

COMMISSIONER'S ORDER NO. 263-97
Natural Resources

A Commissioner's Order establishing Off-Reservation 1997 Small Game Hunting Regulations. East of the St. Croix River.

WHEREAS, the Mille Lacs Band of Chippewa Indians is a signatory and successor to the Treaty of 1837, 7 Stat. 536, and the Treaty of 1842, 7 Stat. 591, and;

WHEREAS, the Mille Lacs Band of Chippewa Indians resides in the ceded territories of the Treaty of 1837, 7 Stat. 536, and;

WHEREAS, the Mille Lacs Band has ratified the 1997 Off-Reservation Small Game Hunting Agreement by and between the Tribal and State Parties in Lac Courte Oreilles, et al., v. State of Wisconsin, et al., and;

WHEREAS, the Mille Lacs Band deems it appropriate to provide an orderly system of tribal control and regulation of off-reservation small game hunting, and;

WHEREAS, the Mille Lacs Band further deems it appropriate to provide conservation and management for small game population found in the ceded territory through the regulation of member hunting occurring there, and;

WHEREAS, the Commissioner of Natural Resources has the authority to regulate natural resources within the jurisdiction of the Mille Lacs Band of Chippewa Indians through 11 MLBSA § 2003, and 2 MLBSA § 1153, et seq., and;

WHEREAS, the taking of small game is a natural resources under the jurisdiction of the Mille Lacs Band of Chippewa Indians and;

WHEREAS, nothing herein or the application thereof shall be construed by any government, agency, person or circumstance as a waiver by the Non-Removable Mille Lacs Band of Chippewa Indians of the solemn, special trust obligation of the United States of America, and;

WHEREAS, pursuant to the provisions of 11 MLBSA § 2003, the Commissioner of Natural Resources is empowered to execute the regulatory agreements for small game hunting by members of the Mille Lac Band for area east of the St. Croix River and within the 1837 treaty area.

NOW THEREFORE, by the authority vested in me by the Mille Lacs Band of Chippewa Indians pursuant to 11 MLBSA § 2003, I, Don Wedll, Commissioner of Natural Resources for the Mille Lacs Band of Chippewa Indians hereby establish the following Small Game Hunting Regulations for members of the Band, east of the St. Croix River:

OFF-RESERVATION 1997 SMALL GAME HUNTING REGULATION
East of the St. Croix River

PART I - INTRODUCTION

101. Title. This Commissioner's Order may be cited as the Mille Lacs Band of Chippewa Indians (East of the St. Croix River) Off-Reservation 1997 Small Game Hunting Regulations.
102. Authority. This Commissioner's Order is authorized pursuant to 11 MLBSA § 2003, and 2 MLBSA § 1153, et seq., of the Mille Lacs Band of Chippewa Indians.
103. Purpose. It is the purpose of this order to:
- a) provide an orderly system for tribal control and regulation of small game hunting on the off-reservation lands and waters ceded by the Chippewa Indians in the Treaty of 1837, 7 Stat. 536 and the Treaty of 1842, 7 Stat. 591.
 - b) Provide a means to promote the conservation and management of small game population in the ceded territory through the regulation of member hunting occurring there.
104. Effective Date. This order shall be effective on the date of issuance and shall expire at 11:59 p.m. on September 1, 1998.
105. Interpretation. The provisions of this order shall be interpreted and applied as minimum requirements applicable to small game hunting and shall be liberally construed in favor of the Mille Lacs Band. The provisions shall not be deemed a limitation or repeal of any other Band power or authority.
106. Severability and Non-Liability. If any section, provision, or portion of this order is adjudged unconstitutional or invalid by the Court of Central Jurisdiction, the remainder of this order shall not be affected thereby. The Mille Lacs Band further asserts immunity on its part and that of its agencies, employees, and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this order.
107. Repeal of Inconsistent Commissioner's Order. All previous Commissioner's Orders inconsistent with this order are hereby repealed. To the extent that this order imposes greater restrictions than those contained in any other Commissioner's Orders, the provisions of this order shall govern.

PART II - DEFINITIONS

201. Definitions.
- a) "Hunt" means to shoot, shoot at, pursue, take, catch, or kill any small game off-reservation, but does not include the recovery of a small game which has already been lawfully reduced to possession.
 - b) "Member" means a member of the Mille Lacs Band of Chippewa Indians.
 - c) "Tribal conservation department" means the conservation departments of any tribe which has approved an ordinance in conformance with the 1989-90 Chippewa Indian Off-Reservation Small Game Hunting Season Agreement By and Between the Tribal and State Parties in Lac Courte Oreilles, et al., v. State of Wisconsin, et al.
 - d) "Tribal Court" means the Court of Central Jurisdiction.
 - e) "Tribal Member" means a member of the Bad River, Keweenaw Bay, Lac Courte Oreilles, Lac du Flambeau, Mole Lake, Mille Lacs, Red Cliff and St. Croix Bands of Chippewa Indians.
 - f) "Tribal transportation tag" means a tag issued by any tribe under an ordinance in conformance with the 1997-97 Chippewa Indian Off-Reservation Small Game Hunting Season Agreement By and Between the Tribal and State Parties in Lac Courte Oreilles, et al., v. State of Wisconsin, et al.

- g) "Tribe" means the Mille Lacs Band of Chippewa Indians.
- h) "Unprotected species" means:
 - 1) Opossum, skunk, weasel, woodchuck;
 - 2) Starlings, English sparrows, coturnix quail, chuckar partridge and rock doves;
 - 3) All other species not covered in the following agreements entered into by the tribe: the 1997 Migratory Bird Agreement, 1997 Deer Hunting Agreement, 1997-91 Trapping Agreement, 1997 Bear Agreement.

Part III - REGULATIONS

301. Seasons:

- a) No member shall hunt small game except during the open season provided for it by this section.
- b) Open seasons are provided as follows:

1) Ruff Grouse	September 15, 1997- January 31, 1998
2) Snowshoe Hare	Year Around.
3) Cottontail Rabbit	Year Around
4) Red, Gray and Fox Squirrel	Year Around
5) Coyote	Year Around
6) Raccoon	Reserved-To be determined pursuant to Trapping Agreement
7) Red and Gray Fox	Reserved-To follow Trapping Agreement
8) Bobcat	Reserved-To follow Trapping Agreement
9) Unprotected Species	Year Around

302. Hunting Hours.

- a) No member shall hunt small game except during the hours provided in this section.
- b) Lawful hunting hours during open seasons are provided as follows. Times given are inclusive.
 - 1) From September 5, 1997 through November 21, 1997, for all animals except coyote, fox, raccoon and snowshoe hare, as follows:

September 5-17	6:00 a.m. to 7:15 p.m. DST
September 18 - October 1	6:15 a.m. to 7:00 p.m. DST
October 2-9	6:30 a.m. to 6:45 p.m. DST
October 10-16	6:30 a.m. to 6:30 p.m. DST
October 17-25	6:45 a.m. to 6:15 p.m. DST
October 26-29	7:00 a.m. to 6:00 p.m. DST
October 30 - November 6	6:00 a.m. to 5:00 p.m. CST
November 7-18	6:15 a.m. to 4:45 p.m. CST
 - 2) From November 19, 1997 through November 27, 1997, for all animals, 6:30 a.m. - 4:30 p.m., CST.
 - 3) From November 28, 1997 through December 31, 1997, for all animals except Coyote, fox, raccoon, and snowshoe hare, 6:30 p.m. - 4:30 p.m., CST.
 - 4) From January 1, 1997 through February 28, 1997, for all animals except coyote, fox, raccoon, and snowshoe hare, the general hunting hours as set forth in NR 10.06, Wis Adm. Code.

(a)

		For Zone A:					
		<u>December</u>		<u>January</u>		<u>February</u>	
		<u>A.M.</u>	<u>P.M.</u>	<u>A.M.</u>	<u>P.M.</u>	<u>A.M.</u>	<u>P.M.</u>
1		6:35	4:12	6:57	4:21	6:38	5:00
2		6:37	4:11	6:57	4:22	6:37	5:02
3		6:39	4:11	6:57	4:23	6:35	5:04
4		6:40	4:11	6:57	4:24	6:34	5:06
5		6:41	4:11	6:57	4:25	6:33	5:08
6		6:42	4:10	6:57	4:26	6:32	5:10
7		6:43	4:10	6:57	4:27	6:31	5:11
8		6:44	4:10	6:56	4:28	6:30	5:12
9		6:45	4:10	6:56	4:29	6:29	5:14

10	6:46	4:10	6:56	4:30	6:28	5:16
11	6:47	4:10	6:55	4:31	6:26	5:17
12	6:47	4:10	6:55	4:32	6:25	5:18
13	6:48	4:10	6:55	4:34	6:24	5:19
14	6:49	4:11	6:54	4:35	6:22	5:21
15	6:50	4:11	6:54	4:36	6:21	5:23
16	6:50	4:11	6:53	4:37	6:20	5:24
17	6:51	4:11	6:53	4:39	6:18	5:25
18	6:52	4:12	6:52	4:40	6:16	5:27
19	6:52	4:12	6:51	4:41	6:15	5:28
20	6:53	4:13	6:51	4:42	6:13	5:29
21	6:54	4:13	6:50	4:44	6:12	5:30
22	6:54	4:13	6:49	4:45	6:10	5:32
23	6:55	4:14	6:48	4:46	6:09	5:33
24	6:55	4:15	6:47	4:48	6:08	5:34
25	6:55	4:15	6:46	4:49	6:06	5:35
26	6:56	4:16	6:46	4:51	6:04	5:37
27	6:56	4:17	6:45	4:52	6:02	5:38
28	6:56	4:17	6:44	4:53	6:01	5:39
29	6:57	4:18	6:43	4:55		
30	6:57	4:19	6:42	4:56		
31	6:57	4:20	6:40	4:58		

b) Hunting Hours in Zone B are established by adding 4 minutes to the a.m. and p.m. columns for Zone A for each day; for Zone C by adding 8 minutes to the a.m. and p.m. columns for Zone A; for Zone D by adding 12 minutes to the a.m. and p.m. columns for Zone A; for Zone E by adding 16 minutes to the a.m. and p.m. columns for Zone A; for Zone F by adding 20 minutes to the a.m. and p.m. columns for Zone A.

c) Hunting hours zones are established as follows:
Zone:

A -- all that part of Wisconsin lying east of 88° 00' longitude.

B -- all that part of Wisconsin lying between 88° 00' and 89° 00' longitude.

C -- all that part of Wisconsin lying between 89° 00' and 90° 00' longitude.

D -- all that part of Wisconsin lying between 90° 00' and 91° 00' longitude.

E -- all that part of Wisconsin lying between 91° 00' and 92° 00' longitude.

F -- all that part of Wisconsin lying west of 92° 00' longitude.

5. Except for the period January 1, 1991 through February 28, 1991, for all animals except coyote, fox, raccoon, and snowshoe hare, 24 hours per day.
 6. From March 1, 1991 through August 31, 1991, for all small game animals, 24 hours per day.
303. Possession of loaded or uncased weapon. No member shall possess a loaded or uncased firearm, or a strung and uncased bow or crossbow in a motor vehicle, except when that vehicle is stationary and more than 50 feet from the center of any road shown on an official county highway map.
304. Discharge of weapons from vehicles. No member shall load or discharge a firearm, bow, or crossbow from a motor vehicle unless it is stationary and more than 50 feet from the center of any road shown on an official county highway map.
305. Discharge of weapons from roadways. No member shall discharge a firearm, bow, or crossbow on or across a road shown on an official county highway map or within 50 feet of the center of a road shown on a county highway map.
306. Shining.
- a) Definition. As used in this section:
 - 1) "Flashlight" means a battery operated light designed to be carried and held by hand.

- 2) "Light" includes flashlight, automobile lights and other lights.
 - 3) "Shining" means the casting the rays of light on a field, forest or other area for the purpose of illuminating, locating, or attempting to illuminate or locate wild animals.
 - b) **Presumption.** A member casting the rays of light on a field, forest or other area which is frequented by wild animals is presumed to be shining wild animals. A member may introduce evidence to rebut this presumption.
 - c) **Shining wild animals while hunting or possessing weapons prohibited.**
 - 1) **Prohibition.** No member may use or possess with intent to use a light for shining wild animals while the member is hunting or in possession of a firearm, bow and arrow, or crossbow.
 - 2) **Exception.** This subsection does not apply:
 - (a) To an employee of the tribe or Great Lakes Indian Fish and Wildlife Commission on official business or a person authorized by the tribe or Commission to conduct a game census.
 - (b) To a member who possess a flashlight or who uses a flashlight while hunting on foot raccoons, foxes or other unprotected animals during the open season for the animal hunted.
 - d) **Shining wild animals after 10:00 p.m. during certain times of the year prohibited.**
 - 1) **Prohibition.** No member may use or possess with intent to use a light for shining wild animals between 10 p.m. and 7 a.m. from September 13 to December 31.
 - 2) **Exceptions.** This subsection does not apply:
 - (a) To an employee of the tribe or Great Lakes Indian Fish and Wildlife Commission on official business or a person authorized by the tribe or Commission to conduct a game census.
 - (b) To a member who possess a flashlight or who uses a flashlight while hunting on foot raccoons, foxes or other unprotected animals during the open season for the animal hunted.
 - (c) To a member who possess a flashlight or who uses a flashlight while on foot and training a dog to track or hunt raccoons, foxes or other unprotected animals.
307. **Blaze orange.** From November 22, 1997 through November 30, 1997, no member whose outer clothing above the waist is not at least 50% blaze orange shall hunt small game.
308. **Prohibited methods.** No member shall:
- a) **Aircraft.** Hunt with the aid of an airplane, including the use of an airplane to spot, rally or drive wild animals for hunters on the ground.
 - b) **Devices.**
 - (1) Place, operate or attend, spread, or set any net, pitfall, spring gun, pivot gun, swivel gun or other similar contrivances for the purpose of catching or which might catch, take or ensnare wild animals.
 - (2) Use or possess any device designed or used for the purpose of driving rabbits out of their holes or dens.
 - c) **Molesting.** Molest the nest or den of any squirrel.
 - d) **Ferret.** Use or possess any ferret while hunting.
 - e) **Salt.** Hunt by the use or aid of salt.
 - f) **Explosive, stupefactive.** Hunt by means of dynamite or other explosives or poisonous or stupefying substances or devices, or possess any such substance or device for the purpose of taking, catching, or killing small game. Possession or control of explosives or poison gases in a hunting camp or on any person while hunting shall be prima facie evidence of a violation of this section.
 - g) **Poison bait.** Use bait containing poison of any description in any forest, fields, or other places where it might destroy or cause the destruction of wild animals or birds. The possession of any such poison or poison baits in a hunting camp or on any person while hunting shall be prima facie evidence of a violation of this section.
 - h) **Bird traps.** Take, capture or kill, or attempt to take, capture, or kill any bird by setting or operating any trap or device designed, built or used to capture birds on a pole, post, tree stump, or any other elevated perch more than 3 feet above the ground.

309. Bobcat hunting.

- a) No member shall move a bobcat after killing prior to affixing a tribal transportation tag to it.
- b) No member shall fail to register with the tribal conservation department any bobcat he or she has killed.

310. Juvenile hunting. No juvenile shall be allowed to hunt small game except as provided by this paragraph:

- a) No person under 12 years of age may hunt small game.
- b) No person 12 years of age or older but under 14 years of age may hunt unless accompanied by a parent or guardian.
- c) No person 14 years of age or older but under 16 years of age may hunt unless accompanied by a parent or guardian or unless issued by the tribe or state a hunter education and firearm safety certificate of accomplishment.

311. Identification, Permits.

- a) No member shall hunt off-reservation except while carrying a valid picture identification card issued by the tribe, or other form of identification card approved by the tribe for small game hunting activities.
- b) No member shall hunt small game without a validly issued tribal off-reservation natural resources harvesting permit, valid for small game hunting.
- c) No member shall hunt bobcat without a validly issued metal carcass transportation tag in his/her possession.
- d) No member shall refuse to display his or her identification documents, permit, and carcass tag, if any, upon request of any tribal, state, or local law enforcement officer.

312. Possession of live animals.

- a) All game and furbearing animals taken shall be immediately killed or released upon taking.
- b) No member shall sell or possess any live game or furbearing animals.

313. Purchase of furs. No member shall purchase furs from a non-tribal member except with a state license, and except as provided by Wisconsin state law pursuant to §.29,134, Stats.

314. Transportation of animals. No tribal member shall transport the carcass of a small game animal taken while hunting except during the open season for such animal or three days after, provided, that a member may transport any such animal at any time if it is wrapped and is frozen or has once been frozen.

315. Shipment of furs. Members shall mark all fur shipment, showing the number and kinds of hides in the shipment and the name and address of the shipper.

316. Sale of meat of furbearing animals. During the closed season for a furbearing animal, and at any time for other small game animals, no member may sell the meat of such animals except to tribal members.

317. Waste. No member shall unreasonably waste, injure, destroy, or impair natural resources while engaged in small game hunting pursuant to this agreement.

318. Larceny of game. No member shall, without permission of the owner, molest, disturb, or appropriate any wild animals or the carcass or part thereof which has been lawfully reduced to possession by another.

319. Endangered, threatened, and protected species. No member shall harvest badger, wolverine, flying squirrel, or any animal on either the Band, state or federal endangered or threatened species list.

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403. Commission, State wardens, hot pursuit. State and Commission wardens may enforce the terms of this order adopted pursuant to this Agreement on-reservation when in hot pursuit of a member.
404. Tribal wardens, cooperation. Tribal wardens shall cooperate with Commission and State wardens in enforcing the terms of this order.
405. Seizure of Evidence. Tribal, Commission, and Wisconsin conservation wardens are empowered to seize evidence in connection with the institution of proceedings in tribal court.
406. Seized animals. Small game animals which are seized in connection with cases referred to tribal court for prosecution shall be turned over to the tribe. Such animals shall not be returned by the tribal court or tribal officials to the convicted violator, his immediate family or other members of the hunting party.
407. Registration information. Tribal and Commission wardens are empowered to request and receive from tribal tag issuance and registration stations information regarding tag issuance and registration.
408. Penalties. Any tribal member found by the Court of Central Jurisdiction to have violated a provision of this ordinance shall be subject to the following penalties:
a) For a violation of any provision of this order, a forfeiture of not more than \$500.00.
b) For a violation of any provision of this order, a revocation of off-reservation small game hunting privileges may be ordered for a period to be determined by the Court
409. Schedule of Money Penalties; No Contest. The Band Court may adopt a schedule of forfeitures to be imposed by the Court upon the receipt of an admission that a violation of this ordinance has occurred, which may be done either in person or in writing. This schedule is not binding as to the forfeitures assessed by the Court after adjudicating a violation.
410. Collection of Money Penalties. Enforcement of the penalties imposed by Sec.408 and 409 of this order may be had through the collection of penalties from funds of the violator held by the Band, through the imposition of community service work requirements in lieu of money payment, through debt collection mechanisms of the courts of other jurisdictions, or through any other method authorized by tribal ordinance.
411. Members of Other Tribes, Issuance of Tags, Permits. The tribal conservation department is authorized to issue bobcat transportation tags and to issue and validate off-reservation natural resources harvest permits to members of the tribe and of any other tribe which has adopted an ordinance in conformance with the 1997-91 Chippewa Indian Off-Reservation Treaty Small Game Hunting Season Agreement in Lac Courte Oreilles Band, et al., v. State of Wisconsin, et al., and to register small game taken by members of the tribe and of such other tribes.
412. Members of Other Tribes, Tribal Court Adjudication. The Tribal Court is authorized to adjudicate alleged violations by any member of the Keweenaw Bay Indian Community or the Mille Lacs Band of Lake Superior Chippewa Indians of the off-reservation deer hunting ordinance of either tribe provided:
a) The ordinance is in conformance with the 1997 Chippewa Indian Off-Reservation Small Game Season Agreement in Lac Courte Oreilles Band, et al., v. State of Wisconsin, et al., and
b) The Mille Lacs Band has authorized the adjudication.

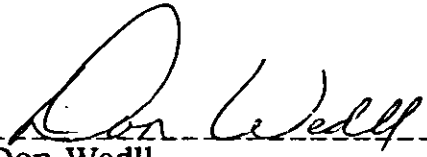
320. Duties on accidental shooting. Any member who while small game hunting discharges a firearm thereby injuring or killing another person shall give his name and address to the person, if injured, shall render necessary assistance, shall obtain immediate medical or hospital care, and shall immediately report the incident to the sheriff or police of the locality in which such shooting took place.
321. Failure to report hunting accident. Any member who has injured himself or another person by gunfire while small game hunting shall report such incidents within ten days to the Wisconsin Department of Natural Resources, unless such member be physically incapable of making the report in which event he or she shall designate an agency to file the report within the specified time.
322. Prohibited places.
- a) Except as provided by this section, a member may hunt small game on all lands within the ceded territory which are not privately owned.
 - b) No member shall hunt small game in the following public lands:
 - 1) Designated public campgrounds, public beaches, and public picnic areas.
 - 2) School forests, public land fills and public gravel pits where small game hunting is prohibited and where notice of the prohibition is clearly posted.
 - 3) Public lands within incorporated areas except where and in the same manner as non-Indian hunting is permitted.
 - 4) All State Parks.
 - 5) All areas within 1,700 feet of any hospital, sanitarium, or school grounds, if the restriction for such areas is designated by signs.
323. Closed areas and refuges.
- a) The following areas as more specifically described in the cited appendix maps are closed to small game hunting at all times:
 - 1) Crex Meadow, Burnett County. NR 15.01 (3)(a).
 - 2) Wissota State Park, Chippewa County. NR 15.01 (2)(a)
 - 3) Camp for the Blind, Portage County. NR 15.01 (14)
 - 4) Douglas County Hospital fields, Douglas County. NR 11.02 (3)(a).
 - b) The following areas as more specifically described in the cited appendix maps are closed to small game hunting from October 1, 1997 through the dates specified.
 - 1) Pershing, Taylor County. NR 11.02 (2)(a). November 9, 1997
 - 2) Fish Lake Wildlife Area, Burnett County. NR 11.04 (1)(a). November 9, 1997
 - 3) Bean's Eddy, Berkhahn Flowage, Honey Islena Flowage, McMillian Marsh, Mead; Marathon County. NR 11.04 (2)(a), (b), (c), (d), (e). November 9, 1997
 - 4) Rice Lake, Oneida County. NR 11.04 (3) (a). November 9, 1997
 - 5) Brule River, Douglas County. NR 15.022 (2)(a). November 30, 1997
 - 6) Powell Marsh, Vilas County. NR 15.022 (9). November 30, 1997
 - c) The following areas as more specifically described in the cited appendix maps are closed to small game hunting from April 1, 1997 - September 15, 1997:
 - 1) Fish Lake, Burnett County. NR 15.03 (3).
 - 2) Mead, Marathon County. NR 15.03 (6).

Part IV - ENFORCEMENT

401. Enforcement by deputized conservation wardens. Any provision of this order may be enforced by tribal conservation wardens of the Great Lakes Indian Fish and Wildlife Commission. Said Commission wardens are hereby authorized by the Department as tribal conservation wardens for purposes of enforcing this order.
402. Enforcement by Wisconsin Department of Natural Resources Wardens. Wisconsin conservation wardens and deputy conservation wardens are hereby empowered to enforce off-reservation the provision of this order and to institute proceedings in the Court of Central Jurisdiction by use of the citation forms of the Wisconsin Department of Natural Resources, as described in Wisconsin Statute Section 23.054.

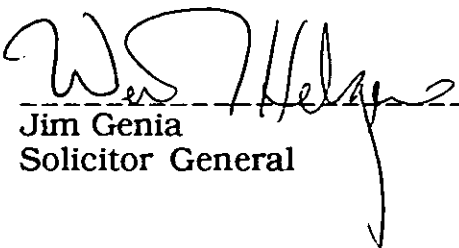
413. Members of other Tribes. Issues of tags, permits. The tribal conservation department is authorized to issue bobcat transportation tags and to issue and validate off-reservation natural resource harvest permits to members of the tribe and of any other tribe which has adopted an ordinance in conformance with the 1989-90 Chippewa Indian Off-Reservation Treaty Small Game Hunting Season by and between the tribal and state parties in Lac Courte Oreilles, et al., v. State of Wisconsin, et al., or has adopted an ordinance regulating 1997-91 off-reservation treaty small game hunting which contain permits and registration provisions in conformance with the provisions of this ordinance, and to register bobcat taken members of such tribes.
414. Parties to a violation.
- a) Whoever is concerned in the commission of a violation of this ordinance shall be deemed a principal and may be charged with the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.
 - b) A person is concerned in the commission of the violation if the person:
 - i) directly commits the violation;
 - ii) aids or abets the commission of the violation; or
 - iii) is a party to a conspiracy with another to commit, advises, hires, counsels or otherwise procures another to commit the violation.

DATED at Vineland, Minnesota this 12th day of September in the year one thousand nine hundred and ninety-seven.



Don Wedll
Commissioner of Natural Resources

APPROVED AND NUMBERED AS TO
FORM AND EXECUTION



Jim Genia
Solicitor General

OFFICIAL SEAL OF THE BAND