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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Environment and Natural Resources (SC-ENR)

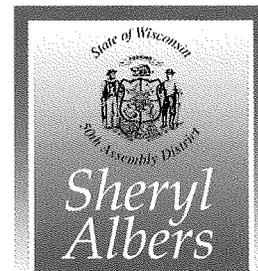
COMMITTEE NOTICES ...

- 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 ... **HR** ... **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**

* Contents organized for archiving by: Mike Barman (LRB) (June/2014)



January 22, 2007

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

Senator Mark Miller
Chair, Senate Committee on Environment & Natural Resources
409 South State Capitol

Dear Representative Gunderson & Senator Miller:

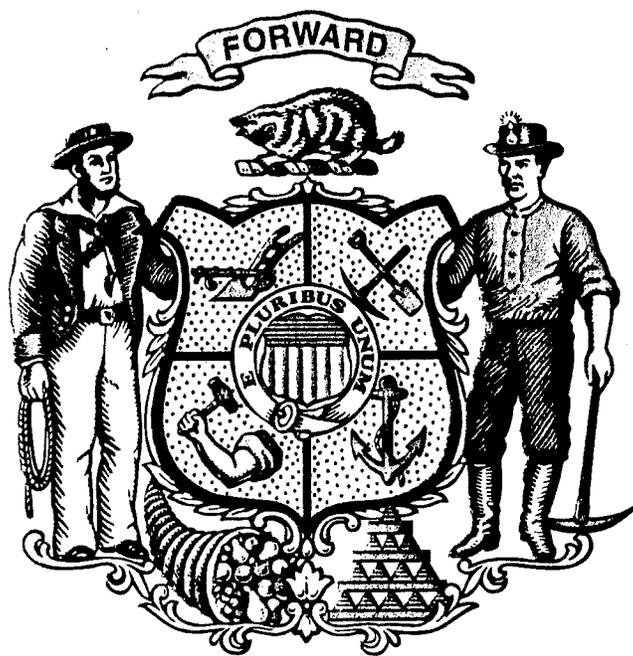
Clearinghouse Rule 06-039 has been referred to your committees for review, relating to sound testing methods for boats. I strongly urge you to consider a hearing on the revised rule since it fails to address the concerns of at least one small business owner who provides recreational charters of airboats.

Thank you for your consideration.

Sincerely,

Sheryl K. Albers
State Representative
50th Assembly District

SKA:kms



Testimony to the Senate Committee on Environment and Natural Resources
February 13, 2007
300 Southeast, State Capitol

RE: Clearinghouse Rule 06-039 (Proposed NR 5.125)

Since its beginning in 1989, the Lower Wisconsin State Riverway Board has supported the responsible and lawful use of the Wisconsin River by all types of watercraft and user groups. Our support and commitment to that standard remains unchanged. Mutual respect among user groups as well as respect for the rights of shoreline property owners remains the keystone of our efforts to protect and preserve the scenic beauty and natural character of this exceptional resource.

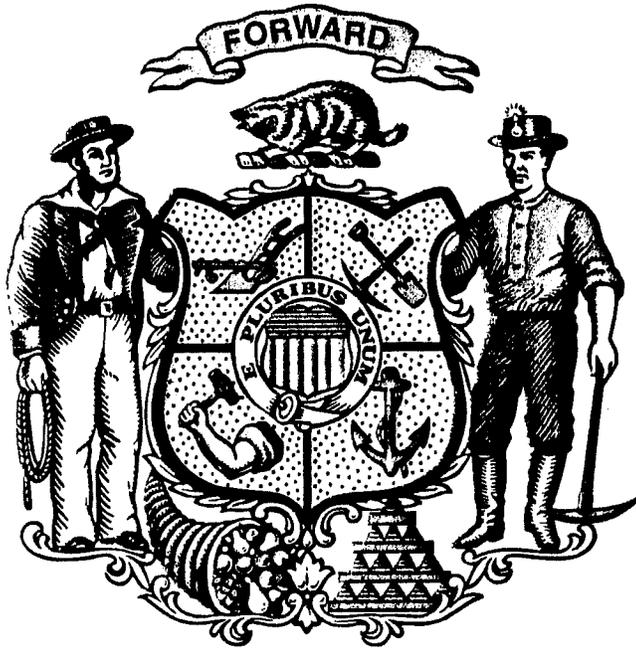
We have no interest in banning any type of watercraft. We strongly support the efforts of the Department of Natural Resources to promote responsible use of the resource among all users and to develop administrative rules that will allow its wardens to equitably and fairly enforce all applicable laws.

We support the Department in its efforts develop rule NR 5.125 in a way that will allow its wardens to enforce the 86 dbA statutory noise limit on all types of motorboats powered by an engine, including airboats and hovercraft in all waters of the State.

Previous concerns about safety and a perceived double standard for sound level testing in an earlier draft of the rule have been addressed. All types of motorboats powered by any type of engine will be treated equally under the proposed rule.

In summary, we support the creation of NR 5.125 because it provides a safe and equitable method for the enforcement of the motorboat noise limit law.

Don Greenwood
Sauk County Representative
Lower Wisconsin State Riverway Board



Wisconsin Wildlife Federation

Wisconsin Wildlife Federation Testimony on Revisions to NR 5, Related to Boat Noise Testing

February 13, 2007

To: Chairman Miller and Members of the Senate Environment and Natural Resources Committee

From: George Meyer, Executive Director, Wisconsin Wildlife Federation

Subject: Revisions to NR 5, Related to Boat Noise Testing

Mr. Chairman, Committee Members:

Thank you very much for the opportunity to testify before you today on behalf of the Wisconsin Wildlife Federation. The Federation is the state's largest conservation organization with 151 hunting, fishing and trapping groups, whose membership exceeds 100,000 members.

The Wisconsin Wildlife Federation did not take an immediate position on the issue of testing noise resulting from airboats. We represent a broad range of members, a few who own airboats and the great majority who do not. Our initial position was that unless there was a change in state law, the statutory 86-decibel limit in state law needs to be uniformly applied to all watercraft including airboats.

The Wildlife Federation is a strong supporter of regulations affecting outdoor recreation that protect public health and safety. The 86-decibel limit has been established nationally as the standard to protect public health and safety and we support its application to all watercraft. In addition, our members who are anglers enjoy the sport of fishing as a relaxing pursuit and are greatly concerned by the disturbance factor of any watercraft on the water disturbing this pursuit.

On the other hand, we do understand the role that airboats have in terms of hunting, fishing and trapping in certain situations and see their value in that context. We do not want to see airboats lost as a reasonable method of gaining access for public hunting, fishing and trapping. To that extent we have carefully and repeatedly asked DNR law enforcement staff whether airboats can meet the 86-decibel auditory standard. We have been repeatedly assured that they can meet that standard if properly designed, outfitted

and operated. In light of these assurances we support accurate noise testing methodology that is equally applicable to all watercraft including airboats.

It is important that these testing standards be implemented in the near future. Currently there are just a few hundred airboats in the state. It is important to adopt adequate testing standards prior to the possible proliferation of craft that may not meet the 86-decibel level as currently designed, outfitted and operated.

The Federation supports the proposed rule. We agree that the minimum distance of 100 feet is appropriate for the pass-by test, J34a. We recognize the safety concerns of testing a passing boat at 50 feet and agree with the minimum 100-foot test with the concept of adding decibels to the test result to take into account the increased testing distance.

The Wildlife Federation has requested that the DNR's Bureau of Law Enforcement incorporate the new protocols for these testing procedures into their training manual for Sound Level Measurement Training and share that protocol with those individuals and organizations that have been heavily involved with this rulemaking process.

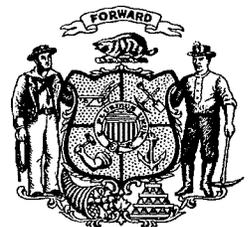
In conclusion, we request that the Senate Environment and Natural Resources Committee support the implementation of the proposed changes to the NR 5 boat testing rules.

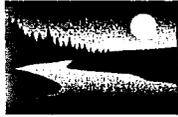
Thank you very much for the opportunity to testify before you today.

George Meyer
Executive Director
Wisconsin Wildlife Federation



WISCONSIN STATE LEGISLATURE





RIVER ALLIANCE of Wisconsin

February 13, 2007

Senator Mark Miller, Chair
Senate Committee on the Environment and Natural Resources
Room 106 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Subject: CR 06-039

Dear Senator Miller and Members of the Committee:

Thank you for the opportunity to provide comments on behalf of the River Alliance of Wisconsin. We are a non-profit, non-partisan organization representing over 2800 members and 160 local watershed groups from throughout the state, and our purpose is to restore and protect Wisconsin's rivers for all.

Airboats are becoming more and more popular on the Wisconsin and other shallow rivers, and our organization hears frequent complaints about the excessive noise generated by the propulsion machinery. Wisconsin's boat noise limits provide protection for waterway users, waterfront property owners and wildlife, but have not been applied to airboats.

Wisconsin Statutes 30.50(6) defines a motorboat as "any boat equipped with propulsion machinery, whether or not the machinery is the principal source of propulsion." Clearly, an airboat is a motorboat as defined in Wisconsin's statutes, and must be held to the same noise standard as typical outboard and inboard motorboats. In January, 2006, the Natural Resources Board recognized that the law intends for all recreational boats to be treated the same, requiring boat noise limits to be enforced for all boats regardless of propulsion method, and directed DNR to develop a method to safely and accurately measure airboat noise.

We believe DNR Bureau of Law Enforcement staff conducted a thorough investigation and analysis, and have developed a measurement procedure that will provide fair and equitable enforcement, while at the same time, will be safe and relatively simple for wardens to conduct in the field.

The River Alliance supports the proposed rule, and agrees that for safety concerns, the minimum distance of 100 feet is appropriate for pass-by tests. We

Everyone deserves healthy rivers

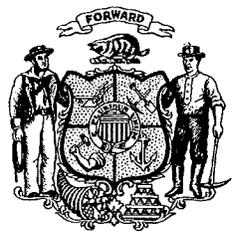
urge swift approval, and encourage efforts to educate the boating community so that new airboat buyers can make the right choices in their purchase.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Grant". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Lori Grant
Policy Program Manager





**Lower Wisconsin
State Riverway Board**

Mark E. Cupp

Executive Director

202 N. Wisconsin Avenue • P.O. Box 187 • Muscoda, WI 53573
(608) 739-3188 • 1-800-221-3792 • FAX (608) 739-4263

Email to: mark.cupp@wisconsin.gov

Web site: www.lwr.state.wi.us

March 12
2007



**Lower Wisconsin
State Riverway Board**

202 N. Wisconsin Avenue • P.O. Box 187 • Muscoda, WI 53573
(608) 739-3188 • 1-800-221-3792 • FAX (608) 739-4263
Email to: mark.cupp@wisconsin.gov
Web site: www.lwr.state.wi.us

TO: State Representative Scott Gunderson, Chair
Assembly Natural Resources Committee

FROM: Mark E. Cupp, Executive Director
Lower Wisconsin State Riverway Board

RE: Noise regulation of watercraft
Clearinghouse Rule 06-039

DATE: March 12, 2007

At the February 28th hearing before the Assembly Natural Resources Committee regarding Clearinghouse Rule 06-039, noise regulation of watercraft, the question of number of citizen contacts regarding the noise issue was raised. During my testimony, you may recall that I felt the number of citizen complaints suggested by the Department of Natural Resources was understated. Attached is a packet of information containing correspondence on the issue and a compilation of references to the noise issue in the minutes of Riverway Board meetings from July of 2004 to January of 2007.

If you have any questions or comments regarding this or any other Riverway related matter, please feel free to contact me at (608) 739-3188 or 1-800-221-3792 or by e-mail at mark.cupp@wisconsin.gov. As always, I will be happy to assist in whatever manner possible. Additional information regarding the Riverway project may be found at the board's website: www.lwr.state.wi.us.

Thank you for your time and consideration.

Cc: State Senator Mark Miller
State Senator Dale Schultz
State Representative Spencer Black
LWSRB members

**Compilation of References to Noise Issues from
Minutes of Lower Wisconsin State Riverway Board meetings
July of 2004 to January of 2007**

July 8, 2004

Agenda Item:

Executive Director's report

-Complaints (trash and noise)

Minutes:

During the public comment session, Timm Zumm-Spring Green showed photographs of a group he termed the "extreme partiers". Zumm complimented the board and staff for the amount of work they do with limited resources. He said FLOW would like to see discussions initiated on a number of important items affecting the river such as excessive emissions of noise, light and chemicals. Zumm described a problem with an airboat operating on the upper segment of the river. He said many neighbors are upset with the noise of the airboat. He then showed a video of the airboat operating on the river. Zumm said, when the operators is wearing ear protection, you know the boat is loud. Cupp asked Beneker and Staff if they could recall any discussions about noise pollution during the Citizens Advisory Committee deliberations in the 1980's. Beneker said the matter was discussed but no definitive action was taken. Staff said the number of airboats has gone down since the 1970's when they appeared to be in vogue for a while. Staff said he has heard a number of people mention the new airboat in the past several weeks. Zumm suggested changes should be made to the statutes to address the noise problem. Staff noted enforcement can be a challenge.

August 12, 2004

Agenda Item:

Executive Director's report

-Noise complaints regarding airboat

Minutes:

The Executive Director's report was presented by Cupp who reviewed the materials in the board members' packets including activities/correspondence, river flow chart and articles of interest. Cupp noted a number of complaints had been received regarding noise associated with airboats operating on the river.

September 9, 2004

Minutes:

The Executive Committee report was presented by Chairman Staff who reviewed correspondence. Staff noted an electronic message had been received from Steve Winters expressing concern about airboat use and noise on the Riverway.

The DNR report was presented by Conservation Warden David Youngquist who gave a presentation regarding enforcement efforts on the upper segment of the Riverway. Cupp asked Youngquist about noise complaints regarding airboats. Youngquist said there is a new large airboat

operating on the river that is very loud. Youngquist said there is ambiguity in the statutes and administrative code regarding noise limits. He said those conflicts must be resolved before any enforcement action is taken. Linda Roos said noise from fireworks and hovercraft also are problems. Ruth Bender said there have been helicopters flying around the Riverway too. Youngquist said he will keep the board updated on the noise issue as changes occur.

During the public comment session, Jerry Stram and Ruth Bender asked about the scenic byways program. Cupp said it would be a designation similar to the Great River Road and would not result in additional regulation other than limitations on outdoor advertising.

Kolby Hirth said Cupp's image was being used on a website regarding hovercraft use on the Riverway. Hirth said it is inappropriate for Cupp as Executive Director to be supporting hovercraft use or any other similar use. Cupp said he had not authorized use of his image and did not endorse or support hovercraft use on the Riverway and agree it is inappropriate. Cupp asked for more information on the website and said he would follow up to have it deleted as soon as possible.

September 8, 2005

Agenda Item:

DNR Report

-Noise regulation update from Colden/Youngquist

Minutes:

Horn then reviewed regulations regarding noise from motorboats, jet boats, airboats and hovercraft. He said current law allows a maximum of 86 decibels to emanate from motorized watercraft, however the rules for testing and citing violations all refer to an engine's muffler. He said the problem is that airboats and hovercraft create noise from an air propeller. He said a proposal is being developed to create a standard for air propeller noise that is enforceable. Horn said one difficulty is that the current boating law administrator is on active duty in Iraq. Horn said the new rule may create exempted areas to allow for operation of airboats and hovercrafts in certain places.

Greenwood stated that he had conversed with DNR officials about the noise regulation issue and had provided board members with background information on the topic. Greenwood expressed concern regarding the concept of exempted areas and said there should not be exemptions to the noise regulations. He said the matter is especially troubling for Riverway users and property owners. He said the lack of noise is an important aspect of the Riverway experience. Greenwood said he is not looking to exclude airboats and hovercraft from the Riverway but wants the noise regulation to apply to all watercraft and be enforced equally among all watercraft by wardens.

Leys said public pressure would be necessary to assure regulations to quiet the machines were adopted. He suggested the matter be placed on the board's agenda again next month. Lundberg said a policy regarding noise regulations could be developed for consideration by the board. Zumm suggested light pollution be given equal weight to noise pollution. Horn noted the LWSRB would be invited to provide input on future noise regulations.

October 13, 2005

Agenda Item:

Executive Committee report

-Noise regulations discussion

Minutes:

The issue of noise regulation was discussed. Lundberg noted the matter had been discussed at the September meeting and had been placed on the agenda for the October meeting. Cupp said he was unsure which direction the board wished to take. He then reviewed different procedures used by the board in the past including policies, resolutions or letters. Cupp provided examples of each. He said that a letter to Department of Natural Resources (DNR) officials seemed most appropriate at this time. Lundberg concurred. Greenwood said the letter should be sent to Steve Colden, DNR Riverway Manager, and Bill Engfer, DNR Acting Boating Law Administrator. Lundberg said it was important to assure the board didn't overstep its authority but agreed it was important to make the board's concerns known to the department.

Leys said he was on the river two days earlier and said it would have been a different experience if there had been airboats on the river. He said any correspondence should include area legislators and the Natural Resources Board members. Greenwood said the letter should emphasize that the regulations should apply equally to all watercraft all over the state and that there should not be areas exempted because of alleged "traditional" use. Moore said the letter should reference the inconsistency between the Riverway objectives and creating an "exempt" area for airboats/hovercraft. Greenwood expressed concern that the Mississippi River and lower Wisconsin River could become a Mecca for airboat/hovercraft users if the rivers were designated as "exempt" areas or identified as places of "traditional" use while use of the watercraft would be prohibited everywhere else. Cupp said it was important to note that the intent is not to outlaw airboats or hovercraft on the Riverway but rather to assure that all motorized watercraft comply with the noise regulations. Lundberg said enforcement of the regulations will be a key. Greenwood said there may be other impacts, such as to wildlife and habitat, which should be researched by the DNR. Cupp said he would provide a draft letter to the board prior to the November meeting.

November 10, 2005

Agenda Item:

Executive Committee report

-Noise regulations letter

Minutes:

The Executive Committee report was presented by Chairman Lundberg who reviewed correspondence. Lundberg said the draft of a letter to Steve Colden, Department of Natural Resources (DNR) Riverway Manager, regarding noise regulation of motorized watercraft had been distributed to board members previously. He asked for comments. Greenwood said it was well written and adequately expressed the board's position. A motion to send the letter to Colden was made by Ritchie Brown, seconded by Greenwood. **MOTION CARRIED.**

December 8, 2005

Agenda Item:

Executive Committee report

-Noise regulations letter

Minutes:

Lundberg said correspondence had been received from Steve Winters of Reedsburg regarding noise regulation on the river. Greenwood noted that some of the statements in the Winters letter misrepresent his personal involvement in the issue, including statements attributed to incorrect DNR official(s). Cupp said the matter will be considered by the Natural Resources Board at their January 25th meeting. He said Mr. Winters had suggested a member from LWSRB be present. Lundberg said it would be a good idea for Cupp and, if possible, Greenwood, to represent the board's position as stated in previous correspondence to the DNR; namely, that there should be uniform regulation of noise throughout the state (no exceptions for certain waterways) and unilateral administration of the regulations to all watercraft. A motion directing Cupp to attend and authorizing Greenwood to join him was made by Ron Leys, seconded by Nice. **MOTION CARRIED.**

January 12, 2006

Minutes:

The Executive Committee report was presented by Chairman Lundberg who noted there was no new correspondence to report. Lundberg said the board had conducted a special meeting to review the LWSRB strategic plan and asked Cupp to review the remainder of the process. Cupp said the revisions proposed by LWSRB members would be incorporated into the plan. The revised plan would be distributed to members prior to the next meeting for review. Final action on the revisions would be expected at the February 9th board meeting. Lundberg then asked for an update on the noise regulation issue. Cupp said he and Greenwood would attend the January 25th Natural Resources Board meeting to present LWSRB concerns on noise regulation in the Riverway. He said comments would focus on the correspondence previously sent to DNR officials requesting uniform and unilateral enforcement of noise regulations.

February 9, 2006

Agenda Item:

Operations Committee report

-Other business

=Noise regulations update

Minutes:

Noise regulation on the Riverway was discussed. Cupp noted he and Greenwood had attended the January 25th Natural Resources Board meeting, pursuant to the LWSRB directive. Greenwood noted several others were in attendance including Timm Zumm of the Friends of the Lower Wisconsin (FLOW), Steve Winters of Reedsburg, George Meyer of the Wisconsin Wildlife Federation. He said the testimony from all was in favor of uniform and unilateral enforcement of noise regulations and also indicated support for providing DNR wardens with the tools necessary to enforce the regulations. He said the key statement from DNR staff was that there would not be any exempt areas, which means the Riverway won't be excluded from the regulations. Greenwood said the board still needs to follow the issue and remain vigilant but said the admission that there won't be exempt areas was an important

development. Cupp said he provided the LWSRB with his written comments as well as the text of his verbal remarks.

Leys thanked Greenwood and Cupp for raising the issue. Youngquist noted the noise regulations are difficult to enforce because of inadequate testing procedures. He said the procedures need to be in line before one goes to court with a citation. Lundberg noted problems with noisy watercraft are spreading all around the state. Madison asked if new administrative rules will be required. Greenwood said the DNR claims the existing rules apply only to muffler noise and not to propeller noise so a rule change may be required but added that DNR legal staff said the process was underway and could be to the Natural Resource Board within 3 months. Zumm noted it was important that folks realized the effort is to enforce the 86 db limit and is not intended to ban any specific type of watercraft.

April 13, 2006

Minutes:

Cupp said he was contacted by Kevin Isenring of Mazomanie regarding noise regulations. Isenring told Cupp he had heard that the LWSRB was trying to outlaw airboats on the river. Cupp explained that the Department of Natural Resources (DNR) regulates airboats but that the board had recommended enforcement of the 86 decibel limit currently on the books. He said Isenring felt the board was discriminating against airboats and hovercraft. At Isenring's request, Cupp sent him the board meeting minutes for the past twelve months.

May 11, 2006

Agenda Item:

Executive Committee report

-Noise regulations

Minutes:

A Department of Natural Resources (DNR) proposal to revise an existing administrative rule regarding regulation of noise from watercraft was discussed. Don Greenwood noted changes are proposed to Chapter NR 5, Wisconsin Administrative Code, with a hearing to be held in Prairie du Chien on May 24th. Greenwood said the proposal would utilize the J1970 testing method to measure decibels for airboats and hovercraft at a minimum distance of 300 feet. He said all other craft are measured at 50 feet. Greenwood said it appears that the 300 foot rule was developed due to safety concerns for conservation wardens enforcing the regulation, although he has not been successful in discussing the rationale for 300 feet with DNR officials. Greenwood said the 300 foot rule creates an exemption, or special class of watercraft, for airboats and hovercraft. He noted there is a significant decibel level drop-off from 50 feet to 300 feet. Greenwood said the 300 foot rule will limit a warden's ability to enforce the regulation on most rivers, including much of the Wisconsin River. He said the J1970 test is a shoreline or land based test. Greenwood suggested exemptions could be created for law enforcement or rescue boats but felt the 300 foot rule would be a bad idea and is excessive.

Ron Leys noted large boats can't use the Wisconsin River but airboats and hovercraft can and said there is a need to protect the Wisconsin River. He asked if the concept of excluding certain "traditional" areas remained in the rule proposal. Greenwood said it had been dropped. Madison asked about the J1970 testing procedure. Greenwood described the various testing procedures, including the J34 test,

J2005 test and J1970 test. He said the information was from the Society of Automotive Engineers. Madison said the board may wish to advocate a change from 300 feet to 50 feet. Greenwood suggested a 50 foot starting point with some discretion for wardens. A member of the public, Timm Zumm of Spring Green, noted the personal watercraft are required to maintain a 100 feet berth from other watercraft but other motor boat operators are simply required to avoid creation of a dangerous wake. Zumm described head gear used for hearing protection that use 85 db as a threshold. Leys noted that the airboats are loud as evidenced by the fact the operators and passengers wear hearing protection.

Cupp reviewed the DNR's statutory authority to regulate noise of watercraft and reviewed the existing administrative rule as well as the language of the proposed rule revision. He noted the board consistently has stated that the intent is not to prohibit airboats or hovercrafts from using the river. He said the board simply has endorsed regulation of the 86 db limit for all watercraft. Cupp then said he felt the cover memorandum presented to the Natural Resources Board in March was in error when it suggested that the user conflict between airboats/hovercraft and canoeists were because canoeists were venturing into areas that formerly were only the domain of airboat or hovercraft enthusiasts. Cupp said his experience on the river is different from that portrayed by the internal DNR memo.

Madison asked if it was possible to muffle the sound of the propeller. Dorscheid asked if it was possible to reduce the RPMs to reduce noise. Greenwood said there are retrofit kits available that reduce noise through a variety of means. Madison noted the "cigar boats" that operate on Lake Wisconsin are extremely loud as well.

Cupp said he was contacted by Kevin Isenring of Mazomanie. Mr. Isenring is an airboat operator. Isenring was unable to attend the LWSRB meeting but asked Cupp to forward his comments to the board. Isenring felt the board was discriminating against airboats and hovercraft and was ignoring other sources of noise such as helicopters, float planes that land on the river, lawn mowers, fireworks, gun clubs, etc. Cupp said he attempted to explain to Mr. Isenring that the board was not trying "outlaw" airboats on the river. Cupp said he told Mr. Isenring that the DNR regulates airboats but that the board had recommended enforcement of the 86 decibel limit currently on the books. Cupp said the board has a role to play by offering an opinion to DNR, just as a private citizen does.

Madison then made a motion, seconded by Moore, directing Cupp and Greenwood to attend the May 24th public hearing in Prairie du Chien and to raise the board's concerns with the proposed rule revision, as written with the 300 foot rule in place, and also raising questions about the language of the internal DNR cover memorandum to Natural Resources Board members. **MOTION CARRIED.**

June 8, 2006

Agenda Item:

Executive Committee report

-Noise regulations update

Minutes:

The issue of noise regulation of watercraft on state waters, including the Riverway, was discussed. Greenwood said he and Cupp had attended a public hearing conducted by the Department of Natural Resources (DNR) in Prairie du Chien on May 24, 2006. Greenwood said testimony was provided regarding the proposed revision to Chapter NR 5, Wisconsin Administrative Code. The proposed rule revision would require testing of airboats and hovercraft to take place at a minimum of 300 feet away. Greenwood said the LWSRB testimony clearly indicated that the board did not wish to create a ban for

any specific type of watercraft but, rather, encourage equitable treatment of all watercraft in regard to enforcement of the 86 db limit. Greenwood said the testimony also encouraged all watercraft to be tested at 50 feet to avoid creation of a double standard or separate class of watercraft. Cupp noted there was a great deal of animosity toward canoeists expressed by airboat and hovercraft operators at the hearing. Leys said his experience has been that user conflicts may be heated for a while but usually fade away.

A member of the public, Ruth Bender-Sauk City, said she supported changes in the law and said the airboats are disruptive and noisy, particularly, when they travel back and forth over the same stretch of river. A member of the public, Dean Faber, said the noise created by airboats, hovercraft and other loud boats compromises the quality of the Riverway experience. He said you often can hear the airboats coming from a long distance away and then can hear the craft for another long period after they have gone by. A member of the public, Timm Zumm-Spring Green, said the Friends of the Lower Wisconsin (FLOW) also support changes in the law that would treat all watercraft the same without a ban on any specific type of craft. Greenwood noted comments would be accepted by DNR officials until June 9th.

July 13, 2006

Agenda Item:

Executive Committee report

-Noise regulations update (tentative)

Minutes:

An update on proposed revision to a Department of Natural Resources (DNR) administrative rule regulating noise from watercraft was discussed. Greenwood said a DNR official had informed him that the revised rule would be submitted to the Natural Resources Board in the next 2-3 months. Members of the public were in attendance who asked to comment on the noise issue.

Harriet Forman, a landowner in the Town of Orion, Richland County, said airboat noise has increased and said the noise is disturbing. She said her house is on the Wisconsin River downstream of the Orion boat landing. She said over the July 4th weekend, a number of airboats were going back and forth and said a large airboat bus holding 12-20 people was operating in the area. She said the large airboat sounded like a train.

Linda Weimer and Jean Lang, also landowners in the Town of Orion, Richland County, related similar concerns about airboat noise and noted their property is near the Forman property. She said that speed and safety are concerns in addition to noise. Lang said she saw four airplanes fly low over the river and they were not nearly as loud as the airboats.

Cupp noted the Natural Resources Board will determine if the rule revision is approved. He said the Legislature also will review the proposed rule revision. Leys suggested the concerned citizens appear at a Natural Resources Board meeting and/or send a letter expressing their views. Greenwood said the matter is progressing through the rule process but that comments would be appropriate. Greenwood noted the LWSRB is not advocating a ban on any type of watercraft but, rather, is encouraging the equitable enforcement of noise regulations for all watercraft so that a double standard is not created. Madison asked if the LWSRB would have a chance to see the revised rule before it goes to the Natural Resources Board. Greenwood said the LWSRB would see the proposal at the same time the general public does and said it is important to monitor the DNR website to learn when the issue may be scheduled for action. Timm Zumm, Co-Chair of the Friends of the Lower Wisconsin (FLOW), said FLOW supports the LWSRB position of equitable enforcement of noise regulations at the 86 db level.

December 14, 2006

Agenda Item:

Executive Committee report

-Correspondence

=Noise regulations

Minutes:

The Executive Committee report was presented by Chairman Lundberg who reviewed correspondence. Lundberg said a memorandum was sent by Cupp to the Natural Resources Board regarding the revised administrative rule on noise regulation of watercraft. Cupp noted the content was approved by the Executive Committee prior to distribution. Don Greenwood noted the Natural Resources Board approved the rule revision on a 4-3 vote. He said concerns were expressed regarding testing procedures and the decibel drop-off from 50 feet to 100 feet. Greenwood said the revised rule is a step in the right direction. He said new tools for testing may be available soon. Greenwood noted the rule was sent to the Legislature for review sometime after the new session begins in 2007.

Leys commended Greenwood and Cupp for their leadership and time spent on the issue. Greenwood noted that a Department of Natural Resources official had told him that the LWSRB involvement in the issue was significant in motivating the department to review the rule and the need for modifications thereof. Lundberg also thanked Greenwood and Cupp for their involvement in the matter. Madison asked where the rule currently was in the process. Cupp said the rule initially is sent from DNR to the Legislature's Joint Committee on the Review of Administrative Rules (JCRAR). Madison said he was concerned about the new technology on the horizon that could require changes in the rule and suggested the rule needs to be flexible to incorporate new testing methods and testing protocols. Cupp noted the LWSRB memorandum to the Natural Resources Board requested that a report be provided on the effectiveness of the new rule after two years and further requested that the DNR monitor developments with new technology and the possible application to noise regulation of watercraft in Wisconsin. Cupp noted it is probable that a legislative hearing will be held on the matter. Greenwood noted he had shared information with DNR regarding the new devices that soon will be on the market. Greg Greenheck said the development of new noise regulations for snowmobiles took ten years.

January 11, 2007

Minutes:

During the public comment session, Kevin Isenring of Sauk City asked about the number of airboats operating on the river that would be affected by the proposed new noise regulations. Cupp said he was aware of two airboat operators that advertised tours and had heard there was another airboat operator on the west end but emphasized he had no firm numbers. Mr. Isenring asked if Cupp would get those numbers. Cupp said the information would be available from DNR and said Mr. Isenring should contact the DNR regarding the request. Mr. Isenring asked if the board would support regulation of other noise sources. Cupp said the board supported uniform application of the noise regulations to all motorized watercraft in the Riverway. Mr. Isenring asked if the board has solicited comments from airboat operators prior to taking a position. Cupp said the rule revision was a DNR process, not an LWSRB process. Cupp said the board had participated in the public hearing process as an advisory agency. Mr. Isenring said the board also should be concerned about other noise sources such as low flying airplanes, hunting, gun clubs, boom boxes, etc.



WISCONSIN STATE LEGISLATURE



March 15, 2007

Scott Hassett, Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
Inter-Departmental
GEF-2, AD/5

Dear Secretary Hassett,

On March 15, 2007 the Assembly Natural Resources Committee adopted the following motion with respect to Clearinghouse Rule 06-039, relating to sound testing methods for airboats:

MOVED: that the Assembly Committee on Natural Resources, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Natural Resources to consider modifications to Clearinghouse Rule 06-039, relating to sound testing methods for boats, to create an exemption from the statutory noise limits for air boats when the air boats are used by trappers while engaged in trapping during the trapping season.

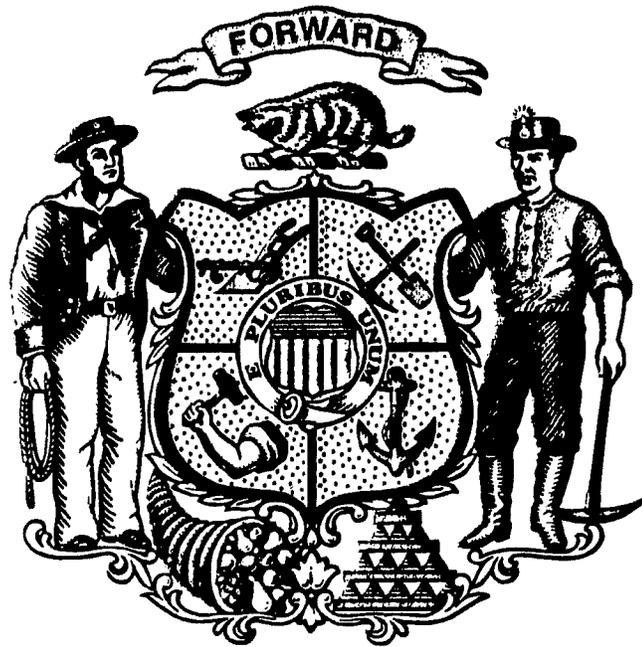
This motion was adopted on a vote of Ayes, 13; Noes, 0.

If the Department of Natural Resources does not agree to consider modifications to Clearinghouse Rule 06-039, in a letter to the chair of the Assembly Committee on Natural Resources, or fails to respond in writing to this request for modification, by 5:00 p.m., March 19, 2007, the Assembly Committee on Natural Resources objects to Clearinghouse Rule 06-039, pursuant to s. 227.19 (4) (d) 6., Stats., on the grounds that the proposed rule is arbitrary and capricious, and imposes an undue hardship.

Thank you for your consideration of this recommendation.

Sincerely,

Representative Scott Gunderson
83rd District
Wisconsin State Assembly





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 16, 2007

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

Re: Clearinghouse Rule No. 06-039
Sound testing methods for airboats

Dear Representative Gunderson:

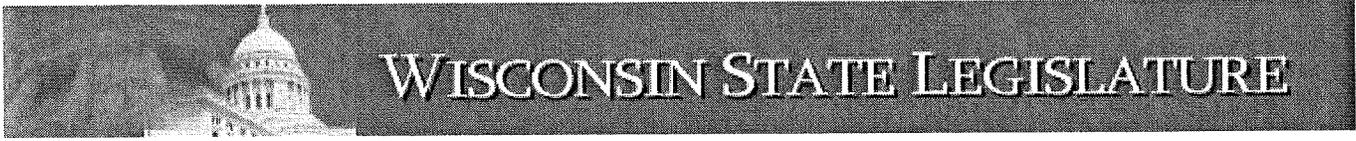
In response to your letter of March 15, 2007, the Department of Natural Resources agrees to consider modifications to Clearinghouse Rule No. 06-039 relating to sound testing methods for airboats.

As required by s. 227.19(5)(b), Stats., the Department will notify your Committee when a decision has been made on the requested modifications.

Sincerely,

Scott Hassett
Secretary

cc: Sen. M. Miller
Rep. L. Nerison
Bill Engfer - LE/5
Roy Zellmer - LE/5
Tom Van Haren - LE/5
Mike Lutz - LS/5
Carol Turner - LS/5





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary

101 S. Webster St.
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Madison, Wisconsin 53707-7921
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October 1, 2007

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

Honorable Mark Miller, Chair
Senate Committee on Environment and Natural Resources
Room 409 South
State Capitol

Re: Clearinghouse Rule No. 06-039
Sound testing methods for airboats

Gentlemen:

On March 15, 2007, the Assembly Committee on Natural Resources requested the Department of Natural Resources to modify Clearinghouse Rule No. 06-039 relating to sound testing methods for airboats. At its September 26, 2007 meeting, the Natural Resources Board modified by rule by creating s. NR 5.125(6)(c) which reads:

NR 5.125(6)(c) A boat being used by a trapper for the sole purpose of trapping from November 1 thru March 31. This paragraph does not apply after March 31, 2009.

Attached is a revised copy of Natural Resources Board Order No. LE-23-06 (Clearinghouse Rule 06-039).

Under s. 227.19(4)(b)2., Stats., the Department of Natural Resources refers this action to your Committees for an additional 10 working day review. If the Department does not hear from you within 10 working days of the receipt of this notification, the Department will continue processing this rule.

Sincerely,



Matthew J. Frank
Secretary

cc: Rep. L. Nerison
Bill Engfer - LEL/5
Roy Zellmer - LE/5
Tom Van Haren - LE/5
Mike Lutz - LS/5
Carol Turner - LS/5

Attach.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create s. NR 5.125 (1) (d), (e), and (6) relating to sound testing methods for boats.

LE-23-06

Analysis Prepared by Department of Natural Resources

1. Statutes interpreted.

Section 30.62(2)(b), (d)2. and 3., and (h), Stats.

2. Statutory authority.

Section 30.62(2)(d)2. and (h), Stats.

3. Explanation of agency authority to promulgate the proposed rules under the statutory authority.

The department is required to enforce the noise statutes found under s. 30.62(2)(b), Stats., but needs a new testing procedure that will allow officers to test boats, such as airboats, which it currently does not have the ability to do in a safer manner under current testing methods. The proposed rule creates a new noise testing method for testing all noise related to boat operation and which the department is authorized to create under s. 30.62(2)(d)2. and 3., Stats. Under s. 30.62(2)(h), Stats., the department has the authority to exempt certain types of motorboats from the noise level requirements for specific uses and specific areas of operation.

4. Related statute or rule.

Section 30.62(2)(b), Stats., and s. NR 5.125, Wisconsin Administrative Code.

5. Plain language analysis of the proposed rule.

The proposed rule will allow the department to safely test airboats and other similar craft to assure that they do not exceed the maximum noise level allowed for operation. This rule simply modifies the procedures used in conducting the J1970 and J34a tests established in Society of Automotive Engineers (SAE). The Department is recommending that when an officer requests a boat operator to conduct a boat noise test under the J1970 shoreline test or the J34a pass-by test method, it will be done at a minimum distance of 100 feet. If the J34a pass-by test is used it will be correlated back to 50 feet requirement of the J34a test by adding 2 dB's to the decibel reading obtained from the test. This rule also creates certain exemptions from the noise level requirements of s. 30.62(2)(b), Stats., to allow the use of boats, such as airboats, hover craft or similar craft used during search and rescue operations and when used by agents of federal, state or municipal governments in the performance of their official duties of enforcement, search and rescue, fire fighting or research programs. A third exemption has been added to this rule order at the request of Assembly Natural Resources Committee. This exemption will sunset on March 31, 2009, and apply only during the period of November 1 through March 31 each year for persons actively engaged in lawful trapping activities.

6. Summary of and preliminary comparison with existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

There are no existing or proposed federal regulations that create a test specific to testing airboat type craft.

7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois, and Michigan)

Of the four states:

Minnesota: Sound laws do apply to airboats, but they are not aware of anyone enforcing the law against airboat prop noise.

Michigan: Does not measure prop noise, but they do require that airboats stay a distance away from residences and that from 11 PM to 6 AM if operating within 400' of a residence that they operate at the minimum speed necessary to maintain forward motion.

Iowa: Does not enforce prop noise as their law was not intended for prop noise.

Illinois: Utilizes the J1970 sound test, but they do not clarify whether they test airboats.

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how many related findings support the regulatory approach chosen for the proposed rule.

Airboats and other air propulsion driven boats are commonly used on shallow rivers and on some lakes within Wisconsin. These boats create movement by either using forced air to push the boat forward or by lifting the boat up with air pressure and then moving it forward with forced air. In looking at the safety concerns when testing these types of craft a method is needed to address the safety concerns of operating these craft at higher rates of speed to test them without creating safety concerns for the public, the boat operator or the testing officer. By using currently approved testing methodology and taking into consideration the safety distances needed, the department believes that the proposed rule will address the needs of the department in testing these boats with a safe and technically sound testing process.

9. Analysis and supporting documentation that the agency used in support of the agency's determination of the rules effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report.

Wisconsin law exempts a commercial or nonrecreational fishing boat, ferry, or other vessel engaged in interstate or international commerce, other than a tugboat from the maximum noise level requirement. We believe that there may be some airboats that are used for commercial trapping which do not involve interstate or international commerce. These boats would most likely be illegal to operate if tested under the proposed rule, unless they had an exemption.

10. Effects on small business, including how the rule will be enforced.

The rule is anticipated to affect airboats that are used for trapping fur bearing animals. The noise level test created under this rule order as well as existing noise level maximum limits would apply to such airboats that operate in the waters of this state. It is unlikely that most such airboats will be able to comply with the current maximum noise level limit of 86 decibels established by state statute, regardless of the testing method used. This rule will not affect those that only operate on the frozen waters of the state as there is not statutory authority to apply the sound law to the boats when they are operating solely on the ice.

11. Agency contact person: William Engfer – LE/5, 101 S. Webster St., PO BOX 7921, Madison, WI 53707-7921, Phone: (608) 266-0859, Email: William.engfer@dnr.state.wi.us

SECTION 1. NR 5.125(1)(d) is created to read:

NR 5.125(1)(d) When an officer requests a boat operator to conduct a boat noise test under the J1970 or J34a test method, the test shall be conducted at a minimum of 100 feet from the boat being tested.

SECTION 2. NR 5.125(1)(e) and note are created to read:

NR 5.125(1)(e) When the J34a test is used at a distance of 100 feet, the officer will add 2 decibels (dB) to the test results.

Note: Copies of the Society of Automotive Engineers Recommended Practice Report J34a, J1970 and J2005 entitled "Exterior Sound Level Measurement Procedure for Pleasure Motorboats" may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, Pennsylvania 15096.

SECTION 3. NR 5.125(6) and note are created to read:

NR 5.125(6) Exemptions. Any boat being operated for one of the following purposes is exempt from the noise level requirements established for motorboats under s. 30.62(2)(b), Stats.

(a) A boat being used by an authorized agent of the federal, state or municipal government to carry out his or her official duty of enforcement, search and rescue, fire fighting or research programs.

(b) A boat being used for search and rescue or training for search and rescue operations at the request of a governmental agency, while being used under the direction or control of a governmental agency.

(c) A boat being used by a trapper for the sole purpose of trapping from November 1 thru March 31. This paragraph does not apply after March 31, 2009.

Note: Section 30.62(2)(b), Stats., states that no person may operate a motorboat powered by an engine on the waters of this state in such a manner as to exceed a noise level of 86 measured on an "A" weighted decibel scale.

SECTION 4. 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 5. Board adoption. The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 6, 2006 and September 26, 2007.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)