

Joint Committee for Review of Administrative Rules

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- **Emergency Rule s. NR 1.016**

Report to the Legislature
Emergency Rule Section NR 1.016
The Joint Committee for Review of Administrative Rules

Produced pursuant to s. 227.26(2)(g), Stats.

Emergency Rule section NR 1.016, promulgated by the Department of Natural Resources, (DNR), is a policy statement regarding the DNR's and the Natural Resources Board's responsibilities to conserve and enhance the public waters of Wisconsin.

Description of the Problem

2004 Wisconsin Act 118, which became effective February 6, 2004, required emergency rules to be written implementing the legislation. In accordance with Act 118, the DNR drafted an emergency rule package. Included in this package is Section NR 1.016, a policy statement written by the DNR outlining their authority as a trustee of the public waters. At a Joint Committee for Review of Administrative Rules public hearing held on June 24, 2004 over 500 people in attendance raised many issues. Numerous individuals questioned whether the DNR in drafting s. NR 1.016 had gone beyond the legislature's intent and the statutory authority of Act 118.

Arguments in Favor of Suspension

- *NR 1.016 is entirely a policy statement without statutory authority. 2004 Wisconsin Act 118 does not instruct the DNR to write any rule outlining their responsibility over public waters.*
- *The legislature did not intend for Act 118 to authorize the DNR to include the s. NR 1.016 policy statement.*
- *S. NR 1.016 has no practical effect and is confusing as far as its purpose in carrying out the authorizing statute.*

Arguments Against Suspension

- *Since this portion of the rule is simply a policy statement, it will not affect the implementation of Act 118.*

Action by Joint Committee for Review of Administrative Rules

On June 24, 2004 the Joint Committee for Review of Administrative Rules held a public hearing on Emergency Rule NR 1.016, 1.05, 1.06 and 1.07. An executive session was held on July 21, 2004. The committee passed a motion on a 9 to 1 vote, pursuant to s. 227.26(2)(d), Stats., and for the reasons set forth in s. 227.19(4)(d)1. 3. and 6., Stats., to suspend NR 1.016. This action voids the DNR policy statement relating to the responsibilities of the DNR and Natural Resources Board for protecting and managing public waters in Wisconsin.

On August 18, 2004, JCRAR voted unanimously to introduce LRB 4639/2 and LRB 4684/2, which makes the effect of the suspension statutory.