

NR 346



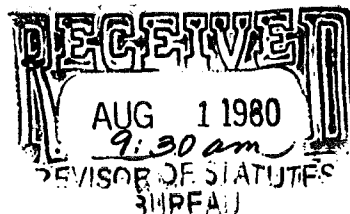
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl
Secretary

BOX 7921
MADISON, WISCONSIN 53707

IN REPLY REFER TO: _____

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) SS



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Anthony S. Earl, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WR-4-80 was duly approved and adopted by this Department on May 29, 1980. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at General Executive Facility #2 in the City of Madison, this 28th day of July, 1980.

Anthony S. Earl
Anthony S. Earl, Secretary

(SEAL)

Tent. eff. 10-1-80

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD

CREATING RULES

.....
IN THE MATTER of creating chapter NR 346 .
of the Wisconsin Administrative Code .
pertaining to dredging contract fees .
.....

WR-4-80

Analysis Prepared by Department of Natural Resources

The beds of natural lakes in Wisconsin are owned by the people and managed in trust for them by the State. Section 30.20(2)(a), Stats., in existence for over 30 years, provides that a contract is required between persons wishing to remove materials from the beds of natural lakes and the Wisconsin Department of Natural Resources in order to provide the consideration required by a contract and to provide for protection of the public interest in the natural lakes in Wisconsin during the execution of the dredging contracts. Previous contracts made no distinction between dredging contracts which were done for commercial purposes and dredging contracts which were done for noncommercial purposes.

Chapter NR 346, Wis. Adm. Code, provides a minimum consideration for dredging contracts which are done for noncommercial purposes and also provides for a royalty consistent with fees paid for similar material obtained from nearby upland sources for commercially valuable materials obtained from the beds of natural lakes. This chapter also clarifies the procedure and amount required for bonds associated with dredging contracts. The rules are proposed to reduce costs and simplify procedures for noncommercial projects.

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by sections 30.20(2) and 227.014, Wisconsin Statutes, the State of Wisconsin Natural Resources Board hereby creates rules interpreting section 30.20(2), Wisconsin Statutes, as follows:

CHAPTER NR 346

DREDGING CONTRACT FEES

- | | |
|-------------------------|---------------------------------------|
| NR 346.01 Purpose | NR 346.05 Fees |
| NR 346.02 Applicability | NR 346.06 Bonding |
| NR 346.03 Definitions | NR 346.07 Procedure |
| NR 346.04 Severability | NR 346.08 Enforcement |
| | NR 346.09 Municipal dredging projects |

NR 346.01 Purpose. These rules are promulgated pursuant to ss. 30.20(2)(a) and 227.014(2)(a) and (b), Stats., to establish a commercial and

noncommercial class of dredging projects, to provide for bonding and to establish procedures applicable to the removal of material from the beds of natural lakes and outlying waters for which a contract is required between the state of Wisconsin and the person desiring to remove bed material. Implementation of these rules will also provide for protection of the public interest in the natural lakes in Wisconsin during the execution of dredging contracts.

NR 346.02 Applicability. All removal of bed material from the beds of natural lakes and the natural bed portions of raised lakes regulated by s. 30.20(2)(a), Stats., must involve a contract between the person removing the material and the state of Wisconsin. The contract is required because the beds of natural lakes are owned by the people of the state of Wisconsin. The department of natural resources administers the trust interest in the beds of natural lakes on behalf of Wisconsin citizens. Definitions and procedures set forth in this rule will identify the contract consideration required for the sale of different types of bed material.

NR 346.03 Definitions. (1) "Application fee" means a fee required by s. 30.28, Stats., consisting of a basic \$10 fee plus a supplemental fee ranging from \$5 to \$65 in proportion to the project cost.

(2) "Bed material" means all earth, muck, sands and gravels, clays, marl, stones and boulders lying below the ordinary highwater mark of natural lakes.

(3) "Bonds" means surety or performance bonds guaranteeing performance of a contract or obligation. The amount of the bond is related to the restoration cost required to eliminate dangerous conditions or adverse environmental conditions caused by the improper removal of bed material from the bed of a natural lake.

(4) "Commerical removal fee" means a fee related to the commercial value of natural lake bed material proposed for use in a commercial venture equal to the royalty paid to owners of similar upland commercially valuable materials.

(5) "Natural lake" means any navigable, nonartificial body of water in a depression of land or a navigable, nonartificial widening of a river characterized by the general absence of any noticeable current from its inlet to its outlet. For purposes of this chapter, the term natural lake includes that portion of a raised lake that would exist in the absence of the artificial raising of the lake.

(6) "Noncommercial removal fee" means a minimal fee of \$1 required as consideration for natural lake bed material removal projects where the material has no commercial value.

(7) "Outlying water" means Lakes Superior and Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor, and the Fox river from it mouth up to the dam at DePere.

(8) "Removal of bed material" means the excavation of materials by any means from the bed of a natural lake for the purposes of enhancement of a portion or all of the aquatic environment or for the purpose of gaining commercially valuable materials.

NR 346.04 Severability. If any provision of this chapter is declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

NR 346.05 Fees. (1) Permit application fees shall be paid in accordance with the specifications in s. 30.28, Stats., and this chapter.

(2) Noncommercial removal fee. Except as provided in sub. (3), a fee of \$1 shall be charged for the removal of bed material from natural lakes.

(3) Commercial removal fee. A fee will be charged for commercially valuable materials to be removed from the bed of a navigable lake. The fee will be equal to the royalty paid to owners of upland in the immediate vicinity of the natural lake in question for materials similar to those materials which are to be removed from the bed of a navigable lake. Current royalty prices for upland materials shall be obtained from commercial operators active in the project vicinity.

NR 346.06 Bonding. (1) A performance or surety bond may be required for noncommercial removal projects regulated by this chapter. The bond amount shall be equal to the estimated cost for restoration of dangerous conditions or undesirable environmental conditions as determined by the department caused by incomplete or improper removal of bed materials from the project site or for removal in excess of volumes authorized. The maximum bond amount shall not exceed the estimated project cost. In determining the need for a bond the department shall consider the potential for creating unsafe conditions, environmental sensitivity of

the project site, the qualifications of the applicant or contractor and potential for removal in excess of authority.

(2) A performance or surety bond shall be required for commercial removal projects. The amount of the bond shall be determined by the department on the basis of the methods of removal, project site conditions, project size, project duration and the qualifications of the applicant or contractor.

NR 346.07 Procedure. (1) Fee schedules. (a) Application fees shall be submitted as a part of a complete application for a contract to remove material from the beds of natural lakes. The application fee shall be remitted to the applicant if the requested dredging contract is denied.

(b) Noncommercial fees shall be submitted by the applicant upon receipt of the contract from the department.

(c) Commercial removal fee shall be submitted in annual installments based upon the charge specified in the contract per cubic yard times the number of cubic yards of material removed under the contract for that calendar year. Quantities removed will be measured in its original position, computed by the method of average end areas, with no correction for curvature, or by the method of truncated prisms.

NOTE: The methods of measuring the amounts of bed material removed during commercial projects were obtained from, "State of Wisconsin, Department of Transportation, Division of Highways, Standard Specifications for Road and Bridge Construction, Edition of 1975, Section 208.4 Method of Measurement", page 103.

The following excerpt from, "Elementary Surveying, 5th Ed.", by Russell C. Brinker, pages 477 & 478, presents formulas for the methods of calculation specified by the Wisconsin Department of Transportation and incorporated in NR 346.

End-areas formulas. The volume between two vertical cross sections A_1 and A_2 is equal to the average of the end areas multiplied by the horizontal distance L between them. Thus:

$$V_e = \frac{L(A_1 + A_2)}{2 \times 27} \text{ cu yd}$$

This formula is approximate and gives answers which generally are slightly larger than the true prismoidal volumes. It is used in practice because of its simplicity. Increased accuracy is obtained by decreasing the distance L between the two sections. When the ground is irregular, cross-sections must be taken closer together.

Prismoidal formula. The prismoidal formula applies to the volumes of all geometric solids which can be considered prismoids. Most earthwork volumes fit this classification but relatively few of them warrant the precision of the prismoidal formula, which is:

$$V_p = \frac{L(A_1 + 4A_m + A_2)}{6}$$

where V_p = volume;

A_1 and A_2 = areas of successive cross-sections taken in the field;

A_m = area of a section midway between A_1 and A_2 ;

L = horizontal distance between A_1 and A_2 .

(2)(a) Bonds in the amount specified in the contract received by the applicant shall be secured by the applicant and submitted to the department of natural resources prior to any removal of material by the applicant on the contract issued by the department.

(b) Upon the successful completion of the dredging contract the applicant shall request a release from the bonding requirements. The department shall inspect the dredging site. If the department determines that the contract has been satisfactorily completed, the department will advise the applicant and bonding company that the bond may be canceled.

NR 346.08 Enforcement. (1) If the department determines that the dredging contract has not been properly completed, it may initiate action to cause the applicant or applicant's agents to comply with the terms of the contract.

(2) For dredging contracts with bonds where the applicant refuses to perform the requested remedial work, the department may require the bonding company or its agent to either perform the required remedial work or pay the amount of the bond to the department. The department, in its discretion, shall either complete the remedial work or contract for the completion of such work.

(3) If the department determines that the dredging project has not been properly completed, and there is no bond, the department may initiate an abatement action pursuant to s. 30.03, Stats., to cause the applicant to restore the project site to comply with the terms of the contract, and forfeiture if the department thinks a forfeiture is appropriate.

NR 346.09 Municipal dredging projects. Dredging from the beds of natural lakes by municipalities defined in s. 144.01, Stats., may be done with no compensation to the state if the material dredged is for a municipal purpose and not for resale.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on May 29, 1980.

The rules contained herein shall take effect upon publication as provided in section 227.026, Wisconsin Statutes.

Dated at Madison, Wisconsin 28 July 1980

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Anthony S. Earl
Anthony S. Earl, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

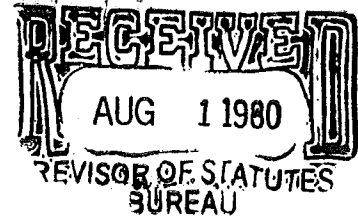
Anthony S. Earl
Secretary

BOX 7921
MADISON, WISCONSIN 53707

July 25, 1980

IN REPLY REFER TO: 1020

Mr. Orlan L. Prestegard
Revisor of Statutes
411 West
C A P I T O L




Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WR-4-80. These rules were reviewed by the Assembly Environmental Resources Committee and the Senate Natural Resources and Tourism Committee pursuant to section 227.018, Wisconsin Statutes. There were no objections.

You will note that this order takes effect upon publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


Anthony S. Earl
Secretary

Enc.