



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

In the Matter of the Denial of an Application by
Hayward Ten T3, LLC for a Pier Permit Located
on Lake Hayward in the City of Hayward, Sawyer
County

Case No. IP-NO-2009-58-01963

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PERMIT

Pursuant to due notice including publication, hearing was held in Hayward, Wisconsin, on April 13, 2010. The parties requested the opportunity to offer written closing arguments and the last submittal was received on June 18, 2010.

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

Attorney Megan Correll
Department of Natural Resources
P. O. Box 7921
Madison, WI 53707-7921

Hayward Ten T3, LLC, by

Attorney Owen R. Williams
314 North Keller Avenue, Suite 16
Amery, WI 54001

Bill Sande
14800 Hidden Woods Drive
Hayward, WI 54843

Linda Zillmer
902 Holly Hill Lane
Birchwood, WI 54817

FINDINGS OF FACT

1. Hayward Ten T3, LLC, applied to the Department of Natural Resources for a permit to place twin piers with three fingers each and a common lateral connecting dock on Lake Hayward. The proposed 12 slip pier would be used for boat mooring and recreation. Ten of the proposed slips would be designated for condo townhomes; two slips would be for swimming, fishing and beach access, as well as for temporary boat mooring for visitors. The proposed project piers would be removable and on post stands and modular in nature, with standard 5' x 20' aluminum frame and wood decking. The proposed piers would contain floats and would be in the water during the boating season.

2. The proposed project is located in the City of Hayward, Sawyer County also described as in the SE ¼ of the NE ¼ of Section 27, Township 41 North, Range 9 West. Hayward Ten T3, LLC is a riparian owner because the subject parcel abuts Hayward Lake, which is navigable in fact at the project site. The applicant owns approximately 365 feet of riparian frontage.

3. On June 22, 2009, the Department of Natural Resources denied Hayward Ten T3, LLC's permit application to place a pier/wharf on the bed of Lake Hayward. On July 13, 2009, the Department received a Request for Contested Case Hearing from Randy M. Lund on behalf of Hayward Ten T3, LLC. On August 13, 2009, the Department granted a contested case hearing pursuant to Wis. Stat. §§ 30.12(3m), 30.209 and 227.42.

4. Hayward Lake is an area of special natural resource interest (ASNRI) as defined by Wis. Stat. § 30.01 (1am) by virtue of several designations. It is an impoundment of the Namekagon River, a federally designated wild and scenic river. (Ex. 6) It is also listed as an "outstanding resource water" in Wis. Admin. Code NR 102.10(1)(a). (Ex. 7) Further, Hayward Lake possesses significant scientific value as identified by the department because it supports threatened and special concern species identified in the Natural Heritage Inventory. (Ex. 8; Kafura)

5. The applicant's 365 feet of frontage has no history of use for the placement of a large pier. Two small piers extending forty feet out into the water and accommodating up to four boats have been placed in the last year or so. (Thompson) There was no testimony of any other historic use of the site to place a large pier structure.

6. At the current site, one condo building has been built with five separate condo living units. The basement has been poured and plans approved for the eventual construction of a second building, which would include five more condo units. (Ex. 14) The original permit application was for twin piers with three fingers each and a common lateral connecting dock. This represented a total of 12 slips: ten to be set aside for condo residents and two slips "would be for swimming fishing and beach access, as well as for temporary mooring for visitors." (Ex. 14) At close of hearing the applicant submitted a new plan for ten slips on one pier. The pier structure would include five finger

extensions and would extend no more than 40 feet out into the water under either configuration. (Thompson)

7. In denying the request for 12 slips, the Department mistakenly advised the applicant that he could place up to eight slips without a permit. (Ex. 19, F of F #3) However, because Hayward Lake is an area of natural resource interest (ASNRI), the exemption provisions of Wis. Stat. § 30.12(1g) do not apply to structure permit requests on Hayward Lake. The applicant does not have an automatic right to place eight slips in the absence of a Wis. Stat. § 30.12 permit.

8. Dr. Thompson testified that he was aware of other condo developments on Lake Hayward which exceeded a reasonable use of riparian frontage. Warden Miller and other DNR staff confirmed that Dr. Thompson appeared to be correct that some other piers apparently exceed what would be allowed without a permit and that one other property did not have a permit. The record was not entirely clear as to whether the other sites were all in the same critical near shore habitat area as the Hayward Ten project. (See: Ex. 36) It is beyond the scope of this proceeding to specifically address any such violations.

9. Dr. Thompson stated that he acted upon his understanding that he had all necessary city and state approvals at the time he purchased the property. However, it is clear that the previous owner had not sought a permit to place piers, nor established any pattern of historic use at the project site. (Thompson; Kafura)

10. DNR Area Senior Fisheries Biologist Frank Pratt, Jr., has worked on Hayward Lake for many years, conducting extensive surveys and research. (Ex. 26) Pratt testified that the Hayward Lake is one of the best small lakes for native Muskellunge (musky) fishing in North America, including record fish over many years. The lake also supports a thriving largemouth and smallmouth Bass, Northern Pike and Bluegill fishery as well. (See: Exs. 28-30) The project site is a particularly good fishing area because it does not have any significant presence of curly leaf pondweed, which can create problems for fishers in other areas of the lake.

Pratt provided un-rebutted expert testimony that there is a band of critical near shore fisheries habitat in the southern near shore area of Hayward Lake. This area includes the proposed project site where the applicant has proposed the placement of up to twelve pier slips. (Ex. 36) Placement of that many pier slips would have a detrimental impact on the public interest in navigable waters because of the loss of quality diverse fish habitat, which would be detrimental “to virtually every life-stage fish community that is present in the Lake.” (Pratt) The area within the project site is a very rare fish habitat, consisting of diverse native plant communities in combination with a deeper riverine channel (about 60 feet out from shore) and a shallower near-shore area (extending approximately the first 40 feet out) with both hard and sandy substrates. This creates the optimal “edge effect” where diverse types of habitats and water depths are readily available for various uses by numerous fish species. These uses include areas

used for spawning and nursery habitat where small fish can gain cover in aquatic macrophytes (aquatic plants other than algae).

Pratt visited the site three times in evaluating the proposal. Based upon these visits, his many years on the lake, and a review of aerial photos, Pratt opined that the site could support no more than eight pier slips without having a detrimental impact upon the fishery. While largemouth bass and bluegill are relatively tolerant of or resistant to habitat changes, this is not true of northern pike, musky, walleye, smallmouth bass and the threatened species Greater Redhorse which is known to exist in the Namekagon River system. (Pratt; Ex.10)

Pratt testified that the project site was used as a northern pike spawning and nursery area. The combination of hard substrate and diverse plants is also very good for musky spawning, and it is "highly probable" that musky use the project site for spawning as well. (Pratt)

11. Ken Jonas is a DNR Wildlife Supervisor for a four county area, including Sawyer County. Jonas testified that the project area has rich biological diversity, including both plants and wildlife. The sandy shallow water area close to a deeper organic substrate river channel makes this a very valuable wildlife habitat for turtles, frogs, toads, river otter, eagles, loons, and osprey among others. (Jonas) The project site is particularly good habitat for turtles, including threatened Blandings and Wood turtles, who need deeper water to survive the winter and shallow areas and sandy soils for nesting. (Jonas; Exs. 33-34) Further, eagles, osprey and loons prefer less-developed areas near shore areas for sight fishing.

12. There would be some detrimental impact upon natural scenic beauty from placement of the pier structures. However, this would not be sufficient to deny the permit in the absence of other public interest concerns.

13. DNR Conservation Warden Susan Miller is assigned to the west half of Sawyer County, and regularly patrols Hayward Lake including the area near the project site. Most boating activity and traffic occur in the river channel itself. However, there are "a couple of people" who do water-ski, and water skiing hours have been restricted by ordinance. (Ex. 37) While the upland shore area is developed, the pier slips placed in the area tend to be small and seldom used to moor boats for extended periods of time. The area is used for fishing more than boating. Not even many shallow-drafting craft such as pontoon boats are used in the area. The area is not used that frequently for boating activities because the water depth is shallow and larger boats, including even pontoon boats, run into problems. Even most motorized boats are fishing boats utilizing small 5 to 8 horsepower motors. (Miller)

There are no large pier structures in the area, "most folks just have one pier with two moorings on it," and this includes riparians who own from 100 to 300 feet of frontage. (Miller) Miller opined that 12 slips in this area was "excessive" and not in keeping with either historic or present day uses in this area. Miller testified that she

believed there would be a safety hazard, particularly to the majority of users, who are principally canoeists and other non-motorized water-craft users, if more than four pier slips were placed at the project location. People in canoes would be forced to go around the large piers and into the main channel used by motorized boats. Miller opined, "I think eight is too many, four is plenty, for 367 feet on *this* lake, considering the types of docks and uses that are out there, I think four is plenty...That's my professional opinion on that."

14. If other riparian owners placed pier slips at the same level of density in this critical habitat area, there would be cumulative detrimental impacts to shoreline habitat for both fish and wildlife. (Pratt; Jonas; Ex.27)

Mr. Pratt concluded that on a cumulative basis numerous fish species, including muskellunge, small mouth bass, northern pike and the state threatened greater redhorse, were susceptible to impact from structures and would be negatively impacted. (Pratt) His conclusions are supported by literature relied on by other experts in his field, including but not limited to, the Jennings study on cumulative effects discussed on and included in the record. (Pratt; Ex. 27)

Mr. Jonas concluded that in his opinion, cumulatively, approval of the project would result in fragmentation to habitat for the state threatened Blandings and Wood turtles. (Jonas; Ex. 33, 34)

There would also be some cumulative detrimental impact upon the ability of non-motorized watercraft users to safely navigate in this area of the lake. (Miller)

15. Balancing public and private rights, a reasonable use of this property would involve placing no more than six pier slips at this site. The project site is an area of special natural resource interest and value for several reasons and is in a critical near shore habitat zone. This favors an assertion of public rights in this important public waterway, and six slips is a reasonable balance that represents a half-way point between the DNR Warden's suggestion of four slips and the eight slips that the other DNR experts felt the site could accommodate. It will also allow the riparian owner to provide slips for each existing condo unit and will offer some flexibility with respect to his long-term plan to build a second building and a total of ten condo units.

16. The Department has met the procedural requirements of Wis. Stat. §1.11, and has determined that the project would not be a major state action significantly affecting the quality of the human environment. A pier project is a type III action under Wis. Admin. Code § NR 150.03(8)(f)(1). Type III actions normally do not have the potential to cause significant environmental effects. The Department met its procedural obligations pursuant to Wis. Admin. Code NR 150 and Wis. Stat. § 1.11.

DISCUSSION

The project area is right in the middle of a unique and valuable critical near shore wildlife and fisheries habitat in the southern area of Hayward Lake. (Ex.36) There was extensive un-rebutted expert testimony that this habitat should be protected in a way that is consistent with affording the applicant a reasonable riparian use of the site. After balancing public and private rights, the record supports a finding that no more than six pier slips should be placed at this site given the critical near-shore habitat found in this Area of Natural Resource Interest (ASNRI).

At the close of the instant hearing, the Department submitted approved pier configurations that would authorize anywhere from 4 to 8 pier slips. This reflected the dispute among Department experts as to the maximum number of slips could reasonably be placed at the site. The Department "...provided three single pier designs with 4, 6 and 8 boat moorings and requests that the permit be issued to authorize a pier for one of these three designs, consistent with the determination made by the finder of fact." (DNR Written Closing, p.7) The Department also submitted a proposed pier permit, drafted by DNR Water Management Specialist Kafura, which limited the placement of pier slips to no more than four. The applicant's counsel moved to strike the same because it did not comport with Mr. Kafura's hearing testimony, in which he had sought to limit the permit to no more than eight slips. Because the DNR counsel specifically left the decision on the final number of slips up to the Division, it is not necessary to strike the terms of the draft permit because the DNR is not asserting that it is owed any particular deference by the Division.

The DNR introduced an April, 2008 document, Answering Questions about Pier Regulations, which is used by Water Management Specialists to interpret the increasingly complex provisions of Wis. Stat. § 30.12. (Ex. 18) The very first question—"Is the pier located in an ASNRI?"—reflects the priority that the legislature has placed upon protecting ASNRI water areas. Piers in ASNRI waters are not subject to the standard exemptions (See: Wis. Stat. § 30.12(1g)) or the standard (See: Wis. Stat. § 30.12(1g)(f)), or double density calculations (See: Wis. Stat. § 30.12(1j)(b) deriving an appropriate number of slips for a particular amount of riparian frontage.

Further, longstanding Wisconsin case law makes it clear that riparian rights must be balanced with public rights. A riparian's right to place piers is limited by the "reasonable use" doctrine. Under the reasonable use concept, there is no unconditional right to place piers that reflect the number of condominium units rather than the amount of frontage and individual and fact specific features of the public waters impacted. In the instant action, because Hayward Lake is an area of special natural resource interest, the exemption provisions of Wis. Stat. § 30.12(1g) do not apply to structures permit requests on Hayward Lake. Further, the specific area of public waters in front of the applicant's property has habitat and spawning value for one of the best musky fishing waters of the state.

In *Hilton v. Department of Natural Resources*, 717 N.W.2d 166, 2006 WI 84 (Wis., 2006), the Wisconsin Supreme Court adopted the following language from a Court of Appeals decision cited below: “*In Sterlingworth, the court of appeals noted that the common law requires "reasonable use" by riparian owners to be determined by "the extent and capacity of the [lake], the uses to which it has been put, and the rights that other riparian owners on the same [lake] also have."* *Sterlingworth*, 205 Wis.2d at 731, 556 N.W.2d 791, (cites omitted) *Such an inquiry is a highly fact-specific one, and determinations are made on a case-by-case basis.* *Hilton*, p.177-178

In *Sterlingworth Condominium Association. Inc v. DNR*, 205 Wis. 2d 710, 727, 556 N.W. 2d 791 (Ct. App 1996) the Wisconsin Court of Appeals ruled that the number of pier slips relate to the specific features and size of a riparian property, and not to the number of residential condo units built by a developer.

The Court wrote the following: “*Although nine additional boat slips may seem inconsequential to a proprietor such as Sterlingworth, we approach it differently. Whether it is one, nine or ninety boat slips, each slip allows one more boat which inevitably risks further damage to the environment and impairs the public’s interest in the lakes. The potential ecological impacts include direct impacts on water quality and sediment quality alteration, as well as direct and indirect influences on flora and fauna. For this very reason, the consideration of “cumulative impact” must be taken into account.*

As was explained by the Wisconsin Supreme Court:

*A little fill here and there may seem to be nothing to become excited about. But one fill, though comparatively inconsequential, may lead to another, and another, and before long a great body of water may be eaten away until it may no longer exist. Our navigable waters are a precious natural heritage; once gone, they disappear forever. Although the legislature has constitutionally permitted some structures and deposits in navigable waters, it permitted them under sec. 30.12(2)(a), STATS., only if the Public Service Commission [now the DNR] found that ‘such structure does not materially obstruct navigation and is not detrimental to the public interest.’ *Hixon v. Public Serv. Comm’n*, 32 Wis.2d 608, 631-32, 146 N.W.2d 577, 589(1966). See *id.* at 632, 146 N.W.2d at 589.”*

Against this longstanding legal background, and balancing public and private rights, the Division finds that a reasonable use of this property would involve placing no more than six pier slips at this site. Admittedly, this represents the half-way point between DNR Warden Miller’s suggestion of no more than four slips and the eight slips that the other DNR experts testified that the site could accommodate. Wisconsin law is clear that the determination of the number of slips appropriate at a site is to be made on a case by case basis. The unique features of this critical near shore habitat area, which has been designated as an area of special natural resource interest, and which has seen little

historic use for pier placement, requires placement of fewer slips than at many other sites. Further, a reduction of the total number of slips from the ten now sought by the applicant to the six approved below should address most of the boating safety and other issues Warden Miller raised in her testimony. If the Department determines that boating activity associated with the six slips is detrimental to the public interest, a standard permit condition gives it the authority to move to revoke the permit—obviously, after notice to the applicant and the right to another hearing. (See: Wis. Stat. § 30.2095(2))

While there is support in the record to limit the pier structures to no more than four slips, four slips would be less than the current condo units on the property, and permitting six will allow the applicant the ability to allow all five existing units to maintain a slip and to have one shared slip at the other building unit if and when it is constructed. Or, alternatively, each five condo unit building could share the six slips—three each or whatever demand there is from either building-- on a rotating basis. These details are up to the applicant and the condo association.

What is clear from the record is that six slips represents the absolute maximum number than can be placed at the site by the private riparian when balanced against the significant public interest in preserving and protecting the public interest in this outstanding resource public waterway and the critical near shore habitat area in particular.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority under Wis. Stat. §§ 30.12, 30.208, 30.209 and 227.43(1)(b) and in accordance with the foregoing Findings of Fact, to review issuance of a permit for the construction and maintenance of structures placed upon the beds of navigable waters.

2. The proposed facility described in the Findings of Fact constitutes a structure within the meaning of Wis. Stat. § 30.12.

3. Wisconsin Stat. § 30.12(3m) provides that:

The department shall issue an individual permit to a riparian owner for a structure or a deposit pursuant to an application under par. (a) if the department finds that all of the following apply: 1. The structure or deposit will not materially obstruct navigation; 2. The structure or deposit will not be detrimental to the public interest; 3. The structure or deposit will not materially reduce the flood flow capacity of a stream.

The applicant has met the standards for issuance of the permit, so long as it is placed in conformance with the configuration described in Attachment 1 and with the permit conditions described below.

4. The proposed pier structures are not exempt under Wisconsin Stat. § 30.13 because placement of more than six slips would “interfere with public rights in navigable waters.”

5. Hayward Lake is an area of special natural resource interest (ASNRI) as defined by Wis. Stat. § 30.01 (1am) by virtue of several designations. It is an impoundment of the Namekagon River, a federally designated wild and scenic river. It is also listed as an “outstanding resource water” under Wis. Admin. Code NR 102.10(1)(a). Further, Hayward Lake possesses significant scientific value as identified by the department because it supports threatened and special concern species identified in the Natural Heritage Inventory. Hayward Lake is listed as an ASNRI on the publically available Surface Water Data Viewer for Designated Waters on the DNR website. (Ex.5) <http://dnrmaps.wisconsin.gov/imf/imf.jsp?site=SurfaceWaterViewer.deswaters>

6. The so-called double density provisions of Wis. Stat. § 30.12(1j) do not apply to this site because to be eligible “the pier or wharf must be located in an area other than an area of special natural resource interest” and Hayward Lake is an area of special natural resource interest.

7. The proposed pier structures are not exempt under Wis. Stat. § 30.12(1g)(f) because to be eligible “the pier or wharf must be located in an area other than an area of special natural resource interest” and Hayward Lake is an area of special natural resource interest.

8. Hayward Lake is designated an “outstanding resource water” because it is part of the Namekagon River, a river designated under the national wild and scenic rivers act, as amended, 16 USC 1271 to 1287, except those portions flowing through Indian reservations.

9. After considering the extent and capacity of the lake, the uses to which it has been put, as well as the rights that other riparian owners and other members of the public using the lake also have, it is clear that the original project proposal exceeded a “reasonable use” of the applicant’s riparian area. Given the critical habitat areas, the safety concerns, and other fact specific features discussed above, a reasonable use of this frontage would involve the placement of no more than 6 slips. *See: Hilton v. Department of Natural Resources, 717 N.W.2d 166, 2006 WI 84 (Wis., 2006)*

PERMIT

1. You must notify David Kafura at (715) 634-2688 before starting construction and again not more than five days after the project is complete.

2. You must complete the project as described on or before June 21, 2013. If you will not complete the project by this date, you must submit a written request for an extension prior to the expiration date of the permit. Your request must identify the

requested extension date and the reason for the extension. A permit extension may be granted, for good cause, by the Department. You may not begin or continue construction after the original permit expiration date unless the Department grants a new permit or permit extension in writing.

3. This permit does not authorize any work other than what you specifically describe in your application and as modified by the conditions of this permit and Attachment 1. If you wish to alter the plans, or any permit conditions, you must first obtain written approval of the Department.

4. You are responsible for obtaining any permit or approval that may be required for your project by local zoning ordinances and by the U.S. Army Corps of Engineers before starting your project.

5. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance.

6. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity is detrimental to the public interest.

7. You must post a copy of this permit at a conspicuous location on the project site, visible from the waterway, for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.

8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.

9. The pier shall be placed in the configuration set forth on Attachment 1 and shall include placement of no more than six slips.

10. You must submit a series of photographs to the Department, within one week of completion of work on the site. The photographs must be taken from different vantage points and depict all work authorized by the permit.

11. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Wis. Stat. § 30.292, for any violations of Chapter 30, Wis. Stats. or this permit.

12. To protect spawning fishes and nursery habitat, no construction shall occur between May 15th and June 15th of any year.

13. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters. Erosion control measures such as silt fence and straw bales must meet or exceed the Storm Water Management Technical Standards found at <http://dnr.wi.gov/runoff/stormwater/techstds.htm>.

14. The pier must allow the free movement of water and must not entrap vegetation.

15. The pier must not enclose any portion of the navigable waterway.

16. This permit authorizes future maintenance to the piers and breakwater; however, no change can be made to the type of materials, number of slips, or pier configuration without written approval from the Department or amendment of this permit.

17. You are responsible for the maintenance and upkeep of the permitted project and project site, including cleanup of any debris in or out of the water. This includes daily monitoring of the site for debris in and around the pier structures.

18. All lighting on land, in the pier and on the buildings shall be installed with the intent of preserving the serenity of the shoreline. This includes minimum sized lighting structures placed close to the ground or pier level, and focusing the direction of the light downward

19. The permit conditions shall limit the pier structure to be constructed according to the approved plans. You must submit construction plans that are consistent with this permit, at least two weeks before construction starts.

20. All equipment used for the project including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be decontaminated for invasive and exotic viruses and species prior to use and after use. The following steps should be taken *every time* you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters should not be used on other non-infested waters.

1. **Inspect and remove** aquatic plants, animals, and mud from your equipment.
2. **Drain all water** from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps
3. **Dispose** of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.

- 4. Wash your equipment** with hot (>104° F) and/or high pressure water OR allow your equipment to **Dry thoroughly for 5 days**

Dated at Madison, Wisconsin on June 29, 2010.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

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.