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CLEARINGHOUSE RULE 00−035

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 September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. NR 216.002 (12), "is" following "~~are~~" should be underscored and a comma should be inserted after the phrase "limited to."

b. In s. NR 216.27 (3) (j) 1., the use of slashed alternatives is not preferred drafting style. [See s. 1.01 (9), Manual.]

c. In the treatment of s. NR 216.43 (4) (a), there should be no comma before "or".

d. The references to s. NR 216.46 (4) (a), (f) and (g) in the three SECTIONS that amend these three paragraphs are all incomplete as none of them include the section in ch. 216 in the rule text.

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

The analysis accompanying the rule cites s. 283.33, Stats., as authorizing rule-making. This reference is unduly broad. The specific subsections within this section that establish the duty of the department to adopt rules, s. 283.33 (8) and (9), Stats., should be cited. In addition, if the department is relying upon either of the sections cited in the list of statutes interpreted as authority for promulgating this rule, then these statutes should be listed under the statutory

authority for the rule. Finally, the statutes interpreted should list all statutes that the department is interpreting in the rule.

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

a. In s. NR 216.002 (2), it appears that the word "occur" should be inserted after the first occurrence of the phrase "construction activities."

b. It is not clear who must make a significant change in discharge to waters of this state for the department to later designate additional municipalities for permitting under the inserted language in s. NR 216.04 (5) (b) (intro.).

c. The note following s. NR 216.06 (1) states that the cited construction site erosion control and storm water management model ordinances may help a municipality "obtain" the legal authority cited in sub. (1). Adoption of a model ordinance by a municipality does not confer legal authority on a municipality to regulate the specified storm water related activities; adoption of such an ordinance could be used to show that a municipality has asserted its legal authority to regulate these activities or to show the scope of its regulation of these activities.

d. In s. NR 216.06 (2) (a), "governmental" should be replaced with "government."

e. To be consistent grammatically with the introduction in s. NR 216.07, the text of s. NR 216.07 (7m) should be a dependent clause rather than a complete sentence.

f. A number of the provisions in the rule refer to "performance standards of" a cited section. See, for example, ss. NR 216.07 (7m) and 216.27 (3) (hm). A clearer word choice would be to refer to performance standards ***in*** the cited sections.

g. The department should review the treatment of changing from a tier 1 to a tier 2 general permit under ss. NR 216.21 and 216.23 (6) and (9) to ensure that the rule achieves the department's desired intent. Under s. NR 216.21 (2) (b) 10., a facility previously classified as a tier 1 discharger may be subsequently classified as tier 2 if the reclassification is done under s. NR 216.23 (6). However, s. NR 216.23 (6) only refers to a permittee covered by a tier 1 general permit requesting the department to consider converting its coverage to a tier 2 permit. The department's determination on this request appears to be made under s. NR 216.23 (9), but sub. (9) does not cross-reference s. NR 216.23 (6) nor is it referenced in s. NR 216.21 (2) (b).

h. The department should review s. NR 216.27 (3) (hm) to ensure that its applicability is clear. The text of par. (hm) indicates that it applies to areas that were subject to s. NR 151.11 and, thus, the area specified in s. NR 151.11 (1). However, the performance standards in s. NR 151.12, as referenced in par. (hm), are applicable as stated in s. NR 151.12 (1) (a), which specify exceptions not in s. NR 151.11 (1).

i. The reference to the three-year record retention period in s. NR 216.29 (7) is vague. When does the three-year period begin?

j. There should be a semicolon before "and" in s. NR 216.41.

k. The verb "manufactures" in the note following s. NR 216.42 (2m) appears to be an incorrect word choice. Should this word be "manufacturers" or "manufacturing"?

l. The reference to the "appropriate" regional office of the department in s. NR 216.43 (6) is vague. Does the department mean the regional office for the region in which the construction site activity will occur?