



CR 84-222

State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

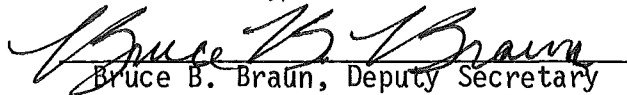
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APR 22 1985
11:00 am
Revisor of Statutes
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy 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-66-84 was duly approved and adopted by this Department on February 27, 1985. 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 General Executive Facility #2 in the City of Madison, this 17th day of April, 1985.


Bruce B. Braun, Deputy Secretary

(SEAL)

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7-1-85

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

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EI-66-84

.....
IN THE MATTER of amending s. NR 2.155(1);
repealing and recreating ss. NR 2.14(6)
and 150.09; and creating s. NR 2.085 of
the Wisconsin Administrative Code
pertaining to hearings involving
environmental impact statements
.....

Analysis Prepared by Department of Natural Resources

The effect of the revision to s. NR 150.09 is to limit the scope of this section to public informational hearings and meetings only. The informational hearing on the final environmental impact statement may be combined with other required hearings. The hearing notice procedure is expanded to require notice to be provided to Native American communities and the Wisconsin Public Intervenor.

The reasons for these revisions are to simplify the rule and distinguish procedures for informational hearings and meetings from those to be followed during contested case hearings.

The effect of the revisions to ch. NR 2 is to simplify procedures for considering an environmental impact statement at a contested case hearing on a proposed action. Presently, the procedures for contested case hearings appear primarily in ch. NR 2, but some related to consideration of environmental impact statements appear in s. NR 150.09. The rule revision would bring all procedures under ch. NR 2. The rule would require that the environmental impact statement and public comments on it be admitted into the record of any contested case hearing on a proposed action, and that they be given appropriate consideration. If there is no mandatory contested case hearing on the proposed action, the rule recognizes petitions for a hearing under s. 227.064, Stats.

The reasons for these revisions are to enhance and simplify consideration of environmental impact statements and public comments on the statements at contested case hearings while assuring that necessary procedural safeguards are maintained. The preexisting rule is cumbersome to administer and is somewhat confusing. The revisions place all the procedural requirements for consideration of environmental impact statements in one location in the administrative code and provide the hearing examiner with more needed flexibility in addressing environmental impact related issues.

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by s. 227.014(2)(a), Stats., the State of Wisconsin Natural Resources Board hereby amends, repeals and recreates, and creates rules interpreting ss. 1.11, 227.064, 227.07, and 227.08, Stats., as follows:

SECTION 1. NR 2.085 is created to read:

NR 2.085 ENVIRONMENTAL IMPACT STATEMENTS. (1) When a final environmental impact statement has been written on a proposed action for which a contested case hearing is held, all evidence regarding compliance with s. 1.11, Stats., shall be taken at that hearing.

(2) In the absence of specific authority for a contested case hearing on a proposed action for which a final environmental impact statement has been written, a contested case hearing shall be held on the proposed action if a petition for a hearing meeting the requirements of s. 227.064, Stats., is received by the department.

(3) If a contested case hearing will be held on a proposed action for which a final environmental impact statement has been drafted, the informational hearing provided for by s. NR 150.09(2) shall be combined with the contested case hearing if circumstances allow. At a combined hearing, the informational portion shall precede the contested portion.

(4) If no contested case hearing will be held on a proposed action for which a final environmental impact statement has been drafted, any person may petition for an opportunity to cross examine the person who is responsible for a specific portion of the final environmental impact statement or present witnesses or evidence at the public informational hearing held under s. NR 150.09(2). 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 final environmental impact statement is published under s. NR 150.09(2)(c)2. The notice under s. NR 150.09(2)(c)2., published in conformance with

s. NR 150.09(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.

SECTION 2. NR 2.14(6) is repealed and recreated to read:

NR 2.14(6) A final environmental impact statement and all comments received by the department on it prior to the contested case hearing shall be received into the record of the contested case hearing under ss. 908.03(6) and (8) and 227.08, Stats. The final environmental impact statement and comments received on it shall be considered along with hearing testimony in making a decision on the merits of the proposed action, and in making findings on compliance with s. 1.11, Stats. Testimony regarding the content of the environmental impact statement or cross-examination of persons responsible for specific portions of the environmental impact statement shall be allowed. No person may use an environmental impact statement or any portion thereof as the exclusive means of meeting a burden of proof of any statutory requirements for an approval, license or permit in a contested proceeding except upon stipulation of the parties.

SECTION 3. NR 2.155(1) is amended to read:

NR 2.155(1) EXAMINER DECISION. The hearing examiner shall prepare findings of fact, conclusions of law and decision subsequent to each contested case heard. The decision shall be the final decision of the department, but may be reviewed in the manner described in s. NR 2.20. Every decision shall include findings regarding compliance with the requirements of s. 1.11, Stats.

SECTION 4. NR 150.09 is repealed and recreated to read:

NR 150.09 PUBLIC INFORMATIONAL HEARINGS AND MEETINGS ON THE EIS. (1)

INFORMATIONAL MEETING ON THE DEIS. Whenever a proposed action requires an EIS, the department shall hold an informational meeting on the DEIS in the locality affected not less than 30 days after its issuance, and provide notice of the meeting in accordance with the procedures of sub. (2)(c).

(2) FEIS INFORMATIONAL HEARING. (a) Except as otherwise provided by law, the department shall hold a public informational hearing, in accordance with s. 227.022, Stats., on the proposed action and the FEIS prior to making its decision. The hearing shall be held not less than 30 days after issuance of the FEIS. The schedule for submission of written comments shall be set by the department before the close of the hearing.

(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 proposed action; to any regional planning commission within which any part of the proposed action lies; to the governing bodies of all towns, villages, cities and counties within which any part of the proposed action lies; to any Native American community located within a town which receives notice; to the governing bodies of any towns, villages or cities and Native American communities affected by any part of the proposed action; and to the Wisconsin public intervenor and other interested persons who have requested such notification.

2. At least 25 days prior to the hearing, a class I notice as defined in ch. 985, Stats., shall be published in a newspaper likely to give notice in the area or to the person affected, or in the official state paper for actions of statewide significance.

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

(3) RECORD OF DECISION. After the close of the informational hearing described in sub. (2), the department shall enter a final written record of decision on the proposed action stating findings of fact, including findings as to environmental impact. When a contested case hearing has been held under the provisions of s. NR 2.085, the findings of fact, conclusions of law and decision rendered as a result of the hearing shall serve as a record of decision.

(4) RELATIONSHIP TO PROCEDURES OF OTHER AGENCIES. 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 FEIS.

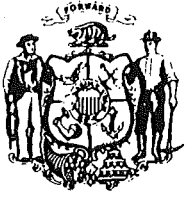
The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on February 27, 1985.

The rules contained herein shall take effect as provided in s. 227.026(1) (intro.), Stats.

Dated at Madison, Wisconsin April 15, 1985

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

April 15, 1985

IN REPLY REFER TO: 1020

Mr. Orlan L. Prestegard
Revisor of Statutes
411 West
C A P I T O L

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APR 22 1985

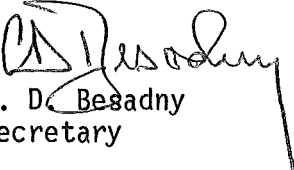
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Bureau

Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. EI-66-84. These rules were reviewed by the Assembly Committee on Environmental Resources and the Senate Committee on Energy and Environmental Resources pursuant to s. 227.018, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees is also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


C. D. Besadny
Secretary

Enc.

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