



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Application by Resort of the
Woods, Inc. for Water Quality Certification to Fill
Wetlands to Construct a Driveway to Access a
Proposed Storage Building in the Town of Boulder
Junction, Vilas County, Wisconsin

Case No.: IP-NO-2008-64-68149

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pursuant to due notice the State of Wisconsin Division of Hearings and Appeals conducted a contested case proceeding at Eagle River, Wisconsin on December 4, 2008 and at Boulder Junction, Wisconsin on January 6, 2009. The parties requested the opportunity to submit written closing arguments, and the last was received on January 29, 2009.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

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FINDINGS OF FACT

1. Resort of the Woods, Inc. (RoW), P. O. Box 412, Boulder Junction, Wisconsin, 54512, filed an application with the Department of Natural Resources (the Department) for water quality certification. The proposed project is located in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 17, Township 42 North, Range 07 East, Town of Boulder Junction, Vilas County. The property address is 10490 Boulder Lane, Boulder Junction, Wisconsin.

2. The purpose of the proposed project is to construct a driveway to provide access to a proposed storage building for the owners of the Resort of the Woods condominium. The proposed project would directly impact an area measuring 1275 square feet (.03 acres) of wetlands.

3. On July 22, 2008, the Department determined that the project met state standards and issued a Chapter 30/Water Quality Certification Decision to the Resort of the Woods, Inc. granting the permit with numerous conditions required. Along with the conditions were the instructions to publish the Department of Natural Resources' Notice of Water Quality Certification. The Notice stated that unless written objection was made within 30 days of publication the decision of the Department would become the final decision. A timely objection was filed by Ms. Mason.

4. The application for water quality certification (WQC) described the purpose and need for the project as follows: "Build a storage facility for owners of Resort of the Woods condominium. Currently no storage place for boats, vehicles, snowmobiles, etc" (Ex. 1) Many of the condo owners would appear to be satisfied with a smaller storage unit, while one or two are seeking something closer to a garage. There are fifteen Resort of the Woods owners, and ten are currently seeking some form of storage facility. The proposed project involves three ten foot units; two 12 $\frac{1}{2}$ foot units; one fifteen foot unit; three 20 foot units; and one large 40 foot wide garage. (Keyzers) The DNR has authority to amend the "project purpose" in conjunction with its review of a water quality certification and in determining whether or not there are practicable alternatives. (Houston) For this application the project purpose is to enhance storage available to RoW owners. (Houston)

5. The proposed fill area consists of .03 acres of a high quality wetland that is approximately three acres in size. (Houston) The wetland is a forested, scrub-shrub wetland with bog-like characteristics. It is listed on the Wisconsin Wetland Inventory map. (Ex.4) DNR Area Water Management Specialist, Jayne Wade, rated the functional values of the wetlands as "high" for floral diversity, wildlife habitat and aesthetics. She also rated the wetland as of "medium"

value for flood/stormwater attenuation and water quality protection. According to Wade, the site also had low value functions for fishery habitat and shoreline protection. The applicant's own expert was Wetland Scientist Anne Michalski (Michalski). Michalski agreed that the subject wetland was of a high quality and she scored the functional values for floral diversity, water quality protection, wildlife habitat, aesthetics and groundwater protection as all being of "high" value at the site. Michalski noted that the soils in the wetland consist of deep peat and muck soils overlying reduced sand and loamy sand soils. (Ex. 13)

There is some dispute among the parties as to the depth of the mucky wetland soils before the sand layer is reached. Michalski probed the fill area and took three borings. She found wetland soil depths of 8 inches, 24 inches and 30 inches. (See: Ex. 54, p.11) Mark Koshak and Dale Lang recorded wetland soils depths of between 18 to 48 inches, and Lang testified that some areas exceeded 4 feet of wetland soils depth. (Ex.149)

6. The proposed project site area will be a hard area to build in and this may result in detrimental impacts to wetlands outside the proposed project foot-print. Mark Koshak (Koshak), a Park Falls area general building contractor with a prior specialty in road construction, has extensive North Woods earth-moving experience, including in similar wetland areas for both the DNR and US Park Service. There is a very steep slope on the southern edge of the proposed building site. The slope is stable and vegetated and Koshak testified that it would make sense to move the building farther north. Further, Koshak testified that there was "no way" that it would be possible to build a roadway across the wetland that was only 15 feet in width, given the steep side slopes and the very deep mucky soils in the area. Koshak has significant experience building in similar terrain. Based upon the four-foot depth of mucky soils, the need for at least two feet of fill over the top, and a two to one side-slope grade, Koshak estimated that a 34 foot wide area across the wetland would need to be disturbed to have a stable 10 foot wide top road surface. (Ex. 179)

Dale Lang of Sand Creek Consultants, a long-time former DNR Fish and Habitat Manager, agreed that a fifteen foot footprint would be difficult to obtain, based upon his extensive experience as a wetland regulator overseeing numerous construction projects. Lang opined that given the depth of the wetland soils in the area, and the requirement for 2 to 1 side slopes, that there would be "very little road surface left" within the fifteen foot footprint allowed under the DNR's initial grant of the WQC.

In rebuttal, Mr. Keyzers testified that he had made measurements of the footprint of the proposed wetland fill. According to these measurements, Keyzers found that the US Army Corps of Engineers had inaccurately overstated the amount of the fill. Keyzers measured 91 feet in length instead of the 110 feet used by the USACOE after its field inspection. However, the project as noticed indicated a proposed direct fill area of 1275 square feet. This is already less than the 91 feet by 15 feet (1365 square feet) and likely reflects, as Keyzers testified, that not all of the direct fill area will need to be 15 feet in width.

The applicants did not offer any rebuttal testimony from a contractor or other person with the breadth of experience of Mr. Koshak in building roadways in wetland areas or of Mr. Lang in overseeing such projects. Ms. Michalski, the RoW's expert, specifically stated that she could not

render an opinion on issues related to road construction, which were outside her expertise as a wetland scientist.

Accordingly, it is likely that the footprint as measured by the applicants and as set forth in the original approval does not accurately reflect the expected impact of building a roadway through the wetland area, which would likely be substantially larger due to the site characteristics and road construction problems described at length by Koshak and Lang.

7. The DNR initially approved the proposal subject to conditions. (Ex. 57) The Department changed its position over the course of the de novo hearing, and now concludes that there are several “practicable alternatives” available to the applicant which do not require the filling of wetlands. (Wade; Houston) One of these is a proposed alternative developed by the principal objector, Sandra Mason (Mason and the Mason plan). Mason’s property abuts the RoW property at the proposed building site.

Mason has agreed to provide a one and one-half acre parcel of her own property to the applicants for no cost to allow Resort of the Woods to build a storage unit building that does not require a wetland fill. At hearing, Resort of the Woods was unwilling to accept this offer, in part because it would be a greater distance from their living units and would not function as a garage equivalent for Mr. and Mrs. Keyzers, the condo association president. Further, the additional land may add to their tax liability. However, neither of these considerations is a sufficient basis to determine that the proposed alternative is not “practicable” within the meaning of Chapter NR 103. Some increase in tax liability will also occur when the storage building project is completed at either location. Any increase from the proposed Mason plan parcel will be minimal. Mason estimated that the parcel was valued at \$28,000. Secondly, it would distort the meaning of the “project purpose” to conclude that a year-round daily use garage is the basic project purpose. Rather, the basic project purpose is, as the applicants stated on their application, to build a storage facility for owners of Resort of the Woods condominium.

DNR Area Water Management Specialist, Jayne Wade originally determined that there were no practicable alternatives that did not involve a wetland fill. However Wade, after hearing the detailed Mason alternative plan and other testimony, concluded that there were two viable alternatives: the Mason plan and building the driveway over a small portion of an existing tennis court. Wade’s supervisor, Dan Houston, agreed that the Mason plan was a practicable alternative and said that building the driveway over the existing tennis court should also be considered prior to the granting of a WQC to fill the wetland.

Further, Dan Houston also testified that the project should be denied because there were numerous other available alternatives for storage, including the use of existing off-site rental storage facilities or building a RoW storage unit on another lot. Because the fill area was less than one-tenth of an acre, standard Department practice would be to limit off-site alternatives to an area no more than five miles from the project site. (Houston) There are numerous existing rental storage facilities, including those of the sizes sought by the applicants, located well within this area. (Mason) Sandra Mason provided un rebutted testimony that there were at least five storage business facilities with available space within one mile of RoW.

Another potential alternative to filling the wetland area would be to have the driveway pass over a small portion of the existing tennis court which is jointly owned by RoW (roughly 2/3 of the tennis court) and the neighboring Zaborski property (who own the balance of the tennis court). (Ex.14) The tennis court is directly proximate to the proposed fill area, and has already been excavated and filled. However, at the time of the hearing RoW had not been able to secure any waiver of the Zaborski's rights under the existing Reciprocal Easement. In numbered paragraph 4, in the parties to the Reciprocal Easement "warrant and represent to each other that they shall not construct any buildings or improvements over any portion of the Tennis Court, nor shall they interfere with or obstruct the exercise of each other's rights granted pursuant hereto." (Ex.14) This language would likely bar gaining access to the upland portion of the property over the tennis court in the absence of an agreement to amend or waive the Easement. Accordingly, while a future agreement to go over a small portion of the tennis court would be far preferable to filling this high quality wetland, the Division finds that this alternative is not practicable at this time.

8. Practical alternatives to the proposal exist which would not adversely impact wetlands and which will not result in other significant environmental consequences, including the Mason plan and off-site storage options discussed above.

9. Ms. Michalski, the applicant's wetland scientist, concluded that the project would not have a detrimental impact upon wetland functional values except a minimal detrimental impact upon aesthetics. This was because the fill area would be largely confined to the eastern edge of the wetland and would fragment only a small portion of the larger wetland complex. Further, Michalski opined that the proposed fill area would not be of sufficient size to impact the wetland's hydrology. (Ex. 13) Michalski did express concerns about the potential of invasive species to colonize in the area after the fill, but argued that monitoring twice a year would be sufficient to ensure that reed canary grass or other invasive species would not have a detrimental impact upon floral diversity. Finally, Michalski also suggested that a culvert be considered to ensure water exchange to the small wetland fragment that would remain just east of the fill area.

Dale Lang and Dan Houston disputed Michalski's opinion and testified that there would likely be significant adverse detrimental impacts to the functional values of the subject wetland if the proposed fill were approved. Specifically, filling the proposed project area would impact the wetland's hydrology, as well as wildlife habitat, and water quality due to a reduction of the wetland's function in storing and filtering surface water runoff. Lang established that there was likely a hydrologic connection between the wetland and Boulder Lake based upon site elevations. Lang also opined that it was likely that invasive species would be more likely to colonize the wetland as a result of driveway and building construction. Further, both Lang and Houston expressed reasonable concerns about cumulative impacts-- if many small wetland areas are filled as older and smaller dwellings are upgraded-- based upon approval of the instant project.

The project proponent has not carried its burden of demonstrating that the project 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. There will likely be "significant detrimental impacts" to the functional values of the subject wetlands.

A clear preponderance of the evidence indicates that there would be significant detrimental impacts to floral diversity, water quality protection, wildlife habitat, and aesthetics if the proposed fill is approved. Further, the project proponent has not established that there would not be cumulative detrimental impacts if the project is approved and others seek similar fills.

10. There are likely to be secondary detrimental impacts to the wetland from the proposed driveway fill and the construction of the storage facility at the proposed project site. There will likely be a significant increase in water that will flow into the wetland after the storage unit has been constructed. (Dirk Mason) Dr. Samantha Kaplan, a U.W. Stevens Point Geography and Geology Professor, is also the daughter-in-law of Sandra Mason. Dr. Kaplan testified that her analysis of soil types at the proposed building site indicated that the soils were “very limited” and “poorly suited,” respectively for the construction of a small commercial building and a roadway. Building at the proposed project site would likely have a secondary detrimental impact on the wetland and upon the water quality of Boulder Lake because of erosion and sediment loading. (Kaplan)

11. The Applicants have not carried their burden of proof in demonstrating that the project will not have a "significant adverse impact" to the functional values of the wetlands or to water quality. First, the applicants have not demonstrated that the proposed wetland fill area will be sufficient to build a driveway fifteen feet in width. (See: Finding 6 above) Secondly, given the high-quality of the wetland proposed to be filled, there is not reasonable assurance that the wetland fill will not have a significant detrimental impact upon wetland functional values. (See: Finding 9 above) Third, there will likely be secondary impacts from the fill as well as the building of the storage unit. (See: Finding 10 above) Finally, there are likely to be cumulative detrimental impacts if other owners of properties seek to fill wetlands around Boulder Lake.

12. Lang was persuasive in establishing that the subject wetland is located in an “area of special natural resource interest” (ASNRI) because the privately owned property is within the Northern Highland – American Legion State Forest. (Ex. 114; NR 103.04(7)) Further, Boulder Lake is very clearly marked as ASNRI water on the DNR’s website and related maps. See: http://dnrmaps.wisconsin.gov/SurfaceWater_Viewer/SurfaceWater_Viewer_deswaters.html Boulder Lake is a “priority navigable waterway” (PNW) as a result of its ASNRI designation, as well as because it has natural musky and walleye fish reproduction. (See: § NR 1.07 (4)(d) and(e))

13. Dan Houston testified that because all parties agreed that the subject wetland was of a high quality and near a lake that the ASNRI determination was not a significant factor in evaluating the wetland fill under NR 103 and 299. This wetland was entitled to significant scrutiny despite the small footprint of the fill because of its high quality whether or not the project area was treated as an ASNRI. (Houston)

14. The ASNRI/PNW designation of Boulder Lake has implications under Chapter 30, which must be considered for water quality certifications pursuant to NR 299.04(6).

The proposed grading for the proposed storage unit/garage would likely exceed 10,000 square feet and would be located less than 300 feet from Boulder Lake. However, the DNR

made a preliminary review and determined that Boulder Lane would likely completely interrupt the flow of water from the bank and that, accordingly, the DNR might not have jurisdiction to require a 30.19 grading permit. In its closing argument, the DNR requests that any WQC issued in connection with this proposal “be conditioned upon a requirement that the applicant demonstrate Chapter 30.19 grading non-jurisdiction.” This is an appropriate request. Because this decision denies issuance of a WQC, if the instant Order should be reversed on appeal, a reviewing court should be mindful of this potential issue. Further, if RoW is able to reach an agreement to go over the tennis court or some other area that does not require the filling of wetlands, they should secure a non-jurisdiction determination from the DNR before undertaking grading in areas within 300 feet of Boulder Lake.

DISCUSSION

This is one of those rare cases where the DNR has changed its fundamental position on a permit after hearing the evidence at a contested case proceeding. While no doubt frustrating to Resort of the Woods and its counsel, the change in this case—the Department now argues that there are other practicable alternatives to the wetland fill and that the project would result in significant detrimental impacts to the wetland—was warranted by the evidence elicited at the *de novo* hearing.

This case involves the filling of a very small portion of a high quality wetland very near Boulder Lake, which is located within the Northern Highland-American Legion State Forest. There is no dispute that this is a high quality wetland. The applicant’s own expert, Anne Michalski, agreed with the DNR and petitioner’s experts that the subject wetland was of a high quality. Michalski scored the functional values for floral diversity, water quality protection, wildlife habitat, aesthetics and groundwater protection as all being of “high” value at the site. The disputed issues at hearing were whether there are other available practicable alternatives to achieve the project purpose and whether there would be significant detrimental impacts to the wetland from the proposed fill, or secondary or cumulative impacts from the project as a whole. Because the objector and the DNR established that there are other “practicable alternatives” within the meaning of Chapter NR 103 and that there would be significant direct and secondary detrimental environmental impacts from the proposed fill, the project proponents have not carried their burden of proof that the project meets state standards.

The Resort of the Woods property, now in the condominium form of ownership, was at one time a group of small cabins rented out by the previous owner. There is insufficient space to put individual garages, or even large individual storage units, conveniently close to every residence. Many of the Resort of the Woods owners appear to recognize this fact. Five of the fifteen condo owners are not seeking to participate in the building project at this time, and six other owners are seeking storage units of less than 15 feet in width. Two owners are seeking 20 foot units. Mr. Keyzers alone is seeking a large 40 foot wide unit that would serve him as a year-round garage large enough to accommodate his vehicles. Given this fact, it would distort the meaning of the “project purpose” to conclude that a year-round daily use garage is the basic project purpose. Rather, the basic project purpose is, as the applicants stated on their application, to build a storage facility for owners of Resort of the Woods condominium. (Houston)

There are available practicable alternatives off-site. Standard DNR policy would be to limit off-site alternatives to an area no more than five miles from the project site. (Houston) There are numerous existing rental storage facilities, including those of the sizes sought by the applicants, located well within this area. Further, there are several "practicable alternatives" available to the applicant which do not require the filling of wetlands. (Wade; Houston)

One of these is a proposed alternative developed by the principal objector, Sandra Mason. Mason has agreed to provide a one and one-half acre parcel of her own property to the applicants for no cost to allow Resort of the Woods to build a storage unit building that does not require a wetland fill. Further, the soil characteristics at the Mason alternative site are better suited to building construction and would result in fewer secondary impacts to the wetland as a result of storm run-off. (Kaplan, Koshak) At hearing, Resort of the Woods was unwilling to accept this offer, in part because it would be a greater distance from their living units and would not function as a garage equivalent for Mr. and Mrs. Keyzers, the condo association president. However, as noted above, as stated in the application, and as demonstrated by the majority of condo owners building plans, the basic project purpose is a storage facility not a garage. The Keyzers knew when they purchased their property that there was no garage and that there was limited space available to provide one. As Houston and Lang testified, there would likely be cumulative detrimental impacts if wetlands were allowed to be filled for numerous other projects in nearby lakes where old cabins are converted to year round residences.

Further, the Applicants have simply not carried their burden of proof in demonstrating that the project will not have a "significant adverse impact" to the functional values of the wetlands or to water quality. First, the applicants have not demonstrated that the proposed wetland fill area will be sufficient to build a driveway fifteen feet in width. (See: Finding 6 above) Secondly, given the high-quality of the wetland proposed to be filled, there is not reasonable assurance that the wetland fill will not have a significant detrimental impact upon wetland functional values. (See: Finding 9 above) Third, there will likely be secondary impacts from the fill as well as the building of the storage unit. (See: Finding 10 above) While the petitioner's witnesses, Mr. Mason and Dr. Kaplan, cited legal provisions that do obtain, notably NR 151, the factual component of their testimony was largely un rebutted. They established two points: that the Mason alternative site was better suited for construction due to its soil characteristics and that there would be secondary impacts from the applicant's proposed building site.

Finally, Resort of the Woods cites NR 102.10, relating to Outstanding Resource Waters, meaning national and state wild and scenic rivers, for the proposition that Boulder Lake is not an ASNRI water and thus not a priority navigable water within the meaning of § 30.19. However, while outstanding or exceptional resource waters are one category of priority navigable waterways, there are others. One of these relates to whether the lake has natural musky and walleye fish reproduction. § NR 1.07 (4)(d) and (e) The Department has indicated that Boulder Lake does fit this category. The best source to determine the status of a particular water body is the Department's Surface Water Data Viewer-Designated Waters. This site lists surface waters by county. Boulder Lake is very clearly marked as ASNRI water on the DNR's Surface Water website and maps.

See: http://dnrm.wisconsin.gov/SurfaceWater_View/SurfaceWater_View_deswaters.html
This is consistent with Dale Lang's testimony. (Ex. 114)

CONCLUSIONS OF LAW

1. The Division has authority to hear contested cases and issue necessary orders related to applications for Water Quality Certification pursuant to Wis. Stat. § 227.43(1)(b) and Wis. Admin. Code §§ NR 299.05(b) and NR 103.

2. The proposed storage unit and driveway construction is not a wetland dependent activity within the meaning of Wis. Admin. Code § NR 103.07(3) because said construction is not of a nature that requires location in or adjacent to surface waters or wetlands to fulfill its basic purpose.

3. Practical alternatives to the proposal exist which would not adversely impact wetlands and which will not result in other significant environmental consequences. A practical alternative means available and capable of being implemented taking into consideration cost, available technology and logistics in light of overall project purposes. Wis. Admin. Code § NR 103.07(2) The practical alternatives include using readily available off-site rental storage facilities, adopting the proposed Mason alternative site, or building a smaller storage facility at an on-site location that does not require the filling of wetlands.

4. The burden of proof is on the applicants to show that the requirements of NR 103 are met. NR 103.08(1) provides that:

The Department shall review all proposed activities subject to this chapter and shall determine whether the project proponent has shown, based on the factors in sub. (3), if the activities are in conformance with this chapter.

The project proponents have not carried their burden of proof with respect to the standards found in NR 103.03(3), including practicable alternatives, direct detrimental impacts on functional values, secondary and cumulative impacts, and adverse impacts to wetlands in an area of special natural resource interest.

5. The project proponent has not 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. There will be "significant detrimental impacts" to the functional values of the subject wetlands. A clear preponderance of the evidence indicates that there would be significant detrimental impacts to floral diversity, water quality protection, wildlife habitat, and aesthetics if the proposed fill is approved.

6. The Division of Hearings and Appeals has the authority pursuant to Wis. Admin. Code § NR 299.05, to deny, approve or modify a water quality certification if it determines that there is a reasonable assurance that the project will comply with standards enumerated in Wis.

Admin. Code § NR 299.04. The Division is not satisfied that there is a reasonable assurance that the project will comply with said standards, based upon the evidence presented at the hearing.

6. The Applicants have not carried their burden of proof in demonstrating that the project will not injure public rights or interests, including fish and game habitat, that the project will not cause environmental pollution as defined at Wis. Stat. § 299.01(4).

7. The subject wetland is in an “area of special natural resource interest.” Wetlands in areas of special natural resource interest include those found in: State parks, forests, trails and recreation areas. NR 103.04(7) The subject wetland, though privately owned, is located within the Northern Highland – American Legion State Forest.

8. Boulder Lake is a “priority navigable water” within the meaning of § 30.19 because the lake has natural musky and walleye fish reproduction. § NR 1.07 (4)(d) and(e)

9. The Chapter 30 public interest factors must be considered for water quality certifications pursuant to NR 299.04(6). If this decision is reversed upon appeal, any WQC issued in connection with this proposal must “be conditioned upon a requirement that the applicant demonstrate Chapter 30.19 grading non-jurisdiction.”

10. Water quality certification is a type IV action under Wis. Admin. Code § NR 150.03(8)(f)18. Type IV actions do not require the preparation of a formal environmental impact assessment.

11. The hearing on this matter was a “de novo proceeding on the issue of whether the department should grant, grant with conditions, deny or waive water quality certification.” Wis. Admin. Code NR 299.05(6)

ORDER

WHEREFORE, IT IS HEREBY ORDERED, that the original DNR determination to issue water quality certification be REVERSED, and that water quality certification be denied. IT IS FURTHER ORDERED that the petition for review be DISMISSED.

Dated at Madison, Wisconsin on February 11, 2009.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By _____
JEFFREY D. BOLDT
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent and shall be served upon the Secretary of the Department either personally or by certified mail at: 101 South Webster Street, P. O. Box 7921, Madison, WI 53707-7921. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to insure strict compliance with all its requirements.