Testimony before the Natural Resources Board on the proposed changes to Wis. Admin. Code ch. NR 150

Sarah Williams on behalf of Midwest Environmental Advocates

Good morning, and thank you for the opportunity to provide comments on the changes to NR 150 that the DNR has proposed for adoption. I am a staff attorney at Midwest Environmental Advocates, a nonprofit law center that provides legal and technical assistance to citizens working for clean air, clean water, and clean government. On behalf of Midwest Environmental Advocates, I oppose the adoption of the proposed changes to NR 150.

As we stated in written comments to the DNR, this proposed revision presents a sweeping change to DNR compliance with the Wisconsin Environmental Policy Act, or WEPA. It eliminates environmental assessments, which have been the means for the DNR to comply with WEPA for the past several decades. In its place the DNR proposed that a number of its permitting actions provide an equivalent analysis that eliminates the need for an environmental assessment. These permitting processes do not provide an equivalent analysis of environmental effects. The result will be lost opportunities for public participation in agency actions that affect the environment and permitting decisions that don’t comply with WEPA.

Most of the permitting processes that purportedly provide an equivalent analysis are narrowly focused on one type of environmental impact to the air, land or water. Thus, the permitting process does not provide an analysis and consideration of the full range of environmental effects as required by WEPA.

A number of equivalent analysis actions are currently type 2 actions for which an environmental assessment has historically been required. A few examples include certain air pollution control permits, approvals to construct, raise, enlarge or abandon a dam, and Wisconsin Pollutant Discharge Elimination System permits for new concentrated animal feeding operations.
From the perspective of an organization that is often involved in the permitting or approval processes that I just listed, these permitting processes do not provide an equivalent analysis as that is defined in the new rule. According to how that term is defined in the proposed NR 150, an environmental analysis must be a written analysis that considers the full range of environmental effects to the human environment, which include direct, indirect, secondary and cumulative changes to all aspects of ecosystems, and the relationship of people with that environment, including aesthetic, historic, cultural, economic, social, and human health-related components.

The permitting process for CAFOs, air pollution control permits, and dam construction approvals are much narrower. For example, WPDES permits for CAFOs, and the permitting analysis, address only water quality impacts from the CAFO. The rule that governs WPDES permit issuance to CAFOs does not include the consideration of the full range of environmental impacts not related to water quality, including how humans interact with the environment. This includes impacts on air quality and odor, as well as impacts to property values, cultural interests, traffic and quality of life. Oddly the DNR’s response to comments raising this issue asserts that the WPDES CAFO permit process does consider air quality, groundwater quantity, and impacts from traffic and noise. That is true only where the DNR has prepared environmental assessment, which under this new rule it will no longer do. Whenever citizens have raised these issues in comments to the DNR as a part of the WPDES permit decisions, the DNR has repeatedly stated that these issues of air quality and quality of life are outside the scope of the WPDES permitting process for CAFOs. Further, the DNR has failed to identify any specific authority or process in NR 243 that provides for the consideration of such environmental impacts. If the DNR plans to modify the permitting process for CAFOs, it should do so as part of this rule change.

As another example of an equivalent analysis action that isn’t, the approval process for the construction or removal of a dam provides that the project may be approved if it “preserves public rights in navigable waters.” The approval process does not envision the consideration of other environmental effects associated with the project such as impacts to fish and wildlife habitat, wetlands and groundwater.

Unless the DNR changes the way that it permits these projects, this proposed rule change will lead to permitting decisions that fail to comply with WEPA and will be subject to the cost and delay of litigation to resolve the tension between WEPA and the new NR 150. In order to remedy this change, DNR either needs to propose rulemaking to incorporate WEPA considerations into these permitting processes, or bring back the environmental assessment process.

We ask the natural resources board to reject the proposed changes to NR 150. Thank you.