

Protect our Lakes and Streams

February 5, 2004

Secretary Scott Hassett
Wisconsin Department of Natural Resources Box 7921
Madison, Wisconsin 53707-7921

Dear Secretary Hassett:

This letter, from many in the conservation and environmental community in Wisconsin, asks that the Department of Natural Resources immediately bring to the Natural Resources Board a set of comprehensive emergency rules so that the changes to Chapter 30, Wisconsin Statutes, as a result of the passage of 2003 Wisconsin Act 118, (Jobs Creation Act of 2003), do not violate public rights to the use and enjoyment of the state's lakes and streams.

Several attorneys representing Wisconsin conservation and environmental organizations have reviewed Act 118 and have reached the conclusion that, on its face, it does not contain the same public rights and public interest standards that existed in former law and that were necessary to implement the Constitutionally established "Public Trust Doctrine." What is of immediate concern to the conservation and environmental community is that many of the provisions of Act 118 that will result in substantial damage to Wisconsin's lakes and streams are already in effect. As soon as Wisconsin's winter weather is over, the bulldozers will roll resulting in permanent damage to fish and wildlife habitat, water quality and the natural scenic beauty of Wisconsin's lakes and streams.

During the formal debate on Act 118, Governor Doyle Majority Leader Panzer and Speaker Gard all stated that the bill was not intended to lower Wisconsin's environmental standards. Several categories of construction activities in and near Wisconsin lakes and streams previously required permits pursuant to the provisions of Chapter 30, Wisconsin Statutes. Those permits could not be issued unless the proposed construction would not harm public rights in navigable waters. In many instances that statutory protection for our lakes and streams has been deleted from Chapter 30.

Governor Doyle, Department of Administration Secretary Marc Marotta and you have all publicly stated that the Department of Natural Resources will adopt administrative rules implementing ACT 118 and thereby fully assure that the public rights protections of the former law will not be diminished.

The conservation and environmental community hereby requests that these administrative rules be brought to the Natural Resources Board at its February meeting.

Our first major concern is the exemptions to sections 30.12, 30.123 and 30.20, Wisconsin Statutes, which would allow the placement of certain structures, culverts and deposits in navigable waters and the removal of certain materials from the beds of navigable waters. We ask that you exercise the rulemaking authority in subsections 30.12 (1p), 30.123 (6s), and 30.20 (1k) to make certain that the only activities allowed are those that do not interfere with public rights, including the protection of navigation, fish and wildlife habitat, scenic beauty and water quality. It is our reading of those statutes that the DNR can prohibit construction activity in a specific location if it is contrary to the provisions of rules adopted under these subsections.

Secondly, it is our reading of the act that the exemptions contained in subsections 30.12 (1 g) (b), (c) and (d) do not go into effect until specific additional rules are adopted pursuant to those subsections. Therefore we ask that you not recognize these exemptions until such time as those additional rules are adopted.

Lastly, we are greatly concerned about the new statutory definition of the bank of a stream or lake at section 30.19 (1 b) (b). This definition relates to the regulation of grading and removal of material adjacent to lakes and streams. Unless your rulemaking authority is vigorously exercised, the new definition will substantially diminish the protection of fish and wildlife habitat, water quality and natural scenic beauty. We ask that you exercise the rule making authority under section 30.19 (1d) to restore to this section the public rights protection formerly afforded by Wisconsin Statutes.

The conservation and environmental community stands ready to support and, if necessary, defend the Department of Natural Resources in the immediate adoption of a fully protective and comprehensive package of environmental rules to completely fill the major gaps in Wisconsin law created by 2003 Wisconsin Act 118. We believe the adoption of these rules is essential if the State is to fulfill its constitutional obligation to perpetually protect public rights to the use and enjoyment of the waters of the State.

We look forward to working with you on this urgent matter.

Very truly yours,

Twenty-eight Conservation
And Environmental Groups