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Chapter ATCP 3

PROGRAM ADMINISTRATION; GENERAL

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Note: Chapter Ag 170 was renumbered ch. ATCP 3 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

Subchapter I — Environmental Impact Statements and Assessments

ATCP 3.01 Definitions. (1) "Action" means action taken by the department including proposed legislation. It may include actions whereby the department, by means of licenses, permits, rules or orders, affirmatively authorizes other persons to engage in activities which would otherwise be prohibited by law. It does not include:

(a) Actions to enforce existing statutes, rules or orders.

(b) Inactions, except to the extent that an inaction is judicially reviewable as an action under ch. 227, Stats.

(2) "Action affecting the quality of the human environment" means action affecting the natural or physical environment, and the relationship of persons to that environment. It does not include actions having only economic or social effects, unless such effects have a discernible secondary effect on the natural or physical environment.

(3) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(4) "Environmental assessment" means a brief written statement prepared in accordance with s. ATCP 3.02.

(5) "Environmental impact statement" means a detailed written report prepared in accordance with s. ATCP 3.03.

(6) "Proposed legislation" means legislation proposed by the department which may significantly affect the human environment.

History: Cr. Register, November, 1986, No. 371, eff. 12–1–86.

ATCP 3.02 Environmental assessments. (1) REQUIREMENT; ACTIONS SUBJECT TO ASSESSMENT. Before undertaking any of the following actions, the department shall prepare an environmental assessment on the proposed action, as provided in sub. (3).

(a) *Pesticide rules.* The adoption, amendment or repeal of any rule governing the manufacture, distribution or use of pesticides, if the adoption, amendment or repeal of the rule may affect the quality of the human environment, such as by permitting a new pesticide or pesticide use.

(b) *Pesticide permits.* The issuance of any permit authorizing the manufacture, sale, distribution, storage, or use of a pesticide if the activity would be prohibited by law in the absence of a permit. This includes the issuance of special use permits under s. ATCP 30.10, emergency use permits under s. ATCP 29.70, experimental use permits under s. ATCP 29.71, special local needs registrations under s. ATCP 29.72, and crisis exemptions under the federal insecticide, fungicide, and rodenticide act (7 USC 136p). It does not include the issuance of a license, permit, or certification under s. ATCP 29.10, 29.15, 29.20, 29.25, 29.26, or 29.27.

(c) *Pesticide and biological control agents; application.* The application or use, by the department or its agents, of any pesticide or biological control agent for the purpose of controlling plant pest infestations, or the adoption of a general plan or program for the use of pesticides or biological control agents by the department.

(d) *Biological control agents; permits and authorizations.* The adoption of any rule, or the issuance of any permit authorizing the sale, movement or use of biological control agents, or pests as defined in s. 93.01 (10), Stats., if, in the absence of the rule or permit, the sale, use or movement would be prohibited by law.

(e) *Soil erosion control plans; rules.* The adoption, amendment or repeal of rules establishing substantive criteria for the approval of county soil erosion control plans under s. 92.10, Stats., if the adoption, amendment or repeal of the rule may significantly affect the quality of the human environment.

(h) *Soil and water resource management; grant allocation plan.* Approval of an annual soil and water resource management grant allocation plan under s. 92.14, Stats., and s. ATCP 50.28.

(i) *Soil and water resource management grants; rules.* The adoption, amendment or repeal of rules establishing substantive funding criteria for the allocation of soil and water resource management grants under s. 92.14, Stats., if the adoption, amendment or repeal of those rules may significantly affect the quality of the human environment.

(j) *Ordinance; rules.* The adoption, amendment or repeal of rules establishing substantive criteria for the approval of manure storage ordinances under s. 92.16, Stats., or shoreland management ordinances under s. 92.17, Stats., if the adoption, amendment or repeal of those rules may significantly affect the quality of the human environment.

(m) *Manure storage facilities; standards.* The adoption, amendment or repeal of rules establishing standards for the construction of manure storage facilities under s. 92.16, Stats., if the adoption, amendment or repeal of those rules may significantly affect the quality of the human environment.

(n) *Weather modification permits.* The issuance of any weather modification permit under s. 93.35 (6), Stats.

(o) *Rendering plant license.* The issuance of any license for the initial establishment and construction of a rendering plant or dead animal processing plant under s. 95.72, Stats.

(p) *Animal or food processing wastes; disposal directed by department.* The adoption of any rule, or the issuance of any order prescribing the ultimate disposal location or manner of ultimate disposal, into the environment, of animal carcasses, animal wastes, or dairy and food processing wastes, if the disposal may significantly affect the quality of the human environment. This does not apply to normal waste disposal through sewer or waste–pickup systems; to disposals which are specifically approved or supervised by the department of natural resources; or to disposals made in compliance with applicable rules of the department or the department of natural resources.

(q) *Toxic substances; disposal by department.* Department disposal of pesticides or other hazardous materials, including hazardous laboratory chemicals. This does not apply to disposals which are specifically approved or supervised by the department of natural resources, or made in accordance with applicable rules of the department of natural resources.

(r) *Heavy metal compounds; required use for preservation of composite milk samples.* The requirement, by rule or otherwise, that any heavy metal compound, including potassium dichromate, be used as a composite milk sample preservative.

(s) *Distribution of mobile air conditioners using ozone–depleting refrigerant; waiver.* Granting any manufacturer or distributor of mobile air conditioners a waiver, under s. 100.45 (2) (b), Stats., from the application of s. 100.45 (2) (a), Stats., which restricts the distribution of mobile air conditioners using ozone–depleting refrigerant.

(t) *Drainage district construction or restoration projects; approval.* The approval of a drainage district construction or restoration project if the department is required to prepare an environmental assessment on that approval under s. ATCP 48.38 (4).

(2) ACTIONS NOT REQUIRING ENVIRONMENTAL ASSESSMENT. (a) *General.* Department actions not specified under sub. (1) do not normally require an environmental assessment, except as otherwise determined by the department under par. (b).

Note: A comprehensive summary of the department actions is available from the department upon request. Requests may be directed to the Wisconsin Department of Agriculture, Trade and Consumer Protection; Legal Section; 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708–8911. Requests should specify the current version of the document entitled SUMMARY OF DEPARTMENT PROGRAMS.

(b) *Exceptions.* Notwithstanding par. (a), the department shall prepare an environmental assessment on a proposed action if the department finds that:

1. The action may be a major action significantly affecting the quality of the human environment within the meaning of s. 1.11 (2) (c), Stats., and that an environmental impact statement may be required; or

2. The action involves unresolved conflicts concerning the use of available resources within the meaning of s. 1.11 (2) (e), Stats., such that the department is required to study, develop and describe alternatives to the proposed action, and the department has not studied, developed, and described alternatives in writing by other means.

(c) *Emergency.* Where emergency action by the department is necessary to protect the public health, safety or welfare, the department shall comply with this section to the maximum extent feasible under the emergency circumstances.

(3) FORM AND CONTENT OF ASSESSMENTS. (a) Environmental assessments of proposed actions shall be prepared in writing, and signed by the administrator of the division proposing to take the action or the administrator's designee. Assessments shall briefly identify and describe:

1. The nature and purpose of the proposed action.

2. The foreseeable environmental effects of the proposed action, including immediate and long–term effects, direct and indirect effects, and cumulative effects when combined with other actions. The description shall include, to the extent feasible, preliminary quantitative estimates of the extent and probability of the effects.

3. The persons, groups or agencies that will be directly or significantly affected by the proposed action, and how they will be affected.

4. The significant economic or social effects which may result from the proposed action, including both positive and negative effects.

5. The controversial public issues, if any, which may be associated with the proposed action.

6. Possible alternatives to the proposed action, including the alternative of taking no action.

7. Possible measures that could be taken in connection with the proposed action to mitigate adverse environmental effects.

(b) Based on the information set forth pursuant to par. (a), the environmental assessment shall contain a written conclusion stating whether the proposed action is, or is not, a major action significantly affecting the quality of the human environment, and whether an environmental impact statement is required under s. 1.11 (2) (c), Stats., and s. ATCP 3.03. In making this determination, the department shall consider the extent, probability, location, seriousness and duration of the environmental effects; the extent to which the effects are irreversible or cumulative in nature; the extent to which the proposed action may foreclose future uses of available resources; and the consistency of the proposed action with state or federal environmental laws and policies.

(c) A class of 2 or more proposed actions, including repeated similar actions, may be covered by a single environmental assessment of generalized form, provided that the actions are substantially similar in relevant respects, and have substantially similar effects on the human environment.

(4) NOTICE OF ASSESSMENT. Before undertaking an action to which an environmental assessment pertains, the department shall make reasonable efforts to give notice of the completed assessment to persons who are directly interested in or affected by the proposed action. Notice shall be given to news media serving the area affected by the proposed action, and may also be published in the administrative register. Notice shall include a description of the proposed action; the results of the completed assessment; the name of a person in the department who may be contacted concerning the assessment; and, to the extent that a comment period is practicable, a time period for comment on the assessment.

History: Cr. Register, November, 1986, No. 371, eff. 12–1–86; cr. (1) (s), Register, March, 1991, No. 423, eff. 4–1–91; cr. (1) (t), Register, June, 1995, No. 474, eff. 7–1–95; am. (1) (g) to (j), (m), r. (1) (f), (k), (L), Register, November, 1996, No. 491, eff. 12–1–96; am. (1) (b), Register, May, 1998, No. 509, eff. 6–1–98; correction in (1) (s) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1999, No. 519; CR 01–090: am. (1) (h), Register September 2002 No. 561, eff. 10–1–02; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register June 2013 No. 690; **CR 19–056: r. (1) (g) Register March 2020 No. 771, eff. 4–1–20**.

ATCP 3.03 Environmental impact statements.

(1) ACTIONS REQUIRING AN ENVIRONMENTAL IMPACT STATEMENT. (a) *General requirement.* An environmental impact statement shall be prepared in connection with a proposed action if the department determines, on the basis of an environmental assessment or otherwise, that the proposed action is a major action significantly affecting the quality of the human environment, and that an environmental impact statement is required under s. 1.11 (2) (c), Stats. If an environmental impact statement is required, the department shall make no final decision to proceed with the proposed action until the environmental impact statement has been completed.

(b) *Emergency exception.* If an action is necessary in an emergency, the department is not required to complete an environmental impact statement before initiating the emergency action. However, if an environmental impact statement would be required except for the emergency, the department shall complete the environmental impact statement as soon as possible after the action is initiated, and shall reconsider its action in light of the information disclosed in the environmental impact statement. Under this paragraph, an emergency exists if the department determines that the proposed action is necessary in an emergency to protect public health, safety or welfare; that the purposes of the proposed action cannot reasonably be achieved by other available means; and that time does not allow for the preparation of an environmental impact statement on the proposed action. A finding of emergency shall be made in writing and signed by the secretary, and shall set forth the basis for the emergency finding.

(2) STATEMENT FORM AND CONTENT. (a) *General.* Environmental impact statements shall be prepared in writing and signed by the individual preparers. Statements shall identify and describe, in specific detail:

1. The nature and purpose of the proposed action.

2. The environment affected by the proposed action.

3. The foreseeable environmental effects of the proposed action, including immediate and long−term effects, direct and indirect effects, cumulative effects when combined with other actions, and any unavoidable adverse effects of the proposed action. The description shall include, to the extent feasible, quantitative estimates of the extent and probability of the effects. If environmental effects cannot be reasonably estimated, because necessary information is not available, the nature of the information needs shall be described. Foreseeable environmental effects include catastrophic effects, even if the probability of their occurrence is low, provided that the potential for the catastrophic effects is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

4. The cost of the proposed action, and any irretrievable commitments of natural or human resources which would be involved in the proposed action.

5. Significant economic and social effects of the proposed action, including both positive and negative effects.

6. Potential trade−offs between short−term and long−term uses of environmental resources which may be involved in the proposed action, including a discussion of the relationship between short−term uses and the maintenance and enhancement of long−term resource productivity.

7. The persons, groups, or agencies who will be directly or significantly affected by the proposed action, and the nature of the effects.

8. Possible measures that could be taken in connection with the proposed action to minimize adverse environmental effects.

9. Possible alternatives to the proposed action, including the alternative of taking no action. The statement shall include a detailed comparative analysis of the proposed action and the described alternatives. The analysis shall discuss and compare the relative environmental effects, costs, and benefits of each alternative, including economic and social costs and benefits where applicable.

(b) *Summary and conclusions.* Every environmental impact statement shall contain a brief written summary and conclusion, signed by the division administrator or the administrator's designee. Based on the information set forth in the environmental impact statement pursuant to par. (a), the summary and conclusion shall review the environmental impact of the proposed action, discuss the relative benefits and costs of the available alternatives, and set forth the department's conclusions.

(c) *Generic statement; repeated or similar actions.* A class of 2 or more actions, including repeated similar actions, may be covered by a single environmental impact statement of generalized form, provided that the actions are substantially similar in relevant respects, and have substantially similar effects on the human environment.

(3) DRAFT STATEMENT; PREPARATION, DISTRIBUTION, NOTICE AND COMMENT. (a) *Preparation of draft statement.* Before issuing an environmental impact statement on a proposed action, the department shall prepare a draft statement for review and comment by interested persons and agencies. Before preparing the draft statement, the department shall consult with other agencies having jurisdiction or expertise in the subject matter, and with other affected persons as appropriate, to help determine:

1. The proposed scope of the draft statement, and the matters and issues to be addressed;

2. The maximum length of the draft statement, and the amount of discussion to be devoted to each issue;

3. Possibilities for the elimination of unnecessary, repetitious or irrelevant material;

4. The respective responsibilities of cooperating agencies in the preparation of any joint draft statement; and

5. A proposed timetable for completing the draft statement.

(b) *Distribution of draft statement.* Copies of draft environmental impact statements shall be distributed, upon completion, to:

1. The governor.

2. The department of natural resources, and other state or federal agencies having jurisdiction or special expertise in the subject matter of the proposed action.

3. Local government units, including county and regional planning agencies, which are directly affected by the proposed action.

4. Public libraries in areas directly affected by the proposed action, if the action is of a local or regional nature.

5. Department regional offices in areas affected by the proposed action, including actions of a statewide nature.

6. The person, if any, whose application for a license, permit or other individual authorization from the department resulted in the need for the environmental impact statement.

7. Any individual or group requesting a copy. A charge may be assessed to cover reproduction and handling costs.

(c) *Invitation to comment on draft statement; distribution of notice.* The department shall invite comment on draft environmental impact statements by distributing notice, in the form provided under par. (d), to:

1. Persons and agencies receiving copies of the draft statement pursuant to par. (b);

2. Interested persons and agencies who have specifically requested notice; and

3. News media serving the area affected by the proposed action.

(d) *Contents of notice.* The notice distributed under par. (c) shall include:

1. A brief description of the proposed action, and a request for public comment on the draft environmental impact statement pertaining to the proposed action.

2. Instructions on how interested persons may obtain or examine a copy of the draft statement.

3. A specified comment period during which comments on the draft statement will be accepted by the department. The comment period shall extend for 45 days after the date on which notice is issued by the department, unless a shorter or longer time period is specified by the department.

4. The date, time and location of any public hearing scheduled in connection with the proposed action, if known.

(4) FINAL STATEMENT AND ACTION. A final environmental impact statement shall be prepared by the department following the receipt of comments on the draft statement. Copies of the final statement, or changes from the draft statement, shall be distributed to all persons and agencies who received or commented on the draft statement. Except where the department determines that an earlier decision is necessary, no final decision on the proposed action shall be made earlier than 30 days after the issuance of the final statement, or 90 days after the issuance of the draft statement, whichever occurs later.

History: Cr. Register, November, 1986, No. 371, eff. 12−1−86.

ATCP 3.04 Public hearing on proposed action. **(1)** GENERAL HEARING REQUIREMENT; EXCEPTIONS. Whenever the department determines that a proposed action is a major action significantly affecting the quality of the human environment within the meaning of s. 1.11 (2) (c), Stats., it shall hold a public hearing on the proposed action prior to making a final decision to proceed with the action, as required by s. 1.11 (2) (d), Stats. A

public hearing held pursuant to another statutory requirement fulfills the hearing requirement under this section. This subsection does not apply to proposals for legislation, or emergency actions taken in compliance with s. ATCP 3.03 (1) (b) and other applicable laws.

(2) NOTICE OF HEARING. Hearings under sub. (1) shall be preceded by notice published in the form of a class 1 notice under ch. 985, Stats., at least 10 days prior to the date of hearing. Notice under this subsection may be included in a hearing notice required by another statute.

(3) FORM OF HEARINGS; HEARING RECORD; CROSS–EXAMINATION IN CONTESTED CASES. (a) Hearings on proposed actions shall be conducted in the manner of rulemaking hearings under s. 227.18, Stats., except as otherwise provided by law. Hearings shall be held, to the extent feasible, in the area affected by the proposed action.

(b) Whenever an environmental impact statement is prepared in connection with a proposed action, a copy of the environmental impact statement shall be admitted into the record in hearings held under this section. Whenever an environmental impact statement is admitted into the record in a contested case hearing, persons preparing or submitting information for the environmental impact statement may be required to respond to cross–examination by parties to the case, pursuant to s. 227.45 (6), Stats.

(c) Persons claiming to be adversely affected by a department action, other than a rulemaking action or proposal for legislation, may petition the department for a contested case hearing on the department action under s. 227.42, Stats. The department shall afford a contested case hearing in response to a petition if the requirements of s. 227.42, Stats., are met. The department may order the consolidation of contested case proceedings as the department deems appropriate. Parties to a contested case hearing shall be afforded the opportunity for cross–examination and discovery, to the extent provided under s. 227.45, Stats., and ch. ATCP 1. This paragraph does not limit any other right to a contested case hearing to which a person may be entitled by law; nor does it limit any discretion which the department may have to afford a contested case hearing not required by law.

History: Cr. Register, November, 1986, No. 371, eff. 12–1–86.

ATCP 3.05 Information required by department. Persons requesting department action in the form of a license, permit, or other individual authorization from the department may be required to submit information, if reasonably needed by the department, for the preparation of any environmental assessment or environmental impact statement made necessary by the requested action. Information shall be submitted in the form requested by the department. The furnishing of information under this section shall be a condition to the issuance of the requested license, permit, or authorization. The department shall exercise its independent judgment when preparing the required environmental assessment or environmental impact statement. The department may use or discount information provided by the applicant or any other person, based on the department's assessment of the reliability of the information.

History: Cr. Register, November, 1986, No. 371, eff. 12–1–86.

ATCP 3.06 Availability of documents; filing. All environmental assessments, and all draft and final environmental impact statements shall be kept on permanent file and be available for public inspection and copying at the department, except as otherwise provided under subch. II of ch. 19, Stats. The department may, in its discretion, charge a reasonable fee to cover the cost of any requested copying or distribution.

History: Cr. Register, November, 1986, No. 371, eff. 12–1–86.

ATCP 3.07 Authority. This chapter is adopted under authority of ss. 227.11 and 93.07 (1), Stats., and interprets s. 1.11, Stats.

History: Cr. Register, November, 1986, No. 371, eff. 12–1–86.

Subchapter II — Licensing

ATCP 3.10 Definitions. In this subchapter:

(1) "Department" means the Wisconsin department of agriculture, trade and consumer protection.

(2) "License" means any permit, certificate, registration or license issued by the department.

Note: See s. 93.06 (1n) and (7), Stats.

History: CR 08–075: cr. Register April 2009 No. 640, eff. 5–1–09.

ATCP 3.11 Licenses; electronic processing fees. The department may charge a processing fee of $3 for each transaction under s. 93.06 (1n), Stats., to cover the department's electronic processing costs. The fees under this section are in addition to any other fees required to be paid to the department.

Note: See s. 93.06 (1n) (c), Stats.

History: CR 08–075: cr. Register April 2009 No. 640, eff. 5–1–09.