

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, AMENDING, AND REPEALING AND RECREATING
RULES**

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 2.085(4), 2.14(7), 300.03(5), 300.05(4), 305.03(5), 305.06(3m), 345.04(2)(e)6, and 345.04(2)(g)2; to **amend** NR 2.085(3), 2.157(title), 2.157(intro) 2.157(1), 19.01(5), 44.04(8)(b), 51.002(1), 51.85(4), 108.04(3)(b), 110.09(3), 110.10(1)(L), 110.11(1)(g), 126.07(2)(j), 134.09(2), 166.07(1)(a)3, 191.05(5), 310.14(4)(b), 327.04(4), NR 410.02(3), 410.03(2)(i), 410.03(3)(a)2, 512.16, 670.409(1)(c), 820.29(1), 820.29(2), 820.30(2)(a), 820.30(3)(a), 820.30(4)(b), 820.30(4)(c), 820.31(4)(b), 820.31(4)(c), 820.32(2), and 820.32(3); and to **repeal and recreate** NR 150; relating to the department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act.

OE-46-10

Analysis Prepared by the Department of Natural Resources

- 1. Statutes interpreted:** Section 1.11, Stats.
- 2. Statutory authority:** Sections 1.11 and 227.11, Stats.
- 3. Explanation of agency authority:** The department has general authority to promulgate rules under s. 227.11(2)(a), Stats., that interprets the specific statutory authority granted in s. 1.11, Stats.
- 4. Related statutes or rules:** Wisconsin Environmental Policy Act (WEPA) compliance is a requirement for all state agencies and department programs. As a result, many statutes and codes are WEPA and ch. NR 150-related.

Statute chapters: 16, 23, 30, 33, 160, 196, 227, 285, 289, 291, and 293.

Administrative Code chapters NR: 1, 2, 19, 44, 48, 52, 60, 103, 107, 108, 110, 126, 128, 131, 132, 133, 134, 162, 166, 182, 191, 200, 243, 299, 300, 305, 310, 327, 345, 347, 406, 410, 489, 512, 670, 820, and 852.

The department proposes several housekeeping changes to some of these other administrative codes that would have obsolete ch. NR 150 references after the changes to ch. NR 150 are codified.

- 5. Plain language analysis:** WEPA and ch. NR 150 are cornerstone laws for the agency that date back to the early 1970's. The rule change will make the department's WEPA compliance more effective, meaningful and consistent with WEPA and s. 1.11, Stats. The new rule emphasizes the analysis of broad issues and policies, reduces process and paperwork requirements for individual project actions, and provides clear procedures for public involvement.

The new rule will require that the department: 1) identify and analyze environmental issues important for their geographic, multidisciplinary, or policy scope; 2) analyze issues earlier, when alternative options have not been foreclosed; 3) provide that environmental analysis information be incorporated into departmental policy and decision-making; 4) define and provide meaningful public involvement; 5) address the information and policy-driven requirements of s. 1.11(2)(e) and (h), Stats. as separate from the action and project-driven requirements of s. 1.11(2)(c); 6), Stats., identify and eliminate

process requirements that have become duplicative over time as a result of changes in statutory authorities and administrative practice; and 7) replace the current ch. NR 150 type list with criteria for identifying, prioritizing, analyzing and seeking public input on relevant issues.

The new rule eliminates the use of Environmental Assessments as a means of WEPA compliance for individual actions. The new rule adds new process and procedures for bigger picture strategic policy analyses.

The fundamental department policy regarding WEPA, as currently embodied in ch. NR 150, will not change. The rule recreation will result in a number of procedural changes and a new emphasis on how the department applies the Wisconsin Environmental Policy Act, especially to its policy development actions.

6. Summary and comparison with existing and proposed federal regulations: The 1970 Wisconsin Environmental Policy Act (WEPA) and s. 1.11, Stats., were modeled after the federal National Environmental Policy Act (NEPA) of 1969. NEPA created the Council on Environmental Quality (CEQ), which established guidelines and regulations to implement the Act. As with other state agencies' WEPA rules, ch. NR 150 was based in part upon the federal CEQ guidelines. This proposed revision of ch. NR 150 will remain substantially consistent with the CEQ guidelines as required under s. 1.11(2)(c), Stats.

7. Comparison of similar rules in adjacent states: Neighboring states have significant differences in their related laws, so the opportunity to gain from their experience is limited. For example, Minnesota requires that counties also follow WEPA-like analysis procedures, whereas Wisconsin counties have no such requirements. Illinois' law covers only actions conducted by the state itself, whereas in Wisconsin, WEPA applies to all actions by other entities that are subject to state approvals.

8. Summary of factual data and analytical methodologies: The Department of Natural Resources Bureau of Energy, Transportation and Environmental Analysis (ETEA) staff reviewed relevant WEPA case law and federal CEQ regulations, obtained the input of an internal team of staff from several department programs, and involved a broad range of potentially interested and affected external parties.

9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis: Chapter NR 150 is an administrative process rule that applies internally to the department, so impacts to businesses are minimal.

10. Effect on small business: Businesses that may be affected by this rule revision include mainly those that are required to apply for certain DNR permits for projects. The amount of redundant environmental analysis required for DNR actions will be reduced under the proposed rule.

11. A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03(2m), Stats., for rules proposed by the Department of Veterans Affairs: Not applicable.

12. Agency Contact Person:

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Section 1. NR 2.085(3) is amended to read:

NR 2.085 (3) If a contested case hearing will be held on a proposed action for which an environmental impact statement has been prepared, the informational hearing provided for by ~~s. NR 150.23 (1)~~ s. NR 150.30(3)(d) shall be combined with the contested case hearing if circumstances and statutes allow. At a combined hearing, the informational portion shall precede the contested portion.

Section 2. NR 2.085(4) is repealed.

Section 3. NR 2.14(7) is repealed.

Section 4. NR 2.157(1) (title) (intro.) and (a) is amended to read:

NR 2.157(1) (title) ~~DECISIONS WHEN AN ENVIRONMENTAL IMPACT STATEMENT OR ENVIRONMENTAL ASSESSMENT ANALYSIS IS COMPLETED.~~

(intro) For any decision arising out of a noncontested case hearing, the department may not commence, engage in, fund, approve, conditionally approve or disapprove an action that has been the subject of a department prepared ~~environmental assessment or environmental impact statement analysis~~ until it has made a written findings of fact, conclusions of law and decision on compliance with s. 1.11, Stats. The decision shall include findings on all of the following whether:

(a) The department has considered the ~~environmental impact statement or environmental assessment analysis~~ and comments received on it.

Section 5. NR 19.01(5) is amended to read:

NR 19.01(5) ENVIRONMENTAL IMPACT. If an environmental ~~impact~~ analysis, environmental impact report or environmental impact statement is required under ss. 1.11 and 23.11 (5), Stats., and ch. NR 150, the time periods for issuing an approval do not apply until ss. 1.11 and 23.11 (5), Stats., and ch. NR 150 have been complied with.

Section 6. NR 44.04(8)(b) is amended to read:

NR 44.04(8)(b) The department procedures described in s. NR ~~150.21 (3)~~30(1)(f) shall be followed, as appropriate, to identify pertinent issues to be evaluated in the planning process for a plan, plan revision or plan amendment and when preparing any environmental analysis required by ch. NR 150.

Section 7. NR 51.002(1) is amended to read:

NR 51.002(1) "Acquisition cost" means the fair market value of the property as determined by department appraisal guidelines, except as provided in s. 23.0917 (7) (b) to (d), Stats., and reasonable costs related to the purchase of the property. These costs are limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, initial posting of signage consistent with s. 23.09165 (3), Stats., with cost share not to exceed \$1,000, attorney fees for department required reviews with cost share not to exceed \$1,000, historical, cultural, and environmental ~~assessments analyses~~ required by the department completed through contract by professional consultants. "Acquisition cost" does not include environmental clean-up costs, brokerage fees paid by the buyer, and real estate transfer taxes.

Section 8. NR 51.85(4) is amended to read:

NR 51.85(4) The department is responsible for any environmental ~~assessments analyses~~, historical or cultural assessments, permits and miscellaneous approvals required to implement the project. Friends groups may not begin work until all applicable permits have been obtained.

Section 9. NR 108.04(3)(b) is amended to read:

NR 108.04(3)(b) Approval of plans and specifications is not to be construed as a department determination on the issuance of a Wisconsin pollutant discharge elimination system permit, an opinion as to the ability of the proposed system to comply with effluent limitations in such permit, an approval of the environmental assessment analysis that may be prepared for this project or an approval for any activities requiring a permit under ch. 30, 31 or 281, Stats. Approval of plans and specifications is also not to be construed as department certification of the ability of a proposed industrial pretreatment facility to comply with applicable pretreatment standards.

Section 10. NR 110.09(3) (intro.) is amended to read:

NR 110.09(3) (intro.) **CONTENT OF AN ENVIRONMENTAL ASSESSMENT ANALYSIS.** An adequate environmental assessment analysis must be an integral, though identifiable, part of any facilities plan submitted to the department under sub. (1). ~~The information submitted in the environmental assessment will be used by the department for determining whether or not an environmental impact statement is necessary.~~ The analyses that constitute an adequate environmental assessment analysis shall include:

Section 11. NR 110.10(1)(L) is amended to read:

NR 110.10(1)(L) *Environmental assessment analysis.* The department may require the submittal of an environmental assessment analysis meeting the requirements of s. NR 110.09 (3) for large or complex sewer projects, for those projects which are proposed to be constructed in environmentally sensitive areas, or for projects which involve significant public controversy.

Section 12. NR 110.11(1)(g) is amended to read:

NR 110.11(1)(g) *Environmental assessment analysis.* The department may require the submittal of an environmental assessment analysis meeting the requirements of s. NR 110.09 (3) for large or complex lift station projects, for those projects constructed in environmentally sensitive areas or for projects which could involve significant public controversy.

Section 13. NR 126.07(2)(j) is amended to read:

NR 126.07(2)(j) An environmental assessment analysis which meets the requirements of the Wisconsin Environmental Policy Act, s. 1.11, Stats., and which includes an evaluation of feasible alternatives and provides clear justification for selecting a particular course of action based on monetary, environmental and other considerations. ~~(The assessment analysis shall be available for public information and public participation in evaluation of the project.)~~

Section 14. NR 134.09(2) is amended to read:

NR 134.09(2) If the department finds that the proposed drillhole location, construction, abandonment and site reclamation will adequately protect the waters of the state, it shall grant the approval. If it finds that the exploration as proposed will not provide such protection, the department may grant an approval subject to such conditions as it deems necessary to provide such protection, or it may deny the approval if it determines that such protection cannot be provided. Written approvals of drillhole construction plans shall be issued, issued with conditions or denied within 20 business days after the department receives a complete application as described in sub. (1). If it is determined, pursuant to ch. NR 150 that an ~~environmental assessment~~ or an environmental impact statement is required to comply with s. 1.11, Stats., this time limit shall be extended. Approval of drillhole construction plans shall terminate one year after date of issuance, if such construction has not commenced.

Section 15. Chapter NR 150 is repealed and recreated to read:

Chapter NR 150

ENVIRONMENTAL ANALYSIS AND REVIEW PROCEDURES

NR 150.01	Purpose.	NR 150.20	Environmental analysis of department actions
NR 150.02	Applicability	NR 150.30	EIS action analysis
NR 150.03	Definitions	NR 150.35	WEPA compliance determination
NR 150.04	Policy	NR 150.40	Cooperation with other agencies
NR 150.05	WEPA Coordinator	NR 150.50	Document retention and management
NR 150.10	Strategic analysis		

NR 150.01 Purpose. This chapter outlines the definitions, procedures and criteria to be used by the department in the implementation of s. 1.11, Stats. The purpose of this chapter is to assure that the department decision-makers, other decision-makers, and the interested public have information to be able to fully consider the short- and long-term effects of department policies, plans, programs, and actions on the quality of the human environment.

NOTE: Section 1.11, Stats. was enacted as ch. 274, laws of 1971, amended by ch. 204, laws of 1973, and is known as the Wisconsin environmental policy act or WEPA.

NR 150.02 Applicability. This chapter shall apply to all department actions which may negatively affect the quality of the human environment and to consideration of strategic natural resource issues or policies which may involve unresolved conflicts concerning alternative uses of available resources.

NR 150.03 Definitions.

(1) "Action" means any final decision by the department to exercise the department's statutory authority that affects the quality of the human environment.

(2) "Alternatives" means other actions or activities which may be reasonably available to achieve the same or altered purpose of the proposed action or project, including the alternative of no action.

(3) "Applicant" means a person who applies for a permit, license or approval granted or issued by the department.

(4) "Cumulative effects" means compounding effects resulting from repeated or other proximal actions, activities or projects.

(5) "Department" means the department of natural resources.

(6) "EIR" means environmental impact report.

(7) "EIS" means environmental impact statement.

(8) "Environmental analysis" means a detailed analysis that evaluates a proposed action or project's effect on the human environment and studies, develops and describes alternatives to the proposed action or project.

(9) "Environmental effect," "effect," "environmental impact," "impact," "effect on the environment," or "environmental consequence" means a direct, indirect, secondary, or cumulative change to the quality of the human environment.

(10) "Equivalent analysis" means department programmatic procedures that include an environmental analysis and provide for public disclosure and comment.

(11) "Facility development" has the meaning in s. NR 44.03(7).

(12) "Human environment" means the natural or physical environment, including the components, structures, and functioning of ecosystems, and the relationship of people with that environment, including aesthetic, historic, cultural, economic, social, and human health-related components.

(13) "Issue" means a general subject, topic or question concerning the use of, or effect on, natural resources about which the department may or may not have authority.

(14) "Lead agency" means the state or federal agency with primary concern or responsibility for a given project or action as determined by law, interagency consultation or written agreement.

(15) "Minor action" means a department action that is not in conflict with local, state or federal environmental policies and is not likely to do any of the following: set precedent for reducing or limiting environmental protection; result in deleterious effects over large geographic areas; result in long-term deleterious effects that are prohibitively difficult or expensive to reverse; result in deleterious effects on especially important, critical or sensitive environmental resources; involve broad public controversy; or result in substantial risk to human life, health or safety.

(16) "Mitigating measure" means an action or activity proposed or undertaken by federal or other state agencies, the department or an applicant to reduce the severity or extent of environmental effects that would result from a proposed action or activity.

(17) "NEPA" means the national environmental policy act under 42 USC 4321 et. seq.

(18) "Person" includes any natural person, firm, partnership, joint venture, joint stock company, association, public or private corporation, the state of Wisconsin and all political subdivisions, cooperative, estate, trust, receiver, executor, administrator, fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(19) "Policy" means a written plan or set of guiding principles, priorities or protocols to guide department action that has been enacted as a statute, promulgated as an administrative rule, issued as a department manual code, or approved in writing by the natural resources board or the department secretary.

(20) "Prime farm land" means land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and that is available for these uses, as defined in U.S. Department of Agriculture, Natural Resources Conservation Service National soil survey handbook, title 430-VI.

NOTE: U.S. Department of Agriculture, Natural Resources Conservation Service National soil survey handbook, title 430-VI is available online at: <http://soils.usda.gov/technical/handbook/>.

(21) "Prior compliance" means that one or more environmental analysis documents exist for prior actions that are similar to the proposed action in kind, scale and environmental setting.

(22) "Project" means one or more actions and other activities related to a single undertaking by the department or an applicant.

(23) "Protocols" means written department procedures to guide department action, other than statutes or administrative codes, that have been approved by the natural resources board or the department secretary.

(24) "Secondary effects" means reasonably foreseeable indirect effects caused by an action or project later in time or farther removed in distance, including induced changes in the pattern of land use, population density or growth rate and related effects on the human environment.

(25) "Strategic analysis" means an environmental and alternatives analysis of any issue or policy which involves unresolved conflicts concerning alternative uses of available resources, within the meaning of s. 1.11(2)(e), Stats.

(26) "Unresolved conflicts concerning alternative uses of available resources" means an unsettled disagreement concerning a department policy affecting natural resources, between experts, policymakers of local, state, or tribal governments, or citizen interest groups in Wisconsin.

(27) "WEPA" means s. 1.11, Stats.

NOTE: S. 1.11, Stats. was enacted as ch. 274, laws of 1971, amended by ch. 204, laws of 1973, and is known as the Wisconsin environmental policy act or WEPA.

NR 150.04 Policy. (1) (a) In accordance with the Wisconsin and national environmental policy acts and regulations issued by the president's council on environmental quality, it is the intention of the natural resources board to declare a policy that will encourage productive and enjoyable harmony among people and their environment; to promote efforts which will prevent or eliminate damage to the environment; and to enrich the understanding of the important ecological systems and natural resources of the state.

(b) The board recognizes the potential for impact of many state and federal actions on all components of the human environment. Therefore, the board declares that it is the continuing policy of the department of natural resources, as the primary environmental agency in state government, to develop an understanding of the environmental consequences of its actions and to use all practicable means and measures to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the requirements of present and future generations.

(2) In order to carry out the policy set forth under sub. (1), the department shall do all the following:

(a) Acknowledge WEPA as an obligation shared by all units of the department to the extent that any unit contemplating regulatory or management actions subject to WEPA review under this chapter shall evaluate and be aware of the environmental consequences of such actions.

(b) Recognize its role as an environmental agency in state government and that it shall set an example in meeting the spirit and intent of WEPA.

(c) Develop, where possible, agreements and understandings with other state, federal and local agencies to minimize duplication in meeting environmental review requirements and establish a mechanism for resolution of interagency conflict.

(d) Develop appropriate strategic analyses for any issue or policy which involves unresolved conflicts concerning alternative uses of available resources.

(e) Develop appropriate environmental effects information and analysis along with a discussion of meaningful alternatives and make this available to the decision-maker in a timely manner for all actions where such an evaluation is required by this chapter; and recognize that decisions subject to WEPA requirements cannot be made until the appropriate environmental review process is completed.

(f) Implement the environmental review procedure as an integrated process, not a separate sequence of activities, that must be part of the initial planning process for department projects and initiated at an early stage of the regulatory review process.

(g) Consider the findings of environmental analyses and comments received from the public in making decisions on proposed actions.

(h) Recognize that the department has an affirmative duty within its resources to comment on the environmental review documents of other agencies by virtue of its jurisdiction by law, special expertise or authority.

NR 150.05 WEPA Coordinator. The department shall designate a qualified staff person as WEPA coordinator to coordinate and oversee performance of WEPA requirements under this chapter. The WEPA coordinator shall do all the following:

(1) Advise the department to ensure that it is in compliance with this chapter, and s. 1.11, Stats.

(2) Participate on behalf of the department in inter-agency WEPA activities.

(3) Act as contact for other state, federal and local agencies seeking assistance or opinions on environmental analysis matters.

(4) Advise the department and the natural resources board on strategic natural resource issues or policies needing analysis under s. NR 150.10.

(5) Prepare and submit to the chief clerk of each house of the legislature the department's annual WEPA report required by s. 1.11(2)(j), Stats.

NR 150.10 Strategic analysis. Pursuant to s. 1.11(2)(e), Stats., the department shall study, develop, and describe alternatives for natural resource issues or policies which involve unresolved conflicts concerning alternative uses of available resources.

(1) IDENTIFICATION OF ISSUES.

(a) *Administrative rules and manual codes.* The department shall conduct a strategic analysis for all new or revised administrative rules and manual codes if both of the following apply:

1. The rule or manual code involves unresolved conflicts concerning alternative uses of available resources.
2. The department has substantial discretion in formulating important provisions of the rule or manual code.

(b) *Requests.* The department shall conduct a strategic analysis when requested by any of the following:

1. The governor.
2. The standing committee in the state assembly with jurisdiction over matters related to the environment or natural resources.
3. The standing committee in the state senate with jurisdiction over matters related to the environment or natural resources.

4. The natural resources board.

5. The secretary of the department.

6. A member of the public whose request is approved by vote of the natural resources board.

(c) *Other issues or policies.* The department may conduct a strategic analysis for any of the following:

1. A complicated or complex issue.

2. An issue that is new to the state.

3. An issue or policy that will likely lead to future department actions that will require an EIS.

4. Issues for which there is a high potential for legislation or new department policy.

5. Planning and development of controversial resource-oriented projects.

6. Any other issue or policy that involves unresolved conflicts concerning alternative uses of available resources.

(2) SCOPING. The department shall determine the scope and important issues to be analyzed, the potential alternative approaches, potentially affected natural resources, and likely effects of the alternatives on those resources. The department shall also identify incomplete or unavailable information that is relevant to a reasoned choice among alternatives.

(a) *Consultation.* The department may consult with and obtain the comments of any agency that has expertise with respect to any issue involved.

(b) *Public scoping.* The department shall use a public scoping process. The process may consist of comment periods, meetings, hearings, workshops, surveys, questionnaires, interagency committees, or other appropriate methods or activities, and may be integrated with other public participation requirements.

(3) ANALYSIS.

(a) *Purpose.* The purpose of the analysis is to inform decision-makers and the public of alternative courses of action and the anticipated effects of those alternatives on the quality of the human environment.

(b) *Intent.* Using available ecological and other scientific information, the analysis shall consider the alternatives and environmental effects in a dispassionate manner and may not advocate a particular position about alternatives.

(c) *Authorship.* Any part of the analysis may be prepared by the department, a consultant to the department, or another state, federal, tribal or local agency. The department may rely on any relevant information from any source.

(d) *Format.* The document shall follow a format relevant to the scope of the analysis.

(e) *Presentation.* The analysis shall be written in plain language and should use appropriate graphics to aid decision-makers and the public.

(4) PUBLIC REVIEW.

(a) *Document publication.* The department shall publicly announce that the analysis is available for public comment and shall make the analysis available to the governor, legislature, local governments, other concerned state agencies, federal agencies, tribal agencies, natural resources board, department secretary and administrators, and the public as required by s. NR 150.50. Copies of the analysis shall be provided to any individual or group requesting a copy. A charge may be assessed to cover reproduction and handling costs for requests for paper copies of documents. The announcement also may be distributed to any of the following entities:

1. All local and regional units of government that may be affected by the issue or policy.
2. Regional and statewide information outlets.
3. Groups, clubs, committees, or individuals which have demonstrated an interest and have requested receipt of this type of information.
4. All participants in the scoping process not covered in subs. 1 to 3.

(b) *Public announcement content.* The public announcement shall include a brief description of the analysis, the date by which public comments on the analysis must be received by the department, the name and address of a contact within the department who will receive comments and respond to questions, and the locations where copies of the analysis are available for review.

(c) *Public comment period.*

1. Unless otherwise provided by law, the department shall provide a minimum of 45 days after the date the analysis is publicly announced to receive comments from other agencies and the public.

2. Unless otherwise provided by law, the department may grant reasonable requests from any person to extend the comment period for the analysis.

3. If a hearing is held under par. (d), the public comment period shall be extended for a minimum of 7 days after the date the hearing is held.

(d) *Hearing.* The department may hold one or more public hearings on the analysis in the manner and locations that the department deems appropriate to the scope of the analysis. Any hearings held shall be announced to the public in a manner that the department deems appropriate.

(e) *Consideration of public comments.* Following the public comment period, the department shall summarize and consider all comments received within the public comment period. The department may revise the analysis based on comments received. The comment summary shall be made public pursuant to s. NR 150.50 along with the final version of the analysis and any supporting documents.

NR 150.20 Environmental analysis of department actions. This section establishes appropriate procedures for the environmental analysis that WEPA requires for all department actions except those specifically

exempted by statute. Notwithstanding subs. (1) to (3), the department may determine to follow the EIS procedures in s. NR 150.30 for any action.

(1) MINOR ACTIONS. The following actions do not require environmental analysis under this chapter because they are minor actions:

(a) A real estate action, including property boundary establishment or modification, purchase, sale, easement, lease, or designation.

(b) Facility development that follows protocols.

(c) Natural resource management, timber management, or environmental restoration that follows protocols.

(d) The operation, repair, maintenance, or in-kind replacement of existing department facilities.

(e) A research action that does not involve species introductions or substantive manipulation of resources, or that does involve species introductions or substantive manipulation of resources but follows protocols for doing so.

(f) A natural resource inventory or mapping action.

(g) Issuance of a grant or other financial assistance action.

(h) Issuance of high capacity well approvals under s. 281.34(2), Stats., except for wells under s. 281.34(4), Stats.

(i) Issuance of high capacity well approvals under s. 281.34(4), Stats., that are exempted from environmental analysis requirements under s. NR 820.30(2) and (3), Wis. Adm. Code.

(j) Reissuance or issuance of a routine or small-scale permit.

(k) Issuance of a routine or small-scale approval or an approval associated with a permit.

(l) Confirmation of coverage under a general permit.

(2) EQUIVALENT ANALYSIS ACTIONS.

(a) The following actions require a WEPA compliance determination under s. NR 150.35 but do not require additional environmental analysis under this chapter because a detailed environmental analysis and public disclosure are conducted as part of the department programmatic procedure:

1. Property planning under ch. NR 44.

2. County forest planning under s. 28.11(5), Stats.

3. Areawide water quality management planning or priority watershed planning under ch. NR 121.

4. Issuance of a construction or operation permit under ss. 285.60, 285.61, and 285.62, Stats., for a new source or modification or relocation of an existing air emission source.

5. Approval of a withdrawal of county forest land under s. 28.11(11), Stats.

6. An incidental take permit under ch. NR 27 and s. 29.604(6m), Stats.

7. A solid or hazardous waste feasibility approval or a commercial PCB waste storage or treatment facility feasibility approval under ss. 289.25 and 289.53, Stats., and chs. NR 157, 182, 512 and 670.

8. Issuance of an individual wetland permit under s. 281.36(3m), Stats.

9. Approval of a bulkhead line ordinance for modification of an existing shoreline under s. 30.11, Stats.

10. Issuance of findings of public interest for a proposed lease for modification of an existing shoreline under s. 30.11, Stats.

11. Issuance of an individual permit for structures on the beds of navigable waters or to construct culverts and bridges across navigable waters under s. 30.12(3m) or 30.123(8), Stats.
 12. Issuance of an individual permit under s. 30.19, Stats., including an individual permit to construct or alter waterways.
 13. Issuance of an individual permit to change the course of or enclose a navigable stream under s. 30.195 or 30.196, Stats.
 14. Issuance of an individual permit or contract under s. 30.20, Stats., to remove material from the bed of a navigable waterway under ch. NR 345, or for non-metallic mining and reclamation in and near navigable waters under ch. NR 340.
 15. Issuance of a barge fleeting permit under ch. NR 327.
 16. Issuance of a permit to construct, raise, enlarge or abandon a dam in navigable or nonnavigable waters under ch. 31, Stats., or establishment of historic or a new level, a flow release or approval of a drawdown of a controlled lake or flowage under s. 31.02, Stats.
 17. An approval of a drainage board action affecting navigable waters under s. 88.31, Stats., for permits under s. 88.31 or ch. 30 or 31, Stats.
 18. An approval of a municipal wastewater facilities plan under s. NR 110.08.
 19. Issuance of an individual permit for an animal feeding operation under ch. NR 243.
- (b) The department may determine under s. NR 150.35 that there is equivalent analysis for a specific action not listed in par. (a).

(3) PRIOR COMPLIANCE ACTIONS.

(a) The following actions require a WEPA compliance determination under s. NR 150.35 but do not require additional environmental analysis under this chapter because one or more environmental analysis documents exist for prior actions that are similar to the proposed action in kind, scale and environmental setting:

1. Facility development planned under ch. NR 44.
2. Natural resource management, timber management, or environmental restoration planned under ch. NR 44.
3. A research action that involves species introductions or substantive manipulation of resources that was planned under ch. NR 44.
4. Approval of a solid waste disposal facility or hazardous waste facility plan of operation under s. 289.30, Stats.
5. Issuance of a solid waste or hazardous waste facility license under s. 289.31, Stats.
6. Approval of an extension of a wastewater collection system under s. 281.41, Stats., that is covered under an area wide water quality management plan under s. 281.348, Stats, and ch. NR 121.
7. Issuance or reissuance of an individual WPDES permit under s. 283.31, Stats., that is covered under an area wide water quality management plan under s. 281.348, Stats., and ch. NR 121.
8. Issuance or reissuance of an individual or general stormwater permit under ch. NR 216, Wis. Adm. Code and s. 283.33, Stats.

(b) The department may determine under s. NR 150.35 that there is prior compliance for a specific action not listed in par. (a) .

(4) EIS ACTIONS AND PROJECTS. (a) *EIS actions.* The department shall comply with the EIS procedures in s. NR 150.30 for all actions not included under sub. (1), (2), or (3).

(b) *EIS projects.* The department may decide to follow the EIS procedures in s. NR 150.30 for projects of such magnitude and complexity that one or more of the following apply:

1. The project involves multiple department actions.
2. The project may be in conflict with local, state or federal environmental policies.
3. The project may set precedent for reducing or limiting environmental protection.
4. The project may result in deleterious effects over large geographic areas.
5. The project may result in long-term deleterious effects that are prohibitively difficult or expensive to reverse.
6. The project may result in deleterious effects on especially important, critical or sensitive environmental resources.
7. The project involves broad public controversy.
8. The project may result in substantial risk to human life, health or safety.

NR 150.30 EIS action analysis.

(1) **PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT.** The department shall prepare a draft EIS and a final EIS.

(a) *Notification.* As required by s. 23.40(2), Stats., the department shall notify an applicant when the department determines that it will follow the detailed environmental analysis for EIS procedures for a proposed project.

(b) *Purpose.* The purpose of an EIS is to inform decision-makers and the public of the anticipated effects on the quality of the human environment of a proposed action or project and alternatives to the proposed action or project. The EIS is an informational tool that does not compel a particular decision by the agency or prevent the agency from concluding that other values outweigh the environmental consequences of a proposed action or project.

(c) *Intent.* The EIS shall address the entire proposed project including all related department actions. An EIS shall consider the proposed action or project, alternatives and anticipated environmental effects in a dispassionate manner, and may not advocate a particular position about a proposed action or project. The EIS shall provide a level of detail commensurate with the complexity of the action or project being evaluated.

(d) *Authorship.* The department is responsible for the accuracy and completeness of the EIS. However, any part of an EIS may be prepared by an applicant, the department, a consultant to the applicant or department, or another state, federal, tribal or local agency. In preparing an EIS, the department may rely on an EIR provided by an applicant pursuant to par. (g), documents prepared or relied upon by other agencies, or any other source of relevant information. The department shall disclose its information sources in compliance with sub. (2)(i).

(e) *Format.* While there is no specific format required for an EIS, the department shall use a format that substantially follows the guidelines issued by the U.S. council on environmental quality under 42 USC 4331, as required by s. 1.11(2)(c), Stats. An EIS shall be written in plain language and should use appropriate graphics to aid decision-makers and the public.

NOTE: 42 USC 4331 was enacted as P.L. 91- 190 and is known as “the national environmental policy act.”

(f) *Issue identification.*

1. The department shall consult with other agencies as provided under s. 1.11(2)(d), Stats.
2. The department may use a public scoping process. The process may consist of comment periods, meetings, hearings, workshops, surveys, questionnaires, interagency committees, or other appropriate methods or activities, and may be integrated with other public participation requirements.

(g) *Environmental Impact Report (EIR)*. Pursuant to s. 23.11(5), Stats., the department may require an applicant for certain proposed projects to submit an EIR. The department may request any applicant to submit an EIR. The purpose of an EIR is to help the department develop the EIS by having the applicant provide a detailed, comprehensive description of the proposed project, reasonable alternatives to the proposed project, the present environmental conditions in the area potentially affected by the proposed project, and anticipated environmental effects of the proposed project and alternatives.

(h) *Cooperation with other agencies*. In developing an EIS, the department may cooperate with other state, federal, tribal or local agencies in accordance with s. NR 150.40(2).

(i) *Consultant services*. The department may enter into contracts for environmental consultant services under s. 23.41(3), Stats., to assist the department in the preparation of an environmental impact statement or to provide pre-application services as provided under s. 23.40(5), Stats.

(j) *Conflicting procedures*. The department may follow procedures for environmental review and analysis other than those contained in this chapter if the procedural requirements of this chapter conflict with statutory review procedures or with procedures and rules of another agency that is the lead agency for the environmental analysis. If other procedures for environmental review and analysis are followed, the department shall comply with this chapter to the maximum extent feasible.

(2) **EIS CONTENT**. An EIS shall emphasize environmental issues relevant to the evaluation of the action and provide a level of detail commensurate with the complexity of the action. As required by s. 1.11(2)(c), Stats., the EIS shall include all of the following:

(a) A description of the proposed project that includes all the following:

1. Project location.
2. Type of facilities.
3. Time schedules.
4. Maps and diagrams.
5. Other information that the department deems necessary.

(b) A description of the purpose and need of the proposed project.

(c) A list of known state, federal, tribal, and local approvals required for the proposed project.

(d) A summary of the process used to identify major issues and the issues identified for detailed analysis.

(e) A list of reasonable alternatives to the proposed project, particularly those that might avoid all or some of the adverse environmental effects of the project, including a description of proposed preventive and mitigating measures and an explanation of the criteria used to discard certain alternatives from additional study.

(f) A description of the human environment that will likely be affected by the proposed project and alternatives to the proposed project.

(g) An evaluation of the probable positive and negative direct, secondary and cumulative effects of the proposed project, and alternatives to the proposed project, on the human environment, including all the following:

1. Effects on scarce resources such as: archeological, historic or cultural resources, scenic and recreational resources, prime farm lands, threatened or endangered species, and ecologically critical areas.
2. A summary of the adverse environmental effects which cannot be avoided.
3. Consistency with plans or policies of local, state, federal or tribal governments.
4. The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and ir retrievable commitments of resources.

5. The potential to establish a precedent for future actions or to foreclose future options.

6. The degree of risk or uncertainty in predicting environmental effects or effectively controlling potential deleterious environmental impacts, including those relating to public health or safety.

7. The degree of controversy over the effects on the quality of the human environment.

(h) Identification of information that is incomplete or unavailable and a description of the relevance of such information.

(i) Sources of information or verbiage.

(3) DRAFT EIS - PUBLIC REVIEW.

(a) *Document publication.* The department shall publicly announce that the draft EIS is available for public comment and shall make the draft EIS available in a manner determined by the department and as required under s. 1.11(2)(d), Stats., and s. NR 150.50. Copies of the draft EIS shall be provided to any individual or group requesting a copy. A charge may be assessed to cover reproduction and handling costs for requests for copies of documents. The announcement also may be distributed to the following entities:

1. All local and regional units of government which have jurisdiction over the area that may be affected by the proposed project or reasonable alternatives to the proposed project.

2. Information outlets accessible in the local, regional, or statewide areas affected by the proposed project.

3. Groups, clubs, committees, or individuals that have demonstrated an interest in and requested receipt of this type of information.

4. All participants in the scoping process not listed in subds. 1 to 3.

(b) *Public announcement content.* The public announcement shall include: a brief description of the proposed project, a brief description of the administrative procedures to be followed under this chapter, the date by which public comments on the draft EIS are to be submitted to the department, the name and address of a contact within the department who will receive comments and respond to questions, and the locations where copies of the draft EIS are available for review.

(c) *Public comment period.*

1. Unless otherwise provided by law, the department shall provide a minimum of 30 days after the date the draft EIS is publicly announced to receive comments from other agencies and the public.

2. Unless otherwise provided by law, the department may grant reasonable requests from any person to extend the comment period for the draft EIS.

3. If a hearing is held under par. (d), the public comment period shall be extended for a minimum of 7 days after the date the hearing is held.

(d) *Hearing.* If no public hearing is otherwise required on the proposed action, the department may hold one or more public hearings prior to making its WEPA compliance determination under s. NR 150.35. Any hearings held pursuant to this chapter shall be announced to the public and held in a manner consistent with s. 1.11(2)(d), Stats.

NOTE: A public hearing required by another statute fulfills s. 1.11(2)(d), Stats.

(4) FINAL EIS. Following the public review period on the draft EIS, the department shall prepare a final EIS.

(a) *Content.* The final EIS shall include the draft EIS, a summary of the comments received on the draft EIS and the department's response to the comments. The final EIS may include revisions to draft EIS text or figures and may vary from the draft EIS in scope based on comments received on the draft EIS or other pertinent information that becomes known to the department.

(b) *Final EIS publication.* The final EIS shall be made publicly available under s. NR 150.50. Copies of the final EIS shall be provided to any individual or group requesting a copy. A charge may be assessed to cover reproduction and handling costs for requests for copies of documents.

NR 150.35 WEPA Compliance determination. Actions under sections NR 150.20(2) to (4) cannot be taken until a determination is published regarding compliance with this chapter.

(1) For all EISs under s. NR 150.20(4) and determinations under s. NR 150.20(2)(b) and (3)(b), the department shall publish findings of fact, conclusions of law and a determination that summarizes the procedures and process steps used to achieve compliance with this chapter.

(2) For actions under s. NR 150.20(2)(a) and (3)(a), the department may publish the WEPA determination as part of the permit or approval document.

NR 150.40 Cooperation with other agencies.

(1) **REVIEW OF OTHER AGENCY ENVIRONMENTAL ANALYSES.** The department may comment on the environmental analyses prepared by other state and federal agencies for WEPA or NEPA compliance. To the extent possible, the department shall review and comment on each relevant environmental analysis within the time period specified by the sponsoring or lead agency. The department may reply that it has no comment and should so reply when it is satisfied that its views are adequately reflected in the environmental analysis.

(2) **INTERAGENCY PROCEDURES ON PROPOSED ACTIONS INVOLVING NEPA OR WEPA.**

(a) The department may conduct an environmental review process jointly with another state, federal or local agency. The joint process shall meet the requirements of this chapter and may be determined by law, interagency consultation or written agreement.

(b) The department may adopt an environmental analysis prepared by another agency as the department's EIS on the proposed action if the environmental analysis substantially meets the requirements of s. NR 150.30. The department shall comply with the public review requirements in s. NR 150.30(3), publish a determination on the proposed action under s. NR 150.35, and make all associated documents available to the public under s. NR 150.50.

NR 150.50 Document retention and management. The department shall maintain a publicly accessible and searchable record system to provide public access to public announcements, strategic analyses, EIS analyses, and WEPA compliance determinations prepared by the department in compliance with this chapter. The record system shall be maintained in a manner consistent with the department's record retention policy.

Section 16. NR 166.07(1)(a)3 is amended to read:

NR 166.07(1)(a)3 Preparing environmental ~~assessment~~ analysis reports and evaluations.

Section 17. NR 191.05(5) is amended to read:

NR 191.05(5) Upon review, the department shall indicate if the proposed project requires the preparation of an environmental impact report by the sponsor and an environmental ~~assessment~~ analysis by the department. If an environmental ~~assessment~~ analysis is required, the application is not considered complete until the environmental ~~assessment~~ analysis has been completed, circulated for public comment, the period for public comment ended and has been ~~certified as being~~ determined to be in compliance with the Wisconsin environmental policy act.

Section 18. NR 300.03(5) is repealed.

Section 19. NR 300.05(4) is repealed.

Section 20. NR 305.03(5) is repealed.

Section 21. NR 305.06(3m) is repealed.

Section 22. NR 310.14(4)(b) is amended to read:

NR 310.14(4)(b) The department may not determine an application is complete unless the department determines that the applicant has provided all information necessary for any environmental ~~assessment or environmental impact statement~~ analysis required under ~~s. 1.11, Stats., and ch. NR 150.~~

Section 23. NR 327.04(4) is amended to read:

NR 327.04(4) An application may not be considered complete until the appropriate environmental ~~impact review~~ analysis is completed under ~~s. 1.11, Stats., and ch. NR 150.~~

Section 24. NR 345.04(2)(e)6 is repealed.

Section 25. NR 345.04(2)(g)2 is repealed.

Section 26. NR 410.02(3) is amended to read:

NR 410.02(3) "Environmental ~~assessment~~ analysis" has the meaning given in s. ~~NR 150.02(9)~~ NR 150.03(8).

Section 27. NR 410.03(2)(i) is amended to read:

NR 410.03(2)(i) \$1,500, if an environmental ~~assessment~~ analysis under ch. NR 150 is required.

Section 28. NR 410.03(3)(a)2 is amended to read:

NR 410.03(3)(a)2 An additional \$2,500 if the permit application is for an indirect source which requires an environmental ~~assessment~~ analysis under ch. NR 150.

Section 29. NR 512.16 (intro.) is amended to read:

NR 512.16 (intro.) **Environmental review.** To aid the department in complying with ch. NR 150, and in determining the need for an environmental impact report or environmental impact statement, the feasibility report shall include an environmental ~~assessment~~ analysis section. This ~~assessment~~ analysis shall include the following items:

Section 30. NR 670.409(1)(c) is amended to read:

NR 670.409(1)(c) The ~~preliminary environmental assessment or environmental impact statement (EIS)~~ analysis if required by ~~s. 1.11, Stats~~ NR 150.

Section 31. NR 820.29(1) is amended to read:

NR 820.29(1) HIGH CAPACITY WELLS IN GROUNDWATER PROTECTION AREAS. Unless another time period is specified by law, the department shall complete its review and make a determination on all applications for approval of proposed high capacity wells in groundwater protection areas within 65 business days after receipt of a complete application unless the department notifies the applicant under s. NR 820.30 (4) (a) or (b) that additional information is needed in order for the department to prepare an environmental ~~assessment~~ analysis for the proposed high capacity well.

Section 32. NR 820.29(2) is amended to read:

NR 820.29(2) HIGH CAPACITY WELLS NEAR SPRINGS. Unless another time period is specified by law, the department shall complete its review and make a determination on all applications for approval of proposed high capacity wells near springs within 65 business days after receipt of a

complete application unless the department notifies the applicant under s. NR 820.31 (4) (a) or (b) that additional information is needed in order for the department to prepare an environmental ~~assessment~~ analysis for the proposed high capacity well.

Section 33. NR 820.30(2)(a) is amended to read:

NR 820.30(2)(a) The department may approve a high capacity well as described in pars. (b) to (e) within a groundwater protection area without preparing an environmental ~~assessment~~ analysis if it determines that construction and operation of the proposed well will not result in significant adverse environmental impact. The information specified under subs. (1) (h) to (j) is not required for a proposed well if any of the conditions in pars. (b) to (e) apply. Based on information submitted by the applicant under sub. (1) and other available information, the department may determine that supplemental information and review is needed in order to issue or deny the necessary approval. The department shall include in any approval issued using the standards under s. 281.34, Stats., conditions to ensure that the high capacity well will not result in significant adverse environmental impacts to trout streams, outstanding resource waters and exceptional resource waters. The conditions may include but are not limited to conditions as to location, depth of lower drillhole, depth interval of well screen, pumping capacity, pumpage schedule, months of operation, rate of flow and conservation measures.

Section 34. NR 820.30(3)(a) is amended to read:

NR 820.30(3)(a) The department may approve a proposed high capacity well without completing an environmental ~~assessment~~ analysis under ch. NR 150 if the proposed well is not a well described in subs. (2) (b) to (e) and the department determines that construction and operation of the proposed well will not result in significant adverse environmental impacts to the stream or lake and at least one of the conditions in subs. 1. to 5. is satisfied. In making this determination, the department shall consider impacts caused by other wells on the high capacity property and take into account actual or current conditions of the Class 1, 2 or 3 trout stream, outstanding resource water or exceptional resource water.

Section 35. NR 820.30(4)(b) is amended to read:

NR 820.30(4)(b) Within 65 business days of receipt of a complete application, the department shall identify additional informational requirements necessary to evaluate the proposed well and may determine that the applicant shall develop and submit an environmental impact report in accordance with s. NR 150.25.

Section 36. NR 820.30(4)(c) is amended to read:

NR 820.30(4)(c) Following receipt of the requested information, the department shall ~~prepare an~~ follow the environmental ~~assessment~~ analysis ~~in accordance with the~~ procedures of s. NR 150.22 and shall ~~develop and publish a news release in accordance with s. NR 150.21~~ ch. NR 150.

Section 37. NR 820.31(4)(b) is amended to read:

NR 820.31(4)(b) Within 65 business days of receipt of a complete application, the department shall identify additional informational requirements necessary to evaluate the proposed well and may determine that the applicant shall develop and submit an environmental impact report in accordance with s. NR 150.25.

Section 38. NR 820.31(4)(c) is amended to read:

NR 820.31(4)(c) Following receipt of the requested information, the department shall ~~prepare an~~ follow the environmental ~~assessment~~ analysis ~~in accordance with the~~ procedures of s. NR 150.22 and shall ~~develop and publish a news release in accordance with s. NR 150.21~~ ch. NR 150.

Section 39. NR 820.32(2) is amended to read:

NR 820.32(2) If the department determines that a proposed high capacity well will result in an annual water loss of greater than 95%, the department shall notify the applicant that the proposed well may result in a water loss of greater than 95%. Within 65 business days of receipt of a complete application, the department shall identify additional informational requirements necessary to evaluate the proposed well and may determine that the applicant shall develop and submit an environmental impact report in accordance with s. NR 150.25.

Section 40. NR 820.32(3) is amended to read:

NR 820.32(3) Following receipt of all requested information, the department shall ~~prepare an~~ follow the environmental ~~assessment analysis in accordance with the~~ procedures of s. NR 150.22, and shall ~~develop and publish a news release in accordance with s. NR 150.21~~ ch. NR 150.

Section 41. EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Section 42. BOARD ADOPTION. This rule was adopted and approved by the State of Wisconsin Natural Resources Board on

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY _____

Cathy Stepp, Secretary