

**Minutes**  
**Wisconsin Small Business Environmental Council**

April 18, 2013  
DNR Central Office  
101 S. Webster St, Madison, WI  
9:00 am -12:00 pm

**Members Present:** Jeanne Whitish, Amy Litscher, Richard Klinke, Vince Ruffolo, Shane Lauterbach, Rep. André Jacque, Al Shea

**Absent:** Steve Aldridge

**DNR Staff:** Kimberly Ake, Lisa Ashenbrenner Hunt

**Guests:** David Siebert

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### **Introductions**

The meeting began by introducing a new council member, Representative André Jacque. Rep. Jacque is in his second term in the State Assembly representing southern Brown and Manitowoc counties. He graduated from the UW in 2003 and has held numerous positions with the city of Green Bay.

Al asked if he had background in small business. Rep. Jacque explained that his father had owned a one person shop. Rep. Jacque had expressed interest in the Council, because there was interest from employers in his district.

Al briefly explained that it was a good time for him to join, since the Council is in the process of resetting its focus. He provided some background and explained that the Council is trying to move towards reviewing DNR rules earlier in the rulemaking process.

### **Proposed Revisions to NR 150** (PowerPoint attached following minutes)

Dave Siebert, Director of the Bureau of Energy, Transportation, and Environmental Analysis (ESEA) spoke to the group on proposed revisions to NR 150. ESEA, part of the Office of Business Support and Sustainability, is responsible for reviewing and permitting all energy and public transportation projects. The program also coordinates cross program on major projects under the Wisconsin Environmental Policy Act (WEPA) which requires DNR to examine ramifications and alternatives, as well as gather public input, for major actions the agency takes.

NR 150 was created in 1979 and the last major revision occurred in 1987. Therefore, it is in need of review. In September of 2010, a Yellow Sheet was developed to bring a proposal to the Natural Resources Board. As part of the revisions, DNR is proposing to focus more on big picture items and to refine the process requirements to promote more efficient use of staff time, meaningful public involvement, simple process steps and elimination of duplicative processes.

Dave noted the need to do generic or strategic analysis on issues outside of a specific project. Al mentioned frac sand mining as an example. The agency could have done an analysis of the impacts of sand mining before it became a controversial issue in the state. Once an issue becomes controversial, it is very difficult to get past the emotion involved. If the agency had done a strategic assessment, the information could have been available

to local governments to use in their decision-making, which may have resulted in a smoother process. Rep. Jacque compared the sand mining example to wind turbine construction that has also become controversial in many communities. Dave noted that, by examining something before it becomes an issue, DNR can be more proactive. However, he also emphasized that the agency would not make a decision on an issue, only provide information. Jeanne noted that people would also be more willing to listen to that information if it was provided early in the process.

Dave then discussed the current version of NR 150 and the proposed changes. There is a common perception that doing an Environmental Assessment (EA) means the agency doesn't really care about the topic, whereas doing an Environmental Impact Statement (EIS) means it does. In reality, these processes are quite similar. The proposed revisions would eliminate this confusion and allow the agency to scale the analysis to the issue. The new rule recognizes that existing regulatory and site planning processes achieve WEPA compliance. In addition, the new rule outlines the EIS process, scales the process to the action or issue, requires a draft and final EIS with clear timelines for each, and requires a written decision on NR 150 compliance.

Currently, the proposal is about halfway through the rulemaking process. The final public hearing is being conducted today in Madison, which Dave invited Council members to attend. Public comments will be accepted through 5/3/13 (email [Jeffrey.Schimpff@wisconsin.gov](mailto:Jeffrey.Schimpff@wisconsin.gov) with comments). After that, the proposal will go to the Natural Resources Board for adoption and then to the Governor's office and the legislature.

Amy asked if small businesses had to follow the same process for review of impacts. David answered that WEPA is an internal agency process, and businesses do not have to do anything. DNR would go through this process before it issues a permit to a business.

### **Budget Update**

Shane mentioned that DNR rules are only part of the regulations businesses have to deal with. He recently had to bring on two administrative people to deal with regulatory issues, which comes at the expense of business growth. He asked DNR to remember what regulations mean to small businesses that do not have the resources to address them. These regulations really affect the employees. Shane felt that regulation is the most overwhelming issue small businesses face, not taxes.

Jeanne asked who the Department of Revenue reports to. Al answered that they report to the governor as part of the cabinet.

Al noted that the Small Business Regulatory Review Board addresses small business issues across all state agencies.

Vince noted that Governor Walker is focusing on small businesses more and is moving in the right direction working with business. He compared this to OSHA which used to fine companies for not having a required poster. Now, if a business doesn't have a poster, the inspector just gives them one.

Al pointed out that the Small Business Program is there to help businesses that cannot hire a consultant and do not want to talk to a permit writer. It is a confidential place for assistance. He also noted that the governor has added two additional positions in his budget for this program.

Rep. Jacque agreed with other members about on the burden of regulations. While working for the city of Green Bay, the city was required to keep records that were never looked at. Rep. Jacque also discussed a bill passed regarding DATCP's regulation of dairy products processing. Before this bill, there were businesses that were treated as though they handled raw milk when they did not. If this law had not passed, some affected businesses would have had to build equipment to specifications that served no purpose to them.

### **Recommendations for Proposed Changes to Council's Role**

Al introduced a proposal that had been adopted at the last meeting. The Council will shift its focus to review proposed DNR rules early in the NRB process.

Shane inquired how the Council would decide what delineates an impact on small business. Jeanne felt this is something they may have to tweak as they go. Al felt the Council should not be constrained by the definition of small business. If the Council feels a rule affects small business, they should comment on it.

Amy provided recommendations on criteria for evaluating impacts. Al felt the suggestions were good and suggested the Council should keep the number of criteria to five.

Jeanne asked how clear the purpose statements are for proposed rules. Al explained that ch. 227 requires DNR to do a scope statement, which is the first notification to the public that the agency is considering a rule change. Act 10 requires this scope statement to be much more specific than it has been in the past. Prior to each meeting, these scope statements will be sent to the Council. The chair can then send a message to the chair of the Natural Resources Board, copying the secretary, requesting that they consider the rule's impacts on small businesses.

Kimberly suggested considering what alternatives to compliance are available to small businesses as an added criterion. Vince agreed, feeling that it is important to educated small businesses about alternatives. This is part of the Small Business Clean Air Assistance Program and Small Business Ombudsman's role and will be added to the list of criteria.

Jeanne also noted that sometimes one agency's rule conflicts with those of another agency. "Overlap with other agencies" will be added to the "overlap with other regulations" criterion.

Richard questioned if the Council submits comments to the Board but the Board doesn't like the comments, will the comments still be passed on to the governor? Al said that if a letter was sent to the Board and the secretary and they didn't respond, the Council could send a letter to the governor. Richard did not want to get on the Board's bad side. Al suggested blind carbon copying the governor's office.

Vince asked who is on the Natural Resources Board. Al responded that there is geographic representation and there is usually a business representative.

Rep. Jacque recommended the Council err on the side of more notification when commenting on a proposal.

Jeanne asked if the Natural Resources Board was aware of the Council's change. Al said the change will require DNR to revise the green sheet process, but the Board will not have a problem with it. The Board knows that the Council is advisory to them.

Al explained the next steps going forward. After cleaning up the proposed criteria for evaluation, the need to revise the green sheet process will have to be discussed with the secretary. For the next meeting, any new scope statements will be provided for the Council's review.

Jeanne asked who the chair is of the Natural Resources Board. Al responded Preston Cole. His appointment expires in May, and it is not yet known if he will be reappointed. Board members serve six year terms.

Amy asked if there is somewhere they can go to see what rules are coming up.

**Action: A link will be sent where upcoming rules can be found [Lisa emailed the links on 4/30].**

Vince asked how often the Board reviews rules. The NRB has 10 meetings annually with most agenda items related to rulemaking; however, not all are environmental rules that impact small businesses.

Al explained recent changes in the rulemaking process as a result of Act 10. Previously, the governor had no authority to approve or disprove rules at the scope statement stage. Governor Walker wanted to get a handle on how many rules were being promulgated, so Act 10 was introduced to make the rulemaking process more deliberative. Now, under Act 10, the governor has influence early in the rulemaking process.

**The criteria for evaluating a rule's small business impacts are as follows:**

- What is the cost of implementation? This includes the time spent on monitoring, recordkeeping and reporting in addition to the financial burden of changing or adding equipment or raw materials.
- How easy is the rule to understand? Are outside experts needed?
- Does the rule overlap with other regulations, including those of other agencies?
- Were affected industry or trade associations consulted?
- Will businesses that were previously unaffected by regulations become affected? How will the newly affected sources be notified?
- What alternatives are available to small businesses to avoid being regulated? Were the possible alternatives considered?

**Budget Update / Future of Small Business Program**

Al had already touched on the budget, but just noted that by fall the Small Business program should have an office of four.

Kimberly gave the Council some background on herself and her new role. She has a Master's in Urban Environmental Policy and Planning and has been working for a nonprofit helping businesses go beyond compliance. Prior to that, she worked in commercial insurance.

Kimberly feels the Green Tier program can be difficult for small businesses to access. She hopes to help level the playing field for small businesses to achieve the same opportunities to go beyond compliance as larger organizations.

Al passed out a sheet showing the Cooperative Environmental Assistance program's sector specialists, although it is in the process of being updated.

**Action: Updated sector specialist information will be sent when complete [Lisa emailed an updated version on 4/25].**

The focus of the sector specialists is on helping businesses grow. There will be better environmental protection if DNR works with businesses. The sector specialists are a single point of contact and can assemble a team of specialist so the business only has to talk to one person.

### **Chair / Vice Chair Transition**

Jeanne and Amy decided Amy would take over as chair at the beginning of 2014.

### **Location of Future Meetings**

Al recommended moving meetings around the state and the members agreed. Vince thought the Council should invite others throughout the state to attend. Al felt changing meeting locations would give the Council more visibility and would help to get the public involved. There could be 30 minutes allocated at the end of each meeting for public comments. This would provide an open forum where anyone could bring up issues. Shane recommended that the sector specialists promote meeting attendance. Jeanne felt this could also help create a pool of future Council appointees. Amy suggested identifying who would be affected by a proposed rule and reaching out to them to participate in the discussion. Vince also suggested having an introduction on what the Council is about.

### **National Training**

There will be national training for small business assistance programs coming up May 14-15 in Chicago. On Tuesday, May 14<sup>th</sup> from 12:15-1:30, there will a training session for Compliance Advisory Panel (CAP) members, and state CAP members are encouraged to attend. They also hope to provide the session via webinar. Council members are invited to attend the training or listen in on the webinar.

**Action: Additional information will be sent when the agenda and webinar information is finalized [Draft agenda emailed 4/22].**

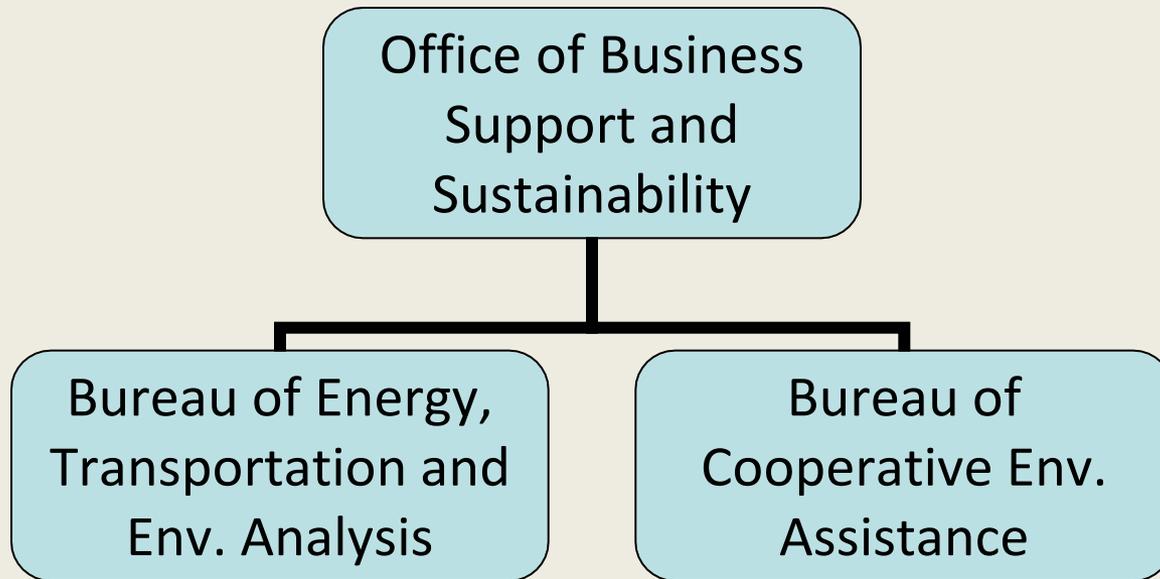
**Next meeting: July 25, 2013, 9:00am -12:00pm**

# Proposed Revisions to NR 150

David Siebert

Bureau of Energy, Transportation,  
and Environmental Analysis

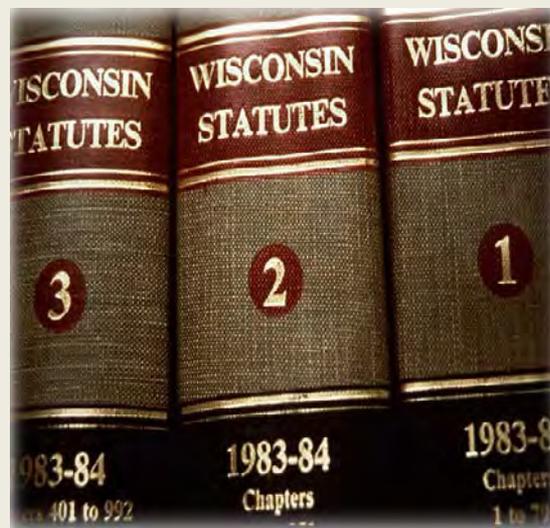
# OBSS



# ETEA is responsible for:

- Review and permitting of all **energy** projects
- Review and permitting for all public **transportation** projects
- Cross program project and policy analysis under **WEPA**





WEPA= WI Environmental Policy Act (1972):

All agencies of the state shall:

“Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the human environment, **a detailed statement**, substantially following the guidelines issued by the United States council on environmental quality...”

# NR 150 requires DNR to:

- Consider and disclose the environmental ramifications of proposals
- Evaluate alternatives
- Provide opportunity for public input

# WEPA History Highlights



- 1970 NEPA
- 1972 WEPA (1.11 stats)
- 1972 EO 69 and 1976 EO 26– guidelines to agencies
- 1979- NR 150 created in January
- 1984-1986 several NR 150 revisions
- 1987 Last major revision to NR 150
- Yellow Sheet Sept 2010

# Goals for NR 150 Revision

- Back to s. 1.11, Stats
- Strategic Analysis--More focus on bigger picture
- Day-to-Day DNR “Actions”
  - Efficient use of staff time
  - Meaningful public involvement
  - Analysis instead of paper exercise
  - Simple to follow process steps

# New NR 150 --Strategic Analysis



# New NR 150 --Strategic Analysis

- Who decides to conduct analysis?
- Analysis to include
  - Alternatives
  - public involvement process



# New NR 150– Actions

Analysis is the focus





# CURRENT NR 150

## EIS process versus EA process

- Issue identification and scoping
- Document preparation
- Public Release and 45 day public review
- **Hearing**
- Evaluate comments
- Conclusion (Record of Decision) & announcement
- Permit decision(s)

# We want an EIS!



# New NR 150

FOR DNR “ACTIONS” WEPA compliance by either:

- a detailed statement

OR

- it is a Minor Action

# New NR 150

For detailed statements, compliance achieved through one of the following:

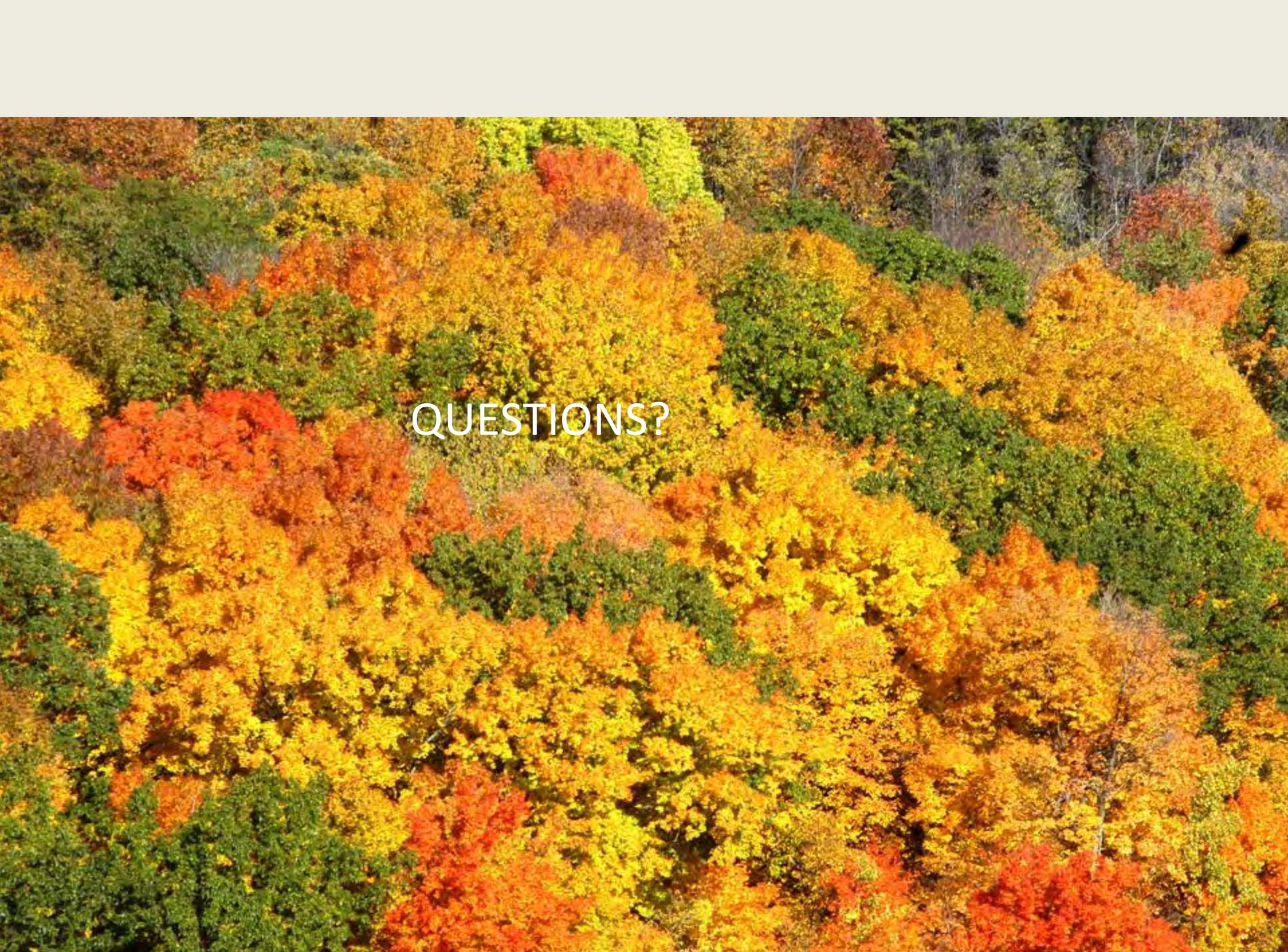
- “Equivalent Analysis”
- “Prior Compliance”
- EIS process

# New NR 150

- EIS process is outlined
- Scale the EIS to the action(s) and issues
- Draft and Final EIS with clear timelines for each
- Written decision on NR 150 compliance

# NEXT STEPS

- NRB authorized hearings on 2/27/13
- Hearings April 16-18– Eau Claire, Green Bay, Madison
- Public Comments through 5/3/13 to :  
[Jeffrey.Schimpff@wisconsin.gov](mailto:Jeffrey.Schimpff@wisconsin.gov)
- Revised Rule to NRB for adoption
- Legislative review



QUESTIONS?