

SUBJECT:

Request adoption of Board Order AM-12-10, proposed rules affecting chs. NR 400, 405, and 406 pertaining to permit requirements relating to non-federal Class I areas.

FOR: AUGUST 2010 BOARD MEETING

TO BE PRESENTED BY: Andy Stewart, Chief, Permits and Stationary Source Modeling Section

SUMMARY:

The proposed rules incorporate the federal designation of the Forest County Potawatomi Community (FCPC) as a non-Federal Class I area for the prevention of significant deterioration (PSD) of air quality, and include portions of a Final Agreement reached between the state and the Forest County Potawatomi Community concerning the Class I area.

A Class I area is defined in ch. NR 405, Wis. Adm. Code. In general, the PSD program is designed to preserve air quality in Class I areas such as national parks and other areas meeting the National Ambient Air Quality Standards. Class I areas are subject to lower allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide.

The FCPC non-Federal Class I area was established by US EPA at the request of the FCPC in 2008 (the original FCPC request for this designation was filed in 1995). In 1999, the state signed a Final Agreement with the FCPC that resolved issues pertaining to implementation of a FCPC Class I area and which details what the Department, FCPC, and potentially affected permit applicants need to do to evaluate the impact of new or modified sources of air pollution that may potentially impact the FCPC Class I area. This Final Agreement took effect after federal establishment of the FCPC Class I area.

There is not expected to be any significant controversy over adopting these rules.

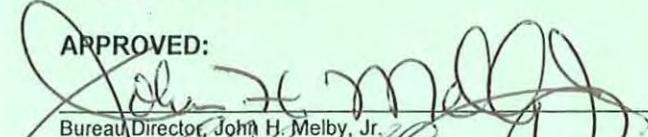
RECOMMENDATION: That the Board adopt Order AM-12-10.

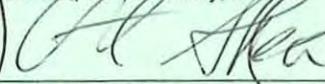
LIST OF ATTACHED MATERIALS:

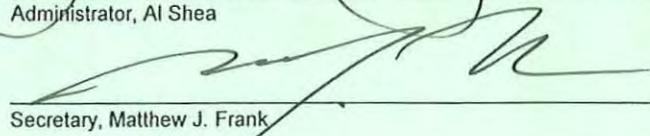
- No Fiscal Estimate Required
- No Environmental Assessment or Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

APPROVED:


 Bureau Director, John H. Melby, Jr.


 Administrator, Al Shea


 Secretary, Matthew J. Frank

7/9/10
 Date

7/12/10
 Date

7-22-10
 Date

cc: Laurie Ross - AD/8
Mike Scott - LS/8

Linda Haddix - LS/8
R. Eckdale - AM/7

DATE: July 12, 2010 FILE REF: 4533

TO: Natural Resources Board Members

FROM: Matt Frank, Secretary 

SUBJECT: Background Memo for adoption of Order AM-12-10, proposed rules affecting NR 405 and 406 pertaining to permit requirements relating to non-federal Class I areas.

Why is this rule being proposed?

This rule is being proposed to incorporate the federal re-designation of certain parcels of the Forest County Potawatomi Community (FCPC) Reservation as a non-Federal Class I area for the prevention of significant deterioration (PSD) of air quality, and to include portions of a 1999 Final Agreement reached between the state and the Forest County Potawatomi Community concerning the Class I area.

A Class I area is defined in ch. NR 405, Wis. Adm. Code. In general, the PSD program is designed to preserve air quality in Class I areas such as national parks and other areas meeting the National Ambient Air Quality Standards. Class I areas are subject to lower allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide.

Summary of the Rule

The rule will:

- Establish the FCPC Class I area as a non-Federal Class I area
- Identify the reservation land parcels of the FCPC Class I area; and
- Identify the requirements for air permit applicants locating within the geographic areas covered in the Final Agreement.

How does this proposal affect existing policy?

The Department is required to keep the air permitting program consistent with federal requirements. This proposed rule change updates the permitting program rules to include the FCPC Class I area that has been approved by US EPA.

Additionally, the rule proposal will aid in the implementation of the Final Agreement reached between the State and the FCPC. In general, this Agreement reduces the number of sources that would have otherwise been required to do additional air quality analyses for the FCPC Class I area in comparison to a Federal Class I area. Thus, these proposed rules will implement existing policy reflected in the Final Agreement.

Hearing Synopsis

Public hearings on the proposed rule were held on June 7, 2010 in Madison and June 9, 2010 in Wausau. There were five attendees at the Madison hearing and four attendees at the hearing in Wausau. Comments on the rule were submitted by the Forest County Potawatomi Community (FCPC) at the Madison hearing.

One comment generally supporting rule and clean air was submitted at the Wausau hearing. The comments received from the FCPC were in support of the proposed rule.

Written comments on the proposed rule were also received from the Wisconsin Paper Council (WPC) and Wisconsin Manufacturers and Commerce (WMC). These comments concerned the dimensions of the "22.25 mile" and "74.25 mile" affected facility circles included in the proposed rule. Both WPC and WMC stated that each of the circles encompasses too large of an area and are not consistent with the "10 mile" radius and "62-mile" distance contained in the 1999 Final Agreement between the state and the FCPC. In response to these comments, a change has been made to the final rule to clarify that no facility located further than 62 miles from any portion of the FCPC Class I area will be subject to the requirements of the final rule. The Department is not proposing to change the dimensions of the "22.25 mile" circle because a drawing of an essentially identical circle is included in the Final Agreement. Therefore, the Department believes that the "22.25" mile circle included in the final rule is consistent with the terms of the Final Agreement.

Additionally, WPC commented that implementation of the Final Agreement could lead to the Department exceeding permit issuance timelines in State Statutes. No portion of the proposed rule allows the Department to exceed the permit issuance timelines contained in s. 285.61, WI Stats. (i.e. WI Act 118). Therefore, all statutory permit issuance deadlines will be met for permits for facilities affected by this rule and for facilities not affected by this rule.

Comments submitted by the Legislative Council Rules Clearinghouse were of a non-substantive nature with the changes specifically suggested by the Clearinghouse included in the proposed rule.

Information on Environmental Analysis

Under s. NR 150.03(3), Wis. Adm. Code, an environmental analysis is not needed because this proposal is considered a Type III Action. A Type III Action is one that normally does not have the potential to cause significant environmental effects, normally does not affect energy usage and normally does not involve unresolved conflicts in the use of available resources.

Final Regulatory Flexibility Analysis

These proposed rules apply only to larger sources of air pollution which are not, in general, small businesses. The Department believes it is unlikely any small business would be impacted by these proposed rules.

Forest County Potawatomi Community Class I Area

Legend

- Class I Parcels
- 22.25 Mile Radius
- 74.25 Mile Radius
- 62 Mile Distance
- Sources

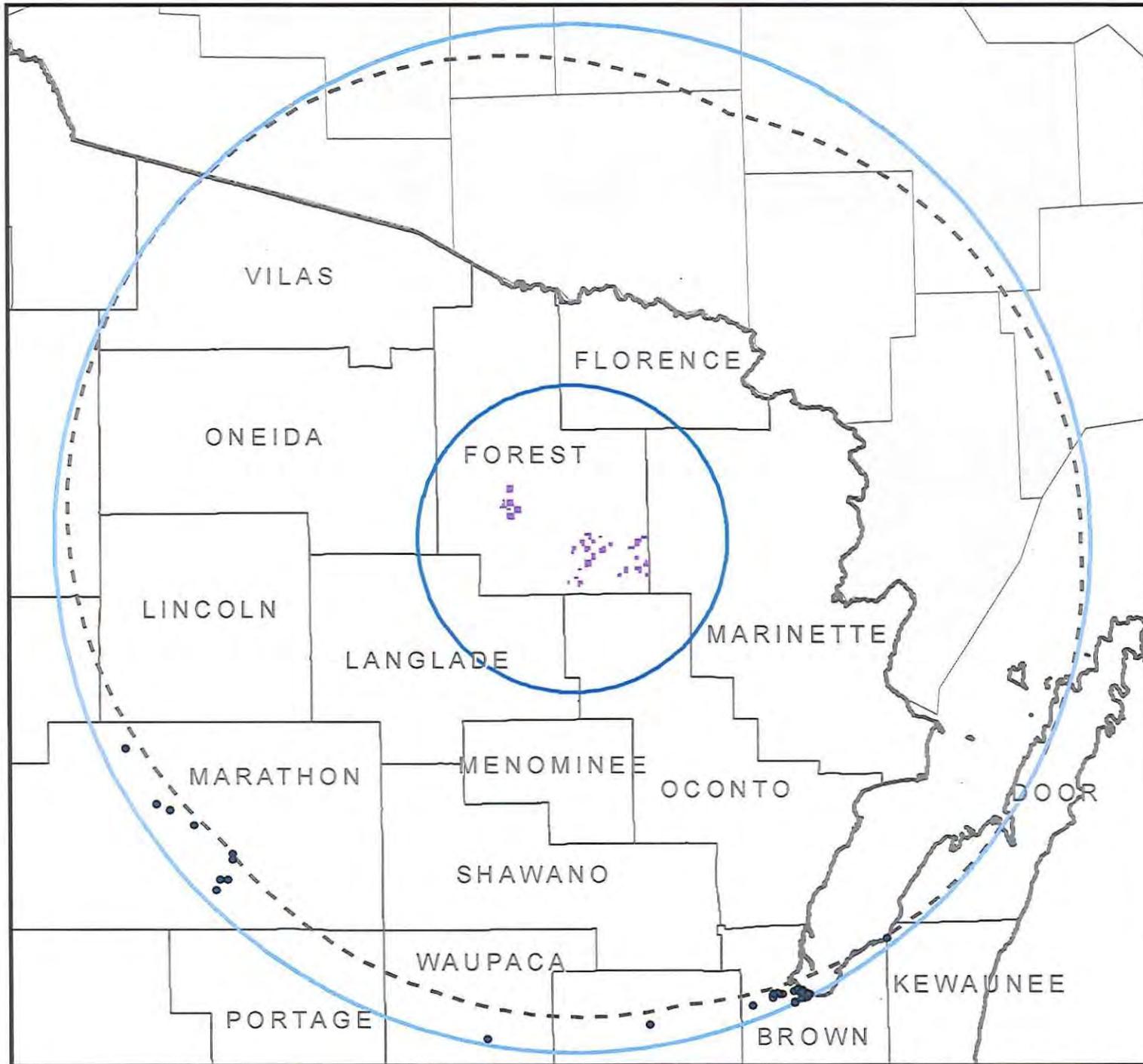


0 12.5 25 Miles



FOR PRESENTATION PURPOSES

The data shown on this map have been obtained from various sources, and are of varying age, reliability, and resolution.



Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number AM-12-10

Subject

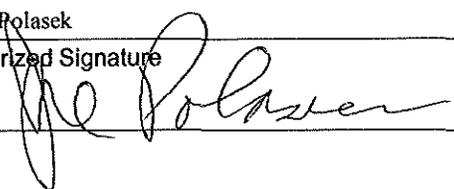
Proposed rules affecting NR 400, 405, and 406 pertaining to permit requirements relating to non-federal Class I areas.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None.

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$ 0	\$ - 0
(FTE Position Changes)		(0.00 FTE)	(- 0.00 FTE)
State Operations — Other Costs		0	- 0
Local Assistance		0	- 0
Aids to Individuals or Organizations		0	- 0
Total State Costs by Category		\$ 0	\$ - 0
B. State Costs by Source of Funds			
GPR		\$ 0	\$ - 0
FED		0	- 0
PRO/PRS		0	- 0
SEG/SEG-S		0	- 0
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$ 0	\$ - 0
GPR Earned		0	- 0
FED		0	- 0
PRO/PRS		0	- 0
SEG/SEG-S		0	- 0
Total State Revenues		\$ 0	\$ - 0

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ 0	\$ 0
Net Change in Revenues	\$ 0	\$ 0

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07/08/10

Fiscal Estimate — 2009 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number AM-12-10

Subject

Proposed rules affecting NR 400, 405, and 406 pertaining to permit requirements relating to non-federal Class I areas.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

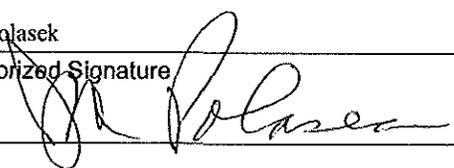
Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

These proposed rules amend the existing air permitting rules to include a non-federal Class air quality area. The Department already processes air permits which may impact existing Class I areas and expects no significant change in permit workload as a result of this rule.

Long-Range Fiscal Implications

None

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07/08/10

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board adopts an order to create NR 400.02 (66m), 405.19 and 406.08(4) relating to permit requirements for Class I areas, and affecting small business.

AM-12-10

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. Statutory authority: ss. 227.11(2)(a) and 285.11(1) and (6) Stats.

3. Explanation of agency authority:

Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(6), Stats., requires the Department to develop a plan for abatement of air pollution in the State. The permitting program, in general, and these regulations specifically, is part of that plan.

These rules are based on federal rules as well as a 1999 Final Agreement reached between the State and the Forest County Potawatomi Community (FCPC).

4. Related statute or rule:

The FCPC Class I area was established as part of a Federal Implementation Plan approved by USEPA in an April 29, 2008 Federal Register Notice.

5. Plain language analysis: This rule is being proposed to amend portions of Department rules to incorporate the federal re-designation of certain parcels of the Forest County Potawatomi Community Reservation as a non-Federal Class I area for the prevention of significant deterioration (PSD) of air quality, and to include portions of a 1999 Final Agreement reached between the State and the Forest County Potawatomi Community concerning the Class I area.

A Class I area is defined in ch. NR 405, Wis. Adm. Code. In general, the PSD program is designed to preserve air quality in Class I areas such as national parks and other areas meeting National Ambient Air Quality Standards. Class I areas are subject to lower allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide.

6. Summary of, and comparison with, existing or proposed federal regulation: In an April 29, 2008, Federal Register Notice, the United State Environmental Protection Agency (USEPA) established the FCPC Class I area. The Department and the FCPC have agreed to provisions impacting the FCPC Class I area that USEPA stated, in the April 29, 2008, notice, need to be promulgated as part of the State's Implementation Plan for controlling air pollution in order to be effective for federal purposes.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota): There are no non-federal Class I areas or non-federal Class I rules in any of these states.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen: The proposed rule is based on the federal re-designation of the FCPC Reservation lands to non-federal Class I, and the Final Agreement.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report: An analysis of the effect of the proposed rules on small business was not performed since the proposed rule only impacts major sources of air pollution in the State and conforms to federal requirements. Major sources of air pollution are not typically small businesses.

10. Effect on small business: These rules should not have a significant economic impact on small business because major air pollution sources do not generally meet the definition of a small business.

11. Agency contact person: Steven Dunn, P.O. Box 7921, Madison, WI 53707, Telephone number: (608) 267-0566; e-mail address: Steven.Dunn@wisconsin.gov

SECTION 1. NR 400.02 (66m) is created to read:

NR 400.02 (66m) "Forest County Potawatomi Community Class I area" or "FCPC Class I area" means those land parcels of the Forest County Potawatomi Reservation that are designated as a non-federal Class I area by EPA under 40 CFR. 52.2581. The FCPC Class I area has a geographic center, as determined by the department, at latitude 45.49978°N, longitude 88.64377°W.

SECTION 2. NR 405.19 is created to read:

NR 405.19 **Forest County Potawatomi Class I area.** (1) For any new major source or major modification of an existing source, the Forest County Potawatomi Community shall have the opportunity to present to the department, within no more than 75 days of receipt of a complete permit application by the department, a demonstration that the emissions from the proposed new major source or major modification would have an adverse impact on the established air quality related values of the FCPC Class I area.

(2) New major sources or major modifications of existing sources wholly or partially locating or located within a radius of 22.25 miles from the geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m), are subject to an increment analysis and limited to the maximum allowable increase levels of a Class I area.

(3) New major sources or major modifications of existing sources locating or located

wholly outside the area defined in sub. (2) are subject to an increment analysis and maximum allowable increase levels of a Class II area.

Note: The relationship between the State of Wisconsin and the Forest County Potawatomi Community with regard to the FCPC Class I area is established in a 1999 Class I Final Agreement. The geographic center of the FCPC Class I area was determined by finding the center of a rectangle placed around the outer most portions of the Class I area. The 22.25-mile radius was determined by adding 10 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area. A map developed by the Department and the Forest County Potawatomi Community shows the approximate 22.25-mile radius for the FCPC Class I area. The Final Agreement, map, and information on established air quality related values for the Class I area are available from the Department upon request, or may be found on the Department's web site.

SECTION 3. NR 406.08 (4) is created to read:

NR 406.08 (4) (a) The Forest County Potawatomi Community shall have the opportunity to review best available control technology (BACT) or maximum achievable control technology (MACT) determinations made by the department for any new or modified source that is either of the following:

1. Wholly or partially locating or located within a radius of 22.25 miles from the geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m).
2. Wholly or partially locating or located within 62 miles of the FCPC Class I area, and has a modeled impact exceeding 1 microgram per cubic meter averaged over any 24-hour period for mercury or for any regulated pollutant that has an ambient air quality standard in s. NR 404.04.

(b) Disagreements between the department and the Forest County Potawatomi Community regarding BACT or MACT determinations are subject to dispute resolution but the department shall act on a permit application according to time period requirements under ss.

285.61 and 285.62, Stats.

Note: The geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m), was determined by finding the center of a rectangle placed around the outer most portions of the Class I area. The 22.25-mile radius was determined by adding 10 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area.

The Department has determined that any source wholly located outside of a circle with a radius of 74.25 miles from the geographic center of the FCPC Class I area is not within 62 miles of the FCPC Class I area. The 74.25-mile radius was determined by adding 62 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area. It is the Department's intent that this circle be used as a screening tool for determining applicability of this subsection, and evidence that a source is wholly outside of this circle will be accepted as proof that the source is not within 62 miles of the FCPC Class I area.

The relationship between the State of Wisconsin and the Forest County Potawatomi Community with regard to the FCPC Class I area is established in a 1999 Class I Final Agreement. Dispute resolution follows a process agreed to by the Department and the Forest County Potawatomi Community pursuant to the Final Agreement.

The Final Agreement and maps showing the approximate 22.25-mile and 74.25-mile radii are available from the Department upon request, or may be found on the Department's web site.

SECTION 4. 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) (intro.), Stats.

SECTION 5. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)