

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

*Joint Committee for  
Review of  
Administrative Rules  
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR\_RCP\_pt01a
- 97hrAC-EdR\_RCP\_pt01b
- 97hrAC-EdR\_RCP\_pt02

➤ Appointments ... Appt

➤

➤ Clearinghouse Rules ... CRule

➤

➤ Committee Hearings ... CH

➤

➤ Committee Reports ... CR

➤

➤ Executive Sessions ... ES

➤

➤ Hearing Records ... HR

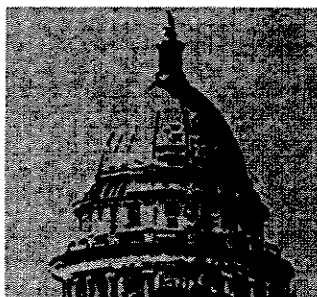
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➤ Miscellaneous ... Misc

➤ 97hr\_JCR-AR\_Misc\_pt32b\_Test

➤ Record of Comm. Proceedings ... RCP

➤



JAN 07 1997

STATE REPRESENTATIVE

WALTER

KUNICKI

January 6, 1997

Representative Ben Brancel  
Assembly Speaker  
211 West, State Capitol  
Madison, WI INTER-D

Dear Speaker Brancel:

Due to the meeting of the Joint Committee for Review of Administrative Rules this Wednesday, I am hereby notifying you of my recommendations for appointments to this committee for the 1997-98 session:

Representative Rebecca Young  
Representative Jim Kreuser

I thank you for your attention to these appointments.

Sincerely,

Walter Kunicki  
Assembly Democratic Leader

WK/sa

cc: Senator Richard Grobschmidt  
Representative Glenn Grothman  
Representative Rebecca Young  
Representative Jim Kreuser

**ASSEMBLY DEMOCRATIC LEADER**



State Senator  
**Chuck Chvala**  
SENATE MAJORITY LEADER

January 8, 1997

To The Honorable the Senate:

Pursuant to Senate Rule 20, I have made the following appointments to Senate Committees:

To the committee on Administrative Rules: Senators Grobschmidt (Chair), Wineke, Wirsch, Darling and Welch.

With regards to the members of the minority party, the appointments reflect the recommendations of that caucus.

Sincerely,

  
CHUCK CHVALA

Chair, Senate Committee on Organization

JAN 09 1997

BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING  
FM-3-97

*Told*

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.085, 29.174(3), 29.33(1) and 227.11(2)(a), Stats., interpreting ss. 29.085, 29.174(2)(a) and 29.33(1), Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 20.02(1)(c), 20.03(1)(k)2. and 25.06(2)(b)1., Wis. Adm. Code, relating to sport and commercial fishing for yellow perch in Lake Michigan. The proposed rule closes the annual sport fishing season for yellow perch in Green Bay and its tributaries from March 16 through May 19. The total allowable annual commercial harvest of yellow perch from zone 1 of Green Bay is decreased from 300,000 pounds to 200,000 pounds.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected: Commercial fishers in Green Bay
- b. Description of reporting and bookkeeping procedures required: No new procedures
- c. Description of professional skills required: No new skills

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

January 21, 1997 - Room 604, Green Bay City Hall, 100 N. Jefferson St., Green Bay  
Tuesday at 4:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than January 31, 1997. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Horns.

Dated at Madison, Wisconsin Dec 13, 1996

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary

SENATOR RICHARD GROBSCHMIDT  
CO-CHAIRMAN

Room 404 • Hamilton  
Madison, WI 53707  
Phone: 608-266-7505



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIRMAN

Room 125 West • State Capitol  
Madison, WI 53703  
Phone: 608-264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 13, 1997

Thomas H. Taylor, Deputy Secretary  
Department of Commerce  
123 West Washington Avenue  
Madison, WI 53702

Dear Deputy Secretary Taylor:

Thank you for meeting with me on January 2<sup>nd</sup>, to explain the provisions of the department's emergency rule relating to the 1997 allocation of volume cap.

In general I am supportive of the changes contained in the rule. In particular, I agree with the department's proposal to subject applications for use of the volume cap to a merit review instead of allocating on a first-come first-served basis.

I was also pleased that you responded to my concern about the appropriateness of using the emergency rule process to set the annual allocation. I am glad that you agreed that the department will resume using the permanent rule process to set future allocations. Even though the rulemaking process may not be perfectly suited for a policy that requires annual and date specific changes, I think you will find that it will provide an orderly procedure for setting the allocation while keeping the level of oversight sought by the legislature.

I also hope that you will give additional review to the power delegated to the Volume Cap Allocation Council. As discussed in our meeting, I have reservations about delegating important decision making authority to individuals who have not had their appointments reviewed and approved by the State Senate. As you will recall, our committee counsel has also expressed his concern about whether this delegation is consistent with the statutory requirement that the department grant use of the allocation.

Taylor  
January 13, 1997  
page two

Once again, I appreciate your keeping me informed of the department's rulemaking activities. If you have any additional comments or questions concerning this rule issue, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Richard Grobschmidt". The signature is written in dark ink and is positioned above the printed name.

RICHARD GROBSCHMIDT  
Senate Co-Chair

RG:js

# FORE THOUGHT®

A HILLENBRAND INDUSTRY

**Mark A. Willoughby**

GOVERNMENT RELATIONS COUNSEL

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**DEWITT  
ROSS & STEVENS**<sub>LLC</sub>  
LAW FIRM

**David J.W. Klauser**

Capitol Square Office  
Two East Mifflin Street  
Suite 600  
Madison, WI 53703-2865  
Fax 608-252-9243  
Tel 608-255-8891

# FORE THOUGHT®

January 20, 1997

Mr. Peter Farrow  
Office of the Commissioner of Insurance  
121 East Wilson Street  
Madison, Wisconsin 53707-7873

Dear Mr. Farrow:

On behalf of Homesteaders, Pierce National, United Family and Forethought life insurance companies, I wish to express our appreciation for the opportunity to meet with you to discuss our concerns with the proposed preneed funeral insurance rules. After the meeting, we had a much better understanding of the concerns which the department wished to address through the rule.

We were very pleased to be given the opportunity to submit a draft set of rules which we believe addresses the concerns of the department while permitting life insurance companies to market products which have proven to be suitable for the purpose of funding preneed funeral contracts throughout the country. These are set forth below. We propose these as a substitute for the rule published by OCI. I did not type the language which is being deleted, but have indicated new language by placing it in **bold type**. A "Note" has been included at the end of some of the amendments to clarify the reasoning behind the proposed change. This draft is based upon the OCI published version of the regulations.

1. INS 23.01 Purpose. **Proposed rule language is acceptable.**
2. INS 23.10 Definitions. **Delete the definition of: (4) Cumulative Premiums.**
3. INS 23.20 General. **Modify to read:** (1) No agent may sell a life insurance or annuity policy for the purpose of funding a prearranged funeral plan as defined in s. 445.125(3m) Stats., unless:
4. INS 23.25 Agent Representation of Affiliation. **Modify to read:** (1) No agent may represent that he or she is affiliated with or representing a funeral operator or funeral establishment in the sale of a prearranged funeral contract unless he or she is an authorized agent of the funeral operator or funeral establishment under s. 445.125(3m), Stats.



5. INS 23.30 Requirements for Funeral Policies. **Modify to read:** (1) No insurer may sell or issue a policy as a funeral policy unless:

- (a) The policy is an individual whole life or group whole life or an annuity policy.
- (b) **The insurer provides certification from an actuary that the funeral policy contains a design element which will permit the death benefit to increase during the lifetime of the insured or annuitant.**
- (c) **On or before April 1, of each year, the insurer shall provide the Office of Commissioner of Insurance (OCI) an annual report of the rate of increase or other adjustment to the death benefit of policies or annuities sold in the previous calendar year. If no increase has been credited by the insurer during any six month period, the insurer shall notify OCI of that action, and shall provide OCI with such documentation as required by OCI supporting zero growth.**
- (d) The premium amount for a funeral policy which is issued on a single pay basis does not exceed the costs of the prearranged funeral plan.
- (e) **For multi-payment policies, the policy clearly discloses the death benefit and any reduction in the death benefit if it is a graded death benefit or limited death benefit policy, and the period of time during which the graded death benefit is applicable.**
- (f) The funeral policy provides that death benefits which exceed the amount of the burial expenses **at the time the burial is provided** shall be paid to the insured's beneficiary or estate. **(Note, facility of payment provisions may be used to avoid payment to an estate when no formal estate has been established.)**
- (g) The funeral policy provides the unrestricted right to return the policy or certificate within thirty (30) days of the date it is received by the insured. If the insured returns the policy or certificate, the **insurance or annuity** contract is void and all payments made under it shall be refunded. **(Note, the insured may not be the policy owner.)**

6. INS 23.35 Minimum Benefit Requirements. **Delete this section since the proposed modifications to the rule 23.40 addresses this concern.**

7. INS 23.40 Consideration Arrangements. **Modify to read:** The commissioner may review and disapprove any consideration plan for the marketing of a funeral policy **which encourages unfair trade practices. Any required submission of a consideration plan by an insurer shall be maintained as proprietary information to the insurer, and shall not be made public by OCI.**

8. INS 23.50 Minimum Standards for Claims Payments Under a Funeral Policy. **Modify to read:**

- (1) The insurer shall not pay policy death benefits to a funeral director or funeral establishment **under a prearranged funeral plan** unless the prearranged funeral plan is in effect at the time of the insured's death.
- (2) The insurer shall not pay more than the actual final costs of the burial expenses to the funeral director or funeral establishment, **but may rely upon the certification of the funeral director or funeral establishment as to those final costs.**

9. INS 23.60 Requirements for Advertisements of Funeral Policies. **Modify to read:**

- (1) Advertisements for funeral policies shall comply with all **applicable** statutes and rules, including but not limited to ch. INS 2.
- (2) An insurer or agent placing or using or publishing an advertisement which may result in the solicitation or sale of a funeral policy shall disclose the following in a clear and conspicuous manner:
  - (a) **That the prearranged funeral contract may be funded through life insurance or and annuity.**
  - (b) The identity of the insurer.
  - (3) No insurer or agent of an insurer may use a response from an advertisement of a prearranged funeral plan if the advertisement does not make the disclosures under sub. (2)
  - (4) An insurer shall require its agents, and all other persons or agencies acting on its behalf in preparing advertisements, to submit advertisements to it for approval prior to use of the advertisement.
  - (5) An insurer shall maintain a copy of every advertisement and all correspondence for each advertisement submitted for approval **for use in Wisconsin for a period of one (1) year from the last date upon which the advertisement was used.**

10. INS 23.70 Marketing Procedures. **Modify to read:** (1) The insurer shall establish and implement **marketing procedures for funeral policies to ensure compliance with all applicable statutes and regulations.**

(2) **The insurer shall provide the following disclosures, statements and questions:**  
(a) **In the event that an insurer markets funeral insurance policies in connection with a prearranged funeral plan, the prearranged funeral plan shall clearly state the following in at least 10 point bold type:**

**"The life insurance which is being used to fund your prearranged funeral contract is regulated under the authority of the Office of Commissioner of Insurance. Should you have a complaint concerning your life insurance, you should contact the Office of the Commissioner of Insurance, 121 East Wilson Street, Madison, WI 53707."**

- (b) **The application shall disclose the current price of the prearranged funeral plan and the initial face amount of the funeral policy.**
- (c) **The application shall comply with all applicable statutes and regulations concerning replacement, including but not limited to INS 2.07.**

11. INS 23.90 Solicitation and Disclosure Requirements. **Acceptable as proposed.**

We would again appreciate the opportunity to meet with you concerning this proposal, and are available to answer questions which you may have. My telephone number is (800) 648-0075 and my facsimile number is (812) 934-8872.

Respectfully submitted,

Mark A. Willoughby  
Government Relations Counsel

cc: Gerry Kraus, Homesteaders  
Susan Cyr, Pierce National  
Dan Ferris, Secura  
Paula Bonds, United Family  
D. J. Klauser

maw/695

SENATOR RICHARD GROBSCHMIDT  
CO-CHAIRMAN

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Madison, WI 53707  
Phone: 608-266-7505



REPRESENTATIVE GLENN GROTHMAN  
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Madison, WI 53703  
Phone: 608-264-8486

JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES

JAN 27 1997

January 23, 1997

Representative Marc Duff  
Chair, Assembly Committee on Environment  
Room 306 North, State Capitol  
Madison, WI 53702

Dear Rep. Duff:

As you are aware, the Speaker has recently referred Assembly Bill 1, relating to the installation of certain pitless water well adapters in private wells, to your committee for consideration.

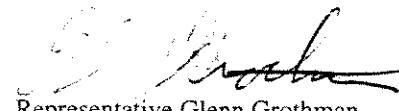
Because bills introduced by the Joint Committee are relatively rare, we wanted to bring to your attention s. 227.26(2)(h), stats. This paragraph sets forth the legislative procedure for the consideration of JCRAR bills introduced subsequent to the suspension of an existing administrative rule by the joint committee. The statute provides for a 30-day review period by the standing committee, beginning at the date of referral.

We, of course, urge your committee's expedient review of this legislation. We further wish to make ourselves and our research staffs available to you if you have any questions about the legislation, its history, or the administrative rulemaking process which has lead to its introduction. Please feel free to contact either of our offices if you need any information.

Thank you for your attention and your time. We look forward to working with you as this legislation moves forward.

Sincerely,

  
Senator Richard Grobschmidt  
Senate Co-Chairman

  
Representative Glenn Grothman  
Assembly Co-Chairman

RG:GG:swk

SENATOR RICHARD GROBSCHMIDT  
CO-CHAIRMAN

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Madison, WI 53707  
Phone: 608-266-7505



REPRESENTATIVE GLENN GROTHMAN  
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Madison, WI 53703  
Phone: 608-264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 23, 1997

Senator Alice Clausing  
Chair, Senate Committee on Agriculture and Environmental Resources  
Room 308, 100 North Hamilton  
Madison, WI 53708

Dear Sen. Clausing

As you are aware, the Senate President has recently referred Senate Bill 21, relating to the installation of certain pitless water well adapters in private wells, to your committee for consideration.


Because bills introduced by the Joint Committee are relatively rare, we wanted to bring to your attention s. 227.26(2)(h), stats. This paragraph sets forth the legislative procedure for the consideration of JCRAR bills introduced subsequent to the suspension of an existing administrative rule by the joint committee. The statute provides for a 30-day review period by the standing committee, beginning at the date of referral.

We, of course, urge your committee's expedient review of this legislation. We further wish to make ourselves and our research staffs available to you if you have any questions about the legislation, its history, or the administrative rulemaking process which has led to its introduction. Please feel free to contact either of our offices if you need any information.

Thank you for your attention and your time. We look forward to working with you as this legislation moves forward.

Sincerely,

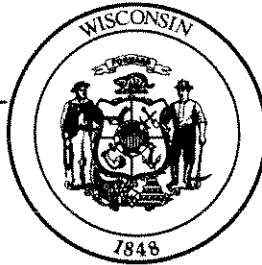
  
Senator Richard Grobschmidt  
Senate Co-Chairman

  
Representative Glenn Grothman  
Assembly Co-Chairman

RG:GG:swk

SENATOR RICHARD GROBSCHMIDT  
CO-CHAIRMAN

Room 404 • Hamilton  
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Phone: 608-266-7505



REPRESENTATIVE GLENN GROTHMAN  
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Madison, WI 53703  
Phone: 608-264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 23, 1997

Representative Al Ott  
Chair, Assembly Committee on Agriculture  
Room 318 North  
Madison, WI 53702

Dear Rep. Ott:

As you are aware, the Speaker has recently referred Assembly Bill 5, relating to atrazine use prohibition zones, to your committee for consideration.


Because bills introduced by the Joint Committee are relatively rare, we wanted to bring to your attention s. 227.19(6)(b), stats. This paragraph sets forth the legislative procedure for the consideration of certain JCRAR bills. This statute applies to AB5, which was introduced subsequent to the concurrence of the joint committee to the objection of a standing committee to a Clearinghouse Rule. The statute provides for a 30-day review period by the standing committee, beginning at the date of referral.


We wish to bring to your attention a known problem with the bill as it is currently written. The legislation would have the effect of prohibiting *ad infinitum* the imposition of an atrazine use prohibition zone in the area specified by the legislation. This was not the intent of the Joint Committee; the members of the JCRAR felt that the imposition of a prohibition zone was not appropriate *at this time*. The joint committee's specific introduction motion prohibited the co-chairs from repairing the bill draft before introduction. We urge the Assembly Committee on Agriculture to make the appropriate amendment to the legislation before reporting it out; you will find an attachment which is informative.

We further wish to make ourselves and our research staffs available to you if you have any questions about the legislation, its history, or the administrative rulemaking process which has lead to its introduction. Please feel free to contact either of our offices if you need any information.

Thank you for your attention and your time. We look forward to working with you as this legislation moves forward.

Sincerely,

  
Senator Richard Grobschmidt  
Senate Co-Chairman

  
Representative Glenn Grothman  
Assembly Co-Chairman

RG:GG:swk



# Wisconsin Agribusiness Council

2317 International Lane Suite 109 • Madison, WI 53704-3129 • (608) 249-2323 Fax (608) 249-279

June 19, 1996

To: Joint Committee for Review of Administrative Rules

Fm: Russ Weisensel, Director Legislative Affairs

Re: CR 95-147; LRB 5794 & 5795 relating to atrazine

The bill drafts are inappropriate for they prohibit DATCP from creating an atrazine Prohibition Area (PA) in the particular site in question, regardless of any level of atrazine which might be detected in the future. A broader and more objective approach is necessary.

The proposed PA at the North Lancaster, Grant County site is just a symptom of the problem with Wisconsin's current groundwater law as it relates to agriculture.

Atrazine has been widely used in our state for some 30 years. Wisconsin had no groundwater law until 1984, no atrazine groundwater standards until 1988, and no atrazine rule until March, 1991. Since then we've added numerous restrictions on this product. The application rate has been severely curtailed. It may only be applied by certified (trained) applicators/farmers. Strict regulations are in place for mixing and loading of atrazine. Fall applications are prohibited. We believe these strict regulations will, in many areas of Wisconsin, allow atrazine to be used without impairing the quality of our groundwater.

In spite of decades of use with no concern regarding the protection of groundwater, DATCP data indicates that only 2 %, or 195 of the 9,951 wells tested, had atrazine levels exceeding our strict enforcement standard, where it is thought the atrazine came from field use. (Another 1.8% exceed the enforcement standard from suspected point-source contamination.) Last fall, DATCP retested 122 wells that had previously exceeded our Enforcement Standard. Eighty-four percent of these wells showed a decline in atrazine levels, and a full 54 % have declined below the Enforcement Standard.

Nationally, based on current test data, the EPA changed its atrazine reference dose, the formula used in animal studies to assess risk. Minnesota, noting this change, has since established 20ppb as its health risk for private wells. (See attached.) Wisconsin not only maintains the current enforcement standard at 3ppb, our DNR included atrazine metabolites in calculating this enforcement standard. Neither the EPA, nor any other state has this restrictive formula.

- more -

ATCP 30, the rule to which you've objected, makes reference to ATCP 31 as it authorizes prohibition areas. (That rule is also attached.) DATCP is beginning its process to re-draft both of these rules. Given the fact that DATCP did not consider the testing in Grant County provided the "credible evidence" it needed to avoid establishing a prohibition area, I would suggest the change in ATCP 31.08 (1) as a *possible* solution to the present inequities:

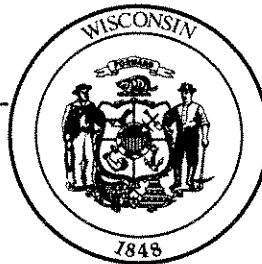
On line 8 delete "shall" and insert "may".

On line 13 after "standard." insert "Prior to prohibiting a pesticide, the department must determine that no other management action will effectively result in a residue level below the Wisconsin Enforcement Standard, and an improvement in the area groundwater. In areas where a single well appears to have exceeded the Enforcement Standard through labeled use of the product, the department shall continue to monitor the well in question and other possible affected wells to ascertain whether the detection level is stable, increasing, or decreasing."



SENATOR RICHARD GROBSCHMIDT  
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## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 23, 1997

Senator Alice Clausing  
Chair, Senate Committee on Agriculture and Environmental Resources  
Room 308, 100 North Hamilton  
Madison, WI 53708

Dear Sen. Clausing

As you are aware, the Senate President has recently referred Senate Bill 20, relating to atrazine use prohibition zones, to your committee for consideration.

Because bills introduced by the Joint Committee are relatively rare, we wanted to bring to your attention s. 227.19(6)(b), stats. This paragraph sets forth the legislative procedure for the consideration of certain JCRAR bills. This statute applies to SB20, which was introduced subsequent to the concurrence of the joint committee to the objection of a standing committee to a Clearinghouse Rule. The statute provides for a 30-day review period by the standing committee, beginning at the date of referral.

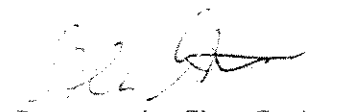
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Senate Co-Chairman

  
Representative Glenn Grothman  
Assembly Co-Chairman

RG:GG:swk



## Wisconsin Agribusiness Council

2317 International Lane Suite 109 • Madison, WI 53704-3129 • (608) 249-2323 Fax (608) 249-279

June 19, 1996

To: Joint Committee for Review of Administrative Rules

Fm: Russ Weisense, Director Legislative Affairs

Re: CR 95-147; LRB 5794 & 5795 relating to atrazine

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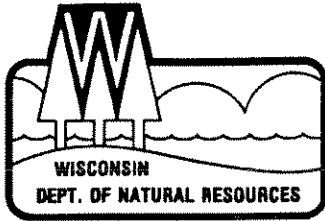
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State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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

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

January 23, 1997

JAN 28 1997

All Legislators

Dear Legislator:

You may have heard recently that the Natural Resources Board adopted a proposal to reduce the daily bag limit for panfish from 50 to 25. This rule is now awaiting review by the Legislature and, if approved, would be effective in 1998.

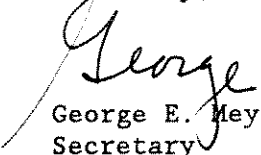
In a recent survey, 60% of Wisconsin panfish anglers rated fishing as "poor" or "fair". Fishery investigations support these perceptions.

There has been significant decline in the size of desirable-sized panfish over the past 30 years. The attached graph shows the results from panfish studies on 421 Wisconsin lakes -- from 10 acre ponds to our largest fishing waters. I believe that we need to take action now to reverse this trend.

The problem is not too few fish. In fact, there are lots of small fish in our waters. Anglers are selecting the larger fish to keep and are simply catching and keeping too many of them in many of our lakes.

This proposal is not a 100% solution for all waters, but it does move us in the right direction to improve the quality of our panfish populations in Wisconsin. I am asking you to look at the attached data and support the Department's position on this rule proposal.

Sincerely,

  
George E. Meyer  
Secretary

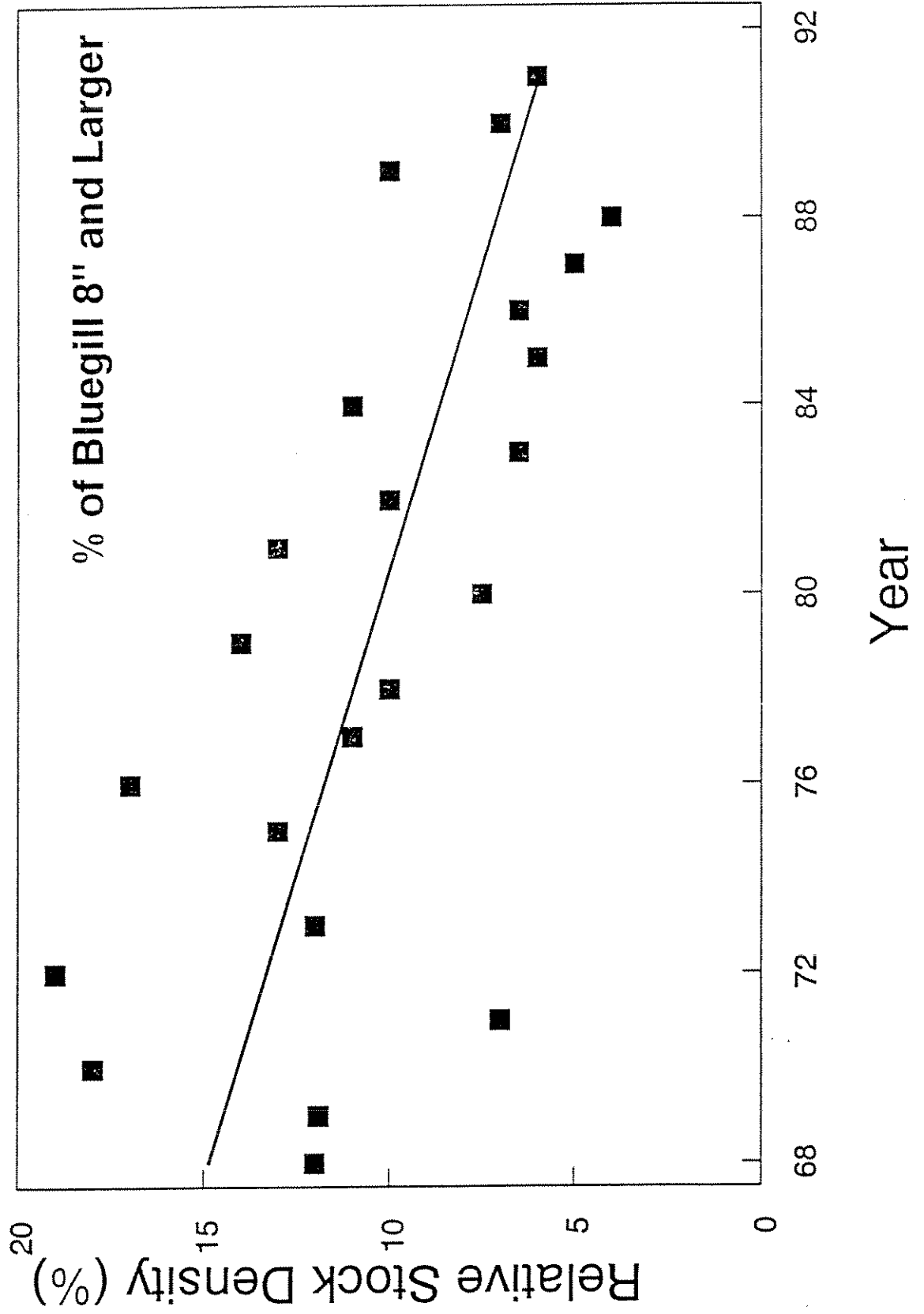
cc. Natural Resources Board

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*Quality Natural Resources Management  
Through Excellent Customer Service*

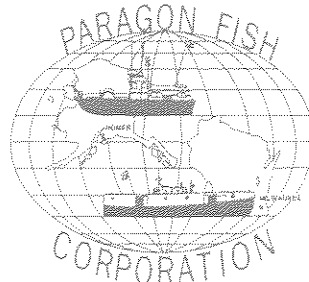


Figure 2. Relative Stock Density of Bluegill in Wisconsin.



FEB 10 1997

5405 South 23rd Street  
Milwaukee, WI 53221-3704



Boat Dock (414) 647-9244  
Office (414) 282-4426  
FAX (414) 282-4271

**DANIEL J. ANDERSON**  
*President*

*Jehw*

January 25, 1997

Wisconsin Department of Natural Resources  
101 South Webster Street - Box 7921  
Madison, WI 53707-7921  
Attn: George E. Meyer - Secretary

Re: Letter dated December 10, 1996 (3600), which was in response to a question I had posed to the DNR.

Dear George:

It's common knowledge that in September 1996 the Wisconsin Natural Resources Board closed the commercial yellow perch harvest in part of zone 2 and all of zone 3 in Lake Michigan. All thru the hearings regarding this issue, I made mention on several occasions to the Natural Resources Board and DNR personnel of not being able to meet the minimum production if zone 3 perch were taken from the fishery, even testimony from the sport industry said they felt our license's should be issued regardless because of closure of the perch season.

The minimum production standards were setup by the department in the late 1980's on top of the existing limit to entry system. It's intent was to identify inactive licenses, with the hope of reducing the total number of licenses issued because it was the Department's opinion that the fisheries in the state did not need the number of licenses issued at the time to efficiently harvest the fish available for harvest. Currently there are 111 licenses issued, down from the 240 range in the late 1970's. Of the 111 licenses currently issued, there are many multiple licensed businesses. Some individuals hold as many as 5 licenses for one business. I currently hold 3 licenses for the operation of one business (License numbers 110, 162 & 280) for a combined total of:

17.517% of the zone 3 perch allocation = 53,720# prior to 1st reduction  
.501% of the zone 2 whitefish allocation = 5,969#  
.020% of the zone 3 whitefish allocation = 25#  
12.947% of the zone 3 menomonee whitefish = 3,625#  
253,125# of the zone 3 chubs

The majority of the above was purchased in order to acquire more of the zone 3 perch quota, which was something fish management encouraged in order to further limit participant's in individual fisheries. I have spent approximately \$100,000 on quota's in order to acquire the zone 3 perch I have, most of which I also had to purchase as a package which included a license, chub and or whitefish quota. The above investment does not include my additional investment made for vessels, docks, buildings and gear. I feel strongly that these investments alone should show my intent to be a serious player in the Wisconsin fisheries. Unfortunately zone 3 perch have had a poor recruitment for the past 6 years (per the DNR records), which caused the fishery closure.

My business was primarily a perch fishery which supplemented some chubs and whitefish for a filler in between perch fishing. All and all the perch being the major financial contributor to my business. I wish to bring to your attention the fact that zone 3 minimum production level is 19,638 # of yellow perch, menomonees, whitefish, chubs or any combination of these species. I also wish to inform you to the fact of how labor intensive the chub fishery is with a relative minimum financial return which makes it very hard to attract qualified dependable crew to harvest solely chubs.

Prior to the perch closure my business was a little short of zone 3 perch to meet the minimum production level on all three licenses. I wish to know why as a serious fisher, with a considerable investment (time and money) I am in a situation where I must fish chubs with the risk of continuing to negatively impact my business or possibly lose my investment, when my normal business has been adversely effected with the perch closure. As I'm being told the relicensing format is such that I apparently can not get a waiver from this production requirement, at this time because the licensing format is:

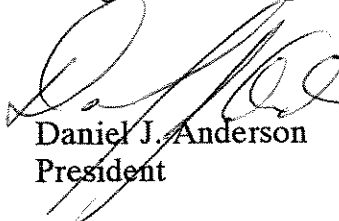
- apply for a license
- intent to deny letter is then sent back to be because of production
- I then have a time frame to prove minimum production, if I can't
- then I am at the mercy of the appeal process

I question the fairness and practicality of this procedure, especially after some of the premature statements made to the press by some department staff this fall regarding a cooperative perch assessment off of Kenosha. Quite frankly, if I were to pay my license fee and write on my first weekly fish report blank that I did not intent to fish until the following license year in the blank that's already provided on the form, wouldn't the department be money and man hours ahead if reporting personnel would not have to make any entries regarding my license's and law enforcement would have zero man hours involved in spot checking my quota books and or in surveyance of my business. How about the licenses that only had perch to fish. Maybe a minimal license fee is in order until the perch fisheries return, which at this time is uncertain when this may occur.

In closing maybe instead of my business possibly losing still more money during this closure, please consider letting me have a choice of fishing or not without having relicensing hanging over my head ready to take my investment of time and money away from me.

Very truly yours,

**Paragon Fish Corporation**



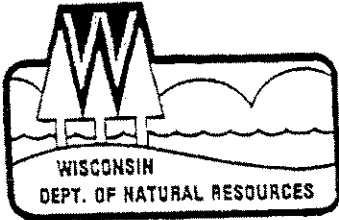
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Daniel J. Anderson  
President

enclosure

cc: Lake Michigan Commercial Fish Board Members  
Wisconsin Natural Resources Board Members  
Wisconsin Department of Development-Cherly Gain  
Political contacts  
DNR - Al Blizel  
DNR - Bill Horns  
DNR - Peter D. Flaherty





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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

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

December 10, 1996

IN REPLY REFER TO: 3600

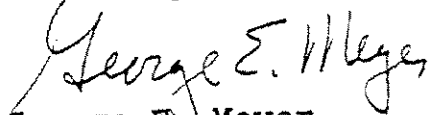
Dear Lake Michigan Commercial Fisher:

Earlier this year, Chapter NR 25, Wis. Adm. Code, was amended to close the yellow perch harvest season in Lake Michigan (in zone 2 east of the Northern Green Bay-Lake Michigan line and in all of zone-3).

Some commercial fishers have expressed concern that, because of this closed season, some licensees may not be able to harvest the minimum poundage required for annual license renewal as required in section NR 25.03(2)(b)3., Wis. Adm. Code. However, that rule also provides that a fisher who fails to make the minimum catch may still be relicensed if the department determines that unavoidable circumstances prevented the fisher from complying with the minimum catch requirement.

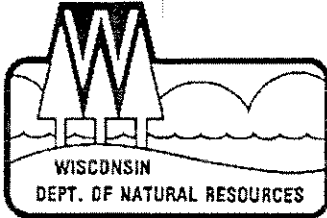
It is the Department's view that the closure of the yellow perch harvest season for Lake Michigan (like the 1995 reductions in yellow perch harvest limits for all 3 zones) would constitute such an unavoidable circumstance if the closed season effectively reduced a licensee's combined harvest for all species in each zone below the minimum catch limits for each zone. Please keep in mind that any licensee who fails to make his or her minimum catch - for whatever reason - can demonstrate to the Department that his or her failure was due to "unavoidable circumstances". If the Department agrees, the fisher can still be relicensed. The purpose of this letter is to let you know that the Lake Michigan perch season closure, like the 1995 perch quota reductions, could be a persuasive reason.

Sincerely,

  
George E. Meyer,  
Secretary

cc: Al Blizel - NER/Sturgeon Bay  
Bill Horns - FH/4  
Peter D. Flaherty - LS/5

FEB 10 1997



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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

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

January 28, 1997

IN REPLY REFER TO: 3600\L9701271.CG

MS CHERYL GAIN  
SMALL BUSINESS OMBUDSMAN  
DEPARTMENT OF COMMERCE  
123 W WASHINGTON AVE  
MADISON WI 53702

SUBJECT: Concerns regarding commercial fishing for yellow perch

Dear Ms. Gain:

Your letter to Senator Grobschmidt dated December 16, 1996, has been forwarded to me for comment. You raised two concerns regarding the closure of the commercial fishery for yellow perch in southern Lake Michigan: 1) the question of parity, and 2) regional isolation.

Parity You note that under the commercial closure some sport harvest will still be allowed, and suggest that a commercial harvest equal to the sport harvest should continue. Unfortunately, there are serious practical problems with attempting to regulate a commercial harvest equal to a very small and declining sport harvest, not the least of which is predicting in advance what the sport harvest will be. Remember, sport fishing is largely self-regulating; anglers will fish less and catch less as the population declines.

Regional isolation Since your letter was drafted, Indiana and Illinois have followed our lead in closing commercial fishing for yellow perch and in retaining a sport harvest. This reflects the culmination of a long-term coordinated effort among the Lake Michigan Management Agencies. In 1995, all states acted in concert to reduce sport and commercial harvests. Now the states have again taken similar steps, with Wisconsin leading the way.

Thank you for your interest in this difficult issue. We have moved with deliberation and caution in closing the commercial yellow perch fishery. It is my hope that the yellow perch population will rebound in the near future, and that we will be able to reopen the commercial fishery.

Sincerely,

*George*  
George E. Meyer  
Secretary

cc: Senator Richard Grobschmidt  
Representative Glenn Grothman

WISCONSIN'S ENVIRONMENTAL  
DECADE, INC., a Wisconsin  
Corporation, and  
RENEW WISCONSIN, a Wisconsin  
Corporation, and  
CITIZENS UTILITY BOARD, a Wisconsin  
Corporation,

Plaintiffs-Petitioners

v.

CASE NO. 96-CV-1298

STATE OF WISCONSIN DEPARTMENT OF  
COMMERCE,

Declaratory Judgment:  
Case Code No.: 30701

WILLIAM MCCOSHEN, SECRETARY,  
STATE OF WISCONSIN DEPARTMENT OF  
COMMERCE,

Other Injunction:  
Case Code No.: 30704

JOINT COMMITTEE FOR REVIEW OF  
ADMINISTRATIVE RULES, and

ASSOCIATED GENERAL CONTRACTORS,  
et. al.

Defendants-Respondents

SUMMONS

THE STATE OF WISCONSIN

To the Joint Committee for Review of Administrative Rules:

You are notified that the above-named plaintiffs have filed a lawsuit against you.  
The Complaint, which is attached, states the nature and basis of the legal action.

The Court in this action has indicated that within 5 (five) days of receiving this  
summons, you must respond with a written answer, as that term is used in ch. 802, Wis.  
Stats., to the Complaint. The court may reject or disregard an answer that does not  
follow the requirements of the statutes. The answer must be sent or delivered to the  
court, whose address is Clerk of Circuit Court, City-County Building, 210 Martin

Luther King, Jr., Blvd., Madison, Wisconsin 53709, and to plaintiff's attorney, Frank Jablonski, 7 North Pinckney Street, Madison, Wisconsin 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within 5 (five) days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

If you require the assistance of auxiliary aids or services because of a disability, call 266-4678 (TDD 266-9138) and ask for the court ADA coordinator.

DATED at Madison, Wisconsin, this 4<sup>th</sup> day of February, 1997.

By: Frank Jablonski  
Frank Jablonski,  
Plaintiff's Attorney  
State Bar No. 1000174

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**Frank Jablonski** • Attorney at Law •  
7 North Pinckney St. • Madison, WI 53703  
• (608) 258-8511 • FAX (608) 251-7870

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WISCONSIN'S ENVIRONMENTAL  
DECADE, INC., a Wisconsin  
Corporation, and  
RENEW WISCONSIN, a Wisconsin  
Corporation, and  
CITIZENS UTILITY BOARD, a Wisconsin  
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et. al.

Defendants-Respondents

WED, RENEW AND CUB'S THIRD AMENDED COMPLAINT

Plaintiffs-Petitioners Wisconsin's Environmental Decade (WED), RENEW Wisconsin (RENEW), and Citizens Utility Board (CUB) petition this honorable Court, pursuant to §§ 227.52, 227.40, and 806.04, and 42 USC 1983, inter alia, for a declaratory judgment that Clearinghouse Rule 96-080, which has the same substantive effect as the Emergency Rule, but which is not an emergency rule, is also invalid. This action seeks, *inter alia*, to secure protection for, and redress deprivation of, rights secured by the Fifth and Fourteenth Amendments to the Constitution of the United States. In addition to declaratory relief plaintiffs petition this honorable Court for injunctive orders necessary to prevent further harm and to compel defendant Department of Commerce to disclose the identity of buildings constructed to deficient legal standards under the invalid rule.

## BACKGROUND

1. Clearinghouse Rule 96-080 retroactively suspends 138 new or altered administrative rules within Clearinghouse Rule 94-116.
2. Clearinghouse Rule 94-116, the suspended rule, substantially reworked Chapters ILHR 63 and ILHR 64 and related definitions, pertaining to energy conservation and ventilation in commercial buildings.
3. At all times relevant to the claims raised in this lawsuit the Department of Commerce, its Secretary, William McCoshen, and the Joint Committee for Review of Administrative Rules have acted under color of state law.

## PARTIES

4. Wisconsin's Environmental Decade, Inc. (WED), is a non-profit, non-stock domestic corporation with approximately 24,000 members, organized and existing under the laws of the State of Wisconsin, with its principal offices at 122 State Street, Suite 200, Madison, Wisconsin. WED is organized and exists for the purpose of protecting and enhancing the quality of the human environment, including promoting energy conservation and the quality of indoor air in public buildings and work places constructed in Wisconsin.
5. RENEW Wisconsin is a non-profit, non-stock corporation with 190 member individuals and businesses, organized and existing under the laws of the state of Wisconsin, with its principal offices located at 222 South Hamilton St., Madison, Wisconsin. RENEW's mission is to promote appropriate uses of the State's native renewable resources to meet Wisconsin's energy needs. These resources can be used to displace the consumption of electricity in commercial buildings.
6. Citizens Utility Board (CUB) is a non-profit, non-stock corporation with approximately 20,000 members, organized and existing under the laws of the State of Wisconsin, with its principal offices located at 16 North Carroll St., Madison, Wisconsin. CUB is organized and exists for the purpose of advancing the interests of its members, Wisconsin residential and small business utility rate payers, in reducing utility costs through energy conservation and other means.
7. William McCoshen is Secretary of the Department of Commerce, and this lawsuit names him in that official capacity.
8. The Department of Commerce is an Administrative Agency of the State of Wisconsin.
9. The Joint Committee for Review of Administrative Rules is a Committee of the Legislature to which the Legislature has delegated certain powers concerning Administrative Rules.
10. The Joint Committee for Review of Administrative Rules is an "Agency" within

the meaning of §227.01 Wis. Stats.

11. The Department of Commerce, specifically the Division of Safety and Buildings, is responsible for energy conservation and ventilation codes and Clearinghouse Rule 96-080 challenged in this proceeding by this complaint

#### STANDING

12. WED, RENEW, and CUB, as organizations devoted to the protection of the physical and human environment, natural resources and energy conservation and renewable energy, assert the interests of their members whose legal rights and interests as employees, frequenters, members of the public and tenants who use public buildings and places of employment are adversely affected by implementation of the Emergency Rule and the Permanent Rule.
13. Legal rights and interests affected by implementation of the Rule here challenged include, among others, preservation of constitutional due process rights, reduced utility bills achieved by energy conservation, personal health benefits gained from improved indoor air quality in public buildings and places of business and employment, and the health, environmental and economic benefits of reduced energy consumption in Wisconsin.
14. Clearinghouse Rule 96-080 interferes with the legal rights and privileges of Plaintiffs-Petitioners' members.

#### COMMERCE, ITS RESPONSIBILITIES, AND CLEARINGHOUSE RULE 96-080.

15. Having assumed responsibilities formerly assigned to the Department of Industry, Labor and Human Relations (DILHR), the Department of Commerce is charged with developing and administering health and energy conservation related code standards for commercial buildings that conform to the requirements articulated in state and federal law.
16. DILHR adopted Clearinghouse Rule 94-116 in August of 1995, to take effect April 1, 1996.
17. DILHR suspended Clearinghouse Rule 94-116 on April 6, 1996 through issuance of an Emergency Rule.
18. The Emergency Rule suspending Clearinghouse Rule 94-116 moved Wisconsin from a position of compliance to a position of non-compliance with the substantive federal energy conservation requirements, ASHRAE 90.1-1989, mandated in the controlling federal legislation, commonly known as EPACKT (Energy Policy Act of 1992).

19. The Emergency Rule suspending Clearinghouse Rule 94-116 took out of effect ventilation requirements that DILHR had deemed to be necessary for adequate protection of health.

ISSUANCE OF THE CLEARINGHOUSE RULE 96-080 -  
CONTINUING SUSPENSION OF CLEARINGHOUSE RULE 94-116.

20. The Department of Commerce has adopted Clearinghouse Rule 96-080. Affidavit of Michael Corry, 22 November 1996, Allegation # 4.
21. The purpose of Clearinghouse Rule 96-080 is to extend the suspension of Clearinghouse Rule 94-116 until April 1, 1996.
22. Clearinghouse Rule 94-116 went into effect on April 1, 1996 displacing preexisting ventilation and energy conservation requirements.
23. As a direct and foreseeable result of Clearinghouse Rule 96-080, which gives rise to the Causes of Action delineated below, Plaintiffs have suffered, are suffering, and will continue to suffer irreparable harm for which there is no adequate remedy at law. They are therefore entitled to declaratory and injunctive relief under 42 U.S. Code 1983, 42 U.S. Code 1988, 28 USC §§2201 and 2202, §227.40 Wis. Stats., §806.04 Wis. Stats., and §813 Wis. Stats., inter alia.

FIRST CAUSE OF ACTION AND GROUNDS FOR RELIEF - VIOLATION  
OF THE RIGHT TO SUBSTANTIVE DUE PROCESS BECAUSE OF  
OVERBREADTH AND OTHER REASONS.

24. Plaintiffs-Petitioners re-allege, as though set forth in full, all preceding allegations of this Complaint-Petition.
25. Clearinghouse Rule 96-080, continuing the effect of the Emergency Rule insofar as it delays implementation of Clearinghouse Rule 94-116 is not reasonably related to a legitimate governmental interest because:
  - 25.1. It is overbroad;
  - 25.2. It is inconsistent with the Department's energy conservation-related responsibilities under, inter alia §101.027 Wis. Stats and §1.12(3)(a); Wis. Stats.;
  - 25.3. It fails to provide for adequate health and safety protections, specifically, adequate ventilation;
  - 25.4. Its cited purpose, "to give the Department and its advisory committee time to study the effect of the rules and make any necessary changes" (Affidavit of Michael Corry, 22 November 1996, Attachment A, numbered page "1") is not related to Commerce's statutory responsibilities, which



are to protect health and promote energy conservation.

- 25.5. The rule itself is unrelated even to its cited purpose, namely, "to give the Department and its advisory committee time to study the effect of the rules and make any necessary changes" (Affidavit of Michael Corry, 22 November 1996, Attachment A, numbered page "1") because any purported "necessary changes" had already been made and incorporated into Clearinghouse Rule 96-144, adopted by the Department on December 5, 1996, well in advance of the effective date of Clearinghouse Rule 96-080. (Supplemental Affidavit of Michael F. Corry, 5 December 1996, Exhibit A).
26. The standard of review in a constitutional substantive due process challenge to an agency rule is whether the rule is reasonably related to a legitimate governmental interest. *Liberty Home, Inc. v. DILHR*, 136 Wis 2d 368, 401 N.W. 2d 805. (1987).

SECOND CAUSE OF ACTION AND GROUNDS FOR RELIEF -  
IMPERMISSIBLY CREATING A LEGAL FRAMEWORK IN WHICH THERE  
ARE NO ENERGY conservation OR VENTILATION RULES FOR THE CLASS  
OF BUILDINGS COVERED BY THE PREDECESSOR RULES AND  
CLEARINGHOUSE RULE 94-116.

27. Plaintiffs-Petitioners re-allege, as though set forth in full, all preceding allegations of this Complaint-Petition.
28. Clearinghouse Rule 94-116 repealed and replaced pre-existing rules. As of April 1, 1996, the pre-existing rules were repealed.
29. DILHR's April 6, 1996 Emergency Rule suspended Clearinghouse Rule 94-116.
30. Commerce's Clearinghouse Rule 96-080 suspended Clearinghouse Rule 94-116 as of January 1, 1997.
31. By continuing the suspension of the only rules governing energy conservation and ventilation for this class of buildings Clearinghouse Rule 96-080 impermissibly eliminates all conservation and ventilation rules governing this class of buildings.
32. Eliminating energy conservation and ventilation rules for new commercial construction directly violates express statutory obligations to have in place energy conservation rules and ventilation rules.
33. Commerce has no power to eliminate altogether energy conservation and ventilation requirements.
34. Challenges to administrative rules as exceeding the agency's statutory authority are reviewed de novo. *DeBeck v. DNR*, 172 Wis. 2d 382, 386, 493 N.W. 2d 234,

236 (Ct.App. 1992), review denied, 497 N.W. 2d 130 (1993).

THIRD CAUSE OF ACTION AND GROUNDS FOR RELIEF -  
RETROACTIVE RULEMAKING.

35. Plaintiffs-Petitioners re-allege, as though set forth in full, all preceding allegations of this Complaint-Petition.
36. Clearinghouse Rule 96-080 purports to retroactively alter the effective date of Clearinghouse Rule 94-116 fully nine months after Clearinghouse Rule 94-116 took effect.
37. Commerce is without power to promulgate a rule retroactively altering the effective date of an existing rule.
38. Challenges to administrative rules as exceeding an administrative agency's statutory authority are reviewed de novo. *DeBeck v. DNR*, 172 Wis. 2d 382, 386, 493 N.W. 2d 234, 236 (Ct.App. 1992), review denied, 497 N.W. 2d 130 (1993).

FOURTH CAUSE OF ACTION AND GROUNDS FOR RELIEF -  
RENDERING THE STATE OUT OF COMPLIANCE WITH CONTROLLING  
FEDERAL LAW (EPACT)

39. Plaintiffs-Petitioners re-allege, as though set forth in full, all preceding allegations of this Complaint-Petition.
40. Clearinghouse Rule 94-116 brought Wisconsin's building code into compliance with federal law.
41. The Department admits that application of rules in place prior to Clearinghouse Rule 94-116 "is contrary to Federal Policy (the EPACT Law)" Parentheses in original. December 13, 1996 Affidavit of James J. Edelson, allegation # 6, citing pages 4 and 5 of an Environmental Assessment produced by the Department of Commerce.
42. Clearinghouse Rule 96-080, by continuing the suspension of Clearinghouse Rule 94-116, and providing for the application of rules that are contrary to EPACT, renders the state out of compliance with federal law (EPACT).
43. The Department of Commerce has no authority to promulgate a rule that places Wisconsin out of compliance with Federal Law.
44. Under §227.40 Stats., DILHR exceeded its authority in issuing Clearinghouse Rule 96-080.
45. The court reviews the agency action de novo when the challenge to

administrative rules contends that an agency exceeded its authority in issuing a rule. *DeBeck v. DNR* 172 Wis. 2d 382, 386 (Ct. App. 1992).

**FIFTH CAUSE OF ACTION - SUSPENDING THE OPERATION OF RULES NECESSARY TO PROTECT HEALTH WHILE ALLOWING BUILDINGS TO BE CONSTRUCTED TO VENTILATION STANDARDS THAT THE DEPARTMENT ITSELF HAS REPEATEDLY FOUND TO BE INADEQUATE TO PROTECT HEALTH.**

46. Plaintiffs-Petitioners re-allege, as though set forth in full, all preceding allegations of this Complaint-Petition.
47. The Department admits that the air change rate in the preexisting rules that the Department will continue to apply under Clearinghouse Rule 96-080 "is below the nationally accepted standard and is no longer considered adequate." December 13, 1996 Affidavit of James J. Edelson, allegation # 8, citing page 3 of an Environmental Assessment of Clearinghouse Rule 96-144 prepared by the Department of Commerce.
48. Both Commerce and its predecessor agency, DILHR, have repeatedly determined and indicated that the ventilation standards of the predecessor rule, which Commerce continues to apply, are insufficient to adequately protect health.
49. This challenge to the Clearinghouse Rule 96-080 under §227.40 Stats. is that DILHR exceeded its authority in issuing Clearinghouse Rule 96-080.
50. The court reviews the agency action de novo when the challenge to administrative rules contends that an agency exceeded its authority in issuing a rule. *DeBeck v. DNR* 172 Wis. 2d 382, 386 (Ct. App. 1992).

**SIXTH CAUSE OF ACTION - REDUCING USE OF COST EFFECTIVE AND TECHNICALLY FEASIBLE ENERGY conservation MEASURES.**

51. Plaintiffs-Petitioners re-allege, as though set forth in full, all preceding allegations of this Complaint-Petition.
52. Clearinghouse Rule 96-080 reduces the use of cost effective and technically feasible energy conservation measures required under Clearinghouse Rule 94-116.
53. Under §227.40 Wis. Stats. and §1.12 Wis. Stats. Commerce is without authority to reduce the use of cost effective and technically feasible energy conservation measures required under Clearinghouse Rule 94-116.
54. The court reviews the agency action de novo when the challenge to administrative rules contends that an agency exceeded its authority in issuing a rule. *DeBeck v. DNR* 172 Wis. 2d 382, 386 (Ct. App. 1992).

SEVENTH CAUSE OF ACTION - REDUCING USE OF COST EFFECTIVE AND  
TECHNICALLY FEASIBLE RENEWABLE ENERGY MEASURES.

55. Plaintiffs-Petitioners re-allege, as though set forth in full, all preceding allegations of this Complaint-Petition.
56. Clearinghouse Rule 96-080 reduces the use of cost effective and technically feasible renewable energy measures provided for under Clearinghouse Rule 94-116.
57. Under §227.40 Wis. Stats. and §1.12 Wis. Stats. Commerce was without authority to reduce the use of cost effective and technically feasible renewable energy measures provided for under Clearinghouse Rule 94-116.
58. The court reviews the agency action de novo when the challenge to administrative rules contends that an agency exceeded its authority in issuing a rule. *DeBeck v. DNR* 172 Wis. 2d 382, 386 (Ct. App. 1992).

WHEREFORE, Plaintiffs-Petitioners respectfully request the Court for the following relief:

- A. A Declaratory Judgment under §227.40 and §806.04 Wis. Stats. finding Clearinghouse Rule 96-080 to be invalid;
- B. An injunction enjoining all Defendants from treating Clearinghouse Rule 96-080 as though it ever was valid;
- C. A Declaratory Judgment under §227.40 and §806.04 Wis. Stats. finding the preexisting energy conservation requirements of Chapters ILHR 63 and 64 that were displaced by Clearinghouse Rule 94-116 to be insufficient to meet the Department of Commerce's assigned energy conservation responsibilities for public buildings and places of employment;
- D. An injunction enjoining all defendants from treating the preexisting energy conservation requirements of Chapters ILHR 63 and 64 that were displaced by Clearinghouse Rule 94-116, which the Department has continued to apply, as though they continue to be sufficient to meet the Department of Commerce's assigned energy conservation responsibilities for public buildings and places of employment;
- E. A Declaratory Judgment under §227.40 and §806.04 Wis. Stats. finding the preexisting ventilation requirements of Chapters ILHR 63 and 64, which were displaced by Clearinghouse Rule 94-116, to be inadequate to meet the Department of Commerce's assigned health-related responsibilities;

- F. An injunction enjoining all defendants from treating the preexisting ventilation requirements of Chapters ILHR 63 and 64 that were displaced by Clearinghouse Rule 94-116, which the Department has continued to apply, as though they continue to be sufficient to meet the Department of Commerce's assigned ventilation, health related, responsibilities;
- G. A Declaratory Judgment under 28 USC §§2201 and 2202 that the imposition of Clearinghouse Rule 96-080, and the ventilation and energy conservation standards that the Department has applied to public buildings and places of employment pursuant to Clearinghouse Rule 96-080 violate plaintiffs substantive due process rights;
- H. An injunction enjoining the Department of Commerce from applying energy conservation requirements for public buildings or places of employment that are not consistent with the substantive commercial building standards, specifically ASHRAE 90.1-1989 mandated by 42 USC 6431 §304(b) and §101.127 Wis. Stats.;
- I. An injunction enjoining the Department of Commerce from applying to public buildings and places of employment ventilation standards found to be inadequate in this proceeding;
- J. An order directing the Department to identify and disclose to plaintiffs all applications processed under Clearinghouse Rule 96-080 that are do not meet or exceed the substantive commercial building standards of ASHRAE 90.1-1989 mandated by 42 USC 6431 §304(b) and §101.127 Wis. Stats.;
- K. An order directing the Department to identify and disclose to plaintiffs all applications processed under Clearinghouse Rule 96-080 that do not meet the ventilation standards of Clearinghouse Rule 96-144;
- L. A Declaratory Judgment under §227.40 and §806.04 Wis. Stats. finding that the Department of Commerce was without power to retroactively alter the effective date of Clearinghouse Rule 94-116;
- M. A Declaratory Judgment under §227.40 and §806.04 Wis. Stats. finding that Clearinghouse Rule 96-080 impermissibly reduced the use of cost effective and technically feasible energy conservation measures;
- N. A Declaratory Judgment under §227.40 and §806.04 Wis. Stats. finding that Clearinghouse Rule 96-080 impermissibly reduced the use of cost effective and technically feasible renewable energy measures.
- O. Costs and attorney's fees pursuant to 42 USC 1983 and 42 USC 1988;
- P. Any and all other relief which the Court deems just and proper.

Dated this 4<sup>th</sup> day of ~~January~~ <sup>February</sup>, 1997.

Frank Jablonski  
Frank Jablonski, Attorney for  
Plaintiffs-Petitioners State Bar #1000174

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Judge Paul Higginbotham  
Dane County Circuit Ct., Br. 17  
210 Martin Luther King Jr. Blvd.  
Madison, WI 53709-0001

February 4, 1997

Re: WED et. al. v. Dept. Commerce et. al. 96 CV 1298  
Delivered by hand.

Dear Judge Higginbotham:

Enclosed for filing, as you directed, are 1) the revised complaint in this proceeding, and 2) the proposed injunctive order. As directed by the court, we have named the Joint Committee for Review of Administrative Rules as a party defendant in this case. The Joint Committee is being served with a summons indicating the shortened time for an Answer, along with the revised complaint and the proposed injunctive order before we deliver these to the court.

Sincerely,



Frank Jablonski  
for WED et. al.

c: Parties