

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

SUBJECT:

Request that the Board approve the Statement of Scope for Emergency Board Order OE-10-14(E) and Board Order OE-09-14, and conditionally approve 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.

FOR: June 2014 Board meeting

PRESENTER'S NAME AND TITLE: Dave Siebert, Director, Bureau of Energy, Transportation and Environmental Analysis

SUMMARY:

Ch. NR 150 was revised and went into effect April 1, 2014. It was the product of nearly three years of public outreach, internal input and staff review. An emergency rule is needed 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. Once the emergency rule is approved, a permanent rule will subsequently be required

The previous version of ch. NR 150 classified most administrative rules as "Type 3 actions", a classification requiring some form of public notice and no additional environmental analysis as part of the formal rules process.

The rule changes would be simple editorial changes to clarify that emergency rules are "minor actions requiring no additional environmental analysis, and that the process for developing permanent rules are "equivalent analysis actions" under the new ch. NR 150, similar to how they were treated under the old ch. NR 150.

RECOMMENDATION: That the Board approve the Statement of Scope for Emergency Board Order OE-10-14(E) and Board Order OE-09-14, and conditionally approve 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.

LIST OF ATTACHED MATERIALS:

Notice of Public Hearing
Statements of scope

Notice of Submittal of proposed rule to Legislative Council Rules Clearinghouse
Governor approvals of statements of scope

Approved by	Signature	Date
Dave Siebert, Bureau Director	<i>Jeffrey Schimpff for Dave Siebert</i>	6/10/2014
Mark Aquino, Acting Division Administrator	<i>Mark Aquino</i>	6/10/2014
Cathy Stepp, Secretary	<i>Cathy Stepp</i>	6/12/14

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

CORRESPONDENCE/MEMORANDUM

DATE: June 5, 2014

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo relating to the request that the Board approve the Statement of Scope for Emergency Board Order OE-10-14(E) and Board Order OE-09-14, and conditionally approve 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.

Why is the rule being proposed?

Ch. NR 150 was revised and went into effect April 1, 2014. It was the product of nearly three years of public outreach, internal input and staff review. An emergency rule is needed 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. Once the emergency rule is approved, a permanent rule will subsequently be required.

Summary of rule.

The previous version of ch. NR 150 classified most administrative rules as "Type 3 actions", a classification requiring some form of public notice and no additional environmental analysis as part of the formal rules process.

The rule changes would be simple editorial changes to clarify that emergency rules are "minor actions requiring no additional environmental analysis, and that the process for developing permanent rules are "equivalent analysis actions" under the new ch. NR 150, similar to how they were treated under the old ch. NR 150.

These changes would more clearly outline the required review process for administrative rules. Additional changes to clarify publication requirements, WEPA compliance determinations for various permits and plan approvals and other housekeeping changes, consistent with the intent of the rule, as presented to the public and approved by the NRB, may also come to light as implementation of the new rule progresses.

How does this affect existing policy?

The rule change would clarify what was intended and what was presented to the public through the Natural Resources Board process for development of the current ch. NR 150.

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.

Who will be impacted by the proposed rule? How?

DNR staff will have more clarity regarding the implementation of ch. NR 150, regarding the required review process for administrative rules and will have more clarity regarding publication requirements, WEPA compliance determinations for various permits and plan approvals, and other housekeeping changes, consistent with the intent of the rule, as presented to the public and approved by the NRB.

Is an environmental analysis needed?

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Small Business Analysis.

There will be no impact to small business as a result of this rule amendment. This rule amendment 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.

Manual Code 1022.4

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES**

NOTICE OF PUBLIC HEARING
Natural Resources Board Order **OE-10-14(E) and OE-09-14**

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on **revisions to chapter NR 150 Wis. Admin. Code**, relating to Emergency Board Order OE-10-14(E) and Board Order OE-09-14, related to the Department's environmental analysis procedures under the Environmental Policy Act. An emergency and permanent rule is needed 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. Once the emergency rule is approved, a permanent rule will subsequently be required. **The hearing will be held** on the date(s) and at the time(s) and location(s) listed below.

Hearing Information

Date and Time
To be determined

Location
State Natural Resources Building (GEF 2), 101 S Webster Street, Madison, WI, 53707, Room G09

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Jim Pardee, Wisconsin DNR, Madison, WI 53707; by E-mail to james.pardee@wisconsin.gov, or by calling (608) 266-0426. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Jim Pardee (BETEA/7), Department of Natural Resources, Bureau of Energy, Transportation and Environmental Analysis, 101 S. Webster St, Madison, WI, 53703, or by calling (608) 266-0426.

Submitting Comments

Comments on the proposed rule must be received on or before **[date to be determined]**. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Jim Pardee (BETEA/7)

Department of Natural Resources
Bureau of Energy, Transportation and Environmental Analysis
101 S Webster St, Madison, WI 53703

Phone: (608) 266-0426

Fax: (608) 264-6048

E-mail: james.pardee@wisconsin.gov

Internet: Use the Administrative Rules System Web site accessible through the link provided

Analysis Prepared by the Department of Natural Resources

1. Finding/nature of emergency (Emergency Rule only):

An emergency rule is needed 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. Once the emergency rule is approved, a permanent rule will subsequently be required.

2. Detailed description of the objective of the proposed rule:

The previous version of ch. NR 150 classified most administrative rules as "Type 3 actions", a classification requiring some form of public notice and no additional environmental analysis as part of the formal rules process.

The Rule changes would be simple editorial changes to clarify that emergency rules are "minor actions requiring no additional environmental analysis, and that the process for developing permanent rules are "equivalent analysis actions" under the new ch. NR 150, similar to how they were treated under the old ch. NR 150.

These changes would more clearly outline the required review process for administrative rules. Additional changes to clarify publication requirements, WEPA compliance determinations for various permits and plan approvals and other housekeeping changes, consistent with the intent of the rule, as presented to the public and approved by the NRB, may also come to light as implementation of the new rule progresses.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The rule change would clarify what was intended and what was presented to the public through the Natural Resources Board process for development of the current ch. NR 150.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The department is responsible for compliance with department rules and procedures pursuant to s. 1.11, and 227.11, Stats., provides rule authority

Pursuant to s. 227.24(1)(a) Stats., the department finds that putting this rule into effect prior to the time it would take effect using the permanent rule process is necessary to ensure that the department and public time involved in lengthy rule processes for current rules is not compromised by a confusing definition in NR 150.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

48 hours.

6. List with description of all entities that may be affected by the proposed rule:

It is anticipated that no entities shall be affected by the proposed rule. This clarifies internal procedures for rules development.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

None.

9. Anticipated number, month and locations of public hearings:

The Department anticipates holding one public hearing in the month of September 2014.

The Department will hold this hearing in Madison to seek public comment on the changes to the rule.

10. Effect on Small Business. This rule will have no effect on small business. The Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us, or by calling (608) 266-1959.

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate Summary

Because this is a housekeeping change affecting only internal DNR operations, no Fiscal Estimate will be prepared.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

**State of Wisconsin
Department of Natural Resources**

**NOTICE OF SUBMITTAL OF PROPOSED RULE TO
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE**

The statement of scope for this rule, OE-09-14 and OE-10-14E, was approved by the governor on **May 15, 2014**, published in Register No. **701**, on **May 31, 2014**, and approved by the Natural Resources Board on **June 24, 2014**.

Date Submitted to the Rules Clearinghouse:

Board Order No.: OE-09-14 and OE-10-14E

Subject: Emergency Board Order OE-10-14(E) and Board Order OE-09-14 related to the Department's environmental analysis procedures under the Wisconsin Environmental Policy Act.

Administrative Codes: NR 150

Date of Public Hearing: To be determined

Name and Organizational
Unit of Agency Contact: Linda Haddix – Legal Services, (608) 266-1959

Approved by:

Cathy Stepp, Secretary
Department of Natural Resources

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: OE-09-14 and OE-10-14

Relating to: Environmental analysis and review procedures under
Ch.NR 150 Wis. Admin. Code

Rule Type: Permanent and Emergency

1. Finding/nature of emergency (Emergency Rule only):

This rule is needed as housekeeping to clarify the procedures for the review and analysis of new administrative rules in order to assure that the intent of the NR 150 revision is being met and potential procedural questions do not invalidate years of work and public engagement on new rules packages. An emergency rule is needed to ensure processing and enactment of rule proposals in a manner that is consistent with past WEPA compliance approaches that have been upheld by the courts.

2. Detailed description of the objective of the proposed rule:

NR 150 was revised and went into effect April 1, 2014. The previous version of the code classified most administrative rules as "Type 3 actions", a classification requiring some form of public notice and no additional environmental analysis as part of the formal rules process.

The rule changes would be simple editorial changes to clarify that emergency rules are "minor actions" requiring no additional environmental analysis, and that the process for developing permanent rules are "equivalent analysis actions". These changes would more clearly outline the required review process for administrative rules. Additional changes to clarify publication requirements, WEPA compliance determinations for various permits and plan approvals and other housekeeping changes, consistent with the intent of the rule, as presented to the public and approved by the NRB, may also come to light as implementation of the new rule progresses.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The rule change would clarify what was intended and what was presented to the public through the Natural Resources Board process for development of the current ch. NR 150.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The department is responsible for compliance with department rules and procedures pursuant to s. 1.11, and 227.11, Stats., which provides rule authority

Pursuant to s. 227.24(1)(a) Stats., the department finds that putting this rule into effect prior to the time it would take effect using the permanent rule process is necessary to ensure that the department and public time involved in lengthy rule processes for current rules is not compromised by a confusing definition in NR 150.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

8 hours.

6. List with description of all entities that may be affected by the proposed rule:

It is anticipated that no entities shall be affected by the proposed rule. This clarifies internal procedures for rules development.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

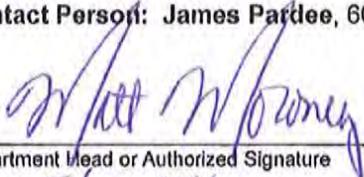
None.

9. Anticipated number, month and locations of public hearings:

The Department anticipates holding one public hearing in the month of September 2014.

The Department will hold this hearing in Madison to seek public comment on the housekeeping changes to the rule.

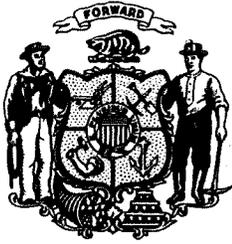
Contact Person: James Pardee, 608-266-0426



Department Head or Authorized Signature

5/12/14

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

May 15, 2014

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

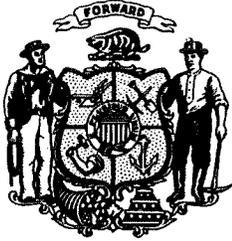
**RE: Scope Statement for modifications to Chapter NR 150 relating to
environmental analysis and review procedures**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on May 12, 2014, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter NR 150 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

May 15, 2014

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

**RE: Scope Statement for OE-10-14 Emergency Rule modifications to Chapter NR
150 relating to environmental analysis and review procedures**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on May 12, 2014, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule modifying Chapter NR 150 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.24(1)(e)1d.

Sincerely,

Scott Walker
Governor