

Chapter NR 150

WISCONSIN ENVIRONMENTAL POLICY ACT PROCEDURES FOR DEPARTMENT ACTIONS

NR 150.01 Purpose (p. 525)	NR 150.07 Contents of an EIS (p. 552-4)
NR 150.015 Applicability (p. 525)	NR 150.08 Distribution and review of the DEIS and FEIS (p. 552-5)
NR 150.02 Definitions (p. 525)	NR 150.09 Public hearing on the EIS (p. 552-7)
NR 150.021 Severability (p. 528)	NR 150.10 Interagency procedures on proposed actions involving NEPA or WEPA (p. 552-9)
NR 150.025 Policy (p. 528)	NR 150.105 Review of and comment on an EIS (p. 552-9)
NR 150.03 Department action type list (p. 529)	NR 150.11 Environmental impact statement charges (p. 552-11)
NR 150.04 Determination of need for an EIR or EIS (p. 532)	
NR 150.05 Contents and department acceptance of an EIR (p. 552-3)	
NR 150.06 Scoping (p. 552-3)	

NR 150.01 Purpose. The purpose of this chapter is to:

(1) Establish a policy to assure governmental consideration of the short- and long-term environmental and economic effects of policies, plans and programs upon the quality of the human environment.

(2) Provide principles, objectives, definitions and criteria to be used by the department in the implementation of ss. 1.11, 23.11 (5), and 23.40, Stats; Implementation includes the evaluation of proposed actions; the study, development, and description of alternatives where proposed actions involve unresolved conflicts in the use of available resources; and the preparation and review of environmental impact statements (EIS's).

(3) Establish the identification of major actions significantly affecting the quality of the human environment and the need for an EIS.

(4) Provide guidance to applicants seeking permission to proceed with a proposed action, which the department may grant, in determining the applicable procedure affecting the department's review of their proposals, and to establish a mechanism for early review of an applicant's proposal to determine the need for an environmental impact report (EIR) and EIS.

(5) Provide an opportunity for public input to the decision-making process.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. Register, February, 1981, No. 302, eff. 3-1-81.

NR 150.015 Applicability. This chapter shall apply to all department actions which may affect the quality of the human environment.

History: Cr. Register, February, 1981, No. 302, eff. 3-1-81.

NR 150.02 Definitions. (1) "Action" means any activity, pursuit or procedure requiring permission from the department, or any activity, pursuit or procedure initiated by the department, including proposals for legislation, which may affect the quality of the human environment.

Register, February, 1981, No. 302
Environmental Protection

(2) "Alternatives" means other actions or activities which may be reasonably available to achieve the same or altered purpose of the proposed action.

(3) "Compliance with WEPA" means the satisfactory completion of all required procedural and substantive steps outlined in this chapter from initial categorization of a proposed action with regard to the need to prepare an EIS through development of any required environmental analysis and appropriate use of that analysis by the decision-maker.

(4) "Cooperating agency" means any state agency, other than the lead agency, which has jurisdiction by law over the proposed action or which has special expertise with respect to any relevant environmental issues.

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

(6) "EIR" means environmental impact report. It is a disclosure document, submitted pursuant to s. 23.11 (5), Stats., by a person seeking a permit or statutory approval.

(7) "EIS" means environmental impact statement. It is a written report prepared pursuant to s. 1.11, Stats., which contains an analysis of anticipated impacts of a proposed action upon the human environment. The draft environmental impact statement (DEIS) is a preliminary version of the final environmental impact statement (FEIS).

(8) "EA" means environmental assessment. It is a documented brief but comprehensive analysis of a proposed Type II action to determine its environmental impact; study, develop, and describe alternatives; and determine whether the proposed action constitutes a major state action significantly affecting the quality of the human environment.

(9) "Fee" means a charge for the preparation of an environmental impact statement, including preapplication services, pursuant to s. 23.40, Stats., and in accordance with this chapter.

(10) "Finding of no significant impact" means a completed environmental assessment which indicates that the proposed action is not a major action which will significantly affect the quality of the human environment and that no EIS is required.

(11) "Hearing" or "public hearing" means a proceeding conducted by the department in accordance with s. 1.11 and in a manner consistent with s. 227.022, Stats., unless otherwise provided in this chapter.

(12) "Human environment" means the totality of conditions and influences, both natural and artificial, which surround and affect all organisms, including people.

(13) "Joint environmental assessment" means an environmental assessment developed by another state or federal agency in which the department had input sufficient to identify major impacts and alternatives and ensure that the assessment is in compliance with the substantive and procedural requirements of this chapter. The department must make an independent judgment on the need for an EIS.

(14) "Joint environmental impact statement" means an EIS developed by the department and another state or federal agency where the

department has equal responsibility with the other agency (ies) for evaluating environmental impacts and has sufficient control over the EIS process and content of the document to ensure that the provisions of this chapter are met. Either the department or other state or federal agency may be designated the lead agency.

(15) "Lead agency" means the agency with primary concern or responsibility for a given action as determined through interagency consultation or written agreement.

(16) "Major action" means an action of magnitude and complexity which will cause significant effects upon the quality of the human environment.

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

(18) "Permission" means any approval or permit issued by the department as required by statute or rule; or any lease, license, variance or other entitlement of use; or the commitment to issue or the issuance of a contract, grant, subsidy, loan or other form of financial assistance by the department to any person.

(19) "Person" means any 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.

(20) "Preapplication services" means those services necessary to evaluate the environmental impact of a project or proposed activity, monitor major developments, and expedite the anticipated preparation of an EIS prior to submission of formal applications, and are part of EIS preparation for the purposes of this chapter.

(21) "Preapplication services agreement" means a written understanding between the department and a person proposing a large, complex, or environmentally sensitive action that the department may perform, and the person will be responsible for the actual full cost of, preapplication services.

(22) "Resources" means financial, cultural and natural matter and forms as well as labor and materials used and affected by a proposed action if permitted.

(23) "Review" means the study of and comment upon the EIR, DEIS, or FEIS by cooperating agencies.

(24) "Scoping" is an early and open process for identifying the anticipated range of issues in an EIS, the extent to which the identified issues will be addressed, and what are expected to be the significant issues.

(25) "Significant effects" means considerable and important impacts of major state actions on the quality of the human environment.

(26) "Substantial participation" means full and effective participation by the department with another state or federal agency in preparation of a NEPA or WEPA EIS including, but not limited to, preparation of portions of the EIS within the department's jurisdiction or expertise,

appropriate review and comment on the other agency's document or procedures, development of standards of document adequacy, determining content of the EIS, involvement in public participation activities and hearings, policy development and decision-making.

(27) "WEPA" means the Wisconsin environmental policy act (ch. 274, laws of 1971, as amended by ch. 204, laws of 1973, which includes s. 1.11, Stats.).

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am., Register, February, 1981, No. 302, eff. 3-1-81.

NR 150.021 Severability. Should any section, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; renum. from NR 150.12, Register, February, 1981, No. 302, eff. 3-1-81.

NR 150.025 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 above, the department shall:

(a) Acknowledge WEPA as an obligation shared by all units of the department to the extent that any unit contemplating regulatory, management or administrative actions subject to WEPA review under this chapter must 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 provide for early environmental reviews of their major actions, minimize duplication in meeting environmental impact requirements and establish a mechanism for resolution of interagency conflict.

(d) Develop appropriate environmental impact 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 impact review process is completed.

(e) Implement the environmental impact 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.

(f) Consider the findings of EIS's, EA's and comments received from the public in making decisions on proposed actions.

(g) Recognize that where an EIS is required for a major state action, it serves as a coordinating mechanism for a comprehensive department analysis of the entire project and for informing the public and/or obtaining comments on the proposed action.

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

History: Register, February, 1981, No. 302, eff. 3-1-81.

NR 150.03 Department action type list. In conformance with regulations promulgated by the president's council on environmental quality, 40 CFR 1500-1508, the department has categorized its actions into the following type list which shall determine or aid in the determination of the need for an EIS. Where similar groups of actions are listed under different subsections (e.g. under Type II and Type III), both listings should be consulted to aid in the determination.

(i) **TYPE I ACTIONS.** - These actions will always require an EIS.

(a) *Facilities
Development*

1. **New Properties** Establishment or acquisition by fee title of new department properties over 1,000 acres in size and involving a basic change in existing land use (e.g., agricultural land converted to recreational use).

(b) *Regulation*

1. **Power Plant Review** Department regulatory actions involving new electric generating facilities with a capacity of 20 MW or more.

2. **Metallic Mining** Department regulatory actions, including permits to mine issued pursuant to s. 144.85, Stats., relating to new mines or to expansions of existing mines, where one or more of the following conditions apply:

a. The estimated weight of the ore deposit exceeds 5 million tons;

Register, February, 1981, No. 302
Environmental Protection

- b. The land area directly committed to mining operations, including waste disposal, exceeds 160 acres; or
- c. The principal ore being mined will generate radioactive waste products.
3. **Metallic Ore Refining** Department regulatory actions involving any new metallic ore refinery intended for commercial production.
- (2) **TYPE II ACTIONS.** - These actions may involve unresolved conflicts in the use of available resources and may or may not require an EIS, depending on the individual significance of the action. All Type II actions will be evaluated by using an EA. Similar actions in the Type III category are numbered the same as their Type II counterpart.
- (a) *Facilities Development*
1. **New Properties** Establishment or acquisition by fee title of new department properties less than 1,000 acres in size or of new department properties over 1,000 acres in size which do not involve a basic change in existing land use.
 2. **Property Re-designation** The re-designation of all or a portion of an existing department property to a different use classification which involves a basic change in existing land use.
 3. **Public Access** Acquisition and development of sites for public access to lakes with no existing access and to rivers and streams where there is no existing developed access serving the same reach.
 4. **Facilities and Building Construction** Construction of new buildings, campgrounds, roads, scenic overlooks, parking lots, dams, dikes, flowages, beaches, trails and other facilities costing the same as or more or more than the limit where approval of the building commission is required pursuant to s. 13.48 (10), Stats., on department lands. Picnic tables, grills, project signs, pit toilets, fences and other minor construction activities, replacement in kind of existing facilities, and remodeling or renovation activities inside existing buildings are excluded.

5. **Property Boundary Adjustments** Boundary adjustments on previously approved department properties which result in an increase or decrease of 10% or more, but not less than 160 acres, in the area within the property boundaries.
6. **Acquisition of Scattered Parcels** Acquisition by fee title of parcels in statewide undelineated properties where the total planned or expected to be acquired exceeds 160 acres in the same township.

(b) *Financial Assistance*

1. **LAWCON Grants-in-Aid** New individual land and water conservation fund (LAWCON) grants-in-aid to local units of government for initial acquisition or development of a new community-wide park or for additional acquisition or development in any existing park that would be a Type II action if carried out by the department.
2. **State Grants-in-Aid for Local Parks, Fish and Wildlife Areas** New individual grants-in-aid to local units of government pursuant to s. 23.09 (12), Stats., for enhancing fish and wildlife habitat where activities are involved that would be Type II actions if carried out by the department; or pursuant to ss. 23.09 (20) and 66.36 (1), Stats., for the initial acquisition or development of a new community-wide park or for additional acquisition or development in any existing park that would be a Type II action if carried out by the department.
3. **Snowmobile and Motorcycle Grants-in-Aid** New individual grants-in-aid to local units of government pursuant to ss. 23.09 (26), 350.12 (4) and 23.09 (25) (a), Stats., for acquisition, development and maintenance of snowmobile and off-road-vehicle trails and facilities when the project involves actions that would be Type II if carried out by the department.
4. **Wildlife Habitat Grants-in-Aid** New individual grants-in-aid to counties pursuant to s. 23.09, Stats., for land management practices benefitting wildlife which would be a Type II action if carried out by the department.
5. **Inland Lake Rehabilitation Grants-in-Aid** New individual grants-in-aid of \$25,000 or more to inland lake rehabilitation districts. Grants for feasibility studies are excluded.

NR 150

6. **Boating Facility Construction** Grants to municipalities for the construction of recreational boating facilities if the grant would result in actions otherwise listed as Type II under this chapter.
7. **Wastewater Facility Grants** New individual grants-in-aid under the Wisconsin fund, or department recommendations for new individual grants-in-aid under the federal construction grants program, to municipalities for construction if the grant would result in actions otherwise listed as Type II under this chapter.
8. **State Forestry Loans** Loans issued pursuant to s. 28.11 (8) (b) 2., Stats., that would result in actions otherwise listed as Type II under this chapter.

(c) Standards

1. **Administrative Rules** Promulgation of new rules or changes in existing rules developed for department resource management or regulatory functions when the implementation of the proposed rule will have material impacts on the human environment, and the department has substantial discretion in formulating important provisions of the rule. Editorial changes in or clarifications of existing rules and the codification of existing department practice are excluded.

(d) Regulation

1. **Air Pollution Control** Permits issued pursuant to s. 144.391, Stats., for:
- a. New sources or modifications or relocations of existing sources resulting in a potential for increased emissions, after legally enforceable offsets, of 100 tons or more per year, before controls, of any categorically limited air contaminants;
- b. New sources or modifications or relocations of existing sources resulting in a potential for increased emissions, before controls, of any hazardous air contaminant; or
- c. Any new or modified source requiring analysis pursuant to s. 144.393 (2) (d), Stats.

- d. Permits or approvals for existing sources or for reconstruction or replacement of existing sources are excluded.
2. Dredging
- Permits and contracts involving navigable lakes and harbors, rivers and streams pursuant to s. 30.20, Stats., except maintenance dredging and utility (electric, sewer, water, phone and cable television) trench crossings. Dredging of nonnavigable waterways is excluded unless it involves draining or filling of wetlands.
3. Dams
- Permits to construct or raise and enlarge in navigable waters, plan approvals to construct in nonnavigable waters, and authority to abandon, where the dam holds a maximum head of 6 feet or more or the pond holds 15 acre-feet or more at maximum water storage elevation pursuant to ch. 31, Stats. Transfers of ownership are excluded.
4. Enlargement or Alterations of Waterways
- Activities defined in s. 30.19, Stats., involving connected waterways; and unconnected waterways and grading when related to extraction of minerals or mineral aggregates or involving draining or filling of wetlands.
5. Sewer Extension Plan Approval
- Department approval of extension of wastewater collection systems pursuant to s. 144.04, Stats., when one or more of the following criteria apply:
- a. Conflict with the areawide water quality management plan or completed elements of such plan;
 - b. Pass through a wetland area greater than 5 acres;
 - c. Pass through a floodway or floodplain except as necessary to cross a stream or river;
 - d. Tributary to a sewage system which experiences dry weather bypassing;
 - e. Involves a community with an annual growth rate of 6% or more;
 - f. Has a pipe diameter greater than 12 inches; or

- g. Extension where the department determines that a potential exists for significant primary or secondary environmental impacts.
6. **WPDES Permits** Permits issued pursuant to s. 147.02, Stats., for new discharges and modifications of permits pursuant to s. 147.03, Stats., for increased levels of pollutant discharge resulting from activities to increase production capacity at existing facilities, and for relocation of an existing discharge to a new receiving water. Discharges covered by a general discharge permit or from Type III dredging operations are excluded.
 7. **Water Level Control** Establishment of new levels or approval of drawdowns of controlled lakes and flowages pursuant to s. 31.02, Stats., where the dam holds a maximum head of 6 feet or more or the pond holds 15 acre-feet or more at maximum water storage elevation. Establishment of historic levels and approval of drawdowns to relieve conditions which are unsafe or dangerous to life, health or property are excluded.
 8. **Surface Water Diversion** Permits to divert water from lakes and streams pursuant to ss. 30.18 (1) (a) and 107.05, Stats. Diversions for agricultural and irrigation purposes pursuant to s. 30.18 (1) (b), Stats., are excluded.
 9. **Fills or Structures Below the Ordinary High Water Mark** Permits issued pursuant to s. 30.12 (2) (a), Stats., for the construction of groins, breakwaters, jetties, and new boathouses on the beds of navigable waters. Permits for other structures under s. 30.12 (2) (a), Stats., and for sand blankets, fish cribs and riprap, pursuant to ss. 30.12 (2) (b), (c), and (d), Stats., are excluded.
 10. **Pesticide Use** Permits issued pursuant to ss. 94.67 to 94.71, Stats. Permits granted to prevent or relieve conditions which are unsafe or dangerous to life or health are excluded.
 11. **Wastewater Plan Approvals** Plan approval pursuant to s. 144.04, Stats., for municipal and industrial wastewater facilities which will result in the development of a new site and which are not for the purpose of bringing an existing discharge into compliance with applicable standards.

12. **Solid Waste Disposal** Determinations of site feasibility pursuant to ss. 144.44 and 144.64, Stats., for new solid waste processing facilities, new or expanded solid waste land spreading sites or facilities, or new or expanded solid waste land disposal sites or facilities.
13. **Channel Changes** Changing the course of a navigable stream pursuant to s. 30.195, Stats., when related to extraction of minerals or mineral aggregates.
14. **Municipal Wastewater Facilities Plans** Approval of facilities plans, pursuant to s. NR 110.08 (1), Wis. Adm. Code, for new municipal sewage treatment plants and for other reviewable projects which will increase the capacity of an existing treatment facility.
15. **Municipal Wastewater Sludge Disposal** Approval of sludge storage facilities to s. 144.04, Stats., not being constructed at the wastewater treatment plant site and of high-rate land spreading of sludges, pursuant to s. 147.02 (1), Stats.
16. **Metallic Mining** Approvals to prospect issued pursuant to s. 144.84, Stats.; permits to mine issued pursuant to s. 144.85, Stats., for existing mines; and permits to mine issued pursuant to s. 144.85, Stats., for new mines or expansions of existing mines where:
 - a. The estimated weight of the ore body is 5 million tons or less,
 - b. The land area directly committed to mining operations, including waste disposal, is 160 acres or less, and
 - c. The principal ore being mined will not generate radioactive waste products.
17. **Bulkhead Line** Approvals of ordinances or proposed leases for modification of existing shorelines pursuant to s. 30.11 and s. 24.39, Stats.
18. **County Forest Land Withdrawal** Approvals for withdrawals of lands pursuant to s. 28.11, Stats.
19. **Drainage** Approvals of drainage board actions affecting navigable waters pursuant to s. 88.31, Stats. Maintenance dredging is excluded.
20. **Power Plant Review** Any department action involving a new electric generating facility of less than 20 MW capacity.

NR 150

- | | |
|--|---|
| 21. Easements and Leases | Conveyance of easements, land use permits, licenses, and leases on department lands for activities which would be Type II actions if carried out by the department and which are otherwise unregulated by the department. Underground utility and telephone lines are excluded. |
| 22. Weed Cutting | Consent to the obstruction of navigable waters for the cutting of aquatic plants pursuant to s. 30.15 (2), Stats. |
| (e) <i>Policy Recommendations</i> | |
| 1. Board Policies | Policies proposed for natural resources board approval which are a basic change in existing department practice and which, upon implementation, will have material effects on the human environment. |
| 2. County Forest Ten Year Plans | Approvals of plans covering management activities on county forests where the proposed activities would be Type II actions if carried out by the department. |
| 3. Long Range Plans | Plans or modifications of plans adopted or approved by the department outlining a specific long range course of action that would essentially pre-determine future individual department actions affecting the human environment. |
| 4. Master Plans | Plans for development of individual department properties. |
| (f) <i>Facility and Maintenance Operations</i> | |
| 1. Chemical Treatment | Use of biocides in fish, wildlife and forest management programs. Use of chemicals at department hatcheries, nurseries, and animal rearing facilities are excluded unless public (navigable) waters are affected. |
| (g) <i>Other</i> | |
| 1. Forest Insect Control | Chemical control of forest insect pests. Application of chemicals to prevent or relieve conditions which are unsafe or dangerous to life or health are excluded. |
| 2. Habitat Management | Actions designed to improve fish and wildlife habitat including: |

- a. Forest wildlife habitat activities involving more than 60 acres;
 - b. Prescribed burning involving more than 160 acres;
 - c. Clearing of land involving more than 60 acres;
 - d. Spring pond dredging;
 - e. All habitat management activities involving filling or draining of wetlands; and
 - f. Installation of fish barriers.
3. **Silvicultural Practices** Harvest (logging) and type conversion on any department property involving more than 120 acres per year and prescribed burning involving more than 160 acres. Tree planting, timberstand improvement, aesthetic cutting and plantation thinning are excluded.
 4. **Research Projects** The conduct of research involving substantial land, air or water manipulation and laboratory research involving the potential for material environmental effects outside the laboratory.
 5. **Legislation** Department proposals for new programs or major changes in existing programs, the implementation of which would have material effects on the human environment.
 6. **Environmental Restoration** Planning and carrying out comprehensive restoration of aquatic environments subsequent to water pollution abatement actions.
 7. **Stocking or Introductions of Exotic Species** The stocking of new fish or wildlife species not now present in the state.
 8. **Proliferation of Aquatic Species** Stocking or introduction of species into new aquatic environments not now occupied by the species.
 9. **Trout Stream Designation** Recommendations for addition of new trout streams to or deletion of existing trout streams from the department publication "Wisconsin Trout Streams."

- (3) **TYPE III ACTIONS.** - These actions normally do not have the potential to cause significant environmental effects and normally do not involve unresolved conflicts in the use of available resources. Therefore, unless the department determines otherwise, these actions will not require an EA or an EIS.
- (a) *Facilities Development*
1. **New Properties** Acquisition by fee title of selected parcels of land within established department property boundaries.
 2. **Property Re-designation** The re-designation of all or a portion of an existing department property to a different use classification which does not involve a basic change in existing land use.
 3. **Public Access** Acquisition and development of sites for public access to lakes with existing access and to rivers and streams where there is an existing developed access serving the same reach.
 4. **Facilities and Small Building Construction** Construction of facilities and buildings costing less than the limit established for building commission approval in s. 13.48 (10), Stats., on department lands, such as picnic tables, grills, project signs, fences and other minor construction activities; replacement in kind of existing facilities; and remodeling or renovation activities inside existing buildings.
 5. **Property Boundary Adjustments** Boundary adjustments on previously approved department properties which result in an increase or decrease of less than 10% in the area within the property boundaries.
 6. **Acquisition of Scattered Parcels** Acquisition by fee title of parcels in statewide undelineated properties where the total planned or expected to be acquired does not exceed 160 acres in the same township.
 7. **Easements and Leases** Acquisition of certain land rights for department projects.
 8. **Sale of Surplus DNR Land** Sale of department lands no longer needed for conservation purposes.

(b) *Financial Assistance*

1. **LAWCON Grants-in-Aid** New individual land and water conservation fund (LAWCON) grants-in-aid to local units of government for initial acquisition, expansion or initial development of a new neighborhood park; or for additional acquisition or development in any park that would be a Type III action if carried out by the department.

2. **State Grants-in-Aid for Local Parks, Fish and Wildlife Areas** New individual grants-in-aid to local units of government pursuant to s. 23.09 (12), Stats., for enhancing fish and wildlife habitat, where activities are involved that would be Type III actions if carried out by the department; or pursuant to ss. 23.09 (20) and 66.36 (1), Stats., for the initial acquisition, expansion or initial development of neighborhood parks or for additional acquisition or development in any park that would be a Type III action if carried out by the department.

3. **Snowmobile and Motorcycle Grants-in-Aid** New individual grants-in-aid to local units of government pursuant to ss. 23.09 (26), 350.12 (4) and 23.09 (25) (a), Stats., for acquisition, development and maintenance of snowmobile and off-road-vehicle trails and facilities when the project involves actions that would be Type III if carried out by the department.

4. **Wildlife Habitat Grants-in-Aid** New individual grants-in-aid to counties pursuant to s. 23.09, Stats., for land management practices benefiting wildlife that would be a Type III action if carried out by the department.

5. **Inland Lake Rehabilitation Grants-in-Aid** New individual grants-in-aid to inland lake rehabilitation districts of less than \$25,000 and grants for feasibility studies.

6. **Boating Facility Construction** Grants to municipalities for the construction of recreational facilities if the grant would result in activities otherwise listed as Type III under this chapter.

NR 150

- | | | |
|-----|-------------------------------|---|
| 7. | Wastewater Facility Grants | New individual grants-in-aid under the Wisconsin fund, or department recommendations for new individual grants-in-aid under the federal construction grants program, to municipalities for facilities planning (step one), development of plans and specifications (step two), or construction (step three) where the grant would result in activities otherwise listed as Type III under this chapter. |
| 8. | State Forestry Loans | Loans issued pursuant to s. 28.11 (8) (b)2., Stats., that would result in activities otherwise listed as Type III under this chapter. |
| 9. | Boating Facility Design | Grants-in-aid issued to municipalities for the design of recreational boating facilities. |
| 10. | Revenue Sharing Bond | Certification of pollution abatement facilities. |
| 11. | Pollution Tax Exemptions | Certification or approval for water pollution control facilities tax exemptions. |
| 12. | Feasibility Study Grants | State grants to local units of government to conduct feasibility studies. |
| 13. | Flood Plain Mapping Grants | Grants-in-aid to municipalities to undertake mapping of flood plain boundaries. |
| 14. | Solid Waste Management Grants | Grants to municipalities pursuant to ss. 144.781 to 144.784, Stats., to develop areawide solid waste management plans and to conduct feasibility studies. |

(c) *Standards*

- | | | |
|----|----------------------|--|
| 1. | Administrative Rules | Promulgation of new rules or changes in existing rules developed for department resource management or regulatory functions when: <ul style="list-style-type: none"> a. The implementation will not have material impacts on the human environment, or b. The department has limited discretion in formulating important provisions of the rule. |
|----|----------------------|--|

(d) *Regulation*

- | | | |
|----|-----------------------|---|
| 1. | Air Pollution Control | Permits pursuant to s. 144.391, Stats., for: <ul style="list-style-type: none"> a. Existing sources of air contaminants; |
|----|-----------------------|---|

- b. Reconstruction or replacement of existing sources of air contaminants; or
- c. New sources or modifications or relocations of existing sources resulting in a potential for increased emissions, after legally enforceable offsets, of less than 100 tons per year, before controls, of each categorically limited air contaminant, unless an analysis is required pursuant to s. 144.393 (2) (d), Stats.
2. Dredging Permits and contracts for maintenance dredging and utility trench crossings in navigable waters and for dredging in non-navigable waters which does not involve draining or filling of wetlands pursuant to s. 30.20, Stats.
3. Dams Permits to construct or raise and enlarge in navigable waters and approval of plans to construct in non-navigable waters where the dam holds less than 6 feet and the pond holds less than 15 acre-feet at maximum water storage elevation; plan approvals of dams permitted in navigable waters; and transfers of ownership of existing dams; pursuant to ch. 31, Stats.
4. Enlargement or Alteration of Waterways Permits for activities involving unconnected waterways and grading, pursuant to s. 30.19, Stats., unless related to extraction of minerals aggregates or involving filling or draining of wetlands.
5. Sewer Extension Plan Approval Department approval pursuant to s. 144.04, Stats., for extensions of wastewater collection systems except for those meeting one or more of the criteria listed under s. NR 150.03 (2) (d)5.
6. WPDES Permits Permits for existing discharges pursuant to s. 147.02, Stats.; modifications of permits pursuant to s. 147.03, Stats., for existing discharges not resulting from activities to increase production capacity at existing facilities and which do not involve a change in receiving water; discharges covered by a general discharge permit; and discharges from Type III dredging operations.

NR 150

7. **Water Level Control** Establishment of new levels and approval of temporary drawdowns of controlled lakes and flowages where the dam holds a maximum head of less than 6 feet and the pond holds less than 15 acre-feet at maximum water storage elevation; establishment of historic levels for controlled lakes and flowages; and approvals of temporary drawdowns to relieve conditions which are unsafe or dangerous to life, health, or property; pursuant to ss. 31.02 and 31.19, Stats.
8. **Surface Water Diversion** Permits to divert water pursuant to s. 30.18 (1) (b), Stats., for agricultural and irrigation purposes.
9. **Fills or Structures Below the Ordinary High Water Mark** Permits for structures other than groins, breakwaters, jetties, and new boathouses, pursuant to s. 30.12 (2) (a), Stats., and for sand blankets, fish cribs, and riprap, pursuant to ss. 30.12 (2) (b), (c) and (d), Stats.
10. **Pesticide Use** Permits issued pursuant to ss. 94.67 to 94.71, Stats., to prevent or relieve conditions which are unsafe or dangerous to life or health.
11. **Wastewater Plan Approvals** Plan approval pursuant to s. 144.04, Stats., for new municipal and industrial wastewater facilities which will not result in development of a new site or which are for the purpose of bringing an existing discharge into compliance with applicable standards.
12. **Solid Waste Disposal** Approvals of site feasibility reports for new or modified solid waste storage sites and facilities, transfer facilities, incinerators, air curtain destructors, and salvage yards, pursuant to ss. 144.44 and 144.64, Stats.; and one-time disposal approvals issued pursuant to s. 144.44, Stats.
13. **Channel Changes** Issuance of permits to change the course of a navigable stream pursuant to s. 30.195, Stats., except where related to extraction of minerals or mineral aggregates.
14. **Municipal Wastewater Facilities Plans** Approval of facilities plans, pursuant to s. NR 110.08 (1), Wis. Adm. Code, for reviewable projects which will not increase the capacity of an existing treatment facility.

15. Municipal Wastewater Sludge Disposal Approval of sludge storage facilities, pursuant to s. 144.04, Stats., being constructed at the wastewater treatment plant site and approval of land spreading of sludge, pursuant to s. 147.02 (1), Stats., except for high rate disposal.
16. Flood Plain Zoning Approvals of ordinances and amendments pursuant to s. 87.30, Stats.
17. Bridges and Culverts Authority to construct private bridges and culverts across navigable waters pursuant to ss. 30.10, 30.12, and 31.23, Stats.
18. Air and Water Quality Monitoring Department acceptance of air and water quality monitoring by private applicants pursuant to ss. 144.09 and 144.31 (2) (f), Stats.
19. Forest Crop Law Entries and Withdrawals Entry or withdrawal of lands from the program pursuant to ss. 77.02 and 77.10, Stats.
20. Woodland Tax Law Entries and Withdrawals Entry or withdrawal of lands from the program pursuant to s. 77.16, Stats.
21. Metallic Mineral Exploration License Issuance of licenses to individual explorers.
22. Shoreland Zoning Approval of ordinances and amendments pursuant to ss. 59.971 and 144.26, Stats.
23. Flood Plain Delineation Approvals of hydraulic and hydrologic data and studies related to delineation of the flood plain or floodway.
24. Pierhead Lines Approvals of pierhead line ordinances and maps adopted pursuant to s. 30.13, Stats.
25. High Capacity Well Permits Permits and approvals issued pursuant to s. 144.025 (2) (c), Stats.
26. Abandonment of Ways to Water Approval of resolutions or ordinances adopted by a municipality pursuant to s. 80.41, Stats.
27. County Forest Mineral Prospecting Agreements Approvals of agreements entered into by counties pursuant to s. 28.11 (3) (i), Stats., to prospect for ore or minerals on county forest lands.
28. Well Drillers Permits Issuance of permits pursuant to s. 162.04, Stats.
29. Private Wells Determinations of compliance with ch. NR 112, Wis. Adm. Code.

NR 150

- | | | |
|-----|--|---|
| 30. | Water Supply Systems Plan Approvals | Plan approvals pursuant to s. 144.04, Stats., for public water main extensions and waterworks. |
| 31. | Water Quality Certification | Certification or waiver of the right to certify under s. 401 (a), 33 USC 1341. Exceptional cases such as those involving filling of wetlands may require further analysis. |
| 32. | Administrative Procedural Regulations | Actions under ss. 227.014 (2) (b) and 227.09 (1), Stats. |
| 33. | Aquatic Nuisance Control | Operations at state fish hatcheries and permits pursuant to s. 144.025, Stats. |
| 34. | Operator Certification: Waterworks, Sewage Treatment Plants and Industrial Wastewater Treatment Facilities | Issuance of certification to operators of waterworks and wastewater treatment plants. |
| 35. | Solid Waste Open Burning | Licenses issued pursuant to s. 144.436, Stats., and approvals of wood burning facilities pursuant to ch. NR 180, Wis. Adm. Code |
| 36. | Solid Waste As-Built Approvals | Approvals of existing facilities as built pursuant to ch. NR 180, Wis. Adm. Code. |
| 37. | Solid Waste Exemptions | Exemptions from licensing granted pursuant to s. 144.44 (7), Stats. |
| 38. | Solid Waste Long Term Care | Approvals to terminate long term care issued pursuant to s. 144.441 (2) (c) and (d), Stats. |
| 39. | Waste Management Fund | Reduction or waiver of fees pursuant to s. 144.441 (3) (a), Stats., and use of waste management fund moneys pursuant to s. 144.441 (3) (d), Stats. |
| 40. | Solid Waste Local Approvals | Waiver of local approvals of solid waste sites or facilities pursuant to s. 144.445 (2) (a), Stats. |
| 41. | Solid Waste Variances | Variances from licensing requirements pursuant to s. 144.64 (1) (b), Stats. |
| 42. | Industrial Pre-Treatment | Approval of plans for pre-treatment of industrial wastes from existing contributors which will be discharged through a municipal wastewater treatment facility, pursuant to s. 144.04, Stats. |

- | | | |
|-----|--|---|
| 43. | Bait Dealers Permit | Issuance of permits pursuant to s. 29.137, Stats. |
| 44. | Birds or Animals Causing Damage | Permits to eradicate or control issued pursuant to ss. 29.594 to 29.596, Stats. |
| 45. | Boat Registration | Registration pursuant to ss. 30.50 to 30.80, Stats. |
| 46. | Burning Permits | Issuance of permits in intensive and extensive fire control districts to issue permits pursuant to s. 26.12, Stats. |
| 47. | Children's Fish Pond License | Issuance of licenses pursuant to ss. 23.09 and 23.11, Stats. |
| 48. | Scientific Collectors Permits | Issuance of permits pursuant to s. 29.17, Stats. |
| 49. | Commercial Fishing License | Issuance of licenses pursuant to ss. 29.30 to 29.37, Stats. |
| 50. | Special Deer Dealer License | Issuance of licenses pursuant to s. 29.578, Stats. |
| 51. | Deer Hunting Party Permits | Issuance of permits pursuant to s. 29.107, Stats. |
| 52. | Hunter's Choice Permits | Issuance of permits pursuant to s. 29.108, Stats. |
| 53. | Competitive Events on Department Lands | Issuance of permits pursuant to ss. 23.09 to 23.11 and 29.255, Stats. |
| 54. | Wholesale Fish Dealers License | Issuance of licenses pursuant to s. 29.135, Stats. |
| 55. | Rough Fish Transport Permits | Issuance of permits pursuant to s. 29.47, Stats. |
| 56. | Sport Fishing Licenses | Issuance of licenses pursuant to ss. 29.14 to 29.147, Stats. |
| 57. | Fur Dealers License | Issuance of licenses pursuant to s. 29.134, Stats. |
| 58. | Guide Licenses | Issuance of licenses pursuant to ss. 29.165 and 29.166, Stats. |
| 59. | Hunting Licenses | Issuance of licenses pursuant to ss. 29.10 to 29.12, Stats. |
| 60. | Private Game and Fur Farm and Shooting Preserve Licenses | Issuance of licenses pursuant to ss. 29.572 to 29.578, Stats. |
| 61. | Trapping Licenses | Issuance of licenses pursuant to s. 29.13, Stats. |

NR 150

- | | | |
|-----|---|--|
| 62. | State Park, Forest, and Trail Admission | Issuance of admission stickers and tags pursuant to s. 27.01 (2r), Stats. |
| 63. | Snowmobile Registration | Registration pursuant to s. 350.12, Stats. |
| 64. | Wildlife Exhibit Licenses | Issuance of licenses pursuant to s. 29.585, Stats. |
| 65. | Concession Agreements | Agreements allowing operation of concessions within state parks pursuant to s. 27.01, Stats. |
| 66. | Private Fish Management Permits | Issuance of permits pursuant to s. 29.513, Stats. |
| 67. | Private Fish Hatchery Permits | Issuance of permits pursuant to s. 29.52, Stats. |
| 68. | Wild Rice and Ginseng Licenses | Issuance of licenses pursuant to ss. 29.544 and 29.547, Stats. |
| 69. | Permits to Take Rough Fish | Issuance of permits pursuant to s. 29.625, Stats. |
| 70. | Serving Game to Guests | Issuance of permits pursuant to ss. 29.578 and 29.49, Stats. |
| 71. | Sturgeon Spearing Licenses | Issuance of licenses pursuant to s. 29.148, Stats. |
| 72. | Net and Set Line Licenses for Inland Waters | Issuance of licenses pursuant to ss. 29.30 and 29.37, Stats. |
| 73. | Net and Set Hook Licenses for Outlying Waters | Issuance of licenses pursuant to s. 29.33, Stats. |
| 74. | Net Licenses for Mississippi and St. Croix Rivers | Issuance of licenses pursuant to s. 29.34, Stats. |
| 75. | Slat and Trammel Net Licenses for the Mississippi River | Issuance of licenses pursuant to s. 29.343, Stats. |
| 76. | Set or Bank Pole Licenses | Issuance of licenses pursuant to s. 29.36, Stats. |
| 77. | Permits to Take, Export, Transport, Possess or Propagate Endangered Species | Issuance of licenses pursuant to s. 29.415 (6), Stats. |

- | | | |
|-----|--|---|
| 78. | Permits to Introduce Fish and Game | Issuance of permits pursuant to s. 29.535, Stats. |
| 79. | Certification of Municipal Fish Hatcheries | Certification pursuant to s. 29.536, Stats. |

(e) *Policy Recommendations*

- | | | |
|----|------------------------------|---|
| 1. | Board Policies | Policies proposed for natural resources board approval affecting personnel, administrative operating procedures, etc., and policies affecting department resource management and regulatory activities which are not a basic change in existing department practice or which, upon implementation, will not have material effects on the human environment. |
| 2. | County Forest Ten Year Plans | Approvals of plans covering management activities on county forests where the activities would be Type III actions if carried out by the department. |
| 3. | Long Range Plans | Plans or modifications of plans adopted or approved by the department that would not essentially pre-determine future individual department actions affecting the physical or biological environment. |

(f) *Facility and Maintenance Operations*

- | | | |
|----|------------------------------------|--|
| 1. | Chemical Treatment | Use of biocides at department hatcheries, animal rearing facilities, or nurseries unless public (navigable) waters are affected. |
| 2. | Refuges and Closed Areas | Established by the department for fish management, wildlife management or human safety. |
| 3. | Information and Education Programs | Conducted by department personnel in schools, with clubs, civic groups, etc., and at organized exhibitions. |
| 4. | Extension Services | Services performed by department personnel (e.g., technical advice in forestry, wildlife, land and water management, etc.). |
| 5. | Farming Operations | Activities on department lands, including sharecropping. |
| 6. | Fire Control Operations | Operations including training, educational programs and fire suppression. |

NR 150

7. Fish Hatchery Operations Procedures including spawning, hatching, disease control and rearing of both warmwater and coldwater fish species at department hatcheries and rearing ponds.
8. Road and Parking Lot Resurfacing Projects on department lands which do not entail a major change or extension.
9. Forest Nursery Operations Procedures including seed procurement, lifting and disbursing plants, and disease control.
10. State Game Farm Operations Procedures including hatching and rearing wildlife species.
11. Operations of the MacKenzie Environmental Center All education and maintenance activities.
12. Mechanical Removal of Rough and Deleterious Fish Activities by department personnel in public waters of the state.
13. Park Operations Activities and programs routinely conducted at department parks such as nature programs, campground operations, day use, and entertainment programs.
14. Routine Game and Fish Stocking Includes pheasant stocking programs, other special game management, excluding new exotics, and warmwater and coldwater fish stocking, excluding new exotics.
15. Repair and Maintenance Maintenance of existing department facilities to prevent or reduce deterioration or damage.

(g) *Other*

1. Forest Insect Control Application of chemicals to prevent or relieve conditions which are unsafe or dangerous to life or health.
3. Habitat Management Actions designed to improve fish and wildlife habitat including:
 - a. Pothole development,
 - b. Level ditching in wetlands,
 - c. Forest game habitat activities involving less than 60 acres,
 - d. "Trail" construction (wildlife management),

- e. Prescribed burning involving less than 160 acres,
 - f. Clearing of land involving less than 60 acres,
 - g. Water level control, and
 - h. Stream habitat improvement.
3. **Silvicultural Practices** Activities including tree planting, plantation thinning and aesthetic cutting, timber stand improvement, harvest (logging) and type conversion involving less than 120 acres per year and prescribed burning involving less than 160 acres on department lands.
4. **Research Projects** Projects conducted by the department which do not involve substantial land, air or water manipulation and research conducted in an office, library, computer facility and in the laboratory when there is no potential for material environmental effect outside the laboratory as a result of the conduct of the research.
5. **Legislation** Proposals for new programs that would not result in material effects on the human environment and for minor changes in existing programs.
6. **Inventories** Includes all surveys conducted by department personnel in the field for wildlife management, fish management, forestry, fire control, environmental protection, scientific and natural areas, and rare, threatened, or endangered plant and animal species.
7. **Gifts and Bequests** Money, land, equipment, services, etc., given to the department to promote activities to benefit natural resource programs.

(4) The following are not major actions significantly affecting the quality of the human environment and are exempt from the provisions of s. 1.11, Stats.:

(a) Issuance of special water pollution abatement orders pursuant to s. 144.025 (2) (d) 1., Stats.

(b) Issuance of temporary emergency orders pursuant to s. 144.025 (2) (d) 2; Stats.

(c) Issuance of orders to enforce agreements to control pollution of interstate waters pursuant to s. 144.025 (2) (j), Stats.

(d) Issuance of orders to abate or department abatement of nuisances under ss. 146.13 and 146.14, Stats., pursuant to s. 144.025 (2) (k), Stats.

(e) Issuance of orders to obtain specific operating results from or to require modifications to, extensions of or replacements of systems or plants which tend to create a nuisance or menace to health or comfort, pursuant to s. 144.025 (2) (r), Stats.

(f) Prohibition of the installation or use of septic tanks in areas where they would impair water quality, pursuant to s. 144.025 (2) (q), Stats.

(g) Department performance of actions ordered under ss. 144.025 (2) (d) and (r), Stats., in cases of noncompliance and collection of the costs from the noncomplying owner, pursuant to s. 144.025 (2) (s), Stats.

(h) Issuance of orders to discontinue the manner or site of refuse disposal in areas subject to flooding, pursuant to s. 144.045, Stats.

(i) Issuance of orders pursuant to s. 144.05, Stats., to owners of treatment plants to file plans for construction necessary to comply with the limitations imposed upon discharges of effluent in counties exceeding 240,000 inhabitants into specified lakes.

(j) Issuance of orders to connect a sewerage system to that of an adjoining town, village or city, pursuant to s. 144.07, Stats.

(k) Issuance of orders pursuant to s. 144.31 (2) (b), Stats., to effectuate the purposes of ss. 144.30 to 144.426 and 144.96, Stats., pertaining to air quality.

(l) Activities pursuant to ss. 144.423, Stats., to correct violations of ss. 144.30 to 144.426 and 144.96 pertaining to air quality.

(m) Issuance of orders to reduce or discontinue air contaminant emissions in the event of an emergency, pursuant to s. 144.424, Stats.

(n) Requiring corrective measures upon determination that a local air pollution control program is inadequate, pursuant to s. 144.41 (4), Stats.

(o) Issuance of orders pursuant to s. 144.83 (4) (c), Stats., directing particular prospectors or operators to comply with ss. 144.80 to 144.94, Stats.

(p) Issuance of orders to mine operators to comply with mining and reclamation plans, pursuant to s. 144.91 (1), Stats.

(q) Performance of actions ordered under s. 144.91 (1), Stats., in the event of noncompliance, pursuant to s. 144.91 (2), Stats.

(r) Issuance of orders to abate or remove a nuisance, and upon non-compliance to abate or remove the nuisance, pursuant to s. 146.14 (1), Stats.

(s) Issuance of orders, pursuant to s. 162.03 (1) (c), Stats., to modify or discontinue the use of any well if found to be contaminated.

(t) Adoption of a shoreland zoning ordinance, pursuant to s. 59.971, Stats., for counties that fail to adopt an adequate ordinance.

(u) Adoption of a flood plain zoning ordinance, pursuant to s. 87.30, Stats., for municipalities that fail to adopt an adequate ordinance.

(v) Issuance of orders, pursuant to s. 60.315, Stats., establishing a town sanitary district when a town fails to do so and private sewage disposal systems or private water supply systems are located as to tend to cause a menace to health or comfort or pollution of surface waters.

(w) Issuance of orders, pursuant to ss. 30.03, 30.195 (5) and (6), 31.02, 31.18, and 31.19, Stats., directing performance or discontinuance of acts necessary to protect public rights or interest in navigable waters.

(x) All enforcement procedures and actions by department conservation wardens, special wardens, etc.

(y) Issuance of orders pursuant to s. 144.975, Stats.

(z) Adoption or approval of enforcement plans to meet established standards or policies.

(za) Appropriation requests initiated by the department or developed on request by the department.

(zb) Adoption of emergency rules by the natural resources board pursuant to ss. 227.014 and 227.027, Stats.

(zc) Initial licenses or renewals of licenses and approvals of engineering plans or plans of operation for any solid waste site or facility pursuant to ss. 144.44 and 144.64, Stats.

(zd) Issuance of enforcement orders pursuant to ss. 144.72 and 144.73, Stats.

(ze) Issuance of orders or department actions pursuant to ss. 144.76 (4) (a) and (b) and 144.76 (7), Stats.

(zf) Waivers of compliance issued to prevent emergency conditions pursuant to ss. 144.44 (7) and 144.64 (1) (c), Stats.

(zg) Alteration, suspension, or revocation of permits pursuant to s. 144.395, Stats., except as provided in s. 144.395 (1) (e), Stats.

(5) Unless the department determines otherwise, substantial changes in previous Type II actions will require an EA.

(6) All actions not listed under ss. NR 150.03 (1), (2), (3) or (4) shall be evaluated on a case-by-case basis for determination of type.

(7) Where a proposed department action has been included in a previous EIS or EA complying with s. 1.11, Stats., and this chapter, the department shall consider the relevance of the previous EIS or EA to the proposed action.

(8) Where an EA is prepared on a proposal involving multiple regulatory actions, it must address each of the approvals and indicate the conformance of the project with applicable statutes, rules, and regulations.

(9) When a Type III proposal involves identifiable impacts on habitat for threatened or endangered species or on unique, scarce or ecologically significant habitat types or ecosystems, the need to prepare an EA is substantially increased.

NR 150

(10) A copy of the action type list will be maintained for public review at the department's district offices and at the central office in Madison.

(11) The action type list will be periodically updated to reflect a change in department programs or a change in the categorization of actions between Types I, II, and III.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am., Register, February, 1981, No. 302, eff. 3-1-81.

NR 150.04 Determination of need for an EIR or EIS. (1) Upon the filing of an application with the department for permission to proceed with an action, the department shall determine the need for preparing an EIS. During the early planning stages the department shall also determine the need for preparing an EIS on its sponsored actions. The action type list will be used to determine the category of the proposed action.

(2) If the department determines that an EIR is needed to assist in making an environmental analysis of a proposed regulatory action, the person seeking permission shall be notified of this determination by letter from the department within 30 days after the department has received the request for permission. The person seeking permission shall provide such a report within an agreed time after consultation with the department.

(3) Prior to making formal application, any person considering a project that will require department permission may provide the department with a preliminary description of the proposed project. The preliminary project description shall include: the concept of development, a description of major facilities and anticipated pollutant discharges, the specific location or locations being considered for the project, and a request that the department make a preliminary determination on the need for an environmental impact report. Upon receipt of such a request, the department shall, based on the information provided, within 30 days provide the person with a list of department authority, permits and approvals that may be required, other available information that may affect the feasibility of the proposed project, and a preliminary determination on the need for an EIR. A final determination will not be made until formal applications are submitted to the department in accordance with sub. (2).

(4) The department may require an EIR if the area affected exceeds 40 acres, or the cost of the proposed action exceeds \$25,000. In determining the need for an EIR, the department will consider:

- (a) The scope and complexity of the proposed action;
- (b) The information available to the department;
- (c) The concerns of persons affected by the proposed action;
- (d) The effect of the proposal on the public interest.

(5) The department may hold a public hearing on the applicant's EIR to gather additional information for determining the significance of the proposed action and its potential environmental impacts.

(6) In determining whether a Type II action is major and whether or not the action will significantly affect the quality of the human environment, the department shall base its decision on an EA which shall contain the following information:

(a) A brief description of the proposed action including maps and graphs if appropriate.

(b) A brief description of those factors in the human environment most directly affected by the proposed action.

(c) A brief evaluation of the most significant primary and secondary environmental effects, including socio-economic effects, that would result if the proposal is implemented.

(d) A brief study, development and description of reasonable alternatives to the proposed action and a brief evaluation of the significant environmental effects that are different than the anticipated impacts of the proposed action.

(e) A listing of other agencies or groups contacted and the comments of, and other pertinent information from, the agencies and groups.

(f) An evaluation section which contains brief discussions of the specific factors in this paragraph. If the proposed action will lead to any of these results, the need to prepare an EIS is increased.

1. Stimulation of secondary (indirect) effects.
2. Creation of a new environmental effect.
3. Impacts on geographically scarce environmental features.
4. Precedent-setting nature of the action.
5. Significant controversy associated with the action.
6. Conflicts with official agency plans or local, state, or national policy.
7. Cumulative impacts of repeated actions of this type.
8. Foreclosure of future options.
9. Direct or indirect impacts on ethnic or cultural groups.

(7) Where proposed actions are likely to be repeated on a recurring basis or where they have relevant similarities such as common timing, impacts, alternatives, methods of implementation, or subject matter, a generic EA may be prepared. The department shall, when addressing a single action already covered by a generic EA, consider the relevance of the generic EA to the specific action.

(8) (a) The EA shall be prepared by the department, or shall be prepared jointly with another agency, and shall include a preliminary recommendation on the need for an EIS. Except for EA's for proposed administrative codes and on projects where statutory review deadlines preclude, the department shall develop a news release for each EA to include the information in subds. 1. through 5. When deemed appropriate by the department, a legal notice required under another statute and containing the information in subds. 1. through 5. may be used in lieu of a news release.

1. The name of the project and project sponsor.
2. A brief description of the project including location.
3. The department's preliminary determination on the need for an EIS.
4. A contact within the department where copies of the EA can be obtained and to respond to questions.
5. A date by which the department will receive and consider comments before finalizing its decision on the need for an EIS.

(b) The department shall mail the news release or legal notice to appropriate news media in the vicinity of the proposed action.

(c) Following the deadline for receipt of public comment on the EA, the appropriate district director, bureau director or designee shall review the EA, consider all public comments, make modifications as required and approve the EA. A public hearing may be held to receive further public input and aid in the review of and decision on the need for a EIS. The director, bureau of environmental impact or designee shall review and sign the document indicating the department's compliance with s. 1.11, Stats.

(d) The department's determination on the need for an EIS becomes final upon signing by the director, bureau of environmental impact or designee.

(9) The director, bureau of environmental impact shall establish and periodically update a mailing list to include all individuals, organizations and agencies that have requested notification of all EA's. On a regular basis the department shall mail a list of environmental assessments to those on the assessment notification mailing list.

(10) If a finding is made in the EA that no EIS is required for a proposed Type II action, the environmental review is complete and the original EA shall then be filed in the Madison, Wisconsin, office of the department as a finding of no significant impact. A copy of the EA shall also be filed in the appropriate area, district or bureau office. The EA is a public record which is available for review upon request.

(11) If a finding is made in the EA that an EIS is required for a proposed Type II action, the department shall prepare a DEIS and an FEIS.

(12) In those cases where a person is seeking permission to proceed with an action, the department shall make its determination on the need for an EIS within 45 days after the department has received all information necessary for that determination. If the department determines that an EIS will be prepared, the person seeking permission shall be notified of this determination by letter from the department. The letter shall include estimated time schedules and other pertinent information relating to the EIS process. Such notification may occur as part of a scoping process under s. NR 150.06.

(13) When the department determines that a proposed action will require an EIS and that the proposed action will involve one or more state or federal agencies, the lead agency will be determined through

interagency consultation. A joint environmental assessment may be used by the department to aid in reaching its independent decision on the need for a EIS. A written agreement may be developed with those agencies which have a major responsibility in or are significantly affected by the proposed action. The written agreement will define the responsibility of each agency in the development of a single EIS on the proposed action and will outline the procedures to be used in the regulatory process.

(14) An application or request for permission shall not be considered complete until s. 1.11, Stats., has been fully complied with.

(15) Determinations of the department except those under s. NR 150.04 (3), regarding the need for an EIS or EIR, or on compliance with WEPA, shall be final and reviewable orders of the department.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am., Register, February, 1981, No. 302, eff. 3-1-81.

NR 150.05 Contents and departmental acceptance of an EIR. (1) When the department requests an EIR from a person seeking permission for a proposed action, it shall notify the person in writing and provide instructions on format, required content, level of detail and number of copies to be submitted.

(2) Upon submission of the EIR by the person seeking permission, the department shall review the report to determine if it complies with the request in the letter of instruction. The department shall make this determination and shall notify the person seeking permission in writing within 60 days after receipt of the report. If the department finds that the EIR does not contain reasonable information to form a definitive picture of the proposed action and its environmental effects, additional information will be requested from the person seeking permission.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 150.06 Scoping. (1) As soon as possible after the decision to prepare an EIS, the department shall inform the public and affected agencies that an EIS will be prepared and that the process of identifying potential major issues (scoping) is beginning.

(2) The scoping process shall include, to the extent possible, affected federal, state and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons. The process may consist of meetings, hearings, workshops, surveys, questionnaires, inter-agency committees, or other appropriate methods or activities, and may be integrated with other public participation requirements.

(3) The department shall use the scoping process to accomplish any of the following:

(a) Determine the scope and the significant issues to be analyzed in depth in the EIS.

(b) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review. This will narrow the discussion of these issues in the EIS to a brief presentation of why they will not have a significant effect on the human environment or a reference to their coverage elsewhere.

Register, February, 1981, No. 302
Environmental Protection

(c) Allocate assignments for preparation of the EIS among the lead and cooperating agencies.

(d) Set page limits on environmental documents.

(e) Set a time schedule for document preparation and opportunities for public involvement.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr., Register, February, 1981, No. 302, eff. 3-1-81.

NR 150.07 Contents of an EIS. (1) When an EIS is required, a DEIS and FEIS shall be prepared by the department or prepared for the department under contract by a consultant with supervision and final editorial review by the department. The DEIS shall emphasize significant environmental issues identified during the scoping process. The FEIS shall be based in part upon comments received on the DEIS or EIR and on information received from other sources. An EIS shall substantially follow the regulations issued by the president's council on environmental quality, 40 CFR 1500-1508, and shall provide analysis of the environmental and economic implications of a proposed action contemplated by the department. An EIS shall include:

(a) A description of the proposed action and of the affected environment, including the project location, type of facility, time schedules, maps and diagrams deemed relevant, and other pertinent information which will adequately allow an assessment of the potential environmental impact by commenting agencies and the public.

(b) The probable impact of the proposed action on the natural and socioeconomic environment. An evaluation will be made of the positive and negative effects of the proposed action as it relates to the local environment. Secondary as well as primary consequences to the environment will be included wherever possible. This section shall also include an evaluation of the archeological, architectural and historical significance of the site and structures therein. An analysis shall also be made of the energy impacts of the proposed action.

(c) Alternatives to the proposed action, including a rigorous exploration and objective evaluation of the environmental impacts of all reasonable alternatives, particularly those that might avoid all or some of the adverse environmental effects of the proposed action. Consideration will be given to the economic costs and benefits and energy impacts of each alternative wherever possible.

(d) Probable adverse environmental effects which cannot be avoided should the proposal be implemented. Protective and mitigative measures to be taken as part of the proposed action will be identified.

(e) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity. The EIS will describe the extent to which the proposed action involves tradeoffs between short-term economic gains at the expense of long-term environmental productivity or vice versa, and the extent to which the proposed action forecloses future options.

(f) Significant irreversible and irretrievable commitments of resources that would be involved in the proposed action if implemented,

Register, February, 1981, No. 302
Environmental Protection

including a statement identifying the extent to which the proposed action irreversibly curtails the range of potential uses of the environment.

(g) An assessment of economic impact, including a consideration of the economic advantages and disadvantages, where these may be expected to occur. This consideration shall address benefits as well as costs to the public and private sectors. Depending on the type of action being considered, the economic impact analysis may vary from a few sentences to an extensive report.

(h) An evaluation of the impacts of the proposed action on agricultural land. Where condemnation authority will be sought by the department or project sponsor pursuant to s. 32.095, Stats., the evaluation shall conform to rules or guidelines of the department of agriculture, trade, and consumer protection.

(i) A summary of the scoping process used and the major issues identified for detailed analysis in the EIS.

(j) Any other related analysis required under another rule, statute or federal regulation or law which does not conflict with the purpose of the EIS.

(2) The FEIS shall be an analysis document that enables environmental and economic factors to be considered in the development of a proposed action. It shall be considered by the department in the decision-making process.

(3) An EIS is not a document of justification. Furthermore, disclosure of adverse environmental effects shall not necessarily require that a proposed action be denied or terminated.

(4) EIS's shall be written in plain language and should use appropriate graphics to aid decision-makers and the public. Where appropriate, an EIS may be combined with other required environmental or planning documents. The text of FEIS's shall normally be less than 150 pages and shall normally be less than 300 pages for proposed actions of unusual magnitude or complexity.

(5) Where proposed actions are likely to be repeated on a recurring basis or where they have relevant similarities such as common timing, impacts, alternatives, methods of implementation, or subject matter, a generic EIS may be prepared. The department shall, when addressing a single action already covered by a generic EIS, examine the relevance of the generic EIS to the specific action.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. Register, February, 1981, No. 302, eff. 3-1-81.

NR 150.08 Distribution and review of the DEIS and FEIS. (1) DISTRIBUTION AND REVIEW OF THE DEIS. (a) Copies of the DEIS shall be distributed as follows:

1. The governor's office.
2. State, federal, and local governmental agencies having special expertise, interest or jurisdiction.
3. Regional and county planning agencies located within the proposed project or action area.

4. Offices of the department located in the vicinity of the proposed project or action area and the department's central office in Madison.

5. Libraries:

a. For proposed actions affecting a local area: the nearest library. In addition, the county clerk or town clerk will be requested to make the document available in the county courthouse, city hall or town hall.

b. For projects of regional importance: public libraries with a geographic distribution which provides public access without undue travel.

c. Projects having statewide significance: public libraries providing reasonable access by the individuals that would be potentially affected by the proposed action.

6. The applicant (for activities requiring permission).

(b) Copies of the DEIS shall also be provided to any individual or group requesting a copy. A charge may be assessed to cover reproduction and handling costs.

(c) Notice of availability of the DEIS. 1. An announcement sheet giving a brief description of the proposed action, description of the administrative procedures to be followed, the date by which comments on the DEIS are to be submitted to the department, and location where copies of the DEIS are available for review will be circulated as follows:

a. All local and regional units of government which have jurisdiction over the area that may be affected by the proposed action. A request will be made for posting the announcement sheet at the place(s) normally used for public notice.

b. Local and regional news media in the area affected.

c. Groups, clubs, committees, or individuals which have demonstrated an interest and have requested receipt of this type of information.

d. All participants in the scoping process not covered in subpar. a. through c.

(d) Period of time for comment on the DEIS. 1. A minimum of 45 days from the date the DEIS is mailed shall be allowed for the receipt of comments from state, federal and local agencies and the public. Depending upon the length and complexity of the DEIS, the department may extend the initial review period up to a total of 90 days. A reasonable request for extension, up to 15 days beyond the initial review period, may be granted by the department for the review of the DEIS.

2. If the department determines that a review period of less than 45 days will suffice for the DEIS, the department may limit the review period to no less than 20 days. The DEIS, announcement sheet, public notices and news releases shall call attention to the reduced review period and shall specify the date by which comments on the DEIS must be submitted to the department if they are to be considered in developing the FEIS.

(e) If other statutory time limits for department action conflict with the comment and review procedure set out in this subsection, the procedure may be adjusted so long as agency and public input is assured.

(2) **DISTRIBUTION AND REVIEW OF THE FEIS.** (a) The FEIS shall be distributed in the same manner as the DEIS.

(b) A charge may be assessed to individuals or groups requesting the FEIS to cover reproduction and handling costs.

(c) The availability of the FEIS will be announced through a notice of public hearing or through an announcement sheet similar to the announcement of the availability of the DEIS.

(d) **Period of time for comment on the FEIS.** 1. A period of not less than 30 days and not more than 90 days from the date the FEIS is mailed, depending on the length and complexity of the FEIS, shall be allowed for receipt of comments from state and federal agencies and the public.

2. If other statutory time limits for department action conflict with the comment and review procedure set out in this subsection, the procedure may be adjusted so long as agency and public input is assured.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. Register, February, 1981, No. 302, eff. 3-1-81.

NR 150.09 Public hearing 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 not less than 30 days after its issuance. The location and notice of the meeting shall be as provided in sub. (2) (b) and (c).

(2) **FEIS 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 FEIS prior to making its decision. The hearing shall be held not less than 30 days after issuance of the FEIS. The FEIS shall be entered into the record of the hearing. Comments may be received and testimony taken on the action or proposal and 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 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. At least 25 days prior to the hearing, a class I notice as defined in ch. 985, Stats., shall be published in a newspaper circulated in the area 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 FEIS INFORMATIONAL HEARING.** After the hearing in sub. (2), the department shall carefully review the hearing record and summarize the comments received on the FEIS 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 FEIS 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 FEIS hearing is published under sub. (2) (c) 2. The notice under sub. (2) (c) 2., published in conformance with sub. (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 FEIS 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 FEIS. Motions shall be limited to those portions of the FEIS 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 FEIS not objected to by motion in par. (b) shall be admitted into evidence at the contested case hearing.

2. The portions of the FEIS 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 FEIS 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 FEIS.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. Register, February, 1981, No. 302, eff. 3-1-81.

NR 150.10 Interagency procedures on proposed actions involving NEPA or WEPA. (1) Where another state or federal agency has concurrent responsibility with the department for a proposed Type II action, a joint environmental assessment may be prepared with the other state or federal agency provided the assessment meets the requirements of this chapter. The department shall make an independent judgment on the need for an EIS in accordance with this chapter.

(2) Where a proposed action involves a federal or other state agency approval or decision and it has been determined that an EIS must be prepared in accordance with NEPA or WEPA, the WEPA requirement for a separate department EIS shall be waived if:

(a) A joint EIS is prepared.

(b) After review of the other state or federal EIS by the department, it appears that the requirements as to content of the EIS prescribed in s. 1.11, Stats., and this chapter have been met; and the EIS was developed and prepared through appropriate participation by the department with the other agencies in a coordinated effort to satisfy the requirements of NEPA or WEPA. The following shall aid in determining the appropriate participation required for waiver of a separate WEPA EIS:

1. Where the department action is immediately related to a major purpose or function of a proposed project with major and significant environmental impacts, substantial participation in the EIS is required.

2. Where the department action is not immediately related to a major purpose or function of the proposed project or where the proposed project does not have major and significant environment impacts, the degree of department participation shall be commensurate with the relationship of its action to the proposed project and the significance of the proposed project's impacts on department areas of responsibility.

(3) If the EIS appears to comply with the requirements of WEPA and this chapter, public hearings shall be held in accordance with this chapter unless they are held in Wisconsin by the lead agency with effective participation by the department.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. Register, February, 1981, No. 302, eff. 3-1-81.

NR 150.105 Review of and comment on an EIS. (1) As required by s. 1.11 (2) (d), Stats., and federal regulations promulgated by the president's council on environmental quality, 40 CFR 1500-1508, the depart-

Register, February, 1981, No. 302
Environmental Protection

ment will receive copies of EIS's prepared by other state and federal agencies. The department shall to the extent possible review and comment on each relevant EIS 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 EIS.

(2) The department's review of other agencies' EIS's should be used to:

(a) Convey the department's perspective on the proposed action and its relation to areas of department concern by virtue of jurisdiction or expertise;

(b) Assist federal and state agencies in meeting the objectives of NEPA and WEPA;

(c) Provide the department's analysis of the potential environmental impacts of the proposed action;

(d) Coordinate the department's regulatory or resource management involvements with the proposal;

(e) Provide a mechanism for the resolution of environmental conflicts where appropriate; and

(f) Provide technical assistance to federal, state, regional, and local government agencies to aid in their determination of the environmental consequences of their proposed actions.

(3) (a) The department's comments on an EIS should reflect the total environmental responsibilities of the department, especially in those cases where the basic nature of the EIS indicates a need for a coordinated multi-program response. The department's comments should strive to stimulate appropriate consideration of primary and secondary environmental effects by other agencies in their decision-making processes.

(b) Comments should stress fundamental environmental issues and should be of a constructive nature, suggesting, where possible, not only what should be improved, but also discussing alternatives warranting consideration.

1. The review of the DEIS should address both the environmental impact of the action and the adequacy of the information presented in the DEIS. Comments on the adequacy of the document are to assist the originating agency in developing a comprehensive impact analysis in the FEIS.

2. Comments on an EIS or on a proposed action shall be as specific as possible and may address either the adequacy of the EIS process or the merits of the alternatives discussed or both.

3. When the department criticizes a lead agency's predictive methodology, the department should describe the alternative methodology which it prefers and why.

4. The department shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or

consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the DEIS's analysis of significant site-specific effects associated with the granting or approving of necessary permits, licenses, or entitlements.

5. When the department expresses reservations or concerns about a proposal on grounds of environmental impacts, it shall specify the measures considered necessary to resolve such reservations or concerns.

Histor: Cr. Register, February, 1981, No. 302, eff. 9-1-81.

NR 150.11 Environmental impact statement charges. (1) In accordance with s. 23.40, Stats., the department will charge a fee for the preparation of an EIS on actions requiring permission from the department including, upon agreement with the person proposing the action, a charge for preapplication services. This section shall not apply, however, to applications of municipalities, as defined under s. 345.04 (1) (a), Stats., or to related environmental impact statements.

(a) Any person as defined in s. NR 150.02 (19), with the exception of municipalities, state agencies, departments, boards and commissions included in ch. 15, Stats., and the federal government, who files an application for a permit, license or approval granted or issued by the department, shall include with the application an estimate of the cost of the project or proposed action when deemed necessary by the department.

(b) In determining the estimated cost, the applicant shall include both structural and nonstructural costs such as, but not limited to:

1. Land and land rights
2. Structures, appurtenances and improvements
3. Project facilities and equipment
4. Site preparation
5. Labor costs
6. Technical costs (e.g., architectural and engineering design and biological data collection)
7. Financial costs (i.e., escalation costs and interest charges)
8. Other costs necessary to complete the project

(c) In determining the estimated cost, costs shall be projected to the anticipated date of operation of the proposed project. If estimated project costs are required by the public service commission in conjunction with a proposed project or action, the format required by the commission may be used for supplying costs to the department.

(d) The department may seek such further information as it deems necessary to determine whether it must prepare an EIS under s. 1.11, Stats.

(e) If the department determines that an EIS shall be required for the proposed project or action in accordance with s. NR 150.04, it shall send a letter to the applicant stating its intent to prepare an EIS and requesting a certified statement of the estimated cost of the proposed project or

action. The following format will be used by the applicant to certify the estimated cost:

Department of Natural Resources
Bureau of Environmental Impact
Box 7921
Madison, Wisconsin 53707

Date _____

Gentlemen:

I hereby certify that the estimated cost of the (*name of proposed project or action*) is \$ _____ and that the itemized list of these costs which is attached to and made a part of this certification is based on current records of the (*name of applicant/company*) which are available for Department of Natural Resources inspection if required.

(*signature of responsible official*)
(*name and address of applicant/company*)

(f) 1. Unless the department determines otherwise, the estimated EIS fee costs are as follows:

a. For a proposed action or project whose estimated cost is 5 million dollars or less, the estimated fee shall be \$10,000.00.

b. For a proposed action or project whose estimated cost is more than 5 million dollars but less than 20 million dollars, the estimated fee shall be \$10,000.00 or .25% of the estimated cost, whichever is greater.

c. For a proposed action or project whose estimated cost is more than 20 million dollars but less than 100 million dollars, the estimated fee shall be \$50,000.00 or .15% of the estimated project cost, whichever is greater.

d. For a proposed action or project whose estimated cost is more than 100 million dollars, the estimated fee shall be \$150,000.00 or .10% of the estimated cost, whichever is greater.

2. When the department determines that the estimated EIS fee cost exceeds that specified under subd. 1. by more than 25% it shall, upon receipt of the certified statement of estimated project cost, notify the applicant by certified mail of the estimated full cost of preparation of the EIS.

(g) The department shall charge a fee based on the full cost of the preparation, including distribution, of the DEIS and FEIS incurred subsequent to the decision that an EIS is necessary and including the full cost of preapplication services provided by the department after execution of a preapplication services agreement. The full cost shall include the following:

1. Actual salary costs, based upon a rate burdened for leave time and calculated on a quarterly basis plus fringe benefits calculated at the previous year actual rate, for time spent by department staff for: preapplication services; coordination, problem identification and data collection leading to the submittal of an EIR by the applicant, if required; review of the applicant's EIR, if required; data collection and analysis leading to and including the preparation of the DEIS and FEIS; and the public hearings on the DEIS and FEIS.

2. Actual expenses for travel and supplies used in conjunction with activities specified in subd. 1.

3. The cost distributing the DEIS and FEIS to those parties or locations specified in s. NR 150.08 (1) (a).

4. The full cost of any consultant retained by the department to perform preapplication services, collect or analyze data, prepare the DEIS, or prepare draft portions of the FEIS for department use in developing the FEIS.

5. Administrative indirect costs to be calculated at the current approved department rate based on total direct costs less expenditures for equipment.

(h) The department shall not include in the EIS fee costs associated with the following:

1. Non-EIS related consultation and review of permit applications or plans for department approval, and associated public hearings.

2. EIS related department activities up to the amount of permit or plan review fees, if any, reimbursed by the applicant under another statute.

3. Department staff time spent on EIS related activities that are reimbursed by the federal government.

(i) The department shall establish accounting procedures that will allow actual costs for development of an EIS, including costs of preapplication services, on a project to be accurately determined.

(j) Following the department's determination that an EIS is required or subsequent to execution of a preapplication services agreement, the department may bill the applicant or person proposing the action as often as every 3 months for actual department costs incurred up to that time. The applicant shall remit to the department the full amount of any EIS fee invoice within 60 days of the date of the invoice. The department shall cease work on the EIS, including preapplication services, if the full amount of any EIS fee invoice is not paid within 60 days of the date of the invoice. The department shall determine the full amount of the EIS fee and notify the applicant within 30 days following the close of the FEIS hearing and bill the applicant for any unpaid portion of the fee. The applicant shall pay the entire fee prior to the department's determination on compliance with WEPA.

(k) If the final EIS fee determined by the department exceeds the estimated EIS fee by more than 25% the department shall provide the applicant with a written explanation of the additional costs. The department shall, if requested, permit the applicant to examine the department's records and accounting procedure regarding the applicant's project.

(l) If the applicant withdraws the applications for a proposed project or action for any reason once the process of preparing an EIS has been initiated or terminates a preapplication services agreement, the department shall determine actual cost incurred to the date of the withdrawal or termination and the applicant shall be responsible for those costs.

(m) Payment of fees for the preparation of an EIS or for preapplication services pursuant to s. 23.40, Stats., shall not be construed to imply department consent or approval of the proposed project or action; to commit the department in any way to grant or deny any permit, license, approval or authority; to limit in any way subsequent essential and approved modifications, future ordered changes and statutory obligations of the department to enforce criteria or standards of environmental quality; or to restrict the department in any way from acting or not acting upon the recommendations or certifications of any other federal, state, county or municipal government or agency or agent thereof.

(n) If it is found as a result of the public hearing process or by a court of law that the department has failed to comply with WEPA through deficiencies in the FEIS, the department may seek additional information from the applicant. Under these circumstances the applicant will not be charged an additional fee for the department's preparation of an addendum to the FEIS.

(2) The fees collected under this section shall be deposited in the general fund, except as otherwise provided by law.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. Register, February, 1981, No. 302, eff. 3-1-81.