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DETAILS: JOINT PUBLIC HEARING OF SENATE COMMITTEE ON NATURAL RESOURCES AND TRANSPORTATION AND ASSEMBLY COMMITTEE ON NATURAL RESOURCES. THE HEARING WAS HELD ON WEDNESDAY, FEBRUARY 23, 2005 ON THE EFFECTS OF IMPLEMENTATION OF 2003 WISCONSIN ACT 118 ON CHAPTER 30 ADMINISTRATIVE RULES.

(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**

Performance of Emergency Rules for Projects in Public Waters Report to the Senate & Assembly Natural Resources Committees

February 23, 2005

Streamlining Overall

During 2004, 10% of all activity is exempt and 30% qualifies for general permits for the year 2004 (with general permits in effect for eight months). At these rates, 60% of the total regulated activity follows a streamlined processes.

These rates are based on the actual number of applications for which general permits have been issued between February 6 and December 31, 2004 (1373) and the number of projects determined exempt on request (184) as a percentage of the total decisions (3782). We assume that 50% of people conducting exempt activities request a determination so the number of exempt activities is estimated at twice the number of requests determined to be exempt.

Exemptions

- 358 requests have been made for exemption determinations. 184 have been determined exempt.
- Determinations are made in an average of 12 days.
- The most commonly requested exemption determination is for riprap repair or replacement (149 or 43%). Fish and wildlife habitat structures and culverts are next most common at 8% each. Exemption determination requests have been fielded for the full range of listed exemptions, plus other regulated activities in public waters.

General Permits

- 1373 applications have been made for general permits. 94% have been determined eligible. 6% have not been eligible.
- Decisions are made in an average of 17 days.
- The most commonly requested general permit is riprap (410 or 43%), followed by ponds (86 wildlife, 79 stormwater and 36 landscape or 21%), then bridges (85 or 9%), grading (63 or 7%).
- As an example, 50% of grading permits were general permits. 94% of all grading permits were granted. Decisions were made in an average of 41 total process days.

Individual Permits

- 2246 applications were made for individual permits. Department staff made decisions on completed applications in an average of 36 days. Applications took 43 days to be completed.

Compliance

- 68 compliance inspections were conducted during late July 2004 of applications received since the effective date of Act 118 (February 6, 2004). Generally compliance for completed projects was reasonable ranging from 100% for exemption requests, to 73% for general permits, to 78% for individual permits. It was noteworthy that for all the recent emphasis on the need for quick permit turnaround by DNR, work on 38% of the exemptions and 45% of the general permits had either not started or was not completed.
- In December 2004 another 54 compliance inspections were conducted of applications received since February 6, 2004. Compliance for completed projects was similar to that found in August, ranging from 100% for exemption requests, to 80% for general permits, to 85% for individual permits. Work on 7% of the exemptions and 25% of the general permits had not been started.
- Combining both monitoring periods, compliance for completed projects was 100% for exemption requests, 77% for general permits and 83% for individual permits.

Overview of Statute and Emergency Rules Substance & Timetable

Wisconsin Act 118 took effect on February 6, 2004 setting up a three-tier system for review of physical alterations to and structures in public waters. Under the new law, projects may qualify for exemptions or general permits or require individual permit review. Exemptions became available on February 6, 2004 while general permits required rule making. Rules setting specifications for exemptions and general permits (other than grading) took effect on April 18, 2004. General permits for grading took effect on May 19, 2004. Revised emergency orders for most activities other than grading took effect on August 24, 2004. Determinations of the type of review are based on whether the water where a project is located has a special designation under the law or rules and if not, whether it meets design and construction specifications set by statute and rule. The law authorizes DNR to require a permit in lieu of exemption or require individual permit review of projects that meet the relevant specifications but due to site conditions may have significant adverse impacts on fish, wildlife, natural scenic beauty, water quality or quantity or navigation.

Implementation Steps

- The Waterway Permitting web page has been the central source of forms, instructions and information about Wisconsin's waterway and wetland regulations since 1997. By the effective date of Act 118, forms for requesting exemption determinations were available on-line – and revised forms reflecting the revised emergency orders were available shortly after their effective date. By early May, a searchable database of designated waters was available on-line along with checklists of specifications for exemptions and many general permits, as well as general permit forms. The searchable database is very nearly completely converted to a map base. Since early June, emergency and proposed permanent rules, hearing notices and other descriptive information about the permit process has been available on-line. This information is used both by applicants as well as the DNR permit reviewers.
- The Waterway and Wetland Permit Data and Document System was largely re-programmed to accommodate the new structure. This system enables reporting on performance of the decision-making process and also ensures consistency in correspondence and decision documents. Application receipt and data entry for exemption determinations are handled at the central office to ensure more complete and accurate data and allow ongoing review for consistency.
- A variety of structural changes have been made to carry out Act 118. Decision-making on exemptions and on any "recalls" are made by a special staff team in recognition of the difficulty of keeping all staff up-to-date and consistent during the expected period of rapid policy evolution. The team meets by conference call weekly to review decisions on exemptions and on "recalls," as well as raising and resolving a wide variety of other policy and operational issues. Answers to questions and operating guidance from the calls are shared among all staff. Regional and central office managers meet monthly to review performance and address workload allocation and similar high-level management issues to ensure that deadlines are met and management systems are operating smoothly. A single reviewer in each region has been will soon handle application intake and preliminary review. In addition to data entry, the intake specialist will be responsible for initial completeness review, will deliver any readily recognized decisions, and will detect potential backlogs.
- Staff training immediately followed passage of Act 118. On November 4-5, 2004 all Water Management Specialists (waterway permit decision makers) received refresher training focusing on process, priorities and public rights features to follow-up on the initial Act 118 training held February 4-5, 2004.
- Since the effective date of Act 118, approximately weekly news releases have informed people about how DNR was carrying out the waterway aspects of Act 118. Follow-up outreach to media, including fact sheets and boat tours, has resulted in a high level of coverage including DNR data and perspectives. In addition to speaking at an estimated 20 forums by invitation, DNR staff conducted regional open houses, and open houses preceding eight rule hearings.

Two major commercial seminars this fall covered Act 118 with talks by key DNR staff.

- Performance measures have been set for not only decision times (as set by statute) but also compliance monitoring. Fifteen percent of decisions, weighted toward exemptions and general permits, will be randomly selected for field inspection each year. The main objective of the compliance program is to determine the efficacy of the system, not necessarily to identify violations, as the proportion of applications inspected is low.

For More Information

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RIVER ALLIANCE of Wisconsin

TESTIMONY TO THE ASSEMBLY NATURAL RESOURCES COMMITTEE AND THE SENATE NATURAL RESOURCE COMMITTEE REGARDING ACT 118 ADMINISTRATIVE RULES

February 23, 2005

My name is Denny Caneff, executive director of the River Alliance of Wisconsin. Our 2,000 members are water users and water lovers --- from small businesses selling fishing and paddling services to retired downtown Milwaukee condominium dwellers. From the Manitowish River to the Milwaukee River, what they have in common is a love of their “home river” – not as a static entity, frozen in time, but as a dynamic liquid force that works hard to move goods or to generate power. For them, rivers are also a source of calm, of inspiration, and fun.

There is always a danger that we love, and work, our lakes and rivers to death. Given that the waters of Wisconsin are the waters of the people of Wisconsin, that danger has to be tempered by rules and agreements. The players in the land and water use game are private landowners and land developers, and the “arbiter” is the Dept. of Natural Resources, refereeing for the general public whose waters the agency is entrusted to protect. The rules before you today reflect a sweeping change in how the game of land use along our public waters, and the use of those waters, will be played for the next several years.

The River Alliance supports the package of rules before you today, and we urge both committees to support them as is. The rules encompass literally hundreds of details

Everyone deserves healthy rivers

covering a panoply of activities in and around water. We fear that, in many ways, these new rules under Act 118 will set back resource protection in Wisconsin. However, we believe the process that generated these rules you have before you was an open, complete and thorough one, and worth commending.

First, there were the public hearings held by the DNR and attended by hundreds of people. The rules reflect the passions seen at those hearings, both for careful resource protection and for relieving undue burdens for a homeowner to get permission to grade their lakeshore or repair their boat house.

Perhaps the most important process was the painstaking negotiations by various stakeholders and interest groups, working with the DNR, to go where the devil resides – in the rules' details. These rules were massaged, rubbed, scrubbed, rinsed, and scrubbed again. In classic political compromise, no one got everything they wanted, but no one came away from that table feeling they had lost what was most important to them. If these rules are not approved today, both the larger public process and that stakeholder process would have been for naught, and our land and water would be the field in a game without rules, just weeks away from the start of the construction season.

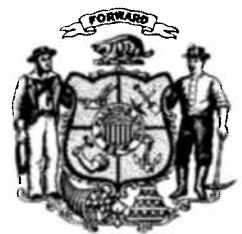
Finally, the Dept. of Natural Resources has suggested conducting a review, in a year's time and in concert with the same stakeholders who were involved in the rule drafting, of how the rules are actually working on the ground. This is a good idea. In a year's time, the DNR will have actual data about the kinds of permits being issued, how quickly permits are being issued, and if changing the process has been good or bad for the resource. It was a way too

common occurrence last year that individual stories and anecdotes drove the process that led to revising these Chapter 30 rules. (I think someone coined the term "anecdote-ocracy" -- government by anecdote -- to describe that process.) We'll have much better resource policy if we actually measure the effects of these rules, and it's my understanding that the DNR not only intends to track that data, but to bring back the stakeholders to make sense of the data, and make changes to the rules if necessary.

We urge you to adopt all the rules that come under the roof of Act 118. Thank you for your attention.



WISCONSIN STATE LEGISLATURE





John Muir Chapter

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SUPPORTING ADOPTION AS PERMANENT RULES

NR 1 and the NR 300 Series, all are related to 2003 WI Act 118

Jointly Before the Senate Committee on Natural Resources and Transportation and
The Assembly Committee on Natural Resources

Wednesday, February 23, 2005 10:00 AM Room 412 East State Capitol

By Caryl Terrell, Chapter Director, SC-JMC

Thank you for the opportunity to present testimony on behalf of the 13, 000 Wisconsin members of the Sierra Club. We strongly urge the Senate and Assembly Committees to adopt NR1 and the NR 300 series as permanent rules. The Sierra Club is satisfied that as a package these rules do a fairly good job of protecting fish and wildlife habitat, endangered species, water quality and the natural scenic beauty of our lakes and streams.

For more than a year and a half, the major focus of Sierra Club discussions among our members and with the Legislature and Department of Natural Resources has been the scope and implementation of Act 118, the so-called Jobs Creation Act. As conservationists we are concerned that the Act would undermine the Wisconsin Constitutional provisions called the Public Trust Doctrine which ensure every citizen certain rights in the waters of the state.

At the time of passage, legislative leaders and the Governor repeatedly assured the public that environmental standards would be safeguarded through administrative rules.

For more than a year representatives of the major stakeholder groups - builders, developers, DNR and the conservation community - have worked diligently to craft rules to implement the Act. There has been an extensive process on the emergency rules of drafting, commentary, rule public hearings and adoption. This was followed immediately by an equally extensive redrafting, commentary and public hearing process related to the permanent rules. The opportunity for broad and active participation by affected landowners, business interests and conservationists has focused the rules discussions to a few remaining issues and many areas of broad agreement that protect our quality of life.

The primary stakeholders have evaluated and modified the interim emergency rules used last summer and fall. The stakeholders and the DNR have set in place a process to review how the rules are working after a year and to propose necessary refinements to oversight committees.

The hard work of the stakeholders is now before you as this series of permanent rules. The process has been democratic. We acknowledge that there was give-and-take and compromises on both sides. Their hard work deserves to be adopted.

It is time to end the uncertainty for lakefront property owners and lake and stream users about how the law will be interpreted and implemented. It is time to let DNR employees get back to the work of stewarding our natural resources. It is finally time to adopt the rules in a permanent form and let the stakeholder process do its job of monitoring and oversight. It is time to put the permanent rules to work as public policy.

We strongly urge the Senate and Assembly Committees to adopt NR1 and the NR 300 series as permanent rules.

Remember to Support the Sierra Club through your Workplace Giving Campaign!
The John Muir Chapter is proud to be a member of



ADDENDUM:

- Clearinghouse Rule 02-099 (NR 328)
- Relating to: department standards for erosion control of inland lakes and impoundments.

- Clearinghouse Rule 04-062 (NR 329)
- Relating to: miscellaneous structures in navigable waterways.

- Clearinghouse Rule 04-063 (NR 325)
- Relating to: boathouses and fixed houseboats in navigable waterways.

- Clearinghouse Rule 04-064 (NR 323)
- Relating to: fish and wildlife habitat structures in navigable waterways.

- Clearinghouse Rule 04-065 (NR 300 and 310)
- Relating to: timelines and procedures for exemptions, general permits, and individual permits for activities in navigable waters.

- Clearinghouse Rule 04-066 (NR 1)
- Relating to: natural resources board policies on protection and management of public waters.

- Clearinghouse Rule 04-084 (NR 320)
- Relating to: the regulation of bridges and culverts in or over navigable waterways.

- Clearinghouse Rule 04-085 (NR 341)
- Relating to: regulation of grading on the bank of a navigable waterway.

- Clearinghouse Rule 04-086 (NR 343)
- Relating to: regulation of construction, dredging, and enlargement of an artificial water body.

- Clearinghouse Rule 04-087 (NR 345)
- Relating to: dredging in navigable waterways.

- NR 1 is the cornerstone for implementation of this package of administrative rules. It should be adopted in its entirety.

- NR 1.016 details the Wisconsin Supreme Court cases protecting public rights in navigable waters. It is important to have this language in the rule because it will give reviewing courts the context in which they need to interpret the rules as broadly and strongly as possible to protect public rights in navigable waters.

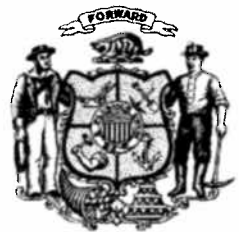
- NR 1.05 "Identification of areas of special natural resource interest" (ASNRIs) has been significantly changed. The list is "adequate for now" in our estimation. But this is an area of the rules that should be reassessed after a year. To designate a water as an ANSRI the DNR must establish the water has "significant scientific value." In particular, "Tributaries to Sturgeon Waters" are globally significant and should be afforded greater protection by not having development activities exempted from prior review of DNR staff.

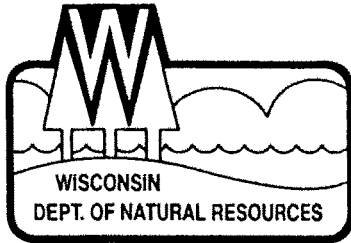
- NR 1.06 "Identification of public rights feature," has not been significantly changed and we support its adoption as is.

- NR 1.07 "Identification of priority navigable waterways" lists the types of water for which the jurisdictional distance for grading on the bank is 300 feet. This list continues to have the support of all stakeholders and should be adopted unchanged.



WISCONSIN STATE LEGISLATURE





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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February 23, 2005

Senator Neal Kedzie
313 S State Capitol
Madison, WI 53707

Representative Scott Gunderson
7 W State Capitol
Madison, WI 53708

Dear Senator Kedzie and Representative Gunderson:

As you are aware, Department of Natural Resources staff and I have been working with the full range of stakeholders to reach agreement on all aspects of the rules to carry out Act 118. One of the remaining questions concerning the Wisconsin Realtors Association had been the relationship between the waters designations in NR1 and the rule related to piers (NR326), still under development.

We agree to modify the language of two notes in NR1 with language suggested by the Realtors Association that makes the relationship clear to them. Attached is a version of the rule with the changes to the notes shown with ~~strikeout~~ and underlining.

These notes did not, and do not as modified, create any substantive requirement but merely reiterate the scope of the authority under the statute to develop standards for piers.

I am attaching our letter to the Wisconsin Realtors Association in which we explain that NR 1 does not in any way constrain the pier standards currently under development.

While it is our understanding that changes to notes do not require review, the Natural Resources Board has been briefed on this change and the members expressed no questions or concerns.

Sincerely,

Todd L. Ambs, Administrator
Division of Water

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 accepted 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 I, 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. However, new and existing piers may be exempt in areas of special natural resource interest under s. 30.13, Stats., as set forth in NR 326.

(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:

(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. However, new and existing piers may be exempt in areas with public rights features under s. 30.13, Stats., as set forth in NR 326.

(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.

(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)i 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.

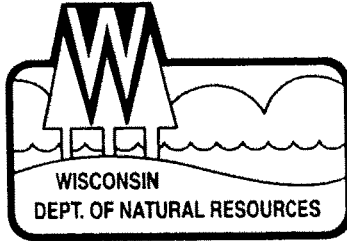
SECTION 6. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

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

February 18, 2005

Messrs. Tom Larson and Mike Theo
Wisconsin Realtors Association
4801 Forest Run Road, Suite 201
Madison, WI 53704-7337

Dear Mr. Larson and Mr. Theo:

Thank you for meeting with us to work on solutions to your concerns with the proposed NR1, NR326 and NR328. It was a productive session and we look forward to following up with you next Friday.

NR1 does not in any way limit or constrain the way that revisions to NR 326 will treat piers, boat lifts or boat shelters. In response to your request for a statement of the Department's position on the application of the NR1 waters designation to piers through NR326, our position is best understood or predicted by the language of NR1 currently awaiting legislative review excerpted and highlighted below.

Excerpt – section NR1.05:

(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.

Excerpt – section NR1.06:

(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.

It's important to point out that these provisions determine whether a pier is exempt, qualifies for a general permit, or needs an individual review – no provision of NR1 or NR326 results in any property owner being denied the ability to place a pier.

As you're aware, we are now reviewing public hearing comments on revisions to NR326 prior to drafting the final proposal for the decision of the Natural Resources Board, and can't absolutely predict the outcome of that process or of the legislative review that follows. In the meantime, the version of NR326 currently in place and that remains the law, does not refer to or use any provisions of NR1.

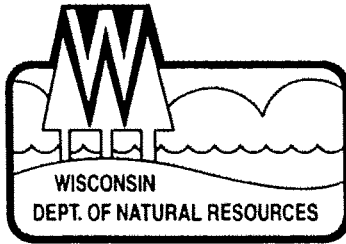
We appreciated your involvement in the rule development process to date and look forward to continuing the open and constructive dialogue we enjoyed today.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Ellen Vollbrecht". The signature is fluid and cursive, with a large initial "M" and "E".

Mary Ellen Vollbrecht
Chief, Rivers and Habitat Protection Section
Bureau of Fisheries Management and Habitat Protection





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

Headquarters
101 S. Webster St.
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Telephone 608-266-2621
FAX 608-267-3579

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES
ON CLEARINGHOUSE RULES RELATED TO 2003 ACT 118
By Mary Ellen Vollbrecht, Section Chief, Bureau of Fisheries & Habitat
February 23, 2005

RULE SUMMARY

Overall, these rules determine the process for authorizing projects in public waters. Is a project exempt? Eligible for a general permit? If not, then an individual review is required.

There are three "umbrella" rules: NR 300 and 310 that establish procedures and deadlines; and NR1 that describes policy and designates special waters.

Here is a brief statement of the goal of each rule and summary of rule's effect.

Clearinghouse Rule 02-099 (NR328) *RIP RAP*

Sea walls prohibited

- Rule helps property owners control shore erosion.
- Rule universally allows installation of a structure to reduce shore erosion. Exemptions or general permits are available for a wide variety of measures for use on any shoreline that is measurably eroding, including consideration of rock armoring. Biological structures are exempt or GP at any site. Rock armoring is GP at moderate and high energy. Where wave energy is low, fish and wildlife habitat is present – erosion is slight and biological methods are exempt or GP. Many safety valves are built into the rule to detect erosion and consider rock armoring for measurably eroding sites. Repair or replacement of nearly any pre-existing structure is either exempt or GP.
- The effects on fish habitat of replacing natural shoreline with rock or walls are significant and well documented. More than 1000 applications are made for these structures each year, so these consequences add up.
- NR328 creates five general permits.

Clearinghouse Rule 04-062 (NR 329)

- Rule enables installation of common in-water infrastructure such as boat ramps, fords, pilings, intake and outfall structures.
- Rule sets maximum sizes, design and construction practices that cover most common installations while avoiding the direct effects on fish and wildlife habitat, boating, natural scenic beauty and water quality that these in-water projects can have.
- NR329 creates six general permits.

Clearinghouse Rule 04-063 (NR325)

- Rule provides clear certification process and documentation for owners of those over-water boathouses that are exceptions to the statutory limits. Over-water boathouses that existed prior to 1979 have been an exception since 1979. Act 118 created an exception for commercial boat storage facilities in brownfield areas of Great Lakes harbors. The certification is a simple process to provide documentation for the owner that the statutory standards for the exception are met.

Handwritten notes:
Powers of NR, DNR, Public Trust Doctrine
Includes Preamble
Special Nat. Res. Interest
NR 106 Public Rights
List of ASNRI on the web.

Clearinghouse Rule 04-064 (NR323)

- Rule enables installation of fish and wildlife habitat structures.
- Rules sets simple standards to ensure that structures don't interfere with boating and don't have unwanted side effects on fish and wildlife such as sedimentation.
- NR323 creates six general permits. *IP = \$ 300.00*

Clearinghouse Rule 04-065 (NR300 - 310)

- Set the procedures and deadlines, following the statute and specifying the applicant and department actions at each step.
- Optional procedure for requesting department determination of whether an activity is exempt.
- General permit is a determination of eligibility. If project plans and location meet rule standards, then DNR confirms and project may proceed under general permit.
- Act 118 specifies that projects not exempt or GP-eligible need individual permit review with a 30-day comment period and opportunity for informational hearing. NR310 specifies that steps that DNR, applicant and commenting parties must take and deadlines that must be met.

Clearinghouse Rule 04-066 (NR1) *12 mos. review Annually*

- Rule has two goals - one, to describe department policy for those who are affected by the rules as well as directing department staff work, and two, to designate waters as required by Act 118.
- Rule says that any Areas of Special Natural Resource Interest (ASNRI) beyond those designated by the legislature, will only be designated by the Natural Resources Board. ASNRI are those waters where exemptions are not available. NR 1 lists waters designated as ASNRI by the Natural Resources Board, using pre-existing state water resource inventories. *where exemptions not allowed*
- Rule prescribes a mapping process for specific physical features of lakes and streams that constitute fish and wildlife habitat, unique natural features, traditional navigation thoroughfares, and natural water quality protective features. These essential locations within lakes and streams are labeled public rights features and are to be mapped by the same process by which trout streams are designated - site survey, legislative and municipal notification, opportunity for hearing. These physical features are used as location standards in a subset of the exemptions and general permits. Where features aren't yet mapped, folks considering waterfront projects are asked to make a reasonable effort to recognize and avoid habitat or similar features or seek permits - or when these sensitive water features are identified in permit screening, folks may be asked to modify a proposal or an individual permit review may be required.
- Rule lists priority navigable waters where Act 118 allows a larger scope of the lake or stream bank - and grading permits are more likely required. *Special concerns species? What is this?*

TOTAL WI = 21%

Clearinghouse Rule 04-084 (NR320)

- Rule helps property owners construct stream crossings, bridges or culverts.
- Rule sets up simple measurement methods to ensure that size of bridge or culvert opening is big enough that the amount of water in stream can pass through, that boats and fish can pass up and down, that water isn't ponded on upstream properties.
- NR320 creates three general permits.

Clearinghouse Rule 04-085 (NR341)

- Rule enables most site grading, excavation or filling 10,000 square feet or more on the bank of a lake or stream with a general permit.
- Rule sets selected limits that prompt individual permit review, such as very steep slopes, dramatic waterfront reshaping, wetland fill and bufferless construction, and non-standard stormwater or construction erosion control practices.
- NR341 creates one general permit covering typical grading projects.

Clearinghouse Rule 04-086 (NR343)

- Rule enables common types of pond construction – stormwater, landscape and wildlife or wetland conservation.
- Rule sets selected limits that prompt individual permit review, such as direct channel connection to a lake or stream, wetland excavation, and non-standard stormwater or construction erosion control practices.
- NR343 creates three general permits.

Public Rights features used.

Clearinghouse Rule 04-087 (NR345)

- Rule enables essential dredging and small scale dredging projects.
- Rule creates standards for dredging that is exempt and sets selected limits that trigger individual permit review. Standards include upper limits on the stream size, location in public rights features such as native aquatic plant stands or fish spawning beds, timing of dredging to avoid spawning seasons.
- NR345 creates general permits for maintenance dredging in farm drainage districts and for dredging to install utility cables or small pipelines.

12"



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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- The effects on fish habitat of replacing natural shoreline with rock or walls are significant and well documented. More than 1000 applications are made for these structures each year, so these consequences add up.
- NR328 creates five general permits. *SEAWALLS PROHIBITED IN MARINAS*

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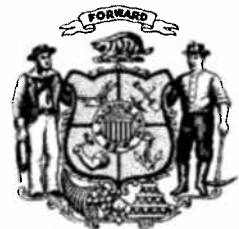
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WISCONSIN STATE LEGISLATURE





WISCONSIN ASSOCIATION OF LAKES, INC.

ONE POINT PLACE • SUITE 101 • MADISON, WI 53719-2809 • 800 542-5253 (in WI) • 608/662-0923 • FAX 608/833-7179

February 23, 2005

To: Members of the Senate Natural Resources and Transportation Committee
Members of the Assembly Natural Resources Committee

There are more than 100,000 riparian property owners represented by the approximately 350 lake organizations and individuals that are members of the Wisconsin Association of Lakes.

Over the past two years there has been much discussion and debate over the concept of private property rights, particularly when new laws and their corresponding regulations are concerned. The proposed changes to the Department of Natural Resources administrative rules stemming from Act 118 have been a major source of these discussions and debates.

There are those who suggest that these regulations **challenge** private property rights. But, aren't such regulations necessary to **protect** private property rights?

There are speed limit laws on our roads and highways, not to limit the rights of those who would speed, but to protect the rights of those that might be injured by those that speed. Do we have enough law enforcement officers to catch all speeders? Absolutely not, but does that mean we shouldn't have the laws? No.

There are laws against driving under the influence of alcoholic beverages. Are these laws imposed to harm the rights of those that would drive drunk? No, they are there to protect the private rights of those that might be harmed by a drunken driver. Do we always do a good job of enforcing these laws? No, but that doesn't mean we should eliminate them.

Aren't the regulations before you today necessary to protect the private property rights of those that want to enjoy good fisheries, and a healthy lake? Aren't the rules necessary to protect the private property rights of all those on a lake who want clean water, natural scenic beauty, and high property values because of a healthy lake? Or do we want the absence of these regulations to protect the few who would satisfy their personal gains at a cost to everyone else?

When discussing proposed regulations in December, in a meeting in St. Germain, a member of this legislature said several times, "Be careful." I would agree that we need to be careful. If we want no rules, or very limited rules as are being asked by some, your private property rights and my private property rights will be compromised by those that care only for themselves. We all have rights. Let's protect them.

The Board of Directors of the Wisconsin Association of Lakes, on behalf of its members, supports these rules.

Sincerely,

Peter T. Murray
Executive Director

email: wal@wisconsinlakes.org / website: www.wisconsinlakes.org



Senator Kedzie

Wisconsin League of Conservation Voters: Adopt all of the Act 118 rules

**Statement of Anne Sayers,
Wisconsin League of Conservation Voters Program Director
February 23, 2005**

The rules before you today are necessary to minimize the devastating impact that Act 118, the most anti-conservation bill in Wisconsin history, could have on Wisconsin's lakes and streams.

In particular, we urge you to fully adopt the provisions of Chapter NR 1 that sets out the fundamental standards that protect lakes and streams. NR 1.016 sets out the long-standing Wisconsin Constitutional protections establishing citizens' rights to use lakes and streams and to assure that they will retain their value for future generations.

The lakes and streams identified in NR 1.05 are the most sensitive and fragile lakes and streams in the state that need an extra level of attention to assure this protection. This list of lakes and streams has unfortunately been shortened substantially during the rule development process. However, it now needs to be adopted.

NR 1.06 which identifies "public rights features" protects those aspects of our waterways that are most important to Wisconsin citizens. It also provides critical direction to those who engage in exempt activities or utilize the general permits in the Act 118 rules.

Minimizing the impact of Act 118 is one of just six priorities for Wisconsin's conservation community this legislative session as outlined in the *Wisconsin Conservation Briefing Book 2005-2006*. You received a copy of this book, prepared by 37 conservation organizations, on Conservation Lobby Day, February 16th.

Due to the way in which Act 118 was first enacted, citizens had very little opportunity to comment on this bill that has dramatic impacts on the lakes and streams they love for fishing, swimming and boating. Although citizens from across Wisconsin remain disappointed by the bill, WLCV has been hearing from many citizens that will be directly impacted by it and want to minimize its negative effects on the waters they love. Passing the DNR proposed rules is the best way to do that. Attached you will find excerpts from citizens who support these rules. Also included is a list of, and letters from, a few of your constituents that support the rules.

Educate • Advocate • Evaluate

**Citizen Comments in Support of NR118 Rules
-Excerpts-**

We must begin to see that what we do to the land, water and fellow organisms, we do to ourselves. Every time we impact the environment, we affect human health, physically and emotionally. As they say "there are no jobs on a dead planet", meaning the supposed "creation" of jobs that negatively affect the planet ultimately hurt us in the end. There are infinite jobs available in a green economy, and ways to minimize impact in our current methods of operating. Because I value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

Cathy Zimmerman
4333 S. 15th St.
Sheboygan, WI 53081

Our natural environment must be protected and preserved for all the reasons you already know: aesthetics, biodiversity, recreation, public health, economic stability, just to name a few. Most importantly, this is simply where we live. The continued pollution and destruction of our home is an untenable course for the future. It's a question of responsibility and taking ownership of the problems.

Derek Clevidence
336 Southing Grange
Cottage Grove, WI 53527

I live on Madeline Island, my house not 75 feet from Lake Superior. In addition to swimming and kayaking in Lake Superior, I also spend time on and in other Wisconsin lakes and streams.

I value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams more than I can tell you. I want to voice my enthusiastic support of the proposed permanent rules being adopted under Act 118.

Kristin Lein
PO Box 83
La Pointe, WI 54850-0083

Wisconsin is a beautiful state, which is one of the reasons people love to live here. With that in mind, I am writing to encourage you to adopt the proposed permanent rules relating to Act 118.

Act 118 was a great cause of concern for me. The more I research and learn about it, the more I wish that some common sense would be applied to the environmental issues involved. Thank you for doing just that in drafting the rules.

The future of Wisconsin's natural resources is determined by our actions today.

Ken Schellin
3125 S. 7th St.
Milwaukee, WI 53215-4703

Wisconsin will create the most jobs by keeping our high standards of environmental protections for the waterways, which here, are regarded as belonging to the public trust. The concept of public trust was in place before current shoreland owners purchased property. They accepted "ownership" within the terms of the public trust.

Marsha Brewer
1617 W. Lorain Ct.
P.O. Box 655
Appleton, WI 54912-0655

I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

Studies have shown that those states that have strong protection of their environment also have stronger economic conditions. Although some businessmen may claim otherwise, the facts are not on their side. In many ways, this makes perfect sense - cleaner air leads to fewer asthma attacks and better health among the populace, and therefore a more productive work force (fewer sick days) and lower expenditures on health care. Cleaner lakes and rivers bring in more tourism dollars and lower expenditures when designing and operating water treatment plants for drinking water supplies. (I used to design water treatment plants, so I am well aware of the impacts polluted water has on the latter, and it is quite significant.)

Chris Bellovary
2424 E. Washington Ave #9
Madison, WI 53704

Because I value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118. Please adopt these rules and allow the annual evaluation process to make the adjustments necessary to achieve the twin objectives of regulatory reform and resource protection. Thank you so much for reading this letter and considering the future of Wisconsin's beautiful lakes and streams.

Cindy Owen
3029 N.7th Street

Wausau, WI 54403

For the last 12 years I have been working as a volunteer for the Timber Wolf Alliance, a program of the Sigurd Olsen Environmental Institute of Northland College. I have given over 120 formal programs and have had a chance to interface with tens of thousands of Wisconsin residents from all walks of life. Conservative, liberal, hunters, wildlife viewers, all have one thing in common. A deep and passionate love for Wisconsin's traditions, which include an extremely high value of our environment and our relationship with it.

Because I value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

Carl Anderson
1602 speedway Rd
Verona, WI 53593-9335

As a long time hunter and fisherman, I appreciate clean water and good habitat for wildlife. Because I value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

David Johnson
N3712 Hwy 40
Bruce, WI 54819-9512

I favor economic opportunity and jobs for all, but I do not believe that creating more jobs depends on weakening protection of our lakes and streams, which--after all--are at the heart of much of our tourism industry.

John Koch
2134 E. Washington Ave.
Madison, WI 53704-5208

It is a fundamental imperative of all faiths that humans have the duty to protect and preserve the entire natural infrastructure of this planet so that it may continue to be a fitting place for our species to dwell!

As a United Methodist clergyman for 44 years and an academic specialist in Ecological Ethics for 34 years, I have to say that passage of Act 118 last year under the guise of streamlining procedures was a shameful act of turning our natural heritage into a resource to be ravaged by short-term greed and profiteers.

But some of that damage can be mitigated and prevented, while still doing some of the needed streamlining of procedures, by adopting all of the democratically crafted proposed permanent rules for Act 118.

Rev. Dave Steffenson, Ph.D.
The Upstream Institute for Ecological Ethics
PO Box 21
Columbus, WI 53925-0021

Because I value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

Although the aesthetic quality of the waterways is a critical component of my concern, as a biologist and the mother of young children, I am more concerned about the longterm impact on the caring for the environment we, as citizens of Wisconsin, live in. Our water and air in Wisconsin is vulnerable and needs the biodiversity of our streams and lakes to help clean the multitudes of pollutants we are pouring in daily. My children drink well water, they breath the pollutants generated by the raw sewage from uncontrolled animal operations, they can no longer swim in streams that I enjoyed as a kid.

I frequently explain to my kids that the reason they have to put up with this mess is because the mothers of the people that are making the mess must have let their kids throw food on the floor and kick holes in the walls of their houses, so they grew up with no understanding of keeping their living space wholesome.

No amount of profit can make up for living in a poisonous environment. The lack of conservation has gone far beyond damaging what is beautiful. We are destroying what is necessary.

Heather Landin
298 190th St.
Baldwin, WI 54002

Wisconsin is known for its pristine environment. Much of our economy is based on this. Tourism is growing and is crucial to many of us living in rural Wisconsin. Act 118, which passed in the Wisconsin legislature in early 2004, is possibly the most anti-conservation policy in our state's history and rolls back decades of progress in protecting Wisconsin's air and water.

I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

Jody Slocum
N9215 130th st
Downing, WI 54734

Because I value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

I was greatly concerned over those provisions of Act 118 related to protection of the shorelines of our lakes and streams. Wisely, the legislature directed the Department of Natural Resources to adopt rules assuring the protection of the rights of the public in navigable waters such as those areas that fish need to reproduce and live, that are needed to protect water quality and provide the beautiful natural shorelines that define Wisconsin.

I have enjoyed fishing and camping in Wisconsin since I was a child. Tourism is a major source of income for many people in Wisconsin, and by protecting our natural resources, we ensure that our economy will remain strong, and future generations will benefit from your foresight in protecting the water resources of Wisconsin.

Randy Sthokal
105 Grandview Lane
Iola, WI 54945

I am a Vilas County riparian owner who values fish and wildlife habitat, water quality and the scenic beauty of our state's lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

When I look around the lake on which I own property, I see the vast majority of my peers have put their personal access to the water above concerns for water quality and fish habitat. Woody debris has been removed and beach development attempted. I own land adjacent to a white sucker spawning area, a prime food source for game fish. An adjoining neighbor, who's frontage was identical to mine, has chosen to remove the majority of the stones used for spawning, and use them as fill for a level foot path at the OHWM. A blatant disregard for fisheries health, as well as an affront to natural lake aesthetics.

Steven Reichel
12270 South Plummer Lake Lane
Lac du Flambeau, WI 54538-9793

Our family enjoys living in Wisconsin because of its natural beauty, not because it's a better business environment. We need to get the corporate influence out of government since the large corporations have been moving jobs out of the state for the last 10 years. We don't owe them our continued loosening of environmental regulations to try to keep them here. We need to help small businesses not land developers and politically connected roadbuilders.

Shawn Mulvihill

2523 LaSalle St.
Racine, WI 53402-4322

We strongly urge you to adopt these rules. Our particular interest in the lakes and other waterways of Wisconsin are as follows: Willa Schmidt is a longtime Vilas County lakeshore property owner and Board member of the Snipe Lake Association and the Northwoods Land Trust, a non-profit organization based in Eagle River and devoted to protection of lakeshores and open land in the area. Kim Genich is on the Board of the Wisconsin Wetlands Association and is also involved in the Snipe Lake Association, Vilas County.

Because we value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, we are writing to voice our support of the proposed permanent rules being adopted under Act 118.

Willa Schmidt and Kim Genich
2020 University Ave. #317
Madison, WI 53726-3965

After 22 years away from Wisconsin, I chose to move back here. Why? Because it is a beautiful state, with rivers and streams and lakes, with wildlife and natural beauty. I need to let you know how much I value these things in Wisconsin, and to encourage you to support the proposed permanent rules being adopted under Act 118.

Susan Remson
326 55th Street
Kenosha, WI 53140

I'm not against development and job creation. I'm against the right to allow an out for fast track development, which always seems to impact our environment the most. If we have cooperative and an effective government there is no need for a fast track anything. Maybe we should work at ways to improve our current communications between the state and the private sector instead of making quick fixes like this. It really doesn't create a happy win-win situation for anyone.

Dina Bertolini
306 W. Washington Street
Dodgeville, WI 53533-1034

As the father of three children, I am deeply concerned about the legacy we leave. I am very fortunate to have enjoyed canoeing, hiking, fishing, hunting and swimming in our naturally endowed State. Because I value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

Robert Smith

4201 N. Woodburn Street
Milwaukee, WI 53211-1504

I live on Frog Lake in Florence County and we are dealing with an Eurasian Water Milfoil invasion. It is very important to consider the environmental impacts that human actions and development have on sensitive lakes and lands we inhabit along with the wildlife. If we are careless, we spread invasives and cause more costly damage. It is better to be safe than sorry. Please do all you can to care for our natural resources.

Because I value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

Barb Schieffer
PO Box 543
Florence, WI 54121

My husband and I are kayakers, canoeists, and hikers and we value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, so we are writing to voice our support of the proposed permanent rules being adopted under Act 118.

Lenor and Art Coe
11246 East County Road X
Clinton, WI 53525-8626

My name is Claudia Haus and I live on Lake Mendota. I moved to be on the water because it has such wonderful qualities. Wisconsin has been known for its natural beauty, especially its streams, lakes and rivers. Having good quality air, forest and water is good for Wisconsin tourism, because people value nature and we should pay attention to this. They value it for a good reason, and it is up to our generation to try to preserve the quality of Wisconsin's nature for ourselves, our tourists, our children and those coming in decades to come.

I am an RN, and I believe that the chemicals in our air and water are affecting everyone's health, especially children. People are being warned against eating the fish in our lakes, recently there have been warnings for those with breathing problems to stay inside due to pollutants in the air. It also seems to me that there is a rise in the number of children and adults with illnesses that could possibly have some of their origin in pollutants.

I agree with all of the following message and pray that you will take it to heart. I don't think there is anything that takes higher precedence than preserving our environment.

Claudia Haus
3300 Lake Mendota Drive
Madison, WI 53705-1469

As an educator and father i realize the importance of providing a safe and healthy natural environment to our succeeding generations. As an avid outdoorsman, sportsman and hunter I realize both the excesses and limitations of government regulations in all aspects of our lives. With these qualities in mind, I urge you to make every effort to work on a state wide level to provide meaningful environmental regulations for the preservation of our wonderful Wisconsin natural resources, which are given to us by God and past generations, not for our use, abuse and exploitation, but as the honored inheritance that we have fought and died, as a nation, to preserve. Long after you and I are gone, the clear lakes and rivers, and clean Wisconsin air will be here to nurture life for future generations. Without our diligence and respect for this natural endowment anything else we leave behind will be of very limited value.

Jeff Horner
n8724 1020th St.
River Falls, WI 54022-4606

I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

It is greatly disappointing to me that a state like Wisconsin, which used to be in the vanguard of protecting its scenic beauty and environmental resources, which are so valuable not only to its residents but to so many that visit this state, is now regressing and allowing so much ill considered development and destruction to occur. Our state's natural resources cannot be replaced! The people's voices must be heard, not just the people with the bucks, but all the people if we are to remain a democratic society. But will they be acted upon?

Margaret Welke
410 Clemons Avenue
Madison, WI 53704-5504

Because I am a human being, my body is largely made up of water. Assuming that another human being is reading this, well, so is yours. Being a human being I am inclined to care about water because I care about other human beings, and I also care about the environment that make it possible for us humans to be.

Because I also value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

Elliott Gengembre
2162 N 72nd St.
Wauwatosa, WI 53213

Having moved to Wisconsin from the Chicago suburbs, I know that BOTH Illinois and Wisconsin folks are depending on you to keep Wisconsin a beautiful natural area and vacation getaway. I worry when Wisconsin has winter advisories for air quality, and cautions are urged on fish consumption from our lakes and streams.

Today I am asking you and the rest of the Natural Resources and Transportation Committee and the Committee on Natural Resources that you adopt all of the Act 118 rules.

Keep our lakes and streams clean and assure that future generations from BOTH Illinois and Wisconsin have the opportunity to view the wonderful beauty of our lakes. Without the full adoption of section NR 1.06, the value of our lakes will be forever lost and all of the Act 118 rules will fail to meet their Constitutional responsibility. Please adopt this section as it has been derived through the public participation process.

Diane McComb
1016 B E. Green Tree Ct.
Appleton, WI 54915

I am a lifelong, 60 year old resident of Wisconsin who enjoys fishing and canoeing among other outdoor activities. Because I value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

Victor Capriolo
93 Marquette Street
Fond du Lac, WI 54935-3405

My husband hunts and fishes and I do not. But we both agree that we must protect the fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams. I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

Karen Campbell
1919 N. 48th Street
Milwaukee, WI 53208-1731

The quality of our Wisconsin's water is essential for health. I speak of health in the broad sense of individual human health, environmental health and a form of mental health which we all benefit from as we live within and enjoy the scenic beauty of our state's wonderful lakes and streams. As a physician, Wisconsin resident and concerned environmentalist, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

I have become greatly concerned over those provisions of Act 118 related to protection of the shorelines of our lakes and streams. The legislature directed the Department of

Natural Resources to adopt rules assuring the protection of the rights of the public in navigable waters. These rules are needed to maintain water quality and protect the beautiful natural shorelines that define Wisconsin.

MICHELE Reyes D.O.
PMB #139
10936 N. PORT WASHINGTON RD.
MEQUON, WI 53092

Wisconsin has a precious preserved resource in its lakes and streams. To allow it to be degraded would make Wisconsin in the image of Illinois. If developers want Illinois standards, they need only travel a relatively short distance to obtain them. Let's not deviate from what has made Wisconsin a great refuge of natural beauty and diversity.

I support the rules which will ameliorate damage caused by the lax standards of Act 118.

Jerry Ugland
P.O. Box 35
Plover, WI 54467-0035

Growing up in Wisconsin, I have always learned about the great conservationists that our state has touched such as Aldo Leopold and John Muir. The immense natural beauty in Wisconsin has long been an important part of our state, bringing in business and tourism, ensuring a high quality of life for its residents, and inspiring great people such as Leopold and Muir to go out and promote the environment.

Because I value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

Matt Balestrieri
936 N. 16th St.
Apt.3
Milwaukee, WI 53233-3106

I look forward every winter to the days the ice goes out so I can begin the musky and walleye fishing I love, the days I can look out again from my cottage window onto a clean and lovely northern Wisconsin lake, and the days I can hike and bike the beautiful trails that surround these lakes. Please, please ensure that I and my grandchildren can continue to enjoy these wonders by passing these needed rules.

James Parker
1900 N. Linwood Ave.
Appleton, WI 54914

I am a life-long resident of Wisconsin who has enjoyed Wisconsin's waterways for all of my life. I have respected and loved our rivers and lakes, and enjoyed their value both esthetically and recreationally. While other states may have oceans, mountains or deserts to attract visitors, I am proud of what we have to offer with our forests and waterways. Please help to keep them protected.

Linda Bullock
2166 Indian Pt Rd
Oshkosh, WI 54901-9722

As a way of introduction, I am Dr. Michael A Ketterhagen, Theology professor at Marian College of Fond du Lac. I value fish and wildlife habitat, and believe that protecting the water quality and the scenic beauty of our state's wonderful lakes and streams makes sense financially, socially and most importantly theologically. I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

Michael Arthur Ketterhagen
220 E. Merrill Avenue
Fond du Lac, WI 54935-3616

Over the last 50-75 years Wisconsin's greatest heritage has been its natural beauty. This has attracted not only tourists but hard working, creative, community minded people who have contributed to industry, education, and a high standard quality of life. Please preserve the rules which will help sustain these matchless attributes.

David S. Hathaway
N 2950 White Pine Lane
Waupaca, WI 54981

As life-long Wisconsin residents (save 6 years in St. Louis, MO) and parents of a 10 year old son, we implore you to consider preserving the beautiful environment that is Wisconsin.

Erica and Peter Christman
9110 Settlers Road
Madison, WI 53717

The state has been a leader in the past with respect and preservation of our environment and we need now more than ever to continue and improve in these efforts.

Judith Schure
1201 Euclid Ave
Sparta, WI 54656

I moved to Wisconsin a decade ago. I love Wisconsin. I love the people and the scenic beauty of our state's wonderful lakes and stream. I value its fish and wildlife habitat and

water quality. I urge you to vote in support of the proposed permanent rules being adopted under Act 118.

Glen Halbe
1736 Park Avenue
Racine, WI 53403-2761

I am a member of the crew of the Wisconsin flagship, the "Denis Sullivan." I spend more time on the water than most people do and can observe it first hand. What follows is the "boilerplate" on the issue, but I wanted to add my voice as one who literally lives on the water that our rivers, aquatic creatures, and indeed our very lives depend on cleaning up our act. What I see out there is heartbreaking.

David HB Drake
2609 S Delaware Ave
Milwaukee, WI 53207-2301

From: jjbrad31@hotmail.com
Sent: Friday, February 18, 2005 2:12 PM
To: sen.kapanke@legis.state.wi.us
Subject: I am requesting that you vote to adopt the rules under Act 118.

Dear Senator Kapanke,

Because I value fish and wildlife habitat, water quality and the scenic beauty of our state's wonderful lakes and streams, I am writing to voice my support of the proposed permanent rules being adopted under Act 118.

I was greatly concerned over those provisions of Act 118 related to protection of the shorelines of our lakes and streams. Wisely, the legislature directed the Department of Natural Resources to adopt rules assuring the protection of the rights of the public in navigable waters such as those areas that fish need to reproduce and live, that are needed to protect water quality and provide the beautiful natural shorelines that define Wisconsin.

Scores of public hearings and hundreds of hours of discussion of Technical Advisory Groups have resulted in the rules before your Committee. The discussions included those in the development industry, realtors, conservationists, land owners and environmentalists. The permanent rules that were developed in this process go a long way to meet the needs of all groups. However, it is recognized by DNR and all of the groups that in a year or two there needs to be a thorough evaluation of the rules to see if they adequately protect our lakes and streams and meet the needs of those in the development industry.

Please recognize and reward those interests that worked hard side-by-side to achieve agreement on these rules. Please adopt these rules and allow the annual evaluation process to make the adjustments necessary to achieve the twin objectives of regulatory reform and resource protection.

Today I am asking you and the rest of the Natural Resources and Transportation Committee and the Committee on Natural Resources that you adopt all of the Act 118 rules. In particular, I request that you fully adopt the provisions of Chapter NR 1 that set out the fundamental standards that protect our precious lakes and streams. NR 1.016 sets out the long standing Wisconsin Constitutional protections that establish all of our rights to use our lakes and streams and to assure that they will retain their value for future generations. This policy states the law that governs how waterways need to be protected in our state.

Also in need of protection are the "areas of special natural resource interest" identified in NR 1.05. The lakes and streams identified in this section are the few most sensitive and fragile lakes and streams in the state that need an extra level of attention to assure this protection. This list of lakes and streams has unfortunately been shortened substantially during the rule development process. But now it needs to be adopted.

Lastly but most importantly, I ask that you adopt section NR 1.06 that identifies "public rights features". This is the section that protects those aspects of our waterways that are most important to Wisconsin citizens. It also provides critical direction to those who engage in exempt activities or utilize the general permits in the Act 118 rules.

This section is also the one that protects valuable fish and wildlife habitat, that keeps our lakes and streams clean and assures that future generations have the opportunity to view the wonderful beauty of our lakes. Without the full adoption of section NR 1.06, the value of our lakes will be forever lost and all of the Act 118 rules will fail to meet their Constitutional responsibility. Please adopt this section as it has been derived through the public participation process.

Thank you so much for reading this letter and considering the future of Wisconsin's beautiful lakes and streams.

Sincerely yours,

J Bradish
340 Wakefield Downs
Wales, WI 53183-9772

11 - Kedzie

Sandra Pearson	202 S Taliesin Road	Wales	WI	53183
Patricia Heiden	W399 S5484 Highway Z	Dousman	WI	53118
Marjorie Inscore	3322 N. Silver Lk. Dr.	Oconomowoc	WI	53066
Sharon Jabs	W4922 Pleasant Lk Rd	Elkhorn	WI	53121-2702
Julie Milliren	333 S. Daffodil Ct	Oconomowoc	WI	53066-9433
Janica Yoder	W349S4051 Waterville Road	Dousman	WI	53118-9786
Bill Wells	W856 Roman Rd	Genoa City	WI	53128-1107
Sister Dorcas Baker	S83 W27815 Beaver Trail	Mukwonago	WI	53149-9623
J Bradish	340 Wakefield Downs	Wales	WI	53183-9772
Kristine Klewin	N11W31848 Phyllis Pkwy	Delafield	WI	53018-2626
Sister Letitia Prentice	S83 W27815 Beaver Trail	Mukwonago	WI	53149-9623