and 2, then, pursuant to s. 227.19 (4) (d) 5. and 6. and (5), Stats., the Joint Committee for Review of Administrative Rules objects to Clearinghouse Rule 03-017.

Pursuant to s. 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,



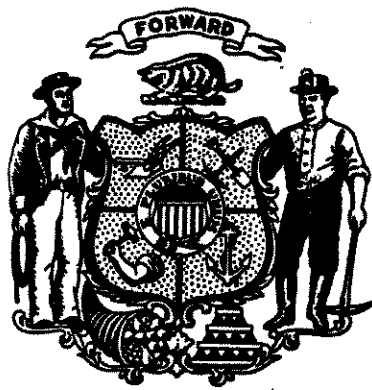
Senator Joseph Leibham
Senate Co-Chair



Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG;pvs

END



END

NR
809

**NR 809.705(1)(b)2 & (1)(c);
and the State Laboratory of Hygiene
policy and fees regarding fluoride
testing**

JCRAR Public Hearing/Executive Session
Thursday, February 19, 2004
9:00 a.m.
Room 300 SE

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

to insure that the public receives the highest quality water practicably obtainable.

(3) The department may require that laboratory test results submitted to the department under this section be performed by a laboratory certified or registered under ch. NR 149.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (2), Register, April, 1982, No. 316, eff. 4-1-82; cr. (3), Register, April, 1986, No. 364, eff. 8-28-86; renum. from NR 109.61, Register, July, 1993, No. 451, eff. 8-1-93; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register November 2002 No. 563.

Subchapter V — Miscellaneous Chemical Monitoring Requirements, Raw Surface Water Standards, Certified Laboratories and Approved Methods for Safe Drinking Water Analysis

NR 809.70 General requirements. Public water systems shall meet applicable minimum monitoring requirements stated in this chapter. The department may increase monitoring requirements of any section of this chapter, if the department deems such an increase is necessary to protect public health, safety and welfare. The department may decrease the monitoring requirements of any section of this chapter, if the department determines that such a decrease will not adversely affect protection of public health, safety or welfare.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91; renum. from NR 109.70, Register, July, 1993, No. 451, eff. 8-1-93.

NR 809.705 Additional requirements for systems which chlorinate or fluoridate water. (1) **FLUORIDE.** (a) The supplier of water for a community water system artificially fluoridating the water shall establish a monitoring program in order to maintain the fluoride concentration within the range of 1.0 to 1.5 milligrams per liter as recommended by the dental health section of the department of health and family services for optimum dental benefits.

(b) The monitoring program shall include:

1. Submission of the results of daily fluoride tests of samples from the distribution system, and
2. One sample per month taken from a representative location in the distribution system and submitted to the state laboratory of hygiene.

Note: For waterworks with large distribution systems and multiple sources, more than one fluoride test per day may be necessary to assure proper feed rates. See NR 811.54 (5) for testing equipment requirements. Exceptions to the daily fluoride test requirement may be approved by the department if it is demonstrated that the optimum fluoride concentration in par. (a) will be maintained by a reduced monitoring program.

(c) The sample submitted to the state laboratory of hygiene shall be a portion of a split sample so that the operator can determine the fluoride concentration with the operator's equipment and compare it to the state laboratory results. The fluoride concentration obtained by the operator shall be noted on the data sheet prior to submission to the state laboratory.

(2) **CHLORINE.** The suppliers of water for all waterworks which chlorinate water shall test chlorine residuals at locations and intervals necessary to control the chlorination process. At ground water supplies, the chlorine residual of a sample from a representative location in the distribution system shall be checked at least twice per week. Waterworks having surface water treatment plants shall determine the chlorine residual in the plant effluent at least every 2 hours and in the distribution system at least daily in representative locations. Where water quality changes rapidly, residuals shall be tested at more frequent intervals as specified by the department and in those individual cases, continuous monitoring equipment may be required if the department determines it is necessary to protect public health. Chlorine residual testing is required when bacteriological samples are taken.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (b) 1., Register, April, 1982, No. 316, eff. 5-1-82; renum. from NR 809.70 and am. (2), Register, March, 1991, No. 423, eff. 4-1-91; renum. from NR 109.705, Register, July, 1993, No. 451, eff. 8-1-93; correction in (1) (a) made under s. 13.93 (2m) (b) 6., Stats., Register November 2002 No. 563.

NR 809.71 Raw surface water standards. The intake water shall be the highest quality reasonably available and which, with appropriate treatment and adequate safeguards, will meet the drinking water standards in this chapter.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. Register, March, 1991, No. 423, eff. 4-1-91; renum. from NR 109.71, Register, July, 1993, No. 451, eff. 8-1-93.

NR 809.72 Laboratories. (1) For the purpose of compliance with ss. NR 809.12, 809.13, 809.14, 809.21, 809.23, 809.25, 809.26, 809.547 and 809.549, samples shall be analyzed at the state laboratory of hygiene, at a laboratory facility acceptable to the U.S. environmental protection agency, or at a laboratory certified for the safe drinking water test category under ch. NR 149. For the purpose of compliance with ss. NR 809.31, 809.52 and 809.78, bacteriological and radiological samples shall be analyzed at a laboratory facility certified or approved by the department of agriculture, trade and consumer protection, or at a laboratory facility acceptable to the U.S. environmental protection agency.

(2) All community water systems utilizing surface water sources shall analyze bacteriological samples for in-plant operational control at a laboratory facility approved by the department of agriculture, trade and consumer protection.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; renum. to be (1), cr. (2), Register, April, 1982, No. 316, eff. 5-1-82; am. (1), Register, April, 1986, No. 364, eff. 8-28-86; am. (1), Register, August, 1989, No. 404, eff. 9-1-89; am. (1), Register, March, 1991, No. 423, eff. 4-1-91; renum. from NR 109.72 and am. (1), Register, July, 1993, No. 451, eff. 8-1-93; corrections made under s. 13.93 (2m) (b) 6., Stats., Register, October, 1997, No. 502.

NR 809.725 Approved analytical methods for safe drinking water analyses. (1) Only the following analytical methods are approved for analysis by this chapter:

(8) **WATER RESOURCES RESEARCH.** Funds made available to the various state agencies for joint water resources research and data collection programs shall be administered and coordinated by the director of the water resources center of the University of Wisconsin-Madison. Such funds shall be made available, on application from the state agencies concerned, when the director, after seeking the advice of the department of natural resources, finds the proposed projects to be consistent with other state projects and the needs of the state. The director shall make biennial reports to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), at the convening of the legislature.

(9) **STATE SOILS LABORATORY.** The board shall establish a state soils and plant analysis laboratory in connection with the College of Agricultural and Life Sciences of the University of Wisconsin-Madison and the University of Wisconsin-Extension. The laboratory shall, at the request of the owner or occupant of any lands in the state and upon the payment of such fees as are prescribed, make field examinations and analyses of the soil and plant tissue and when possible interpret the results of such investigation and make appropriate recommendations. The board through the College of Agricultural and Life Sciences of the University of Wisconsin-Madison may cause an investigation to be made of methods of clearing cutover lands, perform experiments and demonstrations in conjunction therewith and provide related services to individual citizens at cost.

(10) **PHARMACEUTICAL EXPERIMENT STATION.** The board may establish, equip and maintain a pharmaceutical experiment station in the school of pharmacy of the University of Wisconsin-Madison for the purpose of cooperating with other state agencies in the cultivation of medicinal plants, the synthesis and production of high-grade drugs and the dissemination of related information and service to the citizens of the state.

(11) **STATE LABORATORY OF HYGIENE.** (a) The laboratory of hygiene shall be attached to the University of Wisconsin-Madison. The laboratory of hygiene board shall meet at least quarterly and may promulgate rules under ch. 227, approve the laboratory of hygiene budget, set fees, set priorities and make final approval of laboratory resources so that the laboratory can act in response to agencies' planned objectives and program priorities.

(b) The laboratory shall provide complete laboratory services in the areas of water quality, air quality, public health and contagious diseases for appropriate state agencies, and may perform examinations for licensed physicians, veterinarians, local health officers, as defined in s. 250.01 (5), and resource management officials as may be necessary for the prevention and control of those diseases and environmental hazards which cause concern for public health and environmental quality.

(c) The laboratory shall provide analytical support to the appropriate state agencies charged with water system evaluation. The support service shall include an evaluation from a public health standpoint and analytical support to ascertain the water's suitability for manufacturing, commercial and recreational purposes as determined by the rules promulgated by the department of health and family services, the department of natural resources and the department of agriculture, trade and consumer protection.

(d) The laboratory shall be operated to furnish a complete laboratory service to the department of health and family services and the department of natural resources in the areas of water quality, air quality, public health and contagious diseases and to make available to the system, the department of health and family services and the department of natural resources such facilities for teaching in the fields of public health and environmental protection as may be derived from such a laboratory.

(e) The technical staff and other employees necessary to the operation of the laboratory shall be employed under the classified service by the director. The board, upon the recommendation of the chancellor of the University of Wisconsin-Madison, with the approval of the laboratory of hygiene board, shall appoint the

director of the laboratory and such other members of its professional staff as are required for the administration of the laboratory.

(em) The laboratory of hygiene board shall create and maintain a roster of scientists and other persons with technical expertise who are willing to work for the laboratory of hygiene if the governor declares that an emergency related to public health exists. If the governor declares such an emergency, the laboratory of hygiene board shall hire as limited-term employees the requisite number of persons from the roster to assist the department of health and family services under s. 250.042.

(f) The laboratory of hygiene board may impose a fee for each test conducted by the laboratory. Any test conducted for a local unit of government is exempt from the fee unless the test is outside the state public health care mission or is required under 42 USC 300f to 300j, as determined by the laboratory of hygiene board. The laboratory may charge state agencies through contractual arrangements for the actual services rendered.

(g) The laboratory of hygiene board shall submit biennial budget requests reflecting joint budgetary planning with agencies served, and any information required by the department of administration under s. 16.43, directly to the department of administration.

(12) **PSYCHIATRIC RESEARCH INSTITUTE.** (a) The board shall house, equip and maintain the psychiatric research institute as a program of the University of Wisconsin-Madison Center for Health Sciences. The psychiatric research institute shall be a facility for research, development and service to the state in the field of mental health. The institute may exercise the powers granted under s. 46.044.

(b) All property used by the Wisconsin Psychiatric Institute established under s. 46.044, except real property used by the institute and except property of the University of Wisconsin Hospitals and Clinics, is transferred to the board which shall hold such property for the use of the psychiatric research institute.

(c) The institute shall investigate medical and social conditions which directly or indirectly result in state care; develop and promote measures to relieve and prevent the need for state care; undertake special education and training; and generally seek by research and investigation to prevent conditions which result in state care. The institute shall render, under mutual agreement, services to the state institutions under the jurisdiction of the department of health and family services and the department of public instruction. Such state institutions are open to the institute for research and training.

(12m) **STATE CARTOGRAPHER.** In coordination and consultation with the land information board, the state cartographer shall:

NOTE: Sub. (12m) (intro.) is amended eff. 7-1-05 by 1997 Wis. Act 27 to read:

(12m) **STATE CARTOGRAPHER.** (intro.) The state cartographer shall:

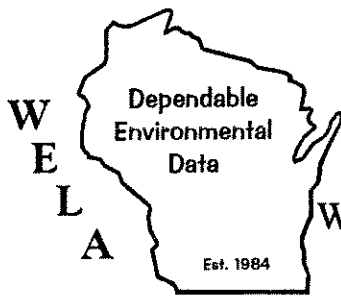
(a) Establish and maintain a union catalog of current and historical reference and thematic maps of all scales available in municipal, county, state and federal agencies relating to this state.

(b) Promote liaison among the municipal, county, state and federal mapping agencies and surveyors to facilitate coordination and to exchange information on mapping and cartographic activities.

(c) Keep abreast of the progress made by mapping agencies and their mapping developments.

(d) Collect, maintain and disseminate information regarding innovation in cartographic techniques and mapping procedures, map and air photo indexes and control data, map accuracy standards, legal aspects of map publication and such other matters as will facilitate an effective cartographic program for the state.

(e) Publish and distribute such special maps and map information as will promote the mapping of the state and preparation and use of maps by individuals, only to the extent, however, that such publication and distribution is not appropriately within the activities of any other state or commercial agency.



WISCONSIN ENVIRONMENTAL LABORATORIES ASSN. INC.

P.O. BOX 259154 • MADISON, WISCONSIN 53725-9154

Wisconsin Laboratory of Hygiene vs. Private Labs Fluoride Issue

While we are concerned about Fluoride testing today, the real issue is much larger than that. Private laboratories in Wisconsin feel that the Wisconsin Laboratory of Hygiene is frequently performing tests that private labs are completely qualified to perform. We also feel that the Wisconsin Lab of Hygiene is often doing this in violation of the law. That is our case today.

Attached find the following documents that clarify our position:

1. State Statute 36.25 (11)

Parts (b), (c), and (d) all relate to state agencies and require the State Lab of Hygiene to perform tests for these agencies. While this is not the issue today, private labs feel that this testing could frequently be performed at less taxpayer expense if done in the private sector.

Part (f) specifically delineates when the State Lab may impose a fee. It clearly states that "Any test conducted for a local unit of government is exempt from the fee unless the test is outside the state public health care mission..."

The State Lab routinely performs tests for municipalities and counties and charges fees for these tests. Most of these tests would not be considered to be outside the public health care mission and we have been unable to have the State Lab declare tests done for local units of government to be "outside the public health care interest". If the tests are outside the public health care interest, a strong case can be made that the State Lab has no business performing these tests while there are non-government laboratories willing to do the testing..

Fluoride Testing for Municipalities is a good example. Few would state that testing for Fluoride (or performing split sample verification of municipal results) is outside the public health care interest.

2. Wisconsin Administrative Code, NR 809.705

Sections (1) (b) 2. and (1) (c) require suppliers of water for a community water system to submit samples to the State Laboratory of Hygiene. This means that the municipalities have no choice but to send the samples to the State Lab and must pay the fee as set by the State Lab.

Suggested Solutions:

1. The State Laboratory of Hygiene should be required to abide by the law.

Despite their protests that they are not funded to perform these tests free, the law is clear. In addition, more than sufficient capacity exists in private laboratories that are certified to perform these tests by the DNR. Requiring compliance with the law would breathe life into the rapidly declining private laboratory community and increase the inflow of tax revenues to Wisconsin.

It should be noted that several years ago the University of Wisconsin claimed that State Statute 36.25 (11) (f) did not forbid the State Lab to charge fees! No private lawyer that has reviewed this statute has come up with this conclusion.

2. NR 809.705 and other relevant sections of the Wisconsin Administrative Code should be revised to allow any DNR certified laboratory to perform tests required by the DNR.

Paul Junio
TestAmerica
Watertown, WI
WELA President
Chair – Laboratory Certification Standards Review Council

State Statute 36.25 (11) STATE LABORATORY OF HYGIENE.

(a) The laboratory of hygiene shall be attached to the University of Wisconsin—Madison. The laboratory of hygiene board shall meet at least quarterly and may promulgate rules under ch. 227, approve the laboratory of hygiene budget, set fees, set priorities and make final approval of laboratory resources so that the laboratory can act in response to agencies' planned objectives and program priorities.

(b) The laboratory shall provide complete laboratory services in the areas of water quality, air quality, public health and contagious diseases for appropriate state agencies, and may perform examinations for licensed physicians, veterinarians, local health officers, as defined in s. 250.01 (5), and resource management officials as may be necessary for the prevention and control of those diseases and environmental hazards which cause concern for public health and environmental quality.

(c) The laboratory shall provide analytical support to the appropriate state agencies charged with water system evaluation. The support service shall include an evaluation from a public health standpoint and analytical support to ascertain the water's suitability for manufacturing, commercial and recreational purposes as determined by the rules promulgated by the department of health and family services, the department of natural resources and the department of agriculture, trade and consumer protection.

(d) The laboratory shall be operated to furnish a complete laboratory service to the department of health and family services and the department of natural resources in the areas of water quality, air quality, public health and contagious diseases and to make available to the system, the department of health and family services and the department of natural resources such facilities for teaching in the fields of public health and environmental protection as may be derived from such a laboratory.

(e) The technical staff and other employees necessary to the operation of the laboratory shall be employed under the classified service by the director. The board, upon the recommendation of the chancellor of the University of Wisconsin—Madison, with the approval of the laboratory of hygiene board, shall appoint the director of the laboratory and such other members of its professional staff as are required for the administration of the laboratory.

(em) The laboratory of hygiene board shall create and maintain a roster of scientists and other persons with technical expertise who are willing to work for the laboratory of hygiene if the governor declares that an emergency related to public health exists. If the governor declares such an emergency, the laboratory of hygiene board shall hire as limited-term employees the requisite number of persons from the roster to assist the department of health and family services under s. 250.042.

(f) The laboratory of hygiene board may impose a fee for each test conducted by the laboratory. Any test conducted for a local unit of government is exempt from the fee unless the test is outside the state public health care mission or is required under 42 USC 300f to 300j, as determined by the laboratory of hygiene board. The laboratory may charge state agencies through contractual arrangements for the actual services rendered.

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NR 809.705 Additional requirements for systems which chlorinate or fluoridate water.

(1) FLUORIDE.

(a) The supplier of water for a community water system artificially fluoridating the water shall establish a monitoring program in order to maintain the fluoride concentration within the range of 1.0 to 1.5 milligrams per liter as recommended by the dental health section of the department of health and family services for optimum dental benefits.

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Steve Smith
257-5546

HOLD RULE
LED TO RULE -

Wisconsin Laboratory of Hygiene vs. Private Labs Fluoride Issue

PAUL HARRIS 1-608-782-3130

While we are concerned about Fluoride testing today, the real issue is much larger than that. Private laboratories in Wisconsin feel that the Wisconsin Laboratory of Hygiene is frequently performing tests that private labs are completely qualified to perform. We also feel that the Wisconsin Lab of Hygiene is often doing this in violation of the law. That is our case today.

2 ISSUES -

Attached find the following documents that clarify our position:

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NO FEE
WITH ONLY STATE LABS.

Parts (b), (c), and (d) all relate to state agencies and require the State Lab of Hygiene to perform tests for these agencies. While this is not the issue today, private labs feel that this testing could frequently be performed at less taxpayer expense if done in the private sector.

Part (f) specifically delineates when the State Lab may impose a fee. It clearly states that "Any test conducted for a local unit of government is exempt from the fee unless the test is outside the state public health care mission..."

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Fluoride Testing for Municipalities is a good example. Few would state that testing for Fluoride (or performing split sample verification of municipal results) is outside the public health care interest.

2. DNR Letter to Senator Decker, 10/7/03

Paragraph 2 of page 1 of this letter clearly indicates that the State Lab is charging municipalities \$19.50 per sample for Fluoride testing, an apparent violation of the state statute above.

- State Lab of Hygiene
- Put fee into rule

- Hygiene board
36.25 (11) Lab
statutory
authority on rule making

- NR 809.
809.11?

3. Wisconsin Administrative Code, NR 809.705

Sections (1) (b) 2. and (1) (c) require suppliers of water for a community water system to submit samples to the State Laboratory of Hygiene. This means that the municipalities have no choice but to send the samples to the State Lab and must pay the fee as set by the State Lab.

Suggested Solutions:

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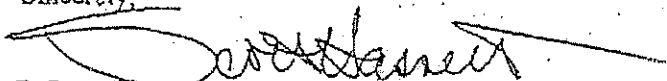
It should be noted that several years ago the University of Wisconsin claimed that State Statute 36.25 (11) (f) did not forbid the State Lab to charge fees! No private lawyer that has reviewed this statute has come up with this conclusion.

2. NR 809.705 and other relevant sections of the Wisconsin Administrative Code should be revised to allow any DNR certified laboratory to perform tests required by the DNR.

We regret not being able to fund the fluoride split sample testing. Unfortunately, some difficult decisions need to be made to meet budgetary restrictions.

I hope this letter satisfactorily addresses the concerns of your constituents.

Sincerely,

A handwritten signature in cursive script, appearing to read "P. Scott Hasset", written over a horizontal line.

P. Scott Hasset
Secretary
Department of Natural Resources

Cc: Warren Lemay - HFS

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Standard	Milligrams per liter
Aluminum	0.05 to 0.2
Chloride	250
Color	15 units
Copper	1.0
Corrosivity	Noncorrosive
Fluoride*	2.0
Foaming agents	0.5
MBAS (Methylene-Blue Active Substances)	
Hydrogen Sulfide	not detectable
Iron	0.3
Manganese	0.05
Odor	3 (Threshold No.)
Silver	0.1
Sulfate	250
Total Residue	500
Zinc	5

Note: The primary maximum contaminant level for fluoride is contained in s. NR 809.11.

(3) The secondary standards contained in this section apply to all public water systems. Compliance with these standards shall be calculated in accordance with s. NR 809.61.

(4) COMPLIANCE WITH THE SECONDARY DRINKING WATER STANDARD AND PUBLIC NOTIFICATION FOR FLUORIDE. Suppliers of water having community water systems that exceed the secondary maximum contaminant level for fluoride as determined by the last single sample taken in accordance with the requirement of s. NR 809.12, but do not exceed the maximum contaminant level for fluoride as specified in s. NR 809.11, shall provide the notice prescribed in s. NR 809.81 (5) (i) to all billing units annually, all new billing units at the time service begins and annually to the department and the department of health and social services.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (2), Register, April, 1982, No. 316, eff. 3-1-82; am. (2), cr. (4), Register, August, 1989, No. 404, eff. 9-1-89; renum. from NR 109.60 and am. (2), Register, July, 1993, No. 451, eff. 8-1-93.

NR 809.61 Sampling and analytical requirements for secondary standards. (1) If the department receives complaints regarding the aesthetic quality of the water the supplier of water may be required to implement a monitoring program to determine compliance with s. NR 809.60.

(2) If it is determined by the department that physical or chemical substances or both in excess of those standards contained in s. NR 809.60 are objectionable to an appreciable number of persons and are detrimental to the public welfare the department may, on its own motion, require remedial action by the supplier of water to insure that the public receives the highest quality water practicably obtainable.

(3) The department may require that laboratory test results submitted to the department under this section be performed by a laboratory certified or registered under ch. NR 149.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (2), Register, April, 1982, No. 316, eff. 4-1-82; cr. (3), Register, April, 1986, No. 364, eff. 8-28-86; renum. from NR 109.61, Register, July, 1993, No. 451, eff. 8-1-93; correction in (3) made under s. 13.93 (2m) (b) 7, Stats.

Subchapter V — Miscellaneous Chemical Monitoring Requirements, Raw Surface Water Standards, Certified Laboratories and Approved Methods for Safe Drinking Water Analysis.

NR 809.70 General requirements. Public water systems shall meet applicable minimum monitoring requirements stated in this chapter. The department may increase monitoring requirements of any section of this chapter, if the department deems such an increase is necessary to protect public health,

safety and welfare. The department may decrease the monitoring requirements of any section of this chapter, if the department determines that such a decrease will not adversely affect protection of public health, safety or welfare.

History: Cr. Register, March, 1991, No. 423, eff. 4-1-91; renum. from NR 109.70, Register, July, 1993, No. 451, eff. 8-1-93.

NR 809.705 Additional requirements for systems which chlorinate or fluoridate water. (1) FLUORIDE. (a) The supplier of water for a community water system artificially fluoridating the water shall establish a monitoring program in order to maintain the fluoride concentration within the range of 1.0 to 1.5 milligrams per liter as recommended by the dental health section of the department of health and social services for optimum dental benefits.

(b) The monitoring program shall include:

1. Submission of the results of daily fluoride tests of samples from the distribution system, and

2. One sample per month taken from a representative location in the distribution system and submitted to the state laboratory of hygiene.

Note: For waterworks with large distribution systems and multiple sources, more than one fluoride test per day may be necessary to assure proper feed rates. See NR 811.54 (5) for testing equipment requirements. Exceptions to the daily fluoride test requirement may be approved by the department if it is demonstrated that the optimum fluoride concentration in par. (a) will be maintained by a reduced monitoring program.

(c) The sample submitted to the state laboratory of hygiene shall be a portion of a split sample so that the operator can determine the fluoride concentration with the operator's equipment and compare it to the state laboratory results. The fluoride concentration obtained by the operator shall be noted on the data sheet prior to submission to the state laboratory.

(2) CHLORINE. The suppliers of water for all waterworks which chlorinate water shall test chlorine residuals at locations and intervals necessary to control the chlorination process. At ground water supplies, the chlorine residual of a sample from a representative location in the distribution system shall be checked at least twice per week. Waterworks having surface water treatment plants shall determine the chlorine residual in the plant effluent at least every 2 hours and in the distribution system at least daily in representative locations. Where water quality changes rapidly, residuals shall be tested at more frequent intervals as specified by the department and in those individual cases, continuous monitoring equipment may be required if the department determines it is necessary to protect public health. Chlorine residual testing is required when bacteriological samples are taken.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (b) 1, Register, April, 1982, No. 316, eff. 5-1-82; renum. from NR 809.70 and am. (2), Register, March, 1991, No. 423, eff. 4-1-91; renum. from NR 109.705, Register, July, 1993, No. 451, eff. 8-1-93.

NR 809.71 Raw surface water standards. The intake water shall be the highest quality reasonably available and which, with appropriate treatment and adequate safeguards, will meet the drinking water standards in this chapter.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. Register, March, 1991, No. 423, eff. 4-1-91; renum. from NR 109.71, Register, July, 1993, No. 451, eff. 8-1-93.

NR 809.72 Laboratories. (1) For the purpose of compliance with ss. NR 809.12, 809.13, 809.14, 809.21, 809.23, 809.25, 809.26, 809.547 and 809.549, samples shall be analyzed at the state laboratory of hygiene, at a laboratory facility acceptable to the U.S. environmental protection agency, or at a laboratory certified for the safe drinking water test category under ch. NR 149. For the purpose of compliance with ss. NR 809.31, 809.52 and 809.78, bacteriological and radiological samples shall be analyzed at a laboratory facility certified or approved by the department of agriculture, trade and consumer protection, or at a laboratory facility acceptable to the U.S. environmental protection agency.