

00-163

State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. FH-44-00

Legislative Council Rules Clearinghouse Number 00-163

Subject of Rules Natural Resources Board policy on wetlands preservation, protection, restoration and management

Date of Transmittal to Presiding Officers May 8, 2001

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

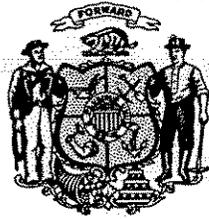
WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Terry C. Anderson, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-163

AN ORDER to repeal NR 1.95 (5) and (6); to amend NR 1.95 (title), (1), (2) (intro.) and (3) (b) 2. (intro.), 2. c., 4. and 6.; and to repeal and recreate NR 1.95 (4), relating to the natural resources board policy on wetlands preservation, protection, restoration and management.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

11-08-00 RECEIVED BY LEGISLATIVE COUNCIL.
12-07-00 REPORT SENT TO AGENCY.

RS:REL:ja;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

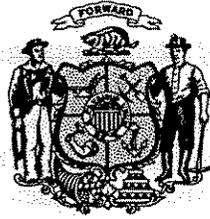
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Terry C. Anderson
Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 00-163

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. NR 1.95 (1), the word "(board)" should be deleted. If the department wishes to use the word board in this section of the code, it should define the term "board." If the definition is not used, the term "natural resources board" should be used. In the last sentence, the phrase "this rule" should be replaced by the phrase "this section."

b. In s. NR 1.95 (4), the word "We" should be replaced by the phrase "The natural resources board."

c. The introduction to s. NR 1.95 (4) appears to be an independent subunit of this subsection. If so, it should be renumbered as sub. (4) (a) and the remaining paragraphs should be renumbered accordingly. Unnumbered introductory material should end in a colon and grammatically lead into the following subunits. The entire rule should be reviewed for this problem.

d. Titles of subdivisions should be placed within single quotation marks.

e. In s. NR 1.95 (4) (b) 2., the phrase "It should" should be replaced by the phrase "the department shall."

f. In s. NR 1.95 (4) (c) 1., the word "should" should be replaced by the word "shall."

g. In the last sentence of s. NR 1.95 (4) (c) 3., the word "are" should be replaced by the phrase "will be."

5. Clarity, Grammar, Punctuation and Use of Plain Language

In the first sentence of s. NR 1.95 (1) (intro.), the word "rules" is deleted and replaced by the word "policy." The subsequent reference to the phrase "The rules" in the second sentence is unclear. It appears that the latter phrase should be deleted and replaced by the phrase "Administrative rules regarding wetlands."

REPORT TO LEGISLATURE

NR 1.95, Wis. Adm. Code
Natural Resources Board policy on wetlands preservation,
protection, restoration and management

Board Order No. FH-44-00
Clearinghouse Rule No. 00-163

Statement of Need

The Department was asked what are the vision and goals for the state's wetlands. Because of the many different programs with wetland responsibilities, there was no single goal. A department wetland team was charged with developing a unified vision and goals for preserving, protecting, restoring and managing the state's wetlands. The team developed *Reversing the Loss – A Strategy for Protecting and Restoring Wetlands in Wisconsin*. The strategy will be used to guide wetland staff in all areas of the Department in their work over the next 6 years. The goals of the strategy have been incorporated in s. NR 1.95. The strategy identifies 4 themes or directions for the Department's wetland efforts:

1. Strengthen relationships with property owners, not-for-profit conservation organizations and local governments. Develop outreach and incentives needed to encourage private wetland stewardship. Provide the technical assistance needed for private wetland stewardship.
2. Manage wetlands for biodiversity, wildlife health and ecological integrity. Identify important wetlands within watersheds and develop coherent ecologically based protection and management plans for each watershed. Encourage wetland restoration and enhancement projects for both specific functions and for the full range of functions.
3. Simplify our regulatory approach by identifying ways to improve our current regulatory program, by developing an effective wetland enforcement program and a compensatory mitigation program. Also seek to develop a comprehensive state administered wetland protection program.
4. Develop and use modern technology. Increase the use and accessibility of the Wisconsin Wetland Inventory, develop a comprehensive, integrated and current wetland monitoring/resource inventory and increase the availability of wetland information.

Modifications as a Result of Public Hearing

In s. NR 1.95(4)(a), the words "human environment" were deleted.

In s. NR 1.95(4)(d)2., the word "enhance" was changed to "maintain or improve wetland functions and".

In s. NR 1.95(4)(d)5., the words "and in certain cases, to provide a single primary purpose such as floodwater retention or providing habitat for migratory waterfowl" have been deleted.

In s. NR 1.95(4)(e)3., In the first sentence the words "that encourages them to consider the full range of wetland impacts when planning development projects" has been deleted. The sentence,

"The full range of wetland impacts shall be considered when planning development projects" has been added.

In s. NR 1.95(4)(e)4., the word "tribal" was added.

Appearances at the Public Hearings and Their Position

December 11, 2000 – Madison

In support:

Robert Regan, BT², Inc., 2740 Alice Circle, Stoughton, WI

In opposition:

Galen Smith, 218 DuRose Terrace, Madison, WI 53705

As interest may appear:

Chris Barden, 8025 Excelsior Drive, Madison, WI 53717

Mike Kakuska, 217 S. Hamilton St., Suite 403, Madison, WI 53703

Travis Olson, WI Coastal Management Program, DOA, P.O. Box 7868, Madison, WI 53707

Hilda McVoy, 1406 W. Skyline Drive, Madison, WI 53705

Kirk McVoy, 1406 W. Skyline Drive, Madison, WI 53705

Angela James, 3 S. Pinckney Street, P.O. Box 1784, Madison, WI 53701

Morgan Robertson, 2320 Winnebago Street, #2B, Madison, WI 53704

December 12, 2000 – Green Bay

In support:

Representative John Ainsworth, W6382 Waukechon Road, Shawano, WI 54166

Jim Johnson, 5072 Brown Road, Little Suamico, WI 54141

Floyd Van Camp, W1988 Twilight Terrace, Seymour, WI 54165

In opposition:

Robert E. Schmitz, Wolf River Watershed Alliance, 1736 Carroll Avenue, Green Bay, WI 54304

As interest may appear:

Thomas Hogan, 530 School House Road, Sobieski, WI 54171

Alden Moeller, N9154 Lawn Road, Seymour, WI 54165

Joseph H. Kielokowski, 740 Bellevue, Green Bay, WI 54302

Patrick J. Farrell, 2859 Sunray Lane, Green Bay, WI 54313

Jan Tesch, STS Consultants, 1035 Kepler Drive, Green Bay, WI 54311

Matt Heyroth, Assistant Brown County Zoning Administrator [no address given]

David Harp, 2738 Oakwood Drive, Green Bay, WI 54304

Pete Van Airsdale, Winnebago County Land & Water Conservation Dept., 625 E. County Road Y,
Oshkosh, WI 54901

Gary Knapton, Green Bay Field Office, U.S. Army Corps of Engineers, Suite 211, Old Fort Square,
211 N. Broadway, Green Bay, WI

Nick Sturzl, CQM, Inc., 2679 Continental Drive, Green Bay, WI 54311
Steven Grumann, 4135 Technology Parkway, Sheboygan, WI 53083
Kurt Rubsam, 4135 Technology Parkway, Sheboygan, WI 53083
James Havel, NES Ecological Services, 2825 S. Webster Avenue, P.O. Box 2100, Green Bay, WI
Bob Stollberg, 1434 S. Locust Street, Green Bay, WI 54304
Patrick Robinson, 925 Marquette Drive, UW-Extension, Kewaunee, WI 54216
Joel Diebl, Brown County Planning Commission, 100 N. Jefferson Street, Room 608, Green Bay, WI
Roger Roffers, W375 EE, DePere, WI 54115
Don Johnson, 100 W. Briar Lane, Green Bay, WI 54301
Jeremiah L. Farrell, 723 Sunset Beach Road, Suamico, WI 54173
Rebecca Katus, Clean Water Action Council of NE Wis., Inc., 1270 Main Street, Suite 120,
Green Bay, WI 54311
George & Lois Kozak, 1102 Ridge Lane, Appleton, WI 54914
Robert A. Calewarts, 2484 St. Pat's Drive, Green Bay, WI 54313
Robert G. Reeners, Federation of Fly Fishers, 4313 Hillcrest Drive, Oneida, WI 54155
Lilian & Donald R. Bouche, 2191 Oakwood Drive, Green Bay, WI 54304

December 12, 2000 – Wausau

In support:

Jim Pellitteri, Marathon Co. Director of Waste Management, 18500 East Hwy. 29, Ringle, WI
Gary Starzinski, 315 Main Street, Marathon, WI
Melvin Buetsch, 2799 CTH S, Marathon, WI 54448

In opposition – none

As interest may appear:

Robert C. Westphal, 808 Marsh Drive, Mosinee, WI 54455
Tom Normington, Maxim Technologies, Inc., 8001 10th Lane, Athens, WI 54411
Robert W. Worth, 4209 Ridge Court, Stevens Point, WI 54481
Evelyn Fisher, Becher-Hoppe Associates, P.O. Box 8000, Wausau, WI 54402
Robert Stimers, 400 Riverside Avenue East, Merrill, WI 54452
Monica D. Stimers, 400 Riverside Avenue East, Merrill, WI 54452
Amy Thorstenson, Maxim Technologies, 3005 Bob O Link Avenue, Wausau, WI 54401
David Erickson, City of Wausau, 407 Grant Street, Wausau, WI 54403
Tom Lochner, WI State Cranberry Growers Association, 181 2nd Street South, Wis. Rapids, WI
Bob Rybarczyk, 900 Grand Avenue, Schofield, WI 54476
Allen O'Leary, Northland Cranberries, Inc., P.O. Box 8020, Wis. Rapids, WI 54495

December 13, 2000 – Rhinelander

In support:

Chuck Wrbelis, 3208 N. Rifle Road, Rhinelander, WI 54501
Brian J. Shimkus, Shimkus Auto Body, Inc., 5890 Musky Bay Drive, Rhinelander, WI 54501
William L. Ludwig, P.O. Box 312, Eagle River, WI
Ron Sleight, 84 Wildwood Road, Manitowish Waters, WI 54545
Richard T. Sleight, 70 Wildwood Road, Manitowish Waters, WI

In opposition – none

As interest may appear:

Shane Spencer, 829 Lake Shore Drive, Rhinelander, WI 54501
Michael P. Meyers, 1030 W. Davenport Street, Rhinelander, WI 54501

December 14, 2000 – Spooner

In support:

Tim King, King Environmental & Planning, 1311 Duke Street, Rice Lake, WI 54868
James Palmer, 1890 Montanis Avenue, Rice Lake, WI 54868
Scott Kimmes, 1409 N. 76th Street, Superior, WI 54880

In opposition – none

As interest may appear:

John Donlin, 24520 Lind Road, Siren, WI 54872
Charles Johansen, 12905 W. County OO, Hayward, WI 54843

December 14, 2000 – Eau Claire

In support:

Pam Rasmussen, Xcel Energy, Inc., 1414 W. Hamilton Avenue, P.O. Box 8, Eau Claire, WI 54702
Christopher J. Bolt, Cedar Corporation, 604 Wilson Avenue, Menomonie, WI 54751
Mark Iverson, Cedar Corporation, 604 Wilson Avenue, Menomonie, WI 54751
Tim Ralston, 3237 Rolling Hills Drive, Eagan, MN 55121

In opposition – none

As interest may appear:

Bill Beskar, N7656 State Road 25, Menomonie, WI 54751
Ritchie Brown, Ho-Chunk Nation DNR, P.O. Box 726, Black River Falls, WI 54615
Michelle Schoolcraft, Ho-Chunk Nation Division of Natural Resources, P.O. Box 726, Black River Falls, WI 54615
Tom Wilson, Northern Thunder, 416 E. Court Street, Viroqua, WI 54665
Doug Brewer, 746 21st Street, Chetek, WI 54728

December 18, 2000 – Prairie du Chien

In support – none

In opposition – none

As interest may appear:

Blair E. Dillman, 800 N. Villa Louis Road, Prairie du Chien, WI 54821

December 19, 2000 – Waukesha

In support:

Gene Kramer, Superior Emerald Park Landfill, Inc., 31024 Timber Lane, Burlington, WI 53105
Ron Williams, W287 S2002 Highway DT, Waukesha, WI 53188
Keirston Peckham, Murn Environmental, Inc., 2707 E. Philhower Road, Beloit, WI 53511
Stevan Keith, Milwaukee County Dept. of Public Works, 2711 W. Wells Street, Room 215,
Milwaukee, WI 53208
William W. Carity, 12720 W. North Avenue, Brookfield, WI 53005
Eric Parker, Graef, Anhalt, Schloemer & Associates, 4821 Elm Island Circle, Waterford, WI 53185
Brian J. Karczewski, Graef, Anhalt, Schloemer & Associates, 567 N. 106th St., Wauwatosa, WI
Marc E. Marszalek, Weaver Boos & Gordon, Inc., 2021 Timberbrook Lane, Springfield, IL 62702
Andrea Lorenz, Superior Services, Inc., N104 W13285 Donges Bay Road, Germantown, WI 53022
Leigh Himebauch, Metropolitan Builders Assoc., 6511 N. Bluemound Road, Milwaukee, WI 53213

In opposition – none

As interest may appear:

Pam Christenson, Dept. of Commerce Small Business Ombudsman, 201 W. Washington Avenue,
P.O. Box 7970, Madison, WI 53703
Edward B. Witte, c/o Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, WI 53202
Ryan P. Mallery, Burke Properties, Inc., 622 N. Water Street, #200, Milwaukee, WI 53202
Joe Ramchick, 2835 N. Grandview Blvd., Pewaukee, WI 53072
Wynnie Zuchowski, 2835 N. Grandview Blvd., Pewaukee, WI 53072
Mark Jenks, Waukesha Co. Dept. of Parks & Land Use, 1320 Pewaukee Road, Room 260,
Waukesha, WI 53188
Michael A. Dodge, Reinhart, Boerner, Van Deuren, Norris & Rieselbach, 1000 N. Water Street,
Milwaukee, WI 53203
Senator Margaret Farrow, W262 N2402 Deer Haven Drive, Pewaukee, WI 53072
Jeffrey A. Mierow, Mierow Building Company, 17635 Bolter Lane, Brookfield, WI 53045
Sandy Scherer, Waukesha Co. Dept. of Parks & Land Use, 1320 Pewaukee Road, Room 230,
Waukesha, WI 53188
Donald A. Smith, Superior Glacier Ridge Landfill, N7296 Hwy. V, Horicon, WI 53032

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The proposed rules do not regulate small businesses. Therefore, a final regulatory flexibility analysis is not required.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, AMENDING, REPEALING AND RECREATING RULES

The Natural Resources Board proposes an order to repeal NR 1.95(5) and (6); to amend NR 1.95(title), (1), (2)(intro.), (3)(b)2.(intro.), 2.c., 4. and 6.; and to repeal and recreate NR 1.95(4) relating to the Natural Resources Board policy on wetlands preservation, protection, restoration and management

FH-44-00

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 1.11, 23.09, 23.32, 23.321, 29.011, 281.11 and 227.11(2)(a), Stats.
Statutes interpreted: ss. 23.09, 23.321, 29.011 and 281.11, Stats.

The Department's wetland policy, s. NR 1.95, was enacted in 1978. While the policy has aged well, there have been numerous changes to federal laws and programs that have impacted heavily on how we regulate and manage Wisconsin's wetlands. In addition to "housekeeping" changes to reflect these changes, the proposed revision includes the strategic direction and goals to:

Strengthen relationships with property owners, not-for-profit conservation organizations and local governments. Develop the outreach and incentives needed to encourage private wetland stewardship. Provide the technical assistance needed for private wetland stewardship.

Manage wetlands for biodiversity, wildlife health and ecological integrity. Identify important wetlands within watersheds and develop coherent ecologically based protection and management plan for each watershed. Encourage wetland restoration and enhancement projects for both specific functions and for the full range of functions.

Simplify our regulatory approach by identifying ways to improve our current regulatory program, by developing an effective wetland enforcement program and a compensatory mitigation program. Also look at developing a comprehensive state administered wetland protection program.

Develop and use modern technology. Increase the use and accessibility of the Wisconsin Wetland Inventory, develop a comprehensive, integrated and current wetland monitoring/resource inventory and increase the availability of wetland information.

SECTION 1. NR 1.95(title), (1), (2)(intro.), (3)(b)2.(intro.), 2.c., 4., and 6. are amended to read:

NR 1.95(title) **Wetlands preservation, protection, restoration and management.** (1)
PURPOSE: It is the intent of the natural resources board to establish rules policy for the preservation, protection, restoration and management of wetlands in the state of Wisconsin. The administrative rules regarding wetlands shall be applied in such a manner as to avoid or minimize the adverse effects on wetlands due to actions over which the department has regulatory or management authority and to maintain, enhance and restore wetland functions and values. Proposals for administrative rules and for legislation shall include appropriate provisions, consistent with this section, except as otherwise provided by law.

(2) AUTHORITY. The department, under existing law, has the responsibility of making and enforcing regulatory and management decisions which, directly or indirectly, affect the quantity and quality of many Wisconsin wetlands.

(3)(b)2.(intro.) Watershed functions. In addition to their biological functions, wetlands may serve important physical and chemical functions with respect to other wetlands and waters of the state. A specific wetland, (or set of wetlands) may play a critical role in maintaining the stability of the ~~entire~~

system ecosystem to which it is physically and functionally related. This functional role may include the maintenance of both the hydrologic patterns and the physical and chemical processes of related wetlands and other related waters of the state.

2.c. Some wetlands may be important for storing water and retarding flow during periods of flood or storm discharge. Even wetlands without surface water connections to other water bodies may serve this function. Such wetlands can reduce or at least modify the potentially damaging effects of floods by intercepting and retaining water which might otherwise be ~~channelled~~ channeled through open flow systems. The importance of a given wetland for storm and flood water storage may be modified by the cumulative effects of the proposed activities and previous activities within the watershed.

4. Scarcity of wetland type. Certain wetland types, (e.g., calcareous fens, wild rice lakes), which are statewide or regionally scarce possess special resource significance. Scarcity or rareness depends on the frequency of occurrence of the type, the area of the type in existence prior to settlement, the historical conversion of the type and its resultant degree of destruction, and the amount of similar habitat in the present landscape of the region.

6. The ecosystem concept in a regional context. Wetlands that are sustainable, diverse and interspersed with healthy aquatic and terrestrial communities contribute to the overall ecosystem health. The previous sections suggest that wetlands may not only have important functions within their boundaries, but may also interact with ecosystems of the surrounding region. The potential impact of wetland modification may influence distant wetlands if they are structurally and functionally related in the region. Similarly, the functions and values of any wetland may be affected by other existing and potential water resource activities in the region. Therefore, consideration should be given to those impacts which are shown to be of regional concern.

SECTION 2. NR 1.95(4) is repealed and recreated to read:

NR 1.95(4) STATEMENT OF POLICY. (a) The natural resources board is concerned with the continuing reduction in the quantity and quality of natural wetlands in this state and is committed to reversing the loss of our state's wetlands. A large percentage of Wisconsin's wetlands have been altered or destroyed in the years since settlement. It is the policy of the natural resources board that wetlands shall be preserved, protected, restored and managed to maintain, enhance or restore their values. The natural resources board promotes, protects, restores, enhances and preserves the quantity, quality and diversity of Wisconsin's wetlands as a critical component of ecosystems essential to the health and quality of life of our state's diverse citizenry, plants, animals and landscapes. It is in the public interest that department decisions which lead to alteration of or effects on wetlands under its jurisdiction or control are based on the intent to preserve, protect, restore and manage them for the maintenance or enhancement of their values.

(b) "Wetland", as defined in s. 23.32 (1), Stats., means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions. It is the intention of the natural resources board that where the term "wetland" appears in a rule promulgated by the department and the rule does not contain a specific definition, the definition of "wetland" in this paragraph shall apply.

(c) The department shall strengthen relationships with stakeholders through outreach and technical assistance and stewardship incentive programs.

1. 'Outreach and technical assistance'. The department shall encourage public and private owners of wetlands to make sound decisions to use their land in a way that sustains both wetland and socio-economic benefits.

2. 'Partnerships'. The department shall cooperate with appropriate governmental units, private groups and the public to further the protection and enhancement of wetlands to provide opportunities for

education on wetland values and ecology. The department shall work directly with local officials and developers to encourage them to avoid wetland destruction or incorporate the wetland into their project planning and reduce the need for a permit.

3. 'Stewardship incentives'. The department shall, in cooperation with other state and federal agencies, provide incentives and conservation programs for wetland owners that encourage ecological restoration of altered and degraded wetlands and reward the perpetual preservation of wetlands and associated upland areas.

(d) The department shall preserve, protect, restore and manage the state's wetland communities to be sustainable, diverse and interspersed with healthy aquatic and terrestrial communities.

1. 'Ecosystem health and integrity'. The department shall protect, restore and manage the state's wetlands to contribute to ecosystem health. The department shall work with stakeholders to identify high quality wetlands taking into consideration ecosystem needs, physical and biological watershed processes, as well as social values, uses and perceptions.

2. 'Department management actions'. The department shall select resource management techniques which maintain or improve wetland functions and values with no significant or irreversible adverse effects. Actions shall be limited to those specifically required to meet the objectives enumerated in sub. (2)(d).

3. 'Land acquisition and easements'. The department's land acquisition and community financial assistance land acquisition programs shall place special emphasis on obtaining wetlands that provide quality fish and wildlife habitat, particularly for threatened or endangered species; that significantly affect the maintenance or improvement of water quality; that have special value as scientific or natural areas; or that are imminently threatened with extensive alteration or destruction. Unique, exceptionally high quality or scarce wetland community types and associated aquatic and terrestrial communities will be held in perpetuity through acquisition of land or easements by federal, state, tribal and local government or not-for-profit conservation organizations for future generations.

4. 'Restoration'. The department shall consider the full range of ecological concerns and meet multiple purposes in wetland restoration and enhancement projects. These projects shall help recapture previously drained or filled wetlands and result in an increase in wetland acreage and function. The department, with assistance from stakeholders, shall identify restoration sites in each watershed based on the potential to successfully restore important wetland functions and values, and the opportunity to restore a watershed's ecological integrity.

5. 'Enhancement for specific functions'. The department shall develop statewide plans and programs that allow wetlands to be managed and enhanced for specific functions.

(e) The department shall administer a comprehensive regulatory and enforcement program for protecting wetlands.

1. 'Regulation'. The department shall seek to administer a comprehensive state wetland regulatory program that is simple, straightforward and reasonable, and make decisions in a predictable, timely and fair manner. The department's wetland regulatory decisions shall be made in accordance with standards in ch. NR 103.

2. 'Enforcement'. The department shall have an effective wetland enforcement program that discourages permit violations and illegal wetland fill activities. The department's enforcement activities shall include steps to assure, to the fullest extent practicable, the restoration of wetlands which were unlawfully altered.

3. 'Compensatory mitigation'. The department shall administer an easy-to-understand compensatory mitigation program available to permit applicants. The full range of wetland impacts shall be

considered when planning development projects. This program shall recognize the need to avoid and minimize adverse wetland effects, to replace wetland functions, and to enable fair, protective and common sense regulatory decisions. The department's wetland compensatory mitigation decisions shall be made in accordance with the procedures in ch. NR 103 and the standards in ch. NR 350.

4. 'Liaison activities'. In its liaison activities with federal, tribal, local and other state agencies and in the absence of regulatory authority, the department shall strongly recommend avoidance of wetland areas and concur with their use or alteration only when necessary to minimize the overall environmental impacts of a proposal. In those cases, the recommended amount of wetland use or alteration shall be held to the minimum. The department shall encourage applicants to consider the full range of wetland impacts when planning development projects.

(f) The department shall develop and maintain an up-to-date inventory of the state's wetland resources and track management actions.

1. 'Technology'. The department shall make use of technological advances to ensure that staff and the public have the most current wetland information that can be easily integrated with other environmental and geographical databases.

2. 'Inventory and tracking'. The department shall maintain an inventory of the state's wetland resources and make it readily available to the public and staff for a full range of planning, policy, management and regulatory applications. The department shall develop and maintain a unified system to track and monitor restoration, preservation, management and regulatory actions

SECTION 3. NR 1.95(5) and (6) are repealed.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on April 25, 2001.

The rules 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 _____
Darrell Bazzell, Secretary

(SEAL)

Fiscal Estimate — 1999 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number s. NR 1.95

Subject
 Revisions to s. NR 1.95, "Wetland Preservation, Protection and Management"

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

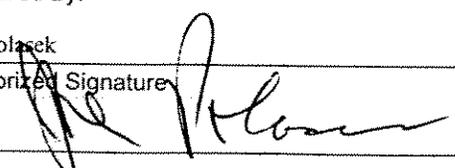
Assumptions Used in Arriving at Fiscal Estimate

SUMMARY OF RULE: The Department's wetland policy, NR 1.95, was enacted in 1978. While the policy has aged well, there have been numerous changes to federal laws and programs that have affected the Department's regulation of wetlands. These federal changes include major adjustments to the Army Corps of Engineers (ACOE) s.404 regulatory program, the development of the wetland water quality certification program, and the development of conservation programs, such as the Wetland Reserve Program. The recent passage of state legislation authorizing compensatory mitigation and creating enforcement authority for wetland water quality certifications is another significant change to the Department's wetland programs. The Department is proposing "housekeeping" changes to its wetland policy to reflect these changes and also to reflect the strategic direction and goals of the Department's wetland strategy--"Reversing the Loss".

FISCAL EFFECT - None. The proposed rule changes create no new authority or programs, and are not expected to have a fiscal impact.

Long-Range Fiscal Implications

None

Prepared By: Joe Polasek	Telephone No. 608-267-2794	Agency DNR
Authorized Signature: 	Telephone No. 6-2794	Date (mm/dd/ccyy) 11-08-00