

## **Report From Agency**

### **REPORT TO LEGISLATURE**

NR 150, Wis. Adm. Code  
Relating to the department's environmental analysis and review  
procedures under the Wisconsin Environmental Policy Act.

Board Order Number: OE 46-10  
Clearinghouse Rule Number: 13-022

### **BASIS AND PURPOSE OF THE PROPOSED RULE**

WEPA and ch. NR 150 are cornerstone laws for the agency that date back to the early 1970's. The rule change will make the department's WEPA compliance more effective, meaningful and consistent with WEPA and s. 1.11, Stats. The new rule emphasizes the analysis of broad issues and policies, reduces process and paperwork requirements for individual project actions, and provides clear procedures for public involvement.

The new rule will require that the department: 1) identify and analyze environmental issues important for their geographic, multidisciplinary, or policy scope; 2) analyze issues earlier, when alternative options have not been foreclosed; 3) provide that environmental analysis information be incorporated into departmental policy and decision-making; 4) define and provide meaningful public involvement; 5) address the information and policy-driven requirements of s. 1.11(2)(e) and (h), Stats. as separate from the action and project-driven requirements of s. 1.11(2)(c); 6), Stats., identify and eliminate process requirements that have become duplicative over time as a result of changes in statutory authorities and administrative practice; and 7) replace the current ch. NR 150 type list with criteria for identifying, prioritizing, analyzing and seeking public input on relevant issues.

The new rule eliminates the use of Environmental Assessments as a means of WEPA compliance for individual actions. The new rule adds new process and procedures for bigger picture strategic policy analyses.

The fundamental department policy regarding WEPA, as currently embodied in ch. NR 150, will not change. The rule recreation will result in a number of procedural changes and a new emphasis on how the department applies the Wisconsin Environmental Policy Act, especially to its policy development actions.

### **SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE**

The Department conducted three public hearings on the rule in the spring of 2013 in Eau Claire, Green Bay, and Madison, with 11 people attending and one person providing oral testimony for the record. As part of the hearing public notification process, public review was also sought statewide via news releases and publicity on the Department's website. The Department received twenty-four comment letters and emails during the 45-day public comment period. The comments covered a very broad range of questions and concerns, a few of which dealt with economic issues related to the proposed rule. Department staff prepared responses to all public comments and made several changes to the rules based on the comments received.

See Attachment 1 for a complete summary of public comments, and the Department responses to each comment. Comments in this document are summarized under general topics. Topics include one or more general comments and comment responses. Some topics also include specific comments in italic type and Department responses that are related to the topic but that differ from the general comments.

**MODIFICATIONS MADE TO THE PROPOSED RULE AS A RESULT OF PUBLIC COMMENT OR TESTIMONY RECEIVED**

Some of the comments received resulted in changes being made to the proposed code and rule package, as indicated in the comment responses. Changes made are indicated in the responses to comments. See the Attachment 1 for details on the changes made.

**PERSONS APPEARING OR REGISTERING AT PUBLIC HEARINGS**

At the Eau Claire hearing, four people attended and none spoke or submitted written comments.

In support: None  
In opposition: None  
As interest may appear: Brad Foss (Dairyland Power)  
Chuck Thompson (Dairyland Power)  
Andrew Werthmann  
Matt McFarlane (Exel Energy)

At the Green Bay hearing, there were no attendees and thus there were no speakers and no comments submitted.

In support: None  
In opposition: None  
As interest may appear: None

At the Madison hearing, four people attended and one presented oral comments. Attendees registered as follows:

In support: None  
In opposition: None  
As interest may appear: Paul Mathewson (Clean Wisconsin)  
Marcy Brant (Clean Wisconsin)  
Elizabeth Wheeler (Clean Wisconsin)  
Scott Froehle (Central Sands Water Action Coalition)

**CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE**

No changes were made to the Fiscal Estimate for this rule.

**RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

Nearly all the changes recommended in the Clearinghouse report were incorporated into the rule. In a few instances, changes made to the rule package made the remainder of the changes no longer relevant.

**FINAL REGULATORY FLEXIBILITY ANALYSIS**

This rule describes the environmental analysis review procedures to be implemented by the Department. This is not a regulatory program and the department does not expect any impact on small businesses. As a result it is unnecessary to conduct a regulatory flexibility analysis.