

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**David J. Stute, Director**  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## **CLEARINGHOUSE RULE 95-076**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### **2. Form, Style and Placement in Administrative Code**

a. Is there any reason why the defined term “applicant” is not used as the subject of the first sentence in s. NR 750.05 (1)?

b. Substantial portions of ss. NR 750.07 and 750.09 are identical. These sections could easily be consolidated and potential confusion would be avoided by that consolidation.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

The proper cross-reference should be substituted for “the NR 700 rule series” in s. NR 700.01 (2) and at other places where this phrase is used in the rule.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The exception added to s. NR 700.01 (2) is ambiguous. This exception is obviously meant to apply to “minimal department oversight,” but it could also apply to “efficiently move through the NR 700 rule series,” which would mean that if s. 144.765, Stats., applies, the process is meant to be inefficient. This problem can be resolved by substituting “requires department oversight” for “is applicable.”

b. “Unless” is preferable to “except if” in the Note after s. NR 700.02 (2). “Except if” and “exemption” in the same sentence has the potential for confusion.

c. “Should be” in ss. NR 724.02 (4) and 724.03 should be replaced by “shall be” to be consistent with s. NR 722.02 (2m).

d. Chapter titles are meant to be descriptive, and cross-references, such as that proposed for the title of ch. NR 750, should not be used. An appropriate descriptive phrase, such as “THE CONTAMINATED LANDS RECYCLING LAW” should be substituted.

e. The last sentence of s. NR 750.01 does not describe a “purpose” of the chapter. Perhaps the section should be titled “PURPOSE AND AUTHORITY”.

f. “Program” is changed to “Law” in the Note after s. NR 700.11 (3) (b). The terminology in the Note after s. NR 750.01 should be consistent. Also, the use of the word “program” throughout ch. NR 750 should be reviewed.

g. The definition of “good faith” is confusing and needs to be rewritten. Can it be broken down into paragraphs?

h. The second phrase in the second sentence of s. NR 750.03 (4) should be “but is not limited to” both for proper drafting and for consistency with s. NR 750.03 (5).

i. In the statutory language quoted after s. NR 750.03 (7), “owner” should be singular in the last sentence.

j. The purpose of ch. NR 750 is to establish fees for department oversight under s. 144.765, Stats. Section NR 750.05 (1) refers to an application fee. Is there any reason why the amount of this fee is not specified in the rule?

k. The word “program” as a modifier of “application” in s. NR 750.05 (1) is superfluous.

l. Is the last sentence of s. NR 750.05 (1) literally correct? This precludes the department from reviewing an application unless the specified fee is included with the application. Would the department refuse to review the application if the fee was submitted under separate cover a few days after the department receives the application?

m. Rather than “the program application,” the subject of the sentence in the Note after s. NR 750.05 (1) should be “form 4400-178.”

n. The phrase “submitted in accordance with sub. (1)” in s. NR 750.05 (2) (a) is superfluous.

o. The second sentence of s. NR 750.05 (2) (a) should be rewritten as follows: “The department may request any additional information needed to determine if the applicant is a purchaser.” Also, the department should consider whether it may also request additional information as needed to make the determination under s. NR 750.05 (2) (b) 2.

p. The third sentence in s. NR 750.05 (2) (a) [“This additional information...”] is superfluous.

q. The last sentence of s. NR 750.05 (2) (a), the first sentence of s. NR 750.05 (2) (b) (intro.) and the second sentence of s. NR 750.05 (2) (c) should be combined in a separate paragraph as s. NR 750.05 (2) (d).

r. Section NR 750.05 (2) (b) (intro.) is confusing, because both sentences refer to “approval to proceed” or “permission to proceed” but the approvals relate to different issues.

s. Section NR 750.05 (2) (b) 1. should be rewritten as: “The applicant is a ‘purchaser.’”

t. Section NR 750.05 (2) (b) 2. requires the department to determine that response actions “will be conducted in accordance with” applicable remedial action statutes and rules. It appears more relevant that the response action be designed in accordance with these requirements. It is difficult to understand how the department would be able to predict whether or not the applicant will comply with applicable statutes and rules.

u. Should “may” be replaced by “shall” in the first sentence of s. NR 750.05 (2) (c)?

v. It is not clear what purpose is served by the Note after s. NR 750.05 (2) (c). It appears that this Note may have some substantive effect and should be included as part of the rule.

w. It appears that the only reason s. NR 750.05 (3) requires the applicant to notify the department is to obtain a refund of any advance deposit as provided in s. NR 750.07 (5) (a) or 750.09 (4) (a). However, this provision is drafted as a mandatory requirement. Would the department commence an enforcement action if the applicant fails to provide the notice?

x. The Note after s. NR 750.05 (3) could be clarified to indicate why this statutory requirement is described at this point in the rule.

y. Section NR 750.07 (2) makes it clear that the department will commence charging for costs incurred after July 1, 1995. Section NR 750.07 (1) is superfluous. [Note: The comments regarding s. NR 750.07 also refer to s. NR 750.09. See comment 2, b, regarding the suggested consolidation of ss. NR 750.07 and 750.09.]

z. Section NR 750.07 (2) (a) and (b) could be combined: “Hourly wages and fringe benefits....”

aa. Section NR 750.07 (2) (a) to (d) refer to “assistance,” while s. NR 750.07 (2) (e), s. NR 750.01 and a number of other provisions of the rule refer to “oversight.” The terms should be used consistently. Also, some thought should be given as to whether the simple references to “assistance,” “oversight” and “indirect costs” are sufficient to determine which costs incurred by the department are charged to a particular project. Finally, why does s. NR 750.07 (2) (e) refer to “specific properties” but this phrase is not used in s. NR 750.07 (2) (a) to (d)?

ab. Do the department activities referred to in s. NR 750.07 (2) include the costs incurred by the department in entering an agreement under s. 144.765 (4), Stats.?

ac. Is there any reason to require a separate payment in s. NR 750.07 (4), or could the payment for permit or license fees be combined with the costs of department oversight?

ad. Section NR 750.07 (5) (a) provides for the return of all unused funds from the deposit upon case closure. Should the department retain fees or otherwise provide for the reimbursement of fees required for ongoing department activities under s. 144.765 (2) (a) 4. and 5., Stats.?

ae. Section NR 750.07 (5) (b) refers to reimbursement of the department under sub. (3), but sub. (3) relates to deposits of fees rather than reimbursements.

af. In s. NR 750.09 (title) and (1), should “on or” precede “after”?

ag. The first sentence of s. NR 750.11 (intro.) refers broadly to “all necessary response actions to restore the environment.” Should this sentence instead refer more specifically to the requirements of s. 144.765, Stats.?

ah. “Shall provide” in s. NR 750.11 (1) should be replaced by “provides.”

ai. The last phrase of s. NR 750.11 (3) appears to be unnecessary.