WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 11-005

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. In the second sentence of s. NR 419.02 (8e), the term "individual drain system" should be shown in quotation marks.

b. In s. NR 419.02 (15t), "organics" is not a defined term. Is it the same as either "volatile organic compounds" or "organic compounds", both of which are defined? If so, the appropriate term should be used.

c. Presumably, in the definition of "temperature monitoring device" [in s. NR 419.02 (15p)], the phrase "whichever number has the highest absolute value" applies to pars. (a) and (b). In that case, it belongs in the introduction, which could be worded something like the following: "…having a minimum accuracy of whichever of the following has [or "produces"] the highest absolute value:".

d. Section NR 419.045 (3) (intro.) should end with a colon.

e. In s. NR 419.045 (3) (a) 1., the phrase "to qualify for the control option available under this paragraph" could be deleted.

f. In s. NR 419.045 (4) (a) 1., "correction" should be changed to "corrective".

g. Section NR 419.045 (4) (a) 2. a. is not in the same format as the following subdivision paragraphs. It could be reworded as follows: "An access door or other opening is left open when not in use". The same applies to subsequent, parallel provisions.

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h. The rule makes extensive use of the passive voice, many instances of which are easily avoided. For example, in s. NR 419.045 (4) (d) (intro.), "The following records shall be retained…" should be written as "The owner or operator of a waste management unit shall maintain the following records…". Section NR 419.045 (9) provides a good model for the use of active voice. [Note that s. NR 419.045 (4) (intro.) correctly uses the active voice, but makes it more cumbersome than necessary; the phrase "that is subject to requirements under sub. (2) or (3)" is duplicative of the applicability statement in s. NR 419.045 (1). By the same reasoning, in s. NR 419.045 (7) (intro.), it appears that "a facility subject to this section" could be replaced with "a waste management unit".]. The entire rule should be reviewed for the use of active versus passive voice.

i. The effective dates in s. NR 421.05 (1) (a) and (b) (intro.) are long past. Are they of any continuing pertinence? If not, this rule is an opportunity to repeal them. The same applies to subsequent, parallel provisions.

j. It appears that the facilities identified in s. NR 421.05 (1) (c) are a subset of the facilities identified in s. NR 421.05 (1) (a). If this is correct, are the requirements imposed under par. (c) in addition to the requirements imposed under par. (a), or in place of them? If it is the former, this could be clarified by inserting at the beginning of par. (c): "In addition to the requirements under par. (a),"; if it is the latter, this could be clarified by inserting at the beginning of par. (a): "Except as provided in par. (c),". The same applies to subsequent parallel provisions.

k. Section NR 421.05 (3) (a) (intro.) should be amended to state that par. (b) applies to the specified facilities, not pars. (a) and (b). The same applies to subsequent parallel provisions.

l. Section NR 421.05 (4) makes incorrect use of the introduction format. An alternative way to draft that provision is as follows:

> NR 421.05 (4) RECORDKEEPING. (a) Except as provided in par. (c) and in addition to the applicable recordkeeping requirements of s. NR 439.04, the owner or operator of a synthetic resins manufacturing facility shall collect and record the following information, as applicable:
>
> 1. Total volume of virgin solvents used in each month.
>
> 2. VOC content in kilograms per liter or pounds per gallon [of the virgin solvents used in each month?].
>
> 3. VOC composite partial vapor pressure in mm Hg at 20º C [of the virgin solvents used in each month?].
>
> (b) The owner or operator of a synthetic resins manufacturing facility shall maintain the information under par. (a) at the facility for a minimum of 5 years and shall make the information available

> to an authorized department representative at any time during normal working hours.
>
> (c) The provisions of par. (a) do not apply to solvent or solvent solution that is used….

Note the minor wording changes included in this alternative. The same, in general, applies to subsequent parallel provisions.

m. The treatment clause of SECTION 26 lacks the statement that the provision is being renumbered.

n. The treatment clause of SECTION 36 should read: "NR 422.05 (1) is renumbered NR 422.05 (1) (intro.) and amended to read:". The same applies to subsequent parallel provisions.

o. The rule creates several new tables in ch. NR 422 and numbers all but one of them, Table 1. The tables should be numbered sequentially in the chapter, accounting for the several tables already in the chapter. Any rule text referring to a table should also reflect the correct numbering.

p. The initial applicability provisions in s. NR 422.05 (3) (intro.) should read: "Beginning on the first day of the 13th month after the effective date of this subsection… [LRB inserts date],". The same applies to subsequent, parallel provisions. Alternatively, these clauses could be drafted collectively in a single, nonstatutory initial applicability provision at the end of the rule. [See s. 1.02 (3m), Manual.]

q. It appears that SECTION 56 should renumber all of s. NR 422.127 (2), rather than only s. NR 422.127 (2) (intro.).

r. The treatment of s. NR 422.14 results in a clear statement of what subs. (2), (3), and (5) apply to and a clear statement of what sub. (4) does ***not*** apply to, but ***no*** statement of what sub. (4) ***does*** apply to. It appears that a par. (b) is missing from sub. (1), similar in substance to s. NR 422.05 (1) (b).

s. The note following s. NR 422.144 (4) (a) 1. seems to be more than explanatory; it is essentially defining a term that will determine the applicability of certain requirements. It appears this should be placed in the text of the rule, rather than a note.

t. SECTION 74 should read:

> SECTION 74. NR 422.15 (1) (a) to (k) are renumbered NR 422.15 (1) (cm) 1. to 9.

u. In SECTION 78, s. NR 423.02 (8) should be renumbered NR 400.02 (85m), not (86m).

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

a. In s. NR 421.07 (3) (a) 5. and (4) (a) 5., should "this section" be "this subsection"?

b. In s. NR 422.05 (1m) (f), "subd." should be changed to "sub.".

c. In s. NR 422.08 (4) (b) 3., the two occurrences of "par." should be changed to "sub.".

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

a. In s. NR 419.045 (4) (e) g., what are "the appropriate operating parameters," and who determines this?

b. The definition of "wipe cleaning," in s. NR 421.02 (23), does not seem necessary. In addition to its meaning being quite obvious, the term is used only twice in the rule, apart from the definition. Is there any possibility of the term being misconstrued?

c. In s. NR 421.05 (2m) (a) (intro.), "except as provided in par. (b)" should be moved to the beginning of the sentence. Also, this provision states that an owner or operator "shall use *at least one* of the following cleaning methods…" (emphasis added). It is unclear whether there are circumstances in which more than one cleaning method would have to be used. If the owner or operator is not required to use more than one method, "at least one" should be replaced by "any". If the owner or operator is required to use more than one method under certain circumstances, those should be specified.

d. In s. NR 421.05 (2m) (a) 1., the phrase "less than of equal to 8 mm…" should be "less than or equal to 8 mm…". The same applies to subsequent parallel provisions.

e. Since the term "screen reclamation" is still used in the definition of "screen printing unit" and, indirectly, in s. NR 422.145 (2) (d), it appears that the definition of that term, which is repealed in SECTION 30, should be retained.

f. In s. NR 422.05 (1m) (a) to (h), it might be helpful to group together the exemptions that pertain to all of sub. (3) [currently in par. (a), (b), and (h)], followed by those applicable just to certain paragraphs of sub. (3). Note that this suggested grouping is done in s. NR 422.145 (1m).

g. In s. NR 422.05 (1m) (c), should "performance laboratory tests" be "performing laboratory tests"? The same applies to subsequent parallel provisions.

h. In s. NR 442.135 (1) (b), how will it be determined that the use in aggregate "never exceeds" 500 gallons, until the year is over? Also, what would happen if that limit were ever exceeded in a year? It appears that "per" should be replaced by "in a".

i. The note following s. NR 422.144 (1) (a) is confusing, the last clause, in particular. Breaking it into two sentences may improve the clarity.

j. Should s. NR 422.144 (2) (intro.) state that the specified retention factors and capture efficiencies ***shall*** be used? If a person chooses not to use them, what is the alternative?

k. The wording of s. NR 423.037 (2) (a) 4. k. and subsequent, parallel provisions is awkward. Would it be correct to revise the inserted language to say "excluding use of industrial adhesives and adhesive primers"?