

SENATOR JUDITH B. ROBSON
CO-CHAIR
P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-6486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

April 26, 2001

Senator Fred Risser
Senate President
Room 220 South

Representative Scott Jensen
Speaker of the Assembly
Room 211 West

Re: Emergency Rule PSC 2.06
 Emergency Rule PSC 116.06
 Emergency Rule HFS 163

Dear Senator Risser and Representative Jensen:

We are writing pursuant to § 227.24(2)(c), *Stats.*, to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on April 24, 2001. At that meeting, the JCRAR received public testimony regarding the following emergency rules:

- Emergency Rule PSC 2.06, relating to procedures for the confidential treatment of documents;
- Emergency Rule PSC 116.06, relating to the triggering mechanism and the period of time in which fuel costs are estimated for purposes of seeking an emergency or extraordinary rate increase under s. PSC 116.06; and
- Emergency Rule HFS 163, relating to certification for the identification, removal and reduction of lead-based paint hazards.

Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule PSC 2.06 for 60 days. The committee approved the motion on a 10 to 0 vote.

Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule HFS 163 for 60 days. The committee approved the motion on a 9 to 1 vote.

The committee did not extend the effective period of emergency rule PSC 116.06.

We are giving you this notice of the committee's action pursuant to § 227.24(2)(c), *Stats.*, and we ask that you notify the appropriate standing committees of each house of the legislature of the JCRAR's actions.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

JBR:GG:da

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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Attendance Form

Last Modified: January 2001

Date: 4/24/01 Accounting for: Public Hearing Executive Session
Location: 300 Southwest

COMMITTEE MEMBER	PRESENT	ABSENT	EXCUSED
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator HANSEN	✓		
4. Senator SCHULTZ	✓		
5. Senator COWLES	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative KREUSER	✓		
10. Representative TURNER	✓		
Totals	10		

David A. Austin
Committee Clerk

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Attendance Form

Last Modified: January 2001

Date: 4/24/01 Accounting for: Public Hearing Executive Session
Location: 300 Southwest

COMMITTEE MEMBER	PRESENT	ABSENT	EXCUSED
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator HANSEN	✓		
4. Senator SCHULTZ	✓		
5. Senator COWLES	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative KREUSER	✓		
10. Representative TURNER	✓		
Totals			

David A. Austin
Committee Clerk

Vote Record

Senate - Joint committee for review of Administrative Rules

Date: 4/24/01

Bill Number: SB 116

Moved by: Grobschmidt

Seconded by: Schultz

Motion: _____

recommend adoption

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Sen. Judith Robson, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Richard Grobschmidt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. David Hansen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Dale Schultz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Robert Cowles	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Glenn Grothman, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Lorraine Seratti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Gunderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. James Kreuser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Robert Turner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>10</u>	_____	_____	_____

Motion Carried

Motion Failed

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JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES

Emergency Rule Extension Motion Form

Last Modified January 2001

Date 4/24/01 Location 300 Southwest
Moved by Grothman, Seconded by Robson

THAT, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule PSC 2.06 by 60 days, at the request of the Public Service Commission.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator HANSEN	✓		
4. Senator SCHULTZ	✓		
5. Senator COWLES	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative KREUSER	✓		
10. Representative TURNER	✓		
Totals	10		

Motion Carried

Motion Failed

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**JOINT COMMITTEE FOR
 REVIEW OF ADMINISTRATIVE RULES**

Emergency Rule Extension Motion Form

Last Modified January 2001

Date 4/24/01 Location 300 Southwest
 Moved by Grothman, Seconded by _____

*NO
 SECOND*

THAT, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule PSC 116.06 by ~~60~~ days, at the request of the Public Service Commission. 30

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON			
2. Senator GROBSCHMIDT			
3. Senator HANSEN			
4. Senator SCHULTZ			
5. Senator COWLES			
6. Representative GROTHMAN			
7. Representative SERATTI			
8. Representative GUNDERSON			
9. Representative KREUSER			
10. Representative TURNER			
Totals			

Motion Carried

Motion Failed

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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

Emergency Rule Extension Motion Form

Last Modified January 2001

Date 4/24/01 Location 300 Southwest
Moved by Robson, Seconded by Cowles

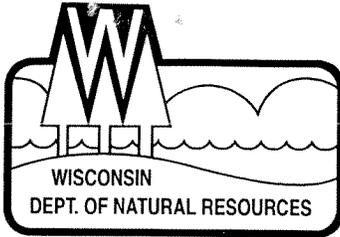
THAT, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule HFS 163 by 60 days, at the request of the Department of Health and Family Services.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator HANSEN	✓		
4. Senator SCHULTZ	✓		
5. Senator COWLES	✓		
6. Representative GROTHMAN		✓	
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative KREUSER	✓		
10. Representative TURNER	✓		
Totals	9	1	

Motion Carried

Motion Failed

MAY 17 2001



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott McCallum, Governor
Darrell Bazzell, Secretary

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

May 14, 2001

Honorable Glenn Grothman, Chair
Joint Committee for Review of
Administrative Rules
Room 15 North
State Capitol

Honorable Judy Robson, Chair
Joint Committee for Review of
Administrative Rules
Room 15 South
State Capitol

Subject: Emergency Rule Extension for FR-41-00(E)

Dear Chairs:

The Department of Natural Resources, under s. 227.24(2), Stats., is requesting the Joint Committee for Review of Administrative Rules to extend Natural Resources Board Emergency Order No. FR-41-00(E) for 60 days. This emergency order pertaining to the federal cost sharing program to suppress gypsy moths took effect on November 10, 2000 and was extended until June 7, 2001.

The extension of the emergency rule is needed so that the department can continue to make payments for administrative costs to the participating counties.

A copy of the emergency order is attached. If you have any questions, please contact Andrea Diss of the Bureau of Forestry at 264-9247.

Sincerely,


Darrell Bazzell
Secretary

Attach.

cc: Andrea Diss – FR/4
Carol Turner – LS/5

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

The State of Wisconsin Natural Resources Board proposes an order to amend NR 47.005(1), 47.007(1) and 47.008(1); and to create subch. IX of ch. NR 47 relating to the federal cost sharing program to suppress gypsy moths

FR-41-00(E)

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 227.11(2) and 227.24, Stats.

Statutes interpreted: ss. 26.30, 28.01 and 28.07, Stats.

The purpose of this rule is to establish the administration and procedures for participation by landowners through counties in a voluntary, cooperative state suppression program for outbreaks in Wisconsin of a foreign pest, the gypsy moth. The suppression program will include an aerial insecticide treatment program (administered in partnership with the department of agriculture, trade and consumer protection) and administration of federal cost sharing for participants in that treatment program.

Gypsy moth is not native to Wisconsin but has become established in eastern counties of the state. Where this pest is established, it goes through periodic outbreaks in which the population of gypsy moth explodes and forests can be stripped of leaves in late June. The stress of heavy defoliation can cause the death of some trees and leaves surviving trees weak allowing attack by other pests and diseases. When outbreaks occur, the public typically becomes concerned and looks for ways to reduce the population of gypsy moth to tolerable levels. Treatments to kill large numbers of the pest can be expensive, at times damaging to our native insects and other animals, or even dangerous to the landowner when pesticides are not used according to directions. The department organized suppression program will provide the public with a safe, effective and affordable means to prevent damage to their trees.

The suppression program will be offered to landowners through counties and municipalities if the county in which they are located declines to participate. Participating counties or municipalities will provide a coordinator who will serve as the contact for the public and the department. The rule defines the tasks that will be performed by the participating counties and municipalities, how to apply for the program, criteria of eligible areas for treatment and cost sharing under the program and eligible costs that can be shared in the federal cost sharing program.

SECTION 1. NR 47.005(1) is amended to read:

NR 47.005(1) APPLICABILITY. The provisions of this section apply only to subchs. II, IV, V, ~~and VIII~~ and IX.

SECTION 2. NR 47.007(1) is amended to read:

NR 47.007(1) The provisions of this section apply only to subchs. II, IV, V, and VIII and IX.

SECTION 3. NR 47.008(1) is amended to read:

NR 47.008(1) The provisions of this section apply only to subchs. II, IV, V and IX.

SECTION 4. Subchapter IX of ch. NR 47 is created to read:

Subchapter IX
Rules for Federal Cost Sharing Program to Suppress Gypsy Moth

NR 47.910 Purpose. The purpose of this subchapter is to establish procedures for participation in the state cooperative gypsy moth suppression program consistent with ss. 26.30(2) and (5) and 28.07, Stats., as an alternative to a control program under s. 26.30 (7) to (10) Stats. The suppression program will include awarding and administering federal cost sharing to counties and municipalities if the county in which they are located declines to participate, for the purpose of aerial insecticide treatment of gypsy moth outbreaks.

NR 47.911 Applicability. The provisions of this subchapter are applicable to all county and municipal governments applying for cost sharing under this subchapter.

NR 47.912 Definitions. In this subchapter:

(1) "Administrative cost" means eligible expenses associated with preparation of applications, notification of residents, collection of funds, maintenance of records and other activities dealing with the administration of the cost shared suppression program for gypsy moths.

(2) "Applicant" means a Wisconsin county or municipality that submits an application for inclusion in the state gypsy moth suppression program and cost sharing for the treatment of and associated administrative costs for suppression of gypsy moth outbreaks.

(3) An "application" is a department form, materials and maps for all areas being proposed for treatment and cost sharing in the state gypsy moth suppression program by an applicant.

(4) "Buffer zone" is 250 feet surrounding a treatment block or exclusion area within a treatment block.

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

(6) "Forest service" means the U.S. department of agriculture, forest service.

(7) "Gypsy moth" refers to the foreign pest, *Lymantria dispar*.

(8) "Local coordinator" means the person designated to represent and act on behalf of a county or municipality for the purpose of applying for cost sharing under this subchapter.

(9) "Local cost share" refers to the portion of the cost of the project other than federal funds administered by the department.

(10) "Municipality" includes cities, villages and towns.

(11) "One fortieth (1/40) acre, fixed radius survey" refers to an egg mass survey used to predict population size in the following spring.

(12) "Preferred hosts" includes tree species listed as Class I and II in the federal Environmental Impact Statement, Appendix G, Table 2-2.

(13) "Project period" means the period of time specified in a grant agreement during which all work shall be accomplished in order to eligible for reimbursement.

(14) "Residential land" means land with an average of one or more residences per 5 acres.

(15) "Rural land" means land with an average of less than one residence per 5 acres.

(16) "Treatment" refers to aerial application of insecticide.

(17) "Treatment block" means an eligible area identified under this subchapter for aerial treatment with insecticide.

NR 47.913 Eligibility. (1) ELIGIBLE APPLICANTS. (a) Counties may apply for participation in the state cost shared suppression program. Where a county declines to participate, municipalities within that county may apply for participation in the state cost shared suppression program during the period of November 2000 to July 2001.

(b) An applicant shall designate a local coordinator who will administer requests for treatment from and for residents. Training shall be provided by the department. Local coordinators shall:

1. Respond to requests for assistance from residents.
2. Determine if areas within a county or municipality are eligible for treatment.
3. Identify and map treatment blocks.
4. Complete and file applications with the department under this subchapter.
5. Collect local cost share moneys for treatments.
6. Conduct public awareness meetings in September, October or November each year and local notification meetings once blocks are determined to be eligible by the department.

7. Notify treatment residents within eligible treatment blocks and surrounding buffer zone by mail, publication of a class one legal notice in a local newspaper and a public meeting.

8. Accommodate spray objectors by revising or dropping treatment blocks.

9. Assist with observation of treatment.

10. Develop and submit requests for reimbursement for eligible administrative costs.

11. Maintain records and prepare an annual report to be filed with the department.

(2) ELIGIBLE TREATMENT BLOCKS. To be eligible for cost sharing under this subchapter, a proposed treatment block shall comply with the following criteria:

(a) Be of at least 40 contiguous acres in a compact and regular shape;

(b) Have a canopy coverage of either:

1. 25% or more on residential land;

2. 50% or more on rural land;

3. 50% or more of the canopy must be preferred hosts;

(d) Have the following minimum average number of egg masses per acre as determined by surveys consistent with subd. 3:

1. 500 egg masses per acre on residential land

2. 1000 egg masses per acre on rural land

3. Egg mass surveys shall be conducted using the 1/40th acre fixed radius survey method described in subd. 4. The number of survey plots taken to determine the average number of egg masses per acre shall be:

a. 40 -50 acres 3 survey plots

b. 51-100 acres 4 survey plots

c. 101-200 acres 6 survey plots

d. over 200 acres 6 survey plots plus an additional plot for each additional 100 acres

4. The procedure for a survey is as follows:

a. Select a location with forest cover representative of the area,

b. Describe a circle with a radius of 18.5 feet with a rope and stake,

c. Count all current year egg masses within the circle making sure to search all items within the circle thoroughly and searching the upper reaches of the trees using binoculars,

d. Multiply the number of current year egg masses found by 40 to determine the number of egg masses per acre as estimated from this plot.

NR 47.914 Application procedures. (1) An eligible applicant, described in s. NR 47.913 (1), may apply for participation in the statewide treatment program and cost sharing for aerial insecticide treatment and associated administrative costs for eligible blocks as described in s. NR 47.913 (2).

(2) Applicants shall submit locations of proposed treatment sites and an estimate of acreage to be treated at each site to the department staff designated in the application by November 30.

(3) Applicants shall submit applications for cost sharing on prescribed department forms to department staff, designated by the department and identified on the application, for the area of the state involved no later than January 3, along with a map of each proposed treatment block on a 7.5 minute quadrangle map to be eligible for participation in the treatment program for that year.

(4) Applicants shall submit a record of administrative costs incurred prior to and in preparation to submittal of the application to the department.

(5) The department shall review applications and recommend treatment for blocks determined to be eligible to the department of agriculture, trade and consumer protection for inclusion in the state treatment plan. If the department finds that a block is ineligible, the map and basis for the decision of ineligibility shall be identified by the department and returned to the applicant for revision. Revised proposed treatment blocks shall be reconsidered by the department if filed for reconsideration within 2 weeks of the date of service of the decision of ineligibility on the applicant.

(6) The applicant shall enter into an agreement with the department regarding cost sharing and continued eligibility under this subchapter to continue its eligibility.

(7) The department shall notify applicants of eligibility of proposed blocks.

(a) The applicant shall then notify landowners and tenants within the eligible proposed treatment blocks and buffer zones and provide information on insecticide to be used, approximate timing of treatment and how to register an objection to treatment. Notification requirements of applicants to landowners and tenants shall be detailed in the agreement and include:

1. A written notification of planned treatment mailed to persons owning or renting land in the treatment blocks or buffer zones. The mailing list shall be retained in the records of the applicant for 3 years subsequent to the treatment and submitted to the department upon its request.

2. Publication of a class 1 legal notice in a local newspaper at least 7 days prior to a deadline designated in the notice for registering an objection by a landowner or tenant to treatment on the land under the landowner's or tenant's control.

3. A public meeting conducted by the applicant and held at least 7 days prior to the objection deadline.

(b) Records of calls and notification mailings, meetings and publications shall be kept by the applicant and submitted to the department in accordance with the grant agreement. Failure to maintain and submit these records required herein and in the grant agreement shall result in cancellation of treatment blocks from that applicant.

(8) Applicants shall contact objectors who register an objection before the deadline, determine the cause for objection and attempt to resolve it. If objections cannot be resolved, local coordinators shall work with the department's designated staff to remove the property and a 250 foot surrounding buffer zone from treatment. If a block is removed, the local coordinator shall notify residents and return money that has been collected from the landowners or tenants. Any objections on the basis of payment shall be resolved by the applicant and the applicant is responsible for the entire local share of costs of treatment for blocks under his or her jurisdiction. Properties will be removed from treatment due to nonpayment of the cost share by the applicant.

(9)(a) The department shall provide an estimate of per acre cost for treatment and administration to local coordinators no later than February 15th of each year. The applicant shall enter into an agreement with the department to pay the local cost share as determined under s. NR 47.915. The applicant shall collect the estimated local cost share and pay its share to the department by April 1 unless otherwise provided on the application. Once the local cost share for treatment blocks has been received, the boundaries of these treatment blocks shall be considered fixed. Alteration or cancellation of a treatment block may only then occur in the event of an irreconcilable conflict with a federally listed threatened or endangered species or where the contractor for pesticide application determines treatment of the block to be hazardous to the contractor. If a block is removed, the local coordinator shall notify residents and return money that has been collected from the landowners or tenants.

(b) The department shall under cooperative agreement work with the department of agriculture, trade and consumer protection to coordinate treatments.

(10) Applicants shall submit no later than April 1 of each year a list of telephone contacts associated with each treatment block to the designated department staff specified in the application. Required contacts for each block include; all schools and licensed daycare providers within a treatment block, local government officials, health, police, sheriff and fire departments within whose jurisdiction a treatment block occurs, hospital emergency rooms in the area of treatment blocks, persons requesting 24-hour notification and other concerned parties as needed. These lists will be used by department staff to provide daily notification during the aerial treatments.

(11) Applicants shall submit a bill for eligible expenditures to the department no later than June 30th of each year for eligible expenditures incurred for the project period.

NR 47.915 Grant calculation. (1) A grant under this subchapter shall be no more of the eligible costs of treatment and administration than the maximum for the appropriate category described in pars. (a) to (d) and be based on the amount of cost share funding received from the forest service.

(a) Privately owned lands under 500 acres per owner may be cost shared up to 50%.

(b) Private lands of over 500 acres per owner may be cost shared at up to 33%.

(c) Publicly owned lands may be cost shared at up to 25%.

(2) If full funding to cover the maximum share of treatment and administrative expenditures of the applicants is not available, the federal funding received shall first be applied to the cost of the treatment. If funds are not adequate to cover the maximum share for the cost of treatment, federal funds will be applied to treatment costs on a pro-rata basis based on acreage per applicant. Federal funding remaining after payment of the maximum share of the cost of treatment shall be paid on a pro-rata basis to the applicants to be applied to administration costs. Applicants are responsible for all treatment and administration costs that exceed the amount reimbursed.

NR 47.916 Grant awards. (1) GRANT AWARDS. Grants shall be awarded subject to execution of the department's grant agreement by both the department and the grant applicant.

(2) PAYMENT. Grant payments may be made only upon approval of a claim supported by evidence of cost that the reimbursable work has been completed and scheduled match has been met.

(3) FINAL AUDIT. All payments are contingent upon final audit. Financial records including all documentation to support entries in the accounting records shall be kept for review by the department auditors for a period of 4 years after final payment.

NR 47.917 Eligible and ineligible costs. (1) ELIGIBLE COSTS. Applicant expenditures eligible for reimbursement under this subchapter shall be documented and provided to the department with any request for cost-share reimbursement. Eligible costs from July 1 to June 30 of each year are subject to cost share reimbursement under this subchapter. The following items are eligible for cost share reimbursement under this program only if aerial treatments are conducted and the costs are eligible under this subchapter and as identified in the grant agreement. Eligible costs of treatment and administration of a block shall be no more than the maximum for the appropriate category for the block as described in s. NR 47.915 (1) (a) to (c).

(a) Topographic maps, aerial photos, weather monitoring equipment and personal safety equipment.

(b) Contracts for specialized equipment, including the rental of 2-way radios identified in the agreement between the department and the applicant.

(c) Communication supplies, including the rental of communication equipment used to coordinate the aerial treatment. Costs incurred for cellular phone service is limited to the period of April 20th through June 10th if the expenses are directly related to aerial treatments.

(d) Landowner notification supplies, including supplies and postage for notification letters, costs of publication of legal notices, costs associated with the public meeting to discuss specific proposed spray blocks, phone bills and documented proportion of office rental.

(e) Educational materials, including the costs of producing or reprinting publications, literature and maps necessary to inform the public about the suppression program.

(f) Newspaper advertisements, including the announcement of the fall scoping meeting and the winter public meetings.

(g) Personnel costs, including salary/wage and benefits for time administering the cost sharing program for treated blocks for personnel including the county coordinator, secretarial support, temporary employees and tax office support.

(h) Travel, including mileage accrued in vehicles used in preparation of sprayed blocks and during suppression activities is reimbursable but must be no more than the DOT standard rates.

(i) Post-suppression evaluation costs.

(2) INELIGIBLE COSTS. Costs associated with treatment blocks which are not sprayed are ineligible for cost sharing. The cost of capital equipment that is not directly necessary or dedicated to the completion of the suppression project and identified in the agreement with the department is ineligible for cost sharing.

An emergency rule is necessary in order to make the cost shared gypsy moth suppression program available for aerial treatments in May 2001. Given the survival of caterpillars this summer, the department expects that populations of gypsy moth will be high enough in some localities in 2001 to necessitate suppression to protect tree health. In order to offer participation in the aerial treatment project and cost sharing from the U.S. Forest Service, it is necessary that preparatory work be done this fall and winter to define treatment blocks. When gypsy moth outbreaks occur, the public typically becomes concerned and looks for ways to reduce the population of gypsy moth to tolerable levels. Treatments to kill large numbers of the pest can be expensive, at times damaging to our native insects and other animals, or even dangerous to the landowner and others when pesticides are not used according to directions. The Department organized suppression program will provide the public with a safe, effective and affordable means to prevent damage to their trees.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on October 25, 2000

The rules shall take effect on November 10, 2000.

Dated at Madison, Wisconsin

November 2, 2000

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary

(SEAL)

MAY 03 2001

P. O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018

Scott McCallum, Governor
Brenda J. Blanchard, Secretary

April 16, 2001

Senator Judy Robson
Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 South, Capitol

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

Dear Senator Robson and Representative Grothman:

As you may know, this Department adopted an emergency rule on December 28 of last year for chapter Comm 10, relating to Flammable and Combustible Liquids. The specific effect of the rule was to give an extension for required environmental protection upgrades to owners of certain bulk tanks due to concerns over the availability of heating oil over this past winter. The emergency rule took effect on January 6, 2001 and will expire on June 4, 2001, unless an extension is granted by the Committee.

Since the emergency rule simply created a narrow window for owners to take advantage of the extension, no permanent rule is deemed necessary. However, the rule institutes a new deadline of August 1, 2001 for compliance. To avoid any possible confusion, the department is requesting one 60-day extension of this emergency rule, which would extend the effective date of the rule to August 4, 2001.

In light of these facts, we respectfully request the Joint Committee for Review of Administrative Rules to grant a 60-day extension of the emergency rule under s. 227.24 (2), Stats.

If you have any questions regarding this request, please don't hesitate to contact us. Thank you in advance for your consideration of our request.

A copy of the emergency rule is enclosed.

Sincerely,


Brenda J. Blanchard
Secretary

Enc.

DEPARTMENT OF COMMERCE

EMERGENCY RULE RELATING TO THE EFFECTIVE DATE OF REQUIRED UPGRADES
TO ABOVEGROUND BULK TANKS THAT WERE IN EXISTENCE ON MAY 1, 1991.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of the rule included in this order is necessary for the immediate preservation of public health, safety and welfare. The facts constituting the emergency are as follows:

Wisconsin Administrative Code Chapter Comm 10, Flammable and Combustible Liquids Code, became effective on 5/1/91. Section Comm 10.345 (2) contains requirements for bulk tanks in existence on that date to be provided with specific containment or leak detection upgrades within 10 years of that date. Some concerns have been expressed on the impact that compliance date could have on heating oil supplies and prices this winter. Construction requirements could result in a substantial number of tanks storing heating oil to be closed during the winter heating season in preparation for the required upgrades.

Based on these concerns, the department has agreed to extend the compliance deadline for 3 months until 8/1/01 if approvable tank system upgrade plans have been submitted to the department by 2/1/01.

These rules are therefore adopted as emergency rules to take effect immediately following publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes, as provided in section 227.24, Stats.

Dated at Madison, Wisconsin this 28th

day of December, A.D. 2000.

Department of Commerce.



Brenda J. Blanchard, Secretary

SECTION 1. Comm 10.345 (2) (intro.) is amended to read:

Comm 10.345 (2) (intro.) ~~Aboveground~~ Except as provided in par. (e), aboveground outside storage tanks which exceed 5,000 gallons capacity and which were installed prior to May 1, 1991 shall be brought into compliance with either par. (a), (b), (c) or (d) within 10 years of May 1, 1991.

SECTION 2. Comm 10.345 (2) (e) is created to read:

Comm 10.345 (2) (e) 1. a. Tank owners and operators who have not complied with either par. (a), (b), (c) or (d) may operate their existing aboveground bulk storage tank systems through July 31, 2001 only if they have approvable plans for their tank system upgrade submitted to the department by February 1, 2001.

b. Plans submitted under subparagraph a., for an installation that is a consolidation of multiple systems or bulk storage sites, are not approvable unless all the site locations associated with the consolidation are identified by facility name, location and commerce tank regulated objects number in a cover letter submitted with the plans.

2. Tank owners and operators who do not have approvable plans submitted to the department by February 1, 2001 shall take tanks that do not comply with either par. (a), (b), (c) or (d) out of service no later than May 1, 2001 and immediately empty and close the tanks.

3. For the purposes of this section, approvable plans are plans that comply with the specific requirements of this section and the applicable requirements under s. Comm 10.10.

END



Public Service Commission of Wisconsin

Ave M. Bie, Chairperson
Joseph P. Mettner, Commissioner
John H. Farrow, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

February 15, 2001

The Honorable Judy Robson
Joint Committee for Review of
Administrative Rules
The State Senate
State Capitol, Room 15 South
Madison, WI 53702

The Honorable Glenn Grothman
Joint Committee for Review of
Administrative Rules
The State Assembly
State Capitol, Room 15 North
Madison, WI 53702

Re: Emergency Rule ch. PSC 2

Dear Senator Robson and Representative Grothman:

Pursuant to Wis. Stat. § 227.24(2), the Commission requests a 60-day extension of our rules regarding confidential filing procedures. These rules were promulgated as emergency rules at the request of the Joint Committee for Review of Administrative Rules. The rules took effect on October 23, 2000, and will expire on March 22, 2001, if an extension is not granted.

The Commission is promulgating these rules as permanent rules in conjunction with our general revision of Wis. Admin. Code ch. PSC 2. The Commission has solicited and received written comments on these rules and has held a hearing on the rules. The rules have also received the Clearinghouse Report as Clearinghouse Rule 00-180. However, the Commission has not yet adopted a final version of the rules and they have not been forwarded to the legislature for standing committee review. Consequently, the permanent rule cannot be in effect before the date the rules expire.

Because the Commission is carefully reviewing the comments we received on the proposed rules, it is possible that a further extension may be requested to complete the promulgation process. If you have any questions regarding this request, please contact Attorney John Lorence at (608) 266-8128, or by e-mail at lorenj@psc.state.wi.us.

Thank you for consideration of this request.

Sincerely,

Ave M. Bie
Chairperson

AMB:pmm:sp:K:\amb\letters\2001\JCRAR 2-15-01

Enclosures

cc: The Honorable Fred Risser
The Honorable Scott Jensen
Ron Sklansky



Public Service Commission of Wisconsin

Ave M. Bie, Chairperson
Joseph P. Mettner, Commissioner
John H. Farrow, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

October 23, 2000

To the Person Addressed:

Re: In the Matter of Proposed Rules Covering and Procedures for
Confidential Treatment of Records

1-AC-201

We enclose copy of Order Adopting Rules at the Direction of the Joint Committee for Review of Administrative Rules issued in the above-entitled.

These rules are effective immediately.

Sincerely,

Lynda L. Dorr
Secretary to the Commission

gef
enc

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Proposed Rules Covering and Procedures for
Confidential Treatment of Records

1-AC-201

**ORDER ADOPTING RULES AT THE DIRECTION OF THE JOINT COMMITTEE
FOR REVIEW OF ADMINISTRATIVE RULES**

At the direction of the Joint Committee for Review of Administrative Rules under s. 227.26(2)(b), Stats., the Commission adopts a rule to create s. PSC 2.06, Wis. Adm. Code, relating to procedures for the confidential treatment of records.

Analysis by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.02(1) and (3), 227.11, 227.24 and 227.26, Stats.

Statutes interpreted: ss. 196.14, 196.72 and 196.795(9), Stats.

On August 15, 2000, the Commission voted to promulgate administrative rules on requests for confidential handling of documents filed with the Commission. On September 20, 2000, the Joint Committee for Review of Administrative Rules directed the Commission to adopt a rule on the subject under s. 227.26(2)(b), Stats. This rule creates a process for obtaining a designation of confidential status. Under the rule, a determination on whether information shall be treated confidentially shall be made at the time the information is given to the Commission. Under previous Commission procedures, if a person filing a document sought confidential treatment of information in the document, the filer could do so by identifying the grounds under which confidentiality could be granted. The Commission would accept the filing, but the

Docket 1-AC-201

acceptance did not constitute a determination that public access to the information would not be permitted. The Commission would determine if confidential status should be granted when a request for that information was made by another person.

Under this rule, a person who wishes the Commission to keep confidential information in the possession of the Commission, or requested by the Commission, must make an application for confidential status. The application must identify the information for which confidential treatment is sought and identify the authority under which confidential status should be granted. Within 21 days after receiving an application, the Commission may seek additional information from the applicant, if needed, to make a confidentiality determination. The applicant must respond within 30 days to the information request.

The Commission will make a determination on a confidentiality request within 30 days of receiving the additional information or within 30 days of the filing of the application if no additional information is needed. The determination will specify what, if any, information is given confidential treatment and the basis for that determination.

The Commission will give the applicant written notice of its determination. The Commission shall post all determinations regarding confidentiality on its website and may give other appropriate notice. If an applicant is authorized to file information confidentially in the context of a Commission proceeding, the applicant shall serve a copy of the determination on all persons listed on the service list for that proceeding.

Fiscal Estimate

A fiscal estimate is attached to this order.

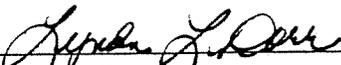
Docket 1-AC-201

Order Adopting Rules

Pursuant to ss. 196.02(1) and (3), 227.11, 227.24 and 227.26, Stats., the Commission creates s. PSC 2.06, Wis. Adm. Code, as shown in Attachment 1. The attached rule takes effect upon publication.

Dated at Madison, Wisconsin, October 19, 2000

By the Commission:



Lynda L. Dorr
Secretary to the Commission

LLD:JL:mem:G:Order Pending\1-AC-201 JCRAR-Ordered Rules

1 SECTION 1. PSC 2.06 is created to read:

2

3 **PSC 2.06 Confidential status.**

4

5 (1) APPLICABILITY. This section applies to requests made to the commission to treat as
6 confidential information in possession of the commission or being requested by the commission.

7

8 (2) RESPONSIBILITY FOR ESTABLISHING CONFIDENTIALITY. The burden of establishing the need
9 for confidential treatment of any information shall be on the person requesting confidential
10 treatment of the information.

11

12 (3) APPLICATION FOR CONFIDENTIAL STATUS. Any person seeking confidential treatment of
13 information shall file with the commission a written application for confidential status containing
14 in affidavit form all of the following:

15

16 (a) The name and address of the applicant.

17

18 (b) The name and position of the individual filing the application.

19

20 (c) The specific type of information for which confidential status is sought.

21

22 (d) The facts and supporting legal authority believed to constitute a basis for obtaining
23 confidential treatment of the information.

1 (4) ADDITIONAL INFORMATION. (a) Within 21 days after receiving a complete application, the
2 commission shall mail to the applicant a list of written interrogatories the answers to which are
3 necessary for a determination under this section. If a confidentiality determination can be made
4 solely on the basis of information appearing in the application, the commission may waive
5 written interrogatories.

6
7 (b) If an extension has not been granted and if the applicant fails to answer all the interrogatories
8 within 30 days after the date the commission mails the interrogatories, the commission shall
9 deny the application. The commission may also deny the application if the applicant fails to
10 provide the information requested in the interrogatories.

11
12 (c) The responses to the interrogatories shall be treated as confidential if the applicant submits a
13 request for confidential treatment of the responses.

14
15 (5) DETERMINATION. (a) Within 30 days after receiving a complete application if interrogatories
16 are waived, or within 30 days after receiving the information requested in the interrogatories, the
17 commission shall issue a written determination on the request for confidentiality. The
18 determination shall include all of the following:

- 19
20 1. A finding which identifies the type of information sought to be assigned confidential status.
21
22 2. A determination of whether the commission has the authority to compel submittal of the
23 information if the commission requested the information.

1 3. If the authority exists, a determination of whether the commission is authorized by law to
2 assign confidential status to the type of information at issue.

3

4 4. The decision to deny or to grant the request in whole or in part.

5

6 (b) A determination to assign confidential status shall be made pursuant to one or more of the
7 following:

8

9 1. Section 196.14, Stats.

10

11 2. Section 196.72, Stats.

12

13 3. Section 196.795(9), Stats.

14

15 4. Upon a finding consistent with the ruling in *State ex rel. Youmans v. Owens*, 28 Wis.2d 672,
16 (1965) that confidential treatment of the information is in the public interest.

17

18 5. Other specific statutory or common law right to confidential treatment of information.

19

20 (c) A determination made pursuant to par. (b)4. shall also include answers to all of the following
21 questions:

22

1 1. How many people have knowledge of the supposedly "secret" information? Will disclosure
2 increase that number to a significant degree?

3

4 2. Does the contested information have any value to the possessor? To a competitor? Is that
5 value substantial?

6

7 3. What damage, if any, would the possessor of the secret suffer from its disclosure? What
8 advantages would its competitors reap from disclosure?

9

10 4. What benefits are likely to flow from disclosure? To whom? Are they significant? In this
11 connection, what is the public "need" for disclosure? Can it be satisfied in any other way?

12

13 (d) 1. The commission shall notify the applicant in writing of the determination. The
14 commission post on its internet website a list of all determinations made under this section and
15 may provide any other notice it considers to be appropriate.

16

17 2. If information that is granted confidential status is filed in conjunction with a commission
18 proceeding, the applicant shall serve a copy of the determination on all persons listed on the
19 service list for the proceeding, and shall file proof of service with the commission.

20

21 (6) INTERIM CONFIDENTIAL STATUS. Information for which confidential status is requested shall
22 not be open to public scrutiny until 40 days after issuance of the determination.

23

1 (7) CONTESTED CASES. In any contested case hearing before the commission, the administrative
2 law judge, in determining the merits of a request for confidential treatment of information which
3 arises during the course of the hearing, may render a ruling on the request only after receiving
4 answers to the questions appearing in sub. (5) (c) 1. to 4.

5

6 SECTION 2. INITIAL APPLICABILITY.

7 The treatment of section PSC 2.06 the Wisconsin Administrative Code first applies to a request
8 for confidential treatment made to the commission on the effective date of this rule.

9

10 SECTION 3. EFFECTIVE DATE.

11 As provided in s. 227.24(1)(c), Stats., the treatment of section PSC 2.06 of the Wisconsin
12 Administrative Code takes effect upon publication in the official state newspaper.

13

14

(end)