



NR 345

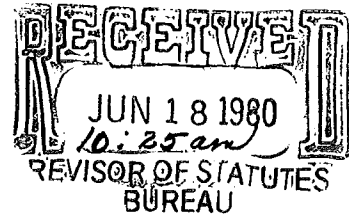
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl  
Secretary

BOX 7921  
MADISON, WISCONSIN 53707

IN REPLY REFER TO: \_\_\_\_\_

STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES ) ss



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Anthony S. Earl, 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-61-79 was duly approved and adopted by this Department on April 23, 1980. 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.

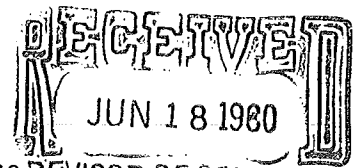
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at General Executive Facility #2 in the City of Madison, this 16<sup>TH</sup> day of June, 1980.

*Anthony S. Earl*  
\_\_\_\_\_  
Anthony S. Earl, Secretary

(SEAL)

*Good copy date 5-1-80*

CREATING RULES



WR-61-79 REVISOR OF STATUTES BUREAU

.....
IN THE MATTER of creating chapter
NR 345 of the Wisconsin Administrative
Code pertaining to removal of material
from the beds of waterways
.....

Analysis Prepared by Department of Natural Resources

Sec. 30.20(1)(b), Stats., was amended in 1966 to require that a permit be obtained to authorize the removal of material from the beds of streams. Administrative interpretation at that time limited the application of the amended statute section to navigable streams. In State of Wisconsin v. Francis Dwyer, 91 Wis.2d (Ct. App.) 440 (1979), the Court of Appeals ruled that authority was required from the Department of Natural Resources for the removal of materials from the beds of all streams, both navigable and nonnavigable.

This rule would result in a doubling of the number of authorities issued annually by the Department of Natural Resources for the removal of material from the beds of waterways (1978 and 1979 authorities averaged 250 decisions per year). The rule would likely result in some dredging projects for non-navigable waterways not being performed because of a denial by the Department of the requested authority. The rule would also most likely result in dredging projects on nonnavigable waterways being done in a more environmentally sensitive manner.

This rule also streamlined the procedure for processing all dredging permit applications and a simplified procedure for use in processing permit applications for projects that will not have adverse environmental impacts and will be consistent with the public interest in the water involved. This procedure will apply to most maintenance dredging projects.

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by sections 30.20(1)(b) and 227.014, Wisconsin Statutes, the State of Wisconsin Natural Resources Board hereby creates rules interpreting section 30.20(1)(b), Wisconsin Statutes, as follows:

Chapter NR 345

REMOVAL OF MATERIAL FROM THE

BEDS OF WATERWAYS

- NR 345.01 Purpose
NR 345.02 Applicability
NR 345.03 Definitions
NR 345.04 Severability
NR 345.05 Procedure
NR 345.06 Emergency procedure
NR 345.07 Nonnavigable waterways

NR 345.01 Purpose. This chapter establishes procedures to implement permitting procedures for the removal of material from the beds of waterways pursuant to s. 30.20; Stats. In addition, this chapter codifies the decision rendered in the matter of State of Wisconsin v. Francis Dwyer, 91 Wis.2d (Ct. App.) 440 (1979).

NR 345.02 Applicability. The provisions of this chapter are applicable to the removal of materials from the bed of any lake or stream except those waterways set forth in s. 30.20(1)(a), Stats., for which contracts are necessary for removal of material from the bed.

NR 345.03 Definitions. (1) "Department" means the state of Wisconsin department of natural resources.

(2) "Person" includes all individuals, partnerships, associations and bodies politic and corporate.

NR 345.04 Severability. Should any section, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

NR 345.05 Procedure. (1) Any person desiring a permit pursuant to s. 30.20, Stats., shall submit an application upon forms developed by the department. No application will be processed unless it is fully completed.

(2) Upon receipt of a complete application, the department shall conduct a site investigation of the proposal within 30 days. Weather conditions which prevent a comprehensive evaluation of the project shall be considered an extenuating circumstance extending the 30-day time limitation. The department shall inspect the site as soon as practicable after the cessation of the weather conditions which prevented the initial site inspection.

(3) If the department concludes that the proposed project will not have adverse environmental effects and will be consistent with the public interest in the water involved, a permit may be issued immediately.

(4) If the department concludes that the proposed project will have adverse environmental effects or will not be consistent with the public interest in the water involved, a permit may be denied immediately.

(5) If the department is uncertain from the initial site inspection as to whether the proposed project has adverse environmental effects or is not consistent with the public interest in the water involved, additional information may be requested of the permit applicant or further investigation may be conducted prior to rendering a decision. A decision granting or denying the permit shall be rendered immediately upon completion of department evaluation.

(6) A hearing may be requested pursuant to s. 227.064, Stats., relative to the department's granting or denial of any permit pursuant to s. 30.20, Stats.

(7) No permit issued by the department for the removal of material from the bed of a waterway may be exercised unless all necessary permits or approvals have been issued by local, state or federal government agencies having jurisdiction over the proposed project.

NR 345.06 Emergency procedure. (1) Notwithstanding section NR 345.05, emergency removal of bed material required by sudden natural closures of drainage ditches draining agricultural lands currently used for crop production may be done according to plans preapproved by the department. Such plans shall include a plan view of the agricultural lands showing the location of drainage ditches, ditch bottom profiles and cross-sections, the location of disposal sites for removed bed material and devices to prevent downstream sedimentation and turbidity. The department shall be notified of the closure as soon as is practicable, but in any event prior to completion of the removal.

(2) Emergency removal of bed material in ditches draining agricultural lands currently used for crop production and for which plans have not been preapproved by the department may be done according to the following procedure.

The department shall be called prior to commencement of the removal and notified of the location of the proposed removal, the nature of the sudden closure, the location of disposal sites for removed bed material and devices that will be used to prevent downstream sedimentation and turbidity. Within 30 days of the commencement of such emergency removal, an application shall be filed for a permit for such removal pursuant to s. 30.20, Stats.

NR 345.07 Nonnavigable waterways. Pursuant to the ruling set forth in State of Wisconsin v. Francis Dwyer, 91 Wis.2d (Ct. App.) 440 (1979), a permit is necessary to remove material from the bed of any nonnavigable lake or stream.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on

The rules contained herein shall take effect upon publication as provided in section 227.026(1) (intro.), Wisconsin Statutes.

Dated at Madison, Wisconsin 16 June 1980

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Anthony S. Earl  
 Anthony S. Earl, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

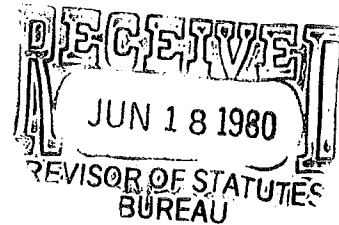
Anthony S. Earl  
Secretary

BOX 7921  
MADISON, WISCONSIN 53707  
1020

June 16, 1980

IN REPLY REFER TO: \_\_\_\_\_

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




Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WR-61-79. These rules were reviewed by the Assembly Environmental Resources Committee and the Senate Natural Resources Committee pursuant to section 227.018, Wisconsin Statutes. There were no objections.

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

Sincerely,

  
Anthony S. Earl  
Secretary

ENC.