

Clearinghouse Rule 06-065

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 45.04(1)(g) relating to regulation of firewood entering department lands and affecting small businesses.

FR-19-06

Analysis Prepared by the Department of Natural Resources

- 1. Statutes interpreted:** Sections. 23.09(2)(intro), 23.091, 23.11(4), 23.17, 23.175, 23.22(2)(a), 23.28(3), 23.293 27.01(2)(i) and (j), and 28.04(2)Stats.
- 2. Statutory authority:** Sections. 23.09(2)(intro), 23.091, 23.11(1), 23.22(2)(b) 1., 23.28(3), 27.01(2)(j) and 227.11(2)(a), Stats.
- 3. Explanation of agency authority to promulgate the proposed rule under statutory authority:** Section 23.11(1), Stats., states that the department shall have and take general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests, except lands where the care and supervision of which are vested in some other officer, body or board; said department is granted such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by this chapter and by other provisions of the law. Sections 23.09(2)(intro), 23.091, 23.28(3), and 27.01(2)(j), Stats., describe department responsibilities on specific types of properties covered in s. 23.11(1), Stats.. The department interprets s. 23.22(2)(a), Stats., to require the department to establish a statewide program to control invasive species in this state. Rules to control the spread of emerald ash borer, and invasive species, are a part of that program. Finally, s. 227.11(2)(a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.
- 4. Related statute or rule:** Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has proposed changes to ch. ATCP 21 that will regulate import and movement of firewood and other host material of the emerald ash borer, Asian longhorn beetle, hemlock woolly adelgid and sudden oak death. This rule will support the proposed changes in ch. ATCP 21.
- 5. Plain language analysis:** This rule will prohibit anyone from bringing onto department managed lands firewood from greater than 50 miles from the campground or property unless the firewood source is approved by the Wisconsin DATCP. The purpose of this rule is to reduce the risk of introduction and spread of emerald ash borer and other invasive insects and diseases of trees by reducing the distance firewood used on the properties is moved. Currently, emerald ash borer is moving primarily on firewood and parks and campgrounds in other states have been sites of new introductions as a result (Muirhead et al. 2006). This rule will provide additional protection for state parks and forests, set a good example for county, municipal and private campgrounds and reduce a reason people move firewood: for use while camping. While this rule may cause some inconvenience for campers, it is dwarfed by the cost of infestation or establishment of this pest to the public and the state. To minimize any inconvenience, the department is working with firewood dealers and the Wisconsin DATCP to assure a sufficient supply of safe and affordable firewood at department campgrounds.

Invasive, foreign pests and diseases are often very destructive as native trees typically have little resistance, there are rarely effective natural enemies to regulate infestations and effective pesticides may be unavailable. Emerald ash borer is a dramatic example of this situation. Where it is established, it has eliminated all ash species in the region. Cities and towns in southeastern Michigan have been stripped of street trees and lowland forests decimated as this beetle has killed the ash trees

that dominate these landscapes. Where states have tried to eradicate colonies of emerald ash borer on the leading edge of infestation, the cost of removing all ash within ½ mile of the infested tree(s) has been approximately one million dollars per site. Wisconsin is at least as vulnerable to emerald ash borer as Michigan. Thirty percent of our community trees are ash and ash species are common to dominant in our northern hardwood, central hardwood and lowland forests. Given that eradication is so expensive and destructive and establishment of this pest even worse, the best defense against this pest is prevention of importation into the state. While federal and state quarantines on nursery stock and logs have been effective, those on firewood have largely failed to prevent exportation of this pest. Most infestations distant from the core infestation in southeastern Michigan have been traced back to firewood as the source of the introduction. Recognizing this risk, the Wisconsin DATCP has proposed additional limits on movement of firewood into and within the state. The permanent rule proposed here will support DATCP's proposed external quarantine. In the event that an infestation of emerald ash borer is discovered on a department property, movement from that property of all host material including firewood would be halted by the DATCP, minimizing the risk of spread.

The regulation of firewood into department properties will be supported by an intensive information and education program to reach campers who could be affected by the new regulation and to raise awareness of the risk posed by the movement of firewood. The department will reach out to municipal and private campground managers to educate them on why we are taking this step and encourage and support them if they decide to do likewise. The department will also work with the DATCP and firewood dealers to ensure campers have a sufficient supply of safe and reasonably priced firewood.

6. Summary of, and comparison with, existing or proposed federal regulation: The Apostle Islands National Park will prohibit bringing any firewood into the park effective May 1, 2006. Currently, the Huron-Manistee National Forest in Michigan prohibits bringing ash firewood onto the forest though enforcement is challenged by the dispersed nature of campsites and the difficulty of the public and staff in identifying ash wood.

7. Comparison with rules in adjacent states: Michigan prohibits movement of ash products including firewood from the quarantined counties. Campers from quarantined areas entering Michigan parks are questioned if they brought firewood from the quarantined area and if so confiscation of firewood and fines could result. Illinois prohibits the movement of host materials including wood from the area quarantined for Asian longhorned beetle. The province of Ontario prohibits firewood from areas quarantined for emerald ash borer from entry into provincial parks and has a \$400 fine for doing so. Ontario also generally discourages bringing firewood in from a distance in order to reduce the risk of spread of EAB, Asian longhorned beetle, gypsy moth and oak wilt.

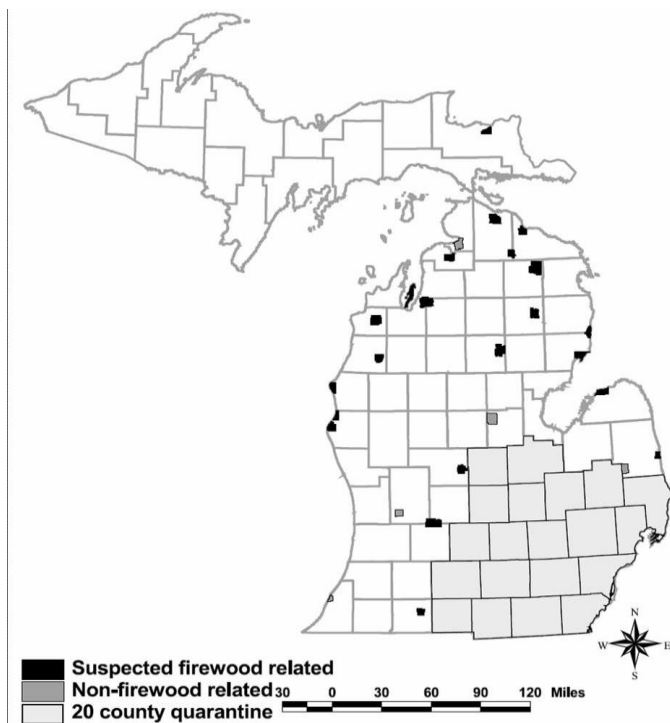
8. Summary of factual data and analytical methodologies: Firewood is generally recognized as a major source of new infestations distant from the currently established areas (Muirhead et al 2006). Figure 1. shows the outlying infestations in Michigan in 2005 and their probable source. Note that most of the colonies distant from the epicenter in the Detroit area were traced back to infested firewood brought in from the quarantined area. Quarantines on nursery stock and logs have been successful in discouraging exportation of infested host material from these sources. When such quarantines are broken, it is often detected quickly and material can be retrieved or at least the potentially infested area can be accurately delineated and treated. This happened in Maryland and Virginia where a dealer received an illegal shipment of nursery stock from Michigan. The Maryland and Virginia introductions appear to have been successfully eradicated. In contrast, much firewood is moved by individuals and there is little that can be done to regulate its movement out of a quarantined area except to try and educate the public to the risk. An external quarantine can add a second opportunity to intercept the infested host material and enforcement is often more vigorous since the people enforcing the quarantine are trying to protect their own resources.

Rapid response to an introduction of an exotic invasive species is key to limiting the impact of the organism. The smaller the area affected, the more likely eradication or management will succeed. Limiting the movement of firewood to localized areas will significantly contribute to limiting the chances of moving exotic-invasive species long distances. Once an introduction is detected, delimiting surveys are conducted to determine the extent of the infestation. Success of the delimiting survey will in part depend on the distance the firewood has been moved; a shorter distance will decrease the survey area and increase the chance of a successful delimit process. The limited distance firewood can move must also be reasonable enough to assure a supply to any given destination. Balancing success of a delimiting survey, eradication and management, with provision of an adequate supply to all destinations, the DNR recommends that firewood move no more than 50 miles from its point of origin.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: This rule is designed to prevent and limit the spread of invasive forest pests and diseases such as the emerald ash borer which pose a grave threat to Wisconsin forest and urban landscapes. This rule will help protect Wisconsin industries associated with tourism and forest products by protecting the resources on which they depend. Some firewood dealers may be initially impacted by this rule if they get firewood from greater than 50 miles from the state campgrounds or from out of state. Early analysis of a statewide survey of firewood dealers indicates that most dealers are obtaining their wood within 50 miles of the area where they sell it so fewer dealers may be impacted than might at first be thought. DATCP is working to develop an approval process so that larger dealers that distribute over a wider area will be able to have their wood approved for use on department properties.

While this rule will require campers to obtain firewood near their campsite, this small expense will be dwarfed by savings to individuals and private business in its contribution to preventing or delaying the establishment of emerald ash borer and other invasive pests and diseases. Where emerald ash borer has been introduced, eradication often costs one million dollars per site. Where this pest is established, homeowners must pay hundreds of dollars to remove yard trees killed by the beetle as well as suffer property value decline due to loss of the trees. Communities must bear the cost of removal and replacement of killed ash trees along streets and in parks. Michigan communities have requested 6 million from FEMA to remove and replace street trees. Businesses that deal in nursery stock, logs and firewood are also impacted by establishment of emerald ash borer as markets outside the infested area no longer want their products or require costly inspections to show the shipment is pest free.

Figure I. 2005 Map of infestations of emerald ash borer and probable source of infestation.



10. Effect on small business: We expect that this rule will increase demand for firewood near state campgrounds and be an opportunity for many small firewood dealers. The department will work with DATCP to develop a process to identify dealers with firewood that is allowable for entry onto state properties. The department will also keep records of how much firewood is brought by campers in order to give firewood dealers a prediction of demand in future years.

11. Agency contact person: Dr. Andrea Diss-Torrance, 608-264-9247, Andrea.Diss@dnr.state.wi.us

12. **Place where comments are to be submitted and deadline for submission:** The deadline for submission is July 10, 2006. Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Dr. Andrea Diss-Torrance
Department of Natural Resources
Division of Forestry
PO Box 7921
Madison WI 53707
Fax: (608) 267-8576

dnrforestryrules@dnr.state.wi.us and include firewood in the subject line

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

SECTION 1. NR 45.04(1)(g) is created to read:

NR 45.04(1)(g) On department lands, no person may possess firewood that originates from greater than 50 miles from the campground on that property where the wood would be used, or the property itself if there is no campground, or from outside the borders of the state of Wisconsin. Firewood from sources approved by the Wisconsin Department of Agriculture, Trade and Consumer Protection is allowable. Firewood includes all wood, processed or unprocessed, meant for use in a campfire.

Note: A list of firewood sources approved by Wisconsin Department of Agriculture, Trade and Consumer Protection can be obtained by contacting Robert Dahl, WI DATCP.

SECTION 3. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)