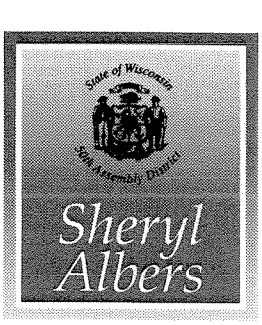



March 27, 2000

Senator Judy Robson, Cochairperson
Joint Committee for Review of Administrative Rules
Room 15 South, State Capitol
Madison, WI 53702

Representative Glenn Grothman, Cochairperson
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
Madison, WI 53702

Dear Co-chairpersons Robson and Grothman:

I request the Joint Committee for Review of Administrative Rules (JCRAR) to conduct a hearing on emergency rules promulgated by the Department of Natural Resources (DNR). These rules create ch. NR 195, relating to establishing river protection grants. The DNR has also commenced the process of promulgating these rules in final form, in Clearinghouse Rule 00–030. I believe that upon review of the emergency rule, the JCRAR will see the need to suspend the emergency rule.

My concerns with this rule relate to the abuse of the emergency rule process by the DNR and to the substance of the rule.

***Emergency Rule Process***

An agency is authorized to promulgate an emergency rule under s. 227.24, Stats., "if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the [statutory procedures for rule promulgation]." The DNR has no credible argument that the rule is eligible for promulgation as an emergency rule. The ***only*** reason for the DNR to promulgate this rule as an emergency rule is so that the agency can assure the expenditure of the entire $300,000 annual appropriation for the current fixed year.

This is clearly an abuse of the emergency rule process. The river protection grant program, as created by the Legislature in the recent budget act (in s. 281.70, Stats.) is a new program. As such, the DNR should take care in crafting the new program, and the Legislature

Office: P.O. Box 8952 • State Capitol • Madison, WI 53708-8952 • (608) 266-8531
Home: S6896 Seeley Creek Road • Loganville, WI 53943 • (608) 727-5084

should have a chance to review the rules implementing the program. The hasty creation of a program through the emergency rule process is liable to result in expectations and commitments that would not have been created with the more deliberative process of normal rule promulgation.

***Contents of the Rule***

In addition to the abuse of the emergency rule process, I believe that JCRAR has grounds to object to the rule based on failure to comply with legislative intent and imposition of an undue hardship under s. 227.19 (4) (d) 3. and 6., Stats. New s. 281.70, Stats., authorizes what are called "river protection grants." I have included a copy of s. 281.70, Stats., as an enclosure to this letter. The DNR is directed to provide grants both for planning projects and management projects. Grants are to be provided to local governmental units, river management organizations and nonprofit conservation organizations.

The problem I see with the rule is that it authorizes dam removal as an eligible management project. Dam removal is not mentioned as an eligible activity in the statute.

A reasonable interpretation of the legislative intent in s. 281.70, Stats., is that the program is intended to leverage a substantial amount of river habitat restoration, using the resources of local governments and private, nonprofit organizations. Dam removal is a very expensive activity and is likely always to require the DNR to commit the maximum grant of $50,000 to the project. The grant money will be gone very quickly if dam removal projects are retained as eligible activities.

Furthermore, I believe that the DNR is co–opting this program for its own purposes. DNR has long favored the removal of dams and would order local units of government to remove more of them, but for the political pressure against removal. I believe that the DNR is attempting to capture funds from the River Protection Grant Program to help reduce the political opposition to its efforts to order local units of government to remove dams. This is clearly not the result that the Legislature intended with this program.

Another program is already in existence for dam removal and repair, albeit unfunded in this most recent budget. If the legislature intends that funds be made available for removal or repair, the legislature should appropriate funds specifically for that purpose.

The effect of the emergency rule encourages removal and discourages repair and such direction is contrary to the legislative intent behind the dam removal and repair program that was created in the 1989 Budget Act. That program allows qualifying entities to seek funds for either purpose with no deference intended to give those opting for repair instead of removal.

Perhaps the legislature should consider specifying a percentage of total funding be used for each purpose or base such a decision on the number of applicants for each stated purpose.

Thank you for your attention to this request. I will be pleased to discuss this request further if you have any questions.

Sincerely,

Sheryl K. Albers
State Representative
50th Assembly District

**Austin, David**
**From:** Sklansky, Ron
**Sent:** Monday, April 03, 2000 4:49 PM
**To:** Austin, David
**Subject:** RE: CR 00-030

David:

O.k., I'm finally taking a break from the Packers. From your description of the situation, it sounds as though DNR has broad rule making authority and that is why the Clearinghouse made no comment. Making a prediction about what a court would say is pretty speculative. All I can say is that I don't have any trouble with the DNR interpretation.

Of course, Rep. Albers can assist the interpretive process by convincing her colleagues to settle the matter through the review of proposed emergency rules. This obviously will clarify legislative intent on a particular subject. But if she can't convince them, that failure says something, too. In other words, I think you are under no obligation to do anything if you also agree with the DNR position.

Ron

-----Original Message-----
**From:** Austin, David
**Sent:** Friday, March 31, 2000 12:26 PM
**To:** Sklansky, Ron
**Subject:** CR 00-030

Ron:

Rep. Albers wrote to the JCRAR co-chairs asking them to suspend emergency rule NR 195 (now CR 00-030). The basis of her objection is that the rule exceeds its statutory authority.

Section 281.70(5)(c)2 of the statutes authorizes DNR river grants for the restoration of in-stream or shoreline habitat.

NR 195.05(1)(d) defines as an eligible activity river restoration projects including restoration of in-stream or shoreland habitat.

"River restoration projects" are defined to include dam removal. NR 195.03(13).

Rep. Albers argues that because dam removal is not included in the statutes as such, it cannot be included in the rule. I think she is wrong. The department is directed to promulgate rules establishing what activities are eligible for grants. The statutes specify a number of activities that "shall" be included in the list of eligible activities. It seems like a standard statutory construction is that this list is not exhaustive.

In preparing the list of eligible activities, the department has interpreted the statutory phrase "restoration of in-stream or shoreline habitat" to include a number of activities that might

achieve this goal. DNR has clearly made a policy judgment that dam removal helps in the restoration of habitat and therefore believes that dam removal falls within the statutory language.

The Clearinghouse Review makes no mention of the rule exceeding its statutory authority.

So, is Rep. Albers on the right track? Or is she off base? (Pardon my mixed metaphor.)

David Austin

WISCONSIN GROCERS ASSOCIATION INC.

2601 CROSSROADS DRIVE • SUITE 185 • MADISON, WI 53718-7923 • 608/244-7150 • FAX 608/244-9030

What is this about? Helen Krause sent a fax (+ dept) Rec'd

October 24, 2001

Secretary James Harsdorf
Department of Agriculture, Trade & Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708

Dear Secretary Harsdorf:

We are writing on behalf of more than 1,000 retailers who are licensed under the Department of Agriculture, Trade & Consumer Protection with concerns regarding the enforcement of the new Wisconsin Food Code by the Rock County Health Department.

It has been brought to our attention by several retailers in Rock County that the Rock County Health Department, an agent of DATCP, has questionable enforcement of the Wisconsin Food Code. It was our understanding that the first year of the new Food Code, which was effective February 2001, was meant to be a "training period" for retailers to learn the new requirements and an opportunity for sanitarians to educate retailers on the new code.

We are assuming that this has been the case in the majority of the state. However, this is not the situation in Rock County.

The WGA has been asked to step in by several retailers who fear that the Rock County Health Department will retaliate if they make a complaint. The WGA has had discussions with DATCP staff on this issue and has received no action.

Rock County Health Department is an agent of the state. There needs to be a mechanism in place that allows DATCP to step in and address problems with misinterpretations and enforcement of the code and stepping outside of the intent of the food code.

A uniform food code should also have uniform enforcement. The current enforcement in Rock County causes anxiety on retailers and confusion to the point that some retailers are considering legal action against the Department. This is not uniform enforcement of the code and defeats the purpose of DATCP contracting with agents to enforce the regulations.

Thus, we are asking you to do two things. First, work with the WGA and the Rock County Health Department to resolve these issues as they stand today. Second, the Department needs to come up with standard interpretation for agents, inspectors, and anyone involved in enforcing the food code. In addition, a sanctioning system should be in place, much like the retailer's penalties, for intentional and wrongful enforcement of the code.

This issue is very important to members in all areas of the state and not just Rock County. We urge you to use this specific situation as the model to ensure that this does not occur in other areas.

Further, it is our hope that we can achieve these objectives by working directly with you, the department and the Rock County Health Department rather than resorting to a corrective route through the legislature.

We welcome the opportunity to talk further about these situations and suggestions on how to improve the situation in Rock County.

Sincerely,

Brandon Scholz
President

Michelle Kussow
VP-Gov't Affairs & Communications

cc: Bob Mathison, WGA Field Representative
Senator Judy Robson
Representative Dan Schooff
Representative Wayne Wood
WGA Board of Directors

Dear Senator, 10/30/01

I am writing in regards to a Wisconsin Department of Corrections administrative rule, as I am under the impression that your committee can review and reverse, or rather abolish, rules that are illegal.

The rule that I am challenging is one that calls for the deduction of 100% of an inmates funds, if he/she has filed litigation in State Court claiming indigency. As I'm sure you Know, Wisconsins Prisoner Litigation Reform Act of 1997 requires that deductions of anything over $10.00 be made, until the filing fee is paid in full. These deductions are also seen in Wis. Stats. § 814.29, and are always ordered by the Judge upon filing. Also, inmates wishing to pursue a court action sign an agreement, pursuant to Wis. Stats. 814.29(1m)(c)2, authorizing the Department of Corrections to deduct anything over $10.00. This is form DOC-1930.

However, in June of this year, the Department of Corrections took it upon themselves to change Internal Management Procedure #40 to state that the deduction schedule is now 100%, rather than excess of $10.00. The Internal Management Procedure is the "interpetation" of the DOC Administrative Code.

Despite what my personal beleif is on why they may have made this change, it is clearly illegal. And I feel that this is undisputable, as this rule conflicts with State law, in violation of Wis. Stats. § 227.10(2).

LEGAL
CORRESPONDENCE

It is possible that they may have misinterpeted Wis. Stat. § 814.29, to mean that they have to deduct at least everything over $10.00. However, this misinterpetation is also in violation of Wis. Stats. § 227.11(2)(a).

I am sorry to have to bother you with this issue, but when I raised this issue to the Inmate Complaint Examiner, she told me flat out that if I didnt like the rule, then I should take it court. And something this petty, yet clearly illegal, would be a waste of $124.00 that I already do not have, and a waste of any Judge's time.

I thank you for your time and attention to this matter.

Sincerely,
Joshua A. Arey

Joshua A. Arey #327387
Supermax Corr. Inst.
P.O. Box 9900
Boscobel, WI 53805

LEGAL
CORRESPONDENCE

Joshua A. Carey #521281
Supermax Correctional Instit.
P.O. Box 9900
Boscobel, WI 53805

BOSCOBEL OCT 30 '01 WI
PB METER 6068489
U.S. POSTAGE ≈ 0.34 ≈

To: Joint Committee for the Review of Administrative rules.
Senator Robson
Room 15 South
State Capitol
P.O. Box 7882
Madison, WI 53707

LEGAL CORRESPONDENCE

53707+7882 31

JCRAR
State Capitol
Room 15 S
Madison, WI
53703

Michael Bartz
#279484
C.C.I.
P.O. Box 900
Portage, WI
53901

To whom it may concern:

On June 1, 1999, DOC 309, IMP #1-A, was put into effect, whereby, all inmates within the Wisconsin Prison System were required to send out any recorded music that they had in their posession.

Here at Columbia Correctional Institution, memos were posted on the bulletin boards of each unit, however, no reasons were stated for the deprivation, nor were inmates permitted an opportunity to appeal their concerns to the committee that enacted this rule.

From inception, it has widely been the belief of inmates who have been deprived as a result, that the policy is an arbitrary violation of First Amendment rights granted to prisoners and, as a result, the method by which the DOC circumvented the statutory rule making procedure through the statewide enactment of this "IMP" is a direct affront to our rights to Due Process.

First of all, for as long as inmates have been allowed cassette tapes, there have been punishments imposed for any misuse such as bartering or altering. Though the fact that these violations were regarded as minor ticketable offenses by the Department of Corrections shows that cassettes were never a major concern for these reasons, each inmate, nevertheless, understood that by not adhering to the rules, penalties up to

and including the permanent loss of their cassettes could be enforced. This, in and of itself, being the only incentive needed for years to remind one not to abuse his property, the fact that there were never more harsh or stringent standards imposed for cassette ownership before its total ban speaks volumes to the arbitrary nature of the ban, as referred to above.

As it is, inmates are now precluded from listening to their choice of music. Prior to the ban, courts have consistently held that recorded music constitutes Freedom of Expression under the First Amendment and that before a department may infringe upon this freedon, it must state a legitimate penological interest for doing so. For example, if one were to recieve a cassette tape that contained lyrics which were potentially harmful to the good order or security of an institution, it could then reasonably deny that particular cassette through the screening process, which has long been the practice in Wisconsin prisons.

In this case, however, the DOC simply stopped all cassettes from coming in, regardless of content or an inmate's valid claim of entitlement without a word to qualify their actions.

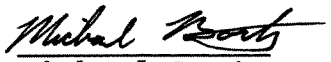
Most significant, though, is the fact that this "rule" as it's loosely referred to, offends the very nature of Due Process. Where an inmate must adhere to those policies and procedures that the DOC has promulgated by rule according to the administrative code under chapter 303, this particular policy has yet to attain a "rule" status. Instead, the statewide ban on cassette tapes that has been applied and enforced throughout all Wisconsin prisons for over two years now and was issued as a directive to

"all Wardens" by the Administrator of the Department of Corrections, regardless of the individual prison's preferred internal operating procedure, remains merely a "revision to an internal management procedure".

Therefore, it is my sincere hope that, perhaps, you could advise me as to how, in light of the concerns I've raised, the DOC remains free to deprive prisoners of these rights I've spoke of. I understand that you must be quite busy but, as I am profoundly uneducated regarding matters such as this, I would deeply appreciate any insight or assistance you'd be willing to provide.

Thank you for your time and consideration.

**Sincerely,**



**Michael Bartz**
#279484

**enclosures**

Library

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary

# State of Wisconsin
# Department of Corrections

Mailing Address

149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471
Fax (608) 267-3661

April 21, 1999

To: All Wardens

From: Dick Verhagen, Administrator
Division of Adult Institutions

Re: DOC 309, IMP #1-A, Electronic Equipment – Television, Radio, Tape Cassettes & Combination Units

Internal Management Procedure #1-A will be revised to reflect the following:

Effective June 1, 1999

1. Inmates will not be allowed to receive cassette tapes from a retail outlet.
2. Inmates will not be allowed to receive a cassette player, or cassette player combination unit, from a retail outlet.
3. Inmates will not be allowed to retain possession of cassette tapes upon transfer to another DOC Institution/Center. In such cases, the inmate will be allowed to send the cassette tape(s) out on visit, mail the tape(s) to someone on their visiting list or have the tape(s) destroyed.

Effective June 1, 2000

1. Inmates will not be allowed to have cassette tapes in their possession.
2. Inmates will not be allowed to have a cassette player in their possession.

NOTE: Cassette player combination units (radio/cassette, TV/radio/cassette) will be allowed provided the inmate was in possession of the item prior to June 1, 1999.

Each institution will be responsible for notifying inmates of this revision to IMP #1-A.

Cc: Cindy O'Donnell, DOC Deputy Secretary
Marianne Cooke, DAI Asst. Administrator
Cindy Schoenike, DAI ASST. Administrator
Office and Bureau Directors
File

Library

*COLUMBIA CORRECTIONAL INSTITUTION* *STATE OF WISCONSIN*
*CORRESPONDENCE/MEMORANDUM*

DATE: April 21, 1999

PLEASE POST HU _____

TO: All Inmates and Staff

FROM: Jeffrey P. Endicott, Warden

SUBJECT: DOC 309 IMP #1-A – Cassette Tapes

Attached is DOC 309 IMP #1-A related to cassette tapes. Since some elements of this IMP regarding receipt of new tapes and equipment go into effect June 1, 1999, you should review it carefully at this time. It does contain a Grandfather Clause with respect to equipment and tapes in possession prior to June 1, 1999. Possession may extend until June 1 of 2000, except in the event of institution transfer.

Please read this IMP carefully and assure that you are in compliance as stated by the implementation date. Thank you in advance for your cooperation.

JPE:jp
**Imptapcsa21**
Cc: Mail/Property Room Staff
Lt. Thomure
Library-POST
IMP Manual Holders
ROLL CALL
File

Michael Bartz #279484
Columbia Correctional Institution
2925 Columbia Drive
P.O. Box 900
Portage, WI 53901

MADISON WI 537
PM
25 JUL
2001


Joint Committee for Review of Administrative Rules
(JCRAR)
State Capitol, Room 15 S
Madison, WI 53703

THIS LETTER HAS BEEN
MAILED FROM THE
WISCONSIN PRISON SYSTEM

53702/0100

JULY 21ST, 2001

JOINT COMMITTEE FOR REVIEW OF
ADMINISTRATIVE RULES
STATE CAPITOL RM 15 S
MADISON, WI., 53703

SPRIGGIE HENSLEY
C.C.I.
P.O. BOX 900
PORTAGE, WI.,
53901

RE: BAN OF RECORDED MUSIC FROM THE WISCONSIN PRISON SYSTEM

TO WHOM IT MAY CONCERN:

ON JUNE 1ST, 1999, THE DEPARTMENT OF CORRECTIONS IMPOSED A STATEWIDE BAN ON ALL RECORDED MUSIC, PROHIBITING ALL INMATES FROM PURCHASING OR POSSESSING THE MUSIC OF THEIR CHOICE. AS OF TODAY'S DATE, THE BAN CONTINUES TO BE TREATED AS A MERE "REVISION TO AN INTERNAL MANAGEMENT PROCEDURE," RATHER THAN A STATEWIDE ADMINISTRATIVE LAW. IN-FACT, AT THE COLUMBIA CORRECTIONAL INSTITUTION, IN PORTAGE, WISCONSIN, INMATES WERE NOTIFIED OF THE BAN BY "MEMO," WHICH WAS POSTED ON BULLETIN BOARDS IN EACH UNIT. THE "MEMO(S)" DID NOT OFFER AN EXPLANATION FOR THE BAN, NOR INDICATE THAT THERE WAS A SUDDEN "CONCERN" PROMPTING THE DEPRIVATION. INSTEAD, INMATES WERE MERELY INFORMED THAT THE RIGHT TO PURCHASE OR POSSESS MUSIC WOULD NO LONGER BE PERMITTED. SEE, DOC 309, IMP #1-A.

THIS LETTER, THEREFORE, IS AN INFORMAL REQUEST THAT THE BAN ON RECORDED MUSIC BE REVIEWED BY THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES, TO DETERMINE WHETHER THE BAN IS APPROPRIATE UNDER THE PROVISIONS OF CHAPTER 227 OF THE WISCONSIN STATUTES, AND FURTHER, TO DETERMINE WHETHER THE PROHIBITION IS CONSTITUTIONALLY PERMISSIBLE UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION.

I HAVE ATTEMPTED TO CHALLENGE THE BAN, BY DECLARATORY ACTION, IN THE DANE COUNTY CIRCUIT COURT, (CASE NO. 99-CV-1366; THE JCRAR WAS SERVED ON SEPTEMBER 29TH, 1999), AND WAS RECENTLY DISMISSED IN THE WISCONSIN SUPREME COURT ON THE QUESTION OF ADMINISTRATIVE EXHAUSTION. [SEE, DECISION, JULY 11TH, 2001, CASE NO. 00-0076, 2001 WI 105]. IN ACCORDANCE WITH THE ORDER OF THE SUPREME COURT, I AM CURRENTLY ATTEMPTING TO EXHAUST ADMINISTRATIVE REMEDIES IN PREPARATION FOR LITIGATION AGAINST THE DEPARTMENT OF CORRECTIONS, WHICH I INTEND TO PURSUE

IN THE WESTERN DISTRICT FEDERAL COURT, ON FIRST AMENDMENT GROUNDS.

IT IS MY BELIEF THAT THE "RULE" BANNING RECORDED MUSIC VIOLATES INMATE RIGHTS UNDER THE FIRST AMENDMENT, IN THAT, THE BAN IS ARBITRARY, OVER-BROAD, DOES NOT RELATE TO LEGITIMATE PENOLOGICAL INTERESTS, AND IS ENACTED WITHOUT CONSIDERATION OF AVAILABLE ALTERNATIVES, IN CONTRAVENTION OF U.S. SUPREME COURT PRECEDENT, TURNER V. SAFELY, 482 U.S. 78, 89 (1987).

I WOULD, HOWEVER, LIKE TO AVOID LITIGATION IF AT ALL POSSIBLE, AND THEREFORE, ASK THAT THE JCRAR REVIEW THE BAN ON RECORDED MUSIC IN THE HOPE THAT SOME ALTERNATIVE CAN BE ACHIEVED. I THANK YOU FOR YOUR PATIENCE AND ANY AND ALL CONSIDERATION YOU MAY GIVE TO THIS MATTER.

SINCERELY,

SPRIGGIE HENSLEY
#180201

C.C.I.
P.O. Box 900
PORTAGE, WI.,
53901

SPRIGGIE HENSLEY #180201
COLUMBIA CORRECTIONAL INSTITUTION
P.O. BOX 900
PORTAGE, WISCONSIN, 53901

COMMUNITY COLLEGES

USA
34

THIS LETTER HAS BEEN MAILED FROM THE WISCONSIN PRISON SYSTEM

JOINT COMMITTEE FOR REVIEW OF
ADMINISTRATIVE RULES (JCRAR)
STATE CAPITOL RM 15 S
MADISON, WI., 53703