



State of Wisconsin

CR 83-78

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny  
Secretary

BOX 7921  
MADISON, WISCONSIN 53707

RECEIVED

STATE OF WISCONSIN )  
DEPARTMENT OF NATURAL RESOURCES )

ss

FEB 7 1984  
9:45 AM  
Revisor of Statutes  
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Carroll D. Besadny, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. L-16-83 was duly approved and adopted by this Department on December 14, 1983. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at General Executive Facility #2 in the City of Madison, this 30<sup>th</sup> day of January, 1984.

Carroll D. Besadny  
Carroll D. Besadny, Secretary

(SEAL)

2967J



ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
AMENDING, REPEALING AND RECREATING, AND CREATING RULES

.....  
IN THE MATTER of amending ss. NR 2.04, .  
2.05 (intro.), (1), (2) and (3), 2.06(2)(d), .  
2.065, 2.07, 2.09(2) and (3), 2.10, 2.11, .  
2.12(1), 2.13(title) and (1), 2.14(1), 2.15(1), .  
2.16, 2.17 (title), (1) and (2), 2.18(1), .  
2.19(5)(b) and (e), 2.195(1), (2), (3), (4) .  
and (5)(a), and 2.20(1), (2) and (5); .  
repealing and recreating ss. NR 2.02(3), .  
2.05(4), 2.08, 2.13(3) and 2.195(5)(b); .  
and creating ss. NR 2.015, 2.02(4), 2.05(5), .  
2.09(3)(c), 2.105, 2.12(3), 2.135, 2.14(6) .  
and 2.20(6) of the Wisconsin Administrative .  
Code, pertaining to procedure and practice .  
in department hearings. .  
.....

L-16-83

Analysis Prepared by Department of Natural Resources

Chapter NR 2, Wis. Admin. Code, sets forth procedures and practices to be followed at Department hearings. The Department is revising ch. NR 2, Wis. Admin. Code, to comport with statutory changes and to correct statutory references. The only major additions are procedures for noncontested case hearings and a procedure for certifying parties to hearings.

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Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by ss. 15.02(4), 227.011, 227.014 and 227.09, Stats., the State of Wisconsin Natural Resources Board hereby amends, repeals and recreates, and creates rules interpreting ss. 15.02(4), 227.011, 227.09, and 227.10, Stats., as follows:

Chapter NR 2  
Procedure and Practice

- NR 2.01 Application of rules
- NR 2.015 Severability
- NR 2.02 Definitions
- NR 2.03 Service on the department
- NR 2.04 Service of pleadings
- NR 2.05 Forms of petitions
- NR 2.06 Notice of hearing
- NR 2.065 Contested case designation
- NR 2.07 Place of hearings
- NR 2.08 Persons entitled to participate in contested case hearings
- NR 2.09 Changes in time or place of hearings; adjournments; failures to appear
- NR 2.10 Witnesses and subpoenas in contested cases
- NR 2.105 Witnesses in noncontested cases
- NR 2.11 Preservation of testimony and discovery of evidence
- NR 2.12 Informal conferences
- NR 2.13 Conduct of contested case hearings
- NR 2.135 Conduct of noncontested case hearings
- NR 2.14 Rules of evidence in contested cases
- NR 2.15 Close of hearing
- NR 2.155 Decisions in contested cases
- NR 2.16 Reopening hearings
- NR 2.17 Transcripts in contested case hearings
- NR 2.18 Briefs
- NR 2.19 Confidential status
- NR 2.195 Public records and information
- NR 2.20 Review of contested case decision

SECTION 1. NR 2.015 is created to read:

NR 2.015 SEVERABILITY Should any section, paragraph, phrase, sentence, clause or word of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

SECTION 2. NR 2.02(3) is repealed and recreated to read:

(3) CONTESTED CASE. Contested case has the meaning specified in s. 227.01, Stats.

SECTION 3. NR 2.02(4) is created to read:

(4) NONCONTESTED CASE. A noncontested case means any proceeding before the department which is not a contested case.

SECTION 4. After s. NR 2.03 add the following note:

Note: The office of the secretary is located on the fifth floor of GEF 2, 101 S. Webster St., Madison, WI.

SECTION 5. NR 2.04 is amended to read:

NR 2.04 SERVICE OF PLEADINGS. After a matter has been set for a contested case hearing, all further pleadings and papers shall be served by delivery or by mail to the Division of Hearings and Appeals, the Bureau of Legal Services, Department of Natural Resources, ~~or-by-mail-addressed--at-P.O.--Box-7921,~~ Madison, Wisconsin--53707 and to all identified parties.

Note: The Division of Hearings and Appeals is located at 310 N. Midvale Blvd., Suite 308, Madison, WI 53705. The department's Bureau of Legal Services is located on the fifth floor of GEF 2, 101 S. Webster St., Madison, WI, mailing address: Box 7921, Madison, WI 53707.

SECTION 6. NR 2.05(intro.), (1), (2) and (3) are amended to read:

NR 2.05. FORMS OF PETITIONS. (intro.) Petitions shall conform with the applicable statute as to form, content, number of signatories and verifications. All petitions shall be filed within the time specified by statute or administrative code, or, where no time is specified, within 30 days of the date of the order or decision to be reviewed. Petitions are deemed filed upon receipt by the department. The department may request additional information concerning any petition or request filed under this section. The department may deny any such petition or request where the information required or requested under this section is not provided. Appropriate-forms Forms of petitions in various proceedings shall be-as-follows follow the formats below:

(1) REVIEW OF ORDERS. The following form shall be used in seeking review of orders issued pursuant to ss. 144.025(2)(d)1., 144.025(2)(k), 144.025(2)(r) 144.35, 144.423(1), 144.47(1), 144.73(1), 144.76(4) and (7)(c), 144.83(4)(c) and 144.91(1), Stats.

To the Department of Natural Resources:

The undersigned hereby petitions for a review of the department order dated -----, 19----, whereby it was ordered-----  
-----.

The grounds for this petition are-----.

The modification or change desired is-----  
-----

Date-----

Signature-----

Verification-----

(2) ADOPTION, REPEAL OR AMENDMENT OF RULES OR GENERAL ORDERS OF THE DEPARTMENT. The following form shall be used in petitioning for rules pursuant to s. 227.015, Stats.

(a) For adoption of general order or rule:

To the Department of Natural Resources:

The undersigned hereby petitions for the adoption of a rule relating to:  
-----

The grounds for this petition are-----  
-----

The petitioners' interest in the request is-----  
-----

The authority of the department to act is-----  
-----

Date-----

Signatures (5 needed unless petitioner is a municipality or corporation)  
-----

Verification-----

(b) For amendment of a general order or rule:

To the Department of Natural Resources:

The undersigned hereby petitions for the amendment of rule number -----  
which provides as follows:-----

-----  
The grounds for this petition are-----

-----  
The modification or change desired is-----

-----  
The petitioners' interest in the request is-----

-----  
Date-----

Signatures (5 needed if the unless petitioner is not a municipality or a  
corporation)-----

Verification-----

(3) DECLARATORY RULINGS. The following form shall be used in petitioning  
for declaratory rulings pursuant to s. 227.06, Stats.

To the Department of Natural Resources:

In the matter of the applicability of rule-----  
(or regulation or statute) to the petitioner(s)-----

Said rule provides as follows:-----

The grounds for this petition are to determine the applicability of the above  
rule to the petitioner(s) because of the following state of facts:-----

The reasons for the requested ruling are -----  
-----

The following are the names and addresses of all other persons other than the petitioner(s) upon whom it is sought to make the ruling binding-----

-----

Date-----

Name-----

Address-----

Signature-----

Verification-----

SECTION 7. NR 2.05(4) is repealed and recreated to read:

(4) SIX CITIZEN COMPLAINTS. The complaint and answer in the proceeding shall conform with the requirements of the applicable provisions of ch. 802, Stats. The following form shall be used in filing six citizen complaints pursuant to s. 144.975, Stats.;

To the Department of Natural Resources:

\_\_\_\_\_  
(Name) (Address)

is causing or will cause alleged or potential environmental pollution, caused by the activities described herein: -----  
-----.

The facts supporting the contention that alleged or potential environmental pollution is or will take place are as follows: -----  
-----  
-----.

The nature of the alleged or potential environmental pollution is: -----  
-----

The specific relief sought by the complainants is: -----  
-----

Name and address of a person within the state authorized to receive service of the answer and other papers on behalf of the complainants:

(Name)	(Address)

Signatures of 6 or more citizens

Verifications

SECTION 8. NR 2.05(5) is created to read:

(5) HEARINGS UNDER s. 227.064, STATS. The request for a hearing to be treated as a contested case under s. 227.064, Stats., shall be in writing, and served upon the secretary within 30 days after the department action or inaction complained of, or within the time specified by the statute or administrative rule which accords a right to a hearing. The following form shall be used in requesting such a hearing:

To the Department of Natural Resources:

The undersigned hereby requests that a hearing be treated as a contested case under s. 227.064, Stats.

The agency action or inaction which is the basis for the request for a hearing is: -----  
-----

The substantial interest injured or threatened with injury by agency action or inaction is: -----

The evidence of legislative intent that the interest is to be protected is as follows: -----

The injury to the person requesting the hearing is different in kind or degree from injury to the general public caused by agency action or inaction because: -----

There is a dispute of material fact, and the disputed facts are: -----

The statute or administrative rule other than s. 227.064, Stats., which accords a right to a hearing is: -----

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

SECTION 9. NR 2.06(2)(d) is amended to read:

(d) Such other information as the department or the hearing examiner may deem appropriate.

SECTION 10. NR 2.065 is amended to read:

NR 2.065 CONTESTED CASE DESIGNATION. (1) ~~Unless~~ Except as provided in sub. (2) or unless otherwise ordered by the department or hearing examiner, all department contested case hearings are class 1 proceedings under s. 227.01(2), Stats., ~~except hearings~~

(2) Hearings held under ss. 30.03, 144.025, ~~144.35, 144.537~~ and 144.423(1), 144.44(8), 144.465, 144.47(1), 144.725, 144.73(1), 144.76(4) and (7)(c), 144.83(4)(c), 144.91, 144.965, 144.975 and 227.064, Stats., and these hearings which modify, revoke or suspend a department-issued license as defined in s. 227.01(3), Stats., ~~issued-by-the-department~~ are class 2 proceedings.

SECTION 11. NR 2.07 is amended to read:

NR 2.07 PLACE OF HEARINGS. Unless otherwise specifically provided by law ~~or ordered by the department or the secretary,~~ all hearings shall be held at the offices of the Department of Natural Resources, ~~4610 University Avenue, Madison, Wisconsin~~ in the Division of Hearings and Appeals, or at the time, date and place designated by the department or the hearing examiner in the hearing notice.

Note: The offices of the department of natural resources are now located at 101 S. Webster, Madison, WI. The offices of the Division of Hearings and Appeals are located at 310 N. Midvale Blvd., Suite 308, Madison, WI.

SECTION 12. NR 2.08 is repealed and recreated to read:

NR 2.08 PERSONS ENTITLED TO PARTICIPATE IN CONTESTED CASE HEARINGS. (1)  
In addition to the parties named in the pleadings, divisions of the department, the public intervenor if authorized by s. 165.07, Stats., and any member of the public may participate in any department contested case hearing.

(2) Any person desiring to participate in a department contested case hearing, whether on his or her own behalf or as an authorized agent or attorney, shall enter an appearance in person by giving his or her name and address, the name and address of any party being represented, and the capacity in which he or she is representing such party. A person may enter his or her appearance either prior to or at the commencement of a contested case hearing.

(3) Any person entering an appearance under sub. (2) may examine and cross-examine witnesses and may present testimony and other evidence. Such person shall be served with a copy of the department's order.

(4) Any documents concerning a contested case hearing filed with an agency prior to issuance of a final decision in the case shall be served on all persons entering appearances under sub. (2).

(5) The department or the hearing examiner may require persons who wish to be considered as parties at a contested case hearing to attend a prehearing conference. The department or the hearing examiner may issue a preliminary certification of parties at such a prehearing conference.

(6) The department or the hearing examiner shall prepare a list of persons who are certified as parties and set forth such list in the department's order. For purposes of certifying parties under s. 227.10, Stats., and this section, the department or the hearing examiner shall consider the following criteria:

- (a) Nature of agency proceeding;
- (b) Nature and effect of decision made; and
- (c) Nature of participation by those involved in the proceeding, including attendance at hearings, cross-examination of witnesses, and submission of briefs.

(7) Persons certified as parties shall be served with exhibits, pleadings, correspondence and other documents submitted by parties after issuance of the decision, including those specified in ss. 227.07(7), 227.12, and 227.13(2), Stats. Such persons shall also be served with petitions for rehearing and petitions for judicial review.

SECTION 13. NR 2.09(2) and (3) are amended to read:

(2) ADJOURNMENT. The department or the hearing examiner may adjourn a hearing for good cause shown, the hearing to be reset or reconvened at the discretion of the department ~~on-10-days-notice-or-at-a-time-certain-on-stipulation-of-the-parties~~ or the hearing examiner or at a time and place set by the department or the hearing examiner on the record of the hearing prior to adjournment.

(3) FAILURE TO APPEAR. (a) If an applicant for a permit or license fails to appear at a hearing following due notice and publication, the department or the hearing examiner may dismiss the application unless the applicant shows good cause for the failure to appear. If an applicant fails to submit proof of publication and notice as required by statute, the department or the hearing examiner may dismiss the application and cancel the hearing.

(b) If a respondent in a an enforcement proceeding fails to appear, the department or the hearing examiner shall take testimony and issue, modify or rescind the order as may be appropriate.

SECTION 14. NR 2.09(3)(c) is created to read:

(c) If a petitioner in a proceeding fails to appear, the department or the hearing examiner may dismiss the petition unless the petitioner shows good cause for the failure to appear.

SECTION 15. NR 2.10 is amended to read:

NR 2.10 WITNESSES AND SUBPOENAS IN CONTESTED CASES. The department or the hearing examiner may issue subpoenas to compel the attendance of witnesses at hearings or discovery proceedings ~~pursuant to section~~ under s. NR 2.11. A subpoena ~~duces-teeum~~ requiring the production of material may be issued if the person requesting such subpoena specifies the documents to be presented by the subpoenaed witness. ~~The provision of the statutes~~ Sections 814.67, 885.06 and 885.07, Stats., shall govern the payment of witness fees and expenses.

SECTION 16. NR 2.105 is created to read:

NR 2.105 WITNESSES IN NONCONTESTED CASES. Subpoenas may be issued by the department to compel the attendance of witnesses at hearings in noncontested cases, except rules hearings. Witnesses subpoenaed in such cases are entitled to payment of witness fees and expenses, as provided in ss. 814.67, 885.06 and 885.07, Stats.

SECTION 17. NR 2.11 is amended to read:

NR 2.11 PRESERVATION OF TESTIMONY AND DISCOVERY OF EVIDENCE. The department or any party in any a contested case hearing may obtain discovery and preserve testimony as provided by ch. 804, Stats. For good cause, the

department's hearing examiner may allow a shorter or longer time for discovery or preserving testimony than is allowed by ch. 804, Stats. For good cause shown, the hearing examiner may issue orders to protect persons or parties from annoyance, embarrassment, oppression or undue burden, as provided in s. 804.01(3), Stats. The hearing examiner may also issue orders to compel discovery. Discovery and preservation of testimony are not available in noncontested case hearings.

SECTION 18. NR 2.12(1) is amended to read:

(1) CALL AND PURPOSE. The department or the hearing examiner may call an informal conference at any time prior to or during the course of a hearing, and may require the attendance of all persons who are or wish to be certified as parties to the proceeding. The purposes of such conferences shall, insofar as applicable, be to consider:

- (a) ~~Simplification~~ Clarification of issues;
- (b) Amendments to the pleadings;
- (c) Admissibility of evidence; and
- (d) The possibility of obtaining admissions or stipulations of fact and of documents which will avoid unnecessary proof;
- (e) The limitation of the number of witnesses;
- (f) The identification of all parties to the proceeding; and
- (g) Such other matters as may aid in the disposition of the matter.

SECTION 19. NR 2.12(3) is created to read:

(3) DECISION ON BRIEFS. If an informal conference is held and the parties agree that there is no material dispute of fact raised by the pleadings, the hearing examiner or department may cancel the hearing and may decide the matter on the basis of briefs submitted by the parties.

SECTION 20. NR 2.13(title) and (1) are amended to read:

NR 2.13 (title) CONDUCT OF CONTESTED CASE HEARINGS. (1) PROCEDURE. The hearing examiner ~~will~~ shall open the hearing and make a concise statement of its scope and purposes. Appearances ~~then-will~~ shall be entered on the record. ~~If-the-matter-is-contested,-the~~ The hearing examiner then ~~will~~ shall state the issues in the proceedings. Thereafter, parties may make motions or opening statements.

SECTION 21. NR 2.13(3) is repealed and recreated to read:

(3) ORDER OF PROCEEDING. (a) In proceedings where the department has issued an order or proposed order and the order recipient requests a hearing on the matter, the department shall proceed first with the presentation of evidence and shall have the burden of proof.

(b) Unless otherwise ordered by the department or the hearing examiner, in proceedings where a person has been granted a hearing under s. 227.064, Stats., or where persons have filed a complaint under s. 144.975, Stats., such persons shall proceed first with the presentation of evidence and shall have the burden of proof.

SECTION 22. NR 2.135 is created to read:

NR 2.135 CONDUCT OF NONCONTESTED CASE HEARINGS. (1) NOTICE. At least 10 days notice shall be given of the time, date and place of a noncontested case hearing.

(2) PROCEDURE. (a) The presiding officer will open the hearing and make a concise statement of its scope and purposes. Appearances may be entered on the record. Divisions of the department, the public intervenor if authorized by s. 165.07, Stats., and any other person may participate in any department noncontested case hearing. Any person desiring to participate in a department noncontested case hearing, whether on his or her own behalf or as an authorized agent or attorney, shall enter an appearance in person by giving his or her name and address, the name and address of any person being represented, and the capacity in which he or she is representing such person. The hearing may be recorded by use of an electronic recording device.

(b) Persons entering an appearance may make statements, offer evidence or ask questions concerning the matter being heard. Such statements need not be made under oath. Cross-examination of those who speak is not permitted, but clarifying questions of those who speak may be allowed by the presiding officer. The presiding officer shall determine the order in which people may speak, and may continue the hearing on another date or limit the length of the presentations if it appears there will not be enough time for all who wish to speak, or if the presentations are unduly repetitious.

(c) Statements may be submitted in oral or written form. Any person may submit a written statement within the time period allowed by the presiding officer.

(3) PARTIES. The presiding officer shall prepare a list of persons who are certified as parties and set forth such list in the department's decision, if one is issued. For purposes of certifying parties under s. 227.10, Stats., and this subsection, the presiding officer shall consider the following criteria:

1. Nature of agency proceeding;
2. Nature and effect of decision made; and
3. Nature of participation by those involved in the proceeding, including attendance at hearings and presentation of oral or written statements.

(4) TRANSCRIPTS. Typed transcripts of noncontested case hearings will be prepared upon request and receipt of payment. The person requesting the transcript is responsible for all reasonable costs incurred by the department in transcribing the record and preparing the transcript. If more than one person requests a transcript, the department may divide the costs of preparation equally among all such persons. In lieu of a typed transcript, the department may provide any person requesting a transcript with a copy of the tape recording of the hearing, or other record if not recorded on an electronic recording device, upon payment of a reasonable fee.

(5) APPLICABILITY. The procedures in this section govern all noncontested case hearings held by the department, except rules hearings, which shall be conducted in accordance with s. 227.022, Stats. This section is applicable to hearings on environmental impact statements, unless it conflicts with the requirements of ch. NR 150.

SECTION 23. NR 2.14(1) is amended to read:

(1) RULES. Rules of evidence in contested cases are governed by s. ~~227-10~~ 227.08, Stats.

SECTION 24. NR 2.14(6) is created to read:

(6) No person may use an environmental impact statement or any portion thereof as the exclusive means of meeting their burden of proof or to meet any statutory requirements for an approval, license or permit in a contested proceeding except upon stipulation of the parties.

SECTION 25. NR 2.15(1) is amended to read:

(1) CLOSING AND BRIEFS. A hearing in a contested case shall be closed upon completion of the submission of all evidence and expiration of the period fixed for filing of briefs. If the time for filing briefs has expired and the brief of one or more parties ~~shall~~ is not be filed within such time, the department or the hearing examiner may proceed to ~~its~~ the determination of the case. Extension of time to file briefs may be granted by the department or the hearing examiner upon good cause shown.

SECTION 26. NR 2.16 is amended to read:

NR 2.16 REOPENING HEARINGS. When a hearing in a contested case is closed, no further evidence shall be received, except by order of the department or the hearing examiner reopening a closed contested case for the taking of ~~future~~ further evidence upon application of a party showing to the department's or the hearing examiner's satisfaction that the evidence is newly

discovered or was not available at the time of the hearing and that the evidence is necessary for a just disposition of the case.

SECTION 27. NR 2.17 (title), (1) and (2) are amended to read:

NR 2.17 (title) TRANSCRIPTS IN CONTESTED CASES. (1) METHOD AND COPIES. Hearings ~~in-contested-cases-will~~ shall be ~~transcribed~~ recorded either stenographically or ~~mechanically~~ electronically. A typed transcript ~~will~~ shall be made when deemed necessary by the department or the hearing examiner. If a transcript is made by the department or the division of hearings and appeals, copies ~~will~~ shall be furnished to all persons upon request ~~at-a-reasonable-cost~~ and payment of a reasonable fee, as determined by the department or the division of hearings and appeals. If no transcript is deemed necessary by the department or the hearing examiner and a party requests that one be prepared, that party shall be responsible for all costs of transcript preparation. If several parties request transcripts, the department may divide the costs of transcription equally among the parties. In lieu of a transcript the department ~~will~~ or the division of hearings and appeals may provide any person requesting a transcript with a copy of the tape recording of ~~a-public~~ the hearing upon request ~~and-at~~ payment of a reasonable ~~cost~~ fee. All requests ~~pursuant-to-the-above-provision~~ for transcripts shall be made in writing and ~~presented~~ sent to the hearing examiner who presided at the hearing.

(2) FINANCIAL NEED. Any person who by affidavit or other appropriate means can establish to the department's satisfaction of the department or the

administrator of the division of hearings and appeals that the person is impecunious and has a legal need may be provided with a copy of a transcript without charge.

SECTION 28. NR 2.18(1) is amended to read:

(1) TIME FOR BRIEFS. In contested cases, parties shall indicate on the record after the close of testimony at the hearing whether they desire to file briefs. ~~The party or parties having the affirmative shall file affirmative brief within 15 days after date of mailing of transcript. Other parties 8 days thereafter shall file answer briefs, which may be replied to within 5 days. The hearing examiner in his discretion may establish an alternate schedule for the filing of briefs.~~ The hearing examiner may establish a schedule for the filing of briefs. The party or parties having the burden of proof shall file the first brief. Other parties may then file response briefs, which may be replied to. In the alternative, the hearing examiner may direct that briefs of all parties be filed simultaneously.

SECTION 29. NR 2.19(5)(b) is amended to read:

(b) A preliminary decision to assign confidential status ~~must~~ shall be made pursuant to one of the following:

1. Section 144.33, Stats., or
2. Section 144.433 Stats., or
3. Section 144.70, Stats., or
4. Section 144.925, Stats., or
5. Section 147.08(2)(c), Stats., or

6. Upon a finding consistent with the ruling in State ex rel. Youmans v. Owens (1965), 28 Wis.2d 672, that confidential treatment of the information is in the public interest, or

7. Other specific statutory or common law right to confidential treatment of information.

SECTION 30. NR 2.19(5)(e) is amended to read:

(e) A preliminary decision to approve the request in whole or in part shall be published by the department as a class 1 notice in the official state newspaper, and such other notice as the department deems appropriate shall be provided. The applicant or any interested member of the public may obtain an adjudicatory hearing on the preliminary decision to grant the request in whole or in part by petitioning the department for such a hearing within 10 days of receipt publication of the notice. If the preliminary decision is to deny the request, the applicant shall be notified in writing of the decision by the department, and shall have ~~to~~ 15 days after receipt from the date of mailing of the decision to petition the department for an adjudicatory hearing on the preliminary decision.

SECTION 31. NR 2.195(1), (2), (3), (4) and (5)(a) are amended to read:

(1) It is vital that the public receive factual information on the affairs of state government through all forms of communication. Whether such the information is requested by media representatives or individual citizens, department employees ~~should~~ shall assist in securing facts necessary to allow understanding of and participation in government and government agencies.

(2)(a) All department employes are authorized to answer questions within their competency, whether these are asked by the public or by representatives of the news media. Employes, in turn, are responsible for the factual accuracy of the information they provide. Requests to inspect department records shall be referred to the custodian of the records.

(b) The following are the only exceptions to this "freedom-of-information" policy. Employes ~~will~~ may not release information within the 6 stated exceptions without prior approval from the bureau of legal services. The exceptions are:

1. Law enforcement, auditing or other investigational information that might prejudice later court cases or quasi-judicial hearings;
2. Comment on a case before, during or after court or quasi-judicial hearings prior to a decision (except as a witness);
3. Financial, medical, social or personal histories and disciplinary data which may unduly damage reputations;
4. Discussions of personalities in personnel actions or in training sessions for state employes;
5. Information of a confidential nature that might inhibit private competitive rights, the investment of state funds or the state's bargaining power in acquisition and disposal of land and facilities;
6. Information specifically excluded from public inspection by law.

Note: See section s. NR 2.19, ~~Wis.-Adm.-Code.~~

(3) In cases where the district, area or bureau ~~director~~ directors are concerned that the public interest in withholding inspection outweighs the

public interest in permitting it, the file or requested information shall be provided to the secretary, deputy secretary or division administrator for review with the bureau of legal services and for determination.

(4) District, area and bureau directors are designated as custodians of their respective department district, area and central office records and files and are delegated the responsibility for them as well as the authority to provide copies or inspection as provided herein.

(5) (a) Requests for copies of records and files ~~must~~ shall be complied with unless the records fall within the ~~af~~orementioned categories in sub. (2)(b). The requestor shall pay the copying charge for 10 or more pages. For 9 or less pages, there ~~wi~~ll shall be no charge. Copies shall be provided to the requestor ~~within-a-reasonable-period-of-time,-but~~ as soon as possible ~~taking-into-consideration-other-duties-and-assignments~~.

SECTION 32. NR 2.195(5)(b) is repealed and recreated to read:

(5)(b) When a request requires a large amount of copy work, the requestor shall make an advance payment of the copying charge and be informed that there will be an approximate processing period of 2 weeks. Unusually large requests may take longer than 2 weeks. When the copying work takes 3 or more hours, the person requesting the records shall pay the department an amount equivalent to the salary (including fringe benefits) of the person doing the copying work, prorated for the amount of time the work takes. The person requesting the records may pay the charge for the employe's salary after the work is completed.

SECTION 33. NR 2.20 (1), (2) and (5) are amended to read:

(1) FILING. Any party to a contested case who is adversely affected by a final decision ~~of the department~~ rendered after a public contested case hearing on the matter, may, within ~~10~~ 20 days after entry of the decision, file a written petition for review by the secretary or the secretary's designee. ~~Said~~ The petition shall specify in detail the grounds for the review, the relief which petitioner seeks and citation to supporting authorities which petitioner feels aids petitioner's case. The secretary ~~shall~~ may not delegate the review to anyone who has had prior involvement in either the hearing or decision-making process.

(2) SERVICE. ~~Said~~ The petition for review under this section shall be served either personally or by registered or certified mail upon the secretary, the hearing examiner and upon all ~~other~~ parties to the action.

(5) SUSPENSION OF ORDERS. The filing of a petition for review ~~shall~~ under this section does not suspend or delay the effective date of an order, and the order shall take effect on the date ~~fixed~~ of the order unless another date is set by the department or the hearing examiner, and shall continue in effect unless provisions of the order are specifically suspended or delayed by the secretary in writing. Petition for such suspension of the effective date of an order shall be clearly specified in the petition for review under this section.

SECTION 34. NR 2.20(6) is created to read:

(6) EFFECT ON JUDICIAL REVIEW. An action pending under this section may not in any manner affect or extend the time limits for filing actions in circuit court for review under ss. 227.15 and 227.16, Stats.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on December 14, 1983

The rules contained herein shall take effect as provided in s. 227.026(1)(intro.), Stats.

Dated at Madison, Wisconsin January 30, 1984

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny  
Carroll D. Besadny, Secretary

(SEAL)