

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board adopt Board Order OE-21-14, proposed rules affecting chapter NR 150 Wis. Adm. Code related to the Department's environmental analysis and review procedures.

FOR: August 2015 Board meeting

PRESENTER'S NAME AND TITLE: David Siebert, Director, Bureau of Environmental Analysis & Sustainability

SUMMARY:

Chapter NR 150 was substantially revised and went into effect April 1, 2014. Following the initial implementation of the April, 2014 rule, an emergency rule (Board Order OE-10-14(E)) was approved by the Natural Resources Board in August (effective August 31, 2014) for two purposes: 1) to clarify the procedures for review and analysis of new administrative rules in order to ensure 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 2) to make additional housekeeping changes to ensure that the intent of the April 2014 ch. NR 150 rewrite was being met in a manner consistent with past WEPA compliance approaches that have been upheld by courts.

The August emergency rule expired on January 28, 2015, two 60-day extensions were granted by JCRAR until May 27, 2015. A new emergency rule (Board Order OE-20-14(E)) based on an expanded scope statement was adopted by the Board in May 2015, to add additional clarification and different rule language not contained in the expiring August 2014 emergency rule, while a new permanent rule is promulgated.

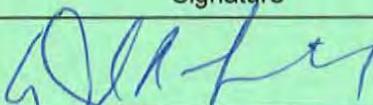
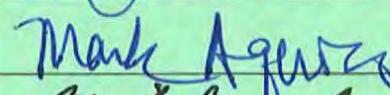
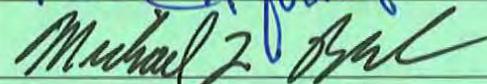
The May 2015 emergency rule and this proposed permanent rule clarify that emergency rules are "minor actions," requiring no environmental analysis, and that the process for developing permanent rules is an "integrated analysis action." The proposed permanent rule expands the list of "minor actions," changes the term "equivalent analysis" to "integrated analysis," and expands and amends the list of these integrated analysis actions, for which a separate environmental analysis process is not required. The rule also clarifies: several definitions; procedures for WEPA compliance determinations and publication requirements; and strategic analysis requirements.

The department received one written comment and zero oral comments during the public hearing and comment period.

RECOMMENDATION: That the Board adopt Board Order OE-21-14.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- (choose one)
- Fiscal estimate and economic impact analysis (EIA) form
- Response summary
- Attachments to background memo
- Environmental assessment or impact statement
- Board order/rule

Approved by	Signature	Date
David Siebert, Director Bureau of Environmental Analysis and Sustainability		7/10/15
Mark Aquino, Administrator Office of Business Support and Science		7/10/15
Cathy Stepp, Secretary		7/20/15

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

CORRESPONDENCE/MEMORANDUM

DATE: July 13, 2015

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo relating to the request that the Board approve Board Order OE-21-14 for housekeeping changes to NR 150.

Why is the rule being proposed?

Ch. NR 150 was substantially revised and went into effect in April 2014. It was the product of nearly three years of public outreach, internal input and staff review. To clarify key elements of the rule during the permanent rule development process, an emergency rule was approved by the Board in August 2014 (expired in May 2015) and a second emergency rule was approved by the Board in May 2015.

The permanent rule revision is needed to clarify the procedures for the review and analysis of new administrative rules and for additional changes to ensure that the intent of the April 2014 rewrite is being met in a manner that is consistent with past WEPA compliance approaches that have been upheld by the courts.

Summary of proposed rule.

The proposed rule changes include the following clarifications:

- an emergency rule is a “minor action,” requiring no environmental analysis;
- the process for developing a permanent rule is an “integrated analysis” process, requiring no separate and additional environmental analysis document and public participation process beyond that which is already involved in the rules process that includes the agency, the Board and the Legislature;
- the procedures for publicizing WEPA compliance determinations; and
- a strategic analysis process is required for review of significant policies, but for other policies or issues the strategic analysis process can be used as a discretionary tool.

The proposed rule also expands the list of “**minor actions**,” not requiring environmental analysis, by specifically listing those 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 by the

Department in guidance and reviewed by the public through the guidance review process.

Additions to the minor action list include:

- Educational activities
- Model ordinances developed to assist municipalities in the creation of ordinances.
- Consultation offered to third parties.
- Routine variances from department rule requirements.
- Denial, termination, revocation, or suspension of a grant, permit, license, approval, variance, land application site, or of any proposed activity.
- Any enforcement action.
- Any emergency action that protects public health, safety, or welfare.
- Issuance of a minor source construction permit under ch. NR 406 or an operation permit renewal or revision under ss. 285.60, and 285.62, Stats., for air emission sources.
- Issuance of licenses for servicing septage, and approvals of county programs to regulate the disposal of septage under s. 281.48, Stats.
- Issuance of operator certifications under s. 281.17 (3), Stats., and licenses or registrations for well drillers and pump installers.
- Approvals of geothermal heat exchange projects.
- Approvals of additives to wastewater or cooling water.
- Issuance of general permits established by administrative code under ch. 30, Stats.
- Issuance of aquatic plant management permits under ch. NR 109.
- Listing and delisting of an impaired water as defined in s. NR 151.002 (16m).
- Review and approval of municipal ordinances or approval of changes to municipal floodplain or shoreland-wetland maps.
- Temporary drawdowns of dams under s. 31.02, Stats.
- Reconstruction and repairs of dams under s. 31.13, Stats.
- Transfer of dam ownership under s. 31.14, Stats.
- Dam inspections under s. 31.19, Stats.

- Approvals of emergency action plans, inspection plans, operation and maintenance plans, dam failure analysis plans, or stability analysis plans under ch. NR 333.
- Review and approval of hydrologic and hydraulic studies for floodplain mapping under s. NR 116.07.
- Approval of construction plans and specifications under s. 281.41, Stats., for municipal, industrial and industrial pretreatment wastewater facilities, public water systems and CAFO reviewable structures.
- Decisions related to evaluations of existing reviewable facilities and systems for concentrated animal feeding operations under ch. NR 243.
- Approvals of land application or nutrient management plans or modifications to the plans.
- Approvals of land application sites.
- Issuance of natural heritage inventory permits, approvals, or licenses under ch. NR 29 except for permits issued under s. NR 29.604 (6m).
- Issuance of an order or any action relating to the forest croplands or managed forest land programs under subch. I or VI of ch. NR 77.

The proposed rule expands and amends the list of “**integrated** (changing the title of this category from “equivalent”) **analysis actions**”, for which a detailed environmental analysis and public disclosure is already conducted as part of department programmatic procedures, to provide additional clarity on actions covered under this subsection. The proposed list is wholly consistent with the intent of the April 2014 rule. The list of “integrated analysis actions” added to the code include:

- Cooperative state trail planning.
- Development of total maximum daily loads as defined in s. NR 151.002 (46m).
- Issuance, reissuance, revocation and reissuance, or modification of a WPDES permit that authorizes a new source discharge that is subject to antidegradation review under ch. NR 207.
- Approval of a variance from a water quality standard under ch. 283, Stats.
- Funding decisions made pursuant to ch. 292, Stats., and chs. NR 700 to 754.
- Issuance of regulatory approvals, liability clarification letters, exemptions and technical assistance under ch. 292, Stats., and chs. NR 700 to 754.

- Except for facilities specified in s. 291.27, Stats., the approval of a feasibility and plan of operation report and issuance of a license for either a new or existing hazardous waste treatment, storage, or disposal facility or class 3 modification of an existing hazardous waste treatment, storage, or disposal facility under ch. NR 670 and s. 291.25, Stats.
- Issuance of findings of public interest under s. 30.11(5), Stats., for a proposed lease of the bed of a lake or lease of rights to fill in a bed of a lakes or a navigable stream.
- Issuance of a report under s. 13.097, Stats., that includes the required department findings under s. 13.097(4), Stats., and conclusions under s. 13.097(6), Stats., regarding whether legislation that proposes to convey lake bed or amend a prior conveyance of lake bed area is consistent with protecting and enhancing a public trust purpose.
- Review of existing or proposed uses for an existing lakebed grant, existing lease of the bed of a lake, or existing lease of rights to fill in a bed of a lakes or a navigable stream to ensure the existing or proposed uses are consistent with the purposes and uses for which the grant or lease was issued.
- Issuance of an aquatic plant management permit under s. NR 107.05 that meets the criteria under s. NR 107.04 (3).
- Approvals of aquatic plant management plans under s. NR 109.09 and lake management plans under s. NR 191.45.

What changed from the proposed to final rule?

Based on comments from Legislative Council Clearing House, minor editorial changes are included. Only one comment letter was received on the proposed rule, from MEA, which included comments very similar to comments submitted in 2013. The attached detailed response to comments document addresses the comments and indicates where changes were made to the rule.

Has the Board dealt with these issues before?

On October 27, 2013, the Board approved the updated ch. NR 150. The rule took effect April 1, 2014. On June 25, 2014 the Board approved the Statement of Scope for Emergency Board Order OE-10-14(E) and Board Order OE-09-14, and conditionally approved the public hearing notice and notice of submittal of proposed rules to the Legislative Council Clearing House, for housekeeping changes to comply with the intent of the recent ch. NR 150 rewrite. On August 25, 2014, the Board adopted Emergency Board Order OE-10-14(E). On February 25, 2015, the Board approved the Statement of Scope for Emergency Board Order OE-20-14(E) and Board Order OE-21-14, and conditionally approved the public hearing notice and notice of submittal of proposed rules to the Legislative Council Clearing House. On May 27, 2015, the Board adopted Emergency Board Order OE-20-14(E).

Who will be impacted by the proposed rule? How?

DNR staff will have more clarity regarding the implementation of ch. NR 150 and regarding the required review process for administrative rules. DNR staff and the public will have more clarity regarding publication requirements for WEPA compliance determinations for various permits and plan approvals.

Soliciting public input on economic impact synopsis

The rule draft and economic impact analysis were developed for the major revision that occurred in late 2013 based on input from an external advisory group that consisted of representatives of a number of conservation advocacy groups, industry groups, and legal firms.

An economic impact analysis was developed by a Department staff economist for the latest revisions and released for a public comment period that began March 23, 2015. As was the case for the 2013 revision, no comments were received on the economic analysis.

Other public input

One public hearing on the rule was conducted on June 2, 2015, in Madison, with 2 people attending and zero people providing oral testimony. 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 one comment letter during the May 13 to June 10, 2015 comment period. Prior to the official comment period on the rule, three county health departments had commented about the emergency rule. The comments covered many of the same topics addressed during the original revision process and addressed in a 24-page response to comments document dated August 28, 2013. Department staff prepared a response to all the public comments and made a few changes to the rule based on the comments received.

A comment that has been addressed in previous proceedings, but continued through this process is about the provision in the rule that recognizes that certain department actions include "equivalent analysis" and therefore a separate environmental analysis document and a separate public comment process on that document are not needed to ensure compliance with WEPA. The final rule changed the terminology from "equivalent analysis action" to "integrated analysis actions" and clarified the definitions and procedures.

Since this concern remains with the public, the department prepared a 28-page memorandum that includes a detailed explanation of the rationale for listing certain actions as "minor actions," "integrated (aka equivalent) analysis actions," and "prior compliance actions."

Is an environmental analysis needed?

The Department has made a preliminary determination that adoption of the proposed rule would not require additional environmental analysis under ch. NR 150, Wis. Adm. Code.

Small Business Analysis.

There will be no impact to small business as a result of this rule revision. This rule revision will benefit small businesses to the extent that it clarifies any ambiguity in favor of the intent of the rule, as presented to the public and approved by the NRB.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapter NR 150 - Environmental Analysis and Review Procedures for Department Actions

3. Subject

Implementation of Wisconsin Environmental Policy Act, s. 1.11, Wis. Stats.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

No

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

Chapter NR 150 was substantially revised and went into effect April 1, 2014. Following initial implementation of the April, 2014 rule, an emergency rule (Board Order OE-10-14(E)) was approved by the Natural Resources Board in August (effective August 31, 2014) for two purposes: 1) to clarify the procedures for review and analysis of new administrative rules in order to ensure 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 2) for additional housekeeping changes to ensure that the intent of the April 2014 ch. NR 150 rewrite is being met - all in a manner consistent with past WEPA compliance approaches that have been upheld by courts.

The August, 2014 emergency rule expired on May 27, 2015.

A new emergency rule (Board Order OE-20-14(E)) was adopted May 27 to broaden the scope and add additional clarification and different rule language not contained in the existing August emergency rule, while a new permanent rule is promulgated. That emergency rule took effect June 10, 2015. This companion new permanent rule (Board Order OE-21-14) similarly broadens the scope and adds the additional clarification and different rule language contained in the current emergency rule.

The new emergency rule and this permanent rule clarify that emergency rules are "minor actions," requiring no environmental analysis, and that the process for developing permanent rules is an "integrated analysis action." The rules also clarify: applicable definitions related to those rules and actions; procedures for WEPA compliance determinations and publication requirements; and strategic analysis requirements.

The new emergency rule and this permanent rule expand the list of "minor actions," and expand and amend the list of "integrated (formerly 'equivalent') analysis actions" for which a detailed environmental analysis and public disclosure are part of program review.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Businesses that may be affected by this rule revision include mainly those that are required to apply for WDNR permits for projects that exhibit the potential to have "significant effects upon the quality of the human environment" (due to major air emissions, wastewater discharges, water withdrawals, etc.). However, ch. NR 150 is primarily an administrative process rule that applies internally to WDNR, so impacts to businesses are minimal. In addition, most environmental review data is also required by permit review requirements, so in general little to no additional cost is imposed by the EIS process.

In addition to a general public announcement soliciting review comments on economic impacts, business sectors participating in the ch. NR 150 External Advisory Group that was formed in 2011 were contacted for comments. This group includes representatives of the housing, energy, dairy, engineering consultancy, legal, and general construction sectors of the state's economy. In addition, it includes representatives of private organizations representing individuals with varied interests in natural resources management issues. No comments were received on this FE/EIA.

11. Identify the local governmental units that participated in the development of this EIA.

Our "external advisory group" included an attorney who regularly represents municipalities on wastewater, water supply, stormwater and other environmental issues. He also represents individuals and businesses on land use and development matters, including developments in and around shorelands, wetlands, and navigable waters.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

There may be a small savings of state tax dollars (GPR) and of utility set-asides that are designated to evaluate impacts of energy and other utility projects that may impact waterways, wetlands, air quality, water quality, and other public resources. Rule changes may also make more efficient use of resources of affected businesses by requiring fewer new impact analyses for similar projects, which would in turn mean that businesses may need to provide less data when WDNR can use applicable data from similar projects that have previously been reviewed under ch. NR 150. However, the primary savings will be those resulting from conducting analyses of broad public policy issues when the analyses point to potential future savings opportunities, such as selecting lower-cost options, before such options are foreclosed by less-informed decisions.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The rule change will make the Department's WEPA compliance more effective, meaningful and consistent with WEPA and s. 1.11, Wis. Stats. The revised rule will emphasize the analysis of broad issues and policies, de-emphasize document production for individual project actions, and provide meaningful 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, and on an ongoing basis; 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/policy-driven requirements of s. 1.11(2)(e) and (h) as separate from the action/project-driven requirements of s. 1.11(2)(c); 6) 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, Wis. Adm. Code, type list with criteria for identifying, prioritizing, analyzing and seeking public input on relevant issues.

Alternatives to the proposed rule changes would include reverting to the April, 2014 version of NR 150. This alternative was rejected as not meeting the need to more effectively and efficiently implement s. 1.11, Wis. Stats.

14. Long Range Implications of Implementing the Rule

In the long term, this revised rule will result in the production of fewer new environmental analysis documents. Relying in significant part on previous analyses for similar projects will reduce costs for businesses for providing data needed for analyzing impacts of proposed projects. Freeing up Wisconsin DNR staff time from multiple programs will enable staff to analyze potential impacts from emerging industries and technologies, enabling all levels of government to better respond to potential problems and opportunities.

15. Compare With Approaches Being Used by Federal Government

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

This revised rule is similar to the existing rule, in that it substantially follows the guidelines of the federal Council on Environmental Quality as directed by s. 1.11, Wis. Stats..

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
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 by other entities that are subject to state approvals.

17. Contact Name

David Siebert

18. Contact Phone Number

608-264-6048

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

None

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

None

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements

Other, describe:

NR 150 is largely an internal process rule, so rule changes would have no measureable impact upon small businesses.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Not applicable.

5. Describe the Rule's Enforcement Provisions

This rule carries no enforcement provisions. Disputes regarding the need to conduct an EIS analysis have judicial avenues of appeal.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No

**NR 150 Revision
Comments and Responses
Natural Resources Board Order No. OE-21-14**

July 20, 2015

This document presents a summary of public comments received on the proposed revision of Chapter NR 150, Wisconsin Administrative Code, and the Department's responses.

PROCESS SUMMARY

The draft rule was made available for public review through the economic impact analysis review process (March 23 to April 7, 2015) and the Board/department's rule review process from May 13 until June 10, 2015. No comments were received during the economic analysis process, and one comment was received during the rule comment period. The department held one public hearing on the draft proposed code on June 2, 2015, in Madison. Two persons attended the hearing and no person spoke on the record.

WRITTEN COMMENT SUMMARY

The Department had also received resolutions from Eau Claire, La Crosse, and Wood Counties dated between January and March 2015, raising concerns about the August 2014 emergency rule. The department responded to those comments in the background memo that accompanied the green sheet for the request for adoption of an emergency rule at the Board's May 2015 meeting. Those responses are repeated below.

During the proposed permanent rule comment period, the Department received one comment letter --from Midwest Environmental Advocates (MEA)-- and a response to those comments begins on page 3 of this memorandum.

Response to Comments from Eau Claire, La Crosse, and Wood Counties:

Comment:

Under the new rule, CAFOs "are now considered a minor action that will not require an environmental analysis"

DNR Response:

CAFOs are not considered minor actions. NR 150 and WEPA impose informational and procedural requirements on the DNR, but are not regulatory. Environmental analyses under NR 150 identify potential environmental effects of proposed actions and alternatives, but does not (and cannot) require permit conditions or directly affect decisions.

CAFOs cannot operate until they've received a Wisconsin Pollutant Discharge Elimination System (WPDES) permit. WPDES permits for new sites are considered integrated (formerly equivalent) analysis actions under NR 150. This is not changed by the proposed permanent rule. Categorizing CAFO WPDES permit issuance as integrated analysis actions acknowledges that the permit issuance/reissuance process itself involves an appropriate level of environmental analysis and public disclosure and does not require the creation of an additional analysis document with an additional review process.

It is true that there are a number of **approvals associated with issuance** of a WPDES permit which are identified as minor actions. Those actions were also considered to be minor under the April 2014 version of NR 150. The environmental analysis required as part of the WPDES permit process encompasses and includes those other approvals.

Comment:

The new rule "...limits the public involvement" in the review process for CAFOs

DNR Response:

The emergency rule and this proposed permanent rule do not limit public involvement. For the WPDES process, the public has opportunities for comment on draft permits and for legal challenges to the permit. The rule does not change anything about the regulatory processes for CAFOs or for any other DNR action.

Comment:

The rule "... reduces the Natural Resources Board oversight of the DNR's environmental review process"

DNR Response:

The emergency rule and this proposed permanent rule do not reduce the Natural Resources Board oversight of the DNR's environmental review process. The role of the NRB is established by statute, and as it relates specifically to Strategic Analysis, the NRB already has authority to require a strategic analysis regardless of any provision in the new ch. NR 150. The April 2014 version of the permanent rule did not create any new oversight for the board, and the inclusion of the NRB relating to Strategic Analysis is superfluous and confusing. Editing to the rule has been proposed to eliminate this potentially confusing language.

Response to Comments of MEA in letter dated June 10, 2015

Attached is the comment letter from MEA. We have highlighted specific aspects of the comment letter and offer the following responses keyed to the numbered comments in the attachment. Below are the department responses to specific matters raised by MEA.

1. Concerns about the environmental analysis of dams

The comment misreads the term “facility development.” The term was intended to mean facility development on department properties, which could include small dams or water control structures associated with wildlife areas. Based on this comment, the term “facility development” has been eliminated and replaced with a term “department facility” in NR 150.03.

The comment also raises concerns on the various dam related actions listed in the code as minor actions. Below is a detailed analysis of each subsection in 150.20(1m) related to dams.

(sc) Temporary drawdowns of dams under s. 31.02, Stats.

Temporary drawdowns involve the operation of a dam to temporarily allow water to pass through the dam and drain any impoundment behind the dam. Temporary drawdowns of dams may be conducted for any variety of reasons. Often these temporary drawdowns facilitate inspection by the dam owner. By statute an owner of the dam is required to conduct an inspection to ensure that the dam is structurally sound to protect life, health, and safety. These drawdowns occur for a very short period of time to allow the Department, the dam owner, or the owners agent to view aspects of the dam that would be inaccessible during operation. In some circumstances temporary drawdowns could also be allowed where an entity is completing some other environmental project, such as dredging, aquatic plant management, or fish management. These environmental projects involve their own analysis of environmental impacts and would include any assessment of the impacts from a temporary drawdown. Regardless, a temporary drawdowns associated with an environmental project are still for typically shorter periods of time to allow for the completion of a project and do not modify the overall operation of a dam. Drawdowns of dams did not require environmental analysis under the pre-2014 version of ch. NR 150.

(sg) Reconstruction and repairs of dams under s. 31.12, 31.18, or 31.185, Stats.

Owners of a dam are required to inspect and maintain a dam to protect life, health and safety. Under s. 31.19, Stats., the Department may order a dam owner to repair or reconstruct a dam if pursuant to an inspection the Department finds that a dam is unsafe. Repairs may be anything from removal of vegetation along a spillway, repairing gates or reducing seepage. Reconstruction means rebuilding all or parts of the dam.

Some of the dams in the state of Wisconsin have been in place since before the turn of the century and many of the existing dams in Wisconsin have been in place for decades. The environmental impacts of an existing dam occurred when the dam was constructed. By statute owners of a dam are required to maintain and repair dams to protect the public. Reconstruction and repair includes repairing or rebuilding the dam to hold the same water level as the original dam. Consequently, repairing or reconstructing a dam would not result in any long term impacts to the existing environment. Reconstruction may have some short term impacts that are due to the potential need to temporarily draw down an impoundment during construction. Efforts to increase the size of the dam or the impoundment or changes in the operation of the dam are regulated under different statutory authority in ch. 31. Some dam reconstruction actions required environmental analysis under the pre-2014 version of ch. NR 150.

(sl) Transfer of dam ownership under s. 31.14, Stats.

Transfers of ownership merely establish ownership and responsibility for constructing, maintaining, repairing, and operating a dam from one entity to another. Transfers of ownership do not result in any changes to a dam or its operation. It is a process to establish and document ownership and financial responsibility for construction, operation, repair and maintenance of a dam for a minimum of 10 years. A municipally-owned dam may not be transferred to a private individual or foreign corporation according to s. 31.21, Stats. Real estate laws require that the transfer of any parcel of land containing a dam (large or small, on navigable or non-navigable waterways) must

obtain approval from the Department. Dam ownership transfers did not require environmental analysis under the pre-2014 version of ch. NR 150.

(sp) Dam inspections under s. 31.19, Stats.

By statute an owner of a dam, or the owner's agent, is required to conduct an inspection to ensure that the dam is structurally sound to protect life, health, and safety. The Department may also conduct inspections. The inspection itself does not result in any environmental impacts, except perhaps the short term impacts that may result if a temporary drawdown is necessary. A temporary drawdown may be necessary to inspect areas that would be inaccessible during operation. Inspections verify that a dam is structural sound and does not pose a risk to life, health or safety. An inspection in and of itself does not cause environmental impact. Dam inspections were not listed under the pre-2014 version of ch. NR 150 and did not require environmental analysis.

(st) Plan approvals for dams under 31.33, Stats., and approvals of emergency action plans, inspection plans, operation and maintenance plans, dam failure analysis plans, or stability analysis plans under ch. NR 333.

The Department is required to approve emergency action plans, inspection plans, operation and maintenance plans, dam failure analysis plans, and stability analysis plans under ch. NR 333. These plans ensure that the dam is constructed, operated and maintained to protect life, health and safety.

For new dams, the Department typically requires the submission of these plans and approval of these plans concurrently with an applicant's request to construct under s. 31.05, Wis. Stats. However, these plans may be modified over time or these plans may be submitted by an owner of an older existing dam, to bring the dam into compliance with ch. NR 333, even though no physical alternations to the dam may occur. The department reviews these plans to verify compliance with ch. NR 333 and sound engineering principals. Staff review of these plans ensure that the dam is constructed, operated and maintained in a manner that protects life, health and safety. These actions were not listed under the pre-2014 version of ch. NR 150.

2. The proposed clarifying additions to the minor action list were included in the May 2015 emergency rule. In the past, some actions involving dams were considered Type III or Type IV under the pre-2014 version of NR 150, where no environmental analysis was required. Some cases were listed as Type II actions in the pre-2014 code, requiring an Environmental Assessment process. In the future, there may be proposals involving dams where the department will opt to use its discretion to conduct an EIS under 150.20(4)(b).

3. This comment raises concerns about the emergency rule process used to get to this permanent rule proposal. Any future additions or subtractions to the rule would require a new administrative rules process.

4. The department will prepare program guidance to identify which actions are considered routine and small scale, subject to the department's public review process for all program guidance.

5. The comment raises concerns about proposed amendments to the minor action list. As has been explained, the 2014 rule used a "catch-all" and intended for program guidance to clarify what actions were minor. The emergency rules and proposed permanent rule provide greater clarity within the rule, adding in many actions that were not addressed in the pre-2014 rule. Any future additions or subtractions to the rule would require a new administrative rules process.

6. Since 2010, the department has prepared on average 35 EAs per year, most of which received zero public comments. The proposed rule is about how the environmental analysis occurs, requiring that environmental analysis be conducted as part of the review process, but the documentation will not be a separate process from the action.

7. The terminology “Type II” was eliminated by the 2014 rule, as such there are no actions “currently listed as Type II”.

8. See answers regarding the handling of WPDES for CAFOs above on pages 1-2 of this memorandum. Per statute, only WPDES permits for “new sources” are required to comply with s. 1.11, Stats. The department uses a detailed analysis form to address a broad range of potential impacts to the human environment and that analysis documentation is included as part of the review process.

9. The comment mixes concerns about legal authority and requirements for permit issuance with matters to consider as part of the environmental analysis. NR 150 is about providing information, not about the regulatory decision. Any analysis conducted as part of the action review is part of the reviewable record for the action.

10. The rule clarifies complicated statutory language regarding WEPA and high capacity wells. In fact, some well permit actions have required an EIS since 2014. Others are considered integrated (formerly “equivalent”) analysis actions. In the future, there may be proposals involving large farms, where the department will opt to use its discretion to conduct an EIS under 150.20(4) (b).

11. This comment has been addressed in previous proceedings. MEA is concerned about the provision in the rule that recognizes that the normal procedures for certain department actions include environmental analysis and public disclosure and therefore a separate environmental analysis document and additional public comment process on that document are not needed to ensure compliance with WEPA. There has been much confusion with the public and internal staff over the term “equivalent analysis action”. As such the term has been changed to “integrated analysis action” and the definition section and introduction to section NR150 (2) (a) have been revised in the final rule to add more clarity. In addition, the department prepared a 28-page detailed explanation of the rationale for listing certain actions as “minor actions,” “integrated analysis actions,” and “prior compliance actions.” That document is attached to the green sheet for the proposed permanent rule.

12. Comment #C is a comment about the use of an emergency rule process, and is not directly related to the actual verbiage found in this proposed rule. The rationale for using an emergency rule process was explained at all stages of this rule process to the Board and to the legislative committee (JCRAR). Public comments on the emergency rule process were considered by those bodies in advance of a decision to approve the emergency rules.



Midwest
Environmental
Advocates

BOARD OF
DIRECTORS

TIM JACOBSON
President
Basehor

ARLEN CHRISTENSON
Founding President
Milwaukee

DAN COLLINS
Treasurer
Milwaukee

JIM GOODMAN
Waukesha

DAVE CLAUSEN
Antigo

HELEN SARAOKINOS
Vice President
Madison

MELISSA SCANLAN
Founder
Norwich, VT

KELLY PARKS SNIDER
Madison

GORDON STEVENSON
Secretary
Black Earth

STEPHANIE TAI
Madison

STAFF

KIMBERLEE WRIGHT
Executive Director

BETSY LAWTON
Senior Counsel

JIMMY PARRA
Staff Attorney

TRESSIE KAMP
Staff Attorney

SARAH WILLIAMS
Staff Attorney

STACY HARBAUGH
*Communications & Outreach
Coordinator*

LAUREN RUDERSDORF
*Administrative & Financial
Coordinator*

JODI HABUSH SINYKIN
Of Counsel



OF WISCONSIN
REGULATORY
AGENCY

Wednesday, June 10, 2015

Jeff Schimpff
Wisconsin Department of Natural Resources
ETEA/7
P.W. Box 7921
Madison, WI 53707

Re: Comments on Proposed Permanent Rule Additions and Amendments to
Wisconsin Administrative Code Chapter NR 150.

Dear Mr. Schimpff:

We appreciate the opportunity to submit comments to the Wisconsin Department of Natural Resources ("DNR") regarding the proposal to amend and add to Wisconsin Administrative Code NR 150 ("NR 150"). Midwest Environmental Advocates, Inc. ("MEA") is a non-profit environmental law center that provides legal and technical assistance to communities and families working for clean air, clean water, and clean government.

NR 150 was created and promulgated to implement the Wisconsin Environmental Policy Act ("WEPA") set forth in Wis. Stat. §1.11. The central focus of WEPA is ensuring that agencies such as the DNR review environmental impacts, consider alternatives, and prepare a record of that analysis to inform the public and other agencies. NR 150 follows the same general purpose as WEPA, and is intended to assure "department decisionmakers, other decisionmakers, and the interested public have information to be able to fully consider the short- and long-term effects of department policies, plans, programs, and actions" in regards to the Wisconsin environment.

We are concerned that the proposed changes and additions to NR 150 will limit the rule's effectiveness, as well as contradict the described purpose of the rule. Our primary concerns are the numerous additions to the "minor actions" category, the inconsistency of the equivalent analysis requirements between WEPA and NR 150, and the use of emergency rulemaking to limit public participation.

MIDWESTADVOCATES.ORG

612 W MAIN STREET, SUITE 302 P 608.251.5047
MADISON, WISCONSIN 53703 F 608.268.0205

A. DNR's transition from internal guidelines to codified rules has resulted in a set of "minor actions" that is overexpansive.

1. The addition of numerous agency actions to the "minor actions" category brings in an abundance of actions that are not actually "minor".

There is a prevalent and growing concern over a number of the additions to the "minor actions" list. Under "minor actions", an agency action does not require any environmental analysis because it is assumed to already comply with "state or federal environmental policies." The new amendments and additions to NR 150 expand to include numerous department activities and decisions that potentially have a significant environmental impact.

1 Of the numerous additions to NR 150, one of the most substantial changes involves agency actions involved in dam permitting. Although unmentioned in previous rules, dam construction and removal now falls under "facility development" in NR 150. Along with the changes in what constitutes facility development, the DNR also moved facility development from "prior compliance actions" to "minor actions". This shift from prior compliance to minor action is accompanied by numerous additional dam related activities being added to "minor actions". The list of new department actions include: temporary drawdowns of dams and reconstruction and repairs of dams. The proposed rule makes what appears to be every dam or dam related activity a "minor action" that does not require any environmental analysis.

2 This rule change overlooks the fact that dam construction, reconstruction, and repairs all have significant effects on the environment. In some instances, dam construction is considered a type II action, which has "the potential to cause significant environmental effects and may involve unresolved conflicts in the use of available resources." Without further analyses of projects, it is unclear what kind of damage could result from concluding that all dam activities are considered "minor actions". Unlike some other agency actions, dams historically have not fallen under "minor actions". Both the relocation of facility development as well as the creation of new actions have not been reflected in any previous versions of NR 150.

3 A majority of the actions that were created for the new proposed rule have been listed in past iterations of the NR 150. However, there are also new additions that appear in the proposed rule that were not listed in any of the previous emergency rules. This is especially concerning because it leaves an indication that the set of actions is not definite. The consistent, almost annual, additions of "minor actions" contradict the DNR's statement that their list is compiled through a codification of internal guidance.

2. The inclusion of a catch-all phrase along with an extensive list creates confusion and can lead to excessive agency activity falling under a "minority action."

The DNR justified these changes and additions to the minor actions by saying that they were simply switching over from internal guidance to codified rules. Prior to these additions, there was a "catch-all" category under "minor actions" that was intended to encompass all the actions

that were not explicitly listed. The DNR has now allegedly codified all agency minor actions, and it would therefore seem appropriate to remove the catch-all category. By creating this “finite list” of minor actions, there doesn’t seem to be a necessity for the unclear, catch-all category. However, the new proposed rule still includes the catch-all.

4 By including a catch-all option alongside an exhaustive list, there is an indication that there are additional actions that will be added or fall in to the “minor actions” category. It means that potentially, agencies have a discretionary power to determine what is considered a minor action. The openness of what constitutes “routine” or “small-scale” is too variable when paired with an extensive and seemingly expanding list of actions.

5 This continual growth of minor actions is allowing agencies to perform actions that are much more significant than “minor”. The emergency rule that was created in August 2014 included around 20 “minor actions” that were individually listed out. The emergency rule that was recently approved and is currently in effect added around eight (8) more minor actions to that list. This continuous growth is occurring despite DNR assurances that they are simply transitioning from an internal guidance system to codified rule. These consistent piecemeal additions to NR 150 do not illustrate a succinct, comprehensive rule, and lead us to believe that more changes and additions will follow the proposed rule.

B. The DNR’s permitting process for the actions listed in NR 150.20(2) do not meet the requirements of WEPA.

6 MEA would like to again reiterate concerns that have been raised in the past regarding the elimination of environmental assessments (“EAs”). EAs had historically been an integral part of compliance with WEPA. The DNR justified eliminating EAs for a number of actions for which an environmental assessment is required in the federal context by presuming that the permitting process provides an “equivalent analysis” of impacts and alternatives.

7 An equivalent analysis is defined as “department programmatic procedures that include environmental analysis and provide for public disclosure and comment.” A number of actions under the equivalent analysis section are currently listed as Type II actions, which, as previously stated, “have the potential to cause significant environmental effects and may involve unresolved conflicts in the use of available resources.” For example, many DNR approvals required for CAFOs are categorized as equivalent analysis actions.

8 Up until the adoption of the April 2014 version of NR 150, CAFOs had historically been required to go through the EA process for the issuance or modification of a Wisconsin Pollutant Discharge Elimination System (“WPDES”) Permit and associated approvals for high capacity wells. EAs for new or expanding CAFOs had typically provided a detailed analysis of a wide range of impacts associated with large CAFOs that were not included in the WPDES permitting process for which public notice is provided:

- Impact on air quality, including estimates of potential emissions and odor impacts;
- Detailed information on groundwater quality and quantity;
- Detailed information on nearby surface water quality;

- 8
- More detail regarding the proposed facility design;
 - Impact on traffic, noise, etc. that will affect the surrounding community

9 The WPDES permitting process is limited in scope and does not produce any publicly noticed record of the DNR's analysis of impacts and alternatives. It addresses only water quality impacts and does not analyze or provide information regarding impacts to air quality, water quantity, or other impacts to the physical environment. In fact, when citizens raised these issues in their comments on a draft WPDES permit, the DNR dismissed those concerns as outside the scope of WPDES permitting. Additionally, the only information that the DNR provides in its notice to the public of a draft CAFO WPDES permit is a permit fact sheet, which includes a limited description of the CAFO and the basic regulatory and permit requirements.

10 High capacity well approvals, which are often part of a CAFO's plans to build a new facility or to expand, were also grouped under the equivalent analysis umbrella for the April 2014 rule adoption. Historically, these had been included in EAs for new or expanding CAFOs. Unlike EAs, the high capacity well approval process does not provide for public notice and does not provide any reviewable record of the impacts and alternatives analyzed. As a result of the elimination of requiring EA's for these approvals, the DNR's consideration of cumulative impacts and alternatives with regard to high capacity wells was entirely removed from public review.

The current rule provides that, as a matter of law, the environmental analysis produced through regulatory programs listed as equivalent analysis actions comply with WEPA in every case, no additional environmental analysis is required. At the same time, NR 150 does not eliminate the WEPA requirement to take a "hard look" at impacts and develop a reviewable record supporting the agency's decision not to prepare an EIS.

11 Since the adoption of the April 2014 rule, MEA has made an open records request as a means of determining whether an equivalent analysis meets the same standards as an environmental assessments. After reviewing these documents, we cannot find any evidence that the DNR gathered sufficient data to meet WEPA requirements. Nothing in the records obtained from the DNR demonstrates that the DNR evaluated whether certain programmatic procedures provided a sufficiently broad and detailed environmental analysis to comply with WEPA. It cannot be said that an environmental analysis for a WPDES permit will comply with WEPA in every case, including a reviewable record of its reasoning for not requiring any further analysis through an Environmental Impact Statement ("EIS")

Apart from a few notations in the records documenting DNR procedures and requirements, there is no list which explains the breadth and depth of an equivalent analysis. Therefore, there is a legitimate question as to whether an equivalent analysis would consistently meet all WEPA requirements.

- 12 C. The process used to promulgate the emergency and proposed permanent rule is inappropriate and undermines citizen participation in the rulemaking process.

While we appreciate the DNR's devotion to ensuring the rule is up to date with their standards, this method of repeated and constant emergency rules for the past year is not an appropriate means to accomplish it. The consistent, fragmented additions to the minor action category create discrepancies or confusion regarding what actions fall under what category.

Even though the DNR indicates that this rule is to clarify what "minor actions" are, there is no real explanation as to what constitutes the emergency. Emergency rulemaking is used when "preservation of the public peace, health, safety, or welfare necessitates placing a rule into effect." Apparently, for the current case, the need for housekeeping changes is enough to circumvent traditional rulemaking proceedings. It is difficult to see how the addition of numerous "minor actions" would so adversely affect public health or safety that an emergency rule is necessary. Whatever quantifies an emergency rule needs to be better explained, especially if the promulgation of emergency rules no longer require any environmental analysis.

There is evidence to show while the DNR claims the new amendments are for clarity, some categories and agency actions actually switched around. Clarity is significantly different than the restructuring of agency actions that is actually being done by this rule change. For example, it is hard to see how clarification involves moving facility development to a "minor action". These changes do much more than clarify, and instead alter or add sections that were not traditionally found in the rule.

The DNR's decision to promulgate an emergency rule that mimics the new proposed rule was unnecessary and skirts around the intent of NR 150 by refusing to allow citizens input on rule changes before implementing them. A key factor in NR 150 involves informing and engaging the public. In this instance, the public was not given an opportunity to understand and engage in the rulemaking process before the DNR implemented their emergency housekeeping rule. Additionally, the DNR's decision to repeatedly promulgate emergency rules has been confusing for the public. There is no reason for an agency that spent years developing a new rule to both immediately and repeatedly amend that rule. This holds true especially for NR 150 which was written with a "catch-all" provision. The DNR could have simply gone through the traditional and appropriate rulemaking process while better establishing the correct lists; proceeding in this way would have prevented the abundance of emergency rules the DNR used instead.

The entire rulemaking process requires more transparency both in, what are now becoming, the regular emergency additions to the minor actions and the focus and depth of the equivalent analysis actions.

We believe that the proposed rule changes to NR 150, as well as the current emergency rule, are likely to create substantial confusion and result in uncertainty and conflicts between permittees, the DNR, environmental organizations, and members of the public.

For all the above reasons, we oppose the proposed amendments and additions to NR 150. We also oppose the methods the DNR has used to continue to alter and promulgate the current rule. By providing these comments, we do not waive any argument in any future proceeding that the rules as proposed, finalized, or implemented is in violation of federal or state laws.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Voskuil". The signature is fluid and cursive, with the first name "Adam" and last name "Voskuil" clearly distinguishable.

Adam Voskuil

Law Clerk

Sarah Williams

Staff Attorney

Midwest Environmental Advocates

CORRESPONDENCE/MEMORANDUM

DATE: July 2015

TO: File

FROM: James Pardee- DNR WEPA Coordinator
David Siebert- Director, Bureau of Environmental Analysis and Sustainability

SUBJECT: Classification of Department actions under NR 150

Introduction

This analysis provides a short summary of the underlying rationale for the inclusion of Department actions listed in the proposed 2015 revision of ch. NR 150, Wis. Adm. Code. Included are minor actions under s. NR 150.20 (1m), integrated analysis actions under s. NR 150.20 (2)(a), and prior compliance actions under s. NR 150.20 (3)(a).

This memorandum lists an explanation developed by program experts and staff attorneys assigned to that program as to the classification of each action listed in the proposed permanent rule (seeking adoption at August 2015 NRB meeting). Also included is information about whether and how each action was categorized under the pre-2014 version of ch. NR 150, which had not been substantially updated since 1987.

This list reflects the product of nearly three years of public outreach, internal input and staff review prior to the 2014 revision and one year of internal review and external input on emergency and proposed permanent rule clarifications. The Department, in generating, analyzing, and providing a hard look at the various actions to be included in the action types listed below, relied on its over 25 years of longstanding experience and expertise in implementing ch. NR 150 and the deference provided throughout that history by the courts in making these determinations in rule and on a case by case basis. Confusion during the first year of the revised rule and as demonstrated by external comments regarding the term “equivalent analysis” resulted in a proposed change in the rule to use the term “integrated analysis action,” for which a separate environmental analysis process is not required.

Explanations

- Minor Actions: see pages 2-15
- Integrated Analysis Actions: see pages 15-26
- Prior Compliance Actions: see pages 26-27

MINOR ACTIONS – s. NR 150.20 (1m)

Section NR 150.03 (15) provides that a “minor action” means:

“a department action that is not in conflict with state or federal environmental policies and is not likely to do any of the following:

- (a) Set precedent for reducing or limiting environmental protection.
- (b) Result in deleterious effects over large geographic areas.
- (c) Result in long-term deleterious effects that are prohibitively difficult or expensive to reverse.
- (d) Result in deleterious effects on especially important, critical or sensitive environmental resources.
- (e) Involve broad public controversy.
- (f) Result in substantial risk to human life, health, or safety.

The following actions were determined by the Department to consistently meet this definition. It is further important to note that any one of these minor actions may still receive review under an environmental impact statement (EIS) under s. NR 150.30 pursuant to s. NR 150.20 (4) (b) in unique circumstances as determined by the Department.

NR 150.20 (1m):

(a) A real estate action, including property boundary establishment or modification, purchase, sale, easement, lease, designation, redesignation or dedication.

Real estate actions typically do not meet the criteria under the definition of minor actions in s. NR 150.03 (15). Any actions allowed for, restricted or otherwise affected by the terms of a real estate action would be evaluated for compliance with ch. NR 150 prior to that action being taken. Most real estate actions did not require environmental analysis under the pre-2014 version of ch. NR 150, although larger acreage projects did require environmental analysis.

- Property boundary establishment and modification are planning tools. The Department does not condemn property within property boundaries, but only acquires property from willing sellers.
- Property purchases (fee title) change property ownership and management authority from willing sellers to the Department, do not dictate environmental changes, and any actions allowed for, restricted or otherwise affected by the terms of a purchase would be evaluated for compliance with chs. NR 44 and NR 150 prior to that action being taken independent of the purchase.
- Property rights acquisition through leases change property management authority from willing sellers to the Department, do not dictate environmental changes, and any actions allowed for,

restricted or otherwise affected by the terms of a lease would be evaluated for compliance with ch. NR 150 prior to that action being taken independent of the lease.

- Property sales change property ownership and management authority from the Department to others, but do not dictate environmental changes. Under s. 23.15, Stats., properties sold by the Department must be shown to be no longer necessary for the state's use for conservation purposes.
- Property rights changes through leases change property management authority from the Department to the lessee, do not dictate environmental changes, and any actions allowed for, restricted or otherwise affected by the terms of a lease would be evaluated for compliance with chs. NR 44 and NR 150 prior to that action being taken independent of the lease.
- Property designation, redesignation and dedication are used as protective covenants by the Department to prevent environmental degradation, do not dictate environmental changes, and any actions allowed for, restricted or otherwise affected by the terms of a designation, redesignation or dedication would be evaluated for compliance with ch. NR 150 prior to that action being taken independent of the designation, redesignation or dedication.
- In addition to applicable protocols, environmental changes to properties managed by the Department are directed and authorized by master planning under ch. NR 44, or local planning overseen by the Department. These planning processes receive environmental analysis as integrated analysis actions under NR 150.20 (2) (a).

(b) Department or construction of new department facilities that follows protocols.

Department protocols are defined in s. NR 150.03 (23) to be written department procedures to guide department action, other than statutes or administrative codes, that have been approved by the Natural Resources Board (NRB) or the Secretary. Protocols receive internal and public review through the Department's policy review procedures. Some protocols may also receive review through strategic analysis. These reviews consider environmental effects and alternative approaches. In addition, few facility developments or removal of developments would not meet the definition of minor actions under s. NR 150.03 (15). Under the pre-2014 version of ch. NR 150, larger and more expensive development projects did require environmental analysis, while smaller and less expensive developments did not. Development removal was not listed in the pre-2014 version of ch. NR 150.

(c) Natural resource management, timber management, or environmental restoration that follows protocols.

Department protocols are defined in s. NR 150.03 (23) to be written department procedures to guide department action, other than statutes or administrative codes, that have been approved by the NRB or the Secretary. Protocols receive internal and public review through the Department's policy review procedures. Some protocols may also receive review through strategic analysis. These reviews consider environmental effects and alternative approaches. In addition, few Department resource management projects have historically ever not met the definition of minor actions under s. NR 150.03 (15). Under the pre-2014 version of ch. NR 150, some larger management projects did require environmental analysis, while most projects did not.

For fisheries' activities subject to protocols, under s. NR 1.01, the Department is responsible for using scientific management principles that emphasize the protection, perpetuation, development, and use of all desirable aquatic species. The goal of the fish management protocols is to provide opportunities for the optimum use and enjoyment of Wisconsin's aquatic resources, both sport and commercial. These activities promote environmental protection and often reverse deleterious effects on resources, such as creating fish habitat and reducing the risk of invasive species proliferation.

Wildlife activities subject to protocols result in populations in balance with ecological and sociological carrying capacity in order to avoid deleterious effects to the environment, minimize public controversy, and avoid risk to human life or safety that may result from failing to manage wildlife. These wildlife habitat management, protection and restoration protocols are designed to have positive effects on both the human environment as well as for wildlife and are supportive of environmental protection.

For forest fire, prevention, detection and suppression protocols, along with prescribed burning protocols, the specific purpose of the activities subject to the protocols is to prevent and stop the destructive effects of forest fires on the ecological landscape and prevent the deleterious effects to the environment that they cause.

Timber management is designed to enhance the forest's utility for any purpose and to meet the diverse needs and values of landowners and society on a sustainable basis and are defined by the department through a variety of protocols, including the Silviculture Handbook, Wisconsin Forest Management Guidelines, and Wisconsin's Best Management Practices (e.g., water quality, invasive species), and others. These protocols are designed to sustainably manage forests by protecting site productivity and critical natural resources.

The following is a non-exhaustive list of examples of natural resource management; timber management or environmental restoration activities covered under existing Department protocols.

- Fisheries monitoring and assessments – creel surveys, species assessments and data analysis, contaminant monitoring, fish kill investigations
- Habitat management and protection – beaver control, culverts, fish ladders, habitat creation/enhancement, waterway and wetland permit reviews
- Propagation and stocking of fish – hatchery operations, facility development and maintenance, fish health sampling
- Invasive species includes treatments to eliminate or contain the spread of non-native plants, animals and pathogens that may cause economic or environmental harm to native ecosystems or harm to human health. Control measures may involve pulling, cutting, and herbicide treatment, as well as other methods to eliminate or contain the spread of invasive species. Invasive species control intends to benefit native ecosystems, native species, and human well-being.
- State game farm activities are the operation of an existing facility. Poultry health is a primary concern and follows existing protocols established in ATCP Administrative Code and best management practices for poultry production.
- Protocols for the use of pesticides are in accordance with label instructions and uses and follows administrative rules established by the department of Agriculture, Trade and Consumer Protection.

- Natural resources field surveys, inventories, and mapping actions are routine activities that would typically not result in any impacts to the human environment.
- Fire prevention activities such as public education, community outreach, law enforcement, engineering, and reduction of fuel hazards that are intended to reduce the incidence of unwanted human-caused wildfires and the risks they pose to life, property or resources. Fire prevention is by in large a behavioral modification strategy and as such as no deleterious effect on the environment.
- Fire detection is a system for, or the act of discovering, locating, and reporting fires. The system is a combination of fixed look-out sites, fixed wing aerial platforms and citizen reporting network. Fire detection as referenced has no deleterious effect on the environment .
- For fire suppression, all work and activities connected with control and fire-extinguishing operations, beginning with discovery and continuing until the fire is completely extinguished. The act of fire suppression is necessary for public safety, preservation of property and further protection of resources. The methods and protocols of fire suppression are consistent in application and objective for the corresponding fuel type the application is being implemented in.
- Rehabilitation of burned areas involves efforts undertaken after a forest fire to repair or improve fire damaged lands unlikely to recover to a management approved conditions or to repair or replace minor facilities damaged by fire. The systems and process used to rehabilitate a fire are in response to reverse any deleterious actions caused by a forest fire.
- Prescribed burning involves any fire intentionally ignited for the purpose of management actions in accordance with applicable laws, policies, and regulations to meet specific objectives. Any deleterious effect to the environment is mitigated through the protocols in advance by substantial planning, application of permits, and mitigation of impact of sensitive environmental concerns by application time and frequency.
- Silvicultural practices include practices for controlling forest composition, structure, and growth to maintain and enhance the forest's utility for any purpose and to meet the diverse needs and values of landowners and society on a sustainable basis. Silvicultural practices are defined by the department through a variety of protocols, including the Silviculture Handbook, Wisconsin Forest Management Guidelines, and Wisconsin's Best Management Practices (e.g., water quality, invasive species). These practices are designed to sustainably manage forests by protecting site productivity and critical natural resources.
- Forest inventory is the systematic collection of forest data for the purposes of assessment and analysis.
- Chemical and mechanical site preparation includes the manipulation of a site to modify the soil, litter, or vegetation to create conditions conducive to the establishment and growth of desired tree species. Treatments may include mechanical (e.g., scarification, disking) or chemical (i.e., herbicide) methods.

- Timber harvesting is the process of gathering a timber crop, including the felling, skidding, on-site processing, and removal of products from the forest.
- Timber sales involve the commercial sale of forest products.
- Timber transporting involves the movement of forest products via trucking or rail to a mill or processing facility.
- Tree planting is the establishment of young trees through planting seedlings.
- Direct seeding is the establishment of young trees through planting seeds.
- Forest type conversions involve silvicultural practices designed to convert one existing forest cover type to another. The conversion process may involve natural succession where one forest cover type is gradually replaced by another or active manipulation of the site to establish a new forest type that better meets land management objectives. Most forests in Wisconsin are regenerated naturally and only a small portion of the landscape is converted through active manipulation, such as a plantation of another tree species.
- Timber stand improvement – Timber stand improvement includes non-commercial silvicultural treatments to improve stand composition, structure, health and growth. Thinning around young desirable crop trees, such as oak trees for example, promotes their growth and development within a forest.
- Forest nursery operations – The Wisconsin DNR operates a forest nursery system in order to grow high quality, native tree seedlings and shrubs for reforestation and conservation purposes. Forest nursery operations support forest restoration and sustainable management practices throughout the state.

(d) The operation, repair, maintenance, or in-kind replacement of existing department facilities that follows protocols.

These are activities designed to maintain rather than change the environment. Repair and maintenance activities did not require environmental analysis under the pre-2014 version of ch. NR 150. Protocols receive internal and public review through the Department's policy review procedures. Some protocols may also receive review through strategic analysis. These reviews consider environmental effects and alternative approaches.

(e) A research action that does not involve species introductions or substantive manipulation of resources, or that does involve species introductions or substantive manipulation of resources but follows protocols for doing so.

Research actions that do not involve species introductions or substantive manipulation of resources did not require environmental analysis under the pre-2014 version of ch. NR 150. Other research actions that

follow protocols are the same as resource management activities under s. NR 150.20 (1m) (c), described above.

This action could include trapping surveys for insects or fungal pathogens, setting up plots to survey and monitor invasive plants, or small pocket studies for control treatments. These actions are appropriately listed as minor actions because they wouldn't alter the landscape over large geographic areas or result in long-term deleterious effects.

(f) A natural resource inventory or mapping action.

These are information activities that meet the definition of minor actions in s. NR 150.03 (15). These actions did not require environmental analysis under the pre-2014 version of ch. NR 150.

(g) Issuance of a grant or other financial assistance action.

Providing money does not result in physical impacts to the environment, and therefore meets the definition of minor actions in s. NR 150.03 (15). Activities supported through financial assistance may themselves be minor actions, or if non-minor they would receive environmental analysis under s. NR 150.20 (2), (3), or (4). Under the pre-2014 version of ch. NR 150, environmental analysis was only required for plans that included activities that themselves required environmental analysis.

(ge) Educational activities.

These are information activities that do not result in physical impacts to the environment, and therefore meet the definition of minor actions in s. NR 150.03 (15). These actions did not require environmental analysis under the pre-2014 version of ch. NR 150.

(gm) Model ordinances developed to assist municipalities in the creation of ordinances.

Model ordinances typically must follow the provisions established in administrative code or receive internal and public review through the Department's policy review procedures. Some model ordinances may also receive review through strategic analysis. These reviews consider environmental effects and alternative approaches. Model ordinances are designed to avoid or minimize environmental impacts, and therefore meet the definition of minor actions in s. NR 150.03 (15). These ordinances required environmental review under the pre-2014 version of ch. NR 150 only if the activities described in the plans required environmental analysis.

For example, the department is required develop model ordinances to assist municipalities in understanding the shoreland, floodplain, shoreland-wetland and St. Croix Riverway standards in chs. NR 115, 116, 117 and 118. These model ordinances reflect the language in the rule but format the rule language in a workable ordinance format. These are minor actions because each of the administrative codes, chs. NR 115, NR 116, NR 117, and NR 118 were developed through the administrative rulemaking process and environmental impacts were assessed at that time. Consequently, the standards in these rules were reviewed for compliance with ch. NR 150 during the rulemaking process, and such rules receive environmental analysis as integrated analysis actions under NR 150.20 (2) (a). Typically, when the department staff develop a model ordinance the model merely reflects the language in the administrative code, but formats that language in a manner that is easier for municipalities to adopt and administer. Municipalities then take the model and may just adopt it word for word or they may use it as a guide

when developing their own ordinance. These actions did not require environmental analysis under the pre-2014 version of ch. NR 150.

(gs) Consultation offered to third parties.

These are informational activities that do not result in physical impacts to the environment. Third party consultation was not listed in the pre-2014 version of ch. NR 150.

(h) Issuance of high capacity well approvals under s. 281.34 (2), Stats., except for wells under s. 281.34 (4), Stats.

Section 281.34 (2), Stats., requires Department approval for high capacity wells, and s. 281.34 (4), Stats., identifies those high capacity wells that require environmental analysis under s. 1.11, Stats. High capacity wells other than those under s. 281.34 (4), Stats., do not require environmental analysis. These well approvals did not require environmental analysis under the pre-2014 version of ch. NR 150.

In accordance with the current statutory and case law related to high capacity well approvals, the department evaluates all high capacity well applications to avoid potentially significant adverse environmental impacts on any “water of the state” as that phrase is broadly defined in ch. 281 of the Wisconsin Statutes. Further, in addition to including the potential impact of the proposed well, the Department’s review includes an evaluation of the cumulative impacts of all area high capacity well pumping. Taking into account the cumulative impacts of area pumping, the department will condition or deny a high capacity well application to avoid significant adverse environmental impacts. The Department’s reviews are not inconsistent with any state or federal environmental policy; they are done on a case-by-case basis, and set no precedent for reducing or eliminating environmental protection; they result in no adverse effects over a large geographic area or effects that are difficult or expensive to reverse; they account for potential impacts to sensitive and critical resources; they at times involve local public controversy, however, the controversy related to any specific application is not broad-based; and they do not result in substantial risk to life, health and safety.

(i) Issuance of high capacity well approvals under s. 281.34 (4), Stats., that are exempted from environmental analysis requirements under s. NR 820.30 (2) and (3).

These well approvals are exempted from compliance with s. 1.11, Stats. These well approvals did not require environmental analysis under the pre-2014 version of ch. NR 150.

In accordance with the current statutory and case law related to high capacity well approvals, the Department evaluates all high capacity well applications to avoid potentially significant adverse environmental impacts on any “water of the state” as that phrase is broadly defined in ch. 281 of the Wisconsin Statutes. Further, in addition to including the potential impact of the proposed well, the department’s review includes an evaluation of the cumulative impacts of all area high capacity well pumping. Taking into account the cumulative impacts of area pumping, the Department will condition or deny a high capacity well application to avoid significant adverse environmental impacts. The Department’s reviews are not inconsistent with any state or federal environmental policy; they are done on a case-by-case basis, and set no precedent for reducing or eliminating environmental protection; they result in no adverse effects over a large geographic area or effects that are difficult or expensive to reverse; they account for potential impacts to sensitive and critical resources; they at times involve local public controversy, however, the controversy related to any specific application is not broad-based; and they do not result in substantial risk to life, health and safety.

(j) Reissuance, modification, revocation and reissuance, or issuance of a routine or small-scale approval or action.

This is a catch-all of actions that are too insignificant to list separately. These actions meet the definition of minor actions under s. NR 150.03 (15). These actions, when generically listed in the pre-2014 version of ch. NR 150, did not require environmental analysis. The department will prepare program guidance to identify which actions are considered routine and small scale, subject to the department's public review process for all program guidance

(jg) Routine variances from department rule requirements.

These variances are only granted under specific criteria and meet the definition of minor actions under NR 150.03 (15). Variances, when listed in the pre-2014 version of NR 150, did not require environmental analysis.

(jr) Denial, termination, revocation, or suspension of a grant, permit, license, approval, variance, land application site, or of any proposed activity.

These actions prevent, or prevent continuation of, activities that may affect the environment. Therefore these actions meet the definition of minor actions under NR 150.03 (15). Environmental analysis was required by the pre-2014 version of ch. NR 150 for permit denials for actions that required environmental analysis. None of the other actions listed here required environmental analysis under the pre-2014 version of ch. NR 150.

(k) A routine or small-scale approval or action, or an approval or action associated with a permit.

This is a catch-all category for actions that are too insignificant to list separately. These actions meet the definition of minor actions under s. NR 150.03 (15). These actions, when generically listed in the pre-2014 version of ch. NR 150, did not require environmental analysis. The department will prepare program guidance to identify which actions are considered routine and small scale, subject to the department's public review process for all program guidance.

(L) Confirmation of coverage under a general permit.

Except for the issuance of statutory general permits under s. NR 150.20 (1m) (q), below, issuance of general permits requires environmental analysis under s. NR 150.20 (2) or (3). General permits typically only cover actions/operations that fall within a defined set of eligibility criteria whose impacts are appropriately addressed by the environmental analysis conducted as part of the permit issuance/reissuance/modification process. Therefore, additional environmental analysis for the confirmation of general permit coverage would be redundant and individual operation/project coverage under general permits meets the definition of minor action in s. NR 150.03 (15). When listed in the pre-2014 version of ch. NR 150, confirmation of general permit coverage did not require environmental analysis.

(m) Promulgation of emergency administrative rules under ch. 227, Stats.

Under s. 227.24, Stats., state agencies may promulgate emergency administrative rules if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the permanent rule promulgation procedures. Emergency rules are also only in effect limited periods of time, and must then be replaced with permanent administrative rules. Permanent rules receive environmental analysis under s. NR 150.20 (2). Emergency rules did not require environmental analysis under the pre-2014 version of ch. NR 150.

(n) Any enforcement action.

These actions prevent, or prevent continuation of, activities that may affect the environment. Therefore these actions meet the definition of minor actions under NR 150.03 (15). Enforcement actions did not require environmental analysis under the pre-2014 version of ch. NR 150.

(nm) Any emergency action that protects public health, safety, or welfare.

These actions prevent, or prevent continuation of, activities that may affect the environment. Therefore these actions meet the definition of minor actions under NR 150.03 (15). Emergency actions did not require environmental analysis under the pre-2014 version of ch. NR 150.

(o) Issuance of a minor source construction permit under ch. NR 406 or an operation permit renewal or revision under ss. 285.60, and 285.62, Stats., for air emission sources.

These actions include either the issuance of an air pollution control construction permit to a minor construction project at a facility that is either a major or a minor source or the issuance of a renewal or revision to an air pollution control operation permit for a facility that is either a major or a minor source.

The quantity of emissions authorized by a minor construction permit do not exceed the thresholds triggering major new source review. Emissions below these thresholds are not expected to degrade the air quality in an area. The criteria for issuance of minor construction permits assures that the source meets emission limits and that emissions are protective of ambient air quality standards. An operation permit revision or renewal does not, by itself, establish new or increased air emissions. Revisions incorporate changes authorized by construction permits, or changes that were exempt from needing a construction permit. Exemptions and minor source construction permits have already been defined under ch. NR 150 as minor actions. Major source construction permits have already been defined as integrated analyses. Renewals may also function as revisions and, in addition, reexamine the permit to assure it is up to date with all applicable requirements.

(p) Issuance of licenses for servicing septage, and approvals of county programs to regulate the disposal of septage under s. 281.48, Stats.

These actions do not result in physical impacts to the environment, and therefore meet the definition of minor actions under s. NR 150.03 (15). These actions did not require environmental analysis under the pre-2014 version of ch. NR 150.

(pe) Issuance of operator certifications under s. 281.17 (3), Stats., and licenses or registrations for well drillers and pump installers.

These actions do not result in physical impacts to the environment, and therefore meet the definition of minor actions under s. NR 150.03 (15).

The action of issuing a certification or license allows an individual to do work that requires a certification or license. The subsequent work that an individual performs is subject to environmental regulations and standards that are established by rule, and that are designed to prevent or minimize environmental pollution. Issuance of a certification or license by itself does not result in physical activity or impacts to the environment, and therefore is not likely to limit environmental protection, result in deleterious effects, involve public controversy or result in risk to human life, health, or safety. Certification and license issuance did not require environmental analysis under the pre-2014 version of ch. NR 150.

(pm) Approvals of geothermal heat exchange projects.

DNR must approve the installation of heat exchange drillhole projects *involving* 10 or more heat exchange drillholes, or where the sum of the depths of all heat exchange drillholes is greater than 4000 feet for a single drilling site, or if any heat exchange drillhole is greater than 400 feet in depth or is within 400 feet of a municipal water supply well. These actions are considered small scale projects and meet the definition of minor actions under s. NR 150.03 (15). These actions were not listed in the pre-2014 version of ch. NR 150.

(ps) Approvals of additives to wastewater or cooling water.

These actions meet the definition of minor actions under s. NR 150.03 (15). These actions were not listed in the pre-2014 version of ch. NR 150.

The Department's "Water Quality Review Procedures for Additives" in guidance document 3400-2015-03 provides a process for evaluating the toxicological data of chemical additives that may enter the environment. The determination on whether the additive may be used and any limitations placed on the additive usage will assure the protection of water quality. Because of the additive review process toxicity to fish and aquatic life are prevented.

(q) Issuance of general permits established by administrative code under ch. 30, Stats.

These general permits are established in administrative code and "issued" to applicants. In this case, issuance is the same as "coverage" under other kinds of general permits. There are over 30 general permits that were created by the ch. NR 300 series of the administrative code. Some of the activities that are included are boat ramps, boathouses, clear span bridges and culverts, dredging for utilities, maintenance dredging, dry fire hydrants, ford, grading, lakeshore erosion control, pea gravel blankets, pilings, ponds, streambank erosion control, temporary forestry crossings, weed rakes and wetland conservation activities. Following the enactment of 2003 WI Act 118, the department was directed by the legislature to create general permits. These general permits were created through the rulemaking process. Each of the administrative codes was reviewed for compliance under the pre-2014 version of ch. NR 150. The rules create general standards that are common to all general permits and then specific standards for each activity that minimize environmental impacts based upon research and years of professional experience with these activities, and such rules receive environmental analysis as integrated analysis actions under NR 150.20 (2) (a). If a project meets the general and specific standards in the

administrative code, the department must issue the permit in 30 days from date of receipt. These actions were not listed in the pre-2014 version of ch. NR 150.

(qm) Issuance of aquatic plant management permits under ch. NR 109.

These actions meet the definition of minor actions under s. NR 150.03 (15). These are permits issued consistent with a plan that is considered an integrated analysis process under s. 150.20(2)(a)22. These actions did not require environmental analysis under the pre-2014 version of ch. NR 150.

(r) Listing and delisting of an impaired water as defined in s. NR 151.002 (16m).

These actions are not regulatory and do not authorize pollution. Permits issued consistent with these listing are considered integrated analysis. These actions were not specifically listed under the pre-2014 version of ch. NR 150.

(s) Review and approval of municipal ordinances or approval of changes to municipal floodplain or shoreland-wetland maps.

The department is required to review and certify municipal shoreland, floodplain, shoreland-wetland and St. Croix Riverway ordinances that meet the standards in chs. NR 115, 116, 117 and 118. Such changes include text or map changes.

This is a minor action because each of the administrative codes, chs. NR 115, NR 116, NR 117, and NR 118, were developed through the administrative rulemaking process and such rules receive environmental analysis as integrated analysis actions under NR 150.20 (2) (a). When Department staff receive a municipal ordinance, the Department does not have discretion in its decision. If the ordinance complies with the standards in the code then the ordinance is certified. The public notice process is completed by the municipalities and the Department has little discretion to influence the decisions unless the ordinance does not meet the standards in the administrative codes. Further, certification of the ordinance does not directly result in environmental impacts. The impacts depend upon effective administration and enforcement by the municipality. These actions did not require environmental analysis under the pre-2014 version of ch. NR 150.

(sc) Temporary drawdowns of dams under s. 31.02, Stats.

Temporary drawdowns involve the operation of a dam to temporarily allow water to pass through the dam and drain any impoundment behind the dam.

Temporary drawdowns of dams may be conducted for any variety of reasons. Often these temporary drawdowns facilitate inspection by the dam owner. By statute an owner of the dam is required to conduct an inspection to ensure that the dam is structurally sound to protect life, health, and safety. These drawdowns occur for a very short period of time to allow the Department, the dam owner, or the owners agent to view aspects of the dam that would be inaccessible during operation. In some circumstances temporary drawdowns could also be allowed where an entity is completing some other environmental project, such as dredging, aquatic plant management, or fish management. These environmental projects involve their own analysis of environmental impacts and would include any assessment of the impacts from a temporary draw down. Regardless, a temporary drawdowns associated with an environmental project are still for typically shorter periods of time to allow for the completion of a project and do not

modify the overall operation of a dam. Drawdowns of dams did not require environmental analysis under the pre-2014 version of NR ch. 150.

(sg) Reconstruction and repairs of dams under s. 31.12, 31.18, or 31.185, Stats.

Owners of a dam are required to inspect and maintain a dam to protect life, health and safety. Under s. 31.19, Stats., the department may order a dam owner to repair or reconstruct a dam if pursuant to an inspection the department finds that a dam is unsafe. Repairs may be anything from removal of vegetation along a spillway, repairing gates or reducing seepage. Reconstruction means rebuilding all or parts of the dam.

Some of the dams in the state of Wisconsin have been in place since before the turn of the century and many of the existing dams in Wisconsin have been in place for decades. The environmental impacts of an existing dam occurred when the dam was constructed. By statute owners of a dam are required to maintain and repair dams to protect the public. Reconstruction and repair includes repairing or rebuilding the dam to hold the same water level as the original dam. Consequently, repairing or reconstructing a dam would not result in any long term impacts to the existing environment. Reconstruction may have some short term impacts but due to the potential need to temporarily draw down an impoundment during construction. Efforts to increase the size of the dam or the impoundment or changes in the operation of the dam are regulated under different statutory authority in Ch. 31, Stats.

Some dam reconstruction actions required environmental analysis under the pre-2014 version of ch. NR 150.

(sl) Transfer of dam ownership under s. 31.14, Stats.

Transfers of ownership merely establish ownership and responsibility for constructing, maintaining, repairing, and operating a dam from one entity to another.

Transfers of ownership do not result in any changes to a dam or its operation. It is a process to establish and document ownership and financial responsibility for construction, operation, repair and maintenance of a dam for a minimum of 10 years. A municipally-owned dam may not be transferred to a private individual or foreign corporation according to s. 31.21, Stats. Real estate laws require that the transfer of any parcel of land containing a dam (large or small, on navigable or non-navigable waterways) must obtain approval from the Department. Dam ownership transfers did not require environmental analysis under the pre-2014 version of ch. NR 150.

(sp) Dam inspections under s. 31.19, Stats.

By statute, an owner of a dam, or the owner's agent, is required to conduct an inspection to ensure that the dam is structurally sound to protect life, health, and safety. The Department may also conduct inspections.

The inspection itself does not result in any environmental impacts, except perhaps the short term impacts that may result if a temporary drawdown is necessary. A temporary drawdown may be necessary to inspect areas that would be inaccessible during operation. Inspections verify that a dam is structural sound and does not pose a risk to life, health or safety. Dam inspections were not listed under the pre-2014 version of ch. NR 150 and did not require environmental analysis.

(st) Plan approvals for dams under 31.33, Stats., and approvals of emergency action plans, inspection plans, operation and maintenance plans, dam failure analysis plans, or stability analysis plans under ch. NR 333.

These are informational activities that do not result in physical impacts to the environment, and therefore meet the definition of minor actions in s. NR 150.03 (15). These actions were not listed under the pre-2014 version of ch. NR 150.

The Department is required to approve emergency action plans, inspection, operation and maintenance plans, dam failure analyses, and stability analysis plans under ch. NR 333. These plans ensure that the dam is constructed, operated and maintained to protect life health and safety.

For new dams, the Department typically requires the submission of these plans and approval of these plans concurrently with an applicant's request to construct under s. 31.05, Stats. However, these plans may be modified over time or these plans may be submitted by an owner of an older existing dam, to bring the dam into compliance with ch. NR 333, even though no physical alternations to the dam may occur. The Department reviews these plans to verify compliance with ch. NR 333 and sound engineering principals. The department's review of these plans ensures that the dam is constructed, operated and maintained in a manner that protects life, health and safety.

(sx) Review & approval of hydrologic & hydraulic studies for floodplain mapping under s. NR 116.07.

These are informational activities that do not result in physical impacts to the environment, and therefore meet the definition of minor actions in s. NR 150.03 (15).

The Department is required to review and approve hydrologic and hydraulic studies for floodplain mapping under s. NR 116.07. These studies are typically mapping changes to the floodplain as a result of changes on the landscape or more detailed surveying data. These studies are reviewed by the department prior to submittal to the Federal Emergency Management Agency (FEMA).

This is a minor action because the review of these studies is based upon the standards in s. NR 116.07 and sound engineering principles. If the studies meet the standards in NR 116 and are based on sound engineering, then the studies are approved. The approval of these studies does not in and of itself change the floodplain maps. Once these studies are reviewed and approved by the Department, then the studies are submitted to FEMA for review and approval. Once FEMA approves the studies then a municipality would be required to adopt the approved studies if it resulted in a change in the mapped floodplain. The community is required to public notice these map changes and there is an opportunity for public comment. The approval of these studies does not result in impacts on the environment and this action did not require environmental analysis under the pre-2014 version of ch. NR 150.

(t) Approval of construction plans and specifications under s. 281.41, Stats., for municipal, industrial and industrial pretreatment wastewater facilities, public water systems and CAFO reviewable structures.

Construction plan and specification reviews are technical reviews that determine whether proposed facilities meet required technical standards. The established standards are designed to prevent or minimize environmental pollution. Facilities that meet the required standards therefore prevent or minimize environmental pollution. Facilities may not legally be constructed without Department approval of construction plans and specifications. In addition, the facilities cannot be operated without first obtaining a Wisconsin Pollutant Discharge Elimination System (WPDES) permit from the Department. WPDES permits for new sites already receive environmental review under s. NR 150.20 (2) or (3). Environmental

assessments were required for construction plan and specification reviews for projects on new sites or operations that would substantially increase pollutant discharge under the pre-2014 version of ch. NR 150.

(u) Decisions related to evaluations of existing reviewable facilities and systems under ch. NR 243.

If a farm is proposing an expansion that will result in an operation size of 1000 animal units or more, Department staff will conduct a review of the existing facilities prior to permit issuance. Reviews of existing facilities under ch. NR 243 are decisions related to the adequacy of previously built structures to protect water quality under a WPDES permit. These reviews will either confirm their adequacy to protect water quality or result in improvements that will prevent or minimize environmental pollution. In addition, WPDES permits for ~~new sources~~ that require review of existing reviewable facilities already receive environmental review under NR 150.20 (2) or (3). These actions were not listed in the pre-2014 version of NR 150.

(ug) Approvals of land application or nutrient management plans or modifications to the plans.

These approvals are designed to prevent or minimize environmental pollution. In addition, these approvals are for WPDES permitted operations. WPDES permits for new sites receive environmental review under NR 150.20 (2). Nutrient management plan approvals were not listed under the pre-2014 version of NR 150, and land application approvals did not require environmental analysis.

(ur) Approvals of land application sites.

Land application site approvals must meet criteria that are designed to avoid or minimize environmental pollution. These actions did not require environmental analysis under the pre-2014 version of NR 150.

(v) Issuance of natural heritage inventory permits, approvals, or licenses under ch. NR 29 except for permits issued under s. 29.604 (6m), Stats.

Permits issued under s. 29.604 (6m) for incidental take of threatened and endangered species receive environmental analysis under NR 150.20 (2) (a). The minor actions are routine reviews of information to support decision making under permits and management plans, data sharing agreements with qualified users, and certification of qualified users of the data. These actions did not require environmental analysis under the pre-2014 version of NR 150.

(w) Issuance of an order or any action relating to the forest croplands or managed forest land programs under subch. I or VI of ch. NR 77.

The purpose of the Managed Forest Law and Forest Croplands programs provides support for the issuance of these orders being classified as "minor action[s]." The purpose of the Managed Forest Law Program provides for the encouragement of the management of private forestlands for the production of future forest crops, but takes into consideration watershed protection and development of wildlife habitat while meeting this purpose. The purpose of the Forest Croplands program has similar objectives. These purposes and the actions taken by the department and landowners to meet them help ensure that department actions do not conflict with state or federal environmental policies. These actions did not require environmental analysis under the pre-2014 version of ch. NR 150.

INTEGRATED ANALYSIS ACTION – s. NR 150.20 (2)(a)

Section NR 150.03 (12m) provides that an “integrated analysis action” means a department action for which department programmatic procedures that provide for public disclosure and include an environmental analysis that provides sufficient information to establish that an environmental impact statement is not required. Note that previous versions of NR 150 used the term “equivalent analysis actions” for this category.

The following actions were determined by the Department to consistently meet this definition. It is further important to note that any one of these integrated analysis actions may still receive review under an EIS under s. NR 150.30 pursuant to s. NR 150.20 (4) (b) in unique circumstances as determined by the Department.

NR 150.20 (2) (a):

1. Property planning under ch. NR 44.

Property planning follows a process that meets the definition of integrated analysis action. Property planning under ch. NR 44 considers physical and socioeconomic effects at local and regional scales. Plans receive extensive public input and review, and are subject to NRB approval. Under the pre-2014 version of ch. NR 150 property planning required environmental analysis for plans that called for actions requiring environmental analysis.

2. County forest planning under s. 28.11 (5), Stats.

County forest planning refers to the development and approval of a comprehensive county forest land use plan for a period of 15-years, and revisions to that plan as changing conditions require. The comprehensive plan addresses: land use designations, land acquisition, forest protection, annual allowable timber harvests, recreational developments, fish and wildlife management activities, roads, silvicultural operations and operating policies and procedures. County forest planning also includes development of annual work plan which includes a schedule of compartments to be harvested and a listing of other management projects for the forthcoming year.

County forest planning follows a process that meets the definition of an integrated analysis action. Plans are developed utilizing a Department-established model plan template that includes evaluation of physical and socioeconomic effects. Plans are developed in consultation with stakeholder and the public and by their very nature are quite comprehensive. Plans, including comprehensive plans, annual work plans, and any amendments, are available for public review through county board approval processes. Under the pre-2014 version of NR 150 county forest planning required environmental analysis for plans that called for actions requiring environmental analysis.

2g. Approval of a withdrawal of county forest land under s. 28.11 (11), Stats.

Withdrawal of county forest land refers to the process by which a county can apply for and the Department may grant approval for removing certain lands from entry as county forest under s.28.11 Wis. stats. If the department finds that the benefits after withdrawal of the lands described in the application outweigh the benefits of continued entry of the lands and that the lands will be put to a better and higher use, it shall make an order withdrawing the lands from entry. NR 48 Wis. Admin Code provides guidance on the statutory withdrawal provisions, including the application, investigation, findings, and decision processes.

County forest withdrawals follow a process that meets the definition of integrated analysis action. The withdrawal review process includes evaluation of physical environment and socioeconomic effects. NR 48 Wis. Admin Code provides guidance on the statutory withdrawal provisions, including the investigation and findings, which includes disposition and use of all land and funds involved, environmental impacts, impacts on endangered and threatened species of plants and wild animals, impacts on game and nongame species of wild animals, impacts on multiple use benefits of the land involved, impacts on production of forest products and commodities, impacts on archeological and historical values, and economic impacts of the withdrawal versus continued entry. Withdrawals receive public review through the county board approval process. Additionally, per s. 28.11(11)(a)(2) Wis. stats., the Department may also conduct a public hearing on the application. Under the pre-2014 version of NR 150 some county forest withdrawals required an environmental assessment.

2r. Cooperative state trail planning.

Cooperative state trail planning follows a process that meets the definition of integrated analysis action. Local government cooperators are required to agree to a memorandum of understanding (MOU) with the Department that includes consideration of physical and socioeconomic effects. Public review is also required under the MOU. In addition, most cooperative state trails are on former railroad grades (“rails to trails” projects) that under protocols receive a detailed environmental review. Under the pre-2014 version of NR 150 cooperative state trail planning required environmental analysis.

3. Areawide water quality management planning or priority watershed planning under ch. NR 121.

Water quality management planning includes consideration of physical and socioeconomic effects under s. 121.05, Stats. and public review under s. 121.08, Stats. Under the pre-2014 version of NR 150, an environmental assessment was required for delineation of areas over 1000 acres that may be served by a sewage collection system.

3c. Development of total maximum daily loads as defined in s. NR 151.002 (46m).

Establishment of total maximum daily loads (TMDL) requires extensive public participation and requires EPA approval. Water quality data is evaluated and sources of pollutants to the impaired water is evaluated. Economic and environmental impacts are discussed and evaluated through this process. TMDL establishment did not require environmental analysis under the pre-2014 version of NR 150.

3g. Issuance, reissuance, revocation and reissuance, or modification of a WPDES permit that authorizes a new source discharge that is subject to antidegradation review under ch. NR 207.

WPDES permits for existing facilities operations that are not at new sites are exempt from compliance with s. 1.11, Stats., under s. 283.93, Stats. A WPDES permit action that authorizes a proposed new or increased discharge to surface waters must follow the antidegradation policy in s. NR 102.05 (1) (a). No waters of the state shall be lowered in water quality unless it’s demonstrated to the department a change is justified for necessary economic and social development, provided it doesn’t conflict with the water body’s use designation. The procedures in ch. NR 207 provides for an evaluation of the new or increased discharge as to whether it would result in a significant lowering of water quality, identifies what qualifies as important economic or social development, and specifies how the department is to make its determinations. The public participation procedures in ch. NR 203, which applies to the permit actions

for issuance, reissuance, revocation and reissuance, or modification provides a public disclosure process equivalent to ch. NR 150.

3n. Approval of a variance from a water quality standard under ch. 283, Stats.

Variations can be approved if applicants can't achieve the standard in a cost effective manner and if they can demonstrate that meeting the limit will cause substantial and widespread social and economic impacts in the area where the permittee is located. To get a variance, applicants have to evaluate sources of the pollutant, evaluate the ability of their treatment system to reduce the pollutant, evaluate changes they could make to reduce the pollutant, consider alternatives to meeting the limit, and characterize and analyze the increased risk to human health and the environment if the variance is granted. If they are seeking a variance based on financial impacts, applicants have to thoroughly analyze the fiscal impact of complying with the limits and the socioeconomic impacts to the community associated with complying with the limit. Pursuant to s. 283.15 (3) and (4), Stats., variances go through a public disclosure process and variances must be approved by EPA before they are included in a permit. Water quality variances were not listed in the pre-2014 version of ch. NR 150.

3r. An approval of a municipal wastewater facilities plan under s. NR 110.08, and approvals of municipal wastewater projects receiving federal grants or state financial assistance under ss. 281.58 and 281.59, Stats.

Municipal wastewater facilities plans are required to include an environmental analysis and receive public review. Under the pre-2014 version of ch. NR 150, environmental analysis was required for new municipal facility plans.

3w. Issuance, reissuance, revocation and reissuance, or modification of an individual WPDES permit for a concentrated animal feeding operation under ch. NR 243 that is a new

WPDES permits for concentrated animal feeding operations (CAFO) that are not at new sites are exempt from compliance with s. 1.11, Stats., under s. 283.93, Stats. Permit actions (issuance, reissuance, etc.) for a new source CAFO includes extensive environmental analysis in the form of review of design plans for manure and process wastewater handling at the production site and land spreading activities under a nutrient management plan. Other information relevant to environmental analysis may be required in accordance with ss. NR 243.12(2)(a)7 and NR 243.12(2)(b)6, if warranted. A robust public review and input process is required as part of WPDES permit actions. Ch. NR 243 requires the inclusion of all information required to comply with ch. NR 150]. WPDES permits for new sites required environmental analysis under the pre-2014 version of ch. NR 150.

4. Issuance of a major source construction permit under ch. NR 405 or 408 or an initial operation permit under ss. 285.60 and 285.62, Stats., for air emission sources.

The action is the issuance of an air pollution control construction permit to a project that is considered a major modification under chs. NR 405 and 408. Permits reviewed under chs. NR 405 and 408 require an analysis of source impacts, additional impacts, air quality and impose control technology considered Best Available Control Technology (under ch. NR 405) or Lowest Achievable Emission rate (under ch. NR 408). Such analyses meet the definition of environmental analysis in ch. NR 150. See s. NR 150.03(8).

The issuance of an initial operation permit means that the entire facility has never been reviewed for facility-wide impacts. This action often involves permitting of a greenfield source. The Air Program requires an environmental analysis questionnaire to be submitted and available as part of the review of this type of action. This ensures that the process includes an environmental analysis as defined in s. NR 150.03(8).

Prior to issuance of any permit by the air program, State Statute also requires the Department to provide for public disclosure and allow 30 days for the public to comment.

6. An incidental take permit under ch. NR 27 and s. 29.604 (6m), Stats.

Section 29.604(6m), Stats. requires a broad analysis of impacts and alternatives, and provides for public review and comment. These permits did not require environmental analysis under the pre-2014 version of ch. NR 150.

7. A solid waste feasibility approval or a commercial PCB waste storage or treatment facility feasibility approval under ss. 289.25 and 289.53, Stats., and chs. NR 157, 182 and 512.

Feasibility approvals require a broad analysis of impacts and alternatives, and provide for public review and comment. Environmental analysis was required for some solid waste and hazardous waste feasibility approvals under the pre-2014 version of ch. NR 150.

Chapter 289, Stats., sets forth the procedures the state follows in permitting a proposed solid waste disposal facility, hazardous waste facility (ss. 289.21 to 289.31, Stats.) or commercial PCB waste storage or treatment facility (s. 289.53, Stats., which specifies that PCB facilities are handled the same way). Section 289.25, Stats., specifies the environmental review process that must be carried out for these facilities (although the above excerpt does not mention hazardous waste facilities). The environmental review process for these facilities is driven by this section of the statutes, not by NR 150. This establishes an integrated analysis procedure for environmental review for these facilities.

In addition, s. 291.25 (2), Stats., relating to “[l]icenses: treatment, storage or disposal” states that no person can construct a hazardous waste facility unless the person complies with 289.23 – 30. This means the Department must follow the same requirements to license a hazardous waste treatment, storage, and disposal facility (TSD) that the Department’s Solid Waste follows and this include the s. 289.25, Stats. reference for environmental review. In order to matchup with the EPA federal hazardous waste permitting process, the Department has combined some steps from s. 289.25, Stats. and also has more public notices. In addition, please note that s. 291.25(5), Stats. includes the following language:

“[a]n existing hazardous waste facility which was never licensed under this section, whether or not it was previously authorized to receive hazardous waste under s. 289.31, shall be treated as an unlicensed proposed facility which has not been constructed for the purpose of complying with sub. (2) (a), for the purpose of obtaining an operating license under this section and for the purpose of administrative procedure and review under ch. 227.

7e. Funding decisions made pursuant to ch. 292, Stats., and chs. NR 700 to 754.

Funding decisions made by the DNR pursuant to ch. 292, Stats., and chs. NR 700 to 754 are governed by the public participation requirements of ch. NR 714. The code requires the Department to follow a number of public notice and engage processes as specified in s. NR 714.05, including: (1) filing a notice of a proposed cleanup as class 1 notice; (2) listing the site and activities on a web-based system for the

public; (3) developing a proposed cleanup plan; (4) making the plan available for comment, including alternatives; (5) conducting public participation and notice; (6) providing an opportunity for a public meeting; and (7) other public participation activities determined to be necessary by the Department.

The federal cleanup grants administered by the Department for cleanups must comply with the NEPA-equivalency requirements. Prior to granting funds, the grant must be public noticed, including the development of an alternatives analysis report and proposed plan. A public meeting needs to be offered, and a responsiveness summary developed at the conclusion of the public participation period. A decision document is then required prior to incurring any federal grant funds. These grants were not listed in the pre-2014 version of ch. NR 150.

7m. Issuance of regulatory approvals, liability clarification letters, exemptions and technical assistance under ch. 292, Stats., and chs. NR 700 to 754.

Responsible parties or the Department, when conducting cleanups, must follow the requirements specified in ch. NR 700 rule series. As part of those requirements, a site investigation must be conducted, including the development of alternative cleanup options. The DNR may require those parties to conduct the appropriate ch. NR 714, public participation requirements, including soliciting public input on the proposed alternative and the other options considered. The issuance of regulatory approvals, liability clarification letters, exemptions and providing technical assistance are all part of the ch. NR 700 process that includes the required public participation and notice requirements in ch. NR 714. This includes a publicly available database of all contaminated sites and tracking of the status of those cleanups. The Department decision documents and reports are posted to that web site. These actions did not require environmental analysis under the pre-2014 version of ch. NR 150.

7s. Except for facilities specified in s. 291.27, Stats., the approval of a feasibility and plan of operation report and issuance of a license for either a new or existing hazardous waste treatment, storage, or disposal facility or class 3 modification of an existing hazardous waste treatment, storage, or disposal facility under ch. NR 670 and s. 291.25, Stats.

These types of actions include new or previously unlicensed hazardous waste storage or treatment or smaller disposal facilities along with significant modifications ("class 3"). Examples of class 3 modifications are covered in appendix 1 to ch. NR 670 and are described in s. NR 670.042 (3). In addition this would cover certain treatment, storage, and disposal facility (TSD) facility expansions. Section NR 670.406 is the process for license applications that requires us to complete an environmental review process in which the department seeks information to address the environmental impacts of the proposal. Section 291.27, Stats. is the provision requiring an EIS for hazardous waste disposal facilities of certain sizes (over 80 acres or over a million cubic yards). Due to s. 291.27, Stats., we would have to do an EIS if we received such an application.

8. Issuance of an individual wetland permit or general permit under s. 281.36, Stats.

An individual and general wetland permit grants a permission to a person who wishes to place fill in a wetland. While the individual permits are issued for specific projects or activities, the general permits are statewide permits that contain standards and conditions to minimize wetland impacts. Applicants must then request coverage under the statewide general permit.

Individual wetland permits require an assessment of wetland functional values, which evaluates the existing services provided by the wetland and the impacts to those services as a result of the proposed project. Wetlands provide ecological, biological and social services such as the protection of water quality, flood or stormwater control, fish and wildlife habitat, and educational or recreational opportunities. Individual wetland permits also provide an opportunity for public disclosure and comment.

Wetland general permits are statewide general permits that identify standards and conditions that limit impacts to wetlands and speeds up the permitting process for smaller projects. In creating a wetland general permit, the department includes an environmental analysis and provides opportunities for public disclosure and comment.

These permits did not require environmental analysis under the pre-2014 version of ch. NR 150.

9. Approval of a bulkhead line ordinance for modification of an existing shoreline under s. 30.11, Stats.

A bulkhead line is a legally established shoreline, adopted by a municipal ordinance and approved by the Department. The main purpose of a bulkhead line should be to regularize the shoreline. A secondary purpose of a bulkhead line is to establish a recoverable shoreline, which can be resurveyed at a later date. Other than for areas along the Great Lakes, federal navigational channels, the Mississippi and St. Croix Rivers, these bulkhead lines must conform as nearly as practicable to the shoreline. Once approved by the department, a bulkhead line ordinance would allow a property owner, within the area designating in the ordinance, to place fill up to the bulkhead line.

In reviewing a proposed municipal bulkhead line ordinance, the department reviews the ordinance for compliance with state statute and assesses the potential environmental impacts of the ordinance. Approval of the ordinance does not result in environmental impacts in and of itself. Riparians, with shoreline located along an approved bulkhead line, have limited rights to fill landward of the bulkhead line, and to use it exclusively once filled and need additional approvals from the department prior to proceeding with filling of the shoreline. The review of a municipal bulkhead line ordinance would allow for public disclosure and comment. These bulkhead line reviews did not require environmental analysis under the pre-2014 version of ch. NR 150.

10. Issuance of findings of public interest under s. 30.11(5), Stats., for a proposed lease of the bed of a lake or lease of rights to fill in a bed of a lake or a navigable stream.

The department is required under s. 30.11(5), Stats. to issue a findings of public interested for a proposed lease of the bed of a lake or a lease of rights to fill in a bed of a lake or navigable stream by the Board of Commissioners of Public Lands (BCPL). Leases are granted by BCPL to improve navigation, harbor facilities or recreational facilities related to navigation. Leases may be created along the Great Lakes, in areas of federal navigational channels, and the Mississippi or St. Croix Rivers. The department's finding of public interest must be incorporated into the lease by the BCPL under s. 24.39(4)(c), Stats.

To issue a findings of public interest the department reviews the proposed uses of the lease in light of the proposed use of the lease and the public trust doctrine. The department's finding of public interest is incorporated into the lease issued by BCPL, who decides whether the lease meets their statutory requirements under s. 24.39, Stats. The department conducts and analysis of the impacts of the proposed lease on public interests and rights but does not conduct any opportunities for public disclosure or comment. The BCPL process provides those opportunities. Some of these findings did require an environmental assessment under the pre-2014 version of ch. NR 150.

11. Issuance of an individual permit, general permit, certification or contract under subchapter II of ch. 30, Stats.

An individual permit, general permit, certifications and contracts under subchapter II of Ch. 30, Stats. gives a person, typically a riparian permission to conduct some project in a navigable water, which may include activities such as the placement of structure, dredging, ponds, nonmetallic mining or grading. While the individual permits are issued for specific projects or activities, the general permits are permits that contain standards and conditions to minimize wetland impacts. Riparians must then request coverage under or be granted a general permit.

Individual permits require an assessment of impacts to public rights and interests, which evaluates the impacts to navigation, fishing, hunting, habitat, water quality and quantity and natural scenic beauty. Individual permits evaluate also provide an opportunity for public disclosure and comment.

General permits are permits that identify standards and conditions that limit impacts to waterway and speed up the permitting process for smaller projects. The department establishes standards and conditions for these general permits that reduce impacts to the waterway. In creating the general permit, the department includes an analysis of the potential environmental impacts and provides opportunities for public disclosure and comment.

Some of these permits did require an environmental assessment under the pre-2014 version of ch. NR 150.

12. Issuance of an individual permit or general permit under s. 30.19, Stats., including permits to construct or alter waterways.

An individual permit or general permit to construct, dredge or enlarge an artificial waterbody connected to or within 500 feet of a navigable waterway or to grade in excess of 10,000 sq. ft. on the banks of a navigable waterway under s. 30.19, Stats. gives a riparian permission to construct a pond connected to or within 500 feet of a navigable water or to grade in excess of 10,000 sq. ft. on the banks of a navigable water. While the individual permits are issued for specific projects or activities, the general permits are permits that contain standards and conditions to minimize wetland impacts. Riparians must then request coverage under or be granted a general permit.

Individual permits require an assessment of impacts to public rights and interests, which evaluates the impacts to navigation, fishing, hunting, habitat, water quality and quantity and natural scenic beauty. Individual permits evaluate also provide an opportunity for public disclosure and comment.

General permits are permits that identify standards and conditions that limit impacts to waterway and speed up the permitting process for smaller projects. The department establishes standards and conditions for these general permits that reduce impacts to the waterway. In creating the general permit, the department includes an analysis of the potential environmental impacts and provides opportunities for public disclosure and comment.

Artificial ponds that are connected to navigable waters required an environmental analysis under the pre-2014 version of NR 150, but unconnected ponds within 500 feet and grading did not require environmental analysis under the pre-2014 version of ch. NR 150.

13. Issuance of an individual permit or general permit to change the course of or enclose a navigable stream under s. 30.195 or 30.196, Stats.

An individual permit or general permit to change the course of or enclose a navigable stream under ss. 30.195 or 30.196, Stats. gives a riparian, and in the case of enclosures a municipality, permission to relocate a navigable stream or to enclose a navigable stream in a conduit or storm sewer. While the individual permits are issued for specific projects or activities, if a general permits were issued for these activities it would be a statewide permits that contained standards and conditions designed to minimize impacts. Applicants must then request coverage under the statewide general permit.

Individual permits require an assessment of impacts to public rights and interests, which evaluates the impacts to navigation, fishing, hunting, habitat, water quality and quantity and natural scenic beauty. Individual permits evaluate also provide an opportunity for public disclosure and comment.

General permits are statewide general permits that identify standards and conditions that limit impacts to waterway and speed up the permitting process for smaller projects. The department establishes standards and conditions for these statewide general permits that reduce impacts to the waterway. In creating the general permit, the department includes an analysis of the potential environmental impacts and provides opportunities for public disclosure and comment.

Enclosures and relocation of a stream in excess of 500 feet in length required an environmental analysis under the pre-2014 version of ch. NR 150, but stream relocations of less than 500 feet did not require an environmental analysis under the pre-2014 version of ch. NR 150.

NR 150.20 (2) (a) 14. Issuance of an individual permit, general permit or contract under s. 30.20, Stats., to remove material from the bed of a navigable waterway under ch. NR 345, or for non-metallic mining and reclamation in and near navigable waters under ch. NR 340.

An individual permit, general permit, or contracts under ch. 30.20, Stats. gives a person, typically a riparian permission to remove material from the bed of a navigable water. Removal of material from the bed may include mechanical or hydraulic equipment and could range from small projects such as the installation of a telecommunications line or jetting of aquatic plants, to large projects such as harbor maintenance or remediation projects to remove contaminated sediments. While the individual permits are issued for specific projects or activities, the general permits contain standards and conditions designed to minimize impacts. Applicants must then request coverage under or be granted the general permit.

Individual permits require an assessment of impacts to public rights and interests, which evaluates the impacts to navigation, fishing, hunting, habitat, water quality and quantity and natural scenic beauty. Individual permits evaluate also provide an opportunity for public disclosure and comment.

General permits are permits that identify standards and conditions that limit impacts to waterway and speed up the permitting process for smaller projects. The department establishes standards and conditions for these general permits that reduce impacts to the waterway. In creating the general permit, the department includes an analysis of the potential environmental impacts and provides opportunities for public disclosure and comment.

Some of these permits did require environmental analysis under the pre-2014 version of ch. NR 150.

15. Issuance of a barge fleeting permit under ch. NR 327.

Section NR 327.04(4) requires that "An application may not be considered complete until the appropriate environmental impact review is completed under s. 1.11, Stats., and ch. NR 150." Section NR 327.07 requires public notification with a hearing request option. NR 327.07 also requires the barge fleeting

permit to be consistent with ss. 30.10, 30.12, 30.15, 30.19, 30.20, et. al., which require decisions to be in the public interest.

16. Issuance of a permit, order, or approval for water levels or flows, or for the regulation of a dam in navigable or nonnavigable waters under ch. 31, Stats., and ch. NR 333.

The construction of large dams under ch. 31, Stats., and modifications of water levels or flows, require review and approval from the department. The review of water levels and flows often involve the operation of a dam, identifying the minimum, maximum or average flows or even seasonal variations in flows.

The construction of large dams under ch. 31, Stats., and modifications of water levels or flows require review and approval from the department. These reviews include an environmental analysis and opportunity for public disclosure and comment. Raising or enlarging a dam under s. 31.13, Stats., must meet the dam construction permit requirements and must protect public rights. Section 31.02, Stats., requires that the department act in the interest of public rights in navigable waters or to promote safety and protect life, health and property. Some dam regulation required environmental analysis under the pre-2014 version of NR 150.

17. An approval of a drainage board action affecting navigable waters under s. 88.31, Stats., for permits under s. 88.31 or ch. 30 or 31, Stats.

Section 88.31, Stats., requires drainage boards to apply for and receive permits under ch. 30 or 31, Stats., and requires protection of all public rights and interests in navigable waters. While most drainage board actions include dredging and the maintenance or construction of water control structures, drainage board actions could also include modifications to structures, such as intake or outfalls pipes for irrigation, bridges or culverts, or grading for vegetation removal.

The Department processes permits for these drainage board actions under chs. 30 or 31, Wis. Stats, but must take into consideration the standards and process outlined in s. 88.31, Wis. Stats. Through the processing of the ch. 30 or 31, Stats, the Department reviews the potential impacts to public rights and interests and provides an opportunity for public disclosure and comment. A public hearing is required under this statute. Under the pre-2014 version of ch. NR 150, drainage board actions required environmental analysis if the corresponding action under chs. 30 or 31, Stats, required an environmental analysis.

19. Issuance of a report under s. 13.097, Stats., that includes the required department findings under s. 13.097(4), Stats., and conclusions under s. 13.097(6), Stats., regarding whether legislation that proposes to convey lake bed or amend a prior conveyance of lake bed area is consistent with protecting and enhancing a public trust purpose.

When the legislature proposes to convey an area of lakebed or amends a prior conveyance of lake to a municipality, the department must prepare a report to the legislature. The department's report must contain a location and description of the lakebed, the purposes of the proposed conveyance, the potential uses of the conveyed area of lakebed, the effect of the proposed conveyance on public trust uses, potential subsequent conveyances, and the potential of the grantee to manage the use of the lake bed area.

While the department does assess the potential impacts of a proposed conveyance of lakebed to a municipality, department does not provide an opportunity for public disclosure and comment. All public disclosure and comment would be provided by the legislature in deliberation of the proposed bill to convey lakebed.

These reports did not require environmental analysis under the pre-2014 version of ch. NR 150.

20. Review of existing or proposed uses for an existing lakebed grant, existing lease of the bed of a lake, or existing lease of rights to fill in a bed of a lakes or a navigable stream to ensure the existing or proposed uses are consistent with the purposes and uses for which the grant or lease was issued.

The Department reviews the existing and proposed uses of existing lakebed grant, existing leases of the bed of a lake, and existing leases of rights to fill behind a bulkhead line, particularly when the proposed use may be modified, the area is sub-leased to another entity or if the Department receives a compliant under s. 30.03, Stats.

In conducting a review of existing and proposed uses of former lakebed or streambed that were granted to a municipality or private entity through a lakebed grant, a lease or a bulkhead line, the Department reviews the existing and proposed uses for compliance with the standards in the lakebed grant, the lease or the bulkhead line, and reviews uses for compliance with the public trust doctrine and impacts to public rights and interests. The Department does not provide for public disclosure or comment, but typically the municipality which has the lakebed grant, bulkhead line or even the lease provide opportunities for public disclosure and comment.

These reviews did not require environmental analysis under the pre-2014 version of ch. NR 150.

21. Issuance of an aquatic plant management permit under s. NR 107.05 that meets the criteria under s. NR 107.04 (3).

Aquatic plant management permit reviews include an analysis of a broad range of environmental issues, consider alternatives, and include public review and comment. Aquatic plant management permits did not require environmental analysis under the pre-2014 version of ch. NR 150.

22. Approvals of aquatic plant management plans under s. NR 109.09 and lake management plans under s. NR 191.45.

Aquatic plant management plans must consider a broad range of environmental effects. Lake management plans must consider a broad range of environmental effects and include public involvement. Aquatic plant management and lake management plans did not require environmental analysis under the pre-2014 version of ch. NR 150. The Department requires management plans for grant eligibility for aquatic invasive species control (under ch. NR 198.42 and ch. NR 198.50) or lake management plan implementation activities (under ch. NR 191.41). The Department may require an aquatic plan management plan before issuing permits under s. NR 109.04(3). The recommendations included in the plans must be approved by the Department before becoming eligible for grant funding or permit issuance. Plans submitted to the Department must document environmental and alternatives review of management recommendations, and the process used to provide public disclosure and comment opportunities.

23. Promulgation of permanent administrative rules under ch. 227, Stats.

Administrative rules must meet the requirements of the state statutes under which the rules are promulgated, and undergo environmental review. Rules must receive public review, including hearings, NRB approval and legislative approval. The rules process includes analysis of alternatives and full disclosure of the ramifications of various options. The public has comment opportunities on the full range of issues and concerns through the NRB process and legislative process.

Under the pre-2014 version of ch. NR 150, promulgation of new rules or changes in existing rules required environmental analysis only when the implementation of the proposed rule would have material impacts on the human environment, and the department had substantial discretion in formulating important provisions of the rule. Some permanent administrative rules required environmental analysis under the pre-2014 version of ch. NR 150.

PRIOR COMPLIANCE ACTIONS – s. NR 150.20 (3) (a)

Section NR 150.03 (21) provides that “prior compliance” means “that one or more environmental analysis documents exist for prior actions that are similar to the proposed action in kind, scale, and environmental setting.”

The following actions were determined by the Department to consistently meet this definition. It is further important to note that any one of these prior compliance actions may still receive review under an EIS under s. NR 150.30 pursuant to s. NR 150.20 (4) (b) in unique circumstances as determined by the Department.

s. NR 150.20 (3) (a):

1. Facility development planned under ch. NR 44.

Master planning under ch. NR 44 receives environmental analysis under s. NR 150.20 (2). All development activities included in master plans have therefore previously received environmental review. Some facility development required environmental analysis under the pre-2014 version of ch. NR 150.

2. Natural resource management, timber management, or environmental restoration planned under ch. NR 44.

Master planning under ch. NR 44 receives environmental analysis under s. NR 150.20 (2). All resource management and restoration activities included in master plans have therefore previously received environmental review. Some resource management required environmental analysis under the pre-2014 version of ch. NR 150.

3. A research action that involves species introductions or substantive manipulation of resources that was planned under ch. NR 44.

Master planning under ch. NR 44 receives environmental analysis under s. NR 150.20 (2). All research activities included in master plans have therefore previously received environmental review. These research activities required environmental analysis under the pre-2014 version of ch. NR 150.

6. Approval of an extension of a wastewater collection system and other plan approvals under s. 281.41, Stats., that are covered under an area wide water quality management plan under s. 283.83, Stats., and ch. NR 121.

Areawide water quality management plans under s. 283, Stats., receive environmental analysis under s. NR 150.20 (2). All subsequent plan activities included have therefore previously received environmental review. Some of these plan approvals required environmental analysis under the pre-2014 version of ch. NR 150.

7. Issuance, reissuance, revocation and reissuance or modification of an individual WPDES permit under s. 283.31, Stats., from a facility that is covered under an area wide water quality management plan under s. 283.83, Stats., and ch. NR 121.

Areawide water quality management plans under s. 283, Stats., receive environmental analysis under s. NR 150.20 (2). All subsequent permit activities included have therefore previously received environmental review. Some of these permit actions required environmental analysis under the pre-2014 version of ch. NR 150.

8. Issuance or reissuance of an individual or general storm water permit under ch. NR 216 and s. 283.33, Stats.

An environmental analysis on ch. NR 216 was prepared and publicly reviewed in 1994. New permits would utilize the same best management practices evaluated in that analysis. Stormwater permits were not listed in the pre-2014 version of ch. NR 150.

9. Reissuance or modification of any general permit.

Except for those required by statute, issuances of general permits receive environmental review under s. NR 150.20 (2). All subsequent reissuances or modifications have therefore previously received environmental review. The pre-2014 version of ch. NR 150 only listed general permit issuance or modification for WPDES permits, and those actions required environmental analysis.

10. The approval of a feasibility and plan of operation report and issuance of a license for a class 1 or class 2 modification of an existing hazardous waste treatment, storage, or disposal facility under ch. 670 and s. 291.25, Stats.

These types of actions includes less significant modifications to hazardous waste storage or treatment facilities along (class 1 or 2). Examples of class 1 & 2 modifications are covered in appendix 1 to ch. NR 670 and are described in s. NR 670.042 (1) & (2). The reason for these to be "prior compliance" is because environmental analysis issues are covered during the siting and initial licensing of the treatment, storage and disposal facilities and these modification are within the scope of that environmental analysis. Environmental analysis was required for some solid waste and hazardous waste feasibility approvals under the pre-2014 version of ch. NR 150.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING,
RENUMBERING, RENUMBERING AND AMENDING, AMENDING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 150.03 (11), NR 150.10 (1m) (b), and 150.20 (3) (a) 4. and 5.; to **renumber** NR 150.20 (2) (a) 5.; to **renumber and amend** NR 150.20 (2) (a) 18. and 19.; to **amend** 150.03 (1), (15) (intro.), (19), (25) and (26), 150.10 (1) and (1m) (a), (c) (intro.) and (2) (a), 150.20 (1), (1m) (a), (b), (d), (j), and (k), (2) (a) (intro.), 4., 7., 8., 10., 11., 12., 13., 14., 16., (2) (b), (3) (a) (intro.), 1., 6., 7., and 8., and (4) (b) (intro.), 150.30 (1) (g), (2) (b), (3) (c) 3., and (d), and 150.35; and to **create** NR 150.02 (Note), 150.03 (5m), (12m), (16m), (17m) and (Note), and (23m), 150.20 (1m) (ge), (gm), (gs), (jg), (jr), (m), (n), (nm), (o), (p), (pe), (pm), (ps), (q), (qm), (r), (s), (sb), (sf), (sk), (sp), (ss), (sw), (sy), (t), (u), (ug), (ur), (v), and (w), (2) (a) 2r., 3c., 3g., 3n., 7e., 7m., 7s., 18m., 19m., 20., 21., 22., and (3) (a) 9. and 10., and 150.30 (3) (d) (Note) relating to the department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act.

OE-21-14

Analysis Prepared by the Department of Natural Resources

- 1. Statute interpreted:** Section 1.11, Stats.
- 2. Statutory authority:** Sections 1.11 and 227.11, Stats.
- 3. Explanation of agency authority:** The department has general authority to promulgate rules under s. 227.11 (2)(a), Stats., that interprets the specific statutory authority granted in s. 1.11, Stats.
- 4. Related statute or rule:** Wisconsin Environmental Policy Act (WEPA) compliance is a requirement for all state agencies and department programs. As a result, many statutes and codes are WEPA and ch. NR 150-related.

Statute chapters: 16, 23, 30, 33, 160, 196, 227, 285, 289, 291, 292 and 293.

Administrative Code chapters NR: 1, 2, 19, 44, 48, 52, 60, 103, 107, 108, 110, 113, 126, 128, 131, 132, 133, 134, 162, 166, 182, 191, 200, 243, 299, 300, 305, 310, 327, 345, 347, 406, 410, 489, 512, 670, 700-754, 820, and 852.

5. Plain language analysis:

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 expired 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. A second emergency rule consistent with the new scope statement was approved Natural Resources Board in May 2015. Public comments on the proposed permanent rule occurred in May and June, with a public hearing held in Madison on June 2.

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 environmental analysis, and that the process for developing permanent rules is an “integrated analysis action,” requiring no separate environmental analysis process. 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 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 terminology of “equivalent analysis actions,” for which a detailed environmental analysis and public disclosure are already conducted as part of department programmatic procedures, has been changed to “integrated analysis actions” and the definition has been clarified to explain that no separate environmental analysis process is required. The list for this category 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.

6. Summary of, and comparison with, existing or proposed federal statutes and regulations:

The 1970 Wisconsin Environmental Policy Act (WEPA) and s. 1.11, Stats., were modeled after the federal National Environmental Policy Act (NEPA) of 1969. NEPA created the Council on Environmental Quality (CEQ), which established guidelines and regulations to implement the Act. As with other state agencies' WEPA rules, ch. NR 150 and these clarifying provisions are based in part upon the federal CEQ guidelines. This proposed revision of ch. NR 150 will remain substantially consistent with the CEQ guidelines as required under s. 1.11 (2)(c), Stats.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):

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 by other entities that are subject to state approvals.

8. Summary of factual data and analytical methodologies used and how any related findings

support the regulatory approach chosen: Department of Natural Resources staff obtained the input of an internal team of staff from several department programs, building on the prior review of relevant WEPA case law and federal CEQ regulations.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report: Chapter NR 150 is an administrative process rule that applies internally to the department, so impacts to businesses are minimal.

10. Effect on small business (initial regulatory flexibility analysis):

There will be no impact to small business as a result of this rule revision. This proposed permanent rule will benefit small businesses to the extent that they clarify any ambiguity of the intent of the rule, as presented to the public and approved by the NRB.

11. Agency contact person:

Jim Pardee
Phone: (608) 316-0999

SECTION 1. NR 150.02 (Note) is created to read:

NR 150.02 (Note) There are several statutory exemptions from s. 1.11, Stats., including the following: s. 30.025, Stats. (construction of certain high voltage transmission lines); ss. 160.23 and 160.25, Stats. (responses to groundwater standards exceedances); s. 283.93, Stats. (WPDES permit actions, except for WPDES permit actions for new sources); s. 285.60(2g)(b) and (3)(b), Stats. (air registration permits and general permits); and ss. 295.44, 295.45, 295.65, and 295.645, Stats. (ferrous mining exploration licenses, bulk sampling approvals, successor operators, and responses to groundwater standards exceedances). The department may have previously conducted environmental analyses under s. 1.11 Stats., for actions that are exempt under s. 283.93, Stats., even though the department was not statutorily required to do so.

SECTION 2. NR 150.03 (5m) and (12m) are created to read:

NR 150.03 (5m) "Department facility" means department infrastructure, including dams, buildings, roads, and trails for resource management, public use, or other purposes.

(12m) "Integrated analysis action" means a department action for which department programmatic procedures provide for public disclosure and include an environmental analysis that provides sufficient information to establish that an environmental impact statement is not required.

SECTION 3. NR 150.03 (1) is amended to read:

NR 150.03 (1) "Action" means any final decision by the department to exercise the department's statutory or administrative rule authority that affects the quality of the human environment including

actions under s. NR 150.20 (1m) to (4), but not including policies as defined in sub. (19).

SECTION 4. NR 150.03 (10) and (11) are repealed.

SECTION 5. NR 150.03 (15) (intro.) is amended to read:

NR 150.03 **(15)** (intro.) “Minor action” means a department action that is not subject to s. 1.11 (2) (c), Stats., because it is not in conflict with local, state or federal environmental policies and is not likely to do any of the following:

SECTION 6. NR 150.03 (16m) and (17m) and (Note) are created to read:

NR 150.03 **(16m)** “Natural resource management, timber management, or environmental restoration” includes all actions associated with the management, economic production, protection, and restoration of native and non-native fish, game, plants, trees and timber, habitat protection, habitat management, habitat restoration, silvicultural practices, forest inventory, chemical and mechanical site preparation, timber harvesting, timber sales, timber transporting, tree planting, direct seeding, forest type conversions, invasive species control, timber stand improvement activities, forest nursery operations, prescribed burning, fire prevention, fire detection, fire suppression, rehabilitation of fire burned areas, environmental remediation, fish hatchery operations, state game farm operations, pesticide or herbicide applications, and field surveys for environmental protection.

(17m) “New source” has the meaning given in s. 283.01(8), Stats.

Note: Section 283.01(8), Stats., defines “new source” to mean any point source the construction of which commenced after the effective date of applicable effluent limitations or standards of performance.

SECTION 7. NR 150.03 (19) is amended to read:

NR 150.03 **(19)** “Policy” means a written plan or set of guiding principles, priorities, or protocols to guide department action that has been ~~enacted as a statute, promulgated as an administrative rule,~~ issued as a department manual code, or approved in writing by the natural resources board or the department secretary, but does not include actions as defined in sub. (1).

SECTION 8. NR 150.03 (23m) is created to read:

NR 150.03 **(23m)** “Publicly announce” or “public announcement” means publication on the department’s internet web site, or other reasonable methods to provide public notice.

SECTION 9. NR 150.03 (25) and (26) are amended to read:

NR 150.03 (25) “Strategic analysis” means an environmental and alternatives analysis of ~~any an~~ issue or policy ~~which involves unresolved conflicts concerning alternative uses of available resources,~~ within the meaning of s. 1.11 (2) (e), Stats.

(26) “Unresolved conflicts concerning alternative uses of available resources” means an unsettled disagreement between experts, policymakers of local, state, or tribal governments, or citizen interest groups in Wisconsin concerning a department policy affecting the utilization of a substantial natural resources, between experts, policymakers of local, state, or tribal governments, or citizen interest groups in Wisconsin or physical resource where the utilization would be of sufficient magnitude that, on a statewide or regional basis, it would have a considerable and important impact to the natural resources of the state. To be considered an unresolved conflict concerning alternative uses of available resources, the disagreeing parties must have identified a technically and economically feasible alternative use of the contested physical or natural resource, or both, and have the ability to reasonably implement that alternative.

SECTION 10. NR 150.10 (1) and (1m) (a) are amended to read:

NR 150.10 (1) ~~GENERAL REQUIREMENT PURPOSE.~~ Pursuant to This section establishes the procedures to fulfill the requirements of s. 1.11 (2) (e) and (h), Stats., the department shall study, develop, and describe alternatives for natural resource issues or policies which involve unresolved conflicts concerning alternative uses of available resources.

(1m) (a) ~~Administrative rules and manual codes Policies.~~ The department shall conduct a strategic analysis for all new or revised ~~administrative rules and manual codes policies~~ if both of the following apply:

1. The ~~rule or manual code policy~~ involves unresolved conflicts concerning alternative uses of available resources.
2. The department has substantial discretion in formulating important provisions of the ~~rule or manual code policy~~.

SECTION 11. NR 150.10 (1m) (b) is repealed.

SECTION 12. NR 150.10 (1m) (c) (intro.) and (2) (a) are amended to read:

NR 150.10 (1m) (c) ~~Other issues or policies.~~ (intro.) The Although not required under this section, the department may conduct a use the strategic analysis processes in subs. (2) to (4) for any of the following issues or policies:

(2) (a) *General requirement.* The department shall determine the scope of ~~important issues to be analyzed~~ the analysis, potential alternative approaches, potentially affected natural resources, and likely effects of the alternatives on those resources. The department shall also identify incomplete or unavailable information that is relevant to a reasoned choice among alternatives.

SECTION 13. NR 150.20 (1) and (1m) (a), (b), and (d) are amended to read:

NR 150.20 (1) ~~PROCEDURES ESTABLISHED PURPOSE.~~ This section establishes appropriate procedures for the environmental analysis that WEPA requires for all department actions except those specifically exempted by statute. Notwithstanding subs. (1m) to (3), the department may determine to follow the EIS procedures in s. NR 150.30 for any action the procedures to fulfill the requirements of s. 1.11(2)(c), Stats.

(1m) (a) A real estate action, including property boundary establishment or modification, purchase, sale, easement, lease, ~~or designation,~~ redesignation, or dedication.

(b) ~~Facility development~~ Development or construction of new department facilities that follows protocols.

(d) The operation, repair, maintenance, removal, or in-kind replacement of existing department facilities that follows protocols.

SECTION 14. NR 150.20 (1m) (ge), (gm), and (gs) are created to read:

NR 150.20 (1m) (ge) Educational activities.

(gm) Model ordinances developed to assist municipalities in the creation of ordinances.

(gs) Consultation offered to third parties.

SECTION 15. NR 150.20 (1m) (j) is amended to read:

NR 150.20 (1m) (j) Reissuance, modification, revocation, and reissuance, or issuance of a routine or small-scale ~~permit approval or action.~~

SECTION 16. NR 150.20 (1m) (jg) and (jr) are created to read:

NR 150.20 (1m) (jg) Routine variances from department rule requirements.

(jr) Denial, termination, revocation, or suspension of a grant, permit, license, approval, variance, land application site, or of any proposed activity.

SECTION 17. NR 150.20 (1m) (k) is amended to read:

NR 150.20 (1m) (k) ~~Issuance of a~~ A routine or small-scale approval or action, or an approval or action associated with a permit.

SECTION 18. NR 150.20 (1m) (m), (n), (nm), (o), (p), (pe), (pm), (ps), (q), (qm), (r), (s), (sb), (sf), (sk), (sp), (ss), (sw), (sy), (t), (u), (ug), (ur), (v), and (w) are created to read:

NR 150.20 (1m) (m) Promulgation of emergency administrative rules under ch. 227, Stats.

(n) Any enforcement action.

(nm) Any emergency action that protects public health, safety, or welfare.

(o) Issuance of a minor source construction permit under ch. NR 406 or an operation permit renewal or revision under ss. 285.60, and 285.62, Stats., for air emission sources.

(p) Issuance of licenses for servicing septage and approvals of county programs to regulate the disposal of septage under s. 281.48, Stats.

(pe) Issuance of operator certifications under s. 281.17 (3), Stats., and licenses or registrations for well drillers and pump installers.

(pm) Approvals of geothermal heat exchange projects.

(ps) Approvals of additives to wastewater or cooling water.

(q) Issuance of general permits established by administrative code under ch. 30, Stats.

(qm) Issuance of aquatic plant management permits under ch. NR 109.

(r) Listing and delisting of an impaired water as defined in s. NR 151.002 (16m).

(s) Review and approval of municipal ordinances or approval of changes to municipal floodplain or shoreland-wetland maps.

(sc) Temporary drawdowns of dams under s. 31.02, Stats.

(sg) Reconstruction and repairs of dams under ss. 31.12, 31.18, or 31.185, Stats.

(sl) Transfer of dam ownership under s. 31.14, Stats.

(sp) Dam inspections under s. 31.19, Stats.

(st) Plan approvals for dams under s. 31.33, Stats., and approvals of emergency action plans, inspection plans, operation and maintenance plans, dam failure analysis plans, or stability analysis plans under ch. NR 333.

(sx) Review and approval of hydrologic and hydraulic studies for floodplain mapping under s. NR 116.07.

(t) Approval of construction plans and specifications under s. 281.41, Stats., for municipal and industrial pretreatment wastewater facilities, public water systems, and CAFO reviewable structures.

(u) Decisions related to evaluations of existing reviewable facilities and systems for concentrated animal feeding operations under ch. NR 243.

(ug) Approvals of land application or nutrient management plans or modifications to the plans.

(ur) Approvals of land application sites.

(v) Issuance of natural heritage inventory permits, approvals, or licenses under ch. NR 29 except for permits issued under s. 29.604 (6m), Stats.

(w) Issuance of an order or any action relating to the forest croplands or managed forest land programs under subch. I or VI of ch. NR 77.

SECTION 19. NR 150.20 (2) (a) (intro.) is amended to read:

NR 150.20 (2) ~~EQUIVALENT INTEGRATED ANALYSIS ACTIONS~~ (a) (intro.) The following actions ~~require a WEPA compliance determination under s. NR 150.35 but do not require a separate additional environmental analysis process under this chapter because a detailed environmental~~ they are integrated analysis actions and public disclosure are conducted as part of the department programmatic procedure:

SECTION 20. NR 150.20 (2) (a) 2r., 3c., 3g., and 3n. are created to read:

NR 150.20 (2) (a) 2r. Cooperative state trail planning.

3c. Development of total maximum daily loads as defined in s. NR 151.002 (46m).

3g. Issuance, reissuance, revocation and reissuance, or modification of a WPDES permit that authorizes a new source discharge that is subject to antidegradation review under ch. NR 207.

3n. Approval of a variance from a water quality standard under ch. 283, Stats.

SECTION 21. NR 150.20 (2) (a) 4. is amended to read:

NR 150.20 (2) (a) 4. Issuance of a major source construction permit under ch. NR 405 or 408 or an initial operation permit under ss. 285.60, 285.61, and 285.62, Stats., for a new source or modification or relocation of an existing air emission source sources.

SECTION 22. NR 150.20 (2) (a) 5. is renumbered NR 150.20 (2) (a) 2g.

SECTION 23. NR 150.20 (2) (a) 7. is amended to read:

NR 150.20 (2) (a) 7. A solid ~~or hazardous~~ waste feasibility approval or a commercial PCB waste storage or treatment facility feasibility approval under ss. 289.25 and 289.53, Stats., and chs. NR 157, 182, and 512, and 670.

SECTION 24. NR 150.20 (2) (a) 7e., 7m., and 7s. are created to read:

NR 150.20 (2) (a) 7e. Funding decisions made pursuant to ch. 292, Stats., and chs. NR 700 to 754.

7m. Issuance of regulatory approvals, liability clarification letters, exemptions, and technical assistance under ch. 292, Stats., and chs. NR 700 to 754.

7s. Except for facilities specified in s. 291.27, Stats., the approval of a feasibility and plan of operation report and issuance of a license for either a new or existing hazardous waste treatment, storage, or disposal facility or class 3 modification of an existing hazardous waste treatment, storage, or disposal facility under ch. NR 670 and s. 291.25, Stats.

SECTION 25. NR 150.20 (2) (a) 8., 10., 11., 12., 13., 14., and 16. are amended to read:

NR 150.20 (2) (a) 8. Issuance of an individual wetland permit or general permit under s. 281.36 ~~(3m)~~, Stats.

10. Issuance of findings of public interest under s. 30.11(5), Stats., for a proposed lease for ~~modification of an existing shoreline under s. 30.11, Stats~~ of the bed of a lake or lease of rights to fill in a bed of a lake or a navigable stream.

11. Issuance of an individual permit ~~for structures on the beds of navigable waters or to construct culverts and bridges across navigable waters under ss. 30.12 (3m) or 30.123 (8).~~ general permit, certification, or contract under subchapter II of ch. 30, Stats.

12. Issuance of an individual permit or general permit under s. 30.19, Stats., including ~~an individual permit permits~~ to construct or alter waterways.

13. Issuance of an individual permit or general permit to change the course of or enclose a navigable stream under s. 30.195 or 30.196, Stats.

14. Issuance of an individual permit, general permit, or contract under s. 30.20, Stats., to remove material from the bed of a navigable waterway under ch. NR 345, or for non-metallic mining and reclamation in and near navigable waters under ch. NR 340.

16. Issuance of a permit ~~to construct, raise, enlarge or abandon~~ order, or approval for water levels or flows, or for the regulation of a dam in navigable or nonnavigable waters under ch. 31, Stats., or establishment of historic or a new level, a flow release or approval of a drawdown of a controlled lake or flowage under s. 31.02, Stats and ch. NR 333.

SECTION 26. NR 150.20 (2) (a) 18. is renumbered NR 150.20 (2) (a) 3r. and amended to read:

NR 150.20 (2) (a) 3r. An approval of a municipal wastewater facilities plan under s. NR 110.08, and approvals of municipal wastewater projects receiving federal grants or state financial assistance under

ss. 281.58 and 281.59, Stats.

SECTION 27. NR 150.20 (2) (a) 18m. is created to read:

NR 150.20 (2) (a) 18m. Issuance of a report under s. 13.097, Stats., that includes the required department findings under s. 13.097(4), Stats., and conclusions under s. 13.097(6), Stats., regarding whether legislation that proposes to convey lake bed or amend a prior conveyance of lake bed area is consistent with protecting and enhancing a public trust purpose.

SECTION 28. NR 150.20 (2) (a) 19. is renumbered NR 150.20 (2) (a) 3w. and amended to read:

NR 150.20 (2) (a) 3w. Issuance, reissuance, revocation and reissuance, or modification of an individual WPDES permit for ~~an~~ a concentrated animal feeding operation under ch. NR 243 that is a new source.

SECTION 29. NR 150.20 (2) (a) 19m., 20., 21., and 22. are created to read:

NR 150.20 (2) (a) 19m. Review of existing or proposed uses for an existing lakebed grant, existing lease of the bed of a lake, or existing lease of rights to fill in a bed of a lake or a navigable stream to ensure the existing or proposed uses are consistent with the purposes and uses for which the grant or lease was issued.

20. Issuance of an aquatic plant management permit under s. NR 107.05 that meets the criteria under s. NR 107.04 (3).

21. Approvals of aquatic plant management plans under s. NR 109.09 and lake management plans under s. NR 191.45.

22. Promulgation of permanent administrative rules under ch. 227, Stats.

SECTION 30. NR 150.20 (2) (b) is amended to read:

NR 150.20 (2) (b) The department may determine under s. NR 150.35 that ~~there is equivalent analysis for a specific~~ an action not listed in par. (a) does not require a separate environmental analysis process under this chapter because it meets the definition of an integrated analysis action.

SECTION 31. NR 150.20 (3) (a) (intro.) and 1. are amended to read:

NR 150.20 (3) PRIOR COMPLIANCE ACTIONS. (a) (intro.) The following actions ~~require a WEPA compliance determination under s. NR 150.35 but~~ do not require additional environmental analysis under this chapter because one or more environmental analysis documents exist for prior actions that are

similar to the proposed action in kind, scale, and environmental setting:

1. Facility Department facility development planned under ch. NR 44.

SECTION 32. NR 150.20 (3) (a) 4. and 5. are repealed.

SECTION 33. NR 150.20 (3) (a) 6., 7., and 8. are amended to read:

NR 150.20 (3) (a) 6. Approval of an extension of a wastewater collection system and other plan approvals under s. 281.41, Stats., that ~~is~~ are covered under an area wide water quality management plan under s. 283.83, Stats., and ch. NR 121.

7. Issuance ~~or~~ , reissuance, revocation and reissuance, or modification of an individual WPDES permit under s. 283.31, Stats., for a facility that is covered under an area wide water quality management plan under s. 283.83, Stats., and ch. NR 121.

8. Issuance or reissuance of an individual or general storm water permit under ~~ch. NR 216~~ and s. 283.33, Stats., and ch. NR 216.

SECTION 34. NR 150.20 (3) (a) 9. and 10. are created to read:

NR 150.20 (3) (a) 9. Reissuance or modification of any general permit.

10. The approval of a feasibility and plan of operation report and issuance of a license for a class 1 or class 2 modification of an existing hazardous waste treatment, storage, or disposal facility under s. 291.25, Stats., and ch. NR 670.

SECTION 35. NR 150.20 (4) (b) (intro.) is amended to read:

NR 150.20 (4) (b) *EIS projects*. (intro.) The department may ~~decide to~~ follow the EIS procedures in s. NR 150.30 for projects of such magnitude and complexity that one or more of the following apply:

SECTION 36. NR 150.30 (1) (g), (2) (b), and (3) (c) 3. and (d) are amended to read:

NR 150.30 (1) (g) *Environmental Impact Report (EIR)*. Pursuant to s. 23.11 (5), Stats., the department may require an applicant for certain proposed projects to submit an EIR. The department may request any applicant to submit an EIR. The purpose of an EIR is to help the department develop the EIS by having the applicant provide a detailed, comprehensive description of the proposed project, reasonable alternatives to the proposed project, the present environmental conditions in the area potentially affected by the proposed project, and anticipated environmental effects of the proposed project and alternatives. Predictive models, bioassays, and other analysis that can be subject to reasonable scientific verification may be required. The instructions to the applicant may also require that certain laboratory tests be

performed by a laboratory certified, registered, or approved under ch. NR 149.

(2) (b) A description of the purpose ~~and need~~ of the proposed project.

(3) (c) 3. ~~If a hearing is held under par. (d), the~~ The public comment period shall ~~may~~ be extended for a minimum of 7 days after the date the hearing is held pursuant to par. (d).

(d) ~~Hearing. If no public hearing is otherwise required on the proposed action, the department may hold one or more public hearings prior to making its WEPA compliance determination under s. NR 150.35. Pursuant to s. 1.11(2)(d), Stats., a public hearing shall be held on the draft EIS and proposed action. Holding a public hearing as required by another statute fulfills the hearing requirement. Any hearings~~ hearing held pursuant to this chapter paragraph shall be publicly announced to the public and held noticed in a manner consistent with s. 1.11 (2) (d), Stats.

SECTION 37. NR 150.30 (3) (d) (Note) is created to read:

NR 150.30 (3) (d) (Note) Pursuant to s. 1.11(2)(d), Stats., “notice of the hearing shall be given by publishing a class 1 notice, under ch. 985, at least 15 days prior to the hearing in a newspaper covering the affected area. If the proposal has statewide significance, notice shall be published in the official state newspaper.”

SECTION 38. NR 150.35 is amended to read:

NR 150.35 **WEPA Compliance determination.** (1) Actions under ~~sections s.~~ NR 150.20 (2) to (4) cannot ~~may not~~ be taken until a determination is published publicly announced or noticed regarding compliance with this chapter unless statutory deadlines preclude compliance with the procedural requirements of this chapter. Actions under s. NR 150.20 (1m) are compliant with WEPA and do not require a determination prior to the action being taken.

(1m) ~~For all EISs any EIS~~ under s. NR 150.20 (4) and determinations determination under s. NR 150.20 (2) (b) and (3) (b), the department shall ~~publish~~ publicly announce findings of fact, conclusions of law and a determination that summarizes the procedures and process steps used to achieve compliance with this chapter.

(2) For actions under s. NR 150.20 (2) (a) and (3) (a), the department may ~~publish~~ publicly announce the WEPA determination ~~as part of or provide notice in accordance with the public notification requirements for the proposed permit or approval document.~~

SECTION 39. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication of the affected Administrative Code Chapters in the Register.

SECTION 40. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)