



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-099

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 November 2011.]

2. Form, Style and Placement in Administrative Code

a. The department should revise the enumeration of sections affected by the rule in conformance with the style prescribed by the Manual. For example, write “to repeal...812.08 (4) (a) 4., 5., 6., 8., 9., and 10., and (b) 13.” rather than repeating “812.08 (4)” before each rule subunit.

b. Page 5 of the rule-making order appears to amend the title and table of contents of ch. NR 146, Wis. Adm. Code. First, this must be done in a numbered section of the rule with the following relating clause: “SECTION 1. ch. NR 146 (title) is amended to read:”. Second, the table of contents actually is not part of the rule and should not be amended; this is accomplished by amending the titles of the individual sections of the chapter. If the department wants to show the table of contents, as affected by this rule, it can do so in the analysis.

c. To accommodate the new definitions of “advance notification” and “certificate of supervision”, the existing definition of “competent engineer” should be renumbered s. NR 146.02 (1s) and the new definitions should be numbered s. NR 146.02 (1e) and (1m).

d. The rule should use only one term for any meaning. For example, the department should choose either “driven point well” or “sand point well” and use the chosen term throughout the chapter. If desired, a note could be included to indicate that the defined term is also known commonly by the other term. See, also, the use of definitions of “potable water” and “water for human consumption”.

e. Most of the definitions created by SECTION 6 and the following sections appear to be unnecessary, as the meaning of the words is fairly obvious. The same is true for some of the definitions created in s. NR 821.07.

f. What are the required samples and forms that are referred to in the definition of “property transfer well inspector”?

g. In the various subsections of s. NR 146.04, the department should choose between “No person may...” and “To be eligible for...”, and then use the selected format consistently. In addition, subs. (6) and (7) have a format that is quite different from the others.

h. The relating clause of SECTION 18 should indicate that that SECTION also amends the title of s. NR 146.04 (2). The error occurs repeatedly throughout the rule.

i. Presumably, s. NR 146.04 (2) (h) should specify that applicants have completed coursework in *each* of the listed areas. Also, that paragraph should start with: “Except as provided in par. (j),”.

j. The treatment of s. NR 146.04 (2) (i), as renumbered, is incorrect: it should start with “~~Demonstrate~~” and the words “the applicant shall demonstrate” should be underscored. However, it does not follow grammatically from the introduction. The final text (omitting striking and underscoring) should read: “After fulfilling pars. (a) to (h) and receiving a notice of eligibility from the department, demonstrate his or her...”. [cf. s. NR 146.04 (3) (c).]

k. The substance of s. NR 146.04 (2) (m) does not follow from the introduction to that subsection; in this case, it should be drafted as a separate subsection. [cf. s. NR 146.04 (3m).]

l. There are a number of other instances in which words that should be stricken are not, words that should be underscored are not, or words simply disappear. See, for example, ss. NR 146.04 (2) (i), 146.05 (1), 146.06 (intro.), 146.07 (3), 146.08 (2) and (3), and 812.07 (38), (57m) and (67). This list is illustrative only, not exhaustive. The entire rule must be reviewed minutely to find and correct these and many other errors. While the drafting in ch. NR 812 is considerably better than that in ch. NR 146, it, too, should be reviewed for these errors.

m. The notation “(title)” should be added to both the treatment clause and text of SECTION 23. This error also occurs repeatedly throughout the rule. Throughout the rule, the style used for titles should conform to the style prescribed by the Manual.

n. The treatment clause of SECTION 27 states that it is creating s. NR 146.04 (3) (d), (e), and (f). However, par. (f) is missing.

o. It is not clear why the rule numbers the subsection created by SECTION 32 as s. NR 146.04 (5m), when it is not being inserted between two existing subsections.

p. Section NR 146.04 (6) refers to “an individual or person”. Since the rule creates a definition of “person”, which includes individuals, the word “individual” should be omitted here. See also s. NR 146.07 (4), and review the rule for other such errors.

q. In s. NR 146.04 (7), is the phrase, “Water Well Drilling Rig Operator” intended as a title or an introductory clause? As applied in this section and throughout the rule, the department should review the manual for proper usage and style of titles and introductory clauses.

r. For ease of reading, and to make sure the drafting is correct, the treatment of s. NR 146.05 (1) should strike everything in the last sentence from the words “prior department” to the end of the sentence, and then present the new text in a single, underscored phrase.

s. The treatment and formatting of s. NR 146.07 (2) (b) should be revised. The department should consult the rules manual for guidance.

t. The rule, as a whole, is highly inconsistent in format, such as alignment and indentation of text.

u. SECTION 45 is completely inconsistent with drafting format, and the intended numbering created by that SECTION is unclear.

v. In the treatment of s. NR 812.02 (1) (b), “ch.” should be replaced with “~~ch.~~ chs.” and “; and” should be replaced with “; ~~and.~~”.

w. In s. NR 812.07 (6), “is amended to read:” should be deleted.

x. The new definitions of “batch chlorination”, “chemical conditioning”, and “DR” include substance, which should be put in the text of the rule. Also, a closing quotation mark is needed after “conditioning”.

y. The second note following the definition of “pump installing” describes exceptions to the definitions. Since notes are not a part of the rule, they are not enforceable. If these exceptions are not clear from the definition, the department may want to move them into the definition.

z. SECTION 72 amends all of s. NR 812.07 (80), not just the introduction, so the treatment clause should indicate this. Also, the last phrase of the introduction should read: “A public water system includes all of the following:”. Paragraphs (a) and (b) should be amended to begin with the word “Collection”. Paragraph (a) should also be amended to replace the final comma and word “and” with a period.

aa. The three definitions created by SECTION 79 should be shown in their proper alphabetic order.

bb. References to s. NR 812.11 (1) (intro.) in SECTION 122 should be replaced with s. NR 812.11 (1). Also, in that provision, should the word “well”, preceding the word “abandonment” in the current rule, be stricken?

cc. In s. NR 812.13 (3) (b) 7., the change from “shall” to “may” means that the well driller may do either of the things described, but is not required to do anything. If the intent is to require that the well driller do one of them, the choice being left to the well driller, “shall” should be retained, and the word “either” could (but need not) be inserted between “be” and

“contained”. This comment applies as well to ss. NR 812.29 (2) and 812.31 (4) (e), and perhaps other provisions.

dd. Because notes are not part of the rule, the note following s. NR 812.26 (2) (a) 4. is not sufficient to create the exceptions that it describes; this can only be done in a substantive rule provision: “Except for seasonal..., within 90 days of..”.

ee. The “A” before the last piece of underscored text in s. NR 812.31 (2) (a) should be underscored, also.

ff. SECTION 159 creates s. NR 812.32 (4) (e) and (f), although there are no pars. (d) or (e) in current law. Is there a reason for skipping over these paragraphs? Also, why create par. (f) 1. and 2. rather than pars. (f) and (g)? Similarly, SECTION 162 creates s. NR 812.32 (8) (d) although there are no other paragraphs in that subsection.

gg. SECTIONS 166 and 179 should indicate the section of the Natural Resources Code in which the figures are located.

hh. In the treatment of s. NR 812.36 (3), the notation “(intro.)” is not necessary, since this provision is being created, rather than amended. However, the “(intro.)” should end in a colon.

ii. In SECTION 178, use of the introductory clause should conform to the Manual.

jj. The treatment clause of SECTION 179 should not include underscoring.

kk. Section NR 812.42 (2) (intro.) should end in a colon. Section NR 812.42 (2) (d) 1. (intro.) should end with the phrase “all of the following apply:”. The subdivision paragraphs that follow should all begin with capital letters and end with periods.

ll. Section NR 812.42 (6) (a) 2. a. should start with a capital letter. Note that this would be drafted as follows:

NR 812.42 (6) (a) 2. For off-set pump installations,~~any~~:

a. Any buried section....

mm. It is unclear what the underscored material is, following s. NR 812.42 (7) (b) 2.; is it a third subdivision or a note? It should be properly identified.

nn. In s. NR 812.42 (8) (c), the amendment of the word “plate” should be as follows: “~~plate~~ split-plate”.

oo. In s. NR 812.42 (9) (a) 1., the words “filled and sealed” are both underscored and stricken.

pp. In s. NR 812.42 (9) (a) 3., there should be no period before “~~unless otherwise accepted by the department~~” and the period following that language should not be stricken.

qq. Section NR 812.42 (10) (title), (11) (title), (12) (title), and (13) (title) are not formatted correctly. [cf. s. NR 812.42 (9) (title).]

rr. Section NR 812.42 (11) (b) should not include the statements that the requirements of that paragraph apply no matter when a well was constructed; by not saying this, it is clearly implied. The department can clarify this in a note, if desired.

ss. Also in s. NR 812.42 (11) (b), “It is no longer permitted to...” should be replaced with the simple prohibition: “A pump installer may not...”.

tt. Section NR 812.452 (7) and (11) (b) 3. and 4. do not follow from the introductory language. They should be renumbered in another subunit of that subsection, and revised as necessary.

uu. A title should be provided for s. NR 812.42 (11) (f).

vv. In s. NR 812.42 (11) (f), “(a) through (f)” should be replaced with “pars. (a) to (f)”.

ww. Section NR 812.44 (1) (e) does not create a substantive requirement, and so appears to more properly belong in a note.

xx. Like SECTION 45, SECTION 198 is completely inconsistent with drafting format, and the intended numbering created by that SECTION is unclear.

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

a. In the definition of “engaged in the business of”, the inserted “and”, before “supervising”, appears superfluous.

b. In the second note following s. NR 146.02 (5), the words “by a water well driller” should be omitted; as written, it implies that the installation of a temporary test pump, etc., by someone who is *not* a water well driller *is* included in the definition.

c. It is not clear in ch. NR 146, as affected by this rule, who is required to obtain a registration and who is required to obtain a license. Section NR 146.03 (1) states that no person (defined broadly) may engage in the business of water well drilling or pump installing without a registration *or* license, but does not indicate which is required in what circumstances. Section NR 146.03 (2) lists exceptions to the registration requirement, but still does not say whether the persons not covered by the exceptions must have licenses or if they may get registrations, instead. Section NR 146.04 answers some of these questions, but still indicates instances in which a person must have a license *or* registration. It appears that s. NR 146.03 should be restructured to clearly state who must get a license and who must register, while s. NR 146.04 specifies the process for obtaining them.

d. There also appears to be some confusion between natural persons and businesses. The exceptions in s. NR 146.03 (2) all apply to natural persons, but they are exceptions to the requirement to have a *business* registration. There is no mention in the rule of a distinction between registering as a business or as an individual. If there is a difference, it should be clearly explained, including who gets what specific license or registration; if there is not, then all references to “business registration” should be changed to “registration”. Again, this is only partially clarified in s. NR 146.04.

e. The grammatical construction of s. NR 146.04 (2) (b), while correct, is awkward and confusing on first read. It may be better to use the current structure: “Have operated...”.

f. What is the “2- or 3-year experience period” that s. NR 146.04 (2) (g) refers to? It should be identified by cross reference, such as “the 2-year experience period required under par. (a).”

g. The word “shall” should be omitted from s. NR 146.08 (1).

h. A period is needed at the end of s. NR 146.08 (6) and the comma at the end of sub. (7) should be shown as a period, as it is in current law. The commas at the ends of s. NR 146.08 (14) and (15) should be periods.

i. Section NR 146.08 (8) to (13), (18), and (19) should be revised to follow grammatically from s. NR 146.08 (intro.), in a manner similar to the other subsections of that section.

j. The first comma in s. NR 146.08 (8) should be omitted.

k. When referring to more than one section, the notation “ss.” is used, rather than “s.”. See s. NR 146.08 (9).

l. By adding verbs to s. NR 146.09 (1) (a) to (d), it becomes necessary to add subjects, as well, for example, “The licensee made a material misstatement...”.

m. Before the colon at the end of s. NR 146.09 (2) (intro.), the rule should insert “all of the following apply” and “; and,” at the end of par. (c) should be replaced with a period. This is a common formatting error in current rules, which could be corrected through rule-making orders such as this.

n. Section NR 146.09 (2) (b) to (d) and (3) (b) refer to persons who have been revoked or suspended; it is the license, rather than the person, that has been revoked or suspended. The rule provision should be rewritten, in the manner of s. NR 146.09 (2) (intro.) and (3) (a), (c), and (d).

o. For correct alphabetical order, the definitions of “pressure system”, “property transfer well inspection”, and “property transfer well inspector”, should be numbered s. NR 812.07 (77m), (78g), and (78r), respectively.

p. In s. NR 812.26 (2) (c) (intro.), is the 30-day department notice a notice *from* the department or *to* the department?

q. The inserted “shall” in s. NR 812.26 (3) does not seem necessary; the inserted comma preceding it is incorrect and should be omitted.

r. It is never necessary to use the phrase “but not limited to” following “including”, as in ss. NR 812.26 (6) (f) and 812.32 (1) (f) and (4) (f), because “includes” implies “not limited”.

s. In s. NR 812.26 (7) (a) 5., would it be helpful to specify what constitutes perforation? Could an argument be made that one or a few holes through a wall meets this requirement?

- t. In s. NR 812.27 (6), the second occurrence of “be analyzed” should be omitted.
- u. The treatment of s. NR 812.34 (intro.) leaves one period too many. The period at the end of the last stricken sentence should be stricken, also.
- v. In s. NR 812.42 (1) (title), a comma is needed following “pump installation”.
- w. The second sentence of s. NR 812.42 (1) (b) 1. should be revised in one of two ways: either the word “either” should be omitted; or the second occurrence of “a well constructed” should be omitted.
- x. It appears that s. NR 812.42 (2) is using the word “alcove” to mean two or more different things. The department should select unique terms for each meaning, define them (if they need defining), and use them consistently.
- y. In s. NR 812.42 (6) (a) 2., instead of stating how a well *may have been installed*, state what standards the well must meet now. (With few exceptions, rules are written in the present tense.)
- z. There is one “and” too many in s. NR 812.42 (6) (b) 4.
 - aa. It is doubtful the department intends to require *non*vermin-proof caps, as appears to be stated in s. NR 812.42 (8) (a) (intro.). What is the department’s intent with regard to this provision?