

Chapter TCS 12

WISCONSIN ENVIRONMENTAL POLICY ACT PROCEDURES

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Note: Chapter VTAE 12 was renumbered chapter TCS 12 under s. 13.93 (2m) (b) 1., Stats., Register, June, 1994, No. 462.

TCS 12.01 Purpose. The purpose of this chapter is to:

(1) Establish procedures for board consideration of short-term and long-term environmental and economic effects of board actions upon the human environment.

(2) Establish definitions and criteria to be used by the board for the implementation of s. 1.11, 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) Provide guidance to districts seeking permission to proceed with a proposed action, determine the applicable procedure affecting the board's review of a proposal, and establish a mechanism for early review of an applicant's proposal to determine the need for an EIS.

(4) Identify major actions significantly affecting the quality of human environment and the need for an EIS.

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

History: Cr. Register, April, 1987, No. 376, eff. 5-1-87.

TCS 12.02 Definitions. In this chapter:

(1) "Action" means any activity initiated by the board, or any activity subject to the regulation or approval of the board, which may affect the quality of the human environment.

(a) "Type I action" means a major action which significantly affects the quality of the human environment and requires the preparation of an environmental impact statement (EIS).

(b) "Type II action" means an action which may or may not significantly affect the quality of the human environment and requires the preparation of an environmental assessment (EA) to determine whether the action significantly affects the human environment and whether an EIS must be prepared.

(c) "Type III action" means an action which normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources, and unless the board determines otherwise, an EA or EIS will not be prepared.

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

(3) "Board" means the technical college system board.

(4) "CEQ" means the council on environmental quality.

(5) "DEIS" means draft environmental impact statement which is a preliminary format of the final environmental impact statement.

(6) "District" means a technical college district established under ch. 38, Stats.

(7) "EA" or "environmental assessment" means a brief but comprehensive analysis of a proposed Type II action to determine its environmental impact; to study, develop and describe alterna-

tives; and to determine whether the proposed action constitutes a major action significantly affecting the quality of the human environment or involving unresolved conflicts in the use of available resources.

(8) "EIS" or "environmental impact statement" means a written report prepared pursuant to s. 1.11, Stats., in accordance with the CEQ guidelines, which contains an analysis of anticipated impacts of a proposed action upon the human environment, and alternatives to the proposed action. The draft environmental impact statement (DEIS) is a preliminary format of the final environmental impact statement (FEIS).

(9) "FEIS" means final environmental impact statement.

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

(12) "Major action" means an action which will significantly affect the quality of the human environment.

(13) "NEPA" means the National Environmental Policy Act (42 U.S.C. s. 4321, et. seq.).

(14) "Resources" includes land, water, air, energy forms, plant life and wildlife, aesthetic, social, economic, historical and archeological factors, and labor and materials used in the proposed action.

(15) "Scoping" means an early process for identifying the anticipated range of issues to be addressed by an EIS, the extent to which the identified issues will be addressed, and the significant issues as seen by the public.

(16) "Significant effects" means the considerable and important impacts, beneficial or adverse, of actions on the quality of the human environment.

(17) "WEPA" means the Wisconsin Environment Policy Act, s. 1.11, Stats.

History: Cr. Register, April, 1987, No. 376, eff. 5-1-87; correction in (3) and (6) made under s. 13.93 (2m) (b) 6., Stats., Register, June, 1994, No. 462.

TCS 12.03 Board action type list. The board shall review its proposed action and determine what impact the proposed action will have on the quality of the human environment. The board has reviewed its actions and has categorized these actions into 3 types as specified in Table TCS 12.03. Table TCS 12.03 shall be used to determine the category of the proposed action and the type of environmental analysis that is required.

(1) **TYPE I ACTION.** If it is determined from Table TCS 12.03 that the proposed action is a type I action, an EIS shall be prepared. These are major board actions which would significantly affect the quality of the human environment.

(2) **TYPE II ACTION.** If it is determined from Table TCS 12.03 that the proposed action is a type II action, an EA will be prepared. These actions have the potential to cause significant environmen-

tal effects and may involve unresolved conflicts in the use of available resources.

(a) If the EA discloses that the proposed action is a major action that will significantly affect the quality of the human environment, an EIS shall be prepared.

(b) If the board finds in the EA that the proposed action is not a major action that will significantly affect the quality of the human environment, the EA shall be filed in the office of the WEPA coordinator as a finding of no significant impact and shall be provided to interested parties upon request.

(3) TYPE III ACTION. A type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources, and, unless the board determines otherwise, these actions will not require an EA or EIS.

(4) OTHER ACTIONS. Every action other than those specified in subs. (1) to (3) shall be evaluated for determination of the type of action.

Table TCS 12.03 Board Action Type List

| ACTION IDENTIFICATION | EXAMPLE | TYPE OF ACTION | | |
|---|---|----------------|----|-----|
| | | I | II | III |
| A. Facility Development | | | | |
| 1. Construction of a new campus | New construction on a site previously undeveloped resulting in a significantly altered site | X | | |
| 2. Construction of buildings on an existing campus that has no prior impact statement | New construction on a campus developed prior to April 1972 | X | | |
| 3. Additions to existing campus buildings not considered under a prior impact statement | Additions on a campus constructed prior to April 1972 or not considered under a prior EIS | | X | |
| 4. Demolition of buildings | | | X | |
| 5. Vehicle training track | | | X | |
| 6. Land acquisitions | Acquisition by fee title of parcels of land | | X | |
| 7. Remodeling for purposes requiring more energy than prior use | Remodel a classroom into a welding shop | | X | |
| 8. Purchase or lease of relocatable structures | Temporary classrooms, shop, laboratory or storage buildings | | X | |
| 9. Emergency replacement | Immediate replacement of facilities to a condition similar to that which existed prior to damage from flood, fire or tornado, or other forces of nature | | | X |
| 10. Parking lot construction that exceeds 1,000 cars or incremental increases in a parking lot that require a permit from the department of natural resources | Self explanatory (see. s. NR 406.04) | | X | |
| 11. Pedestrian elevated walkways or bridges | | | | |
| B. Regulation | | | | |
| 1. Assuring compliance with federal, state and safety codes | | | X | |

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|---------------------|--|--|---|---|
| 2. Legislation | Board proposals for new programs or major changes in existing programs, the implementation of which would have significant material effects on the human environment | | X | |
| 3. Program approval | Proposals for new programs or major changes in existing programs, the implementation of which will not have a significant effect on the human environment | | | X |

History: Cr. Register, April, 1987, No. 376, eff. 5-1-87; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1994, No. 462.

TCS 12.04 Preparation of an environmental assessment. (1) CONTENT. To determine whether a Type II action is major and significantly affects the quality of the natural and physical environment of human beings, and to describe the alternatives to the action, the board shall conduct an EA and shall prepare a reviewable record in the form of a concise report. The preparation shall be done as early as possible in the planning process, but, in any event, before contracts are let if the action involves construction by a district. The report shall include:

(a) A brief description of the proposed action, the purpose of the action, the need for the action, and maps, graphs and other materials where appropriate.

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

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

(d) A brief study developing and describing reasonable alternatives to the proposed action, including the alternative of no action, and a brief evaluation of the significant environmental effects that are different from 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. Irreversible environmental effects.
2. Stimulation of secondary (indirect) effects.
3. Creation of a new environmental effect.
4. Impacts on geographically scarce environmental features.
5. Precedent-setting nature of the action.
6. Significant controversy associated with the action.
7. Conflicts with official agency plans or local, regional, state or national policy.

8. Cumulative impacts of repeated actions of this type.

9. Irrevocable foreclosure of future options.

(g) A preliminary recommendation on the need for an EIS.

(2) GENERIC EA. 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 board shall, when addressing a single action already covered by a generic EA, consider the relevance of the generic EA to the specific action.

(3) NOTICE. (a) *Content.* The board shall develop a notice for EA as prepared under this section. The notice shall state that the EA has been prepared and is available for review and shall include the following information:

1. The name of the proposed action and an identification of the district where the proposed action will occur.
2. A brief description of the proposed action, including location.
3. The board's preliminary determination of the need for an EIS.
4. The name of a contact person within the board who can supply copies of the EA and can answer questions about it.
5. The latest date on which the board will accept and consider comments before making a final decision on the need for an EIS.

(b) *Distribution.* The board shall send copies of the notice to all individuals, agencies, and organizations that have requested notification of the EA or of all EA's and, in the case of a project in a particular area of the state, to the news media in the vicinity of the project.

(4) **PUBLIC COMMENT AND INPUT.** Following the deadline for receipt of public comment on the EA, appropriate board staff shall review the EA, consider all public comments, make modifications as judged necessary, and approve the EA which shall include a finding either of no significant impact or of the need for an EIS.

(5) **FINDINGS.** (a) If a finding is made in the EA of no significant impact, no EIS shall be required, the environmental review is complete and the original EA shall then be filed in the office of the WEPA coordinator as a finding of no significant impact.

(b) If a finding is made in the EA that an EIS is required for a proposed Type II action, the board shall proceed with the preparation of an EIS under ss. TCS 12.05 to 12.11.

(c) The board's finding on the need for an EIS becomes final upon signing by the state director or designee.

(6) **DELEGATION.** Except for the EIS evaluation section as described in sub. (1) (g), any part of an EA may be prepared by a district proposing an action.

History: Cr. Register, April, 1987, No. 376, eff. 5-1-87; correction in (5) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1994, No. 462.

TCS 12.05 Scoping. (1) As soon as possible after the decision to prepare an EIS, the district, in actions where the district is the proponent of an action, or the board, in all other actions, shall notify and inform the public and affected agencies that an EIS will be prepared and that scoping is beginning.

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

(3) The scoping process shall be used to accomplish all 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.

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

History: Cr. Register, April, 1987, No. 376, eff. 5-1-87.

TCS 12.06 Contents of an EIS. (1) When an EIS is required, a DEIS and an FEIS shall be prepared by the board, by the district or by a consultant under contract with the board or a district. The board shall supervise and exercise final review of any EIS prepared by a district or a consultant. 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 and on information received from other

sources. An EIS shall provide analysis of the environmental and economic implications of a proposed action contemplated by a district that need board approval. An EIS shall include the following:

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

(b) A description of the proposed action and of the affected environment including the history and background of the proposed action, location, type of facility, major dimensions, engineering design criteria, general types of materials to be used, time schedules, maps and diagrams deemed relevant, sources of funding, permits and approvals required, and other pertinent information which will adequately allow an assessment of the potential environmental impact by persons who want to make comments.

(c) An evaluation shall be made of the probable environmental consequences, both positive and negative, of the proposed action as it relates to the physical and chemical, biological, social and cultural, and economic environments. Secondary as well as primary consequences to the environment shall be included whenever possible. The discussion shall include adverse environmental effects which cannot be avoided should the proposal be implemented. The EIS shall include impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

1. The evaluation of the physical and chemical environment shall include consideration of the action's effects upon air quality and climate, surface and ground water quality and quantity, noise, geological structure, topography, minerals and soils, thermal effects, unique land forms and water bodies, and flood and erosion hazards.

2. The evaluation of the biological environment shall include consideration of the action's effect upon plant life, animal life, fish and wildlife habitat, ecological relationships, endangered species, migrations, unique plant and animal associations, human health, and hazardous and toxic materials.

3. The evaluation of the social and cultural environment shall include consideration of the action's effect upon historic and archaeological sites, parks and recreation areas, local institutions and community service, existing and future land uses, community description, housing patterns, neighborhood compatibility, displacement of families, businesses and farms, aesthetics, potential for shared use of facilities or programs, ethnic, religious or other groups, change in population patterns, emergency services, educational facilities and local ordinances.

4. An evaluation of the economic environment which shall include consideration of the action's effect upon tax base, property values, employment, community and personal income, business activities and climate, manufacturing, mining and industry, agriculture, transportation, public utilities, energy resources, and government services and costs.

(d) An evaluation of significant irreversible and irretrievable commitments of resources that would be involved in the proposed action if implemented, including a statement identifying the extent to which the proposed action irreversibly curtails the range of potential uses of the environment.

(e) 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. The option of doing nothing shall be included as an alternative.

(f) The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity. The EIS shall 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.

(g) The FEIS shall discuss at appropriate points any responsible opposing view not adequately discussed in the DEIS.

(h) An analysis shall also be made of significant direct and indirect energy impacts of the proposed action.

(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 board in the decision-making process.

(3) The EIS shall be written in plain language and shall 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 the FEIS shall normally be less than 150 pages and in proposed actions of unusual magnitude or complexity shall normally be less than 300 pages.

(4) If the board makes substantial changes in the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns that have bearing on the proposed action or its impacts, that arise after preparation of the FEIS, but before substantial implementation of the action, the board shall prepare supplements to the FEIS. If a supplement is prepared it shall be distributed and reviewed in the same manner as a DEIS or a FEIS as provided in s. TCS 12.07.

History: Cr. Register, April, 1987, No. 376, eff. 5-1-87; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1994, No. 462.

TCS 12.07 Distribution and review of the DEIS.

(1) DISTRIBUTION OF THE DEIS. Copies of the DEIS shall be distributed as follows:

- (a) The governor's office.
- (b) State, federal, and local governmental agencies having special expertise, interest or jurisdiction.
- (c) Regional and county planning agencies located within the proposed action area.
- (d) Libraries in the area of the proposed action.
- (e) Department of transportation — bureau of environmental data analysis.
- (f) Department of natural resources — bureau of environmental analysis and review.

(2) REQUESTED COPIES. 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.

(3) NOTICE OF AVAILABILITY OF THE DEIS. (a) 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 district, and the locations where copies of the DEIS are available for review will be circulated as follows:

1. All local and regional units of government which have jurisdiction over the area that may be affected by the proposed action or reasonable alternatives to the proposed action. A request will be made for posting the announcement sheet at the places normally used for public notice.

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

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

4. All participants in the scoping process not covered in sub. (1) (a) to (c).

(b) The announcement under par. (a) shall be published as a class I notice, under ch. 985, Stats., in a newspaper published in the district where the proposed action is to occur.

(4) PERIOD OF TIME FOR COMMENT ON THE DEIS. 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.

(5) INFORMATIONAL HEARING. (a) The board shall hold a public hearing on the DEIS. The hearing shall be noticed as follows:

1. At least 30 days prior to the hearing, notice shall be mailed to all known agencies and offices required to grant any permit or license of 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 proposed action lies; to the governing bodies of any towns, villages or cities contiguous to any town, village or city within which any part of the proposed action lies; and to interested persons who have requested such notification.

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

(b) The hearing shall be held in the affected area. On actions of statewide significance, the hearing may be held in Madison.

(c) The hearing shall be recorded either stenographically or electronically.

History: Cr. Register, April, 1987, No. 376, eff. 5-1-87; corrections made under s. 13.93 (2m) (b) 1., Stats., Register, April, 1999, No. 520.

TCS 12.08 Conversion of DEIS to FEIS. After considering the testimony received at the public hearing on the DEIS, and undertaking whatever further investigation in response to that testimony deemed necessary, the board may convert a DEIS to an FEIS. The conversion may be accomplished by replacing the cover sheet, modifying the statement as judged appropriate to reflect information received at public hearing or while the hearing record was kept open, and by adding an appendix which records and responds to information, concerns, views, arguments, and suggestions received at the hearing and while the hearing record was kept open.

History: Cr. Register, April, 1987, No. 376, eff. 5-1-87.

TCS 12.09 Distribution and review of the FEIS.

(1) DISTRIBUTION. The FEIS shall be distributed in the same manner as the DEIS under s. TCS 12.07, and shall also be distributed to any person, organization or agency that submitted comments on the DEIS.

(2) NOTICE OF AVAILABILITY. The availability of the FEIS will be announced through a notice similar to the notice of availability of the DEIS under s. TCS 12.07 (3).

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

(4) PERIOD OF TIME FOR COMMENT ON THE FEIS. A period of not less than 30 days from the date the FEIS is mailed shall be allowed for receipt of comments from state and federal agencies and the public.

(5) PUBLIC HEARING. The board shall hold a public hearing on the FEIS. The hearing shall be announced through the notice of availability of the FEIS which shall be published as a class I notice, under ch. 985, Stats., at least 25 days prior to the hearing in a newspaper circulated in the affected area or, for actions of statewide significance, in the official state newspaper.

History: Cr. Register, April, 1987, No. 376, eff. 5-1-87; correction in (1) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1994, No. 462.

TCS 12.10 Contested case hearing. (1) PETITION FOR CONTESTED CASE HEARING. The board shall grant a petition for a contested case hearing on the FEIS when the petition contains a statement of the specific reasons why the petitioner believes a contested case hearing should be held and the petition contains sufficient facts for the board to determine that:

(a) The petitioner satisfies the criteria of s. 227.42, Stats.; or
 (b) The petitioner has an individual interest in the outcome of the proceeding and a public interest will be served by holding a contested case hearing.

(2) TIME LIMIT FOR PETITION. Any petition received by the board requesting a contested case hearing more than 20 days after the date of publication of the notice of availability shall be denied.

(3) HEARING. (a) If the board grants a request for a contested case hearing, the board shall inform the person making the request about the date, time and place of the hearing.

(b) In the event that more than one request for a contested case hearing on the FEIS is granted, the board shall consolidate the requests and hold one hearing.

(c) The only issue at the hearing shall be whether the FEIS complies with the requirements of s. 1.11, Stats. The persons who requested the hearing shall have the burden of proving to a reasonable certainty by the greater weight of the credible evidence that the FEIS does not comply with the requirements of s. 1.11, Stats.

(d) The hearing shall be held in accordance with the board's general procedural rules for hearings or, in the absence of those rules, the conditions and procedures set out in ss. 227.44 to 227.50, Stats., except as otherwise provided in this subsection. Rescheduling of hearings shall be at the board's discretion and shall be granted only for good cause.

(4) EVIDENCE, DISCOVERY AND DISCLOSURE. (a) The FEIS shall be received into the hearing record as an exception to the hearsay rule and shall be considered by the board in making its decision for whatever probative value the FEIS has.

(b) Notwithstanding any other rule of the board, the parties in proceedings under this section shall have the means of discovery, except written interrogatories and depositions on written questions, available to parties through judicial proceedings set forth in ch. 804, Stats.

(c) Not less than 10 days before the hearing the parties shall file with the board:

1. The names and addresses of all witnesses, including adverse witnesses, that the party may call to testify at the hearing;

2. A detailed written summary of the testimony to be elicited from each witness identified in subd. 1., including any option or conclusion of the witness on any matter relevant to the proceedings and the facts and data underlying that opinion or conclusion. The summary shall be an oath or affirmation; and

3. A copy of any document or other writing, except the FEIS, and a copy or detailed description of any demonstrative evidence the party may offer into evidence as exhibits.

(d) 1. Any witness whose name, address and summary of testimony is not provided as required in par. (c) 1. and 2. shall not be permitted to testify at the hearing. No witness may testify on any matter not included in the summary of testimony.

2. No document or other writing or a copy of detailed description of any demonstrative evidence not filed as provided in par. (c) 3. may be made part of the record.

(e) Unless objected to by the board, any summary of testimony of a witness for the person who requested the hearing shall be made part of the record in lieu of the testimony of that witness as an exception to the hearsay rule and shall be considered by the board for whatever probative value that testimony has in making its decision. Unless objected to by the person who requests the hearing, any summary of the testimony of a witness for the board shall be made part of the record in lieu of the testimony of such witness as an exception to the hearsay rule and shall be considered by the board for whatever probative value that testimony has in making its decision.

History: Cr. Register, April, 1987, No. 376, eff. 5-1-87.

TCS 12.11 Record of decision. Where an EIS is prepared, the board shall also, at the time of its final decision, prepare a record of decision. The record of decision shall identify all alternatives considered in the order of their environmental preference. The record of decision for the alternative selected shall state whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why they were not.

Note: The final draft of the EIS issued by the board, and the record of decision provided in s. TCS 12.09, are intended to satisfy the decision requirement of s. 227.47, Stats.

History: Cr. Register, April, 1987, No. 376, eff. 5-1-87.