



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 05-014

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 January 2005.]

1. Statutory Authority

a. Section 93.90 (3) (a) 4., Stats., allows local approval of livestock facilities based on a building, electrical, or plumbing code that is consistent with state codes. The proposed rule adds “sanitation code.” It is not clear what is meant by “sanitation code.” The Department of Commerce adopts the plumbing code pursuant to s. 145.13, Stats., and the plumbing code includes administrative rules regarding private sewage systems in ch. Comm 83. Reference to a sanitation code does not appear to be necessary. See ss. ATCP 51.01 (20) (b) and 51.02 (2) (c).

b. What is the statutory authority for the cap on application fees and the prohibition on posting a bond or security in s. ATCP 51.30 (3)?

2. Form, Style and Placement in Administrative Code

a. The defined term, shown by quotes in s. ATCP 51.01 (1), should be “adjacent livestock facilities.” The same change should be made in other definitions such as s. ATCP 51.01 (7) and (16).

b. Overall, the rule makes effective use of notes. A few additional notes would be appropriate where definitions are based on cross-references, such as the definition of “direct runoff” in s. ATCP 51.01 (9). A note after this definition could repeat the cross-referenced definition.

c. Defined terms should be used consistently. In the definition of “livestock facility” in s. ATCP 51.01 (18), par. (a) should be rewritten to use the definition of “adjacent livestock facilities.”

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

a. The note after s. ATCP 51.12 (2) is an accurate description of the county shoreland zoning program under s. 59.692, Stats. However, this description does not apply to city and village wetlands zoning under ss. 61.351 and 62.231, Stats. Also, the Department of Natural Resources is in the process of a substantial revision of ch. NR 115, Wis. Adm. Code, regarding county shoreland zoning, and the description in this note may need to be changed later, or a reference to the process of redrafting those rules could be included in the note.

b. In addition to the statutes referenced in the note after s. ATCP 51.30 (3) (b), there may be other statutes that a political subdivision could use for an abandoned or improperly closed facility, such as the statutes regarding razing buildings or public nuisance.

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

a. The term “tax parcel” is used in s. ATCP 51.01 (1) and a number of other provisions in the rule. The use of this term should be reviewed carefully. The statutes and administrative rules do not require any standard method for delineating a tax parcel. Tax parcels are created by local assessors, and there is inconsistency statewide regarding what is a tax parcel.

b. The word “adjacent” is used at several places in the proposed rule, including s. ATCP 51.01 (1). This word does not have a precise meaning and it may be appropriate to define the word further. For example, are two parcels that touch at the corner adjacent?

c. The acronym in the note following s. ATCP 51.01 (4) should be “NRCS.”

d. The definition in s. ATCP 51.01 (5) refers to the “relevant” job class, without indicating how the relevance is determined. Also, can the subsection and paragraph in s. ATCP 50.46 be cited?

e. The definition of “cluster” in s. ATCP 51.01 (6) does not add much meaning to this word. “Group” is nearly a synonym. Also, “proposed” appears to be unnecessary.

f. It appears that “permit” should be added after “conditional use” in s. ATCP 51.01 (20).

g. Common drafting practice provides that a local ordinance is “enacted” rather than “adopted.” See s. ATCP 51.01 (21).

h. Consistent use of “operator” in relation to livestock facilities is generally effective in the proposed rule but is confusing in s. ATCP 51.01 (26) (b). Should “operator” be deleted in this paragraph?

i. The definition of “property line” in s. ATCP 51.01 (33) refers to tax parcels, which was discussed earlier in this section of the clearinghouse report.

j. “Bedrock” is used in s. ATCP 51.01 (37) (e). Should this term be defined?

k. “Substantially altered livestock structure” is defined in s. ATCP 51.01 (38). One of the changes that may make a livestock structure into a substantially altered livestock structure is an increase in the number of animal units, which would not in fact alter the structure. Also, the meaning of the word “material,” which is used twice in this definition, should be reviewed for clarity.

l. The note after s. ATCP 51.01 (44) (d) could be rewritten to explain that the definition of “water quality management area” is based on the statutory definition.

m. In the definition of “WPDES permit” in s. ATCP 51.01 (46), “pollutant” should be substituted for “pollution.”

n. In s. ATCP 51.06 (2) (c), “on” should be inserted before the bracketed material.

o. Does “surface area” in s. ATCP 51.12 (1) (a) (intro.) refer to the surface area of the structure or the surface area of land occupied by the structure?

p. Several places in the proposed rule, including s. ATCP 51.16 (4) (b), require the operator to submit a copy of the WPDES permit with the application for local approval. Is it clear that the operator in all cases will have obtained a copy of the WPDES permit prior to submitting the application for local approval?

q. Use of the term “waters of the state” in s. ATCP 51.20 (7) is somewhat awkward. That term, as defined in the proposed rule, includes such things as wells and groundwater that are not apparently covered by this provision of the rule.

r. Section ATCP 51.30 (1) requires a person “seeking local approval” for a livestock facility to file an application with the political subdivision. This seems to give the impression that in all cases a person who plans a new or expanded livestock facility must seek local approval. This provision could be redrafted to clarify that the application is only required if the political subdivision has a requirement for local approval.

s. “Decision-making” should be hyphenated in s. ATCP 51.36 (title), (intro.), and (7).

t. “Professional” in s. ATCP 51.36 (3) appears to be unnecessary.

u. The note after s. ATCP 51.36 (3) could be clarified regarding what is the “local law” that is referenced.