



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2003 Wisconsin Act 118 [2003 Assembly Bill 655]	Regulatory Reform
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

2003 Wisconsin Act 118 makes substantial alterations to three areas of current law: (1) navigable waters regulations; (2) the state air pollution program; and (3) the administrative rules promulgation procedure. A detailed summary of the changes made in each of these areas follows.

Navigable Waters Regulations

Act 118 makes extensive modifications to the regulations in ch. 30, Stats. The regulations apply to activities that affect navigable waters, such as structures placed in the water or dredging. In the most general sense, Act 118 modifies the kinds of activities affecting navigable waters that require a permit from DNR, modifies the standards for issuing various permits, and modifies the administrative and judicial review process related to DNR permit decisions.

The basic regulatory approach of ch 30, Stats., as modified by Act 118, is to require an individual permit unless the proposed activity is subject to a general permit or is exempt from the permit requirement. The regulations for permits and exemptions are as follows:

- The applicant for an individual permit must submit a permit application for the proposed activity and obtain a decision by DNR as to whether to issue the permit, based on whether the permit complies with statutory standards.
- In order to proceed under a general permit, a person is not required to obtain an individual permit. General permits apply to activities that are specifically defined in the statutes. However, DNR must first act to authorize the general permits by rule before the activities may proceed under a general permit. The proposed activity must comply with rules promulgated for each general permit. Act 118 sets time limits within which DNR must promulgate rules for general permits.
- Activities that are exempt from the requirement to obtain an individual or general permit are defined in the statutes and the exemptions are available commencing on the effective date of the act. DNR has authority to enact specific regulations relating to the installation, construction, design, and

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

location of these activities. A person who wishes to proceed with an exempt activity may ask DNR for a written statement to confirm that the activity is eligible for an exemption.

If a person proceeds under an exemption, DNR may direct that person to proceed under a general permit or apply for an individual permit. If a person proceeds under a general permit, DNR may direct the person to apply for an individual permit. In either case, DNR may require the individual permit or general permit if the DNR determines, based on a site visit, that site-specific conditions require an individual permit or a general permit in order to prevent significant adverse impacts to public rights and interest, environmental pollution, or material injury to riparian rights.

Act 118 modifies the procedure for obtaining administrative review of decisions regarding individual permit applications. Under the Act, if DNR issues a notice of the individual permit application and a hearing is requested, DNR conducts a public informational hearing prior to issuing the decision on the application. The DNR decision is reviewable in an administrative review procedure, with the hearing conducted as a contested case (judicial-type) hearing by the Division of Hearings and Appeals. New procedures in Act 118 require a petitioner for a hearing who is not the applicant for or holder of a permit to describe objections that are sufficiently detailed to allow DNR to determine whether the proposed activity violates a statute, together with a commitment by the person to appear at the administrative hearing in support of the objection. DNR is directed to deny the request for a hearing if this evidence is insufficient. The decision of the hearing examiner can be appealed to circuit court.

State Air Pollution Program

Act 118 makes a number of changes to the state's air pollution program in ch. 285, Stats. These changes include that the Act:

- Specifies minimum documentation that DNR must provide to support its finding that a state ambient air quality standard provides adequate protection for public health or welfare when the U.S. Environmental Protection Agency (EPA) has relaxed or not promulgated a corresponding federal standard.
- Prohibits DNR from identifying a county as part of a nonattainment area under the federal Clean Air Act if the concentration of an air contaminant in the atmosphere in that county does not exceed an ambient air quality standard, unless the county is required to be designated under the Clean Air Act.
- Specifies minimum documentation that DNR must provide in adopting an emissions standard for a hazardous air contaminant for which the EPA has relaxed or not adopted a corresponding federal standard. This documentation applies to minimum standards for mercury emissions that the DNR proposes after the Act's effective date.
- Requires DNR to report to and consult with the Legislature's environment committees on new nonattainment area designations, revisions to the state implementation plan, and the late processing by DNR of air permit applications.
- Directs DNR to exempt minor sources from air pollution construction and operation permits if, in general, the emissions from the sources do not present a significant hazard to public health, safety, welfare, or to the environment.
- Directs DNR to establish registration permits that authorize construction or operation of stationary sources with low actual or potential emissions, including a simplified application process.
- Directs DNR to establish a process for issuing general air permits for similar stationary sources, including criteria for identifying eligible categories of sources and basic permit requirements.

- Directs DNR to engage in ongoing air permit streamlining.
- Creates processes for establishing the completeness of air construction and operation permit applications.
- Requires DNR to notify an applicant for an operation permit, prior to permit issuance, of any proposed emissions monitoring requirement and establishes a process under which the applicant may establish that the monitoring requirement is unreasonable.
- Directs DNR to submit reports to the Legislature's environment committees on all of the following:
 - A summary of the state's existing and pending state implementation plans including analysis of any requirements in the plans that may not have been necessary to obtain EPA approval and recommendations to revise the plans to remove these requirements.
 - Recommendations for streamlining state air pollution permits, as modified by the Act.
 - Identification of information DNR will require in air pollution control permit applications that will reduce overall permitting costs and approval times and minimize inconsistencies in application requirements within Wisconsin and those imposed by other states and EPA.
 - Identification of best practices for monitoring air pollution emissions to minimize inconsistencies in monitoring requirements within Wisconsin and those imposed by other states and EPA.

Promulgation of Administrative Rules

Act 118 generally provides that certain agencies must prepare an economic impact report on a proposed rule after it prepares its scope statement and before the agency submits the proposed rule to the Legislative Council Staff for review. The Department of Administration (DOA) will require the preparation of an economic impact report under the following circumstances:

- The rule is promulgated by the Departments of Agriculture, Trade and Consumer Protection, Commerce, DNR, Transportation, or Workforce Development.
- The report is requested by a municipality, an association that represents a farm, labor, business, or professional group, or five or more persons that would be directly and uniquely affected by the rule.
- The request for the preparation of the report was submitted no later than 90 days after the publication of the scope statement or no later than 10 days after publication of the notice for a public hearing on the rule, whichever is earlier.
- The rule would cost affected persons \$20 million or more during each of the first five years after the rule's implementation to comply with the rule, or the rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

The DOA may at any time direct one of the five affected agencies to prepare an economic impact report for a rule.

Act 118 also requires that all of the following be added to an agency rule analysis:

- An explanation of the agency's authority to promulgate the rule.

- A summary of a preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.
- A comparison of similar rules in adjacent states.
- A summary of the factual data and analytical methodologies used by the agency in support of the rule and how any related findings support the regulatory approach chosen by the rule.
- Any analysis and supporting documentation used by the agency in support of the agency's determination of the rule's effect on small businesses or that was used when the agency prepared an economic impact report. [These additional requirements apply to all agencies, not only to the five agencies that may be required to prepare an economic impact report.]

Finally, Act 118 requires that the following information be included in an agency's rule report to the Legislature:

- A copy of any economic impact report prepared.
- A copy of any report prepared by DOA concerning the economic impact report.
- A description of how the proposed rule advances relevant statutory goals or purposes.
- A summary of public comments to the proposed rule and the agency's response to the comments.
- Any changes to the original analysis or fiscal estimate prepared by the agency.

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