



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Natural Resources and Transportation...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Natural Resources and Transportation

Clearinghouse Rule 04-066

Relating to natural resources board policies on protection and management of public waters.

Department of Natural Resources

January 12, 2005 Referred to Committee on Natural Resources and Transportation.

February 23, 2005 **PUBLIC HEARING HELD**

Present: (5) Senators Kedzie, Stepp, Kapanke, Wirch and
 Breske.

Absent: (0) None.

Appearances For

- Todd Ambs, Madison — WI Department of Natural Resources
- Mary Ellen Vollbrecht, Madison — WI Department of Natural Resources
- Paul Cunningham, Madison — WI Department of Natural Resources
- George Meyer, Madison — WI Wildlife Federation
- Jeff Smith, Madison — Trout Unlimited
- Peter Murray, Madison — WI Association of Lakes
- Denny Caneff, Madison — River Alliance of Wisconsin
- Becky Abel, Madison — WI Wetlands Association
- Steve Books, Mount Horeb — self
- Jeff Nania, Portage — WI Waterfowl Association
- Robert Livingston, Twin Lakes — Crane Landscape and Design Inc.

Appearances Against

- Jay Verhulst, Arbor Vitae — Vilas County Board Supervisor

Appearances for Information Only

- Tom Larson, Madison — WI Realtors Association

Registrations For

- Derek Scheer, Madison — Clean Wisconsin
- Sue Moline-Larson, Madison — Reverend, Lutheran Office for Public Policy in Wisconsin
- Anne Sayers, Madison — WI League of Conservation Voters

- Caryl Terrell, Madison — Sierra Club - John Muir Chapter
- Gary Neu, Madison — self
- Karen Etter Hale, Madison — WI Audobon Council and Madison Audobon Society

Registrations Against

- Sandra Verhulst, Arbor Vitae — self

February 28, 2005 EXECUTIVE SESSION - POLLING

Moved by Senator Kedzie that **Clearinghouse Rule 04-066** be recommended for modifications requested.

Ayes: (5) Senators Kedzie, Stepp, Kapanke, Wirch and Breske.

Noes: (0) None.

MODIFICATIONS REQUESTED RECOMMENDED, Ayes 5, Noes 0

March 9, 2005 MODIFICATIONS RECEIVED FROM THE AGENCY, Pursuant to s. 227.19(4)(b)2., Wis. Stats..

March 24, 2005 MODIFICATIONS RECEIVED FROM THE AGENCY, Pursuant to s. 227.19(4)(b)3., Wis. Stats..

March 29, 2005 EXECUTIVE SESSION - POLLING

Moved by Senator Kedzie that **Clearinghouse Rule 04-066** be recommended for review period waive.

Ayes: (5) Senators Kedzie, Stepp, Kapanke, Wirch and Breske.

Noes: (0) None.

REVIEW PERIOD WAIVED RECOMMENDED, Ayes 5, Noes 0

Dan Johnson
Committee Clerk

February 25, 2005

MOTION

Requests for Modification to Rules

The Senate Committee on Natural Resources and Transportation, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Natural Resources to consider the following modifications to Clearinghouse Rule 02-099, relating to department standards for erosion control of inland lakes and impoundments:

1. Add a sentence at the end of s. NR 328.04 (4) (c), as follows:

NR 328.04 (4) (c) Vegetation shall be plant species that are native to the area of Wisconsin where the project is located. Vegetative treatments shall be installed according to Natural Resources Conservation Service Conservation Practice Standard Code 580 (Streambank and Shoreline Protection) or the Natural Resources Conservation Service Engineer's Handbook.

2. Add the following at the end of s. NR 328.05 (5) (b):

NR 328.05 (5) (b) The project site is a moderate or high energy site; or a low energy site where the bank-edge recession described in s. NR 328.08 (3) is equal to or greater than 0.5 feet per year and the applicant can show a biological erosion control structure was previously placed according to the standards in s. NR 328.04 (3) and (4).

Note: NR 328.08(3) requires that the time between separate measurements shall equal or exceed 3 months during the open-water season.

Note: The applicant will satisfy the "equal to or greater than 0.5 feet per year" requirement by demonstrating that the bank-edge recession is equal to or greater than 1.5 inches per 3 months during the open-water season.

The Senate Committee on Natural Resources and Transportation, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Natural Resources to consider the following modifications to Clearinghouse Rule 04-066, relating to natural resources board policies on protection and management of public waters:

1. Modify the note following s. NR 1.05 (2) as follows:

Note: Activities not exempted in areas of special natural resource interest under ss. 30.12 and 30.20, Stats., are: deposits less than 2 cubic yards; seasonal structures other than piers or wharves; fish habitat structures; bird nesting platforms; dry hydrants; pilings; riprap repair or replacement; biological shore erosion control structures; intake or outfall structures; dredging to place or maintain an exempt structure; dredging without auxiliary power. Activities not exempted in areas of special natural resource interest under ch. NR 320 are culvert replacements. ~~Piers meeting the dimensional standards in s. 30.12, Stats., are exempt in areas of special natural resource interest under s. 30.13, Stats., unless 30.12 (2m), Stats., applies.~~ However, new and existing piers may be exempt in areas of special natural resource interest under s. 30.13, Stats., as set forth in ch. NR 326.

2. Delete the "and" between "30.12 (1g)" and "(km)" in s. NR 1.06 (2).
3. Modify the note following s. NR 1.06 (2) as follows:

Note: Exemptions not allowed in locations of public rights features are: intake or outfall structures other than dry hydrants; replacement culverts with inside diameter not more than 24 inches; dredging without auxiliary power. ~~In locations of public rights features, piers exceeding the dimensional standards in s. 30.12, Stats., are unlikely to qualify for the exemption under s. 30.13, Stats.~~ However, new and existing piers may be exempt in areas with public rights features under s. 30.13, Stats., as set forth in ch. NR 326.

The Senate Committee on Natural Resources and Transportation requests the department to inform the chairperson whether it agrees to consider these modifications in a letter addressed to the chairperson and received by the chairperson no later than 4:30 p.m., March 2, 2005.

VOTE ON MOTION:

YES

NO

Signed: Neal J. Redzie

Date: 2/28/05

SENATE COMMITTEE ON NATURAL RESOURCES AND TRANSPORTATION

MOTION ON CLEARINGHOUSE RULE 04-066 (NR 1)

1. Moved by **Senator Kedzie** that the Senate Committee on Natural Resources and Transportation, pursuant to s. 227.19 (4)(c) Wis. Stats., waives its jurisdiction over Clearinghouse Rule 04-066 relating to natural resources board policies on protection and management of public waters.

VOTE ON MOTION:

YES

NO

Signed: Roger Brueck

Date: 3-29-05

SENATE COMMITTEE ON NATURAL RESOURCES AND TRANSPORTATION

MOTION ON CLEARINGHOUSE RULE 04-066 (NR 1)

1. Moved by **Senator Kedzie** that the Senate Committee on Natural Resources and Transportation, pursuant to s. 227.19 (4)(c) Wis. Stats., waives its jurisdiction over Clearinghouse Rule 04-066 relating to natural resources board policies on protection and management of public waters.

VOTE ON MOTION:

YES X

NO

Signed: Dew Kedzie

Date: 03/29/05

SENATE COMMITTEE ON NATURAL RESOURCES AND TRANSPORTATION

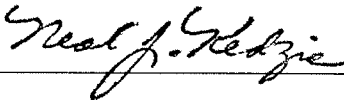
MOTION ON CLEARINGHOUSE RULE 04-066 (NR 1)

1. Moved by **Senator Kedzie** that the Senate Committee on Natural Resources and Transportation, pursuant to s. 227.19 (4)(c) Wis. Stats., waive its jurisdiction of Clearinghouse Rule 04-066 relating to natural resources board policies on protection and management of public waters.

VOTE ON MOTION:

YES

NO

Signed: 

Date: _____

SENATE COMMITTEE ON NATURAL RESOURCES AND TRANSPORTATION

MOTION ON CLEARINGHOUSE RULE 04-066 (NR 1)

1. Moved by **Senator Kedzie** that the Senate Committee on Natural Resources and Transportation, pursuant to s. 227.19 (4)(c) Wis. Stats., waives its jurisdiction over Clearinghouse Rule 04-066 relating to natural resources board policies on protection and management of public waters.

VOTE ON MOTION:

YES X

NO _____

Signed: 

Date: _____

SENATE COMMITTEE ON NATURAL RESOURCES AND TRANSPORTATION

MOTION ON CLEARINGHOUSE RULE 04-066 (NR 1)

1. Moved by **Senator Kedzie** that the Senate Committee on Natural Resources and Transportation, pursuant to s. 227.19 (4)(c) Wis. Stats., waives its jurisdiction over Clearinghouse Rule 04-066 relating to natural resources board policies on protection and management of public waters.

VOTE ON MOTION:

YES X

NO _____

Signed:

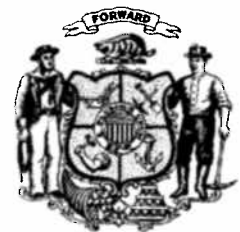
Robert W. Wurch

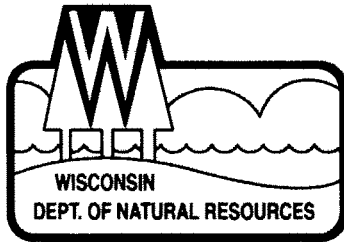
Date:

3/29/05



WISCONSIN STATE LEGISLATURE





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

March 1, 2005

Honorable Neal Kedzie, Chair
Senate Committee on Natural Resources and Transportation
Room 313 South
State Capitol

Re: Clearinghouse Rules No. 02-099 and 04-066

Dear Senator Kedzie:

In response to your letter of February 28, 2005, the Department of Natural Resources agrees to consider modifications to Clearinghouse Rule 02-099 relating to department standards for erosion control of inland lakes and impoundments and Clearinghouse Rule No. 04-066 relating to Natural Resources Board policies on protection and management of public waters.

The Department will be recommending that the Natural Resources Board adopt the specific changes requested by your committee. The Natural Resources Board has already received the language of the revised ch. NR 1 notes with an explanation at its February 22, 2005 meeting. While they did not have the matter before them to vote, the members expressed no concerns with the change.

As the Department has already discussed with your Committee, the Natural Resources Board will also be asked to consider a germane modification to Clearinghouse Rule No. 04-065 creating ch. NR 310 relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waters. This amendment would incorporate into Natural Resources Board Order No. FH-37-04 the Board's December 8, 2004 motion directing the Department to evaluate the performance of the rules, involving key stakeholders and reporting to the Board and to the Senate and Assembly Natural Resources Committees.

Department staff are working with the Natural Resources Board members to schedule consideration of these matters as soon as possible.

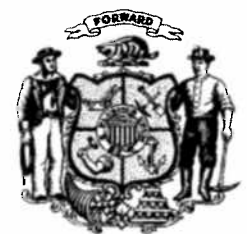
Sincerely,

Scott Hassett
Secretary

cc: Rep. Scott Gunderson
Todd Ambs – AD/5
Mel Vollbrecht – FH/4
Carol Turner – LS/5
Amber Smith – AD/5



WISCONSIN STATE LEGISLATURE



Scott Gunderson



STATE REPRESENTATIVE • 83RD DISTRICT

March 3, 2005

Senator Neal Kedzie
313 South, State Capitol
Madison, WI 53708

Dear Senator Kedzie,

I am writing to inform you that on March 2, 2005 the Assembly Natural Resources Committee, pursuant to s. 227.19 (4) (b) 5. and (d), Stats., objected to a portion of Clearinghouse Rule 04-066.

MOVED: the Assembly Committee on Natural Resources, pursuant to s. 227.19 (4) (b) 5. and (d), Stats., objects to the following portion of Clearinghouse Rule 04-066, relating to natural resources board policies on protection and management of public waters on the grounds that this portion of the proposed rule fails to comply with legislative intent and is arbitrary, capricious, and imposes an undue hardship:

SECTION 1, which creates s. NR 1.016.

This motion was adopted on a vote of Ayes, 9; Noes, 5 (Black, Steinbrink, Molepske, Van Akkeren, Hebl); Absent, 1 (Gronemus).

Sincerely,

Representative Scott Gunderson
83rd District
Wisconsin State Assembly

State Capitol:
P.O. Box 8952
Madison, WI 53708
(608) 266-3363

Toll-Free:
(888) 534-0083

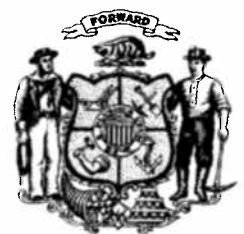
Fax:
(608) 282-3683

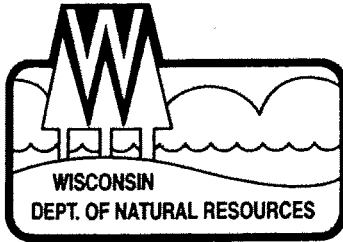
E-Mail:
Rep.Gunderson@
legis.state.wi.us

83rd District:
P.O. Box 7
Waterford, WI
53185
(262) 895-6254



WISCONSIN STATE LEGISLATURE





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

March 9, 2005

Honorable Scott Gunderson, Chair
Assembly Committee on Natural Resources
Room 7 West
State Capitol

Honorable Neal Kedzie, Chair
Senate Committee on Natural Resources and Transportation
Room 313 South
State Capitol

Re: Clearinghouse Rule No. 02-099 relating to department standards for erosion control of inland lakes and impoundments
Clearinghouse Rule No. 04-065 relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waters
Clearinghouse Rule No. 04-066 relating to Natural Resources Board policies on protection and management of public waters

Gentlemen:

I write in response to the February 28, 2005 Senate Natural Resources and Transportation Committee request to make modifications to Clearinghouse Rules No. 02-099 and 04-066, the March 2, 2005 Assembly Natural Resources Committee request for identical changes, as well as the Assembly Committee on Natural Resources request for unspecified changes to ss. NR 1.05 and 1.06 in Clearinghouse Rule No. 04-066.

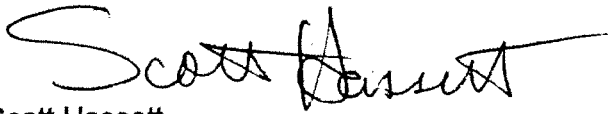
At a meeting on March 8, 2005, the Natural Resources Board adopted the modifications shown on Attachment A which include all of the modifications specified by the Senate Committee and additional items that the Department has been able to determine may be responsive to the Assembly Committee's request for unspecified modifications.

A germane modification to Clearinghouse Rule 04-065 was also adopted by the Natural Resources Board. This modification incorporates the December 8, 2004 motion of the Natural Resources Board regarding evaluating the implementation of Act 118 through the public waters rules.

A copy of the revised orders with the modifications incorporated is attached.

If you have questions about these modifications or about other aspects of these rules, please feel free to contact Todd Ambs or Mary Ellen Vollbrecht of my staff.

Sincerely,

A handwritten signature in black ink that reads "Scott Hassett". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Scott Hassett
Secretary

cc: Todd Ambs – AD/5
Mary Ellen Vollbrecht – FH/4
Carol Turner – LS/5

Attach.

ATTACHMENT A

Modifications to CHR-04-066 (NR 1, Board Order FH-36-04) In response to Assembly Natural Resource Committee

Approved by the Natural Resources Board on March 23, 2005

Amend NR 1.05 (4)(a)

(a) Waters or portions of waters that contain endangered, ~~or threatened, special concern~~ species or ~~unique ecological communities identified as~~ aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory. Aquatic elements are elements that spend part of their life in water or wetlands or they rely on a waterbody for food, e.g., eagles and dragonflies.

~~Note: The definitions of special concern species and scientific protocols for their identification are established in the Wisconsin Natural Heritage Working List available at <http://dnr.wi.gov/org/land/er> or by contacting the Bureau of Endangered Resources. Special concern species are those species about which some problem of abundance or distribution is suspected but not yet proved. The main purpose of this category is to focus attention on these species before they become threatened or endangered. Aquatic elements are elements that spend part of their life in water or wetlands or they rely on a waterbody for food, e.g., eagles and dragonflies.~~

Amend NR 1.05 (5)(a)

(a) The Natural Resources Board may designate by rule categories of waters as areas of special natural resource interest. The status of waters added or removed from designated categories by independent listing processes shall be effective at the time that the name or location of the water is made available in the listing on the department's website as required in sub. ~~(5)(6)~~ and no earlier than the effective date of any rule or required report to the legislature designating a water or portion of a waters as an Area of Special Natural Resource Interest.

Amend NR 1.05 (5)(b)

(b) The Natural Resources Board may designate by rule individual waters or portions of waters as areas of special natural resource interest.

Amend NR 1.06 (1)

To fulfill its affirmative duty to protect public trust waters, the department shall ~~continually~~ assess the state's public trust waters to identify locations of public rights features where activities shall require general or individual permit review in lieu of exemptions, or reasonable limitations on location to assure that the public's rights and interests under the public trust doctrine are protected, under ss. 30.12(1p)(a)3. and (2m), 30.123(6m) and (6s), 30.20(1k)(a)2. and (1m), 30.206(1c), (3) and (3r), Stats.

Create:

NR 1.06 (4) For those activities that are not exempt or eligible for general permits in locations where there are public rights features as described in sub. (5), the department will base determinations of whether activities are in locations of public rights features on information as specified in sub. (6).

Renumber NR 1.06 (4) to NR1.06 (5) and amend:

NR 1.06 (5) Public rights features include all of the following are:

Renumber NR 1.06(4)(a) to **NR 1.06(5)(a)** and amend:

(a) Fish and wildlife habitat, including ~~but not limited to~~ specific sites necessary for breeding, nesting, nursery and feeding areas.

Renumber NR 1.06(5) to **NR 1.06(6)** and amend:

The department shall base its identification of public rights features on factual information obtained from reputable sources, including ~~but not limited to~~:

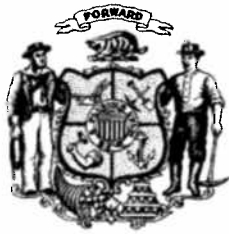
(a) Field surveys and inspections, including historical surveys for fish, wildlife, rare species, aquatic plants, geologic features or water quality.

(b) Surveys or plans from federal, state or local agencies.

(c) Factual documentation of features or use patterns from property owners, user groups or knowledgeable users on the waterbody.



WISCONSIN STATE LEGISLATURE





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

March 23, 2005

Honorable Scott Gunderson, Chair
Assembly Committee on Natural Resources
Room 7 West
State Capitol

Honorable Neal Kedzie, Chair
Senate Committee on Natural Resources and Transportation
Room 313 South
State Capitol

Re: Clearinghouse Rule No. 04-066 relating to Natural Resources Board policies on protection and management of public waters

Gentlemen:

On March 2, 2005, the Assembly Committee on Natural Resources generally requested changes to ss. NR 1.05 and 1.06 in Clearinghouse Rule No. 04-066.

At a meeting on March 23, 2005, the Natural Resources Board adopted the germane modifications shown on Attachment A to respond to this request. Based on our consultation with committee staff, we believe that these modifications, along with those made on March 8, 2005, fully respond to the concerns of the Assembly.

If you have questions about these modifications, please feel free to contact Todd Ambs or Mary Ellen Vollbrecht of my staff.

A copy of the revised NR 1 order with the modifications incorporated is also attached.

Under s. 227.19(4)(b)2. and 3., Stats., the Department of Natural Resources refers these rules to your Committees for an additional 10 working day review.

The department is eager to complete processing these rules so that general permits can continue in effect for the upcoming constructions season. We ask that the committees act as quickly as possible to approve these rules.

Sincerely,

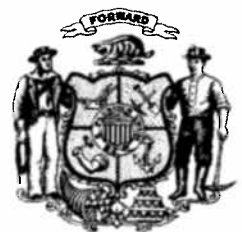
Scott Hassett
Secretary

Attachments

cc: Todd Ambs – AD/5
Mary Ellen Vollbrecht – FH/4
Carol Turner – LS/5



WISCONSIN STATE LEGISLATURE



Johnson, Dan (Legislature)

From: Johnson, Dan (Legislature)
Sent: Thursday, March 24, 2005 2:29 PM
To: Bob Wirch; Cathy Stepp; Dan Kapanke; Elizabeth Piliouras; Jay Risch; John Stolzenberg; Matt Phillips; Matthew Swentkofske; Neal Kedzie; Rachel Letzing; Roger Breske; Rose Smyrski; Scott Manley
Subject: Modifications to NR 1 (CR 04-066)

Importance: High

March 24, 2005

Dear Senate Natural Resources and Transportation committee members,

Today, the DNR has submitted new germane modifications to Clearinghouse Rule 04-066 (NR 1) to the standing committees in an effort to address the concerns of the Assembly Natural Resources Committee. It is our understanding in discussions with the Assembly Committee Chair that he is satisfied with the modifications made.

With these new modifications, both committees now have an additional ten (10) working days to review them. However, we believe the Assembly committee may take Executive action on Wednesday, March 30th to relinquish their jurisdiction in order to expedite the rules back to the agency. It is quite possible, thus, the Senate Committee will take similar action through a paper ballot motion. While we have never taken such action before, we believe this is an unusual and critical circumstance to get these rules in place as quickly as possible.

Attached to this message is a copy of the modifications as well as a letter from DNR Secretary Hassett. If you have any questions, please feel free to contact our office. Thank you.

Dan Johnson

Clerk, Senate Natural Resources and Transportation Committee

State Senator Neal Kedzie, Chair

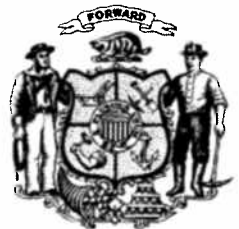
11th Senate District



NR 1 modifications -
CR 04 066...



WISCONSIN STATE LEGISLATURE



**Joint
Committee Report**

The Joint Committee for Review of Administrative Rules Reports:

March 31, 2005

Executive Session

Clearinghouse Rule 04-066

Relating to Natural Resources Board policies on protection and management of public waters.

Moved by Senator Grothman, seconded by Representative LeMahieu, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.19 (4) (d)3. and 6. and (5) (d), Stats., objects to SECTION 1. of Clearinghouse Rule 04-066.

Ayes: (5) Representatives Gottlieb, LeMahieu, and Friske;
Senators Grothman and Stepp*.

Noes: (4) Representatives Schneider and Black; Senators Jauch
and Miller.

Absent: (1) Senator Reynolds

Motion Carried 5 Ayes, 4 Noes, 1 Absent
*voted by polling

Clearinghouse Rule 03-111

Relating to fees for copies of health care records.


Moved by Representative LeMahieu, seconded by Representative Friske, that the Joint Committee for Review of Administrative Rules, pursuant to 227.19(4)(d)6. and (5)(d), Stats., objects to Clearinghouse Rule 03-111.

Ayes: (5) Representatives Gottlieb, LeMahieu, and Friske;
Senators Grothman and Stepp*.


Noes: (4) Representatives Schneider and Black; Senators Jauch
and Miller.

Absent: (1) Senator Reynolds

Motion Carried 5 Ayes, 4 Noes, 1 Absent
*voted by polling



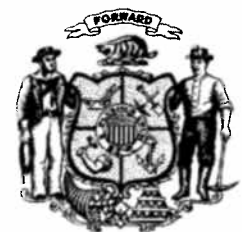
Senator Glenn Grothman
Senate Co-Chair



Representative Mark Gottlieb
Assembly Co-Chair



WISCONSIN STATE LEGISLATURE





P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-7513

P.O. Box 8952
MADISON, WI 53708-8952
(608) 267-2369

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

April 5, 2005

The Honorable Alan Lasee
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable John Gard
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Lasee and Speaker Gard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 31, 2005 and adopted the following motions:

Clearinghouse Rule 04-066 Relating to Natural Resources Board policies on protection and management of public waters.

THAT, the Joint Committee for Review of Administrative Rules, pursuant to s. 227.19(4)(d)3. and 6. and (5)(d), Stats., objects to SECTION 1. of Clearinghouse Rule 04-066.

Motion Carried 5 Ayes, 4 Noes, 1 Absent

Clearinghouse Rule 03-111 Relating to fees for copies of health care records.

THAT, the Joint Committee for Review of Administrative Rules, pursuant to s. 227.19(4)(d)6. and (5)(d), Stats., objects to Clearinghouse Rule 03-111.

Motion Carried 5 Ayes, 4 Noes, 1 Absent

A copy of this notice is also being forwarded to each of the chairpersons of the standing committees in your respective houses which had jurisdiction over these Clearinghouse Rules.

Sincerely,

A handwritten signature in black ink, appearing to be "Glenn Grothman".

Senator Glenn Grothman
Senate Co-Chair

A handwritten signature in black ink, appearing to be "Mark Gottlieb".

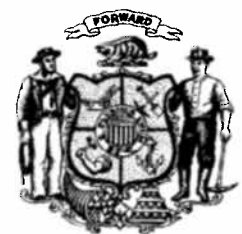
Representative Mark Gottlieb
Assembly Co-Chair

MG:GSG:dls

cc. Rep Gunderson, Sen. Kedzie, Rep. Hines, Sen Roessler



WISCONSIN STATE LEGISLATURE



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 1.016, 1.05, 1.06 and 1.07 relating to Natural Resources Board policies on protection and management of public waters.

FH-36-04

Summary Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.01(1am), 30.12(1p)(a)3. and (2m), 30.123(6m) and (6s), 30.20(1k)(a)2. and (1m), 30.206(1)(c) and (3) and (3r)., and 227.11(2), Stats.

Statutes interpreted: ss. 30.01(1am), 30.12(1p) and (2m), 30.123(6m) and (6s), 30.20(1k)(a)2. and (1m), 30.206(1)(c) and (3) and (3r), Stats.

Explanation of Agency Authority:

The Department has authority under ch. 30, Stats., to establish rules that identify areas possessing significant scientific value as "areas of special natural resource interest", to identify portions of navigable waterways containing sensitive fish and aquatic habitat as "priority navigable waterways", and to establish location standards for exemptions and general permits.

Related statute or rule:

The waters designations in this rule revision relate directly to regulation of activities in navigable waters under ch. 30, Stats., and the NR 300 series of rules.

Plain Language Analysis:

The purpose of this rule is to establish policy guiding the department's actions as a trustee of public waters and to set the process the department will follow when determining waters to be area of special natural resource interest, waters or portions thereof containing public rights features and priority navigable waters.

Federal Regulatory Analysis:

Any activity that results in a discharge (including deposits and structures) into "waters of the United States" is regulated by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. An individual permit from the Corps is required, unless Wisconsin regulates the project in its entirety under ch. 30, Stats., in which case the project is authorized by the Corps under general permit GP-01-WI or GP-LOP-WI. Dredging or discharge into waters declared navigable under Section 10, Rivers and Harbors Act, 1899 is also regulated, and requires an individual permit from the Corps.

Comparison with Adjacent States:

Activity	Wisconsin	Illinois	Iowa	Michigan	Minnesota
Special waters designation	"Areas of special natural resource interest" and water having significant public trust values	Lake Michigan and 48 traditional Natural Navigable Waters, 10 additional artificial waters used by the public	State trust (owned) and must have public access. Protected Waters Area - one in state, regulates activities affecting contaminated aquifer	All waters of the state	Lake Superior, Trout Streams, Federal Scenic and wild rivers, designated spawning areas.

Summary of Factual Data and Analytical Methodologies:

The basis for all waters designations involves survey work for evaluating water quality, fisheries, aquatic habitat and other waterway features, using accepting scientific protocols and methodology that are established in technical journals and reflected in existing agency rules.

Analysis and Documents supporting determination of Small Business Effect: Any person placing a structure or making similar physical modifications to public navigable waters either qualifies for an exemption or must obtain a general or individual permit under state statute. To comply, small businesses follow the same requirements as other waterfront property owners: (1) make a self-determination of exemption using web-based tools provided by the department or describe their activity on an exemption determination request form; (2) complete a general permit application; or (3) complete an individual permit application. Schedules, application steps and compliance/reporting requirements are very basic for all applicants, and most projects can be planned and conducted by individuals with no specific professional background.

Anticipated Private Sector Costs: No significant fiscal effect on the private sector is anticipated.

Effect on Small Business: Building contractors, developers of waterfront property and their technical consultants, and other waterfront businesses will be affected by the rule revisions. Specific standards will provide clarity and consistency in the permitting process.

Agency Contact Person: Mary Ellen Vollbrecht, Mary.Vollbrecht@dnr.state.wi.us, (608) 264-8554

SECTION 1. NR 1.016 is created to read:

NR 1.016 Department responsibilities to conserve and enhance public waters. (1) To meet the departments delegated authorities under the statutes, the Natural Resources Board establishes policy for protecting and preserving public waters. The Natural Resources Board recognizes and reiterates as the basis for its policy the provisions of the statutes enacted by the legislature, the common law public trust principles established by the court interpretations of the statutes under the Wisconsin Constitution, and sound scientific management principles.

(2) The Natural Resources Board recognizes that the State of Wisconsin has an affirmative duty, under the public trust doctrine, emanating from Article IX, Section 1, of the Wisconsin Constitution, to protect and preserve the state's waters. The Wisconsin Supreme Court reiterated that, at the time of statehood, the State of Wisconsin "became a trustee of the people charged with the faithful execution of the trust created for their benefit." The Court further stated that the "wisdom of the policy which...carefully preserved to the people the full and free use of waters cannot be questioned, nor should it be limited by narrow construction." (*Diana Shooting Club v. Husting*, 156 Wis. 261(1914)). The Wisconsin courts have established that the State of Wisconsin must take into account the long term collective impacts of projects in our navigable waters in order to carry out its assigned public trust duty (*Sterlingworth v. DNR*, 205 Wis. 2d 710 (Ct. App.1996)). The court has frequently enumerated the public rights, which include the right to navigate, hunt, fish, swim, recreate, and enjoy natural scenic beauty in clean water free of environmental pollution (*Muench v. PSC*, 261 Wis. 492 (1952)), that shall be conserved along with such rights as may be established by law in the future.

(3) The Natural Resources Board recognizes the scientific research demonstrating that the impacts of many, repeated alterations of our shorelines and shallow water habitat are accumulating with significant impacts on our aquatic ecosystems and their associated human uses. The Natural Resources Board shares the concern of many citizens that these impacts, along with other causes of reduced aquatic biodiversity, loss of natural features and varied forms of water pollution threaten human health, the quality of life and a thriving economy. The Natural Resources Board recognizes that by design, installation and location practices the impacts of human activity on shoreline and shallow water habitat can be greatly reduced.

Note: The scientific research and management principles are readily available in the literature, including *Waters of Wisconsin: The Future of our Aquatic Ecosystems and Resources*, Wisconsin Academy of Sciences, Arts and Letters, 2003 (Wisconsin Academy of Sciences, Arts and Letters, 1922 University Avenue, Madison, WI or www.wisconsinacademy.org). For a survey of research on impacts, see *The Construction, Aesthetics and Effects of Lakeshore Development: A Literature Review*, by Sandy Engel and Jerry L. Pederson, Jr., Wisconsin Department of Natural Resources Research Report 177, December 1998.

(4) The Natural Resources Board recognizes that the Legislature and the Governor of the State of Wisconsin reached agreement on legislation (2003 Wisconsin Act 118) with the dual goals of faster and more predictable permit decisions and no reduction in the protection afforded public waters. The Natural Resources Board sets its policies and directs the department to administer its surface water management programs to meet the dual goals of 2003 Wisconsin Act 118.

SECTION 2. NR 1.05 is created to read:

NR 1.05 Identification of areas of special natural resource interest. (1) To fulfill its affirmative duty to protect public trust waters, the department shall identify and designate by rule areas that possess significant scientific value under s. 30.01(1am)(c), Stats., as areas of special natural resource interest under s. 30.01(1am), Stats.

(2) Exemptions listed in ss. 30.12(1g)(a) to (km), 30.123 (6)(d) and (e) and 30.20(1g)(b)1. and 2., Stats., do not apply in areas of special natural resource interest. General or individual permits are required.

Note: Activities not exempted in areas of special natural resource interest under ss. 30.12 and 30.20, Stats., are: deposits less than 2 cubic yards; seasonal structures other than piers or wharves; fish habitat structures; bird nesting platforms; dry hydrants; pilings; riprap repair or replacement; biological shore erosion control structures; intake or outfall structures; dredging to place or maintain an exempt structure; dredging without auxiliary power. Activities not exempted in areas of special natural resource interest under ch. NR 320 are culvert replacements. Piers meeting the dimensional standards in s. 30.12, Stats., are exempt in areas of special natural resource interest under s. 30.13, Stats., unless 30.12(2m), Stats., applies.

(3) All of the following waters are identified as areas of special natural resources interest under s. 30.01(1am), Stats.:

(a) A state natural area designated or dedicated under ss. 23.27 to 23.29, Stats.

(b) A surface water identified as a trout stream by the department under s. NR 1.02(7).

(c) A surface water identified as an outstanding or exceptional resource water under s. 281.15, Stats.

(4) All of the following are determined to be areas of special natural resources interest under s. 30.01(1am)(c), Stats., as areas with significant scientific value:

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(a) Waters or portions of waters that contain endangered, threatened [special concern species] or unique ecological communities identified as aquatic elements in the Natural Heritage Inventory. Aquatic elements are elements that spend part of their life in water or wetlands or they rely on a waterbody for food, e.g., eagles and dragonflies.

(b) Wild rice waters as identified in a written agreement between the department and the Great Lakes Indian Fish and Wildlife Commission.

(c) Waters in areas identified in a special area management plan, abbreviated SAMP, approved by the U.S. Army Corps of Engineers, or special wetland inventory study, abbreviated SWIS, identified under s. NR 103.04.

Note: Special area management plans exist for the City of Superior, Douglas County and Chiwaukee Prairie, Kenosha County. A Special Wetland Inventory Study exists for the area bordering the bay of Green Bay.

(d) Waters in ecologically significant coastal wetlands along Lakes Michigan and Superior as identified in Publication # ER-002-00, Data Compilation and Assessment of Coastal Wetlands of Wisconsin's Great Lakes, March 2000.

(e) Federal or state, under ss. 30.26 and 30.27, Stats., designated wild or scenic rivers.

(5) Areas of special natural resource interest shall be designated by the Natural Resources Board by rule.

(a) The Natural Resources Board may designate categories of waters as areas of special natural resource interest. The status of waters added or removed from designated categories by independent listing processes shall be effective at the time that the name or location of the water is made available in the listing on the department's website as required in sub. (5).

(b) The Natural Resources Board may designate individual waters or portions of waters as areas of special natural resource interest.

(6) The department shall maintain on its website and make available at its offices a consolidated list of areas of special natural resource interest along with all other waters designated under ss. NR 1.06 and 1.07 so that a person may readily determine the applicability of all exemptions or permit requirements under ch. 30, Stats. For categories of waters with ongoing independent listing processes, notice of waters or portions of waters added or removed shall be provided at the website as soon as the name or location of the water is made available. Notice shall be maintained for 3 months after the initial listing.

Note: See the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

(7) The department shall report to the chairs of the standing natural resource committees of the Legislature and to the co-chairs of the joint committee for review of administrative rules in January of each year the species of special concern that have been added or removed from the state's list and those bodies of water that are known to be impacted by the addition or removal of those species. This report shall be included in an annual report on waterway and wetland permit program performance that is provided to all members of the legislature and the clerk of each county.

SECTION 3. NR 1.06 is created to read:

NR 1.06 Identification of public rights features. (1) To fulfill its affirmative duty to protect public trust waters, the department shall continually assess the state's public trust waters to identify locations of public rights features where activities shall require general or individual permit review in lieu of exemptions, or reasonable limitations on location to assure that the public's rights and interests under the public trust doctrine are protected, under ss. 30.12(1p)(a)3. and (2m), 30.123(6m) and (6s), 30.20(1k)(a)2. and (1m), 30.206(1c), (3) and (3r), Stats.

(2) Due to the potential significant adverse impacts of the activity on public rights features, exemptions listed in ss. 30.12(1g) and (km), 30.123(6)(e) and 30.20(1g)(b)2., Stats., are not allowed in locations where there are public rights features as described under sub.(4). General or individual permits are required for those activities in locations of public rights features.

Note: Exemptions not allowed in locations of public rights features are: intake or outfall structures other than dry hydrants; replacement culverts with inside diameter not more than 24 inches; dredging without auxiliary power. In locations of public rights features, piers exceeding the dimensional standards in s. 30.12, Stats., are unlikely to qualify for the exemption under s. 30.13, Stats.

(3) For those activities that are not allowed in locations where there are public rights features as described under sub. (4), a person may undertake an exempt activity after the person has evaluated the site and determined that the activity is not in the location of a public rights features as described under sub. (4).

Note: Anyone undertaking a project in public waters is encouraged to seek a voluntary exemption determination as provided for in s. 30.12 (2r), 30.123(6r) or 30.20 (1r), Stats. A one-page form for requesting a determination is available from department service centers and at the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

Note: As required by ch. NR 310, the department will make reasonable efforts to determine whether sites that are the subject of exemption determination requests or general permit applications are locations of public rights features and will notify requestors or applicants.

(4) Public rights features include all of the following:

(a) Fish and wildlife habitat, including but not limited to spawning, nursery and feeding areas.

Note: Physical features constituting fish and wildlife habitat include stands of aquatic plants; riffles and pools in streams; undercut banks with overhanging vegetation or that are vegetated above; areas of lake or streambed where fish nests are visible; large woody cover.

(b) Physical features of lakes and streams that ensure protection of water quality.

Note: Physical features that protect water quality include stands of aquatic plants (that protect against erosion and so minimize sedimentation), natural streambed features such as riffles or boulders (that cause turbulent stream flow and so provide aeration).

(c) Reaches of bank, shore or bed that are predominantly natural in appearance (not man-made or artificial) or that screen man-made or artificial features.

Note: Reaches include those with stands of vegetation that include intermixed trees, shrubs and grasses; stands of mature pines or other conifer species; bog fringe; bluffs rising from the water's edge; beds of emergent plants such as wild rice, wild celery, reeds, arrowhead.

(d) Navigation thoroughfares or areas traditionally used for navigation during recreational boating, angling, hunting or enjoyment of natural scenic beauty.

Note: Physical features indicative of navigation thoroughfares include shallow water areas typically used by wading anglers or areas frequently occupied by regularly repeated public uses such as water shows.

(5) The department shall base its identification of public rights features on factual information obtained from reputable sources, including but not limited to:

(a) Field surveys and inspections, including historical surveys for fish, wildlife, rare species, aquatic plants, geologic features or water quality.

(b) Surveys or plans from federal, state or local agencies.

(c) Factual documentation of features or use patterns from property owners, user groups or knowledgeable users on the waterbody.

(6) PROCEDURE FOR IDENTIFYING PUBLIC RIGHTS FEATURES. (a) After survey data shows possible locations of public rights features, the department shall give notice in the official state newspaper or other local media the department selects in the area affected which is likely to inform the local residents. The department shall provide notice on its website and through its system of electronic notices to state media.

(b) The department shall notify the county clerk of any county bordering the lake or reach of a stream, legislators whose districts include the affected public waters and the chairpersons of the committees of the legislature with jurisdiction for natural resources issues, and local, regional or state lake, river or watershed organizations affected by the activity.

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(c) The notice shall contain the location and description of the possible public rights features and the basis for its determination that the location is likely to contain public rights features. If a hearing is not requested in writing within 30 days after the mailing of the notice, the department may waive the hearing. Upon receipt of a request for a hearing, the department shall, not less than 10 days before the hearing, mail written notice thereof to each person notified under par. (b), and shall provide notice on its website and through its system of electronic notices to state media.

(d) At each hearing, the department shall take evidence offered by persons in support of or in opposition to the determination. If the department finds any location not properly classified, the location may not be identified as the location containing public rights features.

(7) Sensitive areas designated under ch. NR 107.05(3)j are determined to be public rights features.

Note: Lakes and streams specifically named in the Wisconsin Land Legacy Report, publication number LF-001-2004 are known to contain extensive public rights features. Persons considering activities in these lakes and streams should consult the department before undertaking activities to determine whether they are in public rights features.

(8) The department shall maintain on its website and make available at its offices a consolidated list of waters with identified public rights features along with all other waters designated under s. NR 1.06 as well as a visual guide to identification of public rights features to assist a person in determining the applicability of all exemptions or permit requirements under ch. 30, Stats.

Note: See the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

SECTION 4. NR 1.07 is created to read:

NR 1.07 Identification of priority navigable waterways. (1) To fulfill its affirmative duty to protect public trust waters, the department shall identify and designate by rule navigable waterways or portions of navigable waterways which contain sensitive fish and aquatic habitat under s. 30.19(1b)(c)4., Stats., as priority navigable waterways under s. 30.19(1b)(c), Stats.

(2) Rules promulgated under s. 30.19(1d), Stats., shall apply to priority navigable waterways.

Note: Under s. 30.19(1g)(c), Stats., and ch. NR 341, a permit is required to grade or remove topsoil from the bank of any navigable waterway where the area exposed by the grading or removal will exceed 10,000 square feet. Under s. 30.19(1d), Stats., and ch. NR 341, bank of a navigable waterway is defined differently for priority navigable waterways.

(3) All of the following waters are determined to be priority navigable waterways under s. 30.19(1b)(c)1. to 3., Stats.:

(a) A navigable waterway, or portion of a navigable waterway, that is identified as an outstanding or exceptional resource water under s. 281.15, Stats.

(b) A navigable waterway, or portion of a navigable waterway, identified as a trout stream by the department under s. NR 1.02(7).

(c) A lake that is less than 50 acres in size.

(4) All of the following waters are determined to be priority navigable waterways under s. 30.19(1b)(c)4., Stats., as navigable waterways or portions of navigable waterways which contains sensitive fish and aquatic habitat:

(a) All areas of special natural resource interest as defined in s. NR 1.05.

(b) All locations containing public rights features as defined in s. NR 1.06.

(c) Tributaries to and rivers connecting to inland lakes containing naturally-reproducing populations of sturgeon up to the first dam.

(d) Navigable waters having self-sustaining populations of walleye located in the ceded territory of the state where resource allocation rights are shared by sovereign tribes.

(e) Muskellunge waters of the state where the muskellunge population is entirely or partially sustained through natural reproduction (Category 0, Category 1 and Category 2 muskellunge waters).

(f) Perennial tributaries to surface waters identified as trout streams by the department under s. NR 1.02(7).

(5) The department shall maintain on its website and make available at its offices a consolidated list of priority navigable waters so that a person may readily determine the applicability of all exemptions or permit requirements under ch. 30, Stats.

Note: See the department's website at www.dnr.wi.gov under the topic "Waterway and Wetland Permits."

SECTION 5. EFFECTIVE DATE. This rule 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.

SECTION 6. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 8, 2004.

Dated at Madison, Wisconsin _____

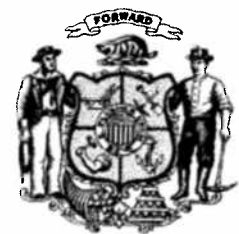
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)



WISCONSIN STATE LEGISLATURE



NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Modifications to FH-36-04

FOR: MARCH **BOARD MEETING**

TO BE PRESENTED BY: Mike Staggs

SUMMARY:

The Assembly Natural Resources Committee continued to have concerns about the department's rules relating to Natural Resources Board policies on protection and management of public waters. Discussion between department and Assembly staff specified the issues and resulted in a series of proposed modifications. The department recommends Board adoption of the requested modifications.

The changes to the board policies on protection and management of public waters (NR 1) are intended to clarify terms used in the designation of Areas of Special Natural Resource Interest (where exemptions are not allowed) for waters harboring rare species and locations of fish and wildlife habitat. In addition, the changes relate to processes used by the department to identify public rights features and to publish the list of waters.

RECOMMENDATION:

LIST OF ATTACHED MATERIALS:

- No Fiscal Estimate Required
- No Environmental Assessment or Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

APPROVED:

Michael Staggs
Bureau Director,

[Signature]
Administrator,

Scott Hassett
Secretary, Scott Hassett

3-21-2005
Date

3/21/05
Date

3/21/05
Date

Date

cc: Amy J. Lemberger - AD/5

DATE: March 18, 2004

FILE REF: 3500

TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: Germane Modifications to FH-36-04

The Department recommends adoption of a set of six germane modifications to NR 1 to further clarify the intent and effect of the rule in response to questions raised by members of the Assembly Natural Resources Committee. The language changes are attached.

Modifications

- Modifies the description of rare species that are the basis for Areas of Special Natural Resource Interest (where exemptions are not available) is modified to refer specifically to the definitions in the Natural Heritage Inventory rather than to the species status itself. This language change does not result in change to the waters where exemptions are not available.
- Clarifies that the department will not add waters to its consolidated list until independent listing processes have been completed (e.g., rules designating ORW/ERW waters have been promulgated or rare species reporting requirement is completed). This is established department practice.
- Restates that DNR staff will use field data and water resource management plans to identify public rights features in making decisions on exemption determination requests or general permit applications.
- Provides a comprehensive specific list of fish and wildlife habitat, resolving the concern that every location in all waters qualifies as protected habitat.

Background

2003 Wisconsin Act 118, which went into effect on February 6, 2004, modified provisions in chapter 30 governing the regulation of activities in Wisconsin's navigable public waters. The legislation establishes a new regulatory framework where activities are either:

1. authorized as exemptions;
2. allowed under a general permit through rules adopted by Department; or
3. reviewed under an individual permit process.

In order to ensure compliance with the stated goals of the Legislature and the Governor in the adoption and signing of 2003 Wisconsin Act 118, namely to deliver regulatory decisions more quickly and consistently while ensuring that equal public trust protections for Wisconsin waters, the Department needs to adopt permanent rules designating waters, identifying administrative processes, and establishing standards for exemptions and general permits.

To accomplish these goals, the Natural Resources Board adopted emergency orders in April and May, 2004. The permanent rules adopted in December 2004 replace the emergency orders. These modifications, if approved, should allow the rule to go into effect on May 1, 2005 with the least possible disruption of the general permit system.

**Modifications to Public Waters Rules
In response to Assembly Natural Resource Committee**

CHR-04-066 (NR 1)

NR1.05(4)(a)

(a) Waters or portions of waters that contain endangered, or threatened, special concern species or unique ecological communities identified as aquatic elements in the Wisconsin Natural Heritage Inventory.

Note: The definitions of special concern species and scientific protocols for their identification are established in the Wisconsin Natural Heritage Working List available at http://dnr.wi.gov/org/land/er/working_list/taxalists/key.htm. Special concern species are those species about which some problem of abundance or distribution is suspected but not yet proved. The main purpose of this category is to focus attention on these species before they become threatened or endangered. Aquatic elements are elements that spend part of their life in water or wetlands or they rely on a waterbody for food, e.g., eagles and dragonflies.

NR1.05(5)(a)

The Natural Resources Board may designate categories of waters as areas of special natural resource interest. The status of waters added or removed from designated categories by independent listing processes shall be effective at the time that the name or location of the water is made available in the listing on the department's website as required in sub. (5). and no earlier than the effective date of any rule or required report designating a water or portion of a waters as an Area of Special Natural Resource Interest.

NR1.06 (1)

To fulfill its affirmative duty to protect public trust waters, the department shall ~~continually~~ assess the state's public trust waters to identify locations of public rights features where activities shall require general or individual permit review in lieu of exemptions, or reasonable limitations on location to assure that the public's rights and interests under the public trust doctrine are protected, under ss. 30.12(1p)(a)3. and (2m), 30.123(6m) and (6s), 30.20(1k)(a)2. and (1m), 30.206(1c), (3) and (3r), Stats.

NR1.06 (4) For those activities that are not exempt or eligible for general permits in locations where there are public rights features as described in sub. (4), the department will base determinations of whether activities are in locations of public rights features on information as specified in sub. (5).

NR1.06(4)(a)

Fish and wildlife habitat, including but not limited to specific sites necessary for breeding, nesting, nursery, feeding and avoidance of predators, thermal or chemical hazards.

NR1.06(5)

The department shall base its identification of public rights features on factual information obtained from reputable sources, including but not limited to:

(a) Field surveys and inspections, including historical surveys for fish, wildlife, rare species, aquatic plants, geologic features or water quality.

(b) Surveys or plans from federal, state or local agencies.

(c) Factual documentation of features or use patterns from property owners, user groups or knowledgeable users on the waterbody.