

**Structures in Public Waters Advisory Committee Meeting
Brainerd Fire Department
Meeting Notes
January 6, 2009**

Attending:

Mike Duval, DNR Fisheries
Patty Gould-St. Aubin, Itasca Realty
Al Grabowski, Landowner
Kenneth Grob, Hubbard County COLA
John Hunt, DNR Enforcement
Paul Radomski, DNR Ecological Resources
Molly Shodeen, DNR Waters
Sam Stern, POPULAR
Jim Strandlund, Strandlund Refrigeration
Don VanderMey, FLOE International
Henry VanOffelen, MN Center for Environmental Advocacy
Michele Walker, DNR Waters
Annalee Garletz, Association of MN Counties

Staff:

Julie Ekman, Permit Programs Supervisor
Tom Hovey, Public Waters Hydrologist
Dave Milles, Rulewriting Hydrologist
Erika Rivers, Facilitator
Felicia Barnes, Planner

Introductions/Reasons for Rule Revision

Julie Ekman welcomed everyone to the committee and committee members introduced themselves and stated whom they were representing.

Julie then stated what prompted the rule revision. The 2008 legislature mandated the DNR to revise the rules. This mandate followed the issuance of the revised dock platform general permit and the 2002 rule revision that resulted in more lenient rules. It was also mentioned that there is a discrepancy with the type of docks people have and the type of dock that requires a permit. One person could have a dock that is no wider than 8' but extends across a large area of public water. Then a person with an 8' wide dock and a modest platform would need to obtain a permit. For this reason the dock general permit was created.

Organizational Details

Erika Rivers called attention to and reviewed a few of the meeting ground rules. 1) Committee members are representing their constituents and it is their job to pass along

information to them. 2) Anything produced at these meetings are public documents. 3) The committee is not the decision maker in this process. The committee will be making recommendations to the Commissioner who will make the final decision. 4) If committee members are suggesting changes to the rules, they should also provide the rationale for the change. This information will be needed for the Statement of Need and Reasonableness (SONAR).

Tom Hovey continued the discussion of the organization components of the advisory committee. The body is not a voting body, but one that will strive to reach informed consent on issues. Where informed consent cannot be reached, differences of opinion will be recorded and presented to decision makers.

In order to give the group some context for this process, Tom went on to define public waters, public waters rules, and structures. Public waters include lakes, most larger and wetter wetlands (types 3, 4 and 5 over 2.5 acres in incorporated areas and at least 10 acres in unincorporated areas) and rivers with drainage areas of at least 2 square miles. The public waters inventory was conducted in the late 1970s and early 1980s. Public waters rules cover topics such as filling, excavation, structures, water level controls, restoration, bridges, culverts and outfalls, mining, and drainage. The section we will be updating is the structure section. Structures include retaining walls, docks, wharfs, geothermal systems in lakes, boat ramps, boat lifts, marinas, mooring facilities, and boathouses.

Future Meetings: The plan is to have four meetings total – one per month. The committee settled on Thursday as the meeting day. The committee will meet on February 12, March 5 and April 2 from 9:30am-2:00pm at the Brainerd Fire Department.

Presentation of Baseline Draft Rules

Dave Milles led the committee in a discussion on the baseline draft rules document. He stated that the public water rules were first adopted in 1977. The rules included the type of activities that would be prohibited, activities that were deregulated (did not require a permit, e.g., sand blankets), and those that would be regulated by permit (e.g., building a dam).

In 1995, the legislature allowed for general permits. These permits were for certain projects that had a minimal environmental impact. The Department sets the parameters for the general permits, and has issued them on such things as water appropriation, bridge/culvert replacement, and to watershed districts for shoreland stabilization projects.

Dave then mentioned a dock survey that was created and made available at the DNR Building at the State Fair for the public to fill out. The objective of the survey was to solicit broader public input than can be achieved through open houses. Just over 500 responses were received from that survey. Dave also mentioned that DNR sent post cards to 25,000 licensed watercraft owners to participate in an on-line survey that he and Tom created. The decision was made to go beyond the 25,000 that were sent post cards and let anyone participate in the survey. DNR sent out a press release to inform the public of the survey. As of January 5 DNR has received almost 4,000 responses, two-thirds of

which were shoreland homeowners. The survey is open until January 19. A copy of the survey was provided to committee members. Upon the close of the survey, survey software will be able to separate out responses from the 25,000 randomly selected boat owners and use these as a control group.

It was mentioned that the major river watercraft owners are not licensed through the state but are documented through the Coast Guard. This group therefore is not included in the DNR list. A small discussion was held on the questions in the survey and that if some of the questions were asked differently you may receive a different answer. The group cautioned that the survey should be viewed as a public input instrument rather than an “unbiased” survey of public opinion. A statement was made that the rules can not accommodate the needs of every individual, but that the individual permit process should be an option to obtain an exception when circumstances warrant one (e.g., wheelchair access, ADA requirements, family size, historic legal utilization, etc.).

It was asked if the Department did a preliminary call for comments. Tom stated that the official call went out on July 21, 2008, and the DNR received about 24 comments before the comment period deadline of Nov 17, 2008. In addition to soliciting public input, the rules team is also looking at existing rules in Wisconsin and Michigan, as well as internal DNR guidance documents and standards for public water access sites and fishing piers.

The committee focused back on the baseline draft rules document. Dave explained briefly what changes were made. He stated to the committee that he would just touch on the main points, but that the members should review the draft document and come prepared for discussion at the next meetings. Dave cautioned that this “baseline” document was very preliminary and meant to be a discussion starter and give some direction to future advisory committee discussions.

Scope – added a sentence on cumulative impacts.

Definitions – some definitions needed to be added and others revised. One new definition is the “aquatic impact zone.” The concept is that based on the shoreline area owned, and would allow a square footage area (up to a maximum of 2,500 square feet) where a homeowner could have as many deregulated activities as he/she wanted. These would be activities covered by the public water rules. The APM rules would apply to the same area, not in addition to it. Dave stated that DNR is trying to integrate some of the Department rules (shoreland, public waters, APM). Some of the definitions were added from the shoreland and other rules.

General Permits – a new section for a procedure for issuing a general permit for activities with minimal environmental impact. Alternate language is provided that includes a section addressing paying a fee for individual projects performed under an issued general permit and also issuing a verification device to affix on the structure. Dave called attention to the “Issues Relating to General Permits” document. He asked members to review the document before the next meeting. Dave clarified that the general permit

section would apply to the whole Public Water Resources rules chapter (MN Rule chapter 6115).

Structures in Public Waters – most changes deal with the numbers (footage). Clarification language was added for boathouses and energy exchangers.

Issue Identification

Erika developed a “Parking Lot” sheet for items that need further discussion:

1. General Permit Issues
 - Administration
 - Fees
 - Difference Individual vs. General
 - Criteria (SONAR)
 - notion of “lower standards”
 - Should/can rules accomplish what GP accomplishes?
2. Education and Outreach Plan/Strategy
3. Geothermal Issues
 - Emerging Issues
 - Scoping Potential Impacts
4. Mooring Facilities
 - PUD
 - Campgrounds
 - Controlled Access Lots

Member’s Perspective

We went around the table and asked each member to state whom they represented, concerns/objectives of the rules revisions and their communication strategies to get information to their constituents. Answers were captured and are listed below:

Groups Represented

Geothermal
MN Center of Environmental Advocacy
Waters & Resources & Fish & Wildlife
Conservation Groups
Fisheries Science
DNR-Waters
Urban Lakes
Rivers
Coalition of Lake Associations (COLA)
Lake Associations
Shorefront Equipment
Residential Dock Owners
Real Estate
MN Citizens/State of MN

Habitat/Ecology

POPULAR

Taxpayers

Economic Interests of Dock Industry

DNR Enforcement

Landowner + “Devil’s Advocate”

Professional Anglers

Resorts

Association of MN Counties

MN Assn of County Planning & Zoning Administrators

Concerns/Objectives Advisory Members Would Like to Address

Criteria for general permit (balance between GP and individual permit)

Large docks

Marinas

Usurping of public waters (limit occupation of public waters by private structures)

Size of docks (abuse)

Listen to people (science)

Fixed square footage (achieving depth for access)

Real estate property

People don’t understand rules or know where to find them

Lack of communication between Dept. and the public (make communication simple)

Communications Plan (publications?)

Balance between personal use and the public resource (protection of the near shore area)

Clarifying enforcement (who regulates what)

Clear set of rules

Get the numbers right

PUDs – resorts (as it relates to structure rules)

Issue of grandfathering

Perception of “I can do what I want”

GP doesn’t end up being a process for “blank checks”

Communication and education (there is a big void in the dock issue)

One size does not fit all

Legacy

Compensation for taking

Provision for people to keep what they have

Enforcement

What comes out of this process be enforceable

Need a basis for enforcing the rules (like WCA) (Statutes)

COs don’t have the authority to enforce

Licensing all docks

Monitor “Let’s have the counties do it” discussions

Taking of public space

Notes from January 6, 2009

Communication Strategies & Needs

Website updates/Listserv

News releases on decision points/lakes newsletters (DNR written?)

Email/discussions

DNR Roundtable

Marina forums

Personal Networks/Tradeshows (Docks)

Monthly meetings (Realtors)

NCLC Meetings/BCLARA

MN Waters

Invites to Groups

Blog (POPULAR) (www.protectlakes.blogspot.com – 250 people ± 500)

Email lists

AMC Listservs (updates/newsletters)

Message boards

Needs

Quick Link to Shoreland and Structures Rules Efforts from the DNR Home Page

DNR-produced articles for listservs and newsletters

Next Meeting

The next meeting will be held on February 12, 2009 from 9:30am to 2:00pm at the Brainerd Fire Department. One topic for discussion at this meeting will be general permits.