

(12) "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.

(13) "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.

(14) "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.

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

(16) "Informational meeting" means an optional, informal proceeding conducted by the department on a DEIS, an EIR submitted by a person seeking permission, or a department EA to receive public comments on the document and the proposal.

(17) "Joint environmental assessment" means an environmental assessment developed by the department or 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.

(18) "Joint environmental impact statement" means an EIS developed by the department and another state or federal agency where the department has commensurate responsibility with the other agency 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.

(19) "Lead agency" means the state or federal agency with primary concern or responsibility for a given action as determined through inter-agency consultation or written agreement.

(20) "Letter of instruction" means written guidance provided to a person who has been required to submit an EIR, concerning the scope, content and organization of the EIR.

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

(22) "Major decision which would significantly affect energy usage" means a decision of the department which would result in an increase in the use of energy to the extent that availability of local energy supplies to other users could be expected to be measurably affected.

(23) "Mitigating measure" means an activity proposed or undertaken by federal or other state agencies, the department or project sponsor to reduce the severity or extent of adverse environmental impacts that would result from a proposed activity. The conveyance of land, or other assets, to local units of government, the state of Wisconsin or the federal

government to offset the adverse impacts of a proposal is not considered a mitigating measure.

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

(25) "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.

(26) "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.

(27) "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.

(28) "Preapplication services agreement" means a written understanding between the department and a person proposing a large, complex, or environmentally sensitive action.

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

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

(31) "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.

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

(33) "Supplemental FEIS" means an additional analysis to complement an existing FEIS when:

(a) The proposed action evaluated by the FEIS is substantially changed from the proposal or alternatives to it which were analyzed in the FEIS, or

(b) The department or a court finds the FEIS to be inadequate.

(34) "Unresolved conflicts concerning alternative uses of available resources" means a department action where an unsettled disagreement between a project sponsor and one or more persons or the department involves the utilization of a substantial natural or physical resource. To be considered an unresolved conflict concerning alternative uses of available resources, the disagreeing parties must have identified a technically and economically feasible alternative use of the contested physical or natural resource, or both, and have the ability to reasonably implement that alternative.

(35) "Worst case analysis" means an analysis which includes known possible catastrophic environmental consequences of a department decision, the best department judgment, utilizing the available information and best available expertise, on the probability of their occurrences; a description of low probability catastrophic impact events that could reasonably be considered in the decision on the action and a spectrum of events of higher probability but less dramatic impact.

(36) "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; renum. (2) to (27) to be (3), (6) to (15), (17) to (19), (21), (24) to (32), (4) and (36) and am. (3), (4), (7), (17) to (19) and (28), cr. (2), (5), (16), (20), (22), (23), (33) to (35), Register, February, 1984, No. 338, eff. 3-1-84.

**NR 150.021 Severability.** **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; r. under s. 13.93 (2m) (b) 16, Stats., Register, October, 1985, No. 358.

**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) Insure that compliance with s. 1.12, Stats., alleviation of energy shortages, is achieved in carrying out its WEPA responsibilities and that conservation of energy resources is considered as an important factor when making any major decision which would significantly affect energy usage.

(h) 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.

(i) 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; renum. (2) (g) and (h) to be (2) (h) and (i), cr. (2) (g), Register, February, 1984, No. 338, eff. 3-1-84.

**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 identifies actions that will require an EIS, actions that will require an EA but not necessarily an EIS, and actions that normally do not require either an EA or 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 of whether an EA or EIS will be required.

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| (1) TYPE I<br>ACTIONS —                      | These are major department actions which would significantly affect the quality of the human environment and will require the preparation of an EIS.                           |
| (a) <i>Department Facilities Development</i> |  |
| 1. New Properties                            | Establishment of land acquisition projects over 1,000 acres in size and involving a basic change in existing land use (e.g., agricultural land converted to recreational use). |

(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 evaluation of the project's impact on endangered and threatened species, fish and wildlife habitat, wetlands, scenic values, scientific and natural areas, energy use, and air and water quality when affected.

(e) 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.

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

(g) 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 generic EA shall contain the information required in sub. (6) and shall identify any conditions which indicate the need for a specific EA or EIS. The department shall, when addressing a single action already covered by a generic EA, consider the relevance of the generic EA to the action in determining the need for a specific EA or EIS.

(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 legislation 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. An informational meeting 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 a reproducible copy of the 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 inter-agency consultation. A joint environmental assessment may be used by the department to aid in reaching its independent decision on the need for a EIS in accord with s. NR 150.10. 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.

**History:** Cr. Register, January, 1979, No. 277, eff. 2-1-79; am., Register, February, 1981, No. 302, eff. 3-1-81; am. (2), (3), (5), (6) (intro.) and (a), (7), (8) (a) (intro.) and (c), (10) and (13), renum. (6) (d) to (f) to be (6) (e) to (g), cr. (6) (d), Register, February, 1984, No. 338, eff. 3-1-84.

**NR 150.045 Compliance with s. 1.11 (2) (e), Stats.** (1) For any department action which involves unresolved conflicts concerning alternative uses of available resources, the department shall study, develop and describe appropriate alternatives to recommend courses of action through one or more of the following mechanisms:

(a) For Type I actions, preparation of a EIS in accord with s. NR 150.07.

(b) For Type II actions, preparation of an EA in accord with s. NR 150.04 (6) or an EIS if the department determines an EIS is necessary.

(c) For all department actions, holding an informational meeting or hearing under another statute or rule in which conflicting uses of resources are aired and in which participants have the opportunity to discuss alternative courses of action and where the department considers the hearing testimony or meeting results in its decision.

(2) Unless the department determines otherwise, department actions listed in s. NR 150.03 (3) are not of sufficient magnitude to require compliance with s. 1.11 (2) (e), Stats.

**History:** Cr. Register, Register, February, 1984, No. 338, eff. 3-1-84.

**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 provide a letter of instruction which will include instructions on format, required content, level of detail and number of copies to be submitted. As a person seeking permission provides more information about the proposal or makes modifications in the proposal, the letter of instruction is revised to insure the potential environmental effects can be identified in the department's EA or EIS.

(2) The primary purpose of an EIR is to provide a detailed, comprehensive description of the proposed action, the present environmental conditions in the area which would be impacted by the proposed action and the alternatives to the proposed action which the person seeking permission has considered throughout the proposal formulation process. Predictive models, bioassays and other analysis that can be subject to reasonable scientific verification may be also required. The department's instructions to the applicant on EIR content and detail will emphasize these elements of disclosure rather than the applicant's judgments and conclusions concerning the significance of the probable impacts associated with the proposed action.

(3) 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 de-

termination and shall notify the person seeking permission in writing within 60 days after receipt of the EIR. The department shall make this determination and notify the person seeking permission within 120 days after receipt if the EIR exceeds 1000 pages in length including appendices or, in the department's judgment, will require a substantial commitment of staff time to determine if it complies with the letter of instruction due to complexity, detail, organization or scope. 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.

(4) If original data concerning existing environmental conditions collected or processed by a person or their agents seeking permission is to be used by the department in its EA or EIS, and that data relates to impacts essential to a reasoned choice among significant alternatives to the proposed action, the data shall be accepted if it meets the requirements outlined in the department's letter of instruction and one or more of the following conditions:

(a) The department, its consultant or cooperating state and federal agencies collects sufficient data to perform a limited statistical comparison with EIR data and can demonstrate that the data sets are statistically similar within a reasonable confidence limit, or;

(b) The data are determined to be within the range of expected results in the professional judgment of a department expert, an expert consultant to the department or expert within a cooperating state or federal agency based on general knowledge and experience in the subject area, relevant literature and published scientific data, or familiarity with the environmental feature being described by the data, or;

(c) The department or its consultant or other cooperating state or federal agencies witness actual collection and analysis to a sufficient extent to verify the methodology as scientifically and technically adequate for the tests being performed. Analysis performed by a laboratory certified for that purpose by a state or federal agency shall be accepted by the department as verified.

1. The department need not verify all original data provided by a person seeking permission in order to accept all data is accurate. If random data sets or data points are independently verified by the department in accord with this subsection, the remainder of the data may be accepted as accurate by the department and utilized in the department's analysis for inclusion in the EA or DEIS and FEIS. The degree of inaccuracy observed by the department in its verification efforts will determine, in part, the extent of verification to be performed. If the data collected by a person seeking permission are determined to be generally inaccurate or to have been derived through the use of questionable methods, the EIR shall be deemed inadequate until adequately verified data are provided by the person seeking permission.

2. The department will, when it has sufficient knowledge of the applicant's proposal and when the state of the applicant's planning permits, generally identify for the applicant the verification procedures it intends