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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95-046

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 October 1994.]

2. Form, Style and Placement in Administrative Code

The rule creates s. ILHR 50.115. The rule should indicate whether this section is to be placed in subch. III or IV of ch. ILHR 50.

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

a. Section ILHR 50.115 (1) refers to a requirement of federal law. The appropriate citation to federal law should be included in the rule.

b. The proper reference to the Department of Natural Resources' (DNR's) publication in s. ILHR 50.115 (1) is WDNR Pub. WR-222, November 1993 Revision [see s. NR 216.46 (2)]. The proposed rule should include a note indicating where copies of the handbook may be obtained. Has the department complied with the requirements of s. 227.21 (2) regarding incorporation by reference?

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

a. Section ILHR 50.115 (1) is intended to apply until replaced by a subsequent administrative rule. The first phrase in s. ILHR 50.115 (1), “Until permanent rules are established by the department under s. 101.1205 (1), Stats.,...” is unnecessary. When rules regarding construction site erosion control are subsequently adopted, s. ILHR 50.115 can be amended or repealed if necessary. In order to provide information about the intentions of the department, a note can

be included indicating the expectation regarding replacement of s. ILHR 50.115 with more comprehensive erosion control rules.

b. The entire rule would be substantially easier to understand if drafted in the active voice. For example, the first sentence of s. ILHR 50.115 (1) would be clarified by rewriting it in the form: “The landowner shall file a notice of intent....”

c. Under s. ILHR 50.115 (1), the landowner is required to file the notice of intent. Are there circumstances in which it may be appropriate for the general contractor to file the notice of intent rather than the landowner? What if a lessee is developing the property pursuant to a long-term lease and the landowner is not involved in the construction project?

d. The threshold for providing the notice of intent is the disturbance of five or more acres of land. The first sentence of s. ILHR 50.115 (1) refers to “construction of a public building...disturbing five or more acres of land.” Is it the department’s intent that “disturbing” refers to the construction project rather than the public building? If so, this sentence should be clarified. As drafted, this sentence might be construed not to require notice of intent if the building disturbs less than five acres of land, even though the construction project disturbs five or more acres of land.

e. It is not clear why a construction site erosion control plan must be prepared prior to submitting the notice of intent, as required in s. ILHR 50.115 (1). The rule does not require a construction site erosion control plan to be submitted to a municipality or the department.

f. Section ILHR 50.115 (2) refers to certified municipalities. However, s. ILHR 50.21, which describes the process for becoming a certified municipality, also permits counties to obtain certification. Should “authorized to review plans and perform inspections” be replaced by “and counties under s. ILHR 50.21”?

g. Section ILHR 50.115 (2) references a DNR form. Pursuant to s. 227.14 (3), Stats., a note should be included in the rule describing how a copy of the form may be obtained.

h. Section ILHR 50.115 (3) requires the notice of intent form to be completed in accordance with the instructions. Does the form itself contain the instructions? Are the instructions attached to the form or otherwise obtainable from DNR? Or are the instructions contained in ch. NR 216, Wis. Adm. Code?

i. Should s. ILHR 50.115 (3) require the form to be filed prior to “commencement of” construction?

j. It appears to be a requirement of s. ILHR 50.115 (3) that a notice of intent be filed twice if the form is initially filed prior to the submission of plans for construction. Is this correct? What purpose is served by the dual submission of the form?

k. Section ILHR 50.115 (4) requires the department to provide “information” related to the notice of intent to DNR. Does this mean that the department will provide a copy of the completed forms to DNR or a summary of the information contained in the form?

1. In s. ILHR 50.115 (5), the phrase commencing with “for” and ending with “land” is unnecessary.

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

The analysis states that federal law requires the owner to file a notice of intent with DNR for construction sites disturbing five or more acres of land until rules are adopted by the Department of Industry, Labor and Human Relations. The analysis also indicates that the department will adopt construction site erosion rules in the future. Does s. ILHR 50.115 satisfy the requirements of the federal law?