

**DANE COUNTY DRAINAGE BOARD
NOTICE**

The Dane County Drainage Board is reminding landowners in all drainage districts of their obligations under the Wisconsin Administrative Code Wisconsin Statutes Chapter sec. 88.89. The subsection addressing roads not to obstruct natural watercourses requires that whenever any embankment, grade, culvert or bridge, including the approaches to, built or maintained across a natural watercourse obstructs the watercourse so that waters are set back or diverted upon any lands in a district, the waterway and the approaches must be enlarged as to not set back or divert waters upon lands in the district. The enlargement is to be performed by the party that built the structure causing the diversion.

In the event an owner fails to comply with Wis. Stat. 88.89, the Board may conduct a hearing on the matter and issue order to show cause why an order directing the work to be done should not be issued. Ultimately, the Board may issue an order to the owner or maintainer to enlarge the waterway or construct a new waterway as the facts warrant. Further, the owner may be liable for damages resulting from failure to enlarge the waterway.

If you are concerned about an obstruction contact a Board member at:

Scott Ringelstetter, (608) 347-4159 or scott@ringelstetter.net
Paul Maly, (608) 695-1623 or spdrainage@hotmail.com
Leonard Massie, (608) 512-7372 or lrmassie@wisc.edu
Attorney Elizabeth L. Spencer, (608)257-0945 or espencer@hurleyburish.com

DANE COUNTY DRAINAGE BOARD
Scott Ringelstetter, Chair
Leonard Massie, Secretary
Paul Maly, Board Member

88.89 Roads not to obstruct natural watercourse.

(1) Whenever any embankment, grade, culvert or bridge, including the approaches to the culvert or bridge, built or maintained by any person across a natural watercourse or natural draw obstructs the watercourse or draw so that waters therein are set back or diverted upon any lands in a drainage district, the person who built the embankment, grade, culvert or bridge shall enlarge the waterway through the embankment, grade, culvert or bridge and the approaches thereto so that it will not set back or divert waters upon lands in the district.

(2) The drainage board or the owner of any land upon which water is set back or diverted by the obstruction described in sub. (1) may serve notice upon the owner or maintainer of the embankment, grade, culvert or bridge to enlarge the opening for the waterway or to make new openings in order to permit the water to pass without being set back or diverted onto the lands of the district. If the owner of or person maintaining the embankment, grade, culvert or bridge fails to comply with the directive of the notice within 60 days after receiving the notice, the drainage board on its own behalf, or on petition of the injured landowner, may conduct a hearing under sub. (3).

(3) Upon receipt of a petition under sub. (2), the drainage board shall fix the time and place of a hearing on the petition and shall issue an order to the owner or maintainer of the embankment, grade, culvert or bridge to show cause why an order directing the work to be done should not be issued. At least 10 days before the time fixed for the hearing on the petition, the order to show cause shall be served on the owner or maintainer, or on both if both are named in the petition, as prescribed in s. 801.11 for the service of a summons.

(4) If the drainage board is satisfied that the embankment, grade, bridge or culvert so obstructs the watercourse or draw that it causes water to be set back or diverted upon lands in the drainage district, the drainage board shall issue an order to the owner or maintainer of the embankment, grade, bridge or culvert to enlarge the waterway or construct a new waterway through the embankment, grade, bridge or culvert, as the facts warrant. The period of time that the embankment, grade, bridge or culvert has been in existence is no defense to a proceeding under this section.

(5) Any person who fails to comply with an order issued under this section is liable to the injured party for all damages caused by the failure.