

CR 92-179

CERTIFICATE

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, CHARLES H. THOMPSON, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to **construction of towers and other tall structures in the State of Wisconsin**, was duly approved and adopted by this Department on May 4, 1994.

I further certify that this 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 of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 4 day of May, 1994.

Charles H. Thompson

CHARLES H. THOMPSON
Secretary



7-1-94

IN THE MATTER OF an Order Adopting Rule **CREATING** ch. Trans 56, Wisconsin Administrative Code, relating to construction of towers and other tall structures in the State of Wisconsin.

ORDER ADOPTING RULE

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 114.135(8) and 227.11, Stats.

STATUTE INTERPRETED: s. 114.135, Stats.

General Summary of Rule. This rule relates to the administration of the Department's "tall tower" permit process. The interpreted statute invests the Department with the responsibility of maintaining airspace over Wisconsin in a condition best suited for the safe operation of aircraft. Safe operation of aircraft requires, among other things, that the "navigable airspace" over the state be kept free of obstructions.

The orderly planning, development and construction of tall structures in Wisconsin is particularly important to human safety near airports. The failure to regulate the construction of tall structures, such as skyscrapers or TV transmission towers near established airways or airports, would endanger human safety and degrade or destroy existing public infrastructure.

This rule: (1) defines technical words and phrases, (2) sets forth the requirement for a permit to construct a tall structure, (3) describes the limits of the permit process, (4) sets out an orderly process for the receipt of and the timely disposition of permit applications, and (5) provides for examination of the interests of the airspace users, the Federal Aviation Administration (which also has advisory input in this field), local concerns, and the structure proponent. The rule also includes the opportunity for public hearings.

Permit criteria are described and a procedure to establish and resolve conflicts is set out. Criteria on which a permit may be denied are established. In addition, **the adoption of Trans 56 will give the Department the authority to use federal standards governing the subsections on the marking and lighting of tall structures. The office of the Attorney General and the Revisor of Statutes Bureau have consented to the incorporation by reference of these federal standards under the provision of § 227.21, Stats.** A subsection on penalties for non-compliance is also identified.

Fiscal Impact. No fiscal impact is anticipated from the implementation of this rule.

Final Regulatory Flexibility Analysis. This rule will have no significant adverse impact on small businesses.

Copies of Rule. Copies of this rule may be obtained, free of charge, upon request to the Wisconsin Department of Transportation, Division of Transportation Assistance, Room 701, P. O. Box 7914, Madison, WI 53707-7914, or by calling James Martin at (608) 267-5018.

TEXT OF RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 114.135(8) and 227.11, Stats., the department of transportation hereby proposes to create a rule interpreting s. 114.135, Stats., relating to construction of towers and other tall structures in the state of Wisconsin.

SECTION 1. Chapter AER 3 is repealed.

SECTION 2. Chapter Trans 56 is created to read:

ERECTION OF HIGH STRUCTURES

TRANS 56.01 PURPOSE. This chapter prescribes procedures for the permitting of the erection of high structures or other objects affecting airspace in the state of Wisconsin.

TRANS 56.02 APPLICABILITY. This chapter applies to any person desiring to erect any building, structure, tower or other object affecting the limitations expressed in s. 114.135(7), Stats. It describes the minimum requirements that a person shall meet before erecting such a structure. This chapter shall not apply to any structure erected or approved for erection prior to the effective date of this chapter....[revisor insert date] unless subsequent addition to that structure would cause it to exceed its original height.

TRANS 56.03 DEFINITIONS. The words and phrases defined in ch. 114, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) "Adverse impact" means an increased level of risk to a pilot flying in navigable airspace, degradation of safety, increased risk to the safe operation of aircraft in airport traffic

patterns, approaches and departures, or other action affecting aviation that is harmful to the public interest.

(2) "AGL" means above ground level.

(3) "AMSL" means above mean sea level.

(4) "Applicant" means any person proposing to erect any structure that would exceed the limitations expressed in s. 114.135(7), Stats.

(5) "Cardinal altitude" means an altitude which commences at 2,000' AMSL and increases in 500' increments.

(6) "Erect" or "erection" means to raise or construct any building, structure, tower or other object, or increase the height of any existing building, structure tower or other object.

(7) "FAA" means federal aviation administration.

(8) "FCC" means the federal communications commission.

(9) "Navigable airspace" means that airspace suitable for transit by aircraft in accordance with 14 CFR part 91.

(10) "Public airport" means any airport open to the regular use of the general public, without prior permission.

(11) "Secretary" means the secretary of the department of transportation.

(12) "Structure" means any building, structure, tower or other object.

(13) "Tower farm" means a grouping of tall towers in clusters.

(14) "VFR" means visual flight rule.

(15) "VFR corridor" means a commonly used route identified by clearly discernible ground references including, but not limited to, railroad tracks, interstate highways, rivers or shorelines.

(16) "Victor airway" means a very high frequency omnidirectional range federal airway.

TRANS 56.04 PERMITS. (1) PERMIT REQUIRED. Any person desiring to erect a structure that exceeds the limitations in s. 114.135(7), Stats., shall obtain a permit from the secretary. Where an addition to an existing structure would cause the structure to exceed the height specified in an existing permit, an amended permit shall be obtained. It is the responsibility of the applicant to properly apply for and obtain the required permit.

(2) AUTHORITY GRANTED BY PERMIT. (a) By issuing a permit, the secretary authorizes the erection of the proposed structure, subject to the conditions in the permit.

(b) A permit does not relieve the permit holder from compliance with other applicable federal, state and local laws and requirements.

(c) The conditions under which a permit is granted include:

1. Written notification to the secretary when erection of the structure has begun, and again upon completion.
2. Written certification to the secretary of the final height upon completion of the structure. Transmission of the appropriate FAA supplemental notification forms or the department of industry, labor and human relations certificate of completion form to the secretary shall fulfill the requirements of s. Trans 56.04(2)(c)1.
3. Written notification to the secretary within 30 days of a change in ownership of the structure.
4. Such other necessary and related conditions as the secretary may specify.

(3) PERMIT APPLICATION GENERAL REQUIREMENTS. (a) Each person who proposes to erect a structure that requires a permit, including increasing the height of an existing structure permitted under s. 114.135(6) and (7), Stats., shall file an application with the secretary. Applications shall be filed with the secretary at the address specified on the application.

NOTE: Application forms for the permits required under s. 114.135(6), Stats., can be obtained from the Wisconsin Department of Transportation, P. O. Box 7914, Madison, WI 53707-7914.

(b) An application for a permit shall include the following information:

1. Name and address of the owner of the proposed structure.
2. Name and address of the applicant, if different from the owner.
3. Location of the proposed structure to within 5 seconds of latitude and longitude.
4. Location of the proposed structure depicted on a United States coast and geodetic survey 7.5' or 15' quadrangle map, or acceptable copy, and by the quarter quarter section of the United States survey.
5. Maximum height AGL of the proposed structure, including all appurtenances and lighting.
6. Maximum elevation AMSL of the proposed structure, including all appurtenances and lighting.
7. Direction and distance to the closest point of the nearest end of runway of the nearest public airport.
8. Description of the marking and lighting proposed to be installed.
9. A copy of the completed FAA form 7460-1, notice of proposed construction or alteration, relative to the proposed structure if one is required.

(c) The application shall be signed by an authorized officer, employe, agent or representative of the applicant.

(d) An incomplete application may be returned to the applicant for further information without action.

(e) The secretary may require additional information deemed necessary by the department to the permit process.

(f) An amendment to an existing permit may be requested by application to the secretary.

(g) The applicant shall be notified within 30 days of receipt of an application if a permit is not required.

(4) PERMIT APPLICATION PROCESSING. (a) The application may be filed at any time.

(b) Upon receipt of a properly completed application, the secretary shall initiate a study.

That study shall include the following:

1. An analysis of the potential impacts of the proposed structure on the safe operation of aircraft and the public interest.

2. Except as provided in par. (h), notification, within 15 working days of receipt of the application, to all airports which may be affected by the proposed structure and to other interested persons, including all known airports within 10 nautical miles of the proposed structure.

3. Except as provided in par. (d) and subject to par. (g), such notice shall provide 90 days for public comment on the proposal.

(c) The secretary shall, within 30 days after the close of the public comment period, issue a decision, except where an FAA aeronautical study is still being conducted. In such instance, no decision shall be issued prior to the issuance of an FAA determination and the resolution of any appeals of that determination.

(d) Where there is no need for an FAA aeronautical study and the proposed structure is more than 5 nautical miles from the closest public airport, the public comment period shall not exceed 30 days.

(e) The applicant or any affected party may, within 20 days of the issuance of a decision, request that the secretary convene a hearing to receive additional information or hear new arguments addressing the application.

(f) If no hearing is requested, the decision shall become final 20 days after the date of issuance.

(g) The secretary may, at any time during the process, convene a meeting to receive public comment and to gather additional facts relevant to the permit application. The secretary may waive the 90-day public comment period anytime after a public comment meeting has been held.

(h) The secretary may waive the notification requirement and public comment period and otherwise expedite applications for towers that do not exceed the highest tower's elevation within a tower farm.

(i) Where there are multiple applicants for the same frequency or service from the FCC, the secretary shall take no final action on a permit application until the FCC has designated a licensee.

(5) PERMIT CONTENTS. The permit shall include the following:

(a) Name and address of the permittee.

(b) The location of the structure by latitude and longitude to the nearest 5 seconds and by the quarter quarter section of the United States survey.

(c) The maximum allowable height of the structure, including all appurtenances and lighting fixtures.

(d) The required marking and lighting.

(e) Notification that the subject structure shall be erected within one year after the date a permit is issued.

(6) PERMIT VIOLATIONS. (a) A permit may be revoked or amended by the secretary for any lawful reason including, but not limited to, the following:

1. Failing to properly maintain the marking and lighting designated by the FAA and FCC.
2. Exceeding the permitted height of the structure.
3. Abandoning the structure.
4. Violating any of the conditions of the permit.
5. The amending of an FAA no hazard determination regarding the proposed structure.
6. Not complying with the terms of an amendment to an FAA no hazard determination relating to the proposal.

(b) In the event the erection of the structure is not completed within one year, an extension may be requested. The extension shall be granted if the criteria for the issuance of the permit continue to be satisfied. Where there is a significant change in facts which may create an adverse impact on aviation, the secretary shall conduct a new study prior to acting on the request for extension.

(c) Upon violation of any of the conditions of the permit, the secretary shall notify the owner of the deficiency. The owner shall correct the deficiency within a reasonable period of time, as specified in the notice. Failure to do so may subject the owner to the penalties provided in s. 114.27, Stats.

(d) If the owner fails to correct the deficiencies described in par. (c), the secretary may notify the FAA and FCC where applicable, correct the deficiency and recover the cost from the owner, or revoke the permit by notice to the owner. The owner may appeal a revocation as provided in s. 114.315, Stats.

(e) Upon revocation of the permit, the owner shall dismantle and remove the structure within a reasonable period of time. Should the owner fail to do so, the secretary may remove the structure and recover the cost from the owner.

(f) A permit shall terminate 60 days after the collapse or removal of the structure or after the secretary issues a determination of abandonment of the structure unless, within such 60 days, the permittee notifies the department that it intends to either erect a replacement structure within the parameters of the existing permit or repair the existing structure.

(g) Any person who erects a structure without obtaining a required permit may be subject to the penalties in s. 114.27, Stats.

(7) APPLICATION EVALUATION. (a) The secretary shall consider the following in determining if a proposed structure will create an adverse impact on the safe operation of aircraft including, but not limited to, the impact on:

1. A minimum altitude on a published instrument approach procedure.
2. Existing instrument departure minimums.
3. Airport traffic patterns at public airports.
4. A cardinal altitude along a victor airway, published routing or VFR corridor.
5. Airspace affected by a proposed structure over 1,000' AGL outside a tower farm or over 500' AGL under an airport radar service area outside a tower farm.
6. Airspace affected by a proposed structure over 500' AGL in remote areas which may be difficult to see.
7. Airspace affected by proposed structures located in areas of known regular, reoccurring use by pilots including, but not limited to, published flight corridors and arrival or departure routes for the annual experimental aircraft association convention and air show at Oshkosh.

8. Visual or instrument operations at an airport or runway shown on a plan approved by the secretary.

(b) The secretary shall approve a permit if all of the following criteria are satisfied:

1. If an FAA aeronautical study is required, the secretary receives a copy of the determination of no hazard.

2. The secretary concludes that the structure will not create an adverse impact on the safe operation of aircraft.

(c) The secretary shall deny a permit if any of the criteria in par. (b) is not met.

TRANS 56.05 MARKING AND LIGHTING. (1) All marking and lighting shall be in accordance with the standards prescribed in the FAA publication, AC 70/7460-1H, "Obstruction Marking and Lighting," as amended. The applicant shall comply with designated FAA and FCC marking and lighting.

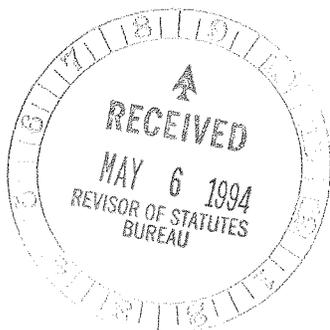
(2) In the event of any deficiency in marking or lighting, the owner shall initiate repairs and notify the FAA in accordance with the current FAA marking and lighting publication.

NOTE: The federal standards prescribed above may be obtained from the Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Room 701, P. O. Box 7914, Madison, WI 53707-7914. These standards are also on file with the Attorney General's office and the Revisor of Statutes Bureau.

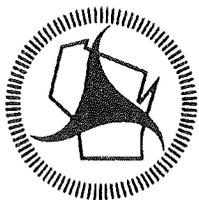
(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 4 day of May, 1994.




CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation



Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

May 5, 1994

Mr. Gary Poulson
Deputy Revisor of Statutes
131 West Wilson Street, Suite 800
Madison, Wisconsin 53703

RE: **CLEARINGHOUSE RULE 92-179**

In the Matter of the Adoption of **TRANS 56**, Wisconsin Administrative Code, relating to **construction of towers and other tall structures in the State of Wisconsin.**

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 92-179**, an administrative rule relating to the above-mentioned matter. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosures

cc: Tom Walker
Dorothy Kapke
Jim McDonnell
John Evans
Bob Kunkel
Keith Gerard
Tom Thomas

