

## The Difference Between State Statutes and Administrative Rules

I'd like to tell you a little bit about the difference between state statutes and administrative rules. As a good friend explained to me, the legislature is like an architect, crafting the overall design of the state's laws. The various state agencies, on the other hand, are the general contractors who figure out the details of what needs to be done to carry out the legislature's intentions.

When the state legislature enacts a bill into law, the law is assigned a statute number and published in the next edition of the *Wisconsin Statutes* (<http://www.legis.state.wi.us/rsb/stats.html>). But there has to be a way to enforce the law, and sometimes a new law is sufficiently vague that it requires interpretation. This is where the various state departments, or administrative agencies, come into play.

Currently there are 18 different administrative agencies within the State of Wisconsin's executive branch. Examples include the Department of Administration, the Department of Regulation and Licensing, the Department of Justice, etc. In the case of laws that affect natural resources, the state agency typically charged with administering the law is the Department of Natural Resources.

State departments have been given the authority to establish, or promulgate, rules to enforce the law. And, according to Wis. Stat. 227.01(13), once a rule is adopted, it "has the effect of law." For example, Wis. Stat. 281.12(1) requires the DNR to develop programs "for the prevention and abatement of water pollution and for the maintenance and improvement of water quality." After this law was passed by the legislature, the DNR promulgated rules to require certain specifications for sewage systems, industrial wastewater facilities and community water systems.

There is a whole section of the statutes devoted to how these types of administrative rules are to be promulgated. It is found in Chapter 227 of the *Wisconsin Statutes*, Subchapter II. In particu-

lar, Wis. Stat. 227.10(1) says, "Each agency **shall promulgate as a rule each statement of general policy and each interpretation of a statute** which it specifically adopts to govern its enforcement or administration of that statute." [emphasis added]

The idea behind this law is that the agency is supposed to formalize with rules how it chooses to interpret and enforce a statute. Any such rules are subject to review by the legislature and must go to a public hearing as a means of insuring that the spirit of the law is upheld by the rules.

In a political climate, however, it's possible that an agency might promulgate rules that are flawed and that the legislature might even go along with the flawed rules. So Wis. Stat. 227.11(2)(a) clearly states, "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, **but a rule is not valid if it exceeds the bounds of correct interpretation.**" [emphasis added] Ultimately, this could end up in the courts.

The various rules that have been adopted by the state's administrative agencies are found in the *Wisconsin Administrative Code*, and all of these rules are available on the internet (<http://legis.state.wi.us/rsb/code/>). The rules promulgated by the Department of Natural Resources are given the prefix "NR," which stands for natural resource rule. For example, Chapter NR 182 of the *Wisconsin Administrative Code* is the chapter of natural resource rules governing metallic mining wastes. Rules promulgated by the Department of Administration are given the prefix "Adm." Rules promulgated by the Department of Justice are given the prefix "Jus," and so on.

One thing to remember is that by law, all of these rules have to be consistent with the intent of the law. Wis. Stat. 227.10(2) specifically states, "**No agency may promulgate a rule which conflicts with state law.**" [emphasis added]

In a nutshell, the legislature empowered the various state agencies (like the DNR) to write *administrative rules*, subject to legislative review, to help ensure that any law passed by the legislature will be correctly interpreted and enforced. To gain a better understanding of how all of this works, take a look at the above essay entitled "The Difference Between State Statutes and Administrative Rules."

You would think that between having some solid environmental laws on the books and provisions to help ensure their correct interpretation and enforcement, we would have been able to stop Kennecott cold in its tracks. But no! Unfortunately, one thing that cannot be legislated is plain honesty. And the "consensus" lawyers showed no integrity whatsoever when hammering out the laws and administrative rules governing metallic mining in this

state.

You see, in July of 1981, the mining companies were given the "green light" to ignore state law and the Wisconsin Constitution. That's when the DNR endorsed a new set of natural resource rules dealing with metallic mineral mining. These "consensus" rules, which to this day are part of the *Wisconsin Administrative Code*, will be discussed in the next chapter. They allow mining companies to do just about anything they want, regardless of the consequences to our clean water supply.

## CD-ROM Reference

**CD 33-1.** "The Evolution of the Public Trust Doctrine and the Degradation of Trust Resources: Courts, Trustees and Political Power in Wisconsin," *Ecology Law Quarterly*, Spring 2000.