

CR 90-43



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary  
Box 7921  
Madison, Wisconsin 53707  
TELEFAX NO. 608-267-3579  
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STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES )      ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy 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. FR-59-89 was duly approved and adopted by this Department on June 28, 1990. 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 here-  
unto set my hand and affixed the  
official seal of the Department at  
the Natural Resources Building in  
the City of Madison, this 11<sup>th</sup>  
day of October, 1990

*Bruce B. Braun*  
Bruce B. Braun, Deputy Secretary

(SEAL)

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ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
CREATING RULES

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FR-59-89

IN THE MATTER of creating ch. NR 37 of  
the Wisconsin Administrative Code  
pertaining to timber cutting on lands  
adjacent to the Lower Wisconsin Riverway

Analysis prepared by Department of Natural Resources

Authorizing Statutes: ss. 30.42(1)(d) and 227.11(2)(a), Stats., and 1989  
Wisconsin Act 31.

Statutes interpreted: ss. 30.42(1)(d), 30.44(3) and 30.45, Stats., as created  
by 1989 Wisconsin Act 31.

1989 Wisconsin Act 31 established the Lower Wisconsin Riverway. That  
act authorizes the Department of Natural Resources to create rules regulating  
the cutting and harvest of timber on lands, whether public or private, located  
within the riverway.

The proposed rules are designed to integrate timber management with  
other uses of the riverway while maintaining the natural character and scenic  
beauty within the riverway. The rules provide that timber harvest or cutting  
may only be conducted on the land when authorized by a permit issued by the  
riverway board. Counties may adopt by ordinance the cutting specifications  
contained in the rules, and issue permits for timber harvest or cutting on  
lands subject to shoreland zoning. The cutting specifications do not apply to  
land currently enrolled in the woodland tax law, forest crop law, or managed  
forest programs but will apply to land entered as managed forest land on or  
after October 31, 1989.

The cutting specifications are designed to assure timber cutting will be  
visually inconspicuous.

Four vegetative management zones are established in the rules with  
specific restrictions or recommendations regarding timber harvest and cutting  
for each zone.

The River Edge Zone includes the land from where tree growth begins on  
the river's edge and extending 75 feet landward. In this zone, only timber  
which constitutes a safety hazard may be removed. In addition, other  
exceptions are provided by statute including the opportunity to clear a strip  
of woody vegetation not greater than 15 feet in width for access to the river.

The Bluff Zone includes the land area 200 feet in width from 100 feet  
behind the bluff line to 100 feet below the bluff line. In this zone,  
selective cutting at certain times and in the manner specifically prescribed  
in the rule is authorized.

The Riverview Zone includes all lands in the riverway which are visible from the river with leaves on deciduous trees, except those lands included in the River Edge Zone or Bluff Zone. In the Riverview Zone small regeneration cuts, shelterwood cuts and selective cutting at certain times and in the manner specifically prescribed in the rules is authorized.

The Resource Management Zone includes all other land in the riverway not included in the River Edge Zone, Bluff Zone or Riverview Zone. Recommendations on timber management in the Resource Management Zone are included in the rules.

Contracts for timber sales which were entered into by landowners prior to October 31, 1989, are not controlled by the proposed rules. However, those contracting parties are encouraged to modify the contracts to comply with the timber sale specifications established in the rules. The statutes also include exemptions for the cutting of timber and woody vegetation for firewood.

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SECTION 1. Chapter NR 37 is created to read:

Lower Wisconsin State Riverway  
Aesthetic Management Specifications for  
Cutting and Harvest of Timber

NR 37.01 APPLICABILITY. This chapter applies to timber harvested under timber sale contracts executed on or after October 31, 1989. Parties to contracts executed before October 31, 1989 are encouraged to amend the contract to incorporate the restrictions in this chapter. Timber harvest and cutting under timber sale contracts executed on or after October 31, 1989, shall be consistent with subch. IV, ch. 30, Stats., and the rules established in this chapter and shall include specifications, terms and conditions necessary to ensure that this chapter and subchapter IV, ch. 30, Stats, are met.

Note: Statutory Provisions Related to the Cutting of Woody Vegetations.

These rules do not apply to nor govern the cutting of woody vegetation (which includes trees that are not timber), that is prohibited by statute.

Exceptions to the prohibition are summarized below.

Sections 30.45(3) and 30.45(3m) prohibit the cutting of woody vegetation (which includes trees that are not timber) on the land or riverbed in the riverway except for the amount necessary for:

1. One strip 15 feet or less in width for each separately owned parcel of land on the river that is necessary for gaining access to the river. (ss. 30.45(3)(a) and (3m)(a), Stats.)

2. An activity for which a permit has been issued, and not revoked, under sections 30.40 or 30.445 of the statutes (permits for structures or mobile homes, walkways and stairways, cutting timber, utility facilities, bridges or piers). (ss. 30.45(3)(ag) and (3m)(a), Stats.)

3. An activity that section 30.44 of the statutes exempts from a permit. (ss. 30.45(3)(ar) and (3m)(a), Stats.)

4. Maintenance of an easement or right-of-way for a utility facility. (ss. 30.45(3)(b) and (3m)(a), Stats.)

5. Construction, reconstruction, modification, relocation, repair or maintenance of a high-voltage transmission line. (ss. 30.45(3)(bn) and (3m)(a), Stats.)

6. Construction, modification, reconstruction or repair of a public access site allowed under section 30.45(8) of the statutes. (ss. 30.45(3)(c) and (3m)(a), Stats.)

7. Construction, modification, reconstruction or repair of a wharf allowed under section 30.45(9) of the statutes. (s. 30.45(3)(cg) and (3m)(a), Stats.)

8. Maintenance of a structure by a person who complies with the provisions of sections 30.44 to 30.46 and subsections 30.45(1),(2) and (4) to (13) of the statutes that apply to the structure. (s. 30.45(3)(cr) and (3m)(a), Stats.)

9. Maintenance of a right-of-way for a highway, private road or a railroad. (s. 30.45(3)(d) and (3m)(a), Stats.)

10. Modification, repair or reconstruction of a dam. (s. 30.45(3)(dh), and (3m)(a), Stats.)

11. Removal of woody vegetation if a forester has issued a written determination that the woody vegetation is subject to an actual, potential or incipient infestation or infection by an insect or disease that is harmful to the woody vegetation. (s. 30.45(3)(dp) and (3m)(a), Stats.)

12. Removal of woody vegetation damaged by natural causes. (s. 30.45(3)(e) and (3m)(a), Stats.)

13. Firewood for the person's agricultural or household use if the land owned or occupied by the person is more than 75 feet beyond the ordinary high water mark of the river. (s. 30.45(3m)(b), Stats.)

14. Removal of woody vegetation necessary and reasonable for those agricultural use activities and structures specifically authorized under s. 30.46, Stats.

NR 37.02 PURPOSE. The purpose of this chapter is to establish management specifications for the harvesting of timber in the lower Wisconsin state riverway pursuant to s. 30.42(1)(d), Stats., so that timber cutting or harvesting has minimal impact on the scenic beauty and natural value of the riverway.

NR 37.03 DEFINITIONS. (1) "Basal area" means the cross-sectional area 4½ feet above ground expressed in square feet per acre of all trees with a diameter of 5 inches and larger.

(2) "Bluff line" means that point where there is a significant change in slope on the visual horizon when viewed from the river. This change in slope may take the form of a ridge protruding into the river valley.

(3) "Bluff zone" means the land area 200 feet in width from 100 feet behind the bluff line to 100 feet below the bluff line.

(4) "Department" means the department of natural resources.

(5) "Cutting and harvesting timber" means the severing of the timber from the land as well as all other aspects of the timber harvesting and transportation operation, but does not include the removal of firewood from tree tops resulting from the timber harvest, shearing of Christmas trees, pruning or other sound forest management practices not involving the severing of the timber from the land.

(6) "Forest aesthetics" means the department publication, publ. FR-039-86, relating to timber harvest.

Note: This publication may be obtained from the bureau of forestry, DNR, P.O. Box 7921, Madison, WI 53707

(7) "Resource management zone" means land in the riverway which is not included in the river edge zone, bluff zone or riverview zone.

(8) "River" has the meaning established in s. 30.40(14), Stats.

(9) "River edge zone" means the land within the riverway from where tree growth begins on the river's edge and extending 75 feet landward.

(10) "Riverview zone" means all land within the riverway which is visible from the river during the time when the leaves are on the deciduous trees.

(11) "Riverway" has the meaning established in s. 30.40(15), Stats.

(12) "Riverway board" means that board established under s. 15.345(6), Stats.

(13) "Selection cutting" means the removal of selected trees throughout the range of merchantable sizes at regular intervals, either singly or in small groups, leaving a uniformly distributed stocking of desirable trees and size classes.

(14) "Shelterwood cut" means a partial removal of mature trees leaving trees of desirable species and form to provide shade, seed source and a desirable seed bed for natural regeneration with the final removal of the overstory after adequate regeneration is established.

(15) "Silvicultural and forest aesthetics handbook" means the department handbook 2431.5 relating to timber harvest.

Note: This handbook may be obtained from the department of natural resources Directives Section, P.O. Box 7921, Madison, WI 53707.

(16) "Small regeneration cut" means a harvest of not more than one-third of the contiguous forested ownership within a 10-year period with each opening not exceeding 6 acres in size and not closer than 75 feet at their closest points.

(17) "Switchback" means a sharp curve or significant change in direction of a road.

(18) "Timber" has the meaning established in s. 30.40(18m), Stats.

(19) "Timber stand" means all trees occupying an area capable of producing timber, including but not limited to, logs, poles, posts, pulpwood and other cordwood products.

(20) "Tree" means a woody plant which at maturity is 20 feet or more in height, with a single trunk, unbranched for at least several feet above the ground and having a more or less definite crown.

(21) "Visible from the river" has the meaning established in s. 30.40(20), Stats.

(22) "Visually inconspicuous" has the meaning established in s. 30.40(21), Stats.

NR 37.04 TIMBER MANAGEMENT CUTTING AND HARVESTING SPECIFICATIONS. (1)  
PERMIT. (a) Permit issuance. No person may cut or harvest timber within the riverway without a permit issued by the riverway board or by a county for areas subject to shoreland zoning when the county has adopted by ordinance the cutting and harvest rules contained in this chapter for their shoreland areas subject to shoreland zoning.

(b) Permit conditions. The riverway board or the county shall place conditions in permits necessary to assure timber harvest or cutting is conducted in compliance with this chapter. Additional conditions, as applicable, shall be included but not be limited to:

1. Cutting specifications to insure that trees of desirable species and form be retained on the site after cutting.

2. Roads constructed for the purpose of harvesting timber shall be visually inconspicuous from the river during the time when the leaves are on the deciduous trees.



3. Timber cutting or harvesting is limited to those times when the ground is frozen or dry and the leaves are off the deciduous trees.

4. Erosion bars or culverts will be installed as necessary to prevent erosion.

5. Harvesting practices shall conform with the "Silvicultural and forest aesthetics handbook" and the department publication "Forest aesthetics."

6. Timber harvesting restrictions necessary to minimize the impact on any known populations of federally or state designated threatened and endangered species.

Note: The species are listed in ch. NR 27.

(c) Maps or diagrams. Landowners desiring to conduct any timber cutting or harvesting, including road construction shall submit a map or diagram of the proposed timber harvest area identifying the property boundaries, harvest boundaries, road locations and other information requested by the riverway board or county.

(2) BLUFF ZONE AND RIVERVIEW ZONE. In addition to other restrictions established on timber cutting and harvest within the bluff zone and riverview zone, the following conditions shall be included but not be limited to:

(a) No timber cutting or harvest may be conducted at any time other than when the ground is frozen or dry and the leaves are off the deciduous trees.

(b) Road construction for the purpose of harvesting or cutting timber on slopes facing the river shall comply with the following:

1. The permit authorizing the timber harvest and road construction.
2. The average grade may not exceed a 10% slope.

3. Grades up to but not exceeding 15% for no longer than 75 feet horizontal distance are authorized; however, grades with a slope of 10% to 15% may not constitute more than 20% of the road length.

4. Road width may not exceed 12 feet.

5. Switchbacks are not permitted on slopes facing the river.

However, a variance may be granted allowing switchbacks or grades in excess of the limits established in subds. 2 and 3 in areas that would otherwise be inaccessible subject to the visually inconspicuous requirement of sub. (1)(b)2 and the erosion protection requirement of sub. (1)(b)4.

6. Roads, upon completion of the timber cutting and harvest operation, shall be seeded to establish sod or other vegetative cover.

Note: A mixture of seed including 10 pounds of white dutch clover, 5 pounds of perennial rye, 10 pounds of annual rye, and 15 pounds of creeping red fescue at a rate of 40 pounds per acre has proven effective. One mile of woods or timber road 12 feet wide will normally equal approximately 1.5 acres.

(3) RIVER EDGE ZONE. Except as otherwise provided in ss. 30.42(1)(d), Stats., no person may cut, harvest or remove any tree which meets the definition of timber within the river edge zone unless the tree poses an imminent hazard to life or property.

(4) BLUFF ZONE. No person may cut, harvest or remove timber within the bluff zone except by selection cutting. After cutting, the residual stand shall be at least 75 square feet basal area.

(5) RIVERVIEW ZONE. No person may cut, harvest or remove timber within the riverview zone except as follows:

(a) By small regeneration cuts with boundaries designed to harmonize with naturally occurring shapes consistent with the "silvicultural and forest aesthetic handbook" and the publication "Forest aesthetics;"

(b) By shelterwood cuts not to exceed the size, shape, spacing or timing of regeneration cuts;

(c) By selection cutting leaving a residual timber stand of at least 60 square feet basal area.

(6) RESOURCE MANAGEMENT ZONE. Persons in the resource management zone are encouraged to conduct timber cutting, harvest or removal operations consistent with these rules and subch. IV, ch. 30, Stats. The harvest and harvest method should consider integration of all resource capabilities, including:

(a) Cutting boundaries should be designed to harmonize with the natural occurring shapes in the area.

(b) Harvesting and thinning should be limited to when the ground is frozen or dry and the leaves are off the deciduous trees.

(c) Selection cutting, small regeneration cuts and shelterwood cuts are preferable harvesting techniques in this zone.

Note: Statutory exemptions to the timber cutting restrictions in this chapter.

Chapter 30, subch. IV, of the Wisconsin Statutes provides various exemptions to timber cutting rules or restrictions. They do not apply to the cutting of timber if:

1. The landowner and the land involved is subject to a Forest Crop Law or Managed Forest Land Law by order or contract issued prior to October 31, 1989. (ss. 30.42(1)(f) and 30.44(3)(c), Stats.)

2. The cutting of timber is necessary for maintenance of an easement or a right-of-way for a high-voltage transmission line or a utility facility. (s. 30.44(3)(c)2m, Stats.)

3. The timber is diseased and a forester has issued a written determination that the timber is subject to an actual, potential or incipient infestation or infection by an insect or disease that is harmful to the timber. (s. 30.44(3)(c)2r, Stats.)

4. The timber has been damaged by natural causes. (s. 30.44(3)(c)3, Stats.)

5. The timber is on land more than 75 feet beyond the ordinary high-water mark of the river and the land is owned or occupied by the person cutting the timber for use as firewood for the person's agricultural or household use. (s. 30.44(3)(c)4, Stats.)

NR 37.05 VARIANCE. (1) The riverway board may grant a variance allowing timber cutting not in strict conformance with the requirements and restrictions of this chapter when the activity will be visually inconspicuous and the activity will be compatible with protecting the scenic beauty and natural values of the riverway.

(2) The riverway board shall notify the department's riverway coordinator at least 15 days prior to granting any variance under this section and afford the department an opportunity to address the riverway board. The riverway board shall also publish in the official state newspaper notice of a variance request and the date, time and place of the meeting at which the riverway board will consider the request.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on June 28, 1990.

The rules 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.

Dated at Madison, Wisconsin October 11, 1990

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny  
Carroll D. Besadny, Secretary

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State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary  
Box 7921  
Madison, Wisconsin 53707  
TELEFAX NO. 608-267-3579  
TDD NO. 608-267-6897

October 11, 1990

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OCT 12 1990

Revisor of Statutes  
Bureau

Mr. Gary L. Poulson  
Assistant Revisor of Statutes  
119 Martin Luther King, Jr., Blvd.

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. FR-59-89. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Transportation, Conservation and Mining pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

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

Sincerely,

A handwritten signature in cursive script that reads "C. D. Besadny".

C. D. Besadny  
Secretary

Enc.