

Proposed Revisions to Department of Natural Resources Wisconsin Environmental Policy Act (WEPA) Rules Are Out for Public Hearing and Comment

Article By:

Linda H. Bochart

The Department of Natural Resources (DNR) is proposing substantive revisions to [Wis. Admin. Code Ch. NR 150: *Environmental Analysis and Review Procedures for Department Actions*](#). NR 150 establishes the procedures DNR uses to comply with the Wisconsin Environmental Policy Act (WEPA), set out in [Wis. Stat. s. 1.11](#). Sometimes referred to as the “EIS rule” because it includes the procedures for preparation of an Environmental Impact Statement (EIS), NR 150 was first adopted in 1979 and last comprehensively revised in 1987. A lot has changed since then.

Written comments may be submitted to DNR through close of business Friday, May 3. In addition, DNR has scheduled three public hearings to receive comments on the proposed revisions:

- April 16, Eau Claire - 11 a.m. until 2 p.m., Eau Claire Room, LE Philips Memorial Library, 400 Eau Claire St.,
- April 17, Green Bay - 11 a.m. until 2 p.m., Lake Michigan Room, Green Bay DNR Service Center, 2984 Shawano Ave.
- April 18, Madison - 2 until 5 p.m., Room G09, State Natural Resources Building (GEF 2), 101 South Webster St.

For DNR's press release announcing the public comment period on these rules, click [here](#).

For the proposed rule revisions and related explanatory materials available through the Wisconsin Administrative Rules Page website, click [here](#).

Do you care?

If this is a rule that directs DNR's internal procedures, why do you care? Maybe you don't. But if you are applying for a DNR permit or are concerned about a project DNR is reviewing, the procedures DNR uses to fulfill its obligation to comply with WEPA affect your project. If DNR doesn't do it correctly, DNR's decision is vulnerable to legal challenge.

Current NR 150

Current NR 150 assigns every Department action – some 360 in all ranging from facilities development and land acquisition to environmental regulatory decisions – to one of four categories in a Type List, based on the potential for impact on the environment. Over time, the Type List has become outdated. The proposed revisions to NR 150 will replace the Type List, which currently works like this:

1. Type I actions are “major actions which would significantly affect the quality of the human environment” and always require preparation of an EIS. Only four of the 360 listed actions are Type I actions: DNR land acquisition projects of more than 1000 acres that will change existing land use; large metallic ore mining and metallic ore refining projects; and new, large hazardous waste facilities.
2. Type II actions “have the potential to cause significant environmental effects and may involve unresolved conflicts in the use of available resources.” Type II actions may or may not require an EIS, but always require preparation of an Environmental Assessment (EA). Approximately 20% of DNR actions are listed as Type II, the majority of those in the environmental regulatory programs. Examples include new municipal sewage treatment plants, changing the course of over 500 feet of navigable stream length, and new or modified air pollution sources above certain thresholds.
3. Type III actions do not normally have the potential to cause significant environmental impacts and so no EA or EIS is required, however, for reasons specific to the project DNR may decide to prepare an EA or EIS. Current NR 150 requires issuance of a press release or public notice to provide public notification. Approximately 15% of DNR actions are listed as Type III. Examples of Type III actions include snowmobile trail modifications, off-site municipal sludge storage facility construction, and small dam construction.
4. Type IV actions include actions that are statutorily exempt from WEPA, enforcement actions, and emergency actions taken to protect public health, safety or the environment. Type IV actions do not require an EA, an EIS or any public notification.

Proposed Revisions

WEPA was enacted in 1971 as the state counterpart to the National Environmental Policy Act (NEPA), signed by President Richard M. Nixon in 1970. Historians point to Rachel Carson’s *Silent Spring*, the 1969 Santa Barbara Oil Spill and the construction of the Interstate Highway System as catalysts for [NEPA](#), designed to require federal agencies to consider the environmental impacts of their actions before taking those actions.

WEPA imposes the same environmental analysis obligation on all Wisconsin state agencies. The goal of WEPA is to provoke an environmental review as part of the project review so that the agency and the public have that information before a decision is made to proceed and work begins. Early litigation over WEPA compliance was directed at assuring that state agencies, especially the Public Service Commission of Wisconsin (PSCW) and DNR, revised their project review procedures to make environmental review an integral part of the decision-making.

The proposed revisions to NR 150 reflect DNR’s view that in the years since WEPA’s enactment,

that goal has largely been accomplished: DNR has incorporated that environmental review into the project review decision-making in a way that makes preparation of a separate EA document a duplication of effort, essentially a step in the process that provides no additional environmental analysis or benefit to the environment.

Under the proposed revisions, the document called the EA would be eliminated and the out-of-date Type List would be replaced with four categories of actions:

1. Minor Actions – do not require any environmental analysis because they are minor with no potential for environmental impact. Examples include facility development according to adopted Department protocols and enforcement actions. These actions are similar to Type IV actions in the current NR 150.
2. Equivalent Analysis Actions – do not require additional environmental analysis because the environmental analysis is already done as an integral part of the project review. Examples include individual wetland permits, individual chapter 30 (navigable waters) activities permits, and individual permits for Concentrated Animal Feeding Operations (CAFOs).
3. Prior Compliance Actions – do not require additional environmental analysis because the environmental analysis was done on a similar proposal and can be relied upon for this project review. Examples include reissuance or modification of a WPDES permit to an existing municipal or industrial discharger, confirmation of coverage under a general permit, and sewer system extensions that are consistent with an area wide water quality management plan.
4. EIS Actions – do not fall into any of the first 3 categories, or involve multiple department actions and as a result may cumulatively impact the environment in a way that necessitates additional environmental analysis; that analysis will be in the form of an EIS. This approach is likely to capture more projects than the four Type I actions in the current NR 150.

For EIS actions, the proposed revisions would result in an EIS scaled to the scope of the project, with a Draft EIS available for public review and comment before DNR finalized a Final EIS as a component of the Department's decision whether to approve the project proposal.

Other revisions to NR 150 would emphasize anticipating major policy issues, so that DNR would have the opportunity to prepare a strategic analysis of the effects of alternative policy considerations before actual project proposals are advanced for permits or other needed DNR approvals. Exactly how such policy issues would be identified is not spelled out in the proposed rule.

DNR's proposed revisions to NR 150 are designed to capture the significant changes in agency procedures that have taken place in the 42 years since enactment of WEPA and the 26 years since NR 150 was last comprehensively revised, while still assuring that the environmental impacts of these actions are evaluated, made known to the public, and considered as part of the project review. This updating of NR 150 is long overdue.

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