

Being Heard

A Citizen's Guide to DNR Hearings



Midwest Environmental
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Being Heard: A Citizen's Guide to DNR Hearings

Thanks

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Appendix A

Sample Hearing Request Forms

Appendix B

Relevant Statutes and WDNR Regulations:

For the PDF version of this report, the two documents in Appendix B are available as two separate PDF files at www.midwest-e-advocates.org/html/News/News.html

Chapter 227, Wisconsin Statutes: [Ch227WisStat.pdf]

Chapter 2, WDNR Administrative Code: [NRch2admincode.pdf]

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Introduction

Wisconsin law requires the Department of Natural Resources (DNR) to obtain public input into many of the important decisions that it makes. Whether the DNR is considering a new administrative rule that will apply statewide or issuing a specific permit to a single manufacturing facility, state law requires that the public be given the opportunity to comment on the proposed action. Public comments on proposed DNR actions can be provided in writing directly to the DNR. Public comments can also be provided at public administrative hearings. This handbook discusses the DNR's administrative hearings and provides general information about the different types of hearings, how you can request a hearing, and what you should expect if you decide to participate in a hearing.

For the most part, the rules that govern the DNR hearings establish a fairly informal process and most administrative hearings resemble a town hall or other public meeting. Typically, anyone who attends such a hearing is invited to voice his or her opinion, present facts or legal arguments, and critique or support the action that the DNR is considering.

The informality of the process should not disguise the importance of such hearings. The DNR makes important decisions that affect the quality of the water you drink and the air you breathe and have significant social and economic impacts. Public hearings are one critical component of the DNR's decision making process and, once the hearings have been held and the DNR has made its decision, *it is very rare for a court to substitute its judgment for that of the DNR and undo what the DNR has done*. Typically, courts will defer to the DNR's expertise and to the detailed administrative decision making process that the DNR goes through to make most decisions.

This handbook is intended to facilitate your participation in the DNR's decision making process. Nevertheless, depending upon the nature of the proposed DNR action and the potential impacts it may have on your interests, it may be advisable to obtain professional legal assistance.



Midwest Environmental Advocates, Inc. can provide legal representation or a referral to an attorney who has joined their Advocacy Network.

(608) 251-5047 or www.midwest-e-advocates.org

Are all hearings the same?

There are four different types of public hearings, each with its own rules and procedures: rule making,¹ informational,² contested case,³ and six citizen complaints.⁴ Additionally, a mining permit application⁵ and decisions made under Wisconsin's Environmental Policy Act (WEPA) follow unique procedures that are outlined in this guide.

Rule Making Hearings



Rules are laws that are written and enforced by an administrative agency. A rule has the same effect as a statute; the difference is that a state agency creates a rule and the state legislature creates a statute. Administrative rules are published in the Wisconsin Administrative Code. (Wisconsin's Administrative Code can be found online at <<http://www.legis.state.wi.us/rsb/code>>). Statutes are published in the Wisconsin Statutes. (Wisconsin's statutes can be found online at <<http://www.legis.state.wi.us/rsb/stats.html>>).

An administrative agency (such as the DNR) uses rules to implement, interpret or clarify a statute passed by the legislature. Rules are also used to set forth procedures the agency will follow.⁶ For example, Chapter 160 of the Wisconsin Statutes, created by the legislature, requires the DNR to establish groundwater quality standards. Natural Resources (NR) Chapter 140 of Wisconsin's Administrative Code, created by the DNR, establishes numerical groundwater quality standards, as required by Chapter 160.

Before the DNR can make a rule, it must hold a public hearing.⁷ The public hearing gives you (or your representative), the opportunity to present facts, opinions or arguments about the DNR's proposed rule.⁸ You can provide public comments at the hearing by either submitting them in writing or speaking. Written comments can also be submitted directly to the DNR during the public comment period that is established for each new rule.

Informational Hearings



If the DNR proposes to issue a permit, you may individually, or as part of a group of people, request a public hearing on the application for the permit. The hearing is your opportunity to learn more about the proposed permit and to make a statement about the proposed permit. The DNR must consider your statement when determining whether to issue or deny the permit.⁹

Contested Case Hearings



Many administrative hearings are informal. Anyone attending the hearing is invited to stand and make a statement or even a presentation. A contested case hearing is more formal.¹⁰ A contested case hearing is similar to a court trial. A hearing examiner runs the hearing, much like a judge runs a trial. Often, lawyers represent the parties (people involved in the dispute).



A party to a contested case is someone who has a substantial interest in the outcome of the contested case hearing. You must file a request with the hearing examiner to be treated as a party.

At a contested case hearing, people who want to make statements do so as “witnesses.” They give testimony under oath. The testimony can include exhibits. Witnesses can be cross-examined by the parties and/or the hearing examiner. The parties may also make legal arguments. The hearing examiner makes final factual determinations (a decision about which version of the facts is correct) and may decide certain legal issues.¹¹



A fact or a statement admitted as evidence is included into a written or recorded record of the hearing and must be considered by the hearing examiner before making a final decision.

Six Citizen Complaint Hearings



If six or more citizens believe that they will be able to show “beyond a reasonable doubt” that some project or activity is causing, or may potentially cause, environmental pollution, they can file a complaint and the DNR is required to hold a hearing. Potential environmental pollution is pollution that causes or will cause environmental harm that would need to be cleaned up.¹²

Mining Permit Application Hearings



In addition to a DNR-issued mining permit, mines require air, water and often many other permits. These permits are the subject of a “master hearing” that considers all of the permits during one public hearing.¹³ The master hearing provides an opportunity for public comments and testimony on any issue related to the mining and related permits. The hearing is conducted in the same court-like setting as a contested case hearing.¹⁴

Rule Making Hearings



Notice. Generally, the DNR must hold a public hearing before it can adopt or modify a rule.¹⁵ Notice of the rule making hearing must be provided to interested parties and, more generally, to the legislature and the public.¹⁶ The DNR only grants requests for changing the time and place of hearings if the request is for “good cause” and if the request is made before the notice of the hearing has been published.¹⁷ Once the notice of the hearing has been published, the hearing will not be changed.

Who can attend and comment? Anyone can attend a rule making hearing. At the hearing, you have the opportunity to submit written comments presenting facts, opinions or arguments about the rule. If there is an opportunity, you may also testify.¹⁸

Who conducts the hearing? The DNR will appoint someone, most likely a DNR employee, to conduct the hearing.

What is the agenda for the hearing? Most often, there will be a stack of appearance sheets available in the hearing room. These sheets allow interested parties to sign in, register their support or opposition to the proposed rule (this is often accomplished by checking a box on the form) and indicate whether the person wants to give written or spoken testimony.

The person conducting the hearing will start the hearing by explaining the purpose of the hearing, describing how testimony about the proposed rule will be received, and presenting a summary of the factual information on which the proposed rule is based.¹⁹

If spoken testimony is allowed, and it typically is, the hearing examiner will call the names of those who have indicated on their appearance sheets that they want to testify.²⁰ The person conducting the hearing may administer an oath or affirmation to anyone testifying regarding the proposed rule. The person conducting the hearing also has the authority to question or permit questioning of those making statements. If many people want to comment, the person conducting the hearing may continue the hearing at a future date, time and place.²¹

What role do witnesses and subpoenas have in rule making hearings? The DNR cannot subpoena witnesses to compel them to attend a rule making hearing.²²

A subpoena is a document that requires a person to give testimony or produce documents. If a person does not comply with the provisions of the subpoena, they can be penalized.



What happens to the comments? By the time a rule reaches the public hearing stage, the DNR has already invested a great deal of time and energy in developing the rule. The agency will likely have already identified many of the pros and cons associated with the new rule. Therefore, the most effective testimony will often be comments that include new facts on the costs, socioeconomic or environmental implications of the proposed rule that may not have been thoroughly considered by the DNR. Evidence of substantial public support or opposition to a proposed rule may also be effective.

The written testimony and a recording of the oral testimony from the hearing is provided to the DNR. The DNR must consider the information and opinions presented at the hearing as a part of the process of finalizing the new rule.

Legislative Review. The State legislature may decide to hold legislative hearings regarding proposed rules. If the rule is controversial, legislative hearings are more likely to be held. If the legislature decides to hold hearings, the public is generally invited to attend and participate.

Can you challenge a final rule? Once a rule becomes final, it can be challenged in court.²³ The rules that govern proper timing, service and content of a petition for judicial review of a DNR rule are rigid, complicated, and may be confusing, and if the rules are not precisely followed, your right to judicial review may be denied. Thus, it is critical that you obtain professional legal assistance if you intend to seek judicial review of a DNR rule.

Informational Hearings



The DNR holds informational hearings on water, air and waste permit applications or modifications. Informational hearings are intended to provide the public with information about a proposed DNR action and to provide an opportunity for the public, in an informal setting, to ask questions, provide additional information to the DNR, and comment on, criticize or support a proposed action. Certain aspects of an informational hearing will vary depending upon the type of permit being considered. However, the general format for an informational hearing is common to all types of informational hearings.

When is an informational hearing held? The DNR holds informational hearings on prospective permits or applications whenever it deems appropriate or whenever an interested party requests a hearing.

How can you request an informational hearing? Generally, to request a hearing you must mail a hearing request or petition to the DNR. The request must be in writing, must be dated, must indicate why you are interested in the proposed permit, must identify the issues that you want to be considered at the hearing, and must include the identification number of the proposed permit or application.²⁴

Where is the hearing held? Whenever possible, the DNR holds the hearing in the area affected by the proposed permit.²⁵

Can the time or place of a public hearing be changed? Before the notice of hearing is published, the DNR may change the time or place of the hearing only if someone can show “good cause” for a change.²⁶ Once the notice of hearing has been published, the hearing will not be changed.

Who conducts the informational hearing? The Secretary of the DNR or someone designated by the Secretary will conduct the hearing.²⁷ The Secretary will usually designate a person from the DNR’s legal staff to conduct the hearing.²⁸ The person conducting the hearing is called the “hearing examiner” or the “presiding officer.”²⁹

Who can attend and how are comments received? Anyone may participate in an informational hearing³⁰ by making a statement, offering evidence or asking questions about the proposed permit.³¹ If you make a statement, you cannot be cross-examined; although anyone at the hearing can ask you informational or clarifying questions through the hearing examiner.³²

The hearing examiner may impose a time limit on an individual’s statement in order to ensure that everyone present has the opportunity to make a statement and to prevent repetitious comments.³³ The hearing examiner may also limit the number of representatives that may speak on behalf of any organized group.³⁴ The hearing examiner may schedule certain times for testimony if he or she decides it’s necessary to ensure maximum public participation.³⁵

The DNR does not require that you testify at the hearing; written statements are also acceptable.³⁶ Generally, you can submit a written statement for up to one week after an informational hearing. The DNR encourages you to submit multiple copies of written comments, but only requires you to submit one legible copy of your written comments to the hearing examiner.³⁷ The notice of the proposed permit will specify to whom you should send your written comments. Be certain to send them to that person. This is typically the same person who drafted the permit.

What is the agenda for the hearing? The hearing examiner opens the hearing and makes a statement about the scope and purpose of the hearing and states what procedures will be used during the hearing.³⁸ The hearing examiner has the discretion to use any procedures necessary to insure that the hearing is conducted in an orderly and expeditious manner. However, this discretion is limited by the requirement that the hearing is intended to promote broad public participation.³⁹

After establishing the procedure for the hearing, the hearing examiner will explain how the DNR will give notice of its final decision to grant or deny the proposed permit. The hearing examiner will explain how you can request a more formal review of the DNR's final decision in a contested case hearing.⁴⁰ See page 14.

After establishing procedures, the hearing examiner will enter appearances on the record for those who have indicated that they want to participate in the hearing.⁴¹ Appearance slips are generally passed out or are available in the hearing room. You indicate on the appearance slip whether you intend to present a spoken or a written statement at the hearing.⁴² The slip will also often provide a box for you to check indicating your support or opposition to the proposed permit. You will have the opportunity to testify and/or submit your written comments.⁴³

The hearing examiner will call the names of those who have entered appearances and give each an opportunity to enter their comments into the record.⁴⁴

Passionate advocacy of your position is encouraged, but keep in mind that factual support for your position is generally the most persuasive.

The hearing examiner has the power to exclude anyone from the hearing for "contemptuous conduct."⁴⁵

Checklist

Making Written Comments After the Hearing

- ✓ Usually a one-week deadline.
- ✓ Send three copies to the hearing examiner.
- ✓ Send one copy to the person who drafted the permit.
- ✓ Send a copy to the DNR employee listed in the notice of the hearing.

The hearing examiner may make a written report of the public's participation at the hearing.⁴⁶ Other times, a recording of the hearing will be made and may be transcribed. If you would like a copy of the report or a recording of the hearing, you may request a copy from DNR. If you want a written transcript of the tape, you will have to pay to have the recording transcribed.⁴⁷

What happens after the hearing? After an informational hearing, the DNR may issue a document called the "Response to Public Comment," in which the DNR addresses any significant changes that the DNR proposes to make to the terms and conditions of the final permit, as compared to the terms and conditions contained in the draft permit.⁴⁸

If you fill out an appearance slip at the hearing, the DNR will mail you notice of its decision to issue or not issue the permit.



The DNR makes its final determination on whether to issue or deny the permit based on consideration of statements by the public, legal standards, the permit application, statements by government agencies and any other information it finds important.⁴⁹ The DNR mails notice of the final determination to everyone who filled out appearance slips at the public informational hearing or submitted written statements.⁵⁰

Although it is unusual for the DNR to deny a permit on the basis of information gathered from the public at an informational hearing, it may impose stricter standards on the permit applicant because of information it learned at the hearing.⁵¹ This underscores the point that the most effective comments are generally fact-based comments about the impacts of the specific permit that the DNR is considering. Sweeping comments regarding the general degradation of the environment are rarely effective in defining the terms and conditions of a proposed permit.

How do I challenge the final permit? Once the DNR issues the final permit, you can challenge the permit by seeking a contested case hearing (see page 14), or judicial review in state court (see page 29).

Informational Hearings on Water Permits



The DNR issues different types of permits for activities that impact the waters of the state. For example, a Wisconsin Pollution Discharge Elimination System (WPDES) permit regulates discharges of pollution into water. It is illegal to discharge a pollutant from a point source (a typical example of a point source is a pipe) into any waters of the state of Wisconsin without a WPDES permit.⁵²

Anyone planning to discharge pollutants must submit a permit application to the DNR.⁵³ Once the DNR receives a complete application, it publishes a notice of its receipt of a completed application in a local newspaper.⁵⁴ If five or more people sign a petition requesting an informational hearing on the proposed permit within 30 days of the publication of this notice, the DNR is required to hold a public hearing on the permit application. If less than five people request a public hearing, the DNR has the discretion to decide whether or not to hold a hearing.⁵⁵

In the case of a modification to a WPDES permit, it is within the DNR's discretion to hold a hearing when five or more people ("the petitioners") file a petition. The request for a hearing on the permit modification must indicate why the petitioners are interested and/or will be affected by the permitted activities and must also state why the petitioners believe that a hearing is warranted.⁵⁶

To request a hearing, your petition must be in writing, must be dated, must indicate your interest in the proposed permit, must identify the issues that you want to be considered at the hearing, and must include the identification number of the proposed permit or application.⁵⁷ A form you can modify and use to request a hearing, is attached as Appendix A-1.

If a hearing on a WPDES permit application is conducted as a part of a hearing for a mining permit, the notice, comment and hearing provisions for a mining permit application hearing apply.⁵⁸ For more information on mining permit application hearings, see page 27.

The hearing examiner makes a written report of the public's participation at the hearing,⁵⁹ and a recording of the hearing may be transcribed. If you would like a copy of the report or a recording of the hearing, you may request a copy from DNR. If you want a written transcript of the hearing, you will have to pay to have the recording transcribed.⁶⁰ Within seven days of the date the DNR mails the hearing transcript, you may file a written notice with the hearing examiner of any errors that you find in the transcript. The hearing examiner will decide whether or not to accept your proposed corrections.⁶¹

Informational Hearings on Air Permits



There are two types of air pollution control permits: construction and operation permits. Without a construction permit, no person can construct, reconstruct, replace or modify a stationary source of air pollution, unless the activity is exempt from the construction permit requirements. Without an operation permit, no person may operate a new or modified source of air pollution.⁶²

Construction Permit

When a person applies for a construction permit, the DNR prepares an analysis of the effects of the action that is the subject of the proposed construction permit and makes a preliminary determination of whether or not the permit application is approvable.⁶³ This is called the "analysis and preliminary determination."

Checklist

Requesting an Informational Hearing on a WPDES Permit

- ✓ You must file your request within 30 days of when notice appears in the newspaper.
- ✓ File a written request.
- ✓ Date the request.
- ✓ If possible, have five or more people sign the petition.
- ✓ Indicate your and the others' interest in the proposed permit.
- ✓ Indicate the issues you want considered at the hearing.
- ✓ Include the identification number of the permit, found in the notice.



Who receives the notice? The DNR distributes a notice of the analysis and preliminary determination that explains how interested people may request a public hearing and submit comments. The notice is sent to any person or group that requests that it receive the notice and the notice is published in a local newspaper in the vicinity of the proposed construction site. The DNR also circulates an announcement sheet to local and regional news media in

the area that will be affected by the proposed construction containing a brief description of the proposed activity, the administrative procedures that apply, the deadline for comments and the location where the public can review complete copies of the DNR's analysis and preliminary determination.⁶⁴

If a hearing on the construction permit is conducted as a part of a mining permit application hearing, the notice, comment and hearing provisions for a mining permit application apply.⁶⁵ See page 27 for information on mining permits.

How long is the public comment period? After the DNR publishes the notice, it accepts public comments about the proposed activity and the analysis and preliminary determination for 30 days.⁶⁶ Within that time period, you may request an informational hearing. If the DNR decides there is a significant public interest in holding a hearing, it must hold the hearing within 60 days after the deadline for requesting the hearing.⁶⁷

How do you request an informational hearing? A form that you can modify and use to request a hearing is in Appendix A-2. If you want to request a public hearing, you must mail or personally deliver a written request for a hearing to the DNR employee specified in the notice.⁶⁸

Operation Permit

When a person applies for an operation permit, the DNR reviews the application and prepares a preliminary determination of whether it will approve the application. Again, the DNR provides notice to any person or group that requests it and publishes a notice in a newspaper in the area that will be affected by the air emissions from the proposed facility. The public notice will contain a brief description of the facility that is the subject of the application, the DNR's preliminary determination and information on how and when to request a public hearing.⁶⁹

How do you request an informational hearing? After the DNR publishes this notice, it receives public comment for 30 days.⁷⁰ Within that time period, you can request an informational hearing. If the DNR decides that there is a significant public interest in favor of holding the hearing, it must hold the hearing within 60 days after the deadline for requesting a hearing.⁷¹

After the DNR considers any public comments concerning the application, the DNR will prepare the proposed operation permit or deny the application for an operation permit. If the permit application satisfies the specific criteria outlined in the Wisconsin Statutes at Sections 285.63 and 285.64, the DNR must issue the requested permit.⁷² Thus, the most effective comments will be those that specifically discuss how the proposed project satisfies or does not satisfy those criteria.

If a proposed activity requires a construction and an operation permit, the DNR holds the informational hearing for both the construction permit and the operation permit at the same time.⁷³ Most proposed activities will require both a construction and an operation permit.⁷⁴ Therefore, in most cases, if you want to comment on a proposed air emission permit, your only opportunity will be at the single hearing for both the construction and operation permits.

How do I challenge the final permit? If you are not satisfied with the DNR's final decision related to any aspect of an air permit, you may request that the DNR's final decision be reviewed at a contested case hearing. Anyone who submitted comments during the public comment period for an air operation permit may request a contested case hearing.⁷⁵ You may also seek a contested case hearing if you meet other statutory requirements for a contested case hearing.⁷⁶ For more information on contested case hearings, see page 14. You must request a contested case hearing within 30 days of the date of the DNR's final decision on the permit.⁷⁷ Generally, this means you must file your request within 30 days of the date that the permit is issued.

In most cases, the DNR will hold one informational hearing that considers both the construction permit and the operation permit.

Informational Hearings on Waste Permits



The DNR regulates facilities that treat, store or dispose of “solid” or “hazardous” waste.⁷⁸ The statute defines “solid waste” as “discarded or salvageable materials,” such as garbage, and various types of commercial and industrial wastes.⁷⁹ Hazardous waste is waste that contains substances that DNR has designated as “hazardous”⁸⁰ and includes chemicals that are potentially cancer-causing or are otherwise determined to be harmful at specified concentrations to human health or to the environment. Before anyone can begin construction of a solid or hazardous waste facility, they must complete a feasibility report that provides, among other things, a description of the topography, soils, geology, groundwater, and surface water in the vicinity of the proposed facility. The report must also describe the engineering design of the proposed facility.⁸¹

Before the DNR can act on the feasibility report, it must determine whether to prepare an environmental impact statement (EIS) for the proposed facility.⁸² The process of preparing and finalizing the necessary environmental impact analysis is generally discussed in the section on Wisconsin's Environmental Policy Act (WEPA) starting at page 12 of this handbook. The process for solid waste facilities is somewhat different than the general process. For example, the environmental impact analysis must be completed before the DNR holds a hearing on the feasibility report.⁸³



When is the public notified? After the DNR determines that an EIS will not be prepared or after the EIS has been prepared and finalized, the DNR issues a notice that the feasibility report is complete and the EIS process has been completed. This notice is published in a local newspaper. The notice will invite you to submit written comments on the proposed waste facility and will describe the methods you can use to request either an informational or contested case hearing on the permit for the proposed facility.⁸⁴

How do I request an informational hearing on a solid or hazardous waste facility permit?

The DNR must hold an informational hearing on a proposed solid or hazardous waste facility if it receives a timely request for such a hearing from any municipality or any six or more people. The request must be made within 30 days after the DNR publishes the notice that the feasibility report is complete and the EIS process for a solid waste facility is complete. Requests for informational hearings on proposed hazardous waste facilities must be made within 45 days of the date of that notice.⁸⁵

The request for an informational hearing must indicate how the municipality or persons requesting the hearing will be affected or are otherwise interested in the facility and the request must also state the reasons why a hearing should be held.⁸⁶ See Appendix A-3 for a form to use to submit your request. The DNR must hold the requested hearing in the area that may be impacted by the proposed facility within 60 days after the period for requesting a hearing has expired.⁸⁷

When does the DNR issue a final decision? The DNR issues a final determination on the facility's permit within 60 days after the informational hearing is adjourned.⁸⁸

How do I request a contested case hearing? See page 26 for a discussion of how you can request a contested case hearing on a solid or hazardous waste facility permit.

Checklist

Requesting an Informational Hearing on a Solid or Hazardous Waste Permit

Your request must:

- ✓ Be completed by six or more people within 30 days, for a solid waste facility, or within 45 days for a hazardous waste facility, of when the DNR publishes notice that the feasibility report is complete.
- ✓ Indicate why those filing the request are interested in the proposed solid or hazardous waste facility.
- ✓ State the reasons why you and the other people are requesting a hearing.
- ✓ The DNR is required to hold a hearing.

Wisconsin's Environmental Policy Act



Wisconsin's Environmental Policy Act (WEPA) requires administrative agencies, including the DNR, to evaluate the potential environmental impacts of any major action that the agency proposes to take.⁸⁹ At the heart of the WEPA process is the preparation of an environmental impact review document. Agency actions generally fall into three categories. First, major state actions that have potentially significant impacts on the environment are required to be evaluated through an environmental impact statement (EIS). Second, if it is not certain whether an action has the potential to significantly impact the environment, an environmental assessment (EA) must be prepared. The purpose of an EA is to determine whether the proposed action has the potential to significantly impact the environment and, therefore, whether the action should be the subject of an EIS. Third, actions that do not have the potential to significantly affect the environment do not require any formal environmental impact review.⁹⁰

The DNR has categorized the majority of its actions and predetermined whether the action must be the subject of an EIS, an EA, or whether no environmental impact review is required. Wisconsin's Administrative Code Chapter NR 150 includes a table of DNR actions, and specifies the type of required environmental impact review.

There are several opportunities for public participation in the DNR's WEPA process. The DNR begins the environmental review process by determining the minimum procedures that are needed to adequately assess the environmental impacts of a proposed action.⁹¹ The DNR then publishes notice of the project, and invites public participation in the environmental review process. The notice must include a statement regarding the DNR's preliminary decision on whether to prepare an EA or EIS for the proposed action.⁹²

For an EA, the DNR may hold informal meetings to receive further public input and aid in the review of and decision on the need for the full EIS process.⁹³

For an EIS, the DNR is required to hold an informational hearing. The DNR will not hold the hearing until 30 days after the issuance of the EIS.⁹⁴ At least 25 days prior to the informational hearing, the DNR will publish a notice of the informational hearing in the area potentially affected by the proposed action, or in the official state paper if the action is of statewide significance.⁹⁵

If an EIS has been written on a proposed action for which a contested case is being held, the DNR will combine the hearing on the EIS with the contested case hearing.⁹⁶ If the DNR is not holding a contested case hearing on either the proposed DNR action or on the EIS, any person attending the informational hearing on the EIS may request to cross examine the person who is responsible for preparing the EIS. You can also present witnesses or evidence at that hearing.⁹⁷

Where is the hearing held? The DNR holds the hearing in the affected area, unless it is an action of statewide significance, in which case the DNR may hold the hearing in Madison.⁹⁸

Can the time or place of a public hearing be changed? The DNR only grants a request for a change in the time and place of a scheduled hearing if it has not already published notice of the hearing in a newspaper and only if you can show good cause for the change.⁹⁹

Who can attend and comment? Anyone can attend an informational hearing. Each interested person has the opportunity to present facts, opinions or arguments about the EA or EIS in writing. If there is opportunity, people may also testify.¹⁰⁰ The person conducting the hearing may limit spoken presentations if the hearing would be unduly lengthened by repetitious testimony. The person conducting the hearing may question you or allow others present to question you.¹⁰¹

Who conducts the hearing? The DNR will generally appoint a DNR employee to preside at an informational hearing on an EA or EIS.¹⁰²

What is the agenda for the hearing? The person conducting the hearing will begin the hearing by explaining the purpose of the hearing and describing how testimony will be received. The person conducting the hearing will also present a summary of the factual information on which the EA or EIS is based, including any information obtained from an advisory committee, informational conference or consultation. The public is then allowed to comment on the EA or EIS.¹⁰³ The person conducting the hearing may administer an oath or affirmation to anyone who wants to make a statement. The person conducting the hearing has the authority to continue or postpone the hearing to a specified date, time and place if necessary to effectively complete the hearing. The DNR will announce the schedule for submission of written comments before the close of the hearing.¹⁰⁴

What role do witnesses and subpoenas have in informational hearings on an EA or EIS? The DNR cannot subpoena witnesses to compel them to attend an EA or EIS informational hearing.¹⁰⁵

Is there discovery in informational EA or EIS hearings? As in all non-contested case hearings, there is no discovery, but the hearings are recorded or transcribed.¹⁰⁶

What happens after the hearing? Based upon all public comments, the DNR may revise the EA or EIS.¹⁰⁷ After the hearing and the time period for submission of written comments has ended, the DNR makes a final written decision on the proposed action.¹⁰⁸ The DNR may not commence, engage in, fund, approve, conditionally approve or disapprove an action that has been the subject of an EA or EIS prepared by the DNR until it has issued a written decision. The decision must include findings on whether:

- ✓ The DNR has considered the EIS or EA and comments received on it;
- ✓ The DNR has complied with WEPA requirements;
- ✓ The decision is consistent with social, economic and other essential considerations; and
- ✓ The DNR has adopted all practical means to avoid or minimize environmental harm and if the DNR has not done so, it must explain why.¹⁰⁹

If the DNR prepared an EA on the proposed action, the written decision must generally be either a Finding of No Significant Impact (FONSI), explaining why the proposed action will not have significant environmental impacts or the written decision must order that an EIS be prepared. If the DNR prepared an EIS on the proposed project, the written decision is included in a Record of Decision (ROD) that discusses the EIS process, including public comments and explains the DNR's decision to approve, reject, or conditionally approve the activity that was the subject of the EIS.

How do I challenge the final decision? The ROD and the FONSI are final agency decisions that can be the basis of a petition for judicial review (see page 29) or a contested case hearing (see page 14).

How is the EIS or EA considered in a contested case hearing? The hearing examiner receives an EIS or an EA and all comments on these documents into evidence. During the contested case hearing, parties may present testimony regarding the content of the EIS or EA, and cross-examine the DNR personnel responsible for writing specific portions of the EIS or EA.¹¹⁰

Contested Case Hearings



A contested case hearing is a hearing that is similar to a court trial. Although the general rules for contested case hearings are found in Chapter 227 of the Wisconsin Statutes and Chapter NR 2 of the Wisconsin Administrative Code, there are also specific rules that apply to contested cases regarding certain DNR actions, such as the issuance of a WPDES permit. If you plan to become involved in initiating a contested case hearing, it is recommended that you retain professional legal assistance. If the specific rules that control the contested case process for a specific DNR action are not precisely followed, it is possible that the right to legal review of the DNR action could be lost. The following section generally discusses the contested case process.

Contested case proceedings are categorized into three types. Class one proceedings involve the review of an agency's granting or denying a license or permit. Class two proceedings involve an agency's imposition of sanctions or penalties. Class three proceedings are any contested cases that are not class one or two proceedings.¹¹¹

How do you request a contested case hearing? You can request a section 227.42 contested case hearing by filing a written request with the DNR that explains that:

- ✓ You have a substantial interest that is injured or will be threatened with injury by the action that DNR is considering.
- ✓ The legislature has not declared that your type of interest is not protected.
- ✓ Your injury is different from injury that the general public may experience.
- ✓ There are disputed facts that should affect the DNR's action.¹¹²

A form you may modify to use to request a contested case hearing is Appendix A-4.

What is the deadline for requesting a contested case hearing? You must request the hearing in writing and serve it upon the DNR secretary within 30 days after the DNR's action or inaction.¹¹³

The DNR must give all parties the opportunity to participate in the hearing after reasonable notice. This means that DNR must mail notice to all parties that the DNR knows are interested at least 10 days prior to the hearing.¹¹⁴

The standards for requesting a contested case hearing and the procedures that are used at a contested case hearing are much more “trial-like” than informational hearings. There are potentially serious consequences if you fail to comply with these procedures.

Where is the hearing held? The hearing may be held in several different places. The DNR can hold a contested case hearing at one of its offices, at the offices of the State Division of Hearings and Appeals, or any time, date and place designated in the hearing notice.¹¹⁵

Who is the hearing examiner? Unless the secretary of the DNR presides over a contested case hearing, the hearing examiner will be an administrative law judge assigned by the administrator of the Division of Hearings and Appeals.¹¹⁶

The hearing examiner must be impartial. In a Class two or three proceeding, if you believe that the hearing examiner has a personal bias or there is another reason the hearing examiner should be disqualified, you may file an affidavit (a written statement made under oath) in which you include facts explaining why you believe that the appointed hearing examiner should not preside at the hearing. The DNR or the hearing examiner will determine, as a part of the record, whether the hearing examiner can preside or participate in the decision in an impartial manner and make an impartial decision in the case. “A hearing examiner or agency official may disqualify himself or herself at any time.”¹¹⁷

Checklist

Requesting a Contested Case Hearing

Your request must:

- ✓ Be in writing.
- ✓ Be served upon the DNR secretary within 30 days of the DNR's action.
- ✓ Indicate what substantial interest you have that will be injured by the DNR's action.
- ✓ Explain how the injury you may suffer is different than the injury that the general public may experience.
- ✓ Indicate that there is a dispute over the facts that will be important in determining what action the DNR should take.
- ✓ State that there is no evidence of legislative intent that your interest should not be protected.

What authority does the hearing examiner have? In general, the hearing examiner has the authority to:

- ✓ Administer oaths and affirmations.
- ✓ Issue and enforce subpoenas (compel a witness to appear at a hearing and testify).
- ✓ Receive evidence and rule on offers of proof.
- ✓ Take depositions or have depositions taken.
- ✓ Regulate the course of the hearing.
- ✓ Hold conferences for clarification of disputed issues or settlement.
- ✓ Act on procedural requests or similar matters.
- ✓ Make or recommend findings of fact, conclusions of law and decisions.
- ✓ Order protective measures that are necessary to protect the trade secrets of the parties to the hearing.¹¹⁸

What happens if there is an “ex parte” communication? An ex parte communication is a private communication with the hearing examiner about the merits of a contested case that is not shared with all parties to the hearing. Ex parte communications are not allowed.¹¹⁹

If there is an ex parte communication, the hearing examiner should place a description of the communication in the record of the pending matter and give interested parties an opportunity to respond. All such responses are also placed in the record.¹²⁰

Who is allowed to participate in the contested case hearing? The parties named in the pleadings, the DNR, and any member of the public may participate in a contested case hearing.¹²¹ The DNR must admit any person as a party to a contested case hearing who requests to be a party and whose substantial interest may be affected by the DNR decision that will be made following the contested hearing.¹²² All parties have the opportunity to present evidence and testimony and to cross-examine witnesses at the contested hearing. All parties will receive copies of all documents filed with the DNR prior to the final decision and all parties will be served a copy of the DNR’s final decision.¹²³ Only people who are certified as “parties” in the final decision will receive copies of post-decision filings and appeals.¹²⁴ If you want to be a “certified” party, be certain to make that request on the record during the hearing and be prepared to explain how your substantial interest will be affected by the proposed DNR decision.

If you file documents with the DNR prior to the DNR’s issuance of a final decision in the case, you must serve the documents on everyone who entered an appearance at the hearing.¹²⁵

Can the time or place of a public hearing be changed? As with informational hearings, the DNR only grants a request for a change in the time and place of a scheduled hearing for “good cause” and only if the request is made before the DNR publishes notice of the hearing.¹²⁶

What role do witnesses and subpoenas have in contested case hearings? The DNR or the hearing examiner may issue subpoenas to compel the attendance of witnesses at hearing or at pretrial information-gathering proceedings, called “discovery.”¹²⁷ A party’s attorney of record may also issue a subpoena to compel the attendance of a witness or the production of evidence. The attorney must, at the time the subpoena is issued, send a copy of the subpoena to the hearing examiner or other representative of the DNR and to all parties.¹²⁸ You may testify at the hearing as a witness. You may also ask the DNR or the hearing examiner to issue a subpoena for you requiring a witness to appear at the hearing or during “discovery” to give testimony and/or to produce material for you. Your request for the subpoena must specify why you believe the testimony or documents will be helpful and you must specify the documents you want from the witness.¹²⁹

Is there discovery in a contested case hearing? There is always an opportunity for discovery for a Class 2 hearing. It is within the hearing examiner’s discretion to allow discovery for a Class 1 or 3 hearing. The notice of the hearing will specify the “class” of the hearing. As permitted, the DNR or any party to a contested case hearing may obtain discovery and preserve testimony. The hearing examiner may set the time during which discovery takes place, may issue orders to protect people or parties from annoyance, embarrassment, oppression or undue burden during discovery,¹³⁰ and may also issue orders to compel discovery.¹³¹

Discovery is a process that takes place before the hearing. You have the opportunity to gather information by reviewing documents and questioning witnesses.



What are informal conferences, and when are they held? In any action to be set for a contested case hearing, the agency or hearing examiner may direct the parties to appear at an informal conference to:

- ✓ Clarify the issues and take any procedural steps necessary to notify all parties and the public if the issues that will be considered at the hearing change.
- ✓ Consider whether the parties can agree to certain facts and documents to avoid unnecessary discovery and reduce the time needed at the hearing.
- ✓ Limit the number of witnesses.
- ✓ Consider any other matter that may help resolve the dispute.¹³²

The DNR or the hearing examiner may call an informal conference any time before or during the course of a hearing and may require the attendance of anyone who is or wants to be certified as a party to the hearing.¹³³ At the informal conference, the parties may make agreements that will bind the parties during the hearing, and the hearing examiner will record such agreements.¹³⁴

If the DNR or the hearing examiner holds an informal conference and the parties agree that there is no material dispute of fact, the DNR or hearing examiner may cancel the hearing and may decide the matter on the basis of briefs, i.e., written arguments submitted by the parties.¹³⁵ In other words, if the parties agree about the facts, but disagree about how the law should be applied to these facts, discovery and testimony may not be necessary, and the hearing examiner can simply consider and decide disputed legal issues.

What procedure is followed in a contested case hearing? The hearing examiner opens the hearing and makes a statement about the hearing's scope and purpose. Then the hearing examiner records appearances on the record by taking down the names of those at the hearing. Next, the parties may make motions or opening statements.¹³⁶

An opening statement must be confined to a brief summary or outline, in clear and concise form, of the evidence you intend to offer during the hearing and a statement of the ultimate legal points that support your position.¹³⁷

Proceedings are not conducted off the record unless allowed by the hearing examiner. This means that anything said at the hearing, or any evidence presented, is included into a record of the hearing, unless the hearing examiner tells those present at the hearing that something is not going to be included in the record. If the hearing examiner deems that a conversation held off the record is pertinent, he or she may summarize it on the record.¹³⁸

The hearing examiner records any party's objection to receipt of evidence or motion to strike evidence.¹³⁹

The hearing examiner may exclude anyone from a contested case hearing for contemptuous conduct.¹⁴⁰

Burden of proof. The party with the burden of proof at the contested case hearing must prove its case by a "preponderance of the evidence." A preponderance of the evidence is simply the majority of the "credible" evidence submitted at the hearing. If the party with the burden of proof does not prove its case by a preponderance of the evidence, the other party wins.

The DNR has the burden of proof if the hearing is about a DNR order.¹⁴¹ In all other cases, the party requesting the hearing has the burden of proof.¹⁴²

Is there a transcript of the hearing? Hearings are recorded either stenographically or electronically. You can request a tape recording of the hearing. You can also request a typed transcript, even if the DNR has not prepared one, if you pay for the costs of preparing it. If several parties request typed transcripts, the DNR will divide the costs of transcription equally among the parties. A request for either a tape recording or a written transcript must be submitted in writing to the hearing examiner.¹⁴³

You may receive a free copy of the transcript, if one has been produced, if you can establish to the satisfaction of the DNR that you are indigent and have a legal need for the transcript.¹⁴⁴

If you think that there is an error in the transcript, within seven days of the date of mailing of the transcript, you may file with the hearing examiner a notice in writing of any claimed error in the transcript. You must also mail a copy of your notice of the error to each party. Within 12 days of the date of the mailing of the transcript, other parties may contest your claimed error, and you may contest any of their claimed errors, by simply notifying the hearing examiner and the other parties. The hearing examiner will advise all parties of any authorized corrections to the record.¹⁴⁵

When would a party file a brief? Briefs are often used to address procedural and other pre-hearing issues. Additionally, after the close of testimony, the parties can request that they be allowed to file post-hearing briefs. The hearing examiner may establish a schedule for the filing of briefs.¹⁴⁶ A brief is a written discussion of the facts, the evidence, and the applicable law and is intended to persuade the hearing examiner of the correctness of the brief writer's legal arguments.

There are normally three rounds of brief writing that may occur after the close of testimony. In the first round, the party or parties with the burden of proof files a brief. In the second round, the other parties may file a response to the first brief or briefs. In the third round, all of the parties have the opportunity to file briefs in response to briefs filed in the second round. In the alternative, the hearing examiner may direct that briefs of all parties be filed simultaneously.¹⁴⁷

If you file a brief, you should send copies of your brief to all the parties to the contested case. To correctly file your brief you must submit five copies to the DNR, and submit to the DNR a certification showing when and upon whom other copies have been served. If your brief contains a summary of evidence or facts from the hearing, you must include reference to the specific pages of the record that contain the cited evidence.¹⁴⁸

What are the rules of evidence in contested case hearings? Contested case hearings are similar to court trials. During a trial, what evidence a judge and jury can consider in making its decision is governed by certain rules called "rules of evidence." For example, when you are watching a TV show about a courtroom drama, you often see lawyers stand up and say, "I object!" By making an objection, the lawyer is arguing that one of the "rules of evidence" is being violated, and that the judge or jury should not hear (or see) the evidence the other side is trying to present.

Even though a contested case hearing is like a court trial, in general, the rules of evidence do not apply. However, there are still some guidelines used at contested case hearings to decide what evidence should be admitted into the record. More important, these guidelines, even if they are not used to exclude evidence from the record, will be used by the hearing examiner to determine the "weight" or significance that should be given to the evidence. In addition, there are many rules and guidelines that anyone participating in a contested case hearing should understand. Attorneys are usually familiar with these rules and that is one reason that anyone who intends to participate in a contested case hearing should consider obtaining professional legal help. Some of these rules and guidelines are:

- ✓ The normal courtroom rules of evidence do not automatically apply to a contested case hearing. However, the hearing examiner has the discretion to use the rules of evidence when he or she determines that the rules are the best means to produce a sound record.¹⁴⁹
- ✓ Rules of privilege, for example that a husband does not have to testify against his wife, do apply to contested case hearings.¹⁵⁰

- ✓ The hearing examiner must admit all evidence that has reasonable probative value (i.e., that is reasonably related to the issue being considered), and must exclude all evidence that is immaterial, irrelevant or unduly repetitious.¹⁵¹ If you believe that evidence your opponent is trying to present is immaterial, irrelevant or unduly repetitious, you should ask the hearing examiner to exclude it.
- ✓ The hearing examiner must allow every party the opportunity to rebut or offer evidence to counteract evidence offered by another party.¹⁵²
- ✓ A party may conduct cross-examination of a witness.¹⁵³
- ✓ The hearing examiner may order parties using documentary exhibits or prepared testimony to furnish copies of the exhibits or testimony to all other parties before the hearing. The hearing examiner may also provide reasonable time for the parties to review the exhibits or prepared written testimony. The hearing examiner may admit written testimony and exhibits into evidence as though given orally, if those who provide the written testimony or exhibits are present and available for cross-examination at the hearing.¹⁵⁴
- ✓ If evidence consists of technical figures so numerous that it would be difficult to follow an oral presentation of the evidence, it may be presented in an exhibit that is explained by oral testimony.¹⁵⁵
- ✓ If an original document that a party wishes to place into the record is not available, the hearing examiner may receive a copy or an excerpt of the document instead. Upon request, the hearing examiner must give the parties the opportunity to compare the copy with the original.¹⁵⁶
- ✓ Evidence submitted at the time of hearing does not need to be limited to the issues identified in the request for a hearing or the notice of the hearing. The request for, and notice of, hearing are collectively referred to in the Wisconsin Administrative Code as the “pleadings” for purposes of a contested case hearing. If new issues are raised at the hearing, the “pleadings” can be considered amended by the record of the hearing, and the hearing examiner may grant additional time to give the parties adequate time to prepare evidence to address the new issues.¹⁵⁷

Checklist

Requirements for Filing a Brief

You must:

- ✓ Send a copy to every party.
- ✓ Submit five copies to the DNR.
- ✓ Submit a certification to the DNR showing when and to whom you sent copies.
- ✓ If you include evidence or facts from the contested case hearing, you must include the specific pages of the record that contain the evidence or facts you cite.

- ✓ Parties may make objections to evidence and may make an offer of proof for evidence not admitted by the hearing examiner. An offer of proof is used to help the hearing examiner decide whether certain evidence should be admitted. A party who disagrees with the hearing examiner's decision on whether or not to allow certain evidence makes an argument that is included in the record.¹⁵⁸ This is important if a party decides to appeal the hearing examiner's final decision. On appeal, the person reviewing the record can consider the party's argument as it is in the record.
- ✓ Parties may file petitions or written communications not admissible as evidence with the hearing examiner but they will not be part of the record.¹⁵⁹

When is the contested case proceeding over? After all of the evidence is submitted, and the time period has elapsed for filing briefs, the hearing examiner will close the hearing.¹⁶⁰

If you find new documentary evidence after the close of testimony, but before the DNR's final decision has been published, you can submit the documents into the record if the other parties stipulate (agree) to the submission of the new documents.¹⁶¹

Who makes the final decision? In general, after the hearing ends, the hearing examiner prepares a proposed decision.¹⁶² The decision includes findings of fact (which version of the facts the hearing examiner considers correct), conclusions of law (how the law applies to the facts in the case), and a decision on the case.¹⁶³ Unless the DNR or another party petitions for judicial review (review by a court), the proposed decision of the hearing examiner is the final decision of the case.¹⁶⁴

Despite this general rule, the Secretary of the DNR may order that the record of the hearing be given to the Secretary or a designee for a final decision, without a proposed decision by the hearing examiner.¹⁶⁵ The Secretary may also order that the final decision be made in two other ways that are outlined in sections 227.46(2) and (4) of the Wisconsin Statutes.¹⁶⁶ Under those sections, each party adversely affected by the proposed decision has an opportunity to file objections to the proposed decision and, in some cases, file briefs or have oral argument before the final decision is made.¹⁶⁷

What information is in a decision? Every proposed or final decision includes a list of the names and addresses of all the people who appeared before the agency as parties in the contested case.¹⁶⁸ Each decision also includes a notice of any right a party has to petition for a rehearing, administrative review, or judicial review of an adverse decision. The decision will inform you of the deadline for filing each petition for review and will identify the party you must name as the respondent, i.e., the person you are "suing" if you are seeking judicial review.¹⁶⁹

Every decision is signed, filed and served to each party, or the party's attorney, by the DNR through personal delivery or mailing.¹⁷⁰ The time period for filing a petition for judicial review or administrative review begins to run when the DNR mails its decision,¹⁷¹ regardless of when, or if, you receive it.¹⁷²

Can you recover the costs you incur in connection with the contested case hearing? If you are an individual,¹⁷³ a small non-profit corporation¹⁷⁴ or a small business,¹⁷⁵ and you are the winning party, you can submit a motion (written request) requesting reimbursement of the costs you incurred in connection with the contested case.¹⁷⁶ The hearing examiner must award¹⁷⁷ you the costs, unless the hearing examiner finds that the DNR's position was "substantially justified,"¹⁷⁸ or that special circumstances exist that would make the award unjust.¹⁷⁹

When more than one issue is contested, the hearing examiner takes into account the relative importance of each issue in determining which party is the winning party, and the hearing examiner can then order partial awards of costs.¹⁸⁰

The hearing examiner determines the amount of costs you should be awarded and includes an order for payment of costs in the final decision. The DNR has 15 working days from the date of the receipt of your motion to respond to it in writing and send it to the hearing examiner.¹⁸¹

Caution! If the hearing examiner finds that your motion for costs is frivolous, the examiner may award the DNR all reasonable costs it incurred in responding to your motion. Your motion is frivolous if the examiner finds one or more of the following:

- ✓ You submitted the motion in bad faith, solely for purposes of harassing or maliciously injuring the DNR; or
- ✓ You or your attorney knew, or should have known, that the motion did not have any reasonable basis in law and could not be supported by a good faith argument for an extension, modification or reversal of existing law.¹⁸²

Is there an opportunity for a rehearing? If you believe the DNR's final order after the contested case hearing was wrong and injures your interest, within 20 days after service of the order, you can file a written petition for a rehearing before the DNR.¹⁸³ Your petition must specify the grounds for the relief you seek and authorities (laws, rules or decisions in other cases) that support your argument that DNR's decision was incorrect.

Checklist

Filing a Motion for Costs

Your motion:

- ✓ Must be submitted within 30 days after the date of the mailing of the proposed decision.
- ✓ Must be submitted to both the hearing examiner and the DNR.
- ✓ Must include an itemized list of fees and other expenses, which may include an itemized statement from an attorney or expert witness representing or appearing on your behalf.
- ✓ The list must include the actual time expended and the rate at which fees and other expenses were computed.

The DNR may order a rehearing on its own motion within 20 days after service (mailing) of the final order.¹⁸⁴ If you request a rehearing you must serve (mail or deliver) copies of your petition for rehearing to everyone listed as a party in the record. Those parties may file replies and support or oppose your petition for rehearing.¹⁸⁵

The DNR only grants a rehearing if it believes there was some material error of law or fact or if you discover new evidence that is strong enough to reverse or change the final decision. The new evidence has to be evidence that you could not have discovered before the contested case hearing.¹⁸⁶

The DNR must make a decision regarding your petition for rehearing within 30 days after you file it. The DNR may order a rehearing or enter a new order based on your petition without granting you a rehearing. If the DNR does not enter an order within the 30-day period, the petition for rehearing is deemed to have been denied on the date of the expiration of the 30-day period.¹⁸⁷

Even if you file a petition for rehearing, the effective date of the order in the final decision is not suspended or delayed. The order takes effect on the date fixed by the DNR and continues in effect unless the petition is granted or until the order is superseded, modified or set aside.¹⁸⁸

However, the time period for requesting judicial review of the decision is postponed until the petition for rehearing is decided by the DNR (see flowchart on page 30).¹⁸⁹

If the agency grants you a rehearing, it must schedule the matter for further proceedings as soon as practicable. The procedure in a rehearing conforms as nearly as possible to the procedure of an original hearing, except as the DNR directs. After the rehearing, the DNR may reverse, change, modify or suspend the original decision if the department decides that the original decision was wrong. Any decision made after the rehearing has the same force and effect as an original decision.¹⁹⁰

Checklist

Filing a Petition for a Rehearing

Your petition must:

- ✓ Be submitted within 20 days after the date of the mailing of the final decision.
- ✓ Specify the relief you want.
- ✓ Specify the grounds for your relief.
- ✓ Be mailed or delivered to every party to the hearing.

Petition for Administrative Review

Instead of a rehearing, you may also file a written petition to have the final decision reviewed by the Secretary of the DNR or the Secretary's designee. The Secretary cannot delegate the review to anyone who had prior involvement in either the hearing or decision-making process.¹⁹¹

Within 14 days of the receipt of your petition, the Secretary must decide whether or not to grant your request. If the Secretary decides to grant the review, the Secretary may order that you file briefs, present an oral argument, or have a rehearing on all or part of the evidence presented at the original contested case hearing.¹⁹²

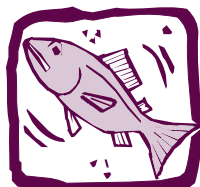
However, unlike when filing a petition for a rehearing, filing a petition for administrative review **does not suspend** or delay the time period for filing a petition for judicial review. You are not required to file a petition for administrative review before you seek judicial review (review by a court) of the final decision,¹⁹³ and you may want to file both petitions simultaneously. While your petition for administrative review is pending, the order from the contested case continues in effect.¹⁹⁴

Checklist

Filing a Petition for Administrative Review

- ✓ You must file the written request within 20 days after the decision is entered.
- ✓ Your petition must specify the grounds (basis) for review, the relief you seek and citation, in detail, to supporting authorities (laws, rules or decisions in other cases) which aid your case.
- ✓ You must serve your petition for review either personally or by registered or certified mail upon the Secretary of the DNR, the hearing examiner and all parties listed in the decision.
- ✓ If you want the date an order goes into effect to be suspended, you must clearly request that in your petition.
- ✓ Thus, if you want a judge to review the DNR's decision, you must not wait to ask for judicial review until the Secretary of the DNR acts on your petition.

Special Rules for Wisconsin Pollutant Discharge Elimination System (WPDES) Permit Contested Case Hearings (also called Public Adjudicatory Hearings)



The DNR has slightly different rules for conducting a WPDES permit contested case hearing than the general rules for contested case hearings.¹⁹⁵

When can you challenge a WPDES Permit? You can obtain a hearing on a WPDES permit in order to review the:

- ✓ Denial, modification or suspension of a WPDES permit;
- ✓ The reasonableness of or necessity for any term or condition of any issued or modified WPDES permit;
- ✓ The establishment of a proposed thermal effluent limitation; or
- ✓ The establishment of any proposed water quality related limitation.¹⁹⁶

Who can seek review of a WPDES permit in a contested case hearing and when? Any five or more people may seek review if they file their petition within 60 days after notice of any reviewable action, such as those listed above.¹⁹⁷ The petition must include the specific issues you want to have reviewed, state your unique interest in the issue, and the reasons why a hearing is warranted.¹⁹⁸ A form for the petition is included in Appendix A-5.

Neither the Wisconsin Statutes nor the Wisconsin Administrative Code set forth the criteria by which the DNR will determine whether or not to grant your petition for this type of hearing. Therefore, it is a good idea to satisfy the requirements set forth in section 227.42 for a contested case hearing. Those requirements are that:

- ✓ You have a substantial interest that is injured or threatened with injury by agency action or inaction regarding the WPDES permit;
- ✓ There is no evidence of legislative intent that your interest is not to be protected;
- ✓ Your injury is different from the injury to the general public that may be caused by the agency action or inaction on the WPDES permit; and
- ✓ There is a dispute of material fact, (i.e., facts that may influence the outcome of the decision).¹⁹⁹

Where is the hearing held? Whenever it is possible, the DNR holds the hearing in the area affected by the discharge permit.²⁰⁰

What is the agenda at the hearing? At the beginning of the hearing, if you petitioned for the hearing, you will present your evidence to the DNR in support of the allegations you made in your petition. After you have finished, other people that have an interest in the issues have the opportunity to present facts, views or arguments relevant to the issues you raised. All parties may cross-examine the other party's witnesses.²⁰¹

Any duly authorized representative of the DNR may compel the attendance of witnesses and the production of information for you by subpoena. The DNR representative can also administer oaths or affirmations, and continue or postpone the hearing to a future time and place.²⁰²

When does the DNR make a final decision? The DNR issues its decision on the issues raised by the petition within 90 days after the close of the hearing.²⁰³ You may petition for judicial review of the final decision as set forth in the contested case section on page 30.²⁰⁴

Special Rules for Contested Case Hearings for Solid or Hazardous Waste



How do I request a contested case hearing on a solid or hazardous waste facility permit? A contested case hearing on the facility feasibility report can be requested within 30 days after the DNR publishes notices that the feasibility report and the EIS process have been completed, for a solid waste disposal facility, or within 45 days for a hazardous waste facility.²⁰⁵

If the DNR does not enter an order granting or denying your request for a contested case hearing within 20 days after you file your request, the request is deemed denied. The DNR may formally deny your request for a contested case hearing in writing by stating the reasons for the denial. In either case, you have 30 days during which you can ask for judicial review (review by a court) of the DNR's denial.²⁰⁶

If you are granted a contested case hearing, the division of hearings and appeals will schedule the hearing within 120 days.²⁰⁷ Upon completion of the contested case hearing, the DNR must make its final determination on whether to issue the proposed permit within 90 days.²⁰⁸

If the hearing is conducted as a part of a hearing for a mining permit application, the mining permit application provisions apply.²⁰⁹ See page 27 for more information on mining permit application hearings.

Checklist

Requesting a Contested Case Hearing on a Solid or Hazardous Waste Permit

Your request must:

- ✓ Be completed by six or more people.
- ✓ Be completed within 30 days, for a solid waste facility, or within 45 days for a hazardous waste facility, or when the DNR publishes notice that the feasibility report is complete.
- ✓ State that you have the right to an informational hearing.
- ✓ Indicate what substantial interest you have that will be injured by the facility.
- ✓ Explain how your injury from the facility is different than injury the facility may cause to the general public.
- ✓ Indicate the factual disputes that will be important in determining whether to issue the facility's permit.

Mining Permit Applications



The procedures for a contested case hearing (see page 14) apply to a hearing on an application for a mining permit, unless they are inconsistent with the specific procedures that apply to a mining permit application hearing.²¹⁰ The same procedures that apply to a hearing on a mining permit application also apply to a hearing on an application for a prospecting permit.

What is at issue in a mining permit application hearing? The hearing covers the mining application, an EA or EIS, and, to the fullest extent possible, all other applications for approvals, licenses and permits that are necessary for mining.²¹¹ These typically include water, air and solid waste facility permits.²¹²

Where is the hearing held? The DNR holds the hearing in the county where the mining site, or the largest portion of the mining site, is located. The hearing may subsequently be continued in other locations.²¹³

When is the hearing held? If the DNR determines that an EIS is not required, the hearing is scheduled for a date, not less than 60 days or more than 90 days, after the announcement of the EIS determination. The DNR schedules and provides notice of the hearing within 10 days of the determination that an EIS is not required.²¹⁴

If the DNR determines that an EIS is required, the DNR has a short window of time in which it must hold at least one informational meeting regarding the preliminary environmental report. The meeting cannot be held sooner than 30 days nor later than 60 days after the report is issued. The DNR must schedule and provide notice of the meeting not later than 10 days following the issuance of the preliminary environmental report. Following this, a hearing on the mining permit must be scheduled for a date not less than 120 days nor more than 180 days after the EIS is issued. The DNR must provide notice of the hearing within 30 days from the date the EIS is issued.²¹⁵



How is the public notified of the hearing? The DNR must publish notice of the hearing in several newspapers in an advertising format. The DNR must publish a notice in several newspapers including the weekly newspaper closest to the proposed mining site, in a newspaper with the largest circulation in the county within which the proposed mine site lies, and in newspapers published in neighboring counties.²¹⁶

When may written comments be submitted? You may submit written comments on the proposed permit to the department for 30 days after the date of notice that no EIS is required.²¹⁷ If an EIS is required, you may submit written comments for 120 days after the date the EIS was issued.²¹⁸

What is the agenda at the hearing? At the opening of the hearing, the hearing examiner advises everyone present of their right to express their views. All interested people, at the hearing or at a time set prior to the hearing, must be given an opportunity, subject to reasonable limitations on the presentation of repetitious or irrelevant material, to express their views on any aspect of the matters under consideration. You do not need to be under oath or subject to cross-examination in order to make your statement.²¹⁹ However, comments that were not made under oath may not be given as much weight by the decision maker (or by a judge reviewing the final decision) as comments that are made under oath or by a party to the hearing. An irrelevant statement will not be admitted as evidence and will not be a part of the record.

Who can participate and when? If you want to participate in a mining hearing as a party, you must file written notice with the hearing examiner explaining your interest in the proposed mining activity at least 30 days prior to the scheduled time of the hearing or prior to the scheduled time of any prehearing conference, whichever is earlier. This is a strict deadline, and the hearing examiner will only make an exception if you can show good cause why you did not meet the deadline.²²⁰

The final decision that comes out of the hearing will include findings of fact, conclusions of law and an order that explains the reasons for the decision.²²¹

Six Citizen Complaint



A six citizen complaint is a special type of hearing held when six or more citizens complain of a situation involving actual or potential environmental pollution.²²²

Potential environmental pollution is “any situation, project or activity which upon continuance or implementation would cause, beyond a reasonable doubt, a degree of pollution that normally would require clean-up action if it already existed.”²²³ Note that if you request a hearing, you must be prepared to prove your allegations “beyond a reasonable doubt.” This is more difficult than proving your case in a contested case hearing, where you only have to prove your case by a preponderance, or majority, of the evidence.

What must be included in the complaint? Your complaint must include the signatures of six or more citizens and specifically set forth the situation, project or activity that you claim causes, is causing, or may cause environmental pollution. You must also include the name and address of a person within the state you authorize to receive service of an answer and other papers on behalf of the complainants.²²⁴ (You can name yourself.) A form you can use to request this type of hearing is in Appendix A-6.

What are the pre-hearing procedures? The DNR may order you to “file security” for costs that will be incurred because of the hearing in a sum “deemed to be adequate,” but not to exceed \$100. If you are ordered to file the security cost, you must do so within 20 days after you receive a copy of the order. All proceedings are stayed (stopped) until the security is filed.²²⁵

The DNR will serve a copy of your complaint and a notice of the hearing on the party you claim is causing, or will cause, the alleged pollution (the respondent) at least 20 days prior to the time set for the hearing. The DNR will hold the hearing not later than 90 days after you file your complaint. The respondent must file a verified answer to your complaint with the DNR and serve a copy on the person you designate not later than five days prior to the date set for the hearing, unless the DNR extends the respondent's time for answering for good cause shown.²²⁶

The hearing examiner may issue subpoenas and administer oaths for the hearing.²²⁷

Make sure your claim is well founded! If the DNR determines that you filed your complaint maliciously or in bad faith, it will order you to pay the legal expenses of the other party.²²⁸

When is the decision made? Within 90 days after the close of the hearing, the DNR makes and files its findings of fact, as well as conclusions of law and order in a final decision. You can petition for judicial review of the DNR's decision²²⁹ as outlined in the following section on judicial review.

Judicial Review

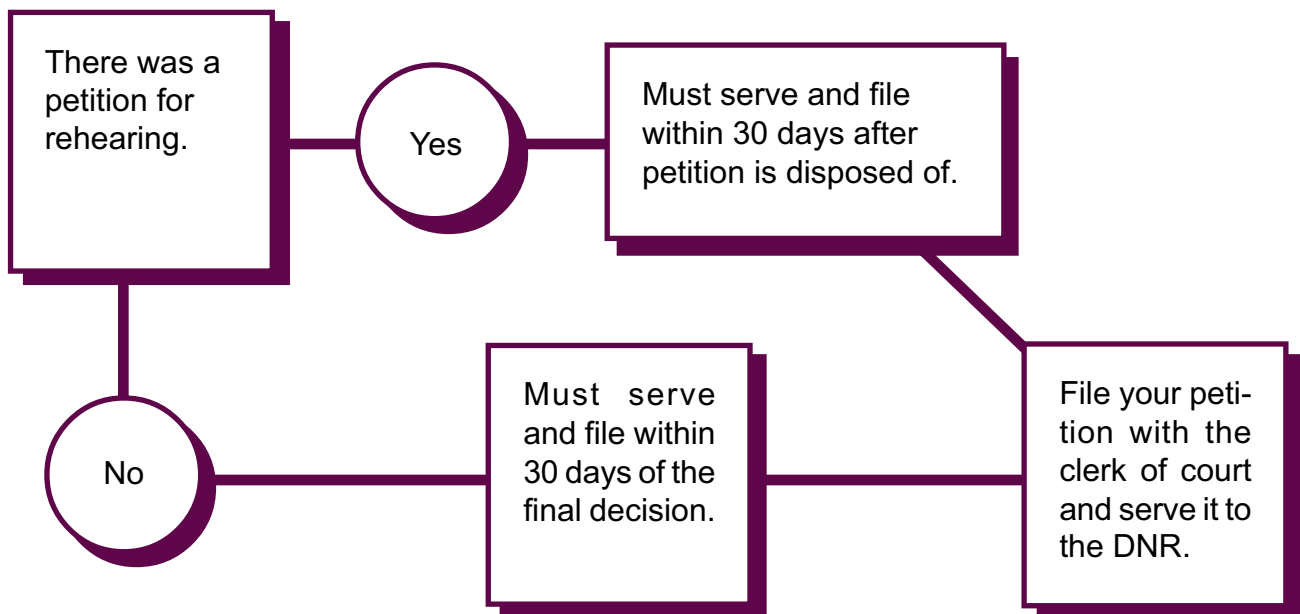


If you want to ask a judge to review the DNR's decision, you must do so within 30 days of the date that the DNR mails its final decision unless a rehearing request has been properly filed. The checklist on page 30 explains how to seek judicial review of a final decision.²³⁰ The rules that govern proper timing, service and content of a petition for judicial review are rigid and are sometimes complicated and confusing. If they are not followed, your right to judicial review may be denied. Thus, it is critical that you obtain professional legal assistance if you intend to seek judicial review of a DNR decision.

Checklist

Obtaining Judicial Review

- ✓ If no one has requested a rehearing, you must serve and file your petition for review within 30 days after the service of the department's final decision (the date the decision was mailed).
- ✓ If someone requested a rehearing, you must serve and file your petition for judicial review within 30 days after the department disposes of the petition for rehearing (remember, if the DNR does not enter an order disposing of the petition for rehearing within 30 days after a party filed it, the petition is deemed to have been denied by the agency on the 30th day). See the flowchart below.
- ✓ You must file the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings will be held and the petition must include the required fee.
- ✓ You must serve the petition personally or by certified mail upon the DNR or one of its officials. Depending upon the nature of the matter, you may need to serve the petition for review on other governmental agents or personnel.
- ✓ Your petition must state the nature of your interest, the facts showing that you are a person aggrieved by the department's final decision, and the grounds on which you contend that the final decision should be reversed or modified.



Conclusion

This handbook is intended to provide an overview of the various informal and formal hearings that are part of the DNR's decision-making process. Public input is a critical part of this process and can affect the DNR's final decision and request. We hope that this handbook will provide you the basic information you need to request and participate in informal hearings and, in some cases, formal hearings that are conducted to solicit public input and comments which assist the DNR in its review of permits, orders and other DNR actions. A review of state and local newspapers will often provide good notice of public informational and contested case hearings in addition to informing you of the opportunity to participate in these hearings. The decisions that the DNR makes can determine the quality of your water, air, and community. Although much of the process related to these hearings is informal, public input is critical to ensure that decisions are made in the public interest.

Endnotes

- ¹ See Wis. Stat. § 227.16(1) (1999-2000).
- ² See, e.g., Wis. Stat. §§ 283.49(1)(a)-(c), 285.61(7)(a)(b), 285.62(5)(a)(b), 289.26(1) (1999-2000).
- ³ See, e.g., Wis. Stat. § 227.42(1) (1999-2000).
- ⁴ See Wis. Stat. § 299.91 (1999-2000).
- ⁵ See Wis. Stat. § 293.43(5) (1999-2000).
- ⁶ See Wis. Stat. § 227.01(13) (1999-2000).
- ⁷ See Wis. Stat. § 227.16(1) (1999-2000).
- ⁸ See, e.g., Wis. Stat. § 227.18(1) (1999-2000).
- ⁹ See, e.g., Wis. Admin. Code § NR 203.04 (2001) (WPDES).
- ¹⁰ See Wis. Stat. § 227.44 (1999-2000).
- ¹¹ See, e.g., Wis. Stat. § 227.42(2)(3) (1999-2000)
- ¹² See Wis. Stat. § 299.91 (1999-2000).
- ¹³ See Wis. Stat. § 293.43(1m) (1999-2000).
- ¹⁴ See Wis. Stat. § 293.45(5) (1999-2000)
- ¹⁵ See Wis. Stat. § 227.16(1) (1999-2000).
- ¹⁶ See Wis. Stat. § 227.17(1) (1999-2000).
- ¹⁷ See Wis. Admin. Code § NR 2.09(1) (2001).
- ¹⁸ See Wis. Stat. § 227.18(1)(c) Wis. Stat. (1999-2000).
- ¹⁹ See Wis. Stat. § 227.18(1)(a)(b) (1999-2000).
- ²⁰ See Wis. Stat. § 227.18(1)(c) (1999-2000).
- ²¹ See Wis. Stat. § 227.18(2) (1999-2000).
- ²² See Wis. Admin. Code § NR 2.105 (2001).
- ²³ See Wis. Stat. §§ 227.40 and 227.52 (1999-2000).
- ²⁴ See Wis. Admin. Code § NR 203.05(3)(2001).
- ²⁵ See Wis. Admin. Code § NR 203.07 (2001); Wis. Stat. § 289.26(4) (1999-2000).
- ²⁶ See Wis. Admin. Code § NR 2.09(1) (2001).
- ²⁷ See Wis. Admin. Code § NR 203.10(2) (2001).
- ²⁸ Telephone Interview with Tom Bauman, DNR Wastewater Specialist, (608) 266-9993, October 6, 1999.
- ²⁹ See Wis. Admin. Code § NR 203.10(2) (2001).
- ³⁰ See Wis. Admin. Code § NR 203.08 (2001); Wis. Admin. Code § NR 2.135(2)(a) (2001).
- ³¹ See Wis. Admin. Code § NR 2.135(2)(b) (2001).
- ³² See Wis. Admin. Code § NR 203.10(3)(d) (2001);
- ³³ See Wis. Admin. Code § NR 203.10(3)(e) (2001).
- ³⁴ See Wis. Admin. Code § NR 203.10(3)(f) (2001).
- ³⁵ See Wis. Admin. Code § NR 203.10(3)(g) (2001).
- ³⁶ Telephone Interview with Tom Bauman, DNR Wastewater Specialist, (608) 266-9993, October 6, 1999.
- ³⁷ See Wis. Admin. Code § NR 203.10(3)(h) (2001).
- ³⁸ See Wis. Admin. Code § NR 203.10(3)(b) (2001).
- ³⁹ See Wis. Admin. Code § NR 203.10(3)(a) (2001).
- ⁴⁰ See Wis. Admin. Code § NR 203.10(3)(b) (2001).
- ⁴¹ See, e.g., Wis. Admin. Code § NR 490.04(1) (2001).
- ⁴² See Wis. Admin. Code § NR 203.10(3)(c) (2001).
- ⁴³ See id. and Wis. Admin. Code § NR 490.04(1) (2001).
- ⁴⁴ See Wis. Admin. Code § NR 490.04 (2001).
- ⁴⁵ See Wis. Admin. Code § NR 203.10(4) (2001).

⁴⁶ See Wis. Admin. Code § NR 203.10(5) (2001).

⁴⁷ See Wis. Admin. Code § NR 203.11(1) (2001).

⁴⁸ See Wis. Admin. Code § NR 203.13(2) (2001).

⁴⁹ See Wis. Admin. Code § NR 203.12 (2001).

⁵⁰ See Wis. Admin. Code § 203.13(3)(b) (2001).

⁵¹ Telephone Interview with Tom Bauman, DNR Wastewater Specialist, (608) 266-9993, October 6, 1999.

⁵² See Wis. Stat. § 283.31(1) (1999-2000).

⁵³ See Wis. Stat. § 283.37(2) (1999-2000).

⁵⁴ See Wis. Admin. Code § NR 203.02(4)(a) (2001).

⁵⁵ See Wis. Stat. § 283.49(1) (1999-2000); Wis. Admin. Code § NR 203.05 (2001). Timing of the hearing request is critical. Wis. Stat. § 990.001(4) (1999-2000) explains how time for appeals and requests are calculated and is reprinted below:

(a) The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last ...

(b) If the last day within which an act is to be done or proceeding had or taken falls on a Sunday or legal holiday the act may be done or the proceeding had or taken on the next secular day.

(c) When the last day within which a proceeding is to be had or taken or an act done, which consists of any payment to or the service upon or the filing with any officer, agent, agency, department or division of the state or of any county, city, village, town, school district or other subdivision of the state, of any money, return, statement, report, notice or other document, falls on a Saturday and the duly established official office hours of such officer, agent, agency, department or division to which such payment is to be made or upon which such service is to be made or with which such return, statement, report, notice or other document is required to be filed, do not include any office hours thereof on such Saturday, said proceeding may be had or taken or such act may be done on the next succeeding day that is not a Sunday or a legal holiday.

(d) Regardless of whether the time limited in any statute for the taking of any proceeding or the doing of an act is measured from an event or from the date or day on which such event occurs, the day on which such event took place shall be excluded in the computation of such time.

(e) "Legal holiday" as used in this section means any statewide legal holiday provided in s. 895.20. When an act is permitted to be done by the use of the postal service, and the last day within the time prescribed by law for performing such act falls on a legal public holiday under federal law, or other holiday designated by the president such that the postal service does not receive registered mail or make regular deliveries on that day, the day shall be considered a legal holiday for purposes of this section, Wis. Stat. § 895.20 (1999-2000) ("January 1, January 15, the 3rd Monday in February (which shall be the day of celebration for February 12 and 22), the last Monday in May (which shall be the day of celebration for May 30), July 4, the 1st Monday in September which shall be known as Labor day, the 2nd Monday in October, November 11, the 4th Thursday in November (which shall be the day of celebration for Thanksgiving), December 25, the day of holding the September primary election, and the day of holding the general election in November are legal holidays. On Good Friday the period from 11 a.m. to 3 p.m. shall uniformly be observed for the purpose of worship. In every 1st class city the day of holding any municipal election is a legal holiday, and in every such city the afternoon of each day upon which a primary election is held for the nomination of candidates for city offices is a half holiday and in counties having a population of 500,000 or more the county board may by ordinance provide that all county employees shall have a half holiday on the day of such primary election and a holiday on the day of such municipal election, and that employees whose duties require that they work on such days be given equivalent time off on other days. Whenever any of said days falls on Sunday, the succeeding Monday shall be the legal holiday.")

See also Wis. Stat. § 985.09 (1999-2000) (provides for the computation of time for publications).

- ⁵⁶ See Wis. Stat. § 283.53(2)(d) (1999-2000).
- ⁵⁷ See Wis. Admin. Code § NR 203.05(3) (2001).
- ⁵⁸ See Wis. Stat. § 283.51 (1999-2000).
- ⁵⁹ See Wis. Admin. Code § NR 203.10(5) (2001).
- ⁶⁰ See Wis. Admin. Code § NR 203.11(1) (2001).
- ⁶¹ See Wis. Admin. Code § NR 203.11(2) (2001).
- ⁶² See Wis. Stat. §§ 285.60(1) (1999-2000).
- ⁶³ See Wis. Stat. § 285.61(3) (1999-2000).
- ⁶⁴ See Wis. Stat. § 285.61(5) (1999-2000).
- ⁶⁵ See Wis. Stat. § 285.61(9) (1999-2000).
- ⁶⁶ See Wis. Stat. § 285.61(6) (1999-2000).
- ⁶⁷ See Wis. Stat. § 285.61(7) (1999-2000). Although Wis. Stat. § 285.61(7)(b) (1999-2000) states “the department shall promulgate by rule procedures for conducting public hearings under this subsection,” the only regulation specific to procedures for construction permit public hearings is found in Wis. Admin. Code Chapter NR 406, “Construction Permits.” The regulation does not set forth any procedures for conducting public hearings. In Wis. Admin. Code § NR 407.07(3)(a) (2001), the chapter for regulations relating to operation permits, a regulation states that “for applications for new or modified sources for which a construction permit is required under Wis. Stat. § 285.60(1)(a), and Wis. Admin. Code ch. NR 406 (2001), the department shall ... Conduct the review, notification and publication, public comment and public hearing process under Wis. Stat. § 285.62(3) to (5), for the operation permit simultaneously with the similar process under Wis. Stat. § 285.61(3) to (7), for the construction permit.” However, there is nothing in Wis. Stat. § 285.61(3) to (7) on the procedures for conducting a public hearing. This is despite the fact that the Wisconsin Statutes (§ 285.61(7)(b)) explicitly directs the DNR to *promulgate procedures* for conducting public hearings. As stated earlier, there are no regulations for the public hearing procedure in Wis. Admin. Code ch. NR 406 (2001) for construction permits. Wis. Admin. Code § NR 2.135 (2001) does provide the procedure for “Conduct of noncontested case hearings” and is the only other source for procedural guidance.
- ⁶⁸ See Wis. Admin. Code § NR 490.025 (2001).
- ⁶⁹ See Wis. Stat. § 285.62(3) (1999-2000).
- ⁷⁰ See Wis. Stat. § 285.62(4) (1999-2000).
- ⁷¹ See Wis. Stat. § 285.62(5) (1999-2000).
- ⁷² See Wis. Stat. § 285.62(6)(a) (1999-2000).
- ⁷³ See Wis. Admin. Code § NR 407.07(3) (2001) (“For applications for new or modified sources for which a construction permit is required under Wis. Stat. § 285.60(1)(a), and ch. NR 406, the department shall: (a) Conduct the review, notification and publication, public comment and public hearing processes under s. 285.62(3) to (5), Stats., for the operation permit simultaneously with the similar processes under s. 285.61(3) to (7) for the construction permit.”).
- ⁷⁴ Telephone Interview with Marcia Penner, DNR Legal Staff (Dec. 10, 1999) ((608) 266-2132).
- ⁷⁵ See Wis. Stat. § 285.81(1)(a) (1999-2000).
- ⁷⁶ See Wis. Stat. § 285.81(2) (1999-2000).
- ⁷⁷ See Wis. Stat. § 285.81(1)(a) (1999-2000).
- ⁷⁸ See Wis. Stat. §§ 289.01(35) and 291.01(8) (1999-2000).
- ⁷⁹ See Wis. Stat. § 289.01(33) (1999-2000).
- ⁸⁰ See Wis. Stat. §§ 291.01(7), 291.05(2) (1999-2000).
- ⁸¹ See Wis. Stat. § 289.23(1) (1999-2000); Wis. Admin. Code § NR 680.06(c) (1999-2000).
- ⁸² See Wis. Stat. § 289.25(1) (1999-2000).
- ⁸³ See Wis. Stat. § 289.25(3) (1999-2000).
- ⁸⁴ See Wis. Stat. § 289.25(3) (1999-2000).
- ⁸⁵ See Wis. Stat. § 289.26(1) (1999-2000).
- ⁸⁶ See id.
- ⁸⁷ See Wis. Stat. § 289.26(4) (1999-2000).

- ⁸⁸ See Wis. Stat. § 286.29(5) (1999-2000).
- ⁸⁹ See Wis. Stat. § 1.11 (1999-2000).
- ⁹⁰ See, e.g., Wis. Admin. Code § NR 150.20(1) (2001).
- ⁹¹ See Wis. Admin. Code § NR 150.20(1) (2001).
- ⁹² See Wis. Admin. Code § NR 450.21(1) (2001).
- ⁹³ See Wis. Admin. Code § NR 150.02(14) (2001).
- ⁹⁴ See Wis. Admin. Code § NR 150.23(1)(a) (2001).
- ⁹⁵ See Wis. Admin. Code § NR 150.23(1)(c)(2) (2001).
- ⁹⁶ See Wis. Admin. Code § NR 2.085 (2001).
- ⁹⁷ See Wis. Admin. Code § NR 2.085(4) (2001).
- ⁹⁸ See Wis. Admin. Code § NR 150.23(b) (2001).
- ⁹⁹ See Wis. Admin. Code § NR 2.09(1) (2001).
- ¹⁰⁰ See Wis. Stat. § 227.18(1)(c) (1999-2000).
- ¹⁰¹ See Wis. Stat. § 227.18(2) (1999-2000).
- ¹⁰² See Wis. Stat. § 227.18(1) (1999-2000).
- ¹⁰³ See Wis. Stat. § 227.18(1) (1999-2000).
- ¹⁰⁴ See Wis. Stat. § 227.18(2) (1999-2000).
- ¹⁰⁵ See Wis. Admin. Code § NR 2.105 (2001).
- ¹⁰⁶ See Wis. Admin. Code § NR 2.11 (2001).
- ¹⁰⁷ See Wis. Admin. Code § NR 150.21(2) (2001).
- ¹⁰⁸ See Wis. Admin. Code § NR 150.24 (2001).
- ¹⁰⁹ See Wis. Admin. Code § NR 2.157 (2001).
- ¹¹⁰ See Wis. Admin. Code § NR 2.14(6) (2001).
- ¹¹¹ See Wis. Stat. § 227.01(3) (1999-2000).
- ¹¹² See Wis. Stat. § 227.42(1) (1999-2000).
- ¹¹³ See Wis. Admin. Code § NR 2.05(5) (2001).
- ¹¹⁴ See Wis. Stat. § 227.44(1) (1999-2000).
- ¹¹⁵ See Wis. Admin. Code § NR 2.07 (2001).
- ¹¹⁶ See Wis. Stat. § 227.43(1)(b) (1999-2000).
- ¹¹⁷ See Wis. Stat. § 227.46(6) (1999-2000).
- ¹¹⁸ See Wis. Stat. § 227.46(1)(7) (1999-2000).
- ¹¹⁹ See Wis. Stat. § 227.50(1) (1999-2000).
- ¹²⁰ See Wis. Stat. § 227.50(2) (1999-2000).
- ¹²¹ See Wis. Admin. Code § NR 2.08(1) (2001).
- ¹²² See Wis. Stat. § 227.44(2m) (1999-2000).
- ¹²³ See Wis. Admin. Code § NR 2.08(3)(4) (2001).
- ¹²⁴ See Wis. Admin. Code § NR 2.08(5)-(7) (2001).
- ¹²⁵ See Wis. Admin. Code § NR 2.08(4) (2001).
- ¹²⁶ See Wis. Admin. Code § NR 2.09(1) (2001).
- ¹²⁷ See Wis. Admin. Code § NR 2.10 (2001).
- ¹²⁸ See Wis. Stat. § 227.45(6m) (1999-2000).
- ¹²⁹ See Wis. Admin. Code § NR 2.10 (2001).
- ¹³⁰ See Wis. Stat. § 227.45(7) (1999-2000).
- ¹³¹ See Wis. Admin. Code § NR 2.11 (2001).
- ¹³² See Wis. Stat. § 227.44(4)(a) (1999-2000); Wis. Admin. Code § NR 2.12 (2001).
- ¹³³ See id.
- ¹³⁴ See Wis. Admin. Code § NR 2.12(2) (2001).

- ¹³⁵ See Wis. Admin. Code § NR 2.12(3) (2001).
- ¹³⁶ See Wis. Admin. Code § NR 2.13(1) (2001).
- ¹³⁷ See Wis. Admin. Code § NR 2.13(2) (2001).
- ¹³⁸ See Wis. Admin. Code § NR 2.13(4) (2001).
- ¹³⁹ See Wis. Admin. Code § NR 2.13(5) (2001).
- ¹⁴⁰ See Wis. Admin. Code § NR 2.13(6) (2001).
- ¹⁴¹ See Wis. Admin. Code § NR 2.13(3)(a) (2001).
- ¹⁴² See Wis. Admin. Code § NR 2.13(3)(b) (2001).
- ¹⁴³ See Wis. Admin. Code § NR 2.17(1) (2001).
- ¹⁴⁴ See Wis. Admin. Code § NR 2.17(2) (2001).
- ¹⁴⁵ See Wis. Admin. Code § NR 2.17(3) (2001).
- ¹⁴⁶ See Wis. Admin. Code § NR 2.18 (2001).
- ¹⁴⁷ See id.
- ¹⁴⁸ See Wis. Admin. Code § NR 2.18(2) (2001).
- ¹⁴⁹ See Wis. Stat. § 227.45(1) (1999-2000).
- ¹⁵⁰ See Wis. Stat. § 227.45(1) (1999-2000).
- ¹⁵¹ See id.
- ¹⁵² See Wis. Stat. § 227.44(2) (1999-2000).
- ¹⁵³ See Wis. Stat. § 227.45(6) (1999-2000).
- ¹⁵⁴ See Wis. Admin. Code § NR 2.14(5) (2001).
- ¹⁵⁵ See Wis. Admin. Code § NR 2.14(3) (2001).
- ¹⁵⁶ See Wis. Stat. § 227.45(5) (1999-2000).
- ¹⁵⁷ See Wis. Admin. Code § NR 2.14(2) (2001).
- ¹⁵⁸ See Wis. Stat. § 227.45(1) (1999-2000).
- ¹⁵⁹ See Wis. Admin. Code § NR 2.14(4) (2001).
- ¹⁶⁰ See Wis. Admin. Code § NR 2.15(1) (2001).
- ¹⁶¹ See Wis. Admin. Code § NR 2.15(2) (2001).
- ¹⁶² See Wis. Admin. Code § NR 2.155(1) (2001).
- ¹⁶³ See id., see also Wis. Stat. § 227.47(1) (1999-2000).
- ¹⁶⁴ See id.
- ¹⁶⁵ See Wis. Admin. Code § NR 2.155(2)(a) (2001).
- ¹⁶⁶ See Wis. Stat. § 227.46(2) (1999-2000); see also Wis. Admin. Code § NR 2.155(2)(b) (2001).
- ¹⁶⁷ See Wis. Stat. § 227.46(2) (1999-2000).
- ¹⁶⁸ See Wis. Stat. § 227.47(1) (1999-2000).
- ¹⁶⁹ See Wis. Stat. § 227.48(2) (1999-2000).
- ¹⁷⁰ See Wis. Stat. § 227.48(1) (1999-2000).
- ¹⁷¹ See id.
- ¹⁷² See In re Proposed Incorporation of Pewaukee, 72 Wis. 2d 593, 241 N.W.2d 603 (1974).
- ¹⁷³ Wis. Stat. § 227.485(3)(7) (1999-2000).
- ¹⁷⁴ A small non-profit corporation is defined as “a nonprofit corporation which employs fewer than 25 full-time employees.” Wis. Stat. § 227.485(2)(d) (1999-2000).
- ¹⁷⁵ A small business is defined as “a business entity, including its affiliates, which is independently owned and operated, and which employs fewer than 25 full-time employees or which has gross annual sales of less than \$2,500,000.” Wis. Stat. § 227.485(2)(c) (1999-2000).
- ¹⁷⁶ See Wis. Stat. § 227.485(3)(5) (1999-2000).
- ¹⁷⁷ “The legislature intends that hearing examiners and courts in this state, when interpreting this section, be guided by federal case law, as of November 20, 1985, interpreting substantially similar provisions under the federal equal access to justice act, 5 U.S.C. § 504.” Wis. Stat. § 227.485(1) (1999-2000).

¹⁷⁸ “‘Substantially justified’ means having a reasonable basis in law and fact.” Wis. Stat. § 227.485(2)(f) (1999-2000).

¹⁷⁹ See Wis. Stat. § 227.485(3) (1999-2000).

¹⁸⁰ See Wis. Stat. § 227.485(4) (1999-2000).

¹⁸¹ See Wis. Stat. § 227.485(5) (1999-2000).

¹⁸² See Wis. Stat. § 227.485(10) (1999-2000).

¹⁸³ See Wis. Stat. § 227.49(1)(3) (1999-2000).

¹⁸⁴ See id.

¹⁸⁵ See Wis. Stat. § 227.49(4) (1999-2000).

¹⁸⁶ See Wis. Stat. § 227.49(3) (1999-2000).

¹⁸⁷ See Wis. Stat. § 227.49(5) (1999-2000).

¹⁸⁸ See Wis. Stat. § 227.49(2) (1999-2000).

¹⁸⁹ See Wis. Stat. § 227.53(1)(a)(2) (1999-2000).

¹⁹⁰ See Wis. Stat. § 227.49(6) (1999-2000).

¹⁹¹ See Wis. Admin. Code § NR 2.20(1) (2001).

¹⁹² See Wis. Admin. Code § NR 2.20(3) (2001).

¹⁹³ See Wis. Admin. Code § NR 2.20(4) (2001).

¹⁹⁴ See Wis. Admin. Code § NR 2.20(5) (2001).

¹⁹⁵ See Wis. Admin. Code § NR 203.15(2) (2001).

¹⁹⁶ See Wis. Admin. Code § NR 203.15(1) (2001).

¹⁹⁷ See Wis. Admin. Code § NR 203.16 (2001).

¹⁹⁸ See Wis. Admin. Code § NR 203.17 (2001).

¹⁹⁹ See Wis. Stat. § 227.42(1) (1999-2000).

²⁰⁰ See Wis. Admin. Code § NR 203.19 (2001).

²⁰¹ See Wis. Stat. § 283.63(1)(b) (1999-2000).

²⁰² See Wis. Stat. § 283.63(1)(c) (1999-2000).

²⁰³ See id.; see also Wis. Admin. Code § NR 203.20 (2001).

²⁰⁴ See Wis. Stat. § 283.63(2) (1999-2000).

²⁰⁵ Wis. Stat. § 289.27(1) (1999-2000).

²⁰⁶ See id.

²⁰⁷ See Wis. Stat. § 289.27(4)(a) (1999-2000).

²⁰⁸ See Wis. Stat. § 289.27(4)(b) (1999-2000).

²⁰⁹ See Wis. Stat. § 289.26(3) (1999-2000).

²¹⁰ See Wis. Stat. § 293.43 (1) (1999-2000).

²¹¹ See Wis. Stat. § 293.43(1m) (1999-2000).

²¹² See Wis. Stat. § 293.43(1m)(b) (1999-2000).

²¹³ See Wis. Stat. § 293.43(2) (1999-2000).

²¹⁴ See Wis. Stat. § 293.43(3)(a) (1999-2000).

²¹⁵ See Wis. Stat. § 293.43(3)(b) (1999-2000).

²¹⁶ See Wis. Stat. § 293.43(3)(b)(2) (1999-2000).

²¹⁷ See Wis. Stat. § 293.43(3)(a) (1999-2000).

²¹⁸ See Wis. Stat. § 293.43(3)(c) (1999-2000).

²¹⁹ See Wis. Stat. § 293.43(5)(a) (1999-2000).

²²⁰ See Wis. Stat. § 293.43(5)(b) (1999-2000).

²²¹ See Wis. Stat. § 293.43(5)(f) (1999-2000).

²²² See Wis. Stat. § 299.91 (1999-2000).

²²³ Id.

²²⁴ See id.

²²⁵ See id.

²²⁶ See id.

²²⁷ See id.

²²⁸ Id.

²²⁹ See id.

²³⁰ See Wis. Stat. § 227.53(1) (1999-2000).

Appendix A

Sample Hearing Request Forms

- A-1 Request for an informational hearing on a WPDES permit
- A-2 Request for an informational hearing in an air construction or operation permit
- A-3 Request for an informational hearing on a solid or hazardous waste permit
- A-4 Request for contested case hearing
- A-5 Request for adjudicatory hearing on WPDES permit
- A-6 Request for six citizen complaint hearing

**TO THE DEPARTMENT OF NATURAL RESOURCES:
REQUEST FOR NONCONTESTED CASE PUBLIC HEARING**

The undersigned hereby request(s) a noncontested case public hearing on the Wisconsin Pollution Discharge Elimination System permit application number _____ under Wisconsin Administrative Code § NR 203.05, as appropriate. The requestor(s) interest in filing the request is:

The reasons why a hearing is warranted are:

Date: _____

Signatures: _____

**TO THE DEPARTMENT OF NATURAL RESOURCES:
REQUEST FOR NONCONTESTED CASE PUBLIC HEARING**

The undersigned hereby requests a noncontested case public hearing on the (air pollution construction permit application submitted by _____ to the department on _____, 20__) (operation permit issued by the department to _____ on _____, 20__) under § 285.61(7)(a) or 285.62(45)(a), Stats., as appropriate. The requestor's interest in filing the request is:

The reasons why a hearing is warranted are:

Date: _____

Signature: _____

Name: _____

Address: _____

Source: Wisconsin Administrative Code § NR 490.01

**TO THE DEPARTMENT OF NATURAL RESOURCES:
REQUEST FOR NONCONTESTED CASE PUBLIC HEARING**

The undersigned hereby request(s) a noncontested case public hearing on the (solid waste facility permit application submitted to the department on _____, 20__) (hazardous waste facility permit application submitted to the department on _____, 20__) Wis. Stats. §289.26(1), as appropriate. The requestor's interest in filing the request is:

The reasons why a hearing is warranted are:

Date: _____

Signatures: _____

TO THE DEPARTMENT OF NATURAL RESOURCES:

The undersigned hereby requests that a hearing be treated as a contested case under Wis. Stats. § 227.42.

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 facts and the disputed facts are:

The statute or administrative rule other than § 227.42, Stats., which accords a right to a hearing is:

Date: _____

Signature: _____

Name: _____

Address: _____

Source: Wisconsin Administrative Code § NR 2.05(5)

TO THE DEPARTMENT OF NATURAL RESOURCES:

The undersigned hereby petition(s) for a review of the department's WPDES permit issuance to _____ entitled _____ and dated _____, 20____. The specific issue(s) requested to be reviewed (is) (are):
(Choose one of the following: Denial, modification, or suspension of a WPDES permit; reasonableness or necessity of any term or condition of any issued or modified WPDES permit; establishment of a proposed thermal effluent limit; or establishment of any proposed water quality related limit.)

The specific interest(s) of the petitioner(s) (is) (are):

The reasons why a hearing is warranted are:

Date: _____

Signature(s): _____

Verification (Witnessed by a Notary Public)

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: _____

Verification (Witnessed by a Notary Public)

Source: Wisconsin Administrative Code § NR 2.05(4)