

# 09hr\_CRule\_08-063\_AC-NR\_pt01



Details:

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Assembly

(Assembly, Senate or Joint)

### Committee on ... Natural Resources (AC-NR)

#### 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**

\* Contents organized for archiving by: Mike Barman (LRB) (Sept/2010)



# JIM OTT

STATE REPRESENTATIVE • 23<sup>rd</sup> ASSEMBLY DISTRICT

(608) 266-0486  
District: (262) 240-0808  
Toll-Free: (888) 534-0023  
Rep.Ottj@legis.wi.gov

P.O. Box 8953  
Madison, WI 53708-8953

February 17, 2009

Representative Spencer Black, Chairman  
Assembly Committee on Natural Resources  
State Capitol, Room 210N  
Madison, WI HAND DELIVERED

Dear Representative Black,

Thank you for your letter of February 17<sup>th</sup>.

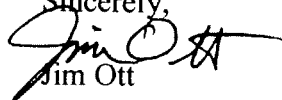
While I appreciate your concern for saving the taxpayers' money by cutting down on the number of hearings before the Natural Resources Committee, it appears any savings would be insignificant since legislative staff are at work during normal business hours and promulgating rules is part of agency staff's responsibilities. Additionally, it is our responsibility as Legislators to oversee the operation of state agencies.

As for the specific rules I requested a hearing on, I do have a number of concerns. Clearinghouse Rule 08-063 would appear to include a substantial increase in spending with no indication of where these funds would come from and Clearinghouse Rule 08-060 includes a lengthy list of penalties for successive violations by commercial fisherman, but it does not appear that these repeated violations would at any point result in suspension or termination of fishing privileges.

Perhaps other committee members also have questions that can only be answered by DNR personnel who will be implementing and enforcing the rules.

In the past it was the policy of the Assembly Natural Resources Committee to hold hearings on all administrative rules from the DNR. You were a member of the committee for 14 years and never once did you express any concerns with this policy.

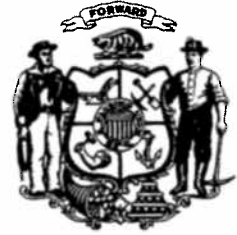
Considering that it our responsibility as Legislators to protect the interest of the citizen of Wisconsin by exercising oversight of state agencies, and considering the tremendous authority wielded by the DNR, I am requesting that you hold public hearings on clearinghouse rules when requested by committee members.

Sincerely,  
  
Jim Ott

CC: Assembly Speaker Sheridan  
Assembly Committee on Natural Resources



# State Representative Spencer Black



State Capitol  
P.O. Box 8952  
Madison, WI 53708  
rep.black@legis.wi.gov  
(608) 266-7521

March 3, 2009

Representative Jim Ott  
State Capitol, 317 North  
Madison, WI 53702

Dear Rep. Ott:

Thank you for your letter of February 17, 2009.

In that letter, you requested hearings on two administrative rules. I have given thoughtful and extensive consideration to your requests. Unfortunately, I have to find that your requests are without merit.

You requested a hearing on CR 08-063. The rule implements s 23.22(2)(c), Stats. which provides cost share grants for control of aquatic invasive species (AIS).

Five public hearings have already been held on the rule. 

In your letter requesting a hearing, you write "CR 08-063 would appear to include a substantial increase in spending with no indication of where these funds would come from." That is the only substantive reason you provide for a hearing on this rule.

The reason that I find your request without merit is that the rule is before us because the last biennial budget provided a base annual appropriation for AIS grants of \$4.3 million. The rule is in response to that funding. Asking where the funding will come from as a possible objection to this rule makes no sense since the reason for the rule is that the Legislature provided funding.

You also requested a hearing on CR 08-060. This rule concerns wholesale fish dealing and commercial fishing in outlying waters.

Seven public hearings have already been held on the rule.

In your letter requesting a hearing, you write "CR 08-060 includes a lengthy list of penalties for successive violations by commercial fishermen, but it



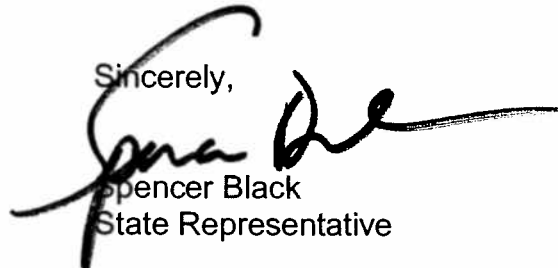
does not appear that these repeated violations would at any point result in suspension or termination of fishing privileges." That is the only substantive reason you provide for a hearing on this rule.

The reason that I find your request to be without merit is that only the circuit courts can impose penalties (found in the statutes) in the form of fines or forfeitures, and only the circuit courts can suspend or revoke a commercial fishing license during its term. DNR does not have the statutory authority to set penalties by rule or to administratively suspend or revoke a commercial fishing license during its term.

Hearings on rules result in costs to taxpayers because of staff time, both legislative and agency, as well as copying and other costs. In a time of significant fiscal restraints, I believe it necessary to be judicious in our expenditures.

As I had previously written to you, rules that are referred to the Legislature have already undergone an extensive public hearing process. I will schedule an additional legislative hearing when requested and when the request has merit, but I will not do so when a meritorious reason for a hearing has not been presented.

Sincerely,

A handwritten signature in black ink, appearing to read "Spencer Black", with a long horizontal flourish extending to the right.

Spencer Black  
State Representative

CC: Members of the Assembly Natural Resources Committee



## REPORT TO LEGISLATURE

NR 190, 191 and 195, Wis. Adm. Code  
Lake and river protection grants  
NR 198 Wis. Adm. Code,  
Aquatic invasive species control grants

Board Order No. WT-09-08  
Clearinghouse Rule No. 08-063

### Basis and Purpose of the Proposed Rules

This proposed rule implements enabling legislation and facilitates investing a \$2.8 million increase in the annual funding allocation for the control of aquatic invasive species (AIS). The management of AIS will be improved statewide through this revision by allowing larger, more efficient prevention and control projects, lowering local costs, and providing a greater diversity of sponsors and eligible activities.

### Summary of the rules

Proposed revisions to all grants, chs. NR 190, 191, 195 and 198 will:

1. Increase the value of hourly donated, non-professional labor that can be used as local match from \$8 to \$12. This will encourage more volunteer citizen participation in projects, make projects easier for sponsors to afford and allow more efficient use of local cash in projects.
2. Require that application materials not part of a required form be submitted in an electronic format. This will facilitate and speed the grant application review process.
3. Require grant applicants to provide specific information to the department about the location and extent of public access to the waterbody that is the focus of the project. This will help the department identify, track, manage and protect the public's access to state waters.

The objectives of the proposed rule changes specific to ch. NR 198 AIS Control Grants are to:

4. Implement changes in enabling legislation that increase the maximum state cost share rate from 50% to 75% and eliminate priority for local government sponsored projects. This will reduce local project costs and allow broader range of project sponsors.
5. Increase the maximum amount of the state funds available for Education, Planning and Prevention projects from \$75,000 to \$150,000; Established Population Control projects from \$75,000 to \$200,000 and Early Detection and Response projects from \$10,000 to \$20,000. This will allow for longer and geographically broader projects which will be more effective and efficient to administer.
6. Allow for a cash advance option for early detection and response projects. This will allow projects to begin immediately while the required local share is being raised.
7. Expand grant sponsorship to include, on a limited basis, universities, colleges and technical schools, hydroelectric corporations and other branches of state and federal government that manage natural resources. This will allow projects to be developed on a statewide scale with

statewide benefits and efficiencies. It will allow managers to access funding for projects on state and federal properties without the burden of securing the support of a third-party sponsor.

8. Broaden the eligibility criteria for nonprofit organizations to include more eligible sponsors.
9. Create a new subchapter (subch. V) that allows the department to disburse funds to sponsors who are successfully and ecologically containing established infestations under a department-approved plan to help offset the costs of permit application fees. This provides support to local organizations that are not otherwise using the grant program to manage and contain an AIS such as Eurasian watermilfoil.
10. Create a new subchapter (subch. VI) that allows the department to solicit and fund research and demonstration projects that will advance statewide knowledge and improve aquatic invasive species (AIS) management techniques. Management of AIS is a relatively new and rapidly evolving science. This expansion will help assure the annual investment of \$4.3 million is guided by science.
11. Add priorities and incentives that encourage sponsors to integrate watershed pollution control, habitat protection and restoration efforts into their projects. This will help couple long-term prevention with control, creating projects that are more resilient to AIS.
12. Change wording and language to improve clarity and other housekeeping items.

#### Summary of Public Comments

Overall there was support expressed for Order WT- WT-09-08. None of the 33 public appearances registered in opposition and several lauded the legislature for the increased funding and complimented the Department on the proposed revisions. In addition, 32 sets of written comments were received before the end of the public comment period. Despite the overall support, there were common concerns that a few of the proposals had over expanded the program or lacked adequate detail. These significant comments and the Department's responses are:

**COMMENT:** Increasing the size of grants is needed though concerned that more money overall will be needed. Large caps and increased cost share rates will limit broad distribution of funds. Reduce the maximum grant award (cap) for Education, Planning and Protection (EPP) from \$200,000 to \$100,000. These activities are less expensive compared to control projects. Reasonable caps (unspecified) should be placed on all projects.

**Response:** The overall cap proposed for EPP projects is now \$150,000 instead of \$200,000.

**COMMENT:** A widely shared concern with the Department, federal agencies and the University sponsoring grants because they will increase competition and reduce available funding; its inherently inappropriate; they charge high overhead; other funding is available to these groups and; it will demoralize volunteer-based organizations. While some suggested complete removal others recommended maximum funding levels or specific limitations on the types of projects that they could sponsor.

**Response:** A limit of \$200,000 per year in total for state, federal, university, college, school and hydropower corporate sponsors of Education, Planning and Prevention projects and a \$500,000 per year cap on Research and Demonstration projects was added to the rule. A provision that these sponsors are only eligible for Established Population Control projects where they are the owner of the shore or bed of an infested water body or where a conventional local sponsor can not be found was also added to the rule.



**COMMENT:** The expanded definition of a nonprofit conservation organization is supported but the definition should be broader for organizations with interest in education and support of management but not active in management activities themselves.

Response: The definition was modified to include a broader purpose relating to control or prevention of AIS in the final rule.

**COMMENT:** Providing a higher cost share rate (50% vs 75%) for projects that also address habitat and water quality degradation wrongly implies that AIS infestations are caused by these other human induced problems; not necessary for effective AIS control and; will increase the costs of projects and take money and attention away from dealing directly with AIS. Everyone should receive 75% state cost share for controlling AIS, this requirement creates an additional financial burden.

Response: In the final rule all projects are eligible for the full 75%. It retains the emphasis on making projects that contain these elements a higher priority for funding and clarifies that to receive cost-sharing for these activities they need to be in the approved plan and need to relate to prevention or control of AIS.

**COMMENT:** Oppose creating a cost share incentive (50% vs 75%) for projects that have used a competitive bidding process to select an herbicide applicator. It will open the door to substandard contractors, is a waste of money and a barrier to innovation.

Response: The differential cost share rates were removed from the final rule but replaced with a requirement that sponsors need to demonstrate they sought bids or competitive quotes or took other actions to seek the best price when selecting consultants and services.

**COMMENT:** Agree that "points" should be given for more comprehensive or "wholistic" management approaches but concerned that it will detract from a focus on AIS management; divert money and energy away from controlling AIS; is ambiguously worded and not pertinent to Early Detection and Response or Education, Planning and Prevention projects. Higher priority should be given to non infested lakes and prevention efforts.

Response: The final rule retains the ability to consider these factors in awarding grants but was reworded to make a tighter connection to activities that have a direct impact on AIS management.

**COMMENT:** Research and demonstration projects are needed but we are concerned about costs of diverting funding away from prevention and control projects and the focus of the work. Research should be restricted or biennially capped to assure a balance of funding for other needs. Research should come from other funding sources or be limited or more specifically controlled.

Response: As discussed above the final rule includes a cap of \$500,000 per fiscal year for research and demonstration projects. To assure research is focused and connected to local projects, the rule now states the Department will solicit research needs year-round from sponsors and consult with the Council on Invasives Species bi-annually. The purpose statement has been amended to explicitly include economic and social issues and the subchapter format has been restructured and expanded similar to the other subchapters to improve clarity.

**COMMENT:** Make I-LIDS (a remote video surveillance device) an eligible cost. They are an important and cost-effective supplement to watercraft inspectors and law enforcement and should become an eligible component of the grant program.

Response: An addition was made to the rule that makes the initial installation costs and set up of a video surveillance system and eligible cost if the sponsor is already participating in watercraft inspection effort (Clean Boats, Clean Waters). The annual lease, all operation and maintenance costs will be the sponsor's responsibility for all years after.

#### Modifications Made

All the major modifications to policy made by the Department following the public comment period are detailed above in the response to comments.

Appearances at the Public Hearings

**July 22, 2008 - Eau Claire**

In support:

Roger Kees, 18300 54<sup>th</sup> Ave., Chippewa Falls  
Mary Jo Fleming, 18790 54<sup>th</sup> Ave. Chippewa Falls  
Sarah Braun, S. Cty Hwy K, Fall Creek, WI  
Jo Heuschele, 836 LeRoy Lane, River Falls, WI

In opposition – none

As interest may appear - none

**July 23, 2008 - Spooner**

In support:

Earl Cook, PO Box 62, Springbrook, WI

In opposition – none

As interest may appear - none

No position -

Jim Brakken, 45255 E Cable Lake Rd., Cable, WI  
Fred Blake, N2644 Boot Lake Rd. Sarona, WI  
Gary Klund, Cumberland WI  
Randy Baker, 122 S. Lake Drive, Shell Lake, WI  
Joe Weiss, W5390 Bobcat Rd., Spooner, WI

**July 29, 2008 - Rhinelander**

In support:

Rick Pyle, 1092 Crystal Creek Ln, Three Lakes, WI  
Steve Oestreicher, 8475 N. Oneida Lake Dr., Harshaw, WI  
Maureen Ferry, PO Box 107, Florence, WI

In opposition – none

As interest may appear -

Ted Ritter, 330 Court St., Eagle River, WI  
Chris Wise, 3185 B Hanson Rd. Sayner, WI  
Sheehan Donoghue, PO Box 39, Sayner, WI  
Jeanette & Robert Williams, 8758 S. Wind Pudding Dr., Hazelhurst, WI  
Dave Roberts, 3248 Tuffle Rd. NW, Eagle River, WI

Susan Lloyd, PO Box 71, Sayner, WI  
Chris Roberts, 3248 Tuttle Rd NW, Eagle River, WI  
Wilbur Petroskey, 431 Abner St., Rhinelander, WI

No position –

Radley Z. Watkins, 6654 Sylvan Shore Dr., Hazelhurst WI  
Jan Wise, 3185 B Hanson Rd. Sayner, WI  
Joanne & Gary DeFere, N5505 Bischoff Bay Ln., Shawano, WI  
Cathy Cleland, 4560 Golf Ln., Harshaw, WI  
Peter Lloyd, W5243 Selmer Rd., Tomahawk, WI  
Harry Helwig, 5590 Lake End Rd., Rhinelander, WI

**July 30, 2008 - Oshkosh – No appearances**

**August 5, 2008 – Watertown**

In support:

Bill Lewis, W4087, Cty Hwy C, Montello, WI

In opposition – none

As interest may appear -

Rick Jirsa, 146 E. Milwaukee St., Jefferson, WI  
Jeffrey Thornton, 321 Barney St., Waukesha, WI

No position –

Dee Schriver, N53 W3436, CTy Hwy Q, Okauchee, WI

#### Changes to Rule Analysis and Fiscal Estimate

Minor modifications were made to the Rule Analysis based on the proposed rule modifications. The fiscal effect remains the same. No modifications were made to the Fiscal Estimate.

#### Response to Legislative Council Rules Clearinghouse Report

Comments from the Legislative Council dealt exclusively with form, style, placement, clarity, grammar, punctuation and use of plain language. All the suggestions were incorporated in the final text.

#### Final Regulatory Flexibility Analysis

Small business is not directly affected by the rule because grants are issued only to governmental units or nonprofit organizations. Therefore, under s. 227.114, Stats., a final regulatory flexibility analysis is not required.





## **NOTICE TO PRESIDING OFFICERS OF PROPOSED RULEMAKING**

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

Board Order Number: WT-09-08

Clearinghouse Number: 08-063

Subject of Rules: Lake and River Protection and Aquatic Invasive Species Control Grants.

Date of Transmittal:

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

**Marney Hoefer, Staff Attorney  
DNR Bureau of Legal Services  
LS/8, 101 South Webster**

An electronic copy of the proposed rule submittal may be obtained by contacting Carroll Schaal, WT/4, Natural Resources Bldg., Madison, WI. Ph: 261-6423. Email: [Carroll.Schaal@wi.gov](mailto:Carroll.Schaal@wi.gov)

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

The State of Wisconsin Natural Resources Board adopts an order to **repeal** NR 198.15(2) and 198.42(1)(d) to **renumber** NR 190.05(2) and (3), 190.15(3) to (5), 191.05 (4) to (9), 195.07(2) and (3), 198.12(5) to (10), 198.15(3), 198.23(3) to (8), 198.43(1)(d) to (m) and 198.44(3) to (5); to **amend** NR 190.005(1)(e)2., 190.15(2)(g), 191.05(3)(g), 191.06(1)(h)2., 195.10(1)(f)2., ch. NR 198 (title), 198.10, 198.11, 198.13(1), 198.13(3), 198.14(1)(intro.), (e), and (f)2., 198.14(2)(d), 198.15(1)(intro.), 198.21, 198.22(1) (a), 198.23(1) (note), (2) (a) and (f), NR 198 subch. III (title), 198.30, 198.31, 198.32(intro.), (1) (intro.), (a), (2), (5) and (6), 198.33(1) (note), (4) and (5), NR 198 subch. IV (title), 198.41, 198.42(1)(a) and (c), 198.43(1)(c) and 198.44(1)(note), (2)(g) and (h); to **repeal and recreate** NR 198.15(1)(a) to (d), and 198.33(2)(c); and to **create** NR 190.05(2), 190.15(3), 191.05(4), 195.07(2), 198.12(5), (7) and (11), 198.14(1)(h) and (note), 198.15(1)(e) and (2)(j), 198.23(3), 198.33(6), 198.43(1)(d), 198.44(2)(k), 198.44(3) and NR 198 subchs. V and VI relating to aquatic invasive species prevention and control grants.

**WT-09-08**

Analysis Prepared by the Department of Natural Resources

**Statutes interpreted:** ss. 23.22(2) (c), 23.24, 281.68, 281.69 and 281.70, Stats.

**Statutory authority:** ss. 23.22(2) (c), 227.11(2) (a), 281.68, 281.69, and 281.70, Stats.

**Explanation of agency authority:** This order implements s. 23.22(2) (c), Stats., which directs the department to promulgate rules to establish a procedure to award cost-sharing grants to control invasive species. The rules must establish the criteria for determining eligible projects and eligible public and private grant recipients, allow cash and non-cash contributions as eligible costs share and consider the recommendations of the Invasive Species Council. Amendments under 2007 Wisconsin Act 20 increased the state cost-share rate from 50% to 75% and eliminated a priority for grants awarded to units of local government. The Act also increased the annual appropriation from \$1.5 million in FY06, to \$3.3 million in FY07 to \$4.3 million in FY08 and each fiscal year thereafter. Sections 281.68, 281.69 and 281.70, Stats., direct the department to promulgate rules for lake management planning, lake protection and classification and river protection grants.

**Related statute or rule:** The proposed rule's general provisions and structure are similar to the department's lake and river grant programs rules, chs. NR 190, 191, and 195, which is intended to provide consistency in grant administration. This rule proposal makes minor changes to these programs for consistency. This proposed rule will also assist the department in achieving the statutory goals of s. 23.24, Stats., which designates invasive plants and provides the authority to regulate how these plants are controlled.

**Plain language analysis:** Proposed revisions to chs. NR 190, 191, 195 and 198 will:

1. Increase the value of hourly donated, non-professional labor that can be used as local match from \$8 to \$12.
2. Require that application materials not part of a required form be submitted in an electronic format.
3. Require grant applicants to provide specific information to the department about the location and extent of public access to the waterbody that is the focus of the project.

The objectives of the proposed rule changes to ch. NR 198 are to:

4. Implement changes in enabling legislation that increase the maximum state cost share rate from 50% to 75% and eliminate priority for local government sponsored projects.
5. Increase the maximum amount of the state funds available for projects.
6. Allow for a cash advance for early detection and response projects.
7. Expand sponsorship to include, on a limited basis, universities, colleges and technical schools, hydroelectric corporations and other branches of state and federal government that manage natural resources.
8. Broaden the eligibility criteria for nonprofit organizations to include more eligible sponsors.
9. Create a new subchapter (subch. V) that allows the department to disburse funds to sponsors who are successfully and ecologically containing established infestations under a department-approved plan to help offset the costs of permit application fees.
10. Create a new subchapter (subch. VI) that allows the department to solicit and fund research and demonstration projects that will advance statewide knowledge and improve aquatic invasive species (AIS) management techniques.
11. Add priorities and incentives that encourage sponsors to integrate watershed pollution control, habitat protection and restoration efforts into their projects.
12. Change wording and language to improve clarity and other housekeeping items.

Chapters NR 190, 191 and 195, Wis. Adm. Code, are all related grant programs that have similar general provisions, largely the same set of sponsors and managed by the same staff. For consistency, minor revisions to policies in NR 198 common to these other codes are proposed.

Regarding changes just to NR 198, increasing the cost share rate and maximum amount of a grant award will improve efficiency and allow the scope and scale of the projects to be commensurate with the scale at which aquatic invasive species (AIS) prevention and control issues need to be approached.

Increasing the volunteer labor rate will encourage more voluntary citizen participation in projects, make projects more affordable for sponsors and allow more efficient use of local cash in projects.

Expanding sponsorship to state and federal agencies will allow better AIS control within state and federal properties and other critical situations in the absence of a willing sponsor. The inclusion of universities, colleges and technical schools will increase efficiency for AIS prevention through statewide support to watercraft inspection networks, public education campaigns, volunteer monitors, information management as well as research and demonstration of AIS prevention and control techniques. Broadening the eligibility of nonprofit corporations expands sponsorship to include groups that do not have land trust functions, but do have strong interests in controlling aquatic invasive species.

The addition of incentives and new priorities will encourage the integration of AIS control with other complimentary environmental protection activities and reward those that are managing AIS in an environmentally-sound manner.

The proposed subchapter V allows the department to reimburse community-based project sponsors who control and contain established populations of AIS in an environmentally sound manner according to a department approved plan. Previously, these "maintenance" level activities did not qualify for grants. Under the revision, grant funds will help offset the costs of aquatic plant management permit application fees and the costs of monitoring and reporting compliance.



**Comparison to federal regulations:** Similar programs on the federal level are generally directed at assisting state programs for AIS control. Some habitat restoration grants administered through agencies such as the U.S. Fish and Wildlife Service are available locally and can be used to address AIS issues.

**Comparison with rules in adjacent states:** Minnesota has a small grant program for reimbursing the costs of treatments for Eurasian water milfoil. They also have a program for "high-intensity Eurasian water milfoil technical assistance." Michigan has a small grants program (\$500 to \$2500) for activities very similar to those included in subchapter II. However, neither state has promulgated administrative rules for their programs. Michigan's program is administered through a contract with a non-profit organization. The Illinois Clean Lakes Program reimburses sponsors who have developed an approved lake planning study up to \$10,000 (50% cost-share) for costs associated with control of nuisance aquatic vegetation and/or algae growth. These projects must be justified by an attainment of significant public recreational lake use (e.g., swimming, fishing, boating), and conducted where a watershed management plan to control and reduce incoming pollutants (e.g., sediment, nutrients) is being implemented. Iowa does not list any grant programs or administrative codes that address invasive species on its DNR website.

**Summary of factual data and analytical methods:** None.

**Analysis to determine effect on small business:** None.

**Anticipated costs incurred by private sector:** These rules affect potential sponsors of management activities on the state's lakes, rivers and wetlands. The effects are believed to be positive, by providing state cost-sharing for activities that many local entities are conducting. While the grant program is voluntary, there will be some increased cost to sponsors associated with the development of plans and for monitoring and reporting activities that are required for some projects under subchapters III and IV. However, cost sharing is available for these requirements as well. It is believed that these increased costs will be offset by the financial assistance available through the grants.

**Effect on small business:** Small business is not directly affected by the rule because grants are issued only to governmental units, educational institutions, qualified non-profit organizations and FERC-licensed hydroelectric corporations. Therefore, under s. 227.114, Stats., an initial regulatory flexibility analysis is not required. Environmental consultants and companies involved in nuisance species control should benefit from an increase in project activity resulting from an increase in the supply of money for these kinds of projects.

**Agency contact:**

Carroll Schaal  
Phone: (608) 261-6423  
Email: [carroll.schaal@wisconsin.gov](mailto:carroll.schaal@wisconsin.gov).

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SECTION 1. NR 190.005(1)(e)2. is amended to read:

NR 190.005(1) (e) 2. The maximum value of donated labor requirements is ~~\$8~~ \$12 per hour.

SECTION 2. NR 190.05(2) and (3) are renumbered NR 190.05(3) and (4).

SECTION 3. NR 190.05(2) is created to read:

NR 190.05(2) All required application material that is not included on a department-provided form shall be submitted in an electronic format specified by the department.

SECTION 4. NR 190.15(2) (g) is amended to read:

NR 190.15(2)(g) A description of the existing and proposed availability of public access to, and public use of, the lake or lakes including a map of the project lake identifying boat landings, public parks, platted access sites and road ends or rights of way providing public access to the water.

SECTION 5. NR 190.15(3) to (5) are renumbered (4) to (6).

SECTION 6. NR 190.15(3) is created to read:

NR 190.15(3) All required application material in sub. (2) that is not included on a department-provided form shall be submitted in an electronic format specified by the department.

SECTION 7. NR 191.05(3) (g) is amended to read:

NR 191.05(3)(g) A description of the existing and proposed availability of public access to, and public use of, the lake or lakes including a map of the project lake identifying boat landings, public parks, platted access sites and road ends or rights of way providing public access to the water.

SECTION 8. NR 191.05 (4) to (9) are renumbered (5) to (10).

SECTION 9. NR 191.05(4) is created to read:

NR 191.05 (4) All required application material in sub. (3) that is not included on a department-provided form shall be submitted in an electronic format specified by the department.

SECTION 10. NR 191.06(1) (h) 2. is amended to read:

NR 191.06(1) (h) 2. The maximum value of donated, non-professional, labor shall be ~~\$8~~ \$12 per hour. For counties conducting projects requiring compliance with USDA ~~natural resource conservation service~~ Natural Resources Conservation Service standards, the donated labor rate established for that county by the Farm Service Agency may be used.

SECTION 11. NR 195.07(2) and (3) are renumbered (3) and (4).

SECTION 12. NR 195.07(2) is created to read:

NR 195.07(2) All required application material that is not included on a department-provided form shall be submitted in an electronic format specified by the department.

SECTION 13. NR 195.10(1) (f) 2. is amended to read:

NR 195.10(1) (f) 2. The maximum value of donated, non-professional, labor shall be ~~equal to the prevailing federal minimum wage requirements~~ \$12 per hour.

SECTION 14. Chapter NR 198 (title) is amended to read:

Chapter NR 198  
AQUATIC INVASIVE SPECIES PREVENTION AND CONTROL GRANTS

SECTION 15. NR 198.10 and 198.11 are amended to read:

**NR 198.10 Purpose.** The purpose of this chapter is to establish procedures for awarding cost-sharing grants to public and private entities ~~including local governmental units~~ for the prevention and control of aquatic invasive species as provided for in s. 23.22(2)(c), Stats. Grants made under this ~~program will assist local governments and other interests in efforts to~~ chapter help eligible sponsors prevent and control the spread of aquatic invasive species in the waters of the state. These grants will assist ~~local~~ efforts to provide information and education on the types of existing and potential aquatic

invasive species in Wisconsin, the threats they pose for the state's aquatic resources and the techniques available for their control. These grants will also assist in planning and conducting projects that will prevent the introduction of aquatic invasive species into waters where they currently are not present, controlling and reducing the risk of spread from waters where they are present and restoring native aquatic communities.

**NR 198.11 Applicability and eligible sponsors.** This chapter applies to all counties, cities, towns, villages, tribes, public inland lake protection and rehabilitation districts, and town sanitary districts and other local governmental units as defined in s. 66.0131(1)(a), Stats., qualified lake associations as defined in s. 281.68 (1) (b), Stats., that charge an annual membership fee of not less than \$5 and not more than \$50, qualified school districts as defined in s. 281.68 (3m) (c), Stats., private and public colleges, universities and technical schools, qualified nonprofit ~~conservation~~ organizations as defined in s. 23.0955 (1), Stats., and river management organizations, as defined in s. NR 195.02(2), state and federal natural resource agencies and hydroelectric corporations licensed by the federal energy regulatory commission, applying for financial assistance under s. 23.22(2)(c), Stats., for an aquatic invasive species prevention or control project for any surface waters of the state including lakes, rivers, streams, wetlands and the Great Lakes.

SECTION 16. NR 198.12(5) to (10) are renumbered NR 198.12(6), (8) to (10), (12) and (13) and subs. (9) and (10), as renumbered, are amended to read:

NR 198.12(9) "Pioneer infestation population," means a small ~~population~~ community of aquatic invasive species in the early stages of colonization, or re-colonization, in a particular ~~water body~~ waterbody or portion thereof. For rooted aquatic plants, a pioneer ~~infestation~~ population is a ~~localized bed that~~ population has been present less than 5 years, or is a re-colonization following the completion of an established ~~infestation~~ population control project under subch. IV, and is less than 5 acres in size or less than 5% of ~~lake~~ the littoral area which ever is greater.

(10) "Project" means an activity to prevent or control aquatic invasive species, including education that is approved for grant funding.

SECTION 17. NR 198.12(5), (7) and (11) are created to read:

NR 198.12(5) "Littoral area" has the meaning given in s. NR 191.22(5).

(7) "Natural resource agency" means a government agency that manages lakes, rivers, streams, wetlands, forests, plants, soils or agricultural lands.

(11) "Qualified nonprofit organization" means a nonprofit corporation, a charitable trust or other nonprofit association whose purposes include the prevention and control of aquatic invasive species and that is described in section 501(c)(3) of the internal revenue code and is exempt from federal income tax under section 501(a) of the internal revenue code. Qualified nonprofit organizations include qualified nonprofit conservation organizations as defined in s. 23.0955(1), Stats.

SECTION 18. NR 198.13(1) is amended to read:

NR 198.13(1) Accounting for all project funds shall conform to generally accepted accounting principles and practices, and shall be tracked by the sponsor in a separate account. Documents to support grant expenditures shall be maintained in sufficient detail to show that grant funds are used for the purpose for which the grant was made. All financial records, including bid summaries, invoices and canceled checks or bank statements, that support all project costs claimed by the sponsor shall be maintained and available for inspection for 3 years after the date the department makes the final payment. Sponsors shall comply with all applicable state and federal regulations regarding bidding and awarding contracts, wage and labor rates.

SECTION 19. NR 198.13(3) is amended to read:

NR 198.13 (3) The sponsor may request, for good cause, a grant agreement amendment for expenditures in excess of those identified as estimated costs in the grant agreement. The sponsor shall submit a request before the ~~project end date~~ end of the grant period.

SECTION 20. NR 198.14(1) (intro.), (e) and (f) 2. are amended to read:

NR 198.14(1) ELIGIBLE COSTS. (intro.) Reasonable and necessary project costs, which are consistent with the approved project, as determined by the department, and incurred during the project grant period are eligible for reimbursement. Eligible costs include:

(e) Reasonable costs necessary to complete an application and comply with a permit application required to implement a project ~~awarded a grant if the costs are incurred within up to 12 months prior to the application deadline~~. Costs incurred up to 12 months prior to the application deadline are eligible for reimbursement.

(f) 2. The maximum value of donated non-professional labor shall be ~~\$8~~ \$12 per hour.

SECTION 21. NR 198.14(1)(h) and (note) are created to read:

NR 198.14(1) (h) Watershed pollution control, native vegetation restoration and protection and other complimentary activities that help control aquatic invasive species or resist future colonization.

Note: A bid summary may be considered by the department as a demonstration by the sponsor of what are reasonable project costs.

SECTION 22. NR 198.14(2)(d) is amended to read:

NR 198.14(2)(d) Aquatic plant management activities that provide temporary or single season relief from nuisance conditions including plant harvesting operations, herbicide treatments and other control methods unless they are approved under an ~~rapid~~ early response project in subch. III or recommended in a department approved plan under subch. IV.

SECTION 23. NR 198.15(1)(intro.) is amended to read:

NR 198.15 (1)(intro.) ~~Priorities for~~ The order of priority for funding projects include projects that do any of the following is:

SECTION 24. NR 198.15(1) (a) to (d) are repealed and recreated to read:

NR 198.15(1) (a) Control pioneer populations of aquatic invasive species

(b) Prevent the spread of aquatic invasive species to unpopulated waters.

(c) Control established populations of aquatic invasive species and restore native aquatic species communities.

(d) Provide research and demonstration that advances the state's knowledge and understanding of aquatic invasive species control.

SECTION 25. NR 198.15(1) (e) is created to read:

NR 198.15(1) (e) Ongoing maintenance to contain aquatic invasive populations within a waterbody.

SECTION 26. NR 198.15(2) is repealed.

SECTION 27. NR 198.15(3) is renumbered NR 198.15(2) and pars. (c), (d), (g) and (h), as renumbered, are amended to read:

NR 198.15(2) (c) The degree to which the project protects or improves the aquatic ecosystem's diversity, function, ecological stability or recreational uses.

(d) The extent of the ~~infestation~~ population in the ~~water body~~ waterbody.

(g) The degree to which the proposed project ~~complements~~ includes or is complemented by other management efforts including watershed pollution prevention and control, native vegetation protection and restoration and other actions that help control aquatic invasive species or resist future colonization.

(h) Community support and commitment, including past efforts to prevent or control aquatic invasive species.

SECTION 28. NR 198.15(2) (j) is created to read:

NR 198.15(2) (j) The degree to which the project will advance the knowledge and understanding of the prevention and control of aquatic invasive species.

SECTION 29 NR 198.21 is amended to read:

**NR 198.21 Applicability.** This subchapter applies to all sponsors ~~for and recipients~~ of aquatic invasive species education, prevention and planning grants. Combined total grant awards to state, federal and hydroelectric corporation sponsors, including universities, colleges and schools, may not exceed \$200,000 in any one state fiscal year.

SECTION 30. NR 198.22(1) (a) is amended to read:

NR 198.22(1)(a) The dissemination of information about aquatic invasive species consistent with the department's statewide education strategy for preventing and controlling invasive species including, but not limited to, attending or conducting workshops, training or coordinating volunteer monitors and other education programs.

SECTION 31. NR 198.23(1) (note) and (2) (a) and (f) are amended to read:

NR 198.23(1) Note: Forms may be obtained free of charge from the department's website, <http://dnr.wi.gov/org/caer/cfa/Grants/Lakes/invasivespecies.html>, or at the following DNR region headquarters located at:

1. Southeast – 2300 N. Dr. Martin Luther King Jr. Dr., Box 12436, Milwaukee 53212
2. South Central – 3911 Fish Hatchery Road, Fitchburg 53711
3. Northeast – 2984 Shawano Ave., ~~Box 40448~~, Green Bay, WI 54313
4. Northern/Rhineland – 107 Sutliff Ave., Rhineland 54501
5. Northern/Spooner – 810 West Maple St., Spooner 54801
6. West Central – 1300 W. Clairemont Ave., Call Box 4001, Eau Claire 54702

(2)(a) A brief description of the project's goals and objectives including a description of the waters on which the project will take place and how the results of the project will lead to the prevention or control of aquatic invasive species.

(f) A description of the existing and proposed availability of public access to, and public use of, the waterbody including a map of the project waterbody identifying boat landings, public parks, platted access sites and road ends or rights of way providing public access to the water.

SECTION 32. NR 198.23(3) to (8) are renumbered NR 198.23(4) to (9), and subs. (6), (7) and (8), as renumbered, are amended to read:

NR 198.23(6) ~~The~~ Except as limited in sub. (7), the total state share of the cost of an education, prevention and planning project may not exceed 50% 75% of the total project cost.

(7) The maximum amount of a grant award shall be \$75,000 \$150,000. Applications shall be separated into 2 classes. The 2 classes consist of those requesting less than \$50,000 in state share and those requesting \$50,000 or more in state share. Each class of projects shall be evaluated separately and have equal priority for funding.

Note: For example, \$200,000 is allocated to the Education, Prevention and Planning projects. The \$200,000 would be distributed evenly between applications for less than \$50,000 and applications for \$50,000 or more. The applications would compete against other application in each class for the \$100,000 distributed to that class.

(8) State share of the costs of a watercraft inspection program is limited to \$2,500 \$4,000 annually for each public boat launch facility not to exceed 50% 75% of the total project cost up to the maximum grant amount. Remote image recording devices may be installed at landings to aid an existing watercraft inspection program. Only the first year costs of purchase or lease and installation are eligible for reimbursement. The costs for remote image recording devices will not be considered part of the annual \$4,000 limit.

SECTION 33. NR 198.23(3) is created to read:

NR 198.23(3) All required application material in sub. (2) that is not included on a department-provided form shall be submitted in an electronic format specified by the department.

SECTION 34 Chapter NR 198, subch. III (title) is amended to read:

#### Subchapter III - Early Detection and-Rapid Response Projects

SECTION 35 NR 198.30 and 198.31 are amended to read:

**NR 198.30 Purpose.** Grants awarded under this subsection are intended to provide for the early identification of and ~~rapid response to control of pioneer infestations~~ populations of aquatic invasive species before they become established. These projects are intended for waters where the presence of aquatic invasive species is relatively new and the area of coverage is limited such that there is a high likelihood that they can be removed or significantly reduced and managed at low densities.

**NR 198.31 Applicability** This subchapter applies to all sponsors applying for a grant for an early detection and-rapid response project.

SECTION 36. NR 198.32(intro.), (1) (intro.), (a), (2), (5) and (6) are amended to read:

**NR 198.32 Eligible projects.** (intro.) Early detection and ~~rapid response~~ projects provide a means for sponsors to quickly effectively control recently discovered aquatic invasive species ~~infestations~~ populations and later receive reimbursement from the department for a portion of the cost of the project by following the procedure described in this section. The procedure is as follows:

(1)(intro.) The sponsor shall immediately notify the department when a pioneer ~~infestation~~ population is suspected in a waterbody. The sponsor shall collect a specimen and submit it to the department using the following procedures:

(a) Collect an entire intact adult specimen. For plants include the roots, stems, and flowers and fruits if available. ~~Try to find plants flowering or fruiting.~~

(2) The department shall verify the species and may authorize control if it is determined to be a controllable pioneer-~~infestation~~ population. For authorized projects, the department shall specify the conditions and procedures under which the project may take place and issue any required permits.

(5) Following authorization, the sponsor shall complete a grant application for the project and may request an advance partial payment.

(6) The sponsor shall report to the department the results of the completed project and request reimbursement for the remainder of the state's share of the project.

SECTION 37. NR 198.33(1) (note) is amended to read:

NR198.33 (1) Note: Forms may be obtained free of charge from the department's website, <http://dnr.wi.gov/org/caer/cfa/Grants/Lakes/invasivespecies.html>, or at the following DNR region headquarters located at:

1. Southeast -- 2300 N. Dr. Martin Luther King Jr. Dr., Box 12436, Milwaukee 53212
2. South Central -- 3911 Fish Hatchery Road, Fitchburg 53711
3. Northeast -- 2984 Shawano Ave., ~~Box 10448~~, Green Bay, WI 54313
4. Northern/Rhineland -- 107 Sutliff Ave., Rhineland 54501
5. Northern/Spooner-- 810 West Maple St., Spooner 54801
6. West Central -- 1300 W. Clairemont Ave., Call Box 4001, Eau Claire 54702

SECTION 38. NR 198.33(2) (c) is repealed and recreated to read:

NR 198.33(2) (c) A signed and dated resolution from the sponsor authorizing the application and identifying a representative to act on its behalf.

SECTION 39. NR 198.33(4) and (5) are amended to read:

NR 198.33(4) The department shall issue grant awards for authorized projects in the order they are received until all the annual funding allotted for early detection and rapid response projects is awarded. The grant period for early detection and rapid response projects shall begin on the date control is authorized under s. NR 198.32(2).

(5) The total state share of the cost of an early ~~infestation control~~ detection and response project may not exceed ~~50%~~ 75% of the total project costs up to maximum of ~~\$10,000~~ \$20,000.

SECTION 40. NR 198.33(6) is created to read:

NR 198.33(6) Notwithstanding s. NR 198.13(2), the department may distribute up to 25% of the state share of the project costs to the sponsor following acceptance of the grant agreement by the sponsor.

SECTION 41. Chapter NR 198, subch. IV (title) is amended to read:

Subchapter IV -- Established ~~Infestation~~ Population Control Projects.

SECTION 42. NR 198.41 is amended to read:

**NR 198.41 Applicability.** This subchapter applies to all sponsors applying for grants for implementing a project to control an established population of aquatic invasive species. State, federal and hydroelectric corporation sponsors, including universities, colleges and schools may only sponsor projects under this subchapter where they are the majority owner of the shorelands adjacent to the public water with an established population or owner of a wetland with an established population or where all other potential sponsors have declined sponsorship of the project.

SECTION 43. NR 198.42(1) (a) and (c) are amended to read:

NR 198.42(1) (a) A department-approved project recommendation included in a management plan adopted by the sponsor for the control of aquatic invasive species and the protection and improvement of aquatic resources.

(c) Other projects that are recommended in or authorized under a statewide or federal management plan for control of aquatic invasive species.

SECTION 44. NR 198.42(1) (d) is repealed.

SECTION 45. NR 198.43(1) (c) is amended to read:

NR 198.43(1)(c) A thorough characterization of the waterbody's aquatic ecosystem's historical and current condition, including at least one year of current base line survey data quantifying the extent of the infestation population.

SECTION 46. NR 198.43(1) (d) to (m) are renumbered NR 148.43(1) (e) to (n) and pars. (g), (L) and (m) as renumbered, are amended to read:

NR 198.43(1) (g) Identification of the management objectives needed to maintain or restore the beneficial uses of the aquatic ecosystem including shoreland and shallow area protection and restoration.

(L) A prevention strategy to for effectively monitoring and preventing the re-introduction of the aquatic invasive species after the initial control and to reasonably assure that new introductions of aquatic invasive species will not infest populate the waterbody.

(m) A contingency strategy for effectively monitoring and preventing responding to the re-introduction of the aquatic invasive species after the initial control.

SECTION 47. NR 198.43(1) (d) is created to read:

NR 198.43(1) (d) An assessment of the sources of watershed pollution and a strategy for their prevention and control.

SECTION 48. NR 198.44(1) (note) is amended to read:

NR 198.44(1) Note: Forms may be obtained free of charge from the department's website, <http://dnr.wi.gov/org/caer/cfa/Grants/Lakes/invasivespecies.html>, or at the following DNR region headquarters located at:

1. Southeast – 2300 N. Dr. Martin Luther King Jr. Dr., Box 12436, Milwaukee 53212
2. South Central – 3911 Fish Hatchery Road, Fitchburg 53711
3. Northeast – 2984 Shawano Ave., ~~Box 10448~~, Green Bay, WI 54313
4. Northern/Rhineland – 107 Sutliff Ave., Rhineland 54501
5. Northern/Spooner – 810 West Maple St., Spooner 54801
6. West Central – 1300 W. Clairemont Ave., Call Box 4001, Eau Claire 54702

SECTION 49. NR 198.44(2) (g) and (h) are amended to read:

NR 198.44(2) (g) Copies of all permits or pending permit applications necessary to complete the project. No grant may be awarded until all the necessary permits and approvals for the project have been obtained. For multiple year projects, the provisions of this section only apply to the first year of permitted activity.

(h) A description of the existing and proposed availability of public access to and public use of, the waterbody including a map of the project waterbody identifying boat landings, public parks, platted access sites and road ends or rights of way providing public access to the water.



SECTION 50. NR 198.44(2) (k) is created to read:

NR 198.44(2) (k) If the sponsor is a state, federal, hydroelectric corporation sponsor, university, college or school sufficient information to determine that they are a majority owner of shorelands adjacent to the public water with an established population, an owner of a wetland with an established population or that all other potential sponsors have declined sponsorship of the project.

SECTION 51. NR 198.44(3) to (5) are renumbered NR 198.44(4) to (6), and sub. (6), as renumbered, is amended to read:

NR 198.44(6) The state share of the cost of the project may not exceed ~~50%~~ 75% of the total project costs up to a maximum state share of ~~\$75,000~~ \$200,000.

SECTION 52. NR 198.44(3) is created to read:

NR 198.44(3) All required application material in sub. (2) that is not included on a department-provided form shall be submitted in an electronic format specified by the department.

SECTION 53. Chapter NR 198, subch. V is created to read:

#### Subchapter V - Maintenance and Containment Projects

**NR 198.50 Purpose.** Grants awarded under this subchapter are intended to provide sponsors limited financial assistance for the ongoing control of a suppressed established aquatic invasive species population. These projects are intended only for waters where management activity has achieved the target level of control identified in an approved plan that meets the criteria of s. NR 198.43. Ongoing maintenance is needed to contain these populations so they do not re-establish throughout the waterbody, spread to other waters, or impair navigation and other beneficial uses of the waterbody.

**NR 198.51 Applicability.** This subchapter applies to all sponsors applying for a grant for a maintenance and containment project that is in compliance with an approved plan under subch. IV.

**NR 198.52 Eligible activities.** Activities eligible for funding under this subchapter may include any of the following:

- (1) Application fees for aquatic plant management permits issued by the department.
- (2) Surveying, monitoring, reporting and record-keeping required by the department.
- (3) Other activities determined necessary by the department.

**NR 198.53 Applications and grant awards.** (1) Claims for reimbursement may be submitted any time after the permitted activities are completed and the necessary compliance reports are submitted to the department.

(2) A complete claim shall contain the following information:

(a) The name of the waterbody on which the project took place and a statement by the sponsor that to the best of its knowledge the project was completed in compliance with permit conditions and according to its department approved plan.

(b) The amount of the claim for reimbursement or the actual cost incurred if the request is greater than the standard reimbursement.

(c) The signature of a representative authorized by resolution to act on behalf of the sponsor.

(d) A completed compliance check list to be signed by region staff.

(3) The department shall review the claim and may approve it for a grant award.

(4) The standard state reimbursement of the cost for a maintenance and control project will be determined by the department based on the application fee and specified monitoring and reporting in the permit or the department approved plan. The maximum state share of a grant awarded under this subchapter shall not exceed the cost of the permit application fee.

SECTION 54. Chapter NR 198, subch. VI is created to read:

Subchapter VI Research and Demonstration Projects

**NR 198.60 Purpose.** Research and demonstration projects are intended as a cooperative activity between sponsors and the department. Such projects shall be designed to increase scientific understanding of the ecological and economic implications of aquatic invasive species and their management and to assess experimental and innovative techniques for their prevention, containment and control.

**NR 198.61 Applicability.** This subchapter applies to all sponsors applying for grants for a research and demonstration project.

**NR 198.62 Applications and grant awards.** (1) Proposals for research projects may be submitted to the department at anytime and shall include the goals and objectives of the project, a brief description of the methods, estimated costs and a time line for completion.

(2) The department may solicit research proposals through a request for proposal process.

(3) Prior to each biennium the department will consult with the invasive species council on needed aquatic invasive species research.

(4) The department has sole discretion to choose to support the project and will work with the sponsor to develop a study design and complete a grant application.

(5) No more than \$500,000 shall be awarded annually for projects under this subchapter.

SECTION 55. EFFECTIVE DATE. The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 56. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on Dec. 10, 2008.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Matthew J. Frank, Secretary

(SEAL)