



**Minutes**  
**Small Business Environmental Council**  
September 11, 2012  
DNR Headquarters – GEF 2, Room 713  
9:00 am – 11:00 am

**Members Present:** Jeanne Whitish, Amy Litscher, Vince Ruffolo, Shane Lauterbach

**Absent:** Richard Klinke, Mike Simpson, Steve Aldridge, Al Shea

**DNR Staff:** Eileen Pierce, Lisa Ashenbrenner Hunt

**Guests:** Mark McDermid, Linda Haddix, Steve Sisbach, Joe Hoch, Andy Stewart, Bart Sponseller

**Introductions / Agenda Repair – Eileen Pierce**

Eileen opened the meeting by introducing Linda Haddix, DNR Rules Coordinator and the DNR Small Business Coordinator. Amy asked what the difference was between Linda's role working with small businesses and Eileen's role as Small Business Ombudsman. Eileen answered that Linda provides rule coordination from the Legal Services Bureau and serves as liaison for small business on matters pertaining to DNR rules.

Eileen reviewed the agenda and asked the Council what they thought. Jeanne answered that it was good to go.

**Environmental Enforcement & Act 46 Alternatives for Small Business – Steve Sisbach, Chief of Environmental Enforcement & Emergency Management**

Steve Sisbach began by giving an overview of environmental enforcement. He distributed a handout further detailing the information he was providing. (Handout is attached at the end of these minutes.) The Environmental Enforcement & Emergency Management section is responsible for environmental enforcement as well as responding to storms, flooding, and other natural issues.

Steve went on to discuss Act 46. His section has yet to develop a scope statement, but Steve wanted to fill the Council in on where the Act was headed.

The Environmental Enforcement & Emergency Management section is responsible for the Air and Waste as well as the Water Division and is just beginning to get into invasive species. The program has 13.5 enforcement specialists, which are not law enforcement officers, who work on stepped enforcement. Additionally, there are seven wardens who are responsible for enforcement.

**FROM THE SMALL BUSINESS ENVIRONMENTAL COUNCIL**  
For more information visit <http://dnr.wi.gov/topic/CompAssist/sb/>

Amy asked if Steve was in charge of staff members who conduct compliance audits. Steve responded that he was not; they are separate from this program. If these inspectors detect a violation; however, they will request his support.

Steve went on to explain how his section addresses small businesses with violations. Usually, a learning curve is built in for new rules. Many programs have preventative steps such as training requirements and other educational activities to increase awareness. His section gets involved at the time a notice of violation is issued and they send out a formal letter detailing the specific violations and requesting an enforcement conference. Most violations are resolved at this stage. Issues that require more time may warrant a compliance order. Citations may also be given out. Steve described these as being similar to speeding tickets. It is a lesser enforcement option when enforcement is warranted, but it is not real widespread. Steve mentioned that they tried to get citation authority for open burning issues, but they didn't get it. As a result, the worst violations have to be sent to the Department of Justice (DOJ). However, they have to balance resources, so they are not going to send smaller violations to the DOJ.

Steve noted that most enforcement actions are resolved without a citation being issued. It is the desire of the Secretary's Office to offer opportunities for the violator and the DNR to meet and work through issues. When this is done, they usually do get compliance. Most violations are resolved during the early steps of stepped enforcement. They only refer about 60-70 cases a year to the DOJ and only if they include many violations or a very significant one-time event. It is rare to go straight to prosecution.

Act 46 seeks to decrease fines and other enforcement for minor violations for small businesses. Steve explained that a fine is used for a criminal case. A forfeiture is for a more minor violations which he compared to a speeding ticket. The goal of the Act is to incorporate stepped enforcement. This is used for violations of administrative rules only, as opposed to violations of state statute. Jeanne asked for an example where this might apply. Eileen gave an example of a trout farm that did not have the necessary permits. However, once they apply, the permits are going to be approved, and they do not pose a risk to public health, safety or the environment. Steve described this as a preventative buffer. A violation will not create significant damage; the rule is meant to prevent it from getting to a more serious point.

Amy inquired how each program determines if something is considered a minor violation. Steve said it has to do with the degree of threat to public health, safety and welfare. If it is not an immediate threat, it might be a minor violation. It also depends on if it is a single violation or if there have been many and if the regulated entity is new to the regulations. They also take into account the responsiveness of the violator in addressing the violation. Enforcement would increase for violations that go unreported or when the violator has been negligent. If they are trying to do it right, that is taken into account.

Eileen asked if anyone had any suggestions for Steve regarding enforcement and small businesses. Jeanne recommended that they should take into consideration whether they

respond to the Department within a reasonable timeframe and, if so, this should fall under the first category of stepped enforcement, assuming there is no immediate threat. Amy thought there should be a definition of minor violation for the sake of consistency. She thought it would encourage businesses to report issues to the DNR and work with the Department to resolve them, instead of trying to hide the violation, if they knew they would not get a fine. Vince brought up an issue of a facility that needs to test new equipment but cannot do so until they have a water permit. However, they cannot get a permit until they run the water and know the discharges, so they are kind of stuck. Vince thinks there should be a timeframe for them to run the equipment before needing a permit if they have been in compliance in the past. He suggested a 90 day window before a permit is needed.

Eileen introduced Vince to Steve.

Shane inquired about how to bring uniformity to the program's interpretation of the rules. Steve responded that those in his section have frequent communication. They are a small group of people, so that makes it easier. Each case is evaluated by a series of staff members and it goes through many reviews. Throughout the process, people are looking at whether it is consistent with other cases.

Vince inquired about a backflush rule for water going into tanks that have to have a valve so nothing moves backwards. There is a high cost to comply with this new rule. The timeframe to comply is in 2013. Existing businesses will have to make replacements. Vince would like to know if there is a set date. Eileen inquired if this was a DSPS code or a drinking water issue. Vince did not know, but knew that they were worried about contamination if the water moves in the wrong direction. Jeanne asked if Vince had called anyone at the Department to ask. Vince said yes, but they did not know if the date would be extended. Eileen asked if Vince had a contact person. If it is a DNR rule, Eileen will advocate for the business.

[Post Meeting Follow Up: The Department of Safety and Professional Services, Plumbing Section is responsible for implementation of the backflush requirements. The Plumbing Section Chief is Jim Miller, 608-266-8072, [Jim.Miller@Wisconsin.gov](mailto:Jim.Miller@Wisconsin.gov).]

Jeanne noted that it was approaching 10:00, so she wanted to proceed if there were no additional questions.

### **Ozone Attainment Status Update – Joe Hoch, Regional Pollutants & Mobile Source Section Chief**

Eileen introduced Joe, Andy and Bart who had just joined the meeting.

Joe provided an update on the new ozone attainment status of some Wisconsin counties as requested at a prior meeting. He began by distributing a fact sheet outlining the information he would be addressing. (The fact sheet is available on the DNR Web site at: <http://dnr.wi.gov/files/PDF/pubs/am/AM495.pdf>) Joe began by noting that a lot of ozone

FROM THE SMALL BUSINESS ENVIRONMENTAL COUNCIL  
For more information visit <http://dnr.wi.gov/topic/CompAssist/sb/>

originates from out of state, contributing to nonattainment in Wisconsin. However, Joe had some good news that a large portion of Southeast Wisconsin that had previously been in nonattainment status had been redesignated to attainment, although the EPA looks at the attainment standards every five years, so they may be proposing more stringent ozone standards in the near future. For those redesignated counties, they now have the benefit of having a better general perception of having cleaner air. There will also be an affect on major source permitting requirements; however, this will impact mostly large businesses.

Vince asked if there was a map available of attainment and nonattainment areas.

**Action: Joe will e-mail the group a map.**

There are currently 1.5 counties still not in attainment for ozone, Sheboygan and a portion of Kenosha. Joe mentioned that there were also counties in Wisconsin that were in nonattainment status for particulate matter, Milwaukee, Racine and Waukesha, but a request has been made for redesignation there as well, because they are currently meeting the standards.

Amy questioned what companies in the newly redesignated counties could now do. Do they still have to follow their old permits? Andy responded that it depends. If they planned to emit more, they would have to apply for a construction permit if they currently have a Title V permit. He is looking into how to get them to a non-Title V permit but wasn't sure if that would require an administrative or significant revision. Being in attainment may decrease reporting requirements and their may be a cost savings, but this is something that will have to be looked into further.

Vince asked when the redesignation occurred. It occurred on July 31<sup>st</sup>, so there will be an impact to businesses applying for permits thereafter. However, prevention of significant deterioration permitting still applies to the attainment areas, so this may limit changes, although they can now consider economic feasibility during permitting. Businesses still might be affected by RACT rules which will not automatically go away, unless it can be shown this will not lead to a return to nonattainment. The vehicle testing program is on the table for change, but it will not automatically go away. The requirement for reformulated gasoline will not go away, because it is required by the EPA.

Vince asked if a new business such as a body shop would be required to get a permit right away. Andy responded that it would depend on the equipment and paints used and how much they emit.

Joe invited the Council to contact him with any questions. His contact information is on the sheet he distributed.

**Program Updates – Region 5 Meeting, Annual Report – Eileen Pierce, Lisa Ashenbrenner Hunt**

Lisa passed out a draft agenda of the Region V Small Business Environmental Assistance Program annual meeting and Eileen invited Council members to attend. Vince expressed interest in attending.

**Action – Let Eileen know if you plan on attending. She will inform the woman who is organizing the conference. There is no formal registration needed. Eileen will send updated agendas and hotel information.**

Eileen explained that the strength of the Small Business Programs was that they work collaboratively with each other and share updates.

Lisa then provided an overview of the 2011 and 2010 State Small Business Stationary Source Technical and Environmental Compliance Assistance Program Annual Reports for Wisconsin. The 2011 report was just submitted on August 31<sup>st</sup>. It touches on all aspects of the program, the Small Business Environmental Assistance Program, the Small Business Ombudsman and the Small Business Council.

In 2011, the Small Business Clean Air Assistance Program (SBCAAP) was housed at the Department of Commerce for the first half of the year and the DNR for the second half. There were three staff members, equaling 2.25 full time equivalent staff, and one position was vacant throughout the year. The position of Small Business Ombudsman was also vacant throughout the year. This was a decrease in staffing from the previous year. They also saw a decrease in their budget, which was \$100,000 for 2011. The SBCAAP dealt primarily with air issues, which comprised 90% of the workload, but also provided some limited assistance on other media including waste and water.

In 2011, the Compliance Advisory Panel (CAP), which is the Small Businesses Environmental Council, had seven positions and four vacancies throughout the year. The Council was active, holding three meetings or conference calls during 2011.

The EPA collects data through the annual report on how much effort is spent on the program. It measures this by counting the number of calls or e-mails back and forth between Small Business staff and businesses as well as other activities. In 2011, the SBCAAP has 5,784 direct contacts, assisting 5,324 businesses in the process. They conducted two site visits, assisting two businesses. 480 of the contacts addressed regulatory applicability. The program developed about 100 tools or regulatory publications which were available online and also distributed 16,617 copies of publications. Program members participated in 12 workshops or seminars with 1,270 total attendees. They engaged in advocacy activities on behalf of one business, which consisted of 41 contacts. In addition, there were 35 small business web pages that had a total of 16,482 visits throughout the year.

For comparison, Lisa then reviewed similar data for 2010. The SBCAAP's budget was significantly higher in 2010 at \$242,300, which had remained consistent from the year before. The program had 2.5 staff members, but the Small Business Ombudsman position was vacant for 2010 as well. The CAP had two vacant positions, but was active during the year. The program provided technical assistance for air only. It did not include any other media.

During 2010 the statistics were as follows. The program conducted six site visits, made or received 717 phone calls, made or received 1,137 e-mails, provided permit assistance in four cases and had one walk-in. Staff published 43 publications or mailings, assisting 2,222 businesses. They also participated in 16 workshops or seminars, assisting 1,243 businesses. In total, the SBCAAP provided 5,330 assists in 2010. There were 32 small business web pages receiving 25,042 hits and 358 online documents with 26,436 downloads. One council member commented that there were many more website visits when the program was housed at Commerce versus DNR. The group discussed that this may be due to awareness issues. Businesses may have been used to looking to Commerce for regulatory questions and might not know to go to the DNR now.

Eileen also mentioned that the annual report is a national report. Every state reports the Small Business Program data in the same format. She also showed an anniversary report that provides the program data for all past years.

#### **DNR Rules Review Update – Eileen Pierce**

Eileen touched briefly on the rules review progress. There is currently no report available, but she noted that she was hearing some very interesting recommendations. She will release the Phase II Report as soon as she can.

Amy reiterated her comments from the previous meeting that she would like to see changes made by not requiring big fees to get construction permits which might deter small businesses from making changes. She would like to see the fees shifted to annual emissions fees so the cost is more distributed over time and the DNR would make money on an annual basis.

Eileen also explained that the Small Business Regulatory Review Board met in August and approved all the changes that the DNR recommended in Phase I of the project. Vince asked if they would go to the Assembly for repeal. The changes will go through the ordinary rulemaking process to be repealed and will eventually go to the legislature. A bill could be proposed to repeal all the rules, but Eileen did not see the legislature taking action in that way.

During the Small Business Regulatory Review Board meeting, some other departments also presented their recommendations. However, some departments do not have their Phase I reports done yet. In fact, the Board did not have a September meeting as a result. The Council briefly reviewed the report from the Department of Revenue. Eileen

suggested council members could do a word search to see if any of the proposed changes apply to them.

**Action: Jeanne requested that Eileen send the reports from the other departments. [Eileen e-mailed this to the Council on 9/11].**

Eileen explained that she has not seen a lot of interagency interaction as a result of the rules review.

Jeanne would like to establish better communication between the Council and the Small Business Regulatory Review Board. Vince asked who the chair of the Board is. Eileen said it was Michelle Litjens.

**Action: Eileen will e-mail Michelle's contact information to the Council [sent 9/11].**

Vince expressed interest in observing a meeting and thought the chair of the Council should have contact with the chair of the Board.

**Action: Eileen will make time on the next meeting's agenda to discuss the Phase I reports from other departments.**

### **SBEC Goals – Members**

Jeanne wanted to make a modification to the Council's goals to increase the participation of small businesses in the Green Tier Program. She asked Mark if he had any suggestions for doing this. Mark told her to have the Council ask the Green Tier staff to come up with options to increase participation. They are currently in the initial phase of creating strategies to do so. One option they are considering is an online tool. They need to determine partners in the effort (such as sustainable business groups) and how to engage them. Shane mentioned he would be interested in talking with cheese producers about Green Tier. Mark talked with them early in the process, but the timing was not right for them. He would be interested in talking with them again.

Jeanne asked where the Small Business Program was on filling positions. Bart answered that they need to determine if there is funding to fill them. It also needs to be determined if the program will continue to address air issues only or will expand into other media. The next question would be who would fund the various parts (if they are Title V funded, they can only fund air activities). There will be a meeting in early October to address these issues. As of right now, it is unknown where new staff would be located, who they would report to or what a position description would look like. Al Shea would be the one to approve any new positions. Bart encouraged Jeanne to let him know (and copy Eileen) if she has any goals regarding how the positions should look. Eileen emphasized that the budget and staffing of the Small Business Program have diminished over time. She is also advocating making the program multimedia.

**2013 Meeting Dates – Members**

Jeanne asked the Council if they had a favorite day to meet. Council members agreed on Thursdays. The Council decided to schedule meetings on Thursday, January 17<sup>th</sup> and Thursday, March 14<sup>th</sup>, both at the regular time of 9:00 to 12:00. Eileen asked if room 713 was good and the Council said yes.

The meeting concluded at 10:50.

## Environmental Enforcement Overview

Compliance monitoring, education and enforcement are essential components of successful environmental protection programs. Most environmental violations are resolved using a Stepped Enforcement process. Environmental Enforcement actions are initiated to:

- Protect public health and welfare
- Protect the quality and health of the environment
- Eliminate competitive advantages achieved through noncompliance.
- Ensure compliance with State laws and administrative codes
- Maintain the integrity and credibility of regulatory programs
- Serve as a deterrent

Stepped Enforcement is a series of incremental actions designed to resolve violations at the lowest level appropriate for the circumstances, to encourage voluntary efforts to regain compliance and to judiciously focus agency resources on the violations that pose the most significant risks to public health or the environment. Within the Stepped Enforcement process, most violations are resolved without formal legal action to obtain penalties or court ordered compliance.

While most cases will follow the typical progression of Stepped Enforcement actions, the Department may tailor its response to fit the circumstances of each situation and there are times when it is appropriate to proceed directly to formal legal action, for example where violations cause or pose significant harm to health or the environment or involve potential criminal violations.

### Stepped Enforcement actions include:

- **Inspection and/or Compliance Contacts.** DNR Environmental Protection staff contacts made through routine inspections, complaint response, inquiries or other communications with individuals or businesses to determine compliance, provide information and answer questions.
- **Notice of Noncompliance.** A letter authored by DNR Environmental Protection staff which is typically used to document minor violations and request correction within a specified period of time.
- **Notice of Violation (NOV).** A formal letter authored by an Environmental Enforcement Specialist which provides specific notice of alleged violations and the potential consequences (orders for corrective action, fines, forfeitures, etc.) allowed by statute. The NOV most often schedules an Enforcement Conference. The NOV should be issued as soon as practical to provide timely notice and motivate corrective action(s) to minimize the risk of harm to human health or the environment. Unless the circumstances require more immediate action, Environmental Enforcement staff has a goal of issuing a NOV within 14 days of receipt of a completed request from staff.

- **Enforcement Conference (EC).** A formal meeting between the DNR and the person or business alleged to be in violation. The purpose of the meeting is to discuss legal and/or technical aspects of the violation, the circumstances surrounding the violation and reach agreement on solutions and a schedule for completing any necessary corrective actions. Environmental Enforcement staff has a goal of holding the EC within 30 days of the date of the NOV.
  - The EC may lead to a compliance agreement, Consent or Administrative Order, issuance of environmental citation(s), referral for prosecution or decision to take no further action.
- **Compliance Orders.** Orders are legally enforceable documents that establish a schedule for the completion of activities necessary to achieve compliance with laws and regulations including investigating and remediating contamination or restoring affected resources. Authority to issue compliance orders varies between environmental programs. Most orders are negotiated as Consent Orders but the Department has authority under some statutes to unilaterally issue a compliance or penalty order.
- **Environmental Citations.** Citation authority exists for certain violations and, where available is an intermediate enforcement option that is more efficient and cost effective for both the Department and the person or business involved.
- **Referral.** A referral is a request for prosecution, typically by the Wisconsin Department of Justice, but some cases may also be referred to US DOJ, US EPA or the District Attorney for the County in which the violations occurred.

### **Violation Evaluation and Enforcement Decision Making**

The scale and severity of violations varies widely. Enforcement decisions are made on a case-by-case basis, taking into account the totality of circumstances surrounding the violation(s) and the legal options available for addressing the violation. Enforcement decisions should reflect a reasoned consideration of all relevant issues, including the use of enforcement discretion where circumstances warrant. Factors include but are not limited to the:

- Actual or potential impact to public health, welfare or the environment
- Nature or toxicity of the pollutant
- Number and duration of violation(s)
- Compliance History
- Responsiveness to correct and minimize the impact of the violation(s)
- Mitigating or aggravating circumstances
- Extent of monetary or other gain
- Impact on program implementation or integrity
- Consistency with prior enforcement decisions
- Alignment with Agency priorities
- Legal sufficiency
- Enforcement goal or desired outcome

Environmental Enforcement Staffing levels:

Environmental Enforcement Specialists = 13.5 at full staff  
 Environmental Wardens = 7 at full staff

Environmental Enforcement Actions – Average per year 2002-2011:

Notices of Violation = 531  
 Enforcement Conferences = 290  
 Referrals = 65

**ENVIRONMENTAL CITATIONS 2007 - 2012**

**OZONE DEPLETING SUBSTANCES**

Year	# of Citations
2007	10
2008	9
2009	4
2010	8
2011	2
2012	3
Total	36
<i>Average Per Year - 6</i>	

**ASBESTOS VIOLATIONS**

Year	# of Citations
2007	17
2008	21
2009	16
2010	4
2011	5
2012	0
Total	63
<i>Average Per Year - 10.5</i>	

**EROSION CONTROL VIOLATIONS**

Year	# of Citations
2007	69
2008	45
2009	28
2010	25
2011	35
2012	4
Total	206
<i>Average Per Year - 34.3</i>	

**WATER POLLUTION**

Year	# of Citations
2007	9
2008	7
2009	3
2010	2
2011	0
2012	3
Total	24
<i>Average Per Year - 4</i>	

Date of enactment: **November 1, 2011**

**2011 Senate Bill 47** Date of publication\*: **November 15, 2011**

\* Section 991.11, WISCONSIN STATUTES 2009-10 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

## 2011 WISCONSIN ACT 46

AN ACT *to amend* 15.155 (5), 227.114 (6), 227.114 (7m), 227.14 (2g) (intro.), 227.19 (3) (intro.), 227.19 (3m) and 227.24 (3m) (intro.); and *to create* 227.04 of the statutes; **relating to:** changes to the membership of the Small Business Regulatory Review Board, notification to the Small Business Regulatory Review Board of bills with an economic impact on small businesses, the role of the Office of Regulatory Assistance in the Department of Commerce, and requiring the exercise of rule-making authority.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 15.155 (5) of the statutes, as affected by [2011 Wisconsin Act 32](#), is amended to read:

15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small business regulatory review board, attached to the department of administration under s. 15.03. The board shall consist of ~~a representative of the department of administration; a representative of the department of agriculture, trade and consumer protection; a representative of the department of children and families; a representative of the department of health services; a representative of the department of natural resources; a representative of the department of safety and professional services; a representative of the department of revenue; a representative of the department of workforce development;~~ **6** ~~7~~ representatives of small businesses, as defined in s. 227.114 (1), who shall be appointed for 3-year terms; and the chairpersons of one senate and one assembly committee concerned with small businesses, appointed as are members of standing committees. ~~The representatives of the departments shall be selected by the secretary of that department.~~

**SECTION 2.** 227.04 of the statutes is created to read:

**227.04 Considerations for small business.** (1) In this section, "small business" has the meaning given in s. 227.114 (1).

(2) Consistent with the requirements under s. 895.59 and, to the extent possible, each agency shall do all of the following:

(a) Provide assistance to small businesses to help small businesses comply with rules promulgated by the agency.

(b) Establish, by rule, reduced fines and alternative enforcement mechanisms for minor violations of administrative rules made by small businesses. The rules promulgated under this paragraph shall include a definition of "minor violation."

(c) In deciding whether to impose a fine against a small business found to be in violation of a rule, consider the appropriateness of a written warning, reduced fine, or alternative penalty if all of the following apply:

1. The small business has made a good faith effort to comply with the rule.

2. The rule violation does not pose a threat to public health, safety, or welfare.

(d) Establish methods to encourage the participation of small businesses in rule making under s. 227.114 (4).

**SECTION 3.** 227.114 (6) of the statutes is amended to read:

227.114 (6) When an agency, under s. 227.20 (1), files with the legislative reference bureau a rule that is subject to this section, the agency shall include with the rule a summary of the analysis prepared under s. 227.19 (3) (e) and a summary of the comments of the legislative standing committees, if any. If, under s. 227.19 (3m), the rule does not require the analysis under s. 227.19 (3) (e), the agency shall include with the rule a statement of the reason for the agency's small business regulatory review board's determination under s. 227.19 (3m) that the rule will not have a significant economic impact on a substantial number of small businesses. The legislative reference bureau shall publish the summaries or the statement in the register with the rule.

**SECTION 4.** 227.114 (7m) of the statutes is amended to read:

227.114 (7m) The Each agency shall designate a at least one employee to serve as the small business regulatory coordinator for the agency, and shall publicize that employee's electronic mail address and telephone number. The small business regulatory coordinator shall act as a contact person for small business regulatory issues and shall publicize that person's electronic mail address and telephone number for the agency.

**SECTION 5.** 227.14 (2g) (intro.) of the statutes is amended to read:

227.14 (2g) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.) On the same day that an agency submits to the legislative council staff under s. 227.15 a proposed rule that may have ~~a significant~~ an economic impact on small businesses, the agency shall submit the proposed rule, the analysis required under sub. (2), and a description of its actions taken to comply with s. 227.114 (2) and (3) to the small business regulatory review board. The board may use cost-benefit analysis to determine the fiscal effect of the rule on small businesses and shall determine whether the proposed rule will have a significant economic impact on a substantial number of small businesses and whether the agency has complied with subs. (2) and (2m) and s. 227.114 (2) and (3). Except as provided in subs. (1m) and (1s), each proposed rule shall include provisions detailing how the rule will be enforced. If the board determines that the rule does not include an enforcement provision or that the agency failed to comply with sub. (2) or (2m) or s. 227.114 (2) or (3), the board shall notify the agency of that determination and ask the agency to comply with any of those requirements. If the board determines that the proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule under sub. (6). In addition, the board may submit other suggested changes in the proposed rule to the agency, including proposals to reduce the use of cross-references in the rule. The board shall send a report of ~~those suggestions~~ any suggested changes and of any notice of failure to include enforcement provisions or to comply with sub. (2) or (2m) or s. 227.114 (2) or (3) to the legislative council staff. The notification to the agency may include a request that the agency do any of the following:

**SECTION 6.** 227.19 (3) (intro.) of the statutes, as affected by [2011 Wisconsin Act 21](#), is amended to read:

227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be in writing and shall include the proposed rule in the form specified in s. 227.14 (1); ~~the material specified in s. 227.14 (2), (3), and (4); including any statement, suggested changes, or other material submitted to the agency by the small business regulatory review board;~~ a copy of any economic impact analysis prepared by the agency under s. 227.137 (2); a copy of any revised economic impact analysis prepared by the agency under 227.137 (4); a copy of any report prepared by the department of administration under s. 227.137 (6); a copy of any energy impact report received

from the public service commission under s. 227.117 (2); and a copy of any recommendations of the legislative council staff. The report shall also include all of the following:

**SECTION 7.** 227.19 (3m) of the statutes is amended to read:

227.19 (3m) ANALYSIS NOT REQUIRED. The final regulatory flexibility analysis specified under sub. (3) (e) is not required for any rule if the ~~agency, after complying with s. 227.114 (1) to (5),~~ small business regulatory review board determines that the rule will not have a significant economic impact on a substantial number of small businesses.

**SECTION 8.** 227.24 (3m) (intro.) of the statutes is amended to read:

227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.) On the same day that the agency files a rule under sub. (3) that may have ~~a significant an~~ economic impact on small businesses, as defined in s. 227.114 (1), the agency shall submit a copy of the rule to the small business regulatory review board. The board may use cost-benefit analysis to determine the fiscal effect of the emergency rule on small businesses and shall determine whether the emergency rule will have a significant economic impact on a substantial number of small businesses and whether the agency complied with ss. 227.114 (2) and (3) and 227.14 (2m). If the board determines that the emergency rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the emergency rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency and to the legislative council staff suggested changes in the emergency rule to minimize the economic impact of the emergency rule. If the board determines that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board shall notify the agency of that determination and ask the agency to comply with any of those provisions. In addition, the board may submit other suggested changes in the proposed rule to the agency and may include a request that the agency do any of the following:

**SECTION 12. Initial applicability.**

(1) The treatment of section 227.14 (2g) (intro.) of the statutes first applies to a proposed administrative rule submitted by an agency to the legislative council staff under section 227.15 of the statutes on the effective date of this subsection.

(2) The treatment of section 227.24 (3m) (intro.) of the statutes first applies to an emergency rule filed with the legislative reference bureau on the effective date of this subsection.

*Next file: [2011 Wisconsin Act 47](#)*

