



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

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In the Matter of the Application of McAllen 120,  
LLC for Water Quality Certification to Fill .37 Acres  
of Wetlands to Construct a Commercial  
Development Located in the City of Madison, Dane  
County

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Case No.: IP-SC-08-13-69306

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

Pursuant to due notice, hearing was held at Madison, Wisconsin, on January 14, 2009. The parties asked for the opportunity to file written briefs and the last was received on February 20, 2009.

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

Wisconsin Department of Natural Resources, by

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McAllen 120, LLC, by

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## FINDINGS OF FACT

1. Carl Chenoweth on behalf of McAllen 120, LLC, filed an application with the Department of Natural Resources for water quality certification pursuant to Section 401 of the Federal Clean Water Act and Wis. Admin. Code § NR 299, to place fill in .37 acres of wetlands to construct a commercial development. The proposed project is located at 6403 Femrite Drive in the NE ¼ of the NE ¼ of Section 26, Township 07 North, Range 10 East, City of Madison, Dane County, Wisconsin.

2. The Department of Natural Resources denied the application for Water Quality Certification (WQC) as outlined in a letter to McAllen 120, LLC, c/o Carl Chenoweth dated August 18, 2008. By letter dated September 24, 2008, Carl Chenoweth (Chenoweth) on behalf of McAllen 120, LLC, filed a request for a contested case hearing. On September 26, 2008, the Department granted a contested case hearing pursuant to Wis. Stat. § 227.42. On December 3, 2008, the Department filed a Request for Hearing with the Division of Hearings and Appeals.

3. The subject property is located on the far east side of the City of Madison, just south of Femrite Drive where it intersects with Meier Road. Meier Road will be extended south of Femrite Drive and become McAllen Way. The McAllen, 120 Business Park consists of 8.75 acres and is being developed by Ruedebusch Development and Construction. (Ex. 1) The area is zoned M-1, light manufacturing and commercial, and most of the nearby properties reflect this type of development. (Ex. 11)

4. The purpose of the proposed project as described by the project proponent in the application “is to fill and grade to the proposed elevation subdivided Lot P-5 and the southern section of McAllen Way which directly impacts the entire delineated boundary” of a .37 acre wetland located on the property. (Ex. 1) The project involves the site development and arterial street construction for 8.75 acre subdivided lots in the McAllen 120 Business Park. (Id.) The “...arterial street layout was designed to accommodate the development of (2) 59,500sf buildings on the proposed subdivided Lot P-5; (3) 62,500sf buildings of the proposed subdivided Lot P-3 and 288,200sf improved Lot P-4.” (Ex. 1 and 15) Mr. Chenoweth characterized the development as staged phase within a 70 acre overall development plan. The project proponent owns 120 acres at the site. Approximately 70 acres is upland and the remaining 50 acres are wetland. (Chenoweth) For purposes of NR 103, the project purpose is “commercial development” that meets City of Madison M-1 zoning requirements. (Peterson)

5. The wetland is a medium-quality seasonally flooded basin. The DNR Area Water Management Specialist, Cami Peterson (Peterson), rated the wetland as of “medium” significance for the following wetland functional values: floral diversity, wildlife habitat, flood/stormwater attenuation, and water quality protection. Peterson gave the wetland a “low” rating for groundwater protection and aesthetic value. (Ex. 27) The applicant’s expert, James Knowles (Knowles), rated the wetland as “medium/low” for floral diversity and wildlife habitat and “low” for the other values described above. (Ex. 25) It should be noted that Mr. Knowles conducted his wetland assessment during the winter season that is not optimal for identifying plant species. Both Peterson and Knowles agreed that fishery habitat and shoreline protection were not applicable to the project site.

Mr. Knowles and Ms. Peterson both concluded that the 0.37 acre wetland is not a deep marsh, ridge and swale complex, wet prairie, ephemeral pond in a wooded setting, sedge meadow or fresh wet meadow, bog, hardwood swamp, or conifer swamp as those nine categories are listed in

Wis. Admin. Code NR 103.08(4)(b)3. Further, both experts agreed that the subject wetland is subject to the jurisdiction of the DNR under NR 103.

Both experts identified Green Ash and the invasive reed canary grass as being dominant plant species, but Peterson identified “an excellent mix of native subdominants” at the site as well. (*See*: Ex. 27)

6. The parties dispute whether or not the wetland was artificially created, but both agree that it is a wetland subject to the jurisdiction of the Department under Wis. Admin. Code § NR 103. (Peterson; Knowles) Accordingly, there is no reason to make a final determination on this issue because it is not relevant to any regulatory determination that is needed for this decision. (Peterson) There is not a sufficient basis on the record to determine whether or not this wetland was naturally occurring or artificially created. The aerial photographs were difficult to review, and were not examined using equipment that would provide the best evidence on this issue. (Knowles)

7. The McAllen project includes several buildings, each of which needs a loading dock and a related truck parking and turn-around area, as well as parking for on-site employees and visitors. (Chenoweth) Mr. Chenoweth testified that the project proponent’s strong preference would be for the fill option because it would involve having the loading docks of more than one building back-to-back. This represents a less costly and more efficient design option because the buildings can be on the same grade and the work can be undertaken at the same time. (Ex. 10; 11) (Id.)

The project proponent initially provided the Department with three proposed on-site options, but argues that the no-fill options are not practicable because of costs. Options A and B represented build-ready areas within the subject property that the project proponent admits “would avoid the impact to any wetland located on the entire subdivided parcel. Both OPTION –A and OPTION-B represent a land subdivision which extents (sic) MEIER ROAD southerly alignment between the 75’ setback boundary of the ‘artificial’ wetland...” on lots P-5 and a new Lot P-6. (Ex.15)

Filling the wetland would save McAllen the costs described above, which the project proponent calculated at no less than 3.4 percent of the overall project costs due to the combination of reduced size and corresponding lower marketability of Lot P-4 and the higher grading and development costs. (Ex. 2; Chenoweth)

At hearing, the project proponent primarily discussed Option D as its no-fill (Ex.10) and Option E as its preferred fill alternative (Ex.11). The total development costs as calculated by the project proponent for these alternatives increased over its calculations in Ex.2. Under the new plans, costs ranged from \$59,370, 801.25 to \$62,460,741.25. (Ex. 15) This represents a difference of over 3 million dollars, or approximately 5 percent. The DNR does not agree that the increased costs represent this percentage and provided testimony that the project proponent overstated the cost differential under both calculations.

The Department has a non-binding guidance document that does not allow consideration of so-called “sunk costs” when considering whether or not cost is a prohibitive factor with respect to the practicable alternatives analysis. (Peterson) These include the costs of the purchase of the property, utilities, consultant fees and other preexisting outlays not directly related to the selection of alternatives related to the wetland fill. (Id.) The applicant’s statement of alternative costs included the cost of each lot, building, lost profits from Lot 4, and even utilities. These were not properly a

part of the calculation using the Department's established policy with respect to interpreting NR 103, so they were not considered by Ms. Peterson. Peterson testified that the cost differential calculated by the applicants grossly overstated that portion that was directly related to the wetland fill because it included utility costs and the "lower marketability" of Lot 4. (Ex. 29)

After subtracting for "sunk costs" and other items which the Department does not consider in processing WQC applications, Peterson calculated the difference between option A and option C to be \$800,000. This represents less than one percent of overall development costs. (Ex.29)

Further, even using the applicant's figures, the cost increases constitute a very low percentage of the overall project cost and is not sufficient to determine that the other alternatives were not practicable because the project is still commercially viable. (Peterson) Peterson determined that development on either Lot P-3 or P-5 were available "practicable alternatives" that did not require the filling of wetlands.

9. There are numerous practicable alternatives to filling wetlands to achieve the project proponent's purpose of developing the property for light manufacturing and commercial purposes that meets City of Madison M-1 zoning. These include Options, A, B and D as identified by the project proponent. (Peterson) The increased costs associated with these options are not a sufficient basis to conclude that the basic project purpose can not be economically viable at the site. (Id.)

10. The DNR Area Water Management Specialist, Cami Peterson, was persuasive that the fill project would result in "significant adverse impacts to wetland functional values." Specifically, the subject wetland has medium quality floral diversity including native plant communities, particularly among subdominants. Because this is a smaller wetland near a larger wetland complex, it provides significant breeding habitat for frogs and other amphibians, as well as small mammals. Peterson noted that a smaller wetland near a larger complex tends to warm up sooner and therefore provides early important wildlife breeding habitat. Further, given its unique location in the landscape, Peterson opined, the small wetland area provides some significant flood and stormwater attenuation and sediment uptake that would be lost if the wetland were to be filled and eliminated. This would have a detrimental impact upon water quality protection. (Peterson) There might well be some overflow from this wetland to the larger wetland complex as well, and filling this site could have an impact on the existing hydrology. (Id.)

11. The proposed project includes a 75 foot buffer around the larger wetland complex and will not directly impact this area. (Peterson) Further, as the development proceeds, the project will be undertaken using stormwater best management practices and stormwater will be directed to a regional stormwater detention pond and not to either the larger wetland or the wetland that is the subject of this hearing. (Chenoweth)

12. The Department has complied with the procedural requirements of WEPA. A wetland water quality certification is a Type IV action under Wis. Admin. Code NR 150.03(f)(18) and does not require preparation of an environmental impact statement or environmental assessment.

## DISCUSSION

This Water Quality Certification (WQC) must be denied for three reasons:

1. There are practicable alternatives that do not require the wetland fill;
2. There was not a showing that “all practicable measures to minimize adverse impacts to the wetland have been taken;” and
3. Filling the subject wetland will have a significant detrimental impact upon the wetland’s functional values.

These are the longstanding requirements to obtain a WQC in Wisconsin, and none of the more recent changes in the regulation have altered these fundamental requirements to obtain a wetland fill WQC. Rather, the DNR now has some discretion to exempt certain small wetlands from the requirements of NR 103. That was not done in this case, nor would it have been appropriate to have done so given the wetland’s functional value. There is no dispute that the Department has jurisdiction over this wetland area. Accordingly, the requirements of NR 103.08(4)(a) must be met. Because the project proponent appears to misunderstand these, they are set forth in full below:

*NR 103.08(4)(a) (a) Except as provided in par. (b), (c) or (d), the department shall make a finding that the requirements of this chapter are satisfied if it determines that the project proponent has shown all of the following:*

*NR 103.08(4)(a)1. 1. No practicable alternative exists which would avoid adverse impacts to wetlands.*

*NR 103.08(4)(a)2.*

*2. If subd. 1. is met, all practicable measures to minimize adverse impacts to the functional values of the affected wetlands have been taken.*

*NR 103.08(4)(a)3.*

*3. If subds. 1. and 2. are met, utilizing the factors in sub. (3) (b) to (g) and considering potential wetland functional values provided by any mitigation project that is part of the subject application, that the activity will not result in significant adverse impacts to wetland functional values, significant adverse impacts to water quality or other significant adverse environmental consequences.*

The project proponent has not shown that there are no practicable alternatives—there is ample land to develop on the parcel and several available but marginally more costly alternatives were described by Mr. Chenoweth for the applicant. Any of three alternatives (Option A, B and D) are available to the developers with no logistical bars and a small cost increase (one to five percent) relative to the project’s overall cost. Similarly, (sub. 2) has not been established. The project proponent has not shown that it has taken “all practicable measures to minimize adverse impacts to the functional values of the affected wetlands.” Rather, the project will result in the complete destruction of the subject wetland. Finally, the project proponent has not established (under sub.3) that the activity will not result in significant adverse impacts to wetland functional values, significant adverse impacts to water quality or other significant adverse environmental consequences. Rather, both sides presented expert testimony that the existing wetland had functional values which would be lost if the wetland was filled.

Further, because the project proponent has not met any of the three prongs of NR 103.08(4)(a)(1-3), the provisions of NR 103.08(4)(c) are not applicable to this decision. The project

proponent mistakenly argues that NR 103.08(4)(c) obtains, and further argues that because there is no dispute that because the wetland is less than .1 acres, not in a floodplain and not one of the listed types of wetlands set forth in NR 103.08(4)(c)(3)(a-i),<sup>1</sup> that the Department must limit the scope of its analysis of alternatives. But this reading does not comport with the plain language of NR 103.08(4)(c) for two reasons. First, as noted, NR 103.08(4)(c), does not obtain in this case because the project proponent did not meet any of the prongs of NR 103.08(4)(a)(1-3). Second, on its face, NR 103.08(4)(c) gives the Department discretion to limit alternatives, and the DNR chose not to exercise its discretion in this case.

*NR 103.08(4)(c)*

*(c) For all activities which meet one or more of subd. 1., 2. or 3., the department, utilizing the factors in sub. (3) and considering potential wetland functional values provided by any mitigation project that is part of the subject application, shall make a finding that the requirements of this chapter are satisfied if it determines that the project proponent has shown that the activity will not result in significant adverse impacts to wetland functional values, significant adverse impacts to water quality or other significant adverse environmental consequences. The department **may** limit the scope of the analysis of alternatives under sub. (3) (b), as determined at the preliminary assessment meeting under sub. (1). (emphasis added)*

This provision clearly gives the Department discretion to limit alternatives, but there was no testimony that the DNR chose to do so in this case. Further, there was no testimony that suggested the Department somehow abused its discretion in failing to do so in this case. Because the project proponent has not met any of the three prongs of NR 103.08(4)(a)(1-3), it would have been improper to do so. Rather, the DNR applied its standard procedure in determining not to allow the filling of the wetland in conjunction with this large \$60 million development project.

This small, medium quality wetland stands out as an island within the recently graded and soon to be developed parcel. (See: Photos, e.g. Ex. 22A) Both sides offered expert testimony that the wetland has functional value which will be lost if the wetland is filled. However, the project proponents make the somewhat unique argument that the wetland is ultimately doomed—whether or not it is filled—because of its own development. “The overall functions and values in January 2009 remain essentially as they were in summer 2008 prior to the adjacent upland grading, but their quality where they existed at all previously—has diminished since 2008.” (Brief, p. 11) As the DNR responds, “The Applicant transparently attempts to characterize the wetland as a degraded low quality wetland—a result that according to the Applicant’s proffered evidence has resulted from its

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<sup>1</sup> NR 103.08(4)(c)1.

1. The activity is wetland dependent.

2. The surface area of the wetland impact, which includes impacts noted in [s. NR 103.08 \(3\)](#), is 0.10 acres or less.

3. All wetlands that may be affected by an activity are less than one acre in size, located outside a 100-year floodplain, and not any of the following types: a. Deep marsh. b. Ridge and swale complex. c. Wet prairie not dominated by reed canary grass (*Phalaris arundinacea*) to the exclusion of a significant population of native species. d. Ephemeral pond in a wooded setting. e. Sedge meadow or fresh wet meadow not dominated by reed canary grass (*Phalaris arundinacea*) to the exclusion of a significant population of native species and located south of highway 10. f. Bog located south of highway 10. g. Hardwood swamp located south of highway 10. h. Conifer swamp located south of highway 10. i. Cedar swamp located north of highway 10.

own grading activity on the site. Even if the current condition of the wetland is lower quality than pre-construction, this fact fails to alter the regulatory framework that requires denial of this WQC.” (DNR responsive brief, p. 1)

Further, there is no discretion for the DNR or the ALJ to ignore any of the requirements of NR 103.08(4) because the project proponent’s grading may or may not have diminished the functional values of the wetland. Nor would it make regulatory sense to do so—for it would create an incentive for developers to operate in a manner that diminished wetland areas near their developed parcels.

McAllen makes several other legal arguments that would likewise significantly alter the DNR’s approach to NR 103. For example, while the project proponent’s wetland expert testified that the wetland had medium/low functional values—McAllen argues in its brief that the wetland does simply not have any significant functional values in its current form. (p. 4)

“The Department staff does not contend that filling the 0.37 acre wetland will adversely affect, much less significantly so, the other wetlands in the area of P-5. The sole objection of the Department staff related to § NR 103.08(4)(c) seems to be that filling the wetland will result in a significant adverse impact to the only two functional values the 0.37 acre wetland had before recent upland grading—in contrast to any proof that these two wetland functions are in themselves significant or their future loss due to filling would be significantly adverse in any cumulative way. . . . Rather, in this case the affected wetland’s functions must be significant before their loss can be considered significantly adverse to wetland functions, within the meaning of § NR 103.08(4)(c).”

This argument ignores the testimony of both Ms. Peterson and Mr. Knowles that the subject wetland does have *medium or medium/low functional value*. Further, Peterson reasonably concluded that this small wetland’s location near a larger wetland complex gave it significant value as breeding habitat for frogs and other amphibians, as well as small mammals. Peterson opined that a smaller wetland near a larger complex tends to warm up sooner and therefore provides important early wildlife breeding habitat. Further, given its unique location in the landscape, Peterson opined, the small wetland area provides some significant flood and stormwater attenuation and sediment uptake that would be lost if the wetland were to be filled and eliminated. This would have a detrimental impact upon water quality protection. (Peterson) There might well be some overflow from this wetland to the larger wetland complex as well, and filling this site could have an impact on the existing hydrology. (Id.) On cross examination, Mr. Knowles acknowledged that the proposal would, in fact, result in significant adverse impacts because the subject “wetland would be wiped out.”

Finally, with respect to the cost issue, the Division has determined that some alternatives are not practicable because of cost, but the cost differential in that instance is a very low percentage of the overall development cost. In *In the Matter of the Application of David Cappelle for Water Quality Certification to Place Culverts in and fill .06 Acres of Wetland on Property located in the Town of Morrison, Brown County, Wisconsin, Case No. 3-NE-02-0236LF*, the project proponent sought to fill a wetland for a driveway to a single family residence. The Division determined that the alternatives of constructing a clear-span bridge that exceeded (219,000 versus 179,000) or was over one-third (70,000) the cost of the proposed home was deemed cost prohibitive and not practicable, particularly because there was no evidence that doing so would enhance amphibian and reptile

migration. Significantly, in that same decision, the Division noted that a \$4,000.00 increase would be reasonable relative to the overall project cost. This represents 2.23 percent, or more than the twice the increase percentage calculated in this case by the DNR.

This is consistent with the way the cost factor of the alternatives analysis has been treated in Wisconsin and under USACOE permits. The “overall project purpose” language has been construed very narrowly in related Federal Clean Water Act cases under Section 404. *See: Practicable Alternatives under Section 404 of the Federal Clean Water Act After Bersani v. Robichard, Syracuse Law Review*, 813. Under related Federal law, there is a rebuttable presumption that a practicable alternative exists if an upland site exists on the same property. *Id.*, p. 819 The essential consideration in many cases is that if the alternative does not provide economically viable opportunities relative to the basic project purposes it will not be considered to be practicable. The “fact that an applicant can sometimes reduce his costs by developing wetland property is not a factor which can be used to justify permit issuance.” *See: Plantation Landing Permit Elevation, Memorandum, USACOE (April 21, 1989) See also: Bersani v. Robichaud, 850 F.2d 36 (2<sup>nd</sup> Cir. 1988), Cert. Denied 489 U.S. 1089 (1989)*

Further, as the Division held in *In the Matter of the Application of James and Hermina Milam for Water Quality Certification to Place Fill in a Wetland, Town of Norway, Racine County, Wisconsin, 33-SE-96-061*: Under NR 103, “costs” incurred are not the same as “profits” foregone in connection with a wetland fill. “Not filling a wetland area almost always involves a lower valued use of a parcel, and “lost” or unrealizable profits as a result.”<sup>2</sup>

There was no convincing testimony that the project purpose of “commercial development that meets City of Madison M-1 zoning requirements” would not be economically viable without filling this wetland. The developers own a parcel that has 50 acres of wetlands on it, and certainly knew that it would be difficult to obtain approval to build in wetland areas.

Rather than convincing evidence that commercial development was not economically feasible without this fill, there was only testimony that the costs would be reduced by a relatively small percentage (anywhere from one to five percent). The project proponent has not carried its burden of proof on any of the three prongs of NR 103.08(4)(a), and the Department’s initial determination must be upheld.

## 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 commercial development 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.

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<sup>2</sup> Note: the *Milam* case was appealed to circuit court and was sustained there and in an unpublished Court of Appeals decision.

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) These practical alternatives include no-fill alternatives A, B and D (Ex.11) or reconfiguring the development layout over the many acres of upland available to the project proponents. The costs of these alternatives are not sufficient to allow the fill in this instance.

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.

5. The project proponent has not carried its burden of proof on any of the three prongs of NR 103.08(4)(a)(1 to 3).

- A. It has not demonstrated that there are no practicable alternatives which avoid adverse impacts to wetlands;
- B. Nor has it established that all practicable measures to minimize adverse impacts to the functional values of the affected wetlands have been taken;
- C. 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 DNR did not abuse its discretion in exercising its discretion not to limit alternatives under NR 103.08(4)(c), because the activity “did not meet one or more of the standards” described in Conclusion of Law #5.

7. 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.

8. 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).

ORDER

WHEREFORE, IT IS HEREBY ORDERED, that the Department's initial determination to deny the WQC be affirmed, and the petition for review be DISMISSED.

Dated at Madison, Wisconsin on March 10, 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.