

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-022

AN ORDER to repeal NR 150.03 (8) (a) 1., and chapter NR 170, relating to power plant siting.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

02-10-99 RECEIVED BY LEGISLATIVE COUNCIL.

03-08-99 REPORT SENT TO AGENCY.

RNS:JES:kjf;jal

MAR 12 1999

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 99-022

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

4. Adequacy of References to Related Statutes, Rules and Forms

The department should review the references in the analysis accompanying the rule with respect to the following comments:

a. The list of statutes that authorize promulgation of the rule include ss. 1.11 and 196.491, Stats. Neither of these sections authorize rule making by the department and thus should not be included in this list.

b. If the department is repealing existing rules because it has determined that they are no longer necessary to effectuate the purpose of the statutes being interpreted, then the statute authorizing the rule making should be listed as s. 227.11 (2) (a), Stats., as other provisions in s. 227.11 do not relate to this type of rule making.

c. In the list of statutes being interpreted by the rule making, the reference to s. 196.491, Stats., is broad, especially since most of s. 196.491 is administered by the Public Service Commission. This reference should be replaced by the more specific reference to s. 196.491 (3) (a) 3.

d. Since ch. NR 170 presently implements both ss. 30.025 and 196.491, Stats., the list of statutes being interpreted by this rule making should include s. 30.025, Stats.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING RULES

The State of Wisconsin Natural Resources Board proposes an order to repeal NR 150.03(8)(a)1., and ch. NR 170 relating to power plant siting

SS-10-99

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 1.11, 196.491 and 227.11, Stats. *No redundancy*

Statutes interpreted: ss. 1.11 and 196.491, Stats. *30.025*

The Public Service Commission is the review authority for power plants. 1997 Wis. Act 204 changes the threshold for Public Service Commission review of power plants. Changes in the technology and size of power plants now being built no longer support a numerical threshold for determining whether a power plant is a major state action under s. 1.11, Stats., the Wisconsin environmental policy act. 1997 Wis. Act 204 also provides enough detail on review of engineering plans for power plants that a separate administrative rule is no longer needed.

SECTION 1. NR 150.03(8)(a)1. is repealed

ck SECTION 2. Chapter NR 170 is repealed.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

30.025

FEB 25 2000

State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. 55-10-99

Legislative Council Rules Clearinghouse Number 99-022

Subject of Rules Power plant siting

Date of Transmittal to Presiding Officers February 23, 2000

Send a copy of any correspondence or notices pertaining to this rule to:

**Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster**

266-1959

REPORT TO LEGISLATURE

NR 150.03(8)(a)1. and NR 170, Wis. Adm. Code
Power plant siting

Board Order No. SS-10-99
Clearinghouse Rule No. 99-022

Statement of Need

1997 Wis. Act 204 changed the Public Service Commission's (PSC) scope of review of power plants proposed in the state. The size of power plants subject to determination of need and siting review has increased, and non-utility power plants are no longer subject to full PSC authority. The PSC has been, and continues to be, the review agency for power plant siting. Act 204 did not affect the Department's separate permitting authorities that apply to power plants. Each of the permitting actions the Department takes for a power plant is included in the NR 150 type list. The repeal of s. NR 150.03(8)(a)1. deletes the NR 150 type list category in which all power plants over 20 megawatts (requiring some type of Department approval) are Type 1 which requires the preparation of an EIS. Chapter NR 170 pertaining to the review of engineering plans for power plants is also repealed.

Modifications as a Result of Public Hearing

No modifications were made as a result of the public hearing.

Appearances at the Public Hearing and Their Position

In support:

Patricia McCormack, Administrator, Electric Division, PSC, 610 Whitney Way, Madison, WI 53705
Kathleen Zuelsdorff, PSC WEPA Coordinator, PSC, 610 Whitney Way, Madison, WI 53705
James L. Christensen, Alliant Energy, P.O. Box 192, Madison, WI 53701
Terrence L. Yakich, Wisconsin Electric, P.O. Box 2046, Milwaukee, WI 53201
Neil Kennebeck, Dairyland Power, 3200 East Avenue South, La Crosse, WI 54601
George Johnston, Dairyland Power Cooperative, Box 817, La Crosse, WI 54601

In opposition:

Keith Reopelle, Wisconsin's Environmental Decade, 122 State Street, Suite 200, Madison, WI

As interest may appear:

Dennis Dums, Citizens Utility Board, 16 North Carroll St., Suite 300, Madison, WI 53703
Gregory W. Egtvedt, Wis. Public Service Corporation, P.O. Box 19002, Green Bay, WI 54307-9002
Barry McNulty, Wisconsin Electric, 2 East Mifflin Street, Madison, WI 53703

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The proposed rule does not affect small businesses; therefore, a final regulatory flexibility analysis is not required.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING RULES

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SS-10-99

Analysis Prepared by Department of Natural Resources

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 1.11, 30.025 and 196.491(3)(a)3., Stats.

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Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)