

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-19-13

FINDINGS OF FACT

The Department of Natural Resources (Department) finds that:

1. On June 26, 2013, the Department received authorization from the Natural Resources Board (Board) to proceed with rulemaking affecting ch. NR 446, Wis. Adm. Code, related to control of mercury emitted by coal-fired electric generating units.
2. The Department prepared proposed rules as Board Order AM-19-13.
3. In a public hearing notice prepared for and sent to the Board on September 20, 2013 for its consideration, the Department included a preliminary determination that promulgation 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).
4. In October, 2013, the Board authorized the Department to hold a hearing on the proposed rules in Board Order AM-19-13 and approved the public hearing notice.
5. The public hearing notice for the proposed rules was published in the Wisconsin Administrative Register on October 31, 2013 .
6. A public hearing was held on November 12, 2013, in Madison, Wisconsin. The public comment period closed on November 14, 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-19-13. A memorandum from the Department was provided to the Board stating that promulgation of the proposed rules was classified as a Type III action and did not involve unresolved conflicts in the use of available resources.
9. The proposed rules were submitted to the Governor under s. 225.185, Stats., and approved on February 7, 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 7, 2014 as required under s. 227.19, Stats. The legislative committees' review began on February 10, 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-19-13 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-19-13 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-19-13 because the proposed rules do not involve unresolved conflicts concerning alternative uses of available resources.
2. The rulemaking process for Board Order AM-19-13 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-19-13.

  
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