

Chapter NR 150

ENVIRONMENTAL ANALYSIS AND REVIEW PROCEDURES

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Note: Chapter NR 150 was repealed and recreated Register March 2014 No. 699.

NR 150.01 Purpose. This chapter outlines the definitions, procedures and criteria to be used by the department in the implementation of s. 1.11, Stats. The purpose of this chapter is to assure that the department decisionmakers, other decisionmakers, and the interested public have information to be able to fully consider the short- and long-term effects of department policies, plans, programs, and actions on the quality of the human environment.

Note: Section 1.11, Stats. was enacted as ch. 274, laws of 1971, amended by ch. 204, laws of 1973, and is known as the Wisconsin environmental policy act or WEPA.

History: CR 13–022: cr. Register March 2014 No. 699, eff. 4–1–14.

NR 150.02 Applicability. This chapter shall apply to all department actions which may negatively affect the quality of the human environment and to consideration of strategic natural resource issues or policies which may involve unresolved conflicts concerning alternative uses of available resources.

Note: There are several statutory exemptions from s. 1.11, Stats., including the following: s. 30.025, Stats. (construction of certain high voltage transmission lines); ss. 160.23 and 160.25, Stats. (responses to groundwater standards exceedances); s. 283.93, Stats. (WPDES permit actions, except for WPDES permit actions for new sources); s. 285.60 (2g) (b) and (3) (b), Stats. (air registration permits and general permits); and ss. 295.44, 295.45, 295.65, and 295.645, Stats. (ferrous mining exploration licenses, bulk sampling approvals, successor operators, and responses to groundwater standards exceedances). The department may have previously conducted environmental analyses under s. 1.11 Stats., for actions that are exempt under s. 283.93, Stats., even though the department was not statutorily required to do so.

History: CR 13–022: cr. Register March 2014 No. 699, eff. 4–1–14.

NR 150.03 Definitions. (1) “Action” means any final decision by the department to exercise the department’s statutory or administrative rule authority that affects the quality of the human environment including actions under s. NR 150.20 (1m) to (4), but not including policies as defined in sub. (19).

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

(3) “Applicant” means a person who applies for a permit, license, or approval granted or issued by the department.

(4) “Cumulative effects” means compounding effects resulting from repeated or other proximal actions, activities or projects.

(5) “Department” means the department of natural resources.

(5m) “Department facility” means department infrastructure, including dams, buildings, roads, and trails for resource management, public use, or other purposes.

(6) “EIR” means environmental impact report.

(7) “EIS” means environmental impact statement.

(8) “Environmental analysis” means a detailed analysis that evaluates a proposed action or project’s effect on the human environment and studies, develops and describes alternatives to the proposed action or project.

(9) “Environmental effect,” “effect,” “environmental impact,” “impact,” “effect on the environment,” or “environmental consequence” means a direct, indirect, secondary, or cumulative change to the quality of the human environment.

(12) “Human environment” means the natural or physical environment, including the components, structures, and functioning of ecosystems, and the relationship of people with that environment, including aesthetic, historic, cultural, economic, social, and human health–related components.

(12m) “Integrated analysis action” means a department action for which department programmatic procedures provide for public disclosure and include an environmental analysis that provides sufficient information to establish that an environmental impact statement is not required.

(13) “Issue” means a general subject, topic or question concerning the use of, or effect on, natural resources about which the department may or may not have authority.

(14) “Lead agency” means the state or federal agency with primary concern or responsibility for a given project or action as determined by law, interagency consultation, or written agreement.

(15) “Minor action” means a department action that is not subject to s. 1.11 (2) (c), Stats., because it is not in conflict with state or federal environmental policies and is not likely to do any of the following:

(a) Set precedent for reducing or limiting environmental protection.

(b) Result in deleterious effects over large geographic areas.

(c) Result in long-term deleterious effects that are prohibitively difficult or expensive to reverse.

(d) Result in deleterious effects on especially important, critical or sensitive environmental resources.

(e) Involve broad public controversy.

(f) Result in substantial risk to human life, health, or safety.

(16) “Mitigating measure” means an action or activity proposed or undertaken by federal or other state agencies, the department or an applicant to reduce the severity or extent of environmental effects that would result from a proposed action or activity.

(16m) “Natural resource management, timber management, or environmental restoration” includes all actions associated with the management, economic production, protection, and restoration of native and non-native fish, game, plants, trees and timber, habitat protection, habitat management, habitat restoration, silvicultural practices, forest inventory, chemical and mechanical site preparation, timber harvesting, timber sales, timber transporting, tree planting, direct seeding, forest type conversions, invasive species control, timber stand improvement activities, forest nursery operations, prescribed burning, fire prevention, fire detection, fire suppression, rehabilitation of fire burned areas, environmental remediation, fish hatchery operations, state game farm operations, pesticide or herbicide applications, and field surveys for environmental protection.

(17) “NEPA” means the national environmental policy act under 42 USC 4321 et. seq.

(17m) “New source” has the meaning given in s. 283.01 (8), Stats.

Note: Section 283.01 (8), Stats., defines “new source” to mean any point source the construction of which commenced after the effective date of applicable effluent limitations or standards of performance.

(18) “Person” includes any natural 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.

(19) “Policy” means a written plan or set of guiding principles, priorities, or protocols to guide department action that has been issued as a department manual code, or approved in writing by the natural resources board or the department secretary, but does not include actions as defined in sub. (1).

(20) “Prime farm land” means land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and that is available for these uses, as defined in U.S. Department of Agriculture, Natural Resources Conservation Service National soil survey handbook, title 430–VI.

Note: U.S. Department of Agriculture, Natural Resources Conservation Service National soil survey handbook, title 430–VI is available online at: http://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/planners/?cid=nrcs142p2_054242.

(21) “Prior compliance” means that one or more environmental analysis documents exist for prior actions that are similar to the proposed action in kind, scale, and environmental setting.

(22) “Project” means one or more actions and other activities related to a single undertaking by the department or an applicant.

(23) “Protocols” means written department procedures to guide department action, other than statutes or administrative codes, that have been approved by the natural resources board or the department secretary.

(23m) “Publicly announce” or “public announcement” means publication on the department’s internet web site, or other reasonable methods to provide public notice.

(24) “Secondary effects” means reasonably foreseeable indirect effects caused by an action or project later in time or farther removed in distance, including induced changes in the pattern of land use, population density, or growth rate and related effects on the human environment.

(25) “Strategic analysis” means an environmental and alternatives analysis of an issue or policy.

(26) “Unresolved conflicts concerning alternative uses of available resources” means an unsettled disagreement between experts, policymakers of local, state, or tribal governments, or citizen interest groups in Wisconsin concerning a policy affecting the utilization of a substantial natural or physical resource where the utilization would be of sufficient magnitude that, on a state-wide or regional basis, it would have a considerable and important impact to the natural resources of the state. 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.

(27) “WEPA” means s. 1.11, Stats.

Note: S. 1.11, Stats. was enacted as ch. 274, laws of 1971, amended by ch. 204, laws of 1973, and is known as the Wisconsin environmental policy act or WEPA.

History: CR 13–022: cr. Register March 2014 No. 699, eff. 4–1–14; correction in numbering in (15) made under s. 13.92 (4) (b) 1., Stats., Register March 2014 No. 699; EmR1517: emerg. am. (1), (10), (11), (15) (intro.), cr. (23m), am. (25), (26), eff. 6–10–15; CR 15–037: am. (1), cr. (5m), r. (10), (11), cr. (12m), am. (15) (intro.), cr. (16m), (17m), am. (19), cr. (23m), am. (25), (26) Register December 2015 No. 720, eff. 1–1–16.

NR 150.04 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 under sub. (1), the department shall do all the following:

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

(d) Develop appropriate strategic analyses for any issue or policy which involves unresolved conflicts concerning alternative uses of available resources.

(e) Develop appropriate environmental effects information and analysis along with a discussion of meaningful alternatives and make this available to the decisionmaker 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 review process is completed.

(f) Implement the environmental review 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.

(g) Consider the findings of environmental analyses and comments received from the public in making decisions on proposed actions.

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

History: CR 13–022: cr. Register March 2014 No. 699, eff. 4–1–14.

NR 150.05 WEPA Coordinator. The department shall designate a qualified staff person as WEPA coordinator to coordinate and oversee performance of WEPA requirements under this chapter. The WEPA coordinator shall do all the following:

(1) Advise the department to ensure that it is in compliance with this chapter and s. 1.11, Stats.

(2) Participate on behalf of the department in inter-agency WEPA activities.

(3) Act as contact for other state, federal and local agencies seeking assistance or opinions on environmental analysis matters.

(4) Advise the department and the natural resources board on strategic natural resource issues or policies needing analysis under s. NR 150.10.

(5) Prepare and submit to the chief clerk of each house of the legislature the department's annual WEPA report required by s. 1.11 (2) (j), Stats.

History: CR 13–022: cr. Register March 2014 No. 699, eff. 4–1–14.

NR 150.10 Strategic analysis. (1) PURPOSE. This section establishes the procedures to fulfill the requirements of s. 1.11 (2) (e) and (h), Stats.

(1m) IDENTIFICATION OF ISSUES. (a) *Policies.* The department shall conduct a strategic analysis for all new or revised policies if both of the following apply:

1. The policy involves unresolved conflicts concerning alternative uses of available resources.
2. The department has substantial discretion in formulating important provisions of the policy.

(c) *Other issues or policies.* Although not required under this section, the department may use the strategic analysis processes in subs. (2) to (4) for any of the following issues or policies:

1. A complicated or complex issue.
2. An issue that is new to the state.
3. An issue or policy that will likely lead to future department actions that will require an EIS.
4. Issues for which there is a high potential for legislation or new department policy.
5. Planning and development of controversial resource-oriented projects.
6. Any other issue or policy that involves unresolved conflicts concerning alternative uses of available resources.

(2) SCOPING. (a) *General requirement.* The department shall determine the scope of the analysis, potential alternative approaches, potentially affected natural resources, and likely effects of the alternatives on those resources. The department shall also identify incomplete or unavailable information that is relevant to a reasoned choice among alternatives.

(b) *Consultation.* The department may consult with and obtain the comments of any agency that has expertise with respect to any issue involved.

(c) *Public scoping.* The department shall use a public scoping process. The process may consist of comment periods, meetings, hearings, workshops, surveys, questionnaires, interagency committees, or other appropriate methods or activities, and may be integrated with other public participation requirements.

(3) ANALYSIS. (a) *Purpose.* The purpose of the analysis is to inform decisionmakers and the public of alternative courses of action and the anticipated effects of those alternatives on the quality of the human environment.

(b) *Intent.* Using available ecological and other scientific information, the analysis shall consider the alternatives and environmental effects in a dispassionate manner and may not advocate a particular position about alternatives.

(c) *Authorship.* Any part of the analysis may be prepared by the department, a consultant to the department, or another state, federal, tribal, or local agency. The department may rely on any relevant information from any source.

(d) *Format.* The document shall follow a format relevant to the scope of the analysis.

(e) *Presentation.* The analysis shall be written in plain language and should use appropriate graphics to aid decisionmakers and the public.

(4) PUBLIC REVIEW. (a) *Document publication.* The department shall publicly announce that the analysis is available for public comment and shall make the analysis available to the governor, legislature, local governments, other concerned state agencies, federal agencies, tribal agencies, natural resources board, department secretary and administrators, and the public as required by s. NR 150.50. Copies of the analysis shall be provided to any indi-

vidual or group requesting a copy. A charge may be assessed to cover reproduction and handling costs for requests for paper copies of documents. The announcement also may be distributed to any of the following entities:

1. All local and regional units of government that may be affected by the issue or policy.
2. Regional and statewide information outlets.
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 subs. 1 to 3.

(b) *Public announcement content.* The public announcement shall include a brief description of the analysis, the date by which public comments on the analysis must be received by the department, the name and address of a contact within the department who will receive comments and respond to questions, and the locations where copies of the analysis are available for review.

(c) *Public comment period.* 1. Unless otherwise provided by law, the department shall provide a minimum of 45 days after the date the analysis is publicly announced to receive comments from other agencies and the public.

2. Unless otherwise provided by law, the department may grant reasonable requests from any person to extend the comment period for the analysis.

3. If a hearing is held under par. (d), the public comment period shall be extended for a minimum of 7 days after the date the hearing is held.

(d) *Hearing.* The department may hold one or more public hearings on the analysis in the manner and locations that the department deems appropriate to the scope of the analysis. Any hearings held shall be announced to the public in a manner that the department deems appropriate.

(e) *Consideration of public comments.* Following the public comment period, the department shall summarize and consider all comments received within the public comment period. The department may revise the analysis based on comments received. The comment summary shall be made public pursuant to s. NR 150.50 along with the final version of the analysis and any supporting documents.

History: CR 13–022: cr. Register March 2014 No. 699, eff. 4–1–14; correction in numbering in (1), (1m), (2) made under s. 13.92 (4) (b) 1., Stats., (1), (2) (a) (title) added under s. 13.92 (4) (b) 2., Stats., corrections in (2) (a) made under s. 35.17, Stats., Register March 2014 No. 699; EmR1517: emerg. am. (1), (1m) (a), r. (1m) (b), am. (1m) (c) (intro.), (2) (a), eff. 6–10–15; CR 15–037: am. (1), (1m) (a), r. (1m) (b), am. (1m) (c) (intro.), (2) (a) Register December 2015 No. 720, eff. 1–1–16.

NR 150.20 Environmental analysis of department actions. (1) PURPOSE. This section establishes the procedures to fulfill the requirements of s. 1.11 (2) (c), Stats.

(1m) MINOR ACTIONS. The following actions do not require environmental analysis under this chapter because they are minor actions:

- (a) A real estate action, including property boundary establishment or modification, purchase, sale, easement, lease, designation, redesignation, or dedication.
- (b) Development or construction of new department facilities that follows protocols.
- (c) Natural resource management, timber management, or environmental restoration that follows protocols.
- (d) The operation, repair, maintenance, removal, or in-kind replacement of existing department facilities that follows protocols.

(e) A research action that does not involve species introductions or substantive manipulation of resources, or that does involve species introductions or substantive manipulation of resources but follows protocols for doing so.

(f) A natural resource inventory or mapping action.

- (g) Issuance of a grant or other financial assistance action.
- (ge) Educational activities.
- (gm) Model ordinances developed to assist municipalities in the creation of ordinances.
- (gs) Consultation offered to third parties.
- (h) Issuance of high capacity well approvals under s. 281.34 (2), Stats., except for wells under s. 281.34 (4), Stats.
- (i) Issuance of high capacity well approvals under s. 281.34 (4), Stats., that are exempted from environmental analysis requirements under s. NR 820.30 (2) and (3).
- (j) Reissuance, modification, revocation, and reissuance, or issuance of a routine or small-scale approval or action.
- (jg) Routine variances from department rule requirements.
- (jr) Denial, termination, revocation, or suspension of a grant, permit, license, approval, variance, land application site, or of any proposed activity.
- (k) A routine or small-scale approval or action, or an approval or action associated with a permit.
- (L) Confirmation of coverage under a general permit.
- (m) Promulgation of emergency administrative rules under ch. 227, Stats.
- (n) Any enforcement action.
- (nm) Any emergency action that protects public health, safety, or welfare.
- (o) Issuance of a minor source construction permit under ch. NR 406 or an operation permit renewal or revision under ss. 285.60 and 285.62, Stats., for air emission sources.
- (p) Issuance of licenses for servicing septage and approvals of county programs to regulate the disposal of septage under s. 281.48, Stats.
- (pe) Issuance of operator certifications under s. 281.17 (3), Stats., and licenses or registrations for well drillers and pump installers.
- (pm) Approvals of geothermal heat exchange projects.
- (ps) Approvals of additives to wastewater or cooling water.
- (q) Issuance of general permits established by administrative code under ch. 30, Stats.
- (qm) Issuance of aquatic plant management permits under ch. NR 109.
- (r) Listing and delisting of an impaired water as defined in s. NR 151.002 (16m).
- (s) Review and approval of municipal ordinances or approval of changes to municipal floodplain or shoreland-wetland maps.
- (sc) Temporary drawdowns of dams under s. 31.02, Stats.
- (sg) Reconstruction and repairs of dams under ss. 31.12, 31.18, or 31.185, Stats.
- (sL) Transfer of dam ownership under s. 31.14, Stats.
- (sp) Dam inspections under s. 31.19, Stats.
- (st) Plan approvals for dams under s. 31.33, Stats., and approvals of emergency action plans, inspection plans, operation and maintenance plans, dam failure analysis plans, or stability analysis plans under ch. NR 333.
- (sx) Review and approval of hydrologic and hydraulic studies for floodplain mapping under s. NR 116.07.
- (t) Approval of construction plans and specifications under s. 281.41, Stats., for municipal and industrial pretreatment wastewater facilities, public water systems, and CAFO reviewable structures.
- (u) Decisions related to evaluations of existing reviewable facilities and systems for concentrated animal feeding operations under ch. NR 243.
- (ug) Approvals of land application or nutrient management plans or modifications to the plans.
- (ur) Approvals of land application sites.
- (v) Issuance of natural heritage inventory permits, approvals, or licenses under ch. NR 29 except for permits issued under s. 29.604 (6m), Stats.
- (w) Issuance of an order or any action relating to the forest croplands or managed forest land programs under subch. I or VI of ch. 77, Stats.
- (2) INTEGRATED ANALYSIS ACTIONS. (a) The following actions do not require a separate environmental analysis process under this chapter because they are integrated analysis actions:
 1. Property planning under ch. NR 44.
 2. County forest planning under s. 28.11 (5), Stats.
 - 2g. Approval of a withdrawal of county forest land under s. 28.11 (11), Stats.
 - 2r. Cooperative state trail planning.
 - 2s. Areawide water quality management planning or priority watershed planning under ch. NR 121.
 - 2t. Development of total maximum daily loads as defined in s. NR 151.002 (46m).
 - 2u. Issuance, reissuance, revocation and reissuance, or modification of a WPDES permit that authorizes a new source discharge that is subject to antidegradation review under ch. NR 207.
 - 2v. Approval of a variance from a water quality standard under ch. 283, Stats.
 - 2w. An approval of a municipal wastewater facilities plan under s. NR 110.08, and approvals of municipal wastewater projects receiving federal grants or state financial assistance under ss. 281.58 and 281.59, Stats.
 - 2x. Issuance, reissuance, revocation and reissuance, or modification of an individual WPDES permit for a concentrated animal feeding operation under ch. NR 243 that is a new source.
 - 2y. Issuance of a major source construction permit under ch. NR 405 or 408 or an initial operation permit under ss. 285.60 and 285.62, Stats., for air emission sources.
 - 2z. An incidental take permit under ch. NR 27 and s. 29.604 (6m), Stats.
 3. A solid waste feasibility approval or a commercial PCB waste storage or treatment facility feasibility approval under ss. 289.25 and 289.53, Stats., and chs. NR 157, 182, and 512.
 - 3e. Funding decisions made pursuant to ch. 292, Stats., and chs. NR 700 to 754.
 - 3m. Issuance of regulatory approvals, liability clarification letters, exemptions, and technical assistance under ch. 292, Stats., and chs. NR 700 to 754.
 - 3n. Except for facilities specified in s. 291.27, Stats., the approval of a feasibility and plan of operation report and issuance of a license for either a new or existing hazardous waste treatment, storage, or disposal facility or class 3 modification of an existing hazardous waste treatment, storage, or disposal facility under ch. NR 670 and s. 291.25, Stats.
 3. Issuance of an individual wetland permit or general permit under s. 281.36, Stats.
 3. Approval of a bulkhead line ordinance for modification of an existing shoreline under s. 30.11, Stats.
 3. Issuance of findings of public interest under s. 30.11 (5), Stats., for a proposed lease of the bed of a lake or lease of rights to fill in a bed of a lake or a navigable stream.
 3. Issuance of an individual permit, general permit, certification, or contract under subchapter II of ch. 30, Stats.
 3. Issuance of an individual permit or general permit under s. 30.19, Stats., including permits to construct or alter waterways.

Note: This subsection does not include the concentrated animal feeding operations permit actions identified as integrated analysis actions pursuant to s. NR 150.20(2) (a) 3w.

13. Issuance of an individual permit or general permit to change the course of or enclose a navigable stream under s. 30.195 or 30.196, Stats.

14. Issuance of an individual permit, general permit, or contract under s. 30.20, Stats., to remove material from the bed of a navigable waterway under ch. NR 345, or for non-metallic mining and reclamation in and near navigable waters under ch. NR 340.

15. Issuance of a barge fleeting permit under ch. NR 327.

16. Issuance of a permit, order, or approval for water levels or flows, or for the regulation of a dam in navigable or nonnavigable waters under ch. 31, Stats., and ch. NR 333.

17. An approval of a drainage board action affecting navigable waters under s. 88.31, Stats., for permits under s. 88.31 or ch. 30 or 31, Stats.

18m. Issuance of a report under s. 13.097, Stats., that includes the required department findings under s. 13.097 (4), Stats., and conclusions under s. 13.097 (6), Stats., regarding whether legislation that proposes to convey lake bed or amend a prior conveyance of lake bed area is consistent with protecting and enhancing a public trust purpose.

19m. Review of existing or proposed uses for an existing lakebed grant, existing lease of the bed of a lake, or existing lease of rights to fill in a bed of a lake or a navigable stream to ensure the existing or proposed uses are consistent with the purposes and uses for which the grant or lease was issued.

20. Issuance of an aquatic plant management permit under s. NR 107.05 that meets the criteria under s. NR 107.04 (3).

21. Approvals of aquatic plant management plans under s. NR 109.09 and surface water management plan recommendations under s. NR 193.53.

22. Promulgation of permanent administrative rules under ch. 227, Stats.

(b) The department may determine under s. NR 150.35 that an action not listed in par. (a) does not require a separate environmental analysis process under this chapter because it meets the definition of an integrated analysis action.

(3) PRIOR COMPLIANCE ACTIONS. (a) The following actions do not require additional environmental analysis under this chapter because one or more environmental analysis documents exist for prior actions that are similar to the proposed action in kind, scale, and environmental setting:

1. Department facility development planned under ch. NR 44.

2. Natural resource management, timber management, or environmental restoration planned under ch. NR 44.

3. A research action that involves species introductions or substantive manipulation of resources that was planned under ch. NR 44.

6. Approval of an extension of a wastewater collection system and other plan approvals under s. 281.41, Stats., that are covered under an area wide water quality management plan under s. 283.83, Stats., and ch. NR 121.

7. Issuance, reissuance, revocation and reissuance, or modification of an individual WPDES permit under s. 283.31, Stats., for a facility that is covered under an area wide water quality management plan under s. 283.83, Stats., and ch. NR 121.

8. Issuance or reissuance of an individual or general storm water permit under s. 283.33, Stats., and ch. NR 216.

9. Reissuance or modification of any general permit.

10. The approval of a feasibility and plan of operation report and issuance of a license for a class 1 or class 2 modification of an existing hazardous waste treatment, storage, or disposal facility under s. 291.25, Stats., and ch. NR 670.

(b) The department may determine under s. NR 150.35 that there is prior compliance for a specific action not listed in par. (a).

(4) EIS ACTIONS AND PROJECTS. (a) *EIS actions.* The department shall comply with the EIS procedures in s. NR 150.30 for all actions not included under sub. (1m), (2), or (3).

(b) *EIS projects.* The department may follow the EIS procedures in s. NR 150.30 for projects of such magnitude and complexity that one or more of the following apply:

1. The project involves multiple department actions.

2. The project may be in conflict with local, state or federal environmental policies.

3. The project may set precedent for reducing or limiting environmental protection.

4. The project may result in deleterious effects over large geographic areas.

5. The project may result in long-term deleterious effects that are prohibitively difficult or expensive to reverse.

6. The project may result in deleterious effects on especially important, critical, or sensitive environmental resources.

7. The project involves broad public controversy.

8. The project may result in substantial risk to human life, health, or safety.

History: CR 13–022: cr. Register March 2014 No. 699, eff. 4–1–14; correction in numbering in (1) and (1m) made under s. 13.92 (4) (b) 1., Stats., (1) (title) added under s. 13.92 (4) (b) 2., Stats., corrections in (1m) (i) and (3) (a) 6. to 8., (4) made under s. 13.92 (4) (b) 7., Stats., Register March 2014 No. 699; EmR1517: emerg. am. (1), (1m) (a), (b), cr. (1m), (ge), (gm), (gs), am. (1m) (j), cr. (1m) (jg), (jr), am. (1m) (k), cr. (1m) (m) to (w), am. (2) (a) (intro.), cr. (2) (a) 2r., 3c., 3g., 3n., am. (2) (a) 4., renum. (2) (a) 5. to (a) 2g., am. (2) (a) 7., cr. (2) (a) 7e., 7m., 7s., am. (2) (a) 8., 10. to 14., 16., renum. (2) (a) 18. to (a) 3r. and am., cr. (2) (a) 18m., renum. (2) (a) 19. to (a) 3w., cr. (2) (a) 19m. to 22., am. (3) (a) (intro.), r. (3) (a) 4., 5., am. (3) (a) 6., 7., cr. (3) (a) 9., 10., am. (4) (b) (intro.), eff. 6–10–15; CR 15–037: am. (1), (1m) (a), (b), (d), cr. (1m), (ge), (gm), (gs), am. (1m) (j), cr. (1m) (jg), (jr), am. (1m) (k), cr. (1m) (m) to (w), am. (2) (a) (intro.), cr. (2) (a) 2r., 3c., 3g., 3n., am. (2) (a) 4., renum. (2) (a) 5. to (a) 2g., am. (2) (a) 7., cr. (2) (a) 7e., 7m., 7s., am. (2) (a) 8., 10. to 14., 16., renum. (2) (a) 18. to (a) 3r. and am., cr. (2) (a) 18m., renum. (2) (a) 19. to (a) 3w., cr. (2) (a) 19m. to 22., am. (2) (b), (3) (a) (intro.), 1., r. (3) (a) 4., 5., am. (3) (a) 6. to 8., cr. (3) (a) 9., 10., am. (4) (b) (intro.) Register December 2015 No. 720, eff. 1–1–16; correction in (1m) (w) made under s. 13.92 (4) (b) 7., Stats., Register December 2015 No. 720; CR 19–078: am. (2) (a) 21. Register May 2020 No. 773, eff. 6–1–20.

NR 150.30 EIS action analysis. (1) PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT. (a) *Draft and Final EIS.* The department shall prepare a draft EIS and a final EIS.

(am) *Notification.* As required by s. 23.40 (2), Stats., the department shall notify an applicant when the department determines that it will follow the detailed environmental analysis for EIS procedures for a proposed project.

(b) *Purpose.* The purpose of an EIS is to inform decision-makers and the public of the anticipated effects on the quality of the human environment of a proposed action or project and alternatives to the proposed action or project. The EIS is an informational tool that does not compel a particular decision by the agency or prevent the agency from concluding that other values outweigh the environmental consequences of a proposed action or project.

(c) *Intent.* The EIS shall address the entire proposed project including all related department actions. An EIS shall consider the proposed action or project, alternatives and anticipated environmental effects in a dispassionate manner, and may not advocate a particular position about a proposed action or project. The EIS shall provide a level of detail commensurate with the complexity of the action or project being evaluated.

(d) *Authorship.* The department is responsible for the accuracy and completeness of the EIS. However, any part of an EIS may be prepared by an applicant, the department, a consultant to the applicant or department, or another state, federal, tribal or local agency. In preparing an EIS, the department may rely on an EIR provided by an applicant pursuant to par. (g), documents prepared or relied upon by other agencies, or any other source of relevant information. The department shall disclose its information sources in compliance with sub. (2) (i).

(e) *Format.* While there is no specific format required for an EIS, the department shall use a format that substantially follows the guidelines issued by the U.S. council on environmental quality

under 42 USC 4331, as required by s. 1.11 (2) (c), Stats. An EIS shall be written in plain language and should use appropriate graphics to aid decisionmakers and the public.

Note: 42 USC 4331 was enacted as P.L. 91–190 and is known as “the national environmental policy act.”

(f) *Issue identification.* 1. The department shall consult with other agencies as provided under s. 1.11 (2) (d), Stats.

2. The department may use a public scoping process. The process may consist of comment periods, meetings, hearings, workshops, surveys, questionnaires, interagency committees, or other appropriate methods or activities, and may be integrated with other public participation requirements.

(g) *Environmental Impact Report (EIR).* Pursuant to s. 23.11 (5), Stats., the department may require an applicant for certain proposed projects to submit an EIR. The department may request any applicant to submit an EIR. The purpose of an EIR is to help the department develop the EIS by having the applicant provide a detailed, comprehensive description of the proposed project, reasonable alternatives to the proposed project, the present environmental conditions in the area potentially affected by the proposed project, and anticipated environmental effects of the proposed project and alternatives. Predictive models, bioassays, and other analysis that can be subject to reasonable scientific verification may be required. The instructions to the applicant may also require that certain laboratory tests be performed by a laboratory certified, registered, or approved under ch. NR 149.

(h) *Cooperation with other agencies.* In developing an EIS, the department may cooperate with other state, federal, tribal or local agencies in accordance with s. NR 150.40 (2).

(i) *Consultant services.* The department may enter into contracts for environmental consultant services under s. 23.41 (3), Stats., to assist the department in the preparation of an environmental impact statement or to provide pre-application services as provided under s. 23.40 (5), Stats.

(j) *Conflicting procedures.* The department may follow procedures for environmental review and analysis other than those contained in this chapter if the procedural requirements of this chapter conflict with statutory review procedures or with procedures and rules of another agency that is the lead agency for the environmental analysis. If other procedures for environmental review and analysis are followed, the department shall comply with this chapter to the maximum extent feasible.

(2) EIS CONTENT. An EIS shall emphasize environmental issues relevant to the evaluation of the action and provide a level of detail commensurate with the complexity of the action. As required by s. 1.11 (2) (c), Stats., the EIS shall include all of the following:

(a) A description of the proposed project that includes all the following:

1. Project location.
2. Type of facilities.
3. Time schedules.
4. Maps and diagrams.
5. Other information that the department deems necessary.

(b) A description of the purpose of the proposed project.

(c) A list of known state, federal, tribal, and local approvals required for the proposed project.

(d) A summary of the process used to identify major issues and the issues identified for detailed analysis.

(e) A list of reasonable alternatives to the proposed project, particularly those that might avoid all or some of the adverse environmental effects of the project, including a description of proposed preventive and mitigating measures and an explanation of the criteria used to discard certain alternatives from additional study.

(f) A description of the human environment that will likely be affected by the proposed project and alternatives to the proposed project.

(g) An evaluation of the probable positive and negative direct, secondary and cumulative effects of the proposed project, and alternatives to the proposed project, on the human environment, including all the following:

1. Effects on scarce resources such as: archeological, historic or cultural resources, scenic and recreational resources, prime farm lands, threatened or endangered species, and ecologically critical areas.

2. A summary of the adverse environmental effects which cannot be avoided.

3. Consistency with plans or policies of local, state, federal, or tribal governments.

4. The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources.

5. The potential to establish a precedent for future actions or to foreclose future options.

6. The degree of risk or uncertainty in predicting environmental effects or effectively controlling potential deleterious environmental impacts, including those relating to public health or safety.

7. The degree of controversy over the effects on the quality of the human environment.

(h) Identification of information that is incomplete or unavailable and a description of the relevance of such information.

(i) Sources of information or verbiage.

(3) DRAFT EIS — PUBLIC REVIEW. (a) *Document publication.* The department shall publicly announce that the draft EIS is available for public comment and shall make the draft EIS available in a manner determined by the department and as required under s. 1.11 (2) (d), Stats., and s. NR 150.50. Copies of the draft EIS shall be provided to any individual or group requesting a copy. A charge may be assessed to cover reproduction and handling costs for requests for copies of documents. The announcement also may be distributed to the following entities:

1. All local and regional units of government which have jurisdiction over the area that may be affected by the proposed project or reasonable alternatives to the proposed project.

2. Information outlets accessible in the local, regional, or statewide areas affected by the proposed project.

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

4. All participants in the scoping process not listed in subs. 1 to 3.

(b) *Public announcement content.* The public announcement shall include: a brief description of the proposed project, a brief description of the administrative procedures to be followed under this chapter, the date by which public comments on the draft EIS are to be submitted to the department, the name and address of a contact within the department who will receive comments and respond to questions, and the locations where copies of the draft EIS are available for review.

(c) *Public comment period.* 1. Unless otherwise provided by law, the department shall provide a minimum of 30 days after the date the draft EIS is publicly announced to receive comments from other agencies and the public.

2. Unless otherwise provided by law, the department may grant reasonable requests from any person to extend the comment period for the draft EIS.

3. The public comment period may be extended for a minimum of 7 days after the date the hearing is held pursuant to par. (d).

(d) *Hearing.* Pursuant to s. 1.11 (2) (d), Stats., a public hearing shall be held on the draft EIS and proposed action. Holding a public hearing as required by another statute fulfills the hearing requirement. Any hearing held pursuant to this paragraph shall be publicly announced and noticed in a manner consistent with s. 1.11 (2) (d), Stats.

Note: Pursuant to s. 1.11 (2) (d), Stats., “notice of the hearing shall be given by publishing a class 1 notice, under ch. 985, at least 15 days prior to the hearing in a newspaper covering the affected area. If the proposal has statewide significance, notice shall be published in the official state newspaper.”

Note: A public hearing required by another statute fulfills s. 1.11 (2) (d), Stats.

(4) **FINAL EIS.** (a) *Preparation.* Following the public review period on the draft EIS, the department shall prepare a final EIS.

(b) *Content.* The final EIS shall include the draft EIS, a summary of the comments received on the draft EIS and the department’s response to the comments. The final EIS may include revisions to draft EIS text or figures and may vary from the draft EIS in scope based on comments received on the draft EIS or other pertinent information that becomes known to the department.

(c) *Final EIS publication.* The final EIS shall be made publicly available under s. NR 150.50. Copies of the final EIS shall be provided to any individual or group requesting a copy. A charge may be assessed to cover reproduction and handling costs for requests for copies of documents.

History: CR 13–022: cr. Register March 2014 No. 699, eff. 4–1–14; correction in numbering in (1), (4) made under s. 13.92 (4) (b) 1., Stats., (1) (a) (title), (4) (a) (title) added under s. 13.92 (4) (b) 2., Stats., Register March 2014 No. 699; EmR1517: emerg. am. (1) (g), (3) (c) 3., (d), eff. 6–10–15; CR 15–037: am. (1) (g), (2) (b), (3) (c) 3., (d) Register December 2015 No. 720, eff. 1–1–16.

NR 150.35 WEPA Compliance determination.

(1) Actions under s. NR 150.20 (2) to (4) may not be taken until a determination is publicly announced or noticed regarding compliance with this chapter unless statutory deadlines preclude compliance with the procedural requirements of this chapter. Actions under s. NR 150.20 (1m) are compliant with WEPA and do not require a determination prior to the action being taken.

(1m) For any EIS under s. NR 150.20 (4) and determination under s. NR 150.20 (2) (b) and (3) (b), the department shall publicly announce findings of fact, conclusions of law and a determination that summarizes the procedures and process steps used to achieve compliance with this chapter.

(2) For actions under s. NR 150.20 (2) (a) and (3) (a), the department may publicly announce the WEPA determination or provide notice in accordance with the public notification requirements for the proposed permit or approval document.

History: CR 13–022: cr. Register March 2014 No. 699, eff. 4–1–14; correction in numbering in (1), (1m) made under s. 13.92 (4) (b) 1., Stats., Register March 2014 No. 699; EmR1517: emerg. am., eff. 6–10–15; CR 15–037: am. Register December 2015 No. 720, eff. 1–1–16.

NR 150.40 Cooperation with other agencies.

(1) **REVIEW OF OTHER AGENCY ENVIRONMENTAL ANALYSES.** The department may comment on the environmental analyses prepared by other state and federal agencies for WEPA or NEPA compliance. To the extent possible, the department shall review and comment on each relevant environmental analysis 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 environmental analysis.

(2) **INTERAGENCY PROCEDURES ON PROPOSED ACTIONS INVOLVING NEPA OR WEPA.** (a) The department may conduct an environmental review process jointly with another state, federal or local agency. The joint process shall meet the requirements of this chapter and may be determined by law, interagency consultation or written agreement.

(b) The department may adopt an environmental analysis prepared by another agency as the department’s EIS on the proposed action if the environmental analysis substantially meets the requirements of s. NR 150.30. The department shall comply with the public review requirements in s. NR 150.30 (3), publish a determination on the proposed action under s. NR 150.35, and make all associated documents available to the public under s. NR 150.50.

History: CR 13–022: cr. Register March 2014 No. 699, eff. 4–1–14.

NR 150.50 Document retention and management.

The department shall maintain a publicly accessible and searchable record system to provide public access to public announcements, strategic analyses, EIS analyses, and WEPA compliance determinations prepared by the department in compliance with this chapter. The record system shall be maintained in a manner consistent with the department’s record retention policy.

History: CR 13–022: cr. Register March 2014 No. 699, eff. 4–1–14.