



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-112

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. Throughout the rule, current rules that are not affected should not be shown. For example, the treatment clause of SECTION 7 should state that “NR 151.002 (42) (c) is amended to read:” and only par. (c) should be shown. Also see SECTION 49. The entire rule should be examined for instances of this error.

b. The entire rule should be reviewed to correct use of introductory material that is inconsistent with s. 1.03 (2) (h), Manual. Introductory material should end with a colon and lead into the subunits that follow. For example, s. NR 153.17 (2) (a) 1. (intro.) should be subd. par. a. and the other two subdivision paragraphs should be b. and c. Subsection (3) (a) (intro.) should end with a colon and “the following information” should replace “administrative information required by this subsection.” In sub. (5), “(a)” should be deleted and the remaining paragraphs should be pars. (a) to (m); a similar change is needed in sub. (6). Similar changes to these are required in many places in the proposed rule.

c. In s. NR 151.003 (1), the material in the note following this subsection appears to be substantive and should be moved to the text of the rule. The same problem occurs in ss. NR 151.002 (25m), 151.003 (5), and 151.005.

d. In s. 151.003 (3) (a), “; and” should be replaced by a period.

e. In s. NR 151.015 (7), the phrase “, but is not limited to,” should be deleted. [See s. 1.01 (7) (c), Manual.]

f. In s. NR 151.07 (2), the first note, the material in the second sentence is substantive and should be moved to the text of the rule.

g. Since s. NR 151.121 is being created, material in sub. (2) (intro.) should not be underscored or stricken.

h. Material in the second note following s. NR 151.122 (2) is substantive and should be moved to the text of the rule. Also, “can” should be changed to “may”.

i. In s. NR 151.124 (4) (a) 2., the parentheses should be replaced by commas.

j. It appears that the note following s. NR 153.14 (8) would be more appropriately placed in the “Purposes” section of the rule, s. NR 153.10.

k. The title of s. NR 153.16 (1) should be shown in all capital letters.

l. In s. NR 155.26 (1), the word “section” should not be stricken through.

3. Conflict With or Duplication of Existing Rules

Since the rule repeals s. NR 155.24, references to that section should be corrected in s. NR 154.04 (25) (c) 2. and (39) (c) 2.

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

a. In the first note following s. NR 151.09 (7) (b), the rule should specify under what “other statutory authority” the department may take direct enforcement action as described in the rule. The same problem occurs in the note following s. NR 151.095 (8) (b).

b. In the note following s. NR 151.11 (5), “s. Trans 401.07” should replace “ch. TRANS 401.07”.

c. In s. NR 151.123 (2) (intro.), “section” should replace “paragraph.”

d. In s. NR 153.205 (1), the phrase “under s. NR 153.145” should be added after “notice of discharge projects”.

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

a. In the explanation of agency authority section of the rule analysis, in the last sentence, “provide” should be changed to “provides”. In the plain language analysis section, in the second sentence of the second-to-last paragraph, “on” should be deleted.

b. In s. NR 151.002 (14g) and (18), the phrase “notice of intent” is vague and should be more specific. In sub. (14r), “regulatory authority” should be more specific. In sub. (16m), if the department maintains a list of waters that do not meet a federal water quality standard as provided in the rule, is that list available to the public? If so, a note should be added stating how to obtain the list. In sub. (25), the word “different” as used in this definition is confusing; “different” level of achieving a performance standard as compared to what? In sub. (38c), the

colon should be changed to a period. In sub. (48m), the phrase “with its own forces or by force account” is unclear and should be changed to clarify the department’s intent.

c. In s. NR 151.006, “, or MEP,” should be deleted. In addition, the wording of this subsection is awkward--does this mean that an applicant has shown that it meets the performance standard to the maximum extent practicable only if the applicant uses the best available technology and other items listed?

d. In s. NR 151.015 (15s), “fields” should be changed to “field”.

e. In s. NR 151.015 (18) (c), “direct conduits” should be changed to “a direct conduit”. Also, “ground water” should be changed to “groundwater”.

f. In s. NR 151.015 (25), “applicable agricultural standards” is vague and should be clarified.

g. In s. NR 151.03 (2), it appears that “the channel” should be changed to “a channel”.

h. In s. NR 151.05 (2) (a), the requirements apply to “new or substantially altered manure storage facilities” and in sub. (2) (am), other requirements are created for “storage facilities that are constructed or significantly altered on or after the effective date of this rule”. The department should review all of the subsections of s. NR 151.05 to clarify what requirements apply to new or substantially altered manure storage facilities and the dates on which those requirements apply or will apply.

i. In s. NR 151.055 (2), the rule should clarify what “significant discharge” of process wastewater means.

j. In s. NR 151.125, sub. (3) (a), it appears that the term “non-transportation facility” should be defined.

k. In s. NR 151.126, the term “fueling and vehicle maintenance areas” should be defined. In addition, the material in the note is substantive and should be moved to the text of the rule.

l. The material in the first note following s. NR 151.129 (1) (b) is substantive and should be moved to the text of the rule.

m. In s. NR 151.14 (1) (e), it appears that “silviculture activity” should be defined.

n. Under s. NR 153.13 (1), federally recognized tribal governing bodies are eligible to receive funding for projects under this chapter. Therefore, it appears that the definition of “runoff management grant agreement” in s. NR 153.12 (29) should be changed to include a federally recognized tribal governing body. A similar issue occurs in s. NR 153.17 (2) (b).

o. In s. NR 153.15 (2) (j) 3., the rule should clarify what “existing urban land use or infill development” and “existing development” mean.

p. In s. NR 153.16 (2) (c), “indirect project costs” should be clarified.

q. In s. NR 153.17 (2) (a) 1. a., the rule should specify which types of “small-scale projects” this subsection applies to. A similar problem occurs in sub. (2) (a) 1. b, and s. NR 153.19 (2) and (3). In sub. (5) (a), it is unclear what a “large scale nonpoint source project” is.

r. In s. NR 153.19 (2), the note contains substantive material and should be moved to the text of the rule. In the note, “will” should be changed to “shall”. In sub. (4) (b) 4., it appears that “interim” should be changed to “initial”. The same problem occurs in sub. (4) (c) 4.

s. In s. NR 151.20 (2) (d) 3. c., “The department may” should be deleted and “establish” should be capitalized. In sub. (2) (d) 3. d., “The department may” should be deleted and “offer” should be capitalized. In addition, if the department intends that the material in sub. (2) (d) 3. e. be mandatory, the material should be moved to a different subsection. If the material is intended to be permissive, then “The department shall” should be deleted and “offer” should be capitalized. In sub. (3) (c), the rule should clarify which types of “large scale project” are included. This problem occurs throughout s. NR 153 and the entire rule should be checked. In sub. (5) (c) 1. and 2., the commas should be replaced by periods.

t. In s. NR 153.205 (2) (c) 1. to 6., periods should be added at the end of these subdivisions. The material in the first note following sub. (3) (b) 2. c. is substantive and should be moved to the text of the rule.

u. In s. NR 153.21 (2) (b), the rule should specify when the grant period begins; for example, from the date the department transmits the grant agreement to the grantee.

v. In s. NR 153.22 (3) (f), the phrase “and prohibitions of a previously complying parcel” is vague and should be clarified. In sub. (3) (p), it is unclear what a “full-farm inventory” means. In sub. (9), it is unclear what a “practice operation and maintenance period” is.

w. In s. NR 153.25 (3), it is unclear what “the eligibility provision of the approved grant application and the runoff management grant” is referring to. In sub. (4) (title), “DNR” should be changed to “DEPARTMENT”.

x. In s. NR 153.28 (1) (b) 1., the phrase “performance standard or prohibition” is vague and should be clarified.

y. In s. NR 155.17 (2) (b) 14., “period(s)” should be changed to “period or periods”.

z. In s. NR 155.20 (1) (c), it appears that the rule should specify November 1 “of each year”. It also appears that the first instance of “based” should be deleted.

aa. In s. NR 155.21 (2), it appears that the rule should specify when the grant period begins.