

CR 83-120

State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

STATE OF WISCONSIN)
DEPARTMENT OF NATURAL RESOURCES) ss

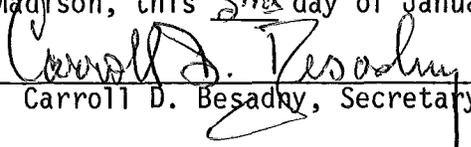
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Carroll D. Besadny, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WR-28-83 was duly approved and adopted by this Department on November 16, 1983. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at General Executive Facility #2 in the City of Madison, this 3rd day of January, 1984.


Carroll D. Besadny, Secretary

(SEAL)

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2.1.84

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

.....
IN THE MATTER of renumbering ss. NR 118.03(9) .
through (26), 118.06(15) and (16); renumbering .
and amending s. NR 118.06 (11)(a)2.c.; .
amending ss. NR 118.01, 118.02(1)(title), .
118.03(3), (4), (20), (26) and (27), 118.05, .
118.06(3)(b), (4), (5), (8), (9) (intro.), .
(b), (c), (e) and (f), (10) (intro.), (a), .
(b), (f) and (h), (11) (intro.), (a)2. .
(intro.), a. and b., (12)(a)2.a., .
(14)(intro.), 118.07(2)(title), (c), (d), . WR-28-83
(e)1. and 2.; repealing and recreating .
s. NR 118.06(2), (3)(a), (6) and (7); .
and creating ss. NR 118.03(9), (16), (28) .
and (30), 118.06(11)(a)2.c., (12)(d), (15) .
and (18) of the Wisconsin Administrative Code .
pertaining to standards and criteria for the .
Lower St. Croix National Scenic Riverway .
.....

Analysis Prepared by Department of Natural Resources

Chapter NR 118, Wis. Adm. Code, requires that counties, cities and villages regulate land use to protect the unique and environmentally sensitive bluffline areas of the Lower St. Croix National Scenic Riverway as shown in the master plan dated February, 1976, and prepared jointly by the National Park Service and the States of Wisconsin and Minnesota.

Major amendments to ch. NR 118 include:

1. Modification of the definition, bluff face, deleting that portion of the term which defines when the bluff face is deemed to be of a rock or soil consistency.
2. Definitions for incorporated and unincorporated areas to differentiate one from the other.
3. A definition for nonconforming use, in compliance with s. 62.23(7)(h), Stats., to recognize existing land uses and structures which do not meet the regulatory requirements of ch. NR 118.
4. A definition for wetlands which coincides with what is contained in the newly revised version of ch. NR 115, Wisconsin's Shoreland Management Program.

5. Modification of provisions dealing with land uses and activities as it pertains to permitted and conditionally permitted uses clarifying what can be allowed in incorporated and unincorporated areas. The revisions recognize existing regulations in the incorporated areas that were in effect on January 1, 1976, which is the effective date of the Lower St. Croix Scenic Riverway Master Plan.

6. Changes to the standards contained in the general provisions section, clarifying development standards for each area of jurisdiction (i.e., incorporated and unincorporated) as it pertains to lot density, bluffline and ordinary highwater mark setbacks, lot widths and lot line setbacks.

7. Deletion of all references to soil and rock bluff faces, providing all development occurring on the bluff face is visually inconspicuous from the water.

8. Modification of variance standards applying to the Boards of Adjustment and Appeals removing the absolute 40 foot setback limit on the granting of variances from the bluffline on pre-existing lots of record.

9. Incorporation of a condition which informs the local community zoning officials that even though they may approve plans or permits involving filling or grading it does not remove the necessity of also obtaining similar state or federal permits.

10. Creation of provisions to recognize the regulation of nonconforming uses in compliance with ss. 59.97(10) and 62.23(7)(h), Stats.

11. Establishment of standards pertaining to private onsite sewage waste disposal systems in compliance with what is required in ch. ILHR 83.

12. Modification to administrative provisions of NR 118 to specifically require the Department to review all appeals involving conditionally permitted activities, amendments and variances in both incorporated and unincorporated areas.

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by ss. 23.09, 23.11, 30.27 and 227.014(2)(a), Stats., the State of Wisconsin Natural Resources Board hereby renumbers, amends, repeals and recreates, and creates rules interpreting s. 30.27, Stats., as follows:

SECTION 1. NR 118.01 is amended to read:

NR 118.01 PURPOSE. The following rules are necessary to reduce the adverse effects of poorly planned shoreland and bluff area development, to prevent pollution and contamination of surface and groundwaters and soil erosion, to provide sufficient space on lots for sanitary facilities, to minimize flood damage, to maintain property values, and to preserve and maintain the exceptional scenic and natural characteristics of the water and related land of the lower St. Croix river valley in a manner consistent with the national wild and scenic river act (P.L. 90-542), the federal lower St. Croix river act of 1972 (P.L. 92-560) and the Wisconsin lower St. Croix river act (chapter 197, laws of Wisconsin, 1973).

SECTION 2. NR 118.02(1)(title) is amended to read:

NR 118.02(1)(title) LOWER ST. CROIX RIVER DISTRICT BOUNDARIES.

SECTION 3. NR 118.03(3) and (4) are amended to read:

NR 118.03(3) "Bluff face" means that area riverward from the bluffline where the slope toward the river equals 12% or more with the horizontal interval of measurement not exceeding 50 feet. ~~Rock-bluff-faces-are-these consisting-of-primarily-exposed-bedrock-material.--For-the-purpose-of-this definition,-bedrock-means-by-any-igneous,-metamorphic-or-sedimentary-material which-is-more-than-50%-consolidated-(more-than-50%-consolidated-rock-material by-volume).--Soil-bluff-faces-are-these-consisting-of-primarily-soil material.--For-the-purposes-of-this-definition,-soil-means-any-unconsolidated material-consisting-of-primarily-varying-amounts-of-sand,-silt-or-clay-which is-less-than-50%-consolidated-(more-than-50%-soil-material-by-volume).~~

(4) "Bluffline" means a line along the top of a slope, connecting the points at which the slope, proceeding away from the river or adjoining watershed channel and which is not visually inconspicuous, becomes less than 12%. The location of the bluffline shall be certified by a registered land surveyor, soil scientist or a landscape architect.

SECTION 4. NR 118.03(9) through (26) are renumbered 118.03(10) through (15), (17) through (27) and (29) respectively.

SECTION 5. NR 118.03(9) and (16) are created to read:

NR 118.03(9) "Incorporated area" means the area that was within the corporate limits of St. Croix Falls, Osceola, North Hudson, Hudson or Prescott on January 1, 1976.

(16) "Nonconforming use" means an existing lawful use of a structure, building or accessory use which is not in conformity with the provisions of the St. Croix riverway zoning ordinance for the area of the lower St. Croix river district which it occupies.

SECTION 6. NR 118.03(20), (26) and (27) as renumbered are amended to read:

NR 118.03(20) "Sewage disposal system" means any system for the collection, treatment, and disposal of sewage including, but not limited to, septic tanks, soil absorption systems, holding tanks, and drainfields.

(26) "Substandard lot" means a lot created and recorded prior to the effective date ~~or~~ of ordinances implementing these rules which does not meet the dimensional requirements of these rules.

(27) "Transmission services" means electric power, telephone, and telegraph lines, cables or conduits, or pipelines that are used to transport large blocks of power or oil or gas, convey information or transport materials between 2 points. In the case of electrical power, this will generally apply to transmission lines operating at 69,000 volts or more. For main pipeline crossings of gas, liquids, or solids in suspension, this means those uses to transport such materials between 2 points.

SECTION 7. NR 118.03(28) and (30) are created to read:

NR 118.03(28) "Unincorporated area" means an area that is not an incorporated area as defined in sub. (9).

(30) "Wetlands" means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

SECTION 8. NR 118.05 is amended to read:

NR 118.05 LAND USES AND ACTIVITIES IN THE LOWER ST. CROIX RIVER

DISTRICT. The following classifications, uses, structures and services shall be subject to the general provisions contained in s. NR 118.06.

(1) ~~Unincorporated areas--(a)~~ PERMITTED USES. 1- (a) Single family detached dwellings.

2- (b) Nonstructural open space uses associated with maintaining the value of certain lands for natural areas, scenic, recreation, wildlife management, water and soil conservation and other such purposes.

3- (c) Agriculture (nonstructural) including silviculture in compliance with s. NR 118.06 (11).

4- (d) Highway and local park waysides, rest areas and scenic overlooks.

5- (e) Governmental structures used as information centers or for resource management to improve the fish and wildlife habitat.

6- (f) Signs as approved by state or local governments which are necessary for public health and safety; signs indicating areas that are available or not available for public use; and personal name or other similar signs that are otherwise lawful, provided they are not visible from the river.

7- (g) Accessory buildings, provided they are not located closer to the bluffline than the principal structure.

8- (h) Docks and piers that have a permit from the army corps of engineers.

(i) In incorporated areas, those uses which were permitted by existing zoning regulations on January 1, 1976. Municipalities may amend zoning regulations to make them more restrictive than those regulations in effect on January 1, 1976. When a municipality has developed a more restrictive zoning regulation, that municipality may not subsequently amend the standard to make it less restrictive.

~~(b)~~(2) Conditionally permitted uses and activities. 1- (a)The following uses are subject to approval after class 2 notice and public hearing:

a- 1. Land divisions.

b- 2. Transmission services.

e- 3. Filling, grading and rock riprapping for shoreline protection.

d- 4. Stairways or lifts.

5. In incorporated areas, those uses which were conditionally permitted by existing zoning regulations on January 1, 1976. Municipalities may amend their conditionally permitted use provisions to make them more restrictive than those in effect on January 1, 1976. When a municipality has developed more restrictive conditionally permitted uses, that municipality may not subsequently amend its permitted use standards to make them less restrictive.

~~2-~~ (b) The applicant shall submit sufficient copies of the following information to the ~~county~~ appropriate governing body 30 days prior to the hearing on the application for a conditionally permitted activity. The applicant seeking a permit for land divisions, transmission services, or filling and grading shall submit information required by subds. ~~a--to--f-~~ 1. to 7. The applicant seeking a permit for a stairway or lift shall submit information required by subds. ~~a--to--d-,--g--and--h-~~ 1. to 4. and 7. Information required by subds. ~~a--to--f-~~ 1. to 6. shall be certified by a professional engineer or land surveyor registered in Wisconsin. ~~Information required by subd--g--shall--be--certified--as--required--in--the--"bluff-face" definition-~~

~~a-~~ 1. Plat or survey showing the property location, boundaries, dimensions, elevations, blufflines, utility and roadway corridors, and the ordinary highwater mark or regional flood elevation (if applicable).

~~b-~~ 2. Location of existing and proposed structures.

~~c-~~ 3. Location of existing and proposed alterations of vegetation and topography including filling and grading.

~~d-~~ 4. Adjoining land and water uses, including natural values in terms of spawning grounds and fish and game habitat.

e- 5. Suitability of area for onsite waste disposal. Size and location of system shall be indicated. If a municipal wastewater collection and treatment system is to be utilized, the developer ~~must~~ shall submit a written agreement from the municipality or sanitary district indicating that the system has the capacity to handle the development.

f- 6. Water supply system.

~~g- Whether the bluff face is a soil bluff face or a rock bluff face.~~

h- 7. Photos of the area of proposed permitted and conditional uses and activity as viewed from the lower St. Croix river.

3- (c) Review of conditionally permitted uses and activities. No less than 20 days prior to the hearing, the county local government shall send a copy of the above information to the following agencies for review and comment:

a- 1. County planning department.

b- 2. Department of natural resources.

e- 3. Regional planning commission.

d- 4. Town board.

e- 5. Minnesota-Wisconsin boundary area commission.

4- (d) Hearing record and decision. The hearing record shall contain the comments of the agencies listed in NR-118.05-(1)-(a)-3. par. (c). The decision in regard to permitting land divisions, transmission services, or filling and grading shall address all of the following points ~~with the exception of subd. g.~~ The decision in regard to permitting lifts or stairways shall address all points with the exception of subd. 7. No use or activity shall be permitted unless it can feasibly comply with all requirements of s. NR 118.06.

a- 1. The scenic and recreational qualities of the lower St. Croix scenic riverway.

b- 2. The maintenance of safe and healthful conditions.

e- 3. The prevention and control of water pollution including sedimentation.

d- 4. The location of the site with respect to ~~flood plains~~ floodplains and floodways of ~~river~~ rivers and streams.

e- 5. The erosion potential of the site based upon degree and direction of slope, soil type and vegetative covers.

f- 6. Location of site with respect to existing or future access roads.

g- 7. The amount of liquid wastes to be generated and the adequacy of the proposed disposal system.

h- 8. The compatibility of the project with uses on adjacent land.

i- 9. The use of common corridors for locating proposed facilities within or adjacent to existing public service facilities such as roads, bridges and transmission services.

~~j- Whether the bluff-face is a soil-bluff-face.~~

5- (e) The county local government shall submit a copy of the written decision, including a summary of the hearing, to the department within 5 work days of the date of the hearing for department approval, modification or rejection within 20 days. No response within 20 days shall be deemed an approval.

~~(2)-Incorporated areas---(a)-Zoning-and-subdivision-regulations-existing on-the-effective-date-of-these-rules-shall-prevail-with-these-qualifications:~~

~~1. The incorporated areas shall provide a timely copy of the notice of hearing and a copy of the decisions on applications including but not limited to annexations, variances, amendments and conditional uses to:~~

~~a. County planning agency.~~

~~b. Regional planning commission.~~

~~c. Minnesota-Wisconsin boundary area commission.~~

~~d. Department of natural resources.~~

~~2. The general provisions contained in NR 118.06 shall be contained within municipal zoning ordinances, with the exception that provisions in such municipal ordinances setting height, lot area, lot width and depth or density standards shall prevail and substitute for height, lot area, width and depth and density standards set forth in NR 118.06. The general provisions of NR 118.06 shall apply if comparable provisions are absent from municipal ordinances.~~

~~3. The zoning of unincorporated lands in the lower St. Croix river district proposed to be annexed to incorporated areas shall be subject to the approval by the department after consultation with the annexing incorporated area and the county.~~

SECTION 9. NR 118.06(2) and (3)(a) are repealed and recreated to read:

NR 118.06(2) DENSITY STANDARDS. (a) Unincorporated areas.

1. Detached single family dwellings. No more than one dwelling unit per acre of net project area may be allowed. There may be no more than one principal structure on each parcel.

2. Planned unit development. The number of proposed family dwellings permitted may not exceed by more than 50% the number of units allowed if the proposal was based on single family dwelling units.

(b) Incorporated areas. Lot density standards in effect on January 1, 1976 shall apply within incorporated areas. Municipalities may amend lot density standards to make them more restrictive than those standards in effect on January 1, 1976. When a municipality has developed a more restrictive lot density standard, that municipality may not subsequently amend the standard to make it less restrictive.

(3)(a) The following minimum setbacks from the ordinary highwater mark and bluffline shall apply to all structures and private roads and parking areas, except those specified as exceptions herein:

1. In incorporated areas, not less than 100 feet from the ordinary highwater mark and not less than 40 feet from the bluffline, whichever is greater.

2. In unincorporated areas, not less than 200 feet from the ordinary highwater mark and not less than 100 feet from the bluffline, whichever is greater.

SECTION 10. NR 118.06(3)(b) is amended to read:

NR 118.06(3)(b) The board of adjustment for counties or the board of appeals for cities and villages may grant a variance to the setback requirements in par. (a) above for pre-existing parcels only where the applicant has proven that a hardship exists. However, no variance shall may be granted for a setback which ~~is less than 40 feet from the bluffline; or~~

~~where such variance shall result~~ results in a change in natural appearance of the shoreline, slope or bluffline as viewed from the river. It is the responsibility of the applicant to justify the need for such a reduced setback and display how the proposed structure will be visually inconspicuous from the river. The setback line shall be delineated on the application and staked out by the applicant. The local enforcement official shall certify the accuracy of setback ~~line~~ lines prior to construction.

SECTION 11. NR 118.06 (4) and (5) are amended to read:

NR 118.06(4) PLACEMENT OF STRUCTURES. Structures shall may not be located on slopes of greater than 12% facing the lower St. Croix river ~~of greater than 12%~~. Alterations of such slopes to overcome this limitation are not permitted.

(5) HEIGHT. The height of any structure shall may not exceed 35 feet above average ground level.

SECTION 12. NR 118.06 (6) and (7) are repealed and recreated to read:

NR 118.06(6). LOT WIDTH. (a) In unincorporated areas, parcels or lots created for single family dwellings shall be no less than 200 feet in width at the building line.

(b) In incorporated areas, parcels or lots created for single family dwellings shall be no less than 100 feet in width at the building line.

(7) LOT LINE SETBACK. (a) In unincorporated areas, all structures or portions of structures shall be located at least 25 feet from all property lines.

(b) In incorporated areas, lot line setbacks in effect on January 1, 1976 shall apply. Municipalities may amend lot line setback standards to make them more restrictive than those standards in effect on January 1, 1976. When a municipality has developed a more restrictive lot line setback standard, that municipality may not subsequently amend the standard to make it less restrictive.

SECTION 13. NR 118.06(8), (9)(intro.), (b), (c), (e) and (f), (10)(intro.), (a), (b), (f) and (h) are amended to read:

NR 118.06(8) DOCKS AND PIERS. Docks and piers associated with riparian residential developments shall be allowed only during the open water season and, shall only extend into the water the minimum distance necessary to allow the launching and mooring of watercraft and, shall be parallel with the shoreline whenever possible, and ~~shall~~ may not exceed the resource limitations of the site or extend beyond the slow speed shore zone. No covered slips or framed canopies ~~shall~~ may be constructed. ~~They~~ Docks and piers shall be colored in earth tones. Lighting of dock or pier areas is permitted only if required by federal, state or local laws or for lighting municipal facilities in incorporated areas only for health and safety reasons.

(9) LIFTS. (intro.) Lifts may be permitted ~~on-soil-face-bluffs-only~~ provided the following standards are met:

(b) No lift ~~shall~~ may be designed and utilized for the transport of boats or machinery up or down the bluff face.

(c) All visible parts of lifts shall be painted or finished in natural or earth tones and shall be visually inconspicuous.

(e) No construction shall may begin on any lift until the applicant has provided local code enforcement officials with a plan showing all necessary construction data including location of the lift, design, size, color, dimensions and other pertinent information. The plan shall contain a certification by a registered professional engineer or architect that the lift components are securely anchored to prevent them from shifting and from causing accelerated erosion.

(f) The car of any lift shall may not exceed 4 by 6 feet. Cars may have hand rails but no canopies or roofs shall may be allowed. Location of the transporting device or power source shall ~~not~~ be visually ~~eonspicious~~ inconspicuous.

(10) STAIRWAYS. Stairways may be permitted ~~on-only-sett-face-bluffs~~ provided the following standards are met:

(a) No stairway shall may exceed 36 inches (3 feet) in width.

(b) Landings may be permitted at a minimum vertical interval of 20 feet. Landings shall may not exceed 40 square feet in area.

(f) Stairways shall be located in the most visually inconspicuous portion of any lot. ~~Vegetative~~ Native vegetative plantings shall be used to screen the stairway from the river.

(h) No construction shall may begin until the applicant has submitted a plan for the stairway to the local enforcement official showing all necessary construction data including location, design, dimensions, color, construction materials and other pertinent information. The plan shall contain a certification by a registered professional engineer or architect that the stairway components are securely anchored to prevent them from shifting and from causing accelerated erosion.

SECTION 14. NR 118.06(11)(intro.), (a)2. (intro.), a. and b. are amended to read:

NR 118.06(11)(intro.) The vegetation shall be managed to maintain the essential character, quality and density of existing growth. Compatible native species of vegetation shall be used for replacement or new plantings. Vegetation shall effectively screen lifts and stairs within 5 years, otherwise the lift and stairs shall be removed.

(2)(intro.) The above cutting provisions ~~shall~~ may not prevent:

a. The removal of diseased or insect infested trees, or of rotten or damaged trees that present safety hazards.

b. ~~Pruning~~ The pruning of trees, ~~or~~ the cutting of shrubs, understory vegetation, bushes, or grasses, or ~~from~~ the harvesting of nonwood fiber crops.

SECTION 15. NR 118.06(11)(a)2.c. is renumbered d. and amended to read:

d. The practice of forestry on lands enrolled under the woodland tax law or forest crop law (ch. 77, Stats.) as prescribed in a department approved forest management plan which requires that vegetation be removed in a manner that protects the scenic quality of the river. Modifications to commonly accepted silvicultural methods ~~will~~ shall be prescribed by the department forester where necessary to protect the esthetic values of the area.

SECTION 16. NR 118.06(11)(a)2.c. is created to read:

NR 118.06(11)(a)2.c. The construction of structures in compliance with the standards contained in sub. (3)(b).

SECTION 17. NR 118.06(12)(a)2.a. is amended to read:

NR 118.06(12)(a)2.a. No filling or grading shall may be allowed on slopes greater than 12% except for rock riprapping for shoreline protection ~~on slopes greater than 12%~~.

SECTION 18. NR 118.06(12)(d) is created to read:

NR 118.06(12)(d) Any local approval of a plan or permit may not negate the requirements for obtaining state or federal permits or approvals.

SECTION 19. NR 118.06(14)(intro.) is amended to read:

NR 118.06(14)(intro.) Lots of record in the register of deeds office on ~~the effective date of these rules~~ January 1, 1976 or the date of enactment of an amendment to a local ordinance which do not meet the requirements of s. NR 118.06 may be allowed as building sites provided that:

SECTION 20. NR 118.06 (15) and (16) are renumbered NR 118.06 (16) and (17).

SECTION 21. NR 118.06 (15) and (18) are created to read:

NR 118.06 (15) NONCONFORMING USES. All nonconforming uses shall be regulated in accordance with ss. 59.97(10) and 62.23(7)(h), Stats.

(18) PRIVATE SEWAGE SYSTEMS. All private sewage systems shall be constructed in accordance with the provisions of ch. ILHR 83.

SECTION 22. NR 118.07(2)(title), (c), (d), (e)1. and 2. are amended to read:

NR 118.07(2)(title) REVIEW OF APPEALS.

(c) Special exception permits, conditional use permits, amendments or variances shall may not be approved over the objection of the department.

(d) A permit for a conditionally permitted activity in an unincorporated area shall may not be issued over the written objection of a town board.

(e)1. This action by the ~~county~~ local government shall stay any construction by the applicant.

2. If at the end of 30 days from the date of the hearing, the department or the town has not changed ~~their~~ its position, the hearing record shall be closed.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on November 16, 1983.

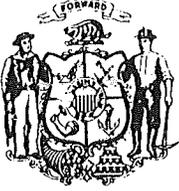
The rules contained herein shall take effect as provided in s. 227.026(1)(intro.), Stats.

Dated at Madison, Wisconsin January 3, 1984

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

January 4, 1984

IN REPLY REFER TO: 1020

Mr. Orlan L. Prestegard
Revisor of Statutes
411 West
C A P I T O L

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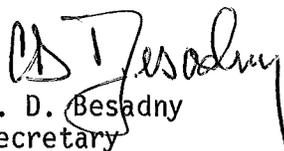
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Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WR-28-83. These rules were reviewed by the Assembly Committee on Environmental Resources and the Senate Committee on Energy and Environmental Resources pursuant to s. 227.018, Stats. There were no objections. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are not enclosed as these rules completed the review process prior to the effective date of Act 90 (January 1, 1984).

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


C. D. Besadny
Secretary

Enc.
2740J