

2003 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB655)

Received: **01/10/2004**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **John Gard (608) 266-3387**

By/Representing: **Ellen Nowak**

This file may be shown to any legislator: **NO**

Drafter: **mglass**

May Contact:

Addl. Drafters: **btradewe
rkite
rnelson2**

Subject: **Nat. Res. - nav. waters
Environment - air quality
Administrative Law**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gard@legis.state.wi.us**

Carbon copy (CC:) to: **laura.rose@legis.state.wi.us
daryl.hinz@legis.state.wi.us
tad.ottman@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Omnibus regulatory reform

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mglass	csicilia	chaugen	_____	sbasford	sbasford	

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	01/10/2004	01/11/2004	01/12/2004 _____		01/12/2004	01/12/2004	
/2	mglass 01/12/2004	wjackson 01/12/2004	chaugen 01/12/2004 _____		lnorthro 01/12/2004	lnorthro 01/12/2004	

FE Sent For:

<END>

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OK 3/1-12

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<END>

3 places

RNK

p.13 + p.14

0-13

Page 10, Section 25, line 20 - Add "unless directed to do so as a result of a judicial or administrative proceeding" after "general permit" on p. 10, line 20 and p. 20, line 3; and after "a contract" on p. 34, line 18.

MBG

Page 12, Section 34, line 7 - The word "general" that occurs before the word "permit" should be removed

MBG

Page 12, Section 37, line 23 - Add "permitted" after "existing" on p. 12, line 23

MBG

Page 25, Section 88, line 8 - Change "individually" to "specifically" on p. 25, line 8

MBG

Page 28, Section 100, starting on line 7 - Add "substantially" before "in accordance with" on p. 28, line 9

MBG

Page 34, Section 123, line 25 - Add "provided that the applicant can demonstrate that material has been previously removed from the area" after "removed" at the end of p. 34, line 25

MBG

Page 40, section 139 - Create additional language to reflect the intent of the following: "The department may request additional information from the applicant one time during the 30-day period. The 30-day period under this section does not run from the date of the request until the applicant has responded to the request."

MBG

NOTE: The intent of this language is to make it clear that the 30 day "clock" does not run while the DNR is waiting for the additional information from the applicant.

MBG

Page 41, section 142, line 4 - Remove "that" after "require"

Page 44, section 151, line 20 - Add after "under s. 227.01(3)." the language "Notwithstanding s. 227.42, the hearing shall be an informational hearing and may not be treated as a contested case hearing nor converted to a contested case hearing." This language is similar to language included 2003 Wisconsin Act 89.

RNK

Page 45, section 151, line 19 - Add "of one" after "distribution"

RNK

Page 48, section 152, starting on line 1 - Add "significant adverse impacts or" before "irreversible harm" on p. 48, line 3

RNK

Page 50, section 157, starting on line 12 - Add "the applicant is not authorized to proceed under a general permit and" after "under s. 30.206(3r)," on p. 50, line 12

MBG

Page 79, section 231, line 10 - Add "and 30.209" after "section 30.208"

RNK

Agree to remove sections 55, 62, 83, 111 and 112

MBG MBG MBG

MBG

MBG

Chapter 30

NEW SECTION

Create s. 30.12(1m) Rulemaking authority

- (1) The department may promulgate rules with respect to the exempt activities in sub. (1g) that do the following:
 - (a) Set forth reasonable installation practices for the structures or deposits to minimize environmental impacts.
 - (b) Establish reasonable construction and design requirements for structures under (1g)(c), (d), (f), (g), (h) and (km) consistent with the purpose of the activity.
 - (c) Establish reasonable limitations on the location of the structure or deposit within the property.
- (2) In no case, except as provided in (1)(c), shall the rules prohibit the placement of the structure or deposit or require practices that render the structure or deposit economically cost-prohibitive.

MOG
RNK

NEW SECTION

Create s. 30.123(6s) Rulemaking authority

- (1) The department may promulgate rules with respect to the exempt activities in sub. (6) that do the following:
 - (a) Set forth reasonable installation practices for culverts to minimize environmental impacts.
 - (b) Establish reasonable construction and design requirements for culverts consistent with the purpose of the activity.
 - (c) Establish reasonable limitations on the location of culverts within the property.
- (2) In no case, except as provided in (1)(c), shall the rules prohibit the placement of the culvert or require practices that render the culvert economically cost-prohibitive.

does
not
include
budgets

MOG
RNK

NEW SECTION

Create s. 30.20(1k) Rulemaking authority

- (1) The department may promulgate rules with respect to the exempt activities in sub. (1g) that do the following:
 - (a) Set forth reasonable procedures for undertaking dredging to minimize environmental impacts.
 - (b) Establish reasonable limitations on the location of the dredging activity within the property.
- (2) In no case, except as provided in (1)(b), shall the rules prohibit the dredging activity or require practices that render the dredging activity economically cost-prohibitive.

Ks + permits

Removal
of material

MOG
RNK

RNK

Page 5, Section 8, line 15 - Agree to add "or contract under subchapters I and II of this chapter" after "general permit"

MOG ✓

Page 9, Section 22, starting on line 5 - Add "in an inland lake or Great Lakes water body" after "riprap" on lines 6 and 8 ✓

MOG ✓

Page 9, Section 22, starting on line 15 - Stay with current law language, remove this provision ✓

1/9 4pm

Ellen N + Bob F. Fixes to ch. 229

(88-268-3561)

action under this section

✓ (4) Dept. is not subject to judicial review
p 54
Line 13

✓ p 56, C. 20 - apply to DOT
& DNR only

✓ p 56-57 - delete SEC 195

✓ p 57 - claims related to provisions

directly attributable
69.04(1)(a)

✓ p 54 - L. 4-6 - make the same as p 55 line 7-9

Tradewell, Becky

From: Nowak, Ellen
Sent: Friday, January 09, 2004 11:14 AM
To: Tradewell, Becky
Subject: Changes to Ch. 285

Here are some changes to make to ch. 285 in the sub to AB 655.



Technical

Amendments to Chap28...

Technical Amendments to Chap. 285

Reference to LRBs0288/1

(January 9, 2004)

1. Pp. 59, line 5: After "strategy" add "that is or may result in regulatory requirements"
2. Pp. 60, lines 4-5: Delete "by other states"
3. Pp. 61, line 1: After "are" add "or will be"
4. Pp. 61, lines 8-10: Delete "regulatory programs reasonably expected to meet the" (line 8) and replace "regulatory programs" with "standards" (line 9) and replace "or" with "and" (line 10)
5. Pp. 61, line 25, pp. 62 lines 1-2: Delete "or recommend that a count be designated as part of a nonattainment area" and after "atmosphere" add "in that county"
6. Pp. 64, line 3: After "are" add "or will be"
7. Pp. 64, line 10-12: Delete "requirements related to" and replace "regulatory programs" with "standards"
8. Pp. 64, lines 17-18: after "under" (both lines 17 & 18) add "section 112"
9. Pp. 65, line 10: After "sub." Add "2g"
10. Pp. 67, line 6: After "shall" add "promulgate rules to"
11. Pp. 70, line 9-10; Pp. 72, line 17: Replace "directly aggrieved" with "affected"
12. Pp. 70, line 25; Pp. 71, lines 1-5: Delete ", including the names of the department's employees responsible for review of the application," replace "joint committee for the review of administrative rule" with "standing committees of the legislature with jurisdiction over environmental matters", and replace "quarterly" with "semiannually" (pp. 71, line 5)
[Note: Make paralleled changes to §220 (pp. 73)]
13. Pp. 72, lines 8-10: Replace "applicant provides the information specified in the written notice under par. (a)" with "department notifies the applicant that the information requested under par (a) is satisfactory" and replace "notice" and "period" (line 9) with "notices" and "periods" and add at the end of that sentence "or 15 days after receipt of additional information requested by the department"
[Note: Make paralleled changes to §206 (pp. 69)]
14. Pp. 73. line 15: Replace "that the operation permit expires" with "specified in s. 285.66(3)(a)"
15. Include clarifying initial applicability language the makes it clear that this Act does not affect DNR's rules already submitted to the Legislature relating to mercury (NR 446) and the air toxics program (NR 445).
[Note: We agree with the LRB drafter that such language is not required, but due to certain confusion, this clarification would be helpful]

ell, Becky

Subject: Nowak, Ellen
RE: Changes to Ch. 285

Ellen,

I have some questions and comments about the instructions:

1. The language proposed to be added on page 59, line 5 needs to be changed in order to end up with a sentence that is grammatically correct. I would propose "that imposes or may result in regulatory requirements," but other approaches could also work. I think that it might be possible to make this whole provision more clear, but would need someone to explain the intent to me before I could attempt to clarify it.
2. About adding "or will be" on page 61, line 1, and page 64, line 3: Should the draft require a finding that persons will be subjected to unhealthy levels of the air contaminant if the ambient air quality standard or emission standard is not promulgated (or something like that)? Otherwise, it seems to require DNR to find that persons will be subjected to unhealthy levels of the air contaminant no matter what action DNR takes or whatever else happens.
3. The instructions indicate that sub. (2g) should be added as an exception to s. 285.60 (1) (a) 1. That would be appropriate if s. 285.60 (2g) authorized DNR to allow construction to begin prior to obtaining a registration permit, but not otherwise. That is not the case in the substitute amendment. Do you want language added to s. 285.60 (2g) that authorizes DNR to exempt applicants who qualify for registration permits from the requirement to obtain a construction permit before beginning construction?
4. I think that I understand the intent behind the proposed changes to page 72, lines 8 to 10, but I think that the language must be structured in a different way in order to accomplish that intent.
5. Doesn't current law (s. 285.62 (8)) provide that if a person applies for renewal of an operation permit by the deadline under s. 285.66 (3) (a), the person may continue to operate the source even if DNR has not acted on the renewal application before the original permit expires? If so, the language on page 73, lines 13 to 19 should be deleted, rather than modified as specified in the instructions, because it would be redundant.

Please let me know if you have any questions about this message.

Becky Tradewell
266-7290

-----Original Message-----

From: Nowak, Ellen
Sent: Friday, January 09, 2004 11:14 AM
To: Tradewell, Becky
Subject: Changes to Ch. 285

Here are some changes to make to ch. 285 in the sub to AB 655.

<< File: Technical Amendments to Chap285Jan9.doc >>

1/9/04 - Per Bob Fassbender

Responses to my e-mail to Ellen:

1. My suggested language is OK
2. Idea is to let DNR act if a facility is in the works that would cause that exposure - if DNR doesn't act.
3. Add to (2g) that DNR may allow construction without any permit at all
4. OK to restructure. Main point is that there are 2 situations in which it is deemed to be complete - if DNR doesn't ask for info in 20 days & if it doesn't say whether info is complete within 15 days
5. Actually, current law requires application & additional info & they don't want the additional info to be required in case of renewals

Three new items:

✓1. Exclude holidays from the 20 days for completeness determination

✓2. P. 65, line 17, after "actual" add "or potential".

✓3. Re: section 227 - ^{add} something like: Notwithstanding sub. (1m), emission limitations contained in a permit will become effective despite a challenge, provided, however, that an applicant may obtain a stay of emission limitations from the hearing examiner or court.