

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

#508 Dept of Natural Resources

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 2/28 Temporary Rule _____

Resubmitted and Received _____

DUE DATE 3/20

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed _____
3. Certificate of Board's Authorizing Resolution, where applicable n/a
4. Order for Hearing ✓ per old rules, OK
5. Notice of Hearing ✓
   (i) Sufficiency ✓ per old rules
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable n/a
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable ✓
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable n/a
17. Petition by Public, where applicable n/a

OUR FILE NO. 508

A. W. Clapp, III
Special Assistant
Attorney General

March 15, 1979

Joanie

- Department of Natural Resources
Amendments to the Lower St. Croix Water Surface Use Regulations

cc: Duane Harves

DEPARTMENT OF NATURAL RESOURCES

RULES FOR LOWER ST. CROIX WATER SURFACE USE

ADOPTED
~~PROPOSED~~ AMENDMENTS

NR 2220 LOWER ST. CROIX WATER SURFACE USE

A. Policy and authority

These rules are authorized by ~~Minnesota Statutes section~~ Minn. Stat. § 361.26, ~~subdivision~~. 2, and are promulgated in order to promote the full use by all of the people, now and in the future, of the water surface of the Lower St. Croix River in a manner consistent with safety for persons and property and with the enjoyment of the scenic and recreational values which caused the river to be designated a National Scenic Riverway.

B. Scope

These rules apply to the waters of the Lower St. Croix River from the dam at Taylors Falls to its confluence with the Mississippi River.

C. Definitions

For the purpose of these rules the word "shall" is mandatory, not permissive, and certain words or terms shall be interpreted as follows:

1. "Mile" means distance in miles above the confluence of the St. Croix River with the Mississippi River.

2. "Motorboat" means any watercraft propelled in any respect by machinery, including watercraft temporarily equipped with detachable motors.

3. "Slow-no-wake" means operation of a motorboat at

the slowest possible speed necessary to maintain steerage.

~~3.~~ 4. "Slow Speed" means operation of a motorboat at a leisurely speed, less than planing speed, whereby the wake or wash created by the motorboat is minimal.

~~4.~~ 5. "Watercraft" means any contrivance used or designed for navigation on water other than (i) duck boat during the duck hunting season, (ii) rice boat during the harvest season, or (iii) seaplane.

D. ~~Slow~~ Restricted speed zones

1. No motorboat shall at any time be operated in excess of a slow speed ~~in the following areas: a. From~~ from the dam at Taylors Falls to the sandbars located approximately at mile 31.0.

2. No motorboat shall be operated in excess of a slow-no-wake speed in the following areas:

a. At the narrows located approximately at mile 28.6, which is 0.4 miles downstream from the Arcola high bridge.

b. Between the Coast Guard navigational buoys designating location of the navigation channel from the railroad swing bridge located at approximately mile 17.3 to the south side of the ~~eastbound span of the U.S. Interstate Highway #94 Bridge~~ southern-most island in the chain of islands located at approximately mile ~~16.1~~ 16.5.

c. Between the Coast Guard navigational buoys designating the Kinnickinnic River Delta Narrows from approximately mile 6.6 to approximately mile 6.0.

d. At the Prescott Narrows from the north side of U.S. Highway # 10 Bridge located approximately at mile 0.3 to the confluenc of the St. Croix River with the Mississippi River.

e. Within 100 feet of shore (including the shores of islands) and of swimmers, from sandbars located approximately at mile 31.0 to the confluence of the St. Croix River with the Mississippi River.

~~2.~~ 3. Any motorboat designated for law enforcement shall be exempt from provision D. ~~1.~~ of this regulation in circumstances involving emergencies or violation of law.

E. Water skiing

1. No watercraft towing a person on water skis, aquaplane, or similar device shall be operated between sunset and sunrise on the St. Croix River from the dam at Taylors Falls to its confluence with the Mississippi River.

2. No watercraft towing a person on water skis, aquaplane, or similar device shall be operated at any time in any zone designated a ~~"slow-speed-zone"~~ restricted speed zone under provision D. ~~1.~~ of this regulation; provided, however, that any watercraft launching or landing a person on water skis, aquaplane, or similar device by the most direct route to open water shall be exempt from provision D. 2. (e) of this regulation.

3. From Memorial Day through Labor Day, inclusive, no watercraft towing a person on water skis, aquaplane, or similar device shall operate after 12:00 Noon on Saturdays, Sundays, and legal holidays, from the sandbars located approximately at mile 31.0 to the upper end of the federal nine-foot navigation channel approximately at mile 24.5.

F. Penalties

Any person violating any of the provisions of this regulation shall be guilty of a misdemeanor.

~~G.--Effective-date~~

~~Beginning-on-Saturday,-May-14,-1977,-this-rule-is in-effect-whenever-similar-laws-or-regulations-of-the-State-of Wisconsin-are-in-effect-for-the-same-reach-of-the-St.-Croix River.~~

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 1 5 1979
Secretary of State

APPROVED AS TO FORM AND LEGALITY
MAR 15 1979
_____, 19____
WARREN SPANNAUS, ATTORNEY GENERAL
BY Joanne Hinderaker
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 15 1979
Joan Anderson Growe
Secretary of State
9:20 AM

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of Proposed
Amendments to the Lower St. Croix
Water Surface Use Regulations.

ORDER FOR HEARING

The State of Wisconsin has just adopted permanent rules for Lower St. Croix water surface use, to replace their temporary rules which expired last fall. The permanent rules take effect May 25, 1978. They are similar to but not identical with the existing Minnesota rule NR 2220 for use of watercraft on the Lower St. Croix. The differences need to be eliminated, so that there will be no confusion as to what to enforce and what to obey.

NOW THEREFORE IT IS ORDERED that a public hearing be held to consider amendments to Minnesota Rule NR 2220 which will make it the same as Wisconsin rule NR 5.30 through 5.36.

The hearing will be on Thursday, July 6, 1978, beginning at 7:30 p.m., in the auditorium of the Stillwater senior high school, 823 West Marsh Street, Stillwater, Minnesota. The hearing shall be conducted according to the rule making provisions of Minnesota Statutes Chapter 15 and the rules of the Office of Hearing Examiners.

Dated this 22 day of May, 1978.

Asst. Commissioner
for
WILLIAM B. NYE
Commissioner

STATE OF
MINNESOTA
DEPARTMENT OF NATURAL RESOURCES
CENTENNIAL OFFICE BUILDING • ST. PAUL, MINNESOTA • 55155

October 16, 1978

Wesley Sheel, Chairman
Washington County Board
14900 No. 61st Street
Stillwater, MN 55082

Dear Mr. Sheel:

Regarding the Lower St. Croix River Water Surface Use Regulations...

On July 6, 1978 a public hearing was held at the Stillwater Senior High on the Department of Natural Resource's (DNR) recommendation for three changes in the water surface use regulations originally put into effect in 1977. These changes were felt to be necessary because of changes placed in effect by the State of Wisconsin.

These three proposed changes were as follows:

1. Shortening the slow zone at Hudson by four tenths (.4) of a mile, by moving the southern end of the zone upstream from the I-94 bridge to the south side of the southern-most island in the chain of islands located at mile 16.5. It was felt that this area be removed from the slow zone, because it is not a hazardous narrows.

2. Changing the speed limit in the four existing slow zones in Lake St. Croix and within 100 feet of shore, islands and swimmers from the "slow speed" definition (which was originally written for only that area north of the Arcola Sandbar) to "slow-no wake." This is the speed limit which was in effect at the Lake St. Croix narrows before last summer. The "slow-speed" definition was developed so that a boater could get from the Arcola sandbars to Taylor Falls and back in a day. "Slow-no wake" would not have allowed this. But "slow-no wake" in short slow zones does not present such a problem. It is easier to understand and enforce "the slowest possible speed necessary to maintain steerage" rather than the slow speed definition, "a leisurely speed, less than planing speed, whereby the wake or wash created by the motorboat is minimal."

3. Adding a new "slow-no wake" zone at the narrows (known as "beer can alley") at mile 28.6. This area is four tenths (0.4) miles downstream from the Arcola high bridge. It had earlier been believed that the narrows would be covered by the 100 foot shore zone, but the first year of experience by both states proved it to

be too wide and it is necessary to mention it more specifically. This area is heavily travelled by fast boats, at the same time people are swimming off the sand beaches adjacent to the narrows. Safety considerations make the change reasonable and necessary.

Although the rules of the two states are currently similar enough to allow both sets of regulations to remain in effect, the aforementioned amendments are necessary to eliminate the differences which could confuse both the boater and enforcement personnel as to which rule to follow.

The State Office of Hearing Examiners conducted the hearing for the DNR and their favorable report is attached for your information. In addition I have enclosed a signed copy of the Commissioner's Findings, which adopts the recommendations of the Hearing Examiner's office contingent upon the approval of the Washington County Board.

I would like to therefore respectfully request that the board consider this matter for approval at its earliest convenience. If further explanation is necessary or an appearance before the board is desired, please do not hesitate to contact me.

Sincerely,

Joseph N. Alexander
Acting Commissioner

JNA:KAE:kb

cc: Theresa Bailey-Morrow - Regulations
Kim Elverum, Boat and Water Safety Coordinator
A.W. Clapp III, Assist. Attorney General

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of Proposed
Amendments to the Lower St. Croix
Water Surface Use Regulations.

NOTICE OF HEARING

A public hearing on the above captioned rule amendments will be held on July 6, 1978, beginning at 7:30 p.m. in the auditorium of the Stillwater senior high school, 823 West Marsh Street, Stillwater, Minnesota.

The State of Wisconsin has just adopted permanent rules for Lower St. Croix water surface use, to replace their temporary rules which expired last fall. The permanent Wisconsin rules (NR 5.30 through 5.36) took effect May 25. They are quite similar to but not identical with the existing Minnesota rule NR 2220. The proposed amendments will eliminate the differences by making the following changes:

- Shortening the slow zone at Hudson four tenths of a mile, by moving the southern end of the zone upstream from the I-94 bridge to the southern end of the narrows itself
- Changing the speed limit in the four existing slow zones in Lake St. Croix and within 100 feet of shore, islands and swimmers to the traditional slow-no-wake definition
- Adding a slow-no-wake zone at approximately river mile 28.6, which is four-tenths of a mile below the Arcola bridge.

All interested persons will have an opportunity to participate in the hearings. Statements may be made orally and written materials may be submitted at the hearings. In addition, written materials may

be submitted to hearing examiner Howard Kaibel at the Office of Hearing Examiners, 1745 University Avenue, Saint Paul, Minnesota, 55104, either before the hearing or within five (5) days after the hearing. The hearing will be conducted as described in Minn. Stat. § 15.0412 and the Minnesota Rules HE 101-109.

A free copy of the proposed rules may be obtained by writing to the Department of Natural Resources, Box # 6, Centennial Office Building, Saint Paul, Minnesota, 55155. Additional copies will be available at the hearing. A "statement of need and evidence" explaining why the agency feels the proposed rules are necessary and outlining the testimony they will be introducing will be filed with the Office of Hearing Examiners twenty-five (25) days before the hearing and will be available there for public inspection.

Be aware that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five (5) days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota, 55155, phone: (612) 296-5615.

Asst. Commissioner

for

WILLIAM B. NYE
Commissioner

DEPARTMENT OF NATURAL RESOURCES

RULES FOR LOWER ST. CROIX WATER SURFACE USE

PROPOSED AMENDMENTS

NR 2220 LOWER ST. CROIX WATER SURFACE USE

A. Policy and authority

These rules are authorized by ~~Minnesota Statutes section~~ Minn. Stat. § 361.26, subd~~ivision~~. 2, and are promulgated in order to promote the full use by all of the people, now and in the future, of the water surface of the Lower St. Croix River in a manner consistent with safety for persons and property and with the enjoyment of the scenic and recreational values which caused the river to be designated a National Scenic Riverway.

B. Scope

These rules apply to the waters of the Lower St. Croix River from the dam at Taylors Falls to its confluence with the Mississippi River.

C. Definitions

For the purpose of these rules the word "shall" is mandatory, not permissive, and certain words or terms shall be interpreted as follows:

1. "Mile" means distance in miles above the confluence of the St. Croix River with the Mississippi River.

2. "Motorboat" means any watercraft propelled in any respect by machinery, including watercraft temporarily equipped with detachable motors.

3. "Slow-no-wake" means operation of a motorboat at

the slowest possible speed necessary to maintain steerage.

~~3.~~ 4. "Slow Speed" means operation of a motorboat at a leisurely speed, less than planing speed, whereby the wake or wash created by the motorboat is minimal.

~~4.~~ 5. "Watercraft" means any contrivance used or designed for navigation on water other than (i) duck boat during the duck hunting season, (ii) rice boat during the harvest season, or (iii) seaplane.

D. ~~Slow~~ Restricted speed zones

1. No motorboat shall at any time be operated in excess of a slow speed ~~in the following areas: a. From~~ from the dam at Taylors Falls to the sandbars located approximately at mile 31.0.

2. No motorboat shall be operated in excess of a slow-no-wake speed in the following areas:

a. At the narrows located approximately at mile 28.6, which is 0.4 miles downstream from the Arcola high bridge.

b. Between the Coast Guard navigational buoys designating location of the navigation channel from the railroad swing bridge located at approximately mile 17.3 to the south side of the ~~eastbound span of the U.S. Interstate Highway #94 Bridge~~ southern-most island in the chain of islands located at approximately mile ~~16.1~~ 16.5.

c. Between the Coast Guard navigational buoys designating the Kinnickinnic River Delta Narrows from approximately mile 6.6 to approximately mile 6.0.

d. At the Prescott Narrows from the north side of U.S. Highway # 10 Bridge located approximately at mile 0.3 to the confluence of the St. Croix River with the Mississippi River.

e. Within 100 feet of shore (including the shores of islands) and of swimmers, from sandbars located approximately at mile 31.0 to the confluence of the St. Croix River with the Mississippi River.

~~2.~~ 3. Any motorboat designated for law enforcement shall be exempt from provision D. ~~1.~~ of this regulation in circumstances involving emergencies or violation of law.

E. Water skiing

1. No watercraft towing a person on water skis, aquaplane, or similar device shall be operated between sunset and sunrise on the St. Croix River from the dam at Taylors Falls to its confluence with the Mississippi River.

2. No watercraft towing a person on water skis, aquaplane, or similar device shall be operated at any time in any zone designated a ~~"slow-speed-zone"~~ restricted speed zone under provision D. ~~1.~~ of this regulation; provided, however, that any watercraft launching or landing a person on water skis, aquaplane, or similar device by the most direct route to open water shall be exempt from provision D. 2. (d) of this regulation.

3. From Memorial Day through Labor Day, inclusive, no watercraft towing a person on water skis, aquaplane, or similar device shall operate after 12:00 Noon on Saturdays, Sundays, and legal holidays, from the sandbars located approximately at mile 31.0 to the upper end of the federal nine-foot navigation channel approximately at mile 24.5.

F. Penalties

Any person violating any of the provisions of this regulation shall be guilty of a misdemeanor.

G. Effective date

Beginning on Saturday, May 14, 1977, this rule is in effect whenever similar laws or regulations of the State of Wisconsin are in effect for the same reach of the St. Croix River.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

In the Matter of Proposed
Amendments to the Lower
St. Croix Water Surface
Use Regulations.

AFFIDAVIT
OF
MAILING

Cynthia N. Blake being first duly sworn, deposes and says:

That on the 2nd of June, 1978, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul, a true and correct copy thereof, properly enveloped, and with postage prepaid, to all persons and associations at the addresses on the attached list.

Cynthia N. Blake

Subscribed and sworn to before
me this 8th day of June, 1978

Anna A. Bohn
Notary Public

ANNA A. BOHN
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES APR. 20, 1984

amended) and the Commissioner's policies relating to advisory councils.*

2. The Council shall:

a. advise the Commissioner regarding EMT registration rules;

b. advise the Commissioner on the enforcement of the EMT rules;

c. provide for the dissemination of information regarding EMT registration standards;

d. assess the qualifications of each applicant before recommending credentialing to the Commissioner; and

e. perform such other duties as directed by the Commissioner not inconsistent with these rules.

7 MCAR § 1.544-1.545 Reserved for future use.

Department of Natural Resources
Boat and Water Safety Division
Proposed Amendment of Rules Governing the Lower St. Croix Water Surface Use

Notice of Hearing

A public hearing on the above captioned rule amendments will be held on July 6, 1978, beginning at 7:30 p.m. in the auditorium of the Stillwater senior high school, 823 West Marsh Street, Stillwater, Minnesota.

The State of Wisconsin has just adopted permanent rules for Lower St. Croix water surface use, to replace their temporary rules which expired last fall. The permanent Wisconsin rules (NR 5.30 through 5.36) took effect May 25. They are quite similar to but not identical to the existing Minnesota rule NR 2220. The proposed amendments will eliminate the differences by making the following changes:

NR 2220

1. shortening the slow zone at Hudson four-tenths of a mile, by moving the southern end of the zone upstream from the I-94 bridge to the southern end of the narrows itself;

2. changing the speed limit in the four existing slow zones in Lake St. Croix and within 100 feet of shore, islands and swimmers to the traditional slow-no-wake definition;

3. adding a slow-no-wake zone at approximately river mile 28.6, which is four-tenths of a mile below the Arcola bridge.

All interested persons will have an opportunity to participate in the hearings. Statements may be made orally and written materials may be submitted at the hearings. In addition, written materials may be submitted to hearing examiner Howard Kaibel at the Office of Hearing Examiners, 1745 University Avenue, Saint Paul, Minnesota, 55104, either before the hearing or within five (5) days after the hearing. The hearing will be conducted as described in Minn. Stat. § 15.0412 and the Minnesota Rules HE 101-109.

A free copy of the proposed rules may be obtained by writing to the Department of Natural Resources, Box #6, Centennial Office Building, Saint Paul, Minnesota, 55155. Additional copies will be available at the hearing. A "statement of need and evidence" explaining why the agency feels the proposed rules are necessary and outlining the testimony they will be introducing will be filed with the Office of Hearing Examiners twenty-five (25) days before the hearing and will be available there for public inspection.

Be aware that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five (5) days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota, 55155, phone: (612) 296-5615.

William B. Nye
Commissioner

*The Commissioner's policies concern only internal management which do not directly affect the rights of or procedures available to the public and are therefore not subject to rule-making.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

NR 2220

Rule as Proposed

NR 2220 Lower St. Croix water surface use.

A. Policy and authority. These rules are authorized by ~~Minnesota Statutes section~~ Minn. Stat. § 361.26, ~~subdivision.~~ 2, and are promulgated in order to promote the full use by all of the people, now and in the future, of the water surface of the Lower St. Croix River in a manner consistent with safety for persons and property and with the enjoyment of the scenic and recreational values which caused the river to be designated a National Scenic Riverway.

B. Scope. These rules apply to the waters of the Lower St. Croix River from the dam at Taylors Falls to its confluence with the Mississippi River.

C. Definitions. For the purpose of these rules the word "shall" is mandatory, not permissive, and certain words or terms shall be interpreted as follows:

1. "Mile" means distance in miles above the confluence of the St. Croix River with the Mississippi River.

2. "Motorboat" means any watercraft propelled in any respect by machinery, including watercraft temporarily equipped with detachable motors.

3. "Slow-no-wake" means operation of a motorboat at the slowest possible speed necessary to maintain steerage.

~~3.~~ 4. "Slow Speed" means operation of a motorboat at a leisurely speed, less than planing speed, whereby the wake or wash created by the motorboat is minimal.

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D. ~~Slow~~ Restricted speed zones.

1. No motorboat shall at any time be operated in excess of a slow speed ~~in the following areas: a. From~~ from the dam at Taylors Falls to the sandbars located approximately at mile 31.0.

2. No motorboat shall be operated in excess of a slow-no-wake speed in the following areas:

a. at the narrows located approximately at mile 28.6, which is 0.4 miles downstream from the Arcola high bridge;

b. between the Coast Guard navigational buoys designating location of the navigation channel from the railroad swing bridge located at approximately mile 17.3 to the south side of the ~~eastbound span of the U.S. Interstate Highway #94 Bridge~~ southern-most island in the chain of islands located at approximately mile ~~16.1~~ 16.5;

c. between the Coast Guard navigational buoys designating the Kinnickinnic River Delta Narrows from approximately mile 6.6 to approximately mile 6.0;

d. at the Prescott Narrows from the north side of U.S. Highway #10 Bridge located approximately at mile 0.3 to the confluence of the St. Croix River with the Mississippi River;

e. within 100 feet of shore (including the shores of islands) and of swimmers, from sandbars located approximately at mile 31.0 to the confluence of the St. Croix River with the Mississippi River;

~~2.~~ 3. any motorboat designated for law enforcement shall be exempt from provision D. ~~1.~~ of this regulation in circumstances involving emergencies or violation of law.

E. Water skiing.

1. No watercraft towing a person on water skis, aquaplane, or similar device shall be operated between sunset and sunrise on the St. Croix River from the dam at Taylors Falls to its confluence with the Mississippi River.

2. No watercraft towing a person on water skis, aquaplane, or similar device shall be operated at any time in any zone designated a ~~"slow speed zone"~~ restricted speed zone under provision D. ~~1.~~ of this regulation; provided, however, that any watercraft launching or landing a person on water skis, aquaplane, or similar device by the most direct route to open water shall be exempt from provision D. 2. (d) of this regulation.

3. From Memorial Day through Labor Day, inclusive, no watercraft towing a person on water skis, aquaplane, or similar device shall operate after 12:00 noon on Saturdays, Sundays, and legal holidays, from the sandbars located approximately at mile 31.0 to the upper end of the federal nine-foot navigation channel approximately at mile 24.5.

F. Penalties. Any person violating any of the provisions of this regulation shall be guilty of a misdemeanor.

G. Effective date. Beginning on Saturday, May 14, 1977, this rule is in effect whenever similar laws or regulations of the State of Wisconsin are in effect for the same reach of the St. Croix River.

STATE OF MINNESOTA

COUNTY OF RAMSEY

IN THE MATTER OF THE PROPOSED
AMENDMENTS TO THE LOWER ST. CROIX
WATER SURFACE USE REGULATIONS

CERTIFICATION

I hereby certify that the attached 485 labels and 3 sheet(s) constitute the complete list of persons, associations, and other interested groups who as of 3:30 o'clock PM, this 31st day of May, 1978, have requested pursuant to Minnesota Statutes 1974, Section 15.0412, Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearings on proposed rules on the subjects captioned above.

SECRETARY OF STATE
JOAN ANDERSON GROWE

By: Cheri L. Mattson

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

Proposed Amendments to
The Rules for Lower St. Croix
Water Surface Use NR 2220

STATEMENT OF
NEED AND
EVIDENCE

The authority of the Commissioner of Natural Resources to promulgate rules regarding surface water use zoning is found in Minnesota Statutes, Section 361.26. The rules currently in effect on the Lower St. Croix River are identified as Minnesota Regulation NR 2220.

The State of Wisconsin adopted permanent rules (NR 5.30-5.36) for the Lower St. Croix as well, on April 27, 1978. These replaced temporary rules which expired in the fall of 1977. These permanent rules are similar to, but not identical with the existing Minnesota Regulation NR 2220.

The Commissioner of Natural Resources proposes to eliminate these differences by making the following amendments:

1. Shortening the slow zone at Hudson by four tenths (.4) of a mile, by moving the southern end of the zone upstream from the I-94 bridge to the south side of the southern-most island in the chain of islands located at mile 16.5. It is reasonable and necessary that this area be removed from the slow zone, because it is not a hazardous narrows.

2. Changing the speed limit in the four existing slow zones in Lake St. Croix and within 100 feet of shore, islands and swimmers from the "slow speed" definition (which was originally written for only that area north of the Arcola Sandbar) to "slow-no wake." This is the speed limit which was in effect at the Lake St. Croix narrows before last summer. The "slow-speed" definition was developed so that a boater could get from the Arcola sandbars

to Taylor Falls and back in a day. "Slow-no wake" would not have allowed this. But "slow-no wake" in short slow zones does not present such a problem. It is easier to understand and enforce "the slowest possible speed necessary to maintain steerage" rather than the slow speed definition, "a leisurely speed, less than planing speed, whereby the wake or wash created by the motorboat is minimal."

3. Adding a new "slow-no wake" zone at the narrows (known as "beer can alley") at mile 28.6. This area is four tenths (0.4) miles downstream from the Arcola high bridge. It had earlier been believed that the narrows would be covered by the 100 foot shore zone, but the first year of experience by both states proved it to be too wide and it is necessary to mention it more specifically. This area is heavily travelled by fast boats, at the same time people are swimming off the sand beaches adjacent to the narrows. Safety considerations make the change reasonable and necessary.

Although the rules of the two states are currently similar enough to allow both sets of regulations to remain in effect, the aforementioned amendments are necessary to eliminate the differences which could confuse both the boater and enforcement personnel as to which rule to follow.

Dated June 7, 1978

Kim A. Elverum

KIM A. ELVERUM, Boat & Water Safety Coordinator
Minnesota Department of Natural Resources

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of Proposed)
Amendments to the Lower St.) REPORT OF HEARING EXAMINER
Croix Water Surface Use)
Regulations)

The above-entitled matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr., of the Minnesota Office of Hearing Examiners on July 6, 1978, beginning at 7:30 p.m. in the Auditorium of the Stillwater Senior High School, Stillwater, Minnesota. The hearing continued until all interested persons had an opportunity to participate and be heard fully. No transcript of that hearing was prepared and this Report is based on the Hearing Examiner's notes.

Mr. Augustus W. Clapp, III, Special Assistant Attorney General, appeared on behalf of the Department staff. Mr. Kim Elverum, Boat and Water Safety Coordinator, also appeared on behalf of the Department.

Pursuant to Minn. Stat. §15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Department shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. §15.0412 within ten calendar days. Thereafter, the Department shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the

Examiner makes the following:

FINDINGS OF FACT

1. On May 15, 1978, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On June 5, 1978 a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 2163.

3. On June 2, 1978, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On June 12, 1978 the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need; and
(g) The Statement of Evidence, including the names of witnesses to be called;
(h) The names of Department personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing. This is 24 days prior to the hearing, instead of the 25 days mandated by the rules of procedure. Because there were no requests to inspect the documents, this defect is not jurisdictional.

5. The record remained open through July 20, 1978 for the receipt of written comments and statements.

6. The statutory authority for the proposed amendments is found in Minn. Stat. §361.26, subd. 2.

7. The Department provided extensive documentation by way of an affirmative presentation of facts to demonstrate the need for and reasonableness of its proposed amendments. That documentation is summarized in the Department's "Statement of

Need and Evidence" (Ex. 1). No useful purpose is served in extensively repeating the language of that Statement in this Report.

8. The Department proposed at the hearing that the cross-reference in Section E (2) should be revised to read "D(2)(e)" instead of "D(2)(d)". This appears to be an insubstantial change to correct a typographical error. It was not opposed by any persons commenting on the proposed amendments at or after the hearing.

9. If an effective date section is to be included in the rule, it would be more reasonable to revise the existing provisions to more adequately inform the affected public and to eliminate the legal ambiguity discussed toward the end of the hearing. The following language would accomplish that purpose and does not appear to be a "substantial change":

> This rule became effective when a similar regulation was adopted by the State of Wisconsin for the same reach of the St. Croix River, May 25, 1978. The minor amendments making the rule almost identical to the Wisconsin regulation, heard July 6, 1976, will be effective after final Minnesota promulgation and approval by the Washington County Board of Commissioners.

CONCLUSIONS

1. The Department of Natural Resources duly acquired and now has jurisdiction over the within proceeding.

2. The Department has complied with all relevant substantive and procedural requirements of law and rule.

3. The Department has demonstrated the need for and reasonableness of its proposed amendments with an affirmative presentation of facts.

4. The Department has adequately documented its statutory authority to adopt the proposed amendments.

RECOMMENDATIONS

It is hereby recommended: That the Department duly adopt and promulgate the proposed amendments after attention to the matters discussed in the Findings in this Report.

Dated: August 16, 1978

HOWARD L. KAIBEL, JR.
HEARING EXAMINER

M E M O R A N D U M

The final comments of Department Staff properly point out that most of the public concern expressed at the hearing dealt with matters that are not properly discussed in the attached Report.

> The question before the Hearing Examiner is whether the amendments proposed are reasonable and necessary. Most of the hearing testimony fell in other areas: noise, jetboats, seaplanes, enforcement, additional slow-no-wake zones, wider slow-no-wake zones next the shore, the definition of slow speed, waterskiing, and referendums, Most all these concerns will be addressed as the University of Wisconsin user survey is being analyzed in terms of its implications for further changes in the boating rules for the Lower St. Croix.

The Department Staff comment omits mention of the more generalized vigorous opposition of some citizens to any and all government regulation of the St. Croix area. Careful consideration was given to these concerns insofar as the proposed amendments will make the existing regulations more restrictive. There is also inconclusive evidence of considerable support for restrictive boat regulations generally, particularly the summary of the study done by the University of Wisconsin at Madison. It indicates that 84% of all users of the River in an extensive survey supported "imposing strong river-way boating regulations" and that the percentage was even higher for riparian landowners. (Page 41)

The Report further indicates that 71.7% of all users (including 68.1% of all landowners responding, who are obviously more intensively affected generally) indicated that "the new 'Slow Speed Zone' regulations have increased the enjoyment of the river". (Page 24)

There was thus substantial evidence of both support for and opposition to more restrictive regulation. The present statutory scheme protects local citizens in the area from overzealous regulation by the Department (in favor of users generally) by requiring approval by the Washington County Board of Commissioners, the elected representatives of persons

residing on and along the river. This mechanism resolves the question of in what area a local "referendum" should be conducted, that was raised by the Department. It is the proper forum for resolution of the conflict between local supporters and opponents.

HLK, JR.

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

- - - - - - - - - - -

In the Matter of Proposed
Amendments to the Lower St. Croix
Water Surface Use Regulations.

COMMISSIONER'S
FINDINGS

- - - - - - - - - - -

I have read the Report of the Hearing Examiner, and reviewed the record. I concur with the Findings of Fact and Conclusions of the Hearing Examiner, and adopt them as my own, with one exception. I find that the effective date section of the rule is now unnecessary. The date on which the amendments become effective is established by statutes, which need not be quoted, paraphrased or summarized in the rule.

The original rule was approved by Chisago and Washington Counties pursuant to Minn. Stat. § 361.26, Subd. 2(b). The present amendments need only be approved by Washington County since they do not affect Chisago County waters.

Dated this 13th day of October, 1978.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

Joseph N. Alexander

JOSEPH N. ALEXANDER,
Acting Commissioner

612/439-3220

Washington County

PLANNING DEPARTMENT

WASHINGTON COUNTY COURT HOUSE • 14900 61ST STREET NORTH
STILLWATER, MINNESOTA 55082

WILLIAM A. SCHWAB
COUNTY PLANNING COORDINATOR

A W Clapp, III
Special Assistant Attorney General
Department of Natural Resources
375 Centennial Office Building
St Paul, MN 55155
January 22, 1979

RE: Amended Lower St Croix River Water Surface Use Regulations

Dear Bill:

On December 18, 1978, I discussed with the Washington County Board of Commissioners the letter from Acting Commissioner Joseph Alexander regarding the proposed changes to the Lower St Croix River Water Surface Use Regulations. After a thorough discussion, the County Board passed Resolution No. 78-130 approving the proposed rule changes.

Please find enclosed a certified copy of that Resolution. Based on our previous conversation, I assume you will take care of getting the Resolution recorded with the appropriate State officials. If anything else is needed regarding this issue, please let me know.

Sincerely yours,

William Schwab

William A Schwab
County Planning Coordinator

WAS/dkr

Enclosure

RECEIVED
JAN 24 1979
ATTORNEY GENERAL
Dept. of Natural Resources

An Equal Opportunity Employer

BOARD OF COUNTY COMMISSIONERS
WASHINGTON COUNTY, MINNESOTA

Date December 18, 197[redacted] Resolution No. 78-130

Department Planning

Motion by Commissioner Otte Seconded by Commissioner Schaefer, Jr.

RESOLUTION

WHEREAS, the Acting Commissioner of the Department of Natural Resources has requested that the Washington County Board of Commissioners approve certain proposed rule changes regarding the Lower St Croix Water Surface Use Regulations, and

WHEREAS, the Acting Commissioner of the Department of Natural Resources has signed a Commissioner's Findings dated October 13, 1978 concurring in the Findings of Fact and Conclusions of the Hearing Examiner who conducted a public hearing on July 6, 1978 in the Stillwater Senior High School regarding the proposed rule changes relating to the Lower St Croix River Water Surface Use Regulations.

NOW, THEREFORE, BE IT RESOLVED by the Washington County Board of Commissioners that they do hereby approve the proposed rule changes as outlined in the Acting Commissioner of Natural Resources findings dated October 13, 1978 and as specified in his letter of October 16, 1978 relating to the Lower St Croix Water Surface Use Regulations.

Attest: M. Neal Erdahl
M. Neal Erdahl
County Administrator

Wesley R. Scheel
Chairman, County Board

YES		NO	
AXELROD	X	AXELROD	
MCGOWAN	X	MCGOWAN	
OTTE	X	OTTE	
SCHAEFER, JR.	X	SCHAEFER, JR.	
SCHEEL	X	SCHEEL	

State of Minnesota)
County of Washington) SS.

I, M. Neal Erdahl, duly appointed, qualified and acting County Administrator for the County of Washington, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Washington County, Minnesota, at its session held on the 18th day of December, 1978, now on file in my office and have found the same to be a true and correct copy thereof.

Witness my hand and official seal at Stillwater, Minnesota, this 3rd day of January, 1979.

M. Neal Erdahl
County Administrator

By _____
Deputy Administrator

DNR-78-021-HK

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF PROPOSED)
AMENDMENTS TO THE LOWER)
ST. CROIX WATER SURFACE)
USE REGULATIONS.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on July 6, 1978, before Howard L. Kaibel, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Natural Resources on August 16, 1978; and

WHEREAS, the Department of Natural Resources has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Natural Resources has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Natural Resources has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Natural Resources has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 5th day
of February, 1979.

Duane R. Harves
DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

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In the Matter of
Amendments to the
Lower St. Croix Water
Surface Use Regulations

ORDER
ADOPTING
RULE AMENDMENTS

- -

WHEREAS a public hearing has been held on the above-entitled matter; and

WHEREAS I have received and reviewed the report of the hearing and examiner and made findings; and

WHEREAS the Board of County Commissioners of Washington County has approved the amendments I recommended to them; and

WHEREAS the Chief Hearing Examiner finds the changes to the rule I now adopt not substantially different from changes proposed at the hearing,

NOW, THEREFORE, I adopt the amendments to NR 2200 (6 MCAR §1.2200) proposed at hearing, except that the cross-reference in Section E.2 is changed from D.2 (d) to D.2.(e), and Section G. is deleted.

Dated: February 23, 1979.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

Joseph N. Alexander

JOSEPH N. ALEXANDER
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

- -

In the Matter of
Amendments to the
Lower St. Croix
Water Surface Use
Regulations

STATEMENT OF
COMPLIANCE

- -

I have examined the proposed rule amendments and related documents, and participated in the proceedings. Based on that, I conclude that the requirements of statute and rule have been followed.

Dated: February 27, 1979.

WARREN SPANNAUS
Attorney General

C. PAUL FARACI
Deputy Attorney General

Bill Clapp

A. W. CLAPP III
Spec. Asst. Attorney General
Department of Natural Resources