

Clearinghouse Rule 96-113
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

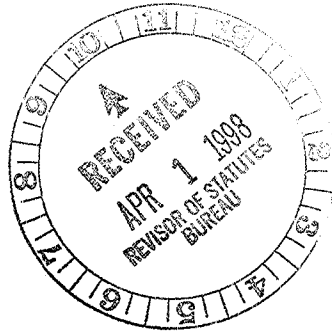
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STATE OF WISCONSIN)
) ss
DEPARTMENT OF NATURAL RESOURCES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, 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. WZ-35-96 was duly approved and adopted by this Department on October 22, 1997.. 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 the Natural Resources Building in the City of Madison, this 30 day of March, 1998.



George E. Meyer
George E. Meyer, Secretary

(SEAL)

96-113

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to amend NR 103.08 (4) (a) 1., 103.08 (4) (b), 299.05 (5) and (6) and 504.04 (2) (a) and to create NR 103.02 (1m), 103.06 (4), 103.07 (1), 103.08 (1m) and 103.08 (4) (c), and renumbering NR 103.07 (1) and 103.07 (2) to 103.07 (2) and 103.07 (3) relating to water quality standards for wetlands, water quality certification and landfill location, performance, design and construction criteria.

WZ-35-96

Analysis Prepared by
Department of Natural Resources

Statutory authority: ss. 227.11(2)(a), 281.15, 283.001 and ch. 289, Stats.

Statutes interpreted: ss. 281.12(1), 281.15, 283.001 and ch. 289, Stats.

Chapters NR 103, 299 and 504 currently contain standards and criteria for activities affecting wetlands. Chapter NR 103 establishes water quality standards for wetlands. Chapter NR 299 establishes the states water quality certification program and Chapter NR 504 establishes landfill location, performance, design and construction criteria. The standards and criteria in these codes are based upon protecting, preserving, restoring and enhancing the functional values of wetlands.

The standards and criteria are applicable to Department regulatory, planning, resource management, liaison and financial aid determinations which may impact wetlands. The proposed changes will be implemented through application under existing Department regulatory and management programs (e.g., ch. 283, Stats.; ch. NR 299, Wis. Adm. Code, etc.).

SECTION 1. NR 103.02(1m) is created to read:

NR 103.02(1m) "Artificial wetland" means a landscape feature where hydrophytic vegetation may be present as a result of human modifications to the landscape or hydrology and for which there is no prior wetland or stream history.

SECTION 2. NR 103.06 (4) is created to read:

NR 103.06(4) EXEMPTIONS. A person who proposes a project that may affect an artificial wetland shall notify the department at least 15 working days prior to initiating the project. For purposes of this chapter, the following artificial wetlands are exempt from the provisions of this chapter unless the department notifies the applicant within 15 working days from when the department receives notice of the proposed project from the applicant that the artificial wetland has significant functional values or uses under s. NR 103.03 (1) (e), (f) or (g):

(a) Sedimentation and stormwater detention basins and associated conveyance features operated and maintained only for sediment detention and flood storage purposes;

(b) Active sewage lagoons, cooling ponds, waste disposal pits, fish rearing ponds and landscape ponds.

(c) Actively maintained farm drainage and roadside ditches.

(d) Artificial wetlands within active nonmetallic mining operations.

SECTION 3. NR 103.07 (1) is created to read:

NR 103.07 (1) "Expansion activities of existing cranberry operations" means expansions of existing cranberry beds, "squaring-off" of existing cranberry beds, construction of new cranberry beds adjacent to existing beds, rehabilitation of abandoned beds, construction of dikes

for subdivision of an existing reservoir, and the construction or extension of dikes for reservoir expansion.

SECTION 4. NR 103.07 (1) and (2) are renumbered to NR 103.07 (2) and NR 103.07 (3)

SECTION 5. NR 103.08 (1m) is created to read:

NR 103.08(1m) The department may rely upon wetland boundary determinations made by other agencies and consultants. If there is a dispute concerning a wetland boundary delineation, the review of the delineation shall be consistent with the procedures identified in the "Basic Guide to Wisconsin's Wetlands and Their Boundaries" (Wisconsin Department of Administration PUBL-WZ-029-94) as determined by the department.

Note: This guide is based upon the "Corps of Engineers Wetlands Delineation Manual, 1987" which has been regionalized for Wisconsin. Copies of "Basic Guide to Wisconsin's Wetlands and Their Boundaries" may be obtained from Wisconsin Department of Administration, Document Sales Unit, 202 S. Thornton Ave., P.O. Box 7840, Madison, WI 53707-7840.

SECTION 6. NR 103.08 (4) (a) 1. is amended to read:

NR 103.08(4)(a)1. An activity is not wetland dependent; and the surface area of the wetland impact, which includes impacts noted in s. NR 103.08(3), is greater than 0.10 acres, and

SECTION 7. NR 103.08 (4) (b) is amended to read:

NR 103.08 (4) (b) For all activities which either do not meet the conditions in par. (a) or for cranberry activities, the department utilizing the factors in sub. 3 (b) to (f), shall determine whether the project proponent has shown that the activity will not result in significant adverse impacts to the functional values of the affected wetlands, significant adverse impacts to water quality or other significant adverse environmental consequences. If it is determined that significant adverse impacts will occur, the department shall make a finding that the requirements of this chapter are not satisfied. If it is determined that significant impacts will not occur, the department shall make a finding that the requirements of this chapter are satisfied.

SECTION 8. NR 103.08 (4) (c) is created to read:

NR 103.08 (4) (c) For the purposes of determining whether there is a practicable alternative to a proposed expansion of an existing cranberry operation, the analysis shall be limited to alternatives within the boundaries of the property where the existing cranberry operation is located and on property immediately adjacent to the existing cranberry operation. For new cranberry operations, a practicable alternatives analysis must be conducted which shall include off-site alternatives.

SECTION 9. NR 299.05 (5) is amended to read:

NR 299.05 (5) Any person whose substantial interests may be affected by the department's determination may, within 30 days after publication of the notice, request in writing a contested case hearing on the matter under ch. 227, Stats. A request for a contested case hearing shall include a written statement giving specific reasons why the proposed activity violates the standards under s. NR 299.04 (1) (b) and provide specific information explaining

why the petitioner's interests are adversely affected by the department's determination. The request for hearing shall also include a written statement specifying that the petitioner will appear and present information supporting the petitioner's objections in a contested case hearing. The department may request additional information from the petitioner to support the allegations in the petition prior to granting or denying a hearing request. In any case where a class 1 notice on the application is otherwise required by law or where a contested case hearing on an application for water quality certification will be held under some other specific provision of law, the notice and hearings shall be combined.

SECTION 10. NR 299.05 (6) is amended to read:

NR 299.05 (6) Hearings requested under this section shall be contested case hearings, and shall be in accordance with the procedures outlined in ch. 227, Stats., and may not deal with issues that were adjudicated under separate authority. The hearing shall be a de novo hearing on the issue of whether the department should grant, grant with conditions, deny or waive water quality certification. No hearing may be granted under this section on issues relating to water quality certification for a specific project if the same issues were, or could have been, adjudicated in another proceeding in which the petitioner or persons privy to the petitioner was named or admitted as a party.

SECTION 11. NR 504.04 (2) (a) is amended to read:

NR 504.04(2) EXEMPTIONS. (a) Exemptions from compliance with subs. (3) (a), (b), (d), (e), (f), (g), (h), (i) and (4) (b), (e) and (f) may be granted by the department only upon demonstration by the applicant of circumstances which warrant such an exemption. ~~Exemptions from compliance~~ Compliance with sub. (4)(a) ~~may be granted only~~ shall be evaluated in accordance with the standards set forth in ch. NR 103. For the purpose of determining whether there is a practicable alternative to a proposed landfill expansion under s. NR 103.08, the department may allow an applicant to limit its analysis of alternatives to alternatives within the boundaries of the property where the existing landfill is located and on property immediately adjacent to the existing landfill. Exemptions from compliance with subs.(3) (c) and (4) (c) may not be granted. Exemptions from compliance with sub. (4) (d) may be granted only according to the procedures set forth in chs. NR 507 and 140. Exemptions from compliance with sub. (3) (f) will be based on an evaluation of the information contained in par. (b). However, no exemptions from sub. (3) (f) may be granted unless information on the well location, former and present well owner, well driller, well log and construction details and the general hydrogeologic setting is submitted to the department. Exemptions from sub. (3) (i) may be granted only if the applicant demonstrates that engineering measures have been incorporated into the landfill's design to ensure that the integrity of the structural components of the landfill will not be disrupted.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on October 22, 1997.

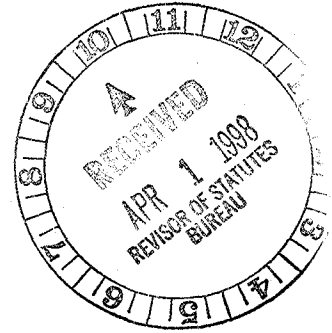
The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

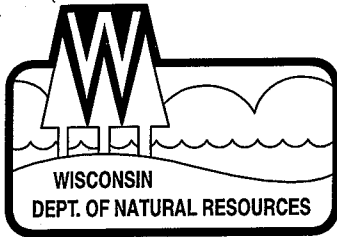
Dated at Madison, Wisconsin March 30, 1998

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary

(SEAL)





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

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March 27, 1998

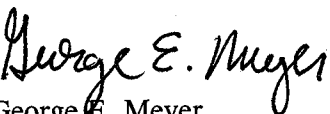
Mr. Gary L. Poulson
Assistant Revisor of Statutes
131 West Wilson Street - Suite 800
Madison, WI

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WZ-35-96. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Agriculture and Environmental Resources 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,


George E. Meyer
Secretary

Enc.

