

**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-20-14(E) and Permanent Board Order OE-21-14, and conditionally approve the Notice of Public Hearing for Emergency Board Order OE-20-14(E) and Permanent Board Order OE-21-14 and Notice of Submittal of Proposed Rules to the Legislative Council Rules Clearinghouse for proposed rules affecting ch. NR 150, related to the Department's environmental analysis and review procedures.

FOR: February 2015 Board meeting

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

SUMMARY:

NR 150 was revised and went into effect April 1, 2014. The previous version of the code classified most administrative rules as "Type 3" or "Type 4" actions, classifications requiring some form of public notice and no additional environmental analysis. The rule changes would further clarify that emergency rules are "minor actions" requiring no additional environmental analysis, and that the process for developing permanent rules is an "equivalent analysis action," as well as clarifying the various applicable definitions related to those rules and actions. These changes would more clearly outline the required review process for administrative rules, and provide further clarification through refining definitions. Additional changes to clarify publication requirements, WEPA compliance determinations for various permits, plan approvals and other actions and policies, and other changes, generally consistent with the intent of the rule as presented to the public and approved by the NRB, will also be included in the emergency and permanent rules.

The Board has previously approved the Statement of Scope for proposed changes to Ch. NR 150 Wis. Adm. Code, pertaining to environmental analysis and review procedures. The Board has issued Board Order numbers OE-20-14(E) and OE-21-14, as of December 11, 2014, to proceed with drafting the proposed rule changes. The Governor approved the Statement of Scope December 15, 2014.

RECOMMENDATION: That the Board approve the statement of scope and conditionally approve the public hearing notice for Emergency Board Order OE-20-14(E) and Permanent Board Order OE-21-14 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse.

LIST OF ATTACHED MATERIALS:

- Statement of scope
- Governor approval of statement of scope

Approved by	Signature	Date
David Siebert, Bureau Director	<i>Mark Aquino</i>	2/6/15
Marc Aquino, Administrator Office of Business Support, Science and Sustainability	<i>Marc Aquino</i>	2/6/15
Cathy Stepp, Secretary	<i>Cathy Stepp</i>	2/9/15

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule officer - LS/8

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: OE-20-14(E) and OE-21-14

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 to clarify and modify the procedures for the review and analysis of new administrative rules, WEPA compliance determinations for various permits, plan approvals and other actions and policies, and other relevant changes, in order to assure that the general intent of the NR 150 revision is being met, that potential procedural questions or legal challenges do not invalidate years of work and public engagement on new rule packages or other actions and policies. A new emergency rule and following permanent 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, along with clarifying publication requirements, WEPA compliance determinations for various permits, plan approvals and other actions and policies.

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 or 4 actions", a classification requiring some form of public notice and no additional environmental analysis. The rule changes would further clarify that emergency rules are "minor actions" requiring no additional environmental analysis, and that the process for developing permanent rules are "equivalent analysis actions," as well as clarifying the various applicable definitions related to those rules and actions. These changes would more clearly outline the required review process for administrative rules, and provide further clarification through refining definitions. Additional changes to clarify publication requirements, WEPA compliance determinations for various permits, plan approvals and other actions and policies, and other changes, generally consistent with the intent of the rule as presented to the public and approved by the NRB, will also be included in the emergency and permanent rule.

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 and support the general intent of 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 ss. 1.11 and 227.11, Stats.

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:

80 hours.

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

This clarifies internal procedures for rules development, as well as WEPA compliance for various actions and policies. WEPA (and therefore NR 150) compliance is a requirement for all Department programs. DNR staff and many regulated entities and interested parties involved in the full array of DNR activities, including policy making, planning, and permitting, may have an interest in the revised rule.

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):

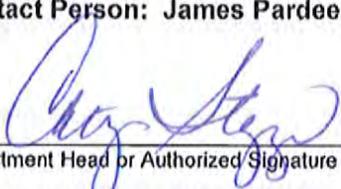
None.

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

The Department anticipates holding one public hearing.

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

Contact Person: James Pardee, 608-266-0426



Department Head or Authorized Signature

12-9-14

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

December 29, 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-20-14 (E) and OE-21-14 relating to environmental analysis and review procedures under Ch. NR 150

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on December 9, 2014, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapters OE-20-14(E) and OE-21-14 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