

Chairman:
Agriculture Committee



Member:
Consumer Affairs
Government Operations
Natural Resources

Al Ott

State Representative • 3rd Assembly District

Assembly Agriculture Committee

MEMO

TO: Members of the Assembly Agriculture Committee

FROM: Representative Al Ott, Chair

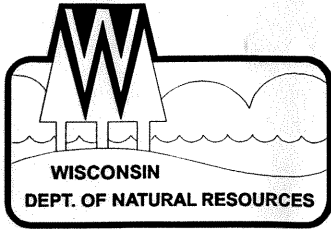
DATE: February 4, 1999

The following clearinghouse rule has been referred to the Assembly Agriculture Committee:

Clearinghouse Rule 98-055

Relating to natural waters as fish farms. Submitted by the Department of Natural Resources.

The deadline for action on this rule is February 15, 1999. A copy of the rule is attached.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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

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January 29, 1999

Honorable Alvin Ott, Chair
Assembly Committee on Agriculture
State Capitol

Honorable Alice Clausing, Chair
Senate Committee on Agriculture, Environmental
Resources and Campaign Finance Reform
State Capitol

Re: Clearinghouse Rule No. 98-055
Natural waters as fish farms

Al + Alice
Dear Committee Chairs:

On November 9, 1998, the Senate Committee on Environment and Energy requested the Department of Natural Resources to modify Clearinghouse Rule No. 98-055 pertaining to natural waters and fish farms. At its January 27, 1999 meeting, the Natural Resources Board adopted s. NR 16.73(4) as an additional subsection to the proposed rule. The subsection reads as follows:

NR 16.73(4) The department shall issue a notice of intent to use a natural body of water as a fish hatching or rearing facility that was not being used as of January 1, 1998 by the department. The department shall comply with all provisions of s. NR 16.74 before it may use a natural body of water as a fish hatching or rearing facility.

Under s. 227.19(4)(b)2., Stats., the Department of Natural Resources refers this rule to your Committees for an additional 10 working day review on the modifications. If the Department does not hear from you within 10 working days of the receipt of this notification, the Department will continue processing this rule. A copy of the complete proposed rule is attached for your information.

Sincerely,

George

George E. Meyer
Secretary

cc: Tim Andryk - LE/5
Mel Vollbrecht - FH/6
Carol Turner - LS/5

Attach.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 16 (title) and to create NR 16, subch. I (title), 16.001(intro.) and NR 16, subch. II relating to the development of fees, criteria, and procedures to use when permitting the use of natural waters as fish farms.

FH-18-98

Analysis Prepared by the Department of Natural Resources

Statutory authority: s. 29.733 (2) (f), Stats.

Statutes interpreted: s. 29.733, Stats.

NR 16, subch. II is created to set the fee structure, criteria, and procedures to use when permitting the use of natural waters as fish farms. The rule applies to fish farms and state-owned fish hatcheries located in, or proposed to be located in freeze-out ponds, and to natural water bodies that were licensed by the Department in 1997 as part of a private hatchery. A freeze-out pond is defined in s. 29.001 (29), Stats., as a natural, self contained body of water (which has no inlet or outlet, except that it may have pipes equipped with barriers with which to put in or withdraw water) in which freezing or anoxic conditions prevent the body of water from naturally sustaining a fish population at least twice every five years. An application to use freeze-out ponds as fish farms may include more than one freeze-out pond if they are located on a contiguous parcel of property under the same ownership or leasehold.

The rule provides a three tiered fee structure as follows:

- 1) For natural waters that were licensed as a private fish hatchery or as part of a private fish hatchery in 1997, the Department will issue a 10 year permit for this use without making an initial determination as specified in s. 29.733 (2) (b), Stats. The fee is \$50.
- 2) For natural waters that are freeze-out ponds that were not formerly licensed by the Department, the Department will make an initial determination of substantial public interest in the freeze-out pond and whether public or private rights in the freeze-out pond would be damaged. This will entail an on-site visit by water management specialists, fisheries personnel, and other Department personnel as needed. The fee is \$500.
- 3) The natural waters permit is transferable. The fee to transfer the permit is \$100.

Applications for this permit may be made beginning 60 days after the effective date of the rule. Renewal applications may be made within 16 months before the expiration date of the permit. The Department will issue, renew or deny the permit within 3 months of receiving the application, however, if the natural water body is ice-covered at the time of application, the

Department may delay its action until May 31.

The applicant must provide evidence that they own, lease, or otherwise control the land riparian to the water body and that the public does not have access to the water body, except for allowing fishing for a fee. The applicant must also indicate why they believe the water body is a freeze-out pond. They must attach copies of any other permits required by state, local or federal authorities (Chapters 30 and 31, Army Corps of Engineers, etc.). The applicant will also indicate the water source and quantity used for the fish farm and whether there is a discharge to a water of the state.

The Department will issue a permit for the use of a natural water body as a fish farm if all the requirements of this subchapter are met and if the Department determines that there is no substantial public interest in the body of water and that no public or private rights in the body of water will be damaged.

The Department must follow the same review and public notice procedures required of permit applicants when using natural waters as a fish hatching or rearing facility.

Although not inclusive, the following are indicative of public rights and interests: plant and wild animal habitats and populations, including threatened or endangered species; wetland functional values; water quality; navigability and associated incidents to navigation (fishing, swimming, canoeing, wading).

Species reared in the natural water body may not be detrimental, non-native species pursuant to s. 29.424 (2), Stats.

Physical improvements or modifications to the natural water body must comply with all federal, state, and local laws and ordinances.

After receiving a permit application, the Department shall schedule a public hearing or provide notice that it will proceed without a public hearing if no substantive written objections are received within 30 days of publication of the notice.

The Department will renew permits subject to the provisions of s. 29.733 (2) (c), Stats., and will deny permits subject to the provisions of s. 29.733 (2) (d), Stats.

The Department will suspend or revoke permits subject to the provisions of s. 29.733 (2) (e), Stats.

SECTION 1. Chapter NR 16 (title) is amended to read:

Chapter NR 16

GAME FARMS AND, EXHIBITS AND FISH FARMS

SECTION 2. NR 16, subch. I (title) is created to read:

**NR 16, SUBCHAPTER I
GAME FARMS AND EXHIBITS**

SECTION 3. NR 16.001 (intro) is created to read:

NR 16.001 DEFINITIONS. In this subchapter:

SECTION 4. NR 16, subch. II is created to read:

**NR 16, SUBCHAPTER II
PERMITTING THE USE OF NATURAL BODIES OF WATER AS FISH FARMS**

NR 16.70 PURPOSE AND APPLICABILITY. (1) **PURPOSE.** The purpose of this subchapter is to establish fees, criteria and procedures to be used for permitting the use of natural bodies of water as fish farms as required under s. 29.733 (2) (f), Stats.

(2) **APPLICABILITY.** The provisions of this subchapter are applicable to:

(a) Fish farms and state-owned hatcheries located in or proposed to be located in freeze-out ponds.

(b) Natural bodies of water that were licensed as a private fish hatchery or licensed as a part of a private fish hatchery in 1997.

(c) A freeze-out pond or more than one freeze-out pond that is proposed as a fish farm at the time of application and is located on the same contiguous parcel of property under the same ownership or leasehold.

NR 16.71 DEFINITIONS. In this subchapter: (1) "Barrier equipped" means the placement of a structure or device which prevents the movement of fish or bait from a fish farm to a natural body of water.

(2) "Freeze-out pond" has the meaning specified in s. 29.001 (29), Stats.

(3) "Natural body of water" means any spring, stream, pond, lake or wetland that was historically present in a natural state but may have been physically altered over time and has not

been permitted as an artificial and private water body under ch. 30 or 31, Stats.

(4) "Preexisting fish rearing facility" has the meaning specified in s. 29.001 (64), Stats.

(5) "Transfer of permit" means the conveyance of a permit from one party to another as a result of change in ownership or leasehold interest of a fish farm.

(6) "Wetland" has the meaning specified under s. 23.32, Stats.

Note: For purposes of this subchapter, a natural body of water does not include a physically altered body of water that has been permitted as an artificial and private body of water under ch. 30 or 31, Stats.

NR 16.72 NATURAL BODY OF WATER PERMIT APPLICATION FEES. Permit application fees for the use of natural bodies of water for fish farms for a period of 10 years shall be as follows:

(1) Permit applicants for natural bodies of water reauthorized for use as fish farms under s. 29.733 (2) (b) and (c), Stats., shall pay a non-refundable renewal fee of \$50.00.

(2) Permit applicants for the initial use of freeze-out ponds as fish farms shall pay a \$500.00 non-refundable permit application fee.

(3) Recipients of permit transfers shall pay a non-refundable permit transfer fee of \$100.00. The expiration date of the original permit shall remain in effect for the transferred permit.

NR 16.73 APPLICANT PERMIT PROCEDURES FOR USE OF NATURAL BODIES OF WATER FOR FISH FARMS. (1) For permits reauthorized under s. 29.733 (2) (b), Stats., the applicant shall complete and submit an application form provided by the department and the appropriate permit fee within 60 days from the effective date of this rule ... [revisor insert date].

(2) For renewal of permits under s. 29.733 (2) (c), Stats., the applicant shall submit a new application to the department not more than 16 months before the expiration date of the permit granted under this chapter but not less than 2 months from the expiration date of the permit.

(3) Applications for permits under this subchapter shall include documents verifying all of the following:

(a) The land that is riparian to the body of water is owned, leased or controlled by the owners of the fish farm.

(b) None of the owners of the fish farm or of the riparian lands provides access to the body of water to the public by means of an easement or other right-of way or by means of a

business open to the public, except that the owners of the fish farm may allow fishing by the public for a fee.

(c) Documentation that the natural body of water may be a freeze-out pond or that the natural body of water is a preexisting fish rearing facility that is barrier equipped.

(d) Copies of any other permits or authorization required by ch. 30 or 31, Stats., the Army corps of engineers and any other federal, state or local laws and zoning ordinances.

(e) All applicants shall identify the water source and quantity used for the fish farm and whether there is any discharge to a water of the state.

(f) Any other information requested by the department to determine whether a permit would or would not be granted by the department.

Note: Permit application forms are available from the Bureau of Fisheries Management and Habitat Protection, 101 South Webster St., P.O. Box 7921, Madison, WI 53707.

(4) The department shall issue a notice of intent to use a natural body of water as a fish hatching or rearing facility that was not being used as of January 1, 1998 by the department. The department shall comply with all provisions of s. NR 16.74 before it may use a natural body of water as a fish hatching or rearing facility.

NR 16.74 DEPARTMENT DETERMINATIONS. (1) The department shall issue a permit for use of a natural body of water as a fish farm or as a part of a fish farm if all requirements of this subchapter have been met and if the department determines that no substantial public interest exists in the body of water and that no public or private rights in the body of water will be adversely impacted. Among the factors considered, the following are indicative of public rights and interests including but not limited to:

(a) Plant and wild animal habitat or plant and wild animal populations.

(b) Threatened or endangered species or their habitat.

(c) Water quality related functional values or uses of wetlands identified in s. NR 103.03.

(d) Surface water quality standards identified in chs. NR 102, 104, 105, 106 and 107 and minimum water quantity requirements identified in s. 31.02, Stats.

(e) The public's right to navigate and associated incidents to navigation including fishing, swimming, wading and canoeing.

(2) Fish farms may not introduce or propagate any non-native fish species if the department has determined that having the fish in that particular self-contained fish rearing facility or preexisting fish rearing facility will pose a risk of being detrimental to the waters of the state.

(3) Physical improvements or modifications to natural bodies of water used as fish farms shall comply with all federal, state and local laws and ordinances.

(4) Permits approved under this subchapter may be transferred to another party if the department determines that all conditions of this subchapter and s. 29.733, Stats., have been satisfied.

(5) The department shall renew permits issued under this subchapter subject to the provisions of s. 29.733 (2) (c), Stats.

(6) The department shall deny a permit for use of a natural body of water as a fish farm or as part of a fish farm if the requirements of this subchapter have not been met.

(7) Upon receipt of a complete permit application, the department shall either schedule a hearing or provide notice stating that it will proceed on the application without a hearing if no substantive written objections to issuance of the permit is received within 30 days after publication or notice. The notice shall be provided to news media and other persons according to the procedures in s. NR 27.07 (1) (b) and (c). The department may provide notice to other persons as it deems appropriate. The department will assume the cost of publishing the notice.

NR 16.75 ENFORCEMENT. The department may suspend or revoke a permit issued under this subchapter subject to the provisions of s. 29.733 (2) (e), Stats.

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on August 26, 1998 and January 27, 1999.

The rules contained herein shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)