

## Clearinghouse Rule 15-037

Report to  
Legislative Council Rules Clearinghouse  
NR 150, Wis. Adm. Code  
Natural Resources Board Order No. OE-21-14

Wisconsin Statutory Authority  
Sections 1.11 and 227.11, Stats.

Federal Authority  
None

Comparison of Adjacent States  
Neighboring states have significant differences in their related laws, so the opportunity to gain from their experience is limited. For example, Minnesota requires that counties also follow WEPA-like analysis procedures, whereas Wisconsin counties have no such requirements. Illinois' law covers only actions conducted by the state itself, whereas in Wisconsin, WEPA applies to all actions that are permitted or regulated by the state.

Court Decisions Directly Relevant  
None

Analysis of the Rule - Rule Effect - Reason for the Rule  
Chapter NR 150 was revised and went into effect April 1, 2014. An emergency rule was approved by the Natural Resources Board in August 2014 and is set to expire May 27, 2015. A revised scope statement was approved by the Governor on December 11, 2014 and approved by the Natural Resources Board on February 25, 2015. The purpose of the proposed permanent rule is to clarify the procedures for the review and analysis of new administrative rules in order to assure that the intent of the ch. NR 150 revision is being met and potential procedural questions do not invalidate the years of work and public engagement on new rules packages, and for additional housekeeping changes to ensure that the intent of the recent ch. NR 150 rewrite is being met all in a manner that is consistent with past WEPA compliance approaches that have been upheld by the courts.

The proposed rule clarifies that emergency rules are “minor actions,” requiring no additional environmental analysis, and that the process for developing permanent rules is an “equivalent analysis action.” The April 2014 revision of the rule was not perfectly clear to this point.

Procedures for WEPA compliance determinations and publication requirements have been clarified.

This proposed permanent rule includes clarification changes regarding strategic analysis requirements. Consistent with the intent of the current rule, the rule clarifies that a strategic analysis is required for review of significant policies, but for other policies or issues the strategic analysis may be used as a discretionary tool.

The list of minor actions, not requiring additional environmental analysis, has been expanded to include actions that originally were intended to be outlined in program guidance. The April 2014 version relied on reference to “routine and small-scale” permits or approvals as a catch-all category for minor actions that would be listed in guidance and reviewed by the public through the guidance review process. The revision in this proposed permanent rule clarifies by rule the list of activities that are minor actions.

The list of equivalent analysis actions, for which a detailed environmental analysis and public disclosure are already conducted as part of department programmatic procedures, has been expanded and amended to provide additional clarity on actions covered under this subsection.

The list of prior compliance actions, for which one or more environmental analysis documents exist for similar prior actions, has been expanded to provide additional clarity on actions covered under this subsection.

Agency Procedures for Promulgation

Holding one public hearing. Preparing a response to public comments. Review and approval from the Natural Resources Board.

Description of any Forms (attach copies if available)

None

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