

Chapter NR 150

WISCONSIN ENVIRONMENTAL POLICY ACT
PROCEDURES FOR DEPARTMENT ACTIONS

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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, 1.12, 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, investigation and consideration of energy conservation in major decisions which would significantly affect energy usage; 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; am. (2), Register, February, 1984, No. 338, eff. 3-1-84.

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, pur-

suit or procedure initiated by the department, including proposals for legislation, which may affect the quality of the human environment.

(2) "Adequate FEIS" means a final environmental impact statement that is prepared by the department or in accordance with s. NR 150.10 following preparation of a DEIS and public review that complies with the content requirements of s. NR 150.07 for an FEIS, which discloses reasonably foreseeable environmental impacts to the public and which, together with the FEIS hearing record, fully explores the reasonably foreseeable environmental consequences of the proposed action and its alternatives to a sufficient degree to permit a reasoned choice among the alternatives.

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

(4) "Appropriate participation" means effective participation by the department with another state or federal agency in preparation of a NEPA or WEPA EIS or EA including one or more of the following, but not limited to, preparation of portions of the EIS or EA 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 or EA, involvement in public participation activities and hearings, policy development and decision-making.

(5) "Compliance with s. 1.12, Stats., alleviation of energy shortages" means the satisfactory completion of an EA or EIS in which the department evaluates the impact on energy resources of a proposed department decision which would significantly affect energy usage, and department consideration of those energy impacts in making its final decision.

(6) "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.

(7) "Cooperating agency" means any state or federal 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.

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

(9) "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.

(10) "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).

(11) "EA" means environmental assessment. It is a documented brief but comprehensive analysis of a proposed Type II action to determine its

- a. Pass through a wetland area greater than 5 acres;
 - b. Tributary to a sewage system which experiences category 1 dry weather bypassing;
 - c. Involves a community with an annual growth rate of 6% or more;
 - d. Has a pipe diameter greater than 18 inches; or
 - e. Extension where the department determines that a potential exists for significant primary or secondary environmental impacts.
16. WPDES Permits Permits issued under s. 147.02, Stats., for new discharges to surface or groundwaters and substantial modifications of permits under 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, discharges from Type III dredging operations or the relocation of land spreading systems are excluded.
17. Wastewater Plan Approvals Plan approval under 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.
18. Wastewater Sludge Disposal Approval of sludge storage facilities under s. 144.04, Stats., not being constructed at the wastewater treatment plant site and of high-rate land spreading of sludges, under s. 147.02 (1), Stats.
19. Municipal Wastewater Facilities Plans Approval of facilities plans under s. NR 110.08 (1), for new municipal sewage treatment plants and for other reviewable projects which will increase the capacity of an existing treatment facility.
20. Industrial Pretreatment Plan approvals under s. 144.04, Stats., for industrial wastewater pretreatment facilities which:

- a. Result in new process wastewater contribution to a publicly owned treatment works (POTW), and are expected to discharge a toxic pollutant as defined in ch. NR 215, and are expected to have an average wastewater discharge flow greater than 1% of the current average annual flow of the POTW receiving the wastewater; or
 - b. Result in a new process wastewater contribution to a POTW, and are expected to increase the current average annual flow of the POTW receiving the wastewater by 5% or 50,000 gpd, whichever is greater.

- 21. Metallic Mining Permits to prospect issued under s. 144.84, Stats.; permits to mine issued under s. 144.85, Stats., for existing mines or expansions of existing mines; and permits to mine issued under s. 144.85, Stats., for new 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.

- 22. Solid and Hazardous Waste Feasibility Reports Report approvals under s. 144.44 (2) and (9), Stats., chs. NR 157, 180, 181 and 182 for:
 - a. New landfills or expansion of existing landfill with a new or additional design capacity of 50,000 cubic yards or more.
 - b. Noncontainerized storage facilities with a design capacity greater than 50,000 cubic yards or 100 tons per day (wet weight).
 - c. Any hazardous waste or PCB disposal facility except for those meeting the criteria listed under sub. (1) (b) 4.
 - d. Any metallic mining waste facility.

- 23. Solid Waste Plan of Operation Plan approvals under ch. NR 180 for transfer, processing or incinerator facilities with a design capacity of 100 tons per day (wet weight) or more based on at least 8 hours of operation each day.

11. Floodplain Zoning Approvals of ordinances and amendments under s. 87.30, Stats.
12. Shoreland Zoning and Wetland Mapping Approval of ordinances, wetland inventory maps and amendments under ss. 59.971, 61.351, 62.231 and 144.26, Stats.
13. Floodplain Studies Approvals of hydraulic and hydrologic data and studies related to delineation of the floodplain or floodway or to determine the effects of proposed developments under s. 87.30, Stats.
14. Aquatic Nuisance Control Permits under s. 144.025 (2) (i), Stats., except for mosquito larvaciding involving over 160 acres.
15. Sewer Extension Plan Approval Department approval under s. 144.04, Stats., for extensions of wastewater collection systems except for those meeting one or more of the criteria listed under sub. (2) (b) 15.
16. WPDES Permits Permits for existing discharges under s. 147.02, Stats.; modifications of permits under 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; discharges from the relocation of land spreading systems and discharges from Type III dredging operations.
17. Wastewater Plan Approvals Plan approval under s. 144.04, Stats., for the relocation of land spreading sites and 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.
18. Wastewater Sludge Disposal Approval of sludge storage facilities, under s. 144.04, Stats., being constructed at the wastewater treatment plant site and approval of land spreading of sludge, under s. 147.02 (1), Stats., except for high rate disposal.
19. Municipal Wastewater Facilities Plans Approval of facilities plans, under s. NR 110.08 (1), for reviewable projects which will not increase the capacity of an existing treatment facility.

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20. Industrial Pretreatment Approval of plans for pretreatment of industrial wastes under s. 144.04, Stats., except for those meeting the criteria in sub. (2) (b) 20.
21. Metallic Mining Certification of completion or partial completion of the reclamation plan and the release of reclamation bonds under s. 144.90, Stats.
22. Solid Waste Feasibility Reports Report approvals under s. 144.44 (2), Stats., and ch. NR 180, for:
- a. New landfills or expansion of existing landfills with a new or additional design capacity of less than 50,000 cubic yards.
 - b. Noncontainerized storage facilities with a design capacity of less than 50,000 cubic yards or 100 tons per day (wet weight).
 - c. Processing facilities and incinerators.
23. Solid Waste Plan of Operation Plan approvals under ch. NR 180, for:
- a. Transfer, processing or incinerator facilities with a design capacity of less than 100 tons per day (wet weight) based on at least 8 hours of operation each day.
 - b. Noncontainerized storage facilities and air curtain destructors.
24. Metallic Minerals Exploration License Issuance of licenses, certificates of completion, and bond releases to individual explorers under s. 144.832, Stats.
25. Construction Observation Reports Approval of reports for solid or hazardous waste facility under ch. NR 180 or 181.
26. One-Time Disposal Approval of facilities for one-time disposal of solid waste under s. NR 180.13.
27. Closure Plans Approval of plans for the closure of a solid or hazardous waste facility under s. NR 180.13 or 181.42 (8).
28. Solid Waste Open Burning Licenses issued under s. 144.436, Stats., and approvals of wood burning facilities under ch. NR 180.
29. Solid Waste Exemptions Exemptions from licensing granted under s. 144.44 (7), Stats., or ch. NR 180.

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| 30. | Hazardous Waste Variances | Variances and waivers from licensing requirements under s. 144.64 (3), Stats. |
| 31. | Solid Waste Management Plan | Final plan approvals under s. NR 185.07. |
| 32. | Engine Waste Oil Plans | Approval of informal plans of operation for collection and storage facilities under s. NR 183.07. |
| 33. | Waste Management Fund and Financial Responsibility | Actions under s. 144.441, Stats., for solid or hazardous waste disposal facilities. |
| 34. | Permit Alterations Exemptions and Variances | Permit extensions, alterations, variances, approvals and exemptions from emission limits under s. 144.396 (1) or 144.402, Stats., or ss. NR 154.02 (3) or (4), 154.06 (8) (a), 154.09 (1), 154.11 (6) (a) 1. b., 154.13 (4) (a) 5, (6) (a) 1. c. or (13) (d). |
| 35. | Local Air Pollution Control Programs | Actions under s. 144.401 or 144.41, Stats., for county air pollution control programs. |
| 36. | Emission Plans and Programs | Actions under s. NR 154.09 (1), 154.11, 154.12, 154.13 or 154.20 (2) (d) on RACT compliance plans, emission control action programs and maintenance, startup or shutdown emission plans or schedules. |
| 37. | Open Burning Methods; Habitat Management Burns | Approvals of methods under s. NR 154.10 (1) (i) or (k) or approval of prescribed burns for forest or wildlife habitat management under s. NR 154.10 (1) (c) for projects involving less than 320 acres. |
| 38. | Nonattainment Area Documents; Sources Affected | Issuance of documents defining, listing, describing or identifying nonattainment areas or air contaminant sources under s. NR 154.03 and s. 144.371, Stats. |
| 39. | Portable Source Relocation | Approval under s. NR 154.055 (2) and s. 144.391 (5), Stats., for portable sources of air contaminants. |
| 40. | Auto Emission Inspections | Certification or withdrawal of certification under s. 144.42, Stats., of counties where inspections are required. |
| 41. | Boathouse Repair Cost Certification | Certification of required maintenance and repair costs under ch. NR 325. |

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| 42. | 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. |
| 43. | Reports and Fees For Environmental Discharges. | Actions under s. 144.96, Stats., for effluent discharges and air emissions. |
| 44. | Air and Water Quality Testing and Monitoring | Department acceptance of air and water quality monitoring by private applicants under ss. 144.09 and 144.31 (2) (f), Stats., actions relating to air pollution source reporting, record-keeping, testing, compliance determination methods and instrumentation under s. NR 154.06 (2), (3), (5) and (6) and approval of reference and equivalent procedures for measuring air quality under s. NR 155.04. |
| 45. | Operator Certification: Waterworks, Wastewater Treatment Plants and Industrial Wastewater Treatment Facilities | Certification of operators of waterworks and wastewater treatment plants under s. 144.025 (2) (1), Stats., and ch. NR 114. |
| 46. | High Capacity Well Permits | Permits and approvals issued under s. 144.025 (2) (e), Stats. |
| 47. | Well Drillers Permits | Issuance of permits under s. 162.04, Stats. |
| 48. | Private Wells | Determinations of compliance with ch. NR 112. |
| 49. | Water Supply Systems Plan Approvals | Plan approvals under s. 144.04, Stats., for public water main extensions and waterworks. |
| 50. | Forest Crop Law Entries and Withdrawals | Entry or withdrawal of lands from the program under ss. 77.02 and 77.10, Stats. |
| 51. | Woodland Tax Law Entries and Withdrawals | Entry or withdrawal of lands from the program under s. 77.16, Stats. |
| 52. | County Forest Mineral Prospecting Agreements | Approvals of agreements entered into by counties under s. 28.11 (3) (i), Stats., to prospect for ore or minerals on county forest lands. |

(s) Issuance of orders, under 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, under s. 59.971, Stats., for counties that fail to adopt an adequate ordinance.

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

(v) Issuance of orders, under 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, under ss. 30.03, 30.121, 30.195 (5) and (6), 31.02, 31.18, and 31.19, Stats., and ch. NR 330, directing performance or discontinuance of acts necessary to protect public rights or interest in navigable waters.

(x) All enforcement and rescue procedures and actions by department including conservation wardens, special wardens, and pilots.

(y) Issuance of orders under ss. 144.965 and 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 under ss. 227.014 and 227.027, Stats.

(zc) Approval of plans of operation for solid waste landfills or hazardous waste facilities under s. 144.44 or 144.64, Stats.

(zd) Issuance of operating licenses for solid waste facilities or hazardous waste facilities under s. 144.44 or 144.64, Stats.

(ze) Issuance of enforcement orders under ss. 144.44 (8), 144.47, 144.72 and 144.73, Stats.

(zf) Issuance of orders or department actions under ss. 144.76 (4) (a) and (b) and 144.76 (7), Stats.

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

(zh) Alteration, suspension, or revocation of permits under 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 sub. (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 prepared by the department or in accordance with s. NR 150.10, the department shall consider the relevance of the previous EIS

or EA to the proposed action in determining the need for an EIS, supplemental FEIS or EA.

(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.

(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; am. (intro.), (1), (6) and (7), r. and recr. (2) to (4), Register, February, 1984, No. 338, eff. 3-1-84.

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) The department will determine the need for an EIR to assist in making an environmental analysis of a proposed regulatory action and notify the person seeking permission within 30 days after the department has received the request for permission. The person seeking permission shall provide the EIR 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 45 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;

(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.

(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 except as provided in s. 144.836 (3) (c), Stats.

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; am. (1) (c) 1. a., (2) (c) and (d) 1., Register, February, 1984, No. 338, eff. 3-1-84.

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 EA or EIS must be prepared in accordance with NEPA or WEPA, a separate department EA or EIS shall not be required if:

(a) A joint EA or 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 level of department participation shall be commensurate with the department's authority and the significance of the proposed project's impact on the department's area of responsibility; or

(c) After review of the other state or federal EA, the department determines that the requirements as to content of the EA prescribed in this chapter have been met, and the department has made an independent determination on the need for an EIS.

(3) Where an EIS is prepared in accord with sub. (2), the department shall hold public hearings in accordance with this chapter unless the lead agency held public hearings or meetings in Wisconsin and the department appropriately participated in them.

(4) The department may use an EA prepared by another agency or a jointly prepared EA as the record on which its independent judgment on the need for an EIS is based, if the EA meets the requirements of ss. NR 150.03 and 150.04. The department shall develop a news release in accordance with s. NR 150.04 (8) unless the lead agency conducted a similar notification process in Wisconsin.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. Register, February, 1981, No. 302, eff. 3-1-81; am. (2), r. and recr. (3), cr. (4), Register, February, 1984, No. 338, eff. 3-1-84.

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 department 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 to insure appropriate preventative and mitigating measures are included in the proposal and 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 and possible preventative and mitigating measures.

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.