



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-125

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 December 2014.]

1. Statutory Authority

After the statement of scope was approved but before this rule was submitted to the Rules Clearinghouse, the Legislature enacted 2017 Wisconsin Act 369, which, among various other changes to state law, specified that “[a] settlement agreement, consent decree, or court order does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules”. [s. 227.11 (3) (b), Stats.] In the rule analysis, the explanation of statutory authority indicates that the department concluded it could not satisfy the statutory threshold for creating site-specific water quality criteria under s. 281.15 (2) (c), Stats., but is nonetheless proceeding with the rule promulgation pursuant to court order. As described, that situation appears to fall within the scope of rule promulgations prohibited under Act 369. Accordingly, the department should either: (a) revise its explanation of statutory authority to assert a legal foundation for rulemaking derived from s. 281.15, Stats., rather than the court order; or (b) withdrawal the rule promulgation and commence further judicial proceedings in light of the prohibition under Act 369.