

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DETERMINATION REGARDING WISCONSIN
ENVIRONMENTAL POLICY ACT COMPLIANCE FOR BOARD ORDER AM-21-12

FINDINGS OF FACT

The Department of Natural Resources (Department) finds that:

1. On October 24, 2012, the Department received authorization from the Natural Resources Board (Board) to proceed with rulemaking affecting chs. NR 400, 405, 408, and 410, Wis. Adm. Code, related to consistency with federal major source permit review requirements and clean-up of rules related to the former indirect source permit program.
2. The Department prepared proposed rules as Board Order AM-21-12.
3. In a background memorandum dated September 10, 2013 and prepared for the Board's consideration of a Department request to notice and hold public hearings on Board Order AM-21-12, the Department included its preliminary determination that promulgation of the proposed rules constituted a Type III action under s. NR 150.03, Wis. Adm. Code.
4. On September 25, 2013, the Board approved the Department's request to publish a public hearing notice and hold a public hearing on the proposed rules in Board Order AM-21-12.
5. The public hearing notice for the proposed rules was published in the Wisconsin State Journal on October 3, 2013 and in the Wisconsin Administrative Register on October 14, 2013. The notice included the Department's 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. The notice also included a statement that, based on comments received, an environmental analysis may be prepared before proceeding (with the adoption of the proposed rules).
6. A public hearing was held on November 5, 2013 in Madison, Wisconsin. The public comment period closed on November 8, 2013.
7. No comments were received at the public hearing or in response to the public hearing notice on the Department's preliminary determination that an environmental analysis under ch. NR 150, Wis. Adm. Code, would not be needed.
8. On January 22, 2014, the Board considered and adopted Order AM-21-12. A memorandum from the Department was provided to the Board stating that adoption of the proposed rules was classified as a Type III action under ch. NR 150, Wis. Adm. Code, and therefore an environmental analysis was not needed.
9. The proposed rules were submitted to the Governor under s. 225.185, Stats., and approved on February 5, 2014.
10. The Department provided notification accompanied by a report, including the proposed rules, to the chief clerks of each house of the legislature on February 6, 2014 as required under s. 227.19, Stats. The legislative committees' review began on February 7, 2014 and expired on May 16, 2014 with no action taken by the committees.
11. Effective April 1, 2014, ch. NR 150, Wis. Adm. Code, was repealed and recreated.

12. Effective April 1, 2014, s. NR 150.10 (1m) (a), Wis. Adm. Code, requires that the Department conduct a strategic analysis for all new or revised administrative rules if the rule involves unresolved conflicts concerning alternative uses of available resources and the Department has substantial discretion in formulating important provisions of the rule.
13. The proposed rules in Board Order AM-21-12 do not involve unresolved conflicts concerning alternative uses of available resources.
14. Effective April 1, 2014, s. NR 150.20 (1) and (1m), Wis. Adm. Code, establish that an environmental analysis is required for all Department actions not specifically exempt by statute or defined as minor actions.
15. Promulgation of rules is not identified in statute as an action exempt from an environmental analysis, nor is promulgation of rules identified in s. NR 150.20 (1m), Wis. Adm. Code, as a minor action not requiring an environmental analysis.
16. Effective April 1, 2014, s. NR 150.20 (2) (b), Wis. Adm. Code, provides that the Department may determine under s. NR 150.35, Wis. Adm. Code, that there is equivalent analysis for a specific action.
17. The rulemaking process for Board Order AM-21-12 included procedures for evaluating the environmental impacts of the proposed rules and provided for public disclosure and opportunities for public input.

CONCLUSIONS OF LAW

The Department concludes that:

1. A strategic analysis under s. NR 150.10 (1m), Wis. Adm. Code, is not required for Board Order AM-21-12 because the proposed rules do not involve unresolved conflicts concerning alternative uses of available resources.
2. The rulemaking process for Board Order AM-21-12 constitutes an equivalent analysis action under s. NR 150.20 (2) (b), Wis. Adm. Code.

DETERMINATION

The Department has complied with ch. NR 150, Wis. Adm. Code, as in effect prior to April 1, 2014, and upon publication of this determination, will have complied with ch. NR 150, Wis. Adm. Code, as in effect on and after April 1, 2014 for Board Order AM-21-12.


 Bart Sponseller, Director
 Bureau of Air Management

6/5/2014
 Date


 James Pardee, Wisconsin Environmental Policy Act Coordinator
 Bureau of Energy, Transportation and Environmental Analysis

06/04/2014
 Date