



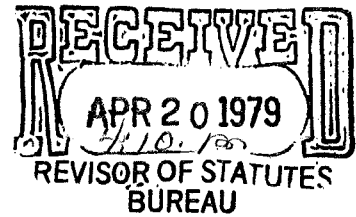
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl
Secretary

BOX 7921
MADISON, WISCONSIN 53707

IN REPLY REFER TO: _____

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) SS



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Anthony S. Earl, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. EI-38-78 was duly approved and adopted by this Department on January 25, 1979. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at Pyare Square Building in the Village of Shorewood Hills, this 14th day of April, 1979.

Anthony S. Earl, Secretary

(SEAL)

STATE OF WISCONSIN NATURAL RESOURCES BOARD

.....
IN THE MATTER of the repeal and recreation .
of sections NR 2.13(3) and NR 150.09 of the .
Wisconsin Administrative Code pertaining to .
public hearings on environmental impact .
statements .
.....

EI-38-78

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD

REPEALING AND RECREATING RULES

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by sections 1.11, 23.11 and 227.014, Wisconsin Statutes, the State of Wisconsin Natural Resources Board hereby repeals and recreates rules as follows:

SECTION 1 - Section NR 2.13 (3) is repealed and recreated to read:

(3) Order of proceeding. Applicants, petitioners and complainants shall proceed first with presentation of their evidence and shall have the burden of proof. No person may use an environmental impact statement or any portion thereof as the exclusive means of meeting their burden of proof or to meet any statutory requirements for an approval, license or permit in a contested proceeding except upon stipulation of the parties.

SECTION 2 - Section NR 150.09 is repealed and recreated to read:

NR 150.09 Public hearing on the EIS. (1) Informational meeting on PER. Whenever a proposed action requires an EIS, the department shall hold an informational meeting on the PER in not less than 30 days from the date of its issuance. The location and notice of the meeting shall be as provided in pars. (2)(b) and (2)(c) respectively.

(2) EIS informational hearings. (a) The department shall hold a public informational hearing, in accordance with s. 227.022, Stats., on the action or proposal and the EIS prior to making its decision. The hearing shall be held not less than 30 days after issuance of the EIS. The EIS shall be entered

into the record of the hearing. Comments may be received and testimony taken on the action or proposal and the EIS. The schedule for submission of written comments shall be set before the close of the hearing by the department.

(b) The hearing shall be held in the locality affected, unless otherwise provided by statute. On actions of statewide significance, the hearing may be held in Madison.

(c) The hearing shall be noticed as follows: 1. At least 30 days prior to the hearing, notice shall be mailed to all known departments and agencies required to grant any permit, license or approval necessary for the proposal, to any regional planning commission within which the affected area lies, to the governing bodies of all towns, villages, cities and counties within which any part of the proposal lies, to the governing bodies of any towns, villages or cities contiguous to any town, village or city within which any part of the proposal lies and to interested persons who have requested such notification.

2. Publish a class I notice as defined in ch. 985, Stats., in a newspaper circulated in the area affected, or in the official state paper for actions of statewide significance at least 25 days prior to the hearing.

3. Notwithstanding subs. 1. and 2., notice of hearing on an EIS concerning administrative rules shall be given in the same manner as notice is given for rules hearings.

(3) Record of EIS informational hearing. After the hearing in sub. (2), the department shall carefully review the hearing record and summarize the comments received on the EIS and the proposed action, before making a decision under sub. (4) or (5).

(4) Decision on action or proposal on which a contested case hearing is not required. (a) Any person may petition for an opportunity to cross examine the person who is responsible for a specific portion of an EIS or present

witnesses or evidence. The petition shall include a statement of position on the action or proposal and specific statements and issues that are desired to be cross examined or presented. Petitions for opportunity to cross examine shall be filed with the department within 20 days after the notice of the EIS hearing is published in subd. (2)(c)2. The notice in subd. (2)(c)2. published in conformance with subd. (2)(c)1. shall include a statement that the failure to file the petition provided for in this subsection shall preclude the opportunity to cross examine.

(b) If the department finds that the action or proposal may affect substantial interests of the petitioner, an order shall be issued stating what persons will be made available for cross examination. Denials of petitions shall be in writing. Failure to issue an order within 10 days of the filing of the petition shall constitute a denial.

(c) The opportunity to cross examine shall be given after the informational portion of the hearing is completed.

(d) After the close of the informational hearing described in sub. (2), the department shall enter a final written decision on the proposed action or proposal stating findings of fact, including findings as to environmental impact. The burden of establishing compliance with s. 1.11, Stats., is upon the agency.

(5) When the final decision on an action or proposal is to be made after a contested case hearing as defined in s. 227.01(2), Stats., and the decision is a major state action under s. 1.11, Stats., the following procedures shall be followed:

(a) Persons wishing to become a party to the contested case proceeding shall serve a notice of appearance on the department within 30 days of the

date of the notice of hearing. The notice of the contested case hearing shall include a statement that the failure to file the notice of appearance shall preclude objecting to the admissibility of the EIS at the hearing.

(b) A prehearing conference may be scheduled pursuant to s. 227.09(1)(f), Stats., to file motions concerning or objecting to the admissibility of portions of the environmental impact statement (EIS). Motions shall be limited to those portions of the EIS concerning issues that will be decided in the contested case hearing. Motions shall be served on the parties to the proceedings 10 days before the prehearing conference, unless the examiner orders otherwise.

(c) 1. The portions of the EIS not objected to by motion in par. (b) shall be admitted into evidence at the contested case hearing.

2. The portions of the EIS subject to motion under par. (b) may be admitted as evidence at the hearing after parties have an opportunity to cross examine witnesses and offer countervailing or rebutting evidence or a stipulation of the parties.

3. The examiner shall deny any motion at the prehearing conference that is ambiguous, overbroad or is not supported by sufficient allegations and information to make that portion of the EIS inadmissible under s. 908.03, Stats.

(6) This section is applicable to the extent it does not conflict with the procedures and rules of another agency if that agency is the lead agency on the EIS.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on January 25, 1979.

The rules contained herein shall take effect upon publication.

Dated at Madison, Wisconsin 19 April 1979

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Anthony S. Earl
Anthony S. Earl, Secretary

(SEAL)