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CLEARINGHOUSE RULE 97−087

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

a. Section NR 590.02 (6) should be renumbered s. NR 590.02 (6) (a) and the material created in SECTION 3 of the rule should be numbered s. NR 590.02 (6) (b) to (e). The same modification should be made to the treatment of s. NR 590.04 (1) (c).

b. Separate provisions of the Administrative Code should be treated in their numerical order in the code. [See s. 1.04, Manual.] This rule is frequently violated in this rule-making order. For example, the treatment of s. NR 590.04 (2) (d) 2. should come after the creation of s. NR 590.04 (1) (c) 1. to 6. Other examples of this error are found in SECTIONS 28, 29, 32 and 37 of the rule among others.

c. In SECTION 15, the two paragraphs being treated should be renumbered and amended, rather than inserting the new numbering by underscoring. However, it might be simpler to amend each existing paragraph as follows: "NR 590.37 (1) (e) The signature, dated upon receipt of the used oil, of a representative of the generator, transporter or processor or refiner who provided the used oil for transport, except that intermediate rail transporters are not required to sign the record of acceptance."

d. Notes to rules are to be used for explanatory purposes, and do not have the force of the law. Therefore, they must not include any substantive material. [See s. 1.09 (1), Manual.] The rule contains numerous examples of notes that appear to contain substance. For example, see the Notes following ss. NR 600.03 (56m) and (249p) and 633.06 (1) (c) 3. (second Note). The Note following s. NR 600.03 (56m) should begin with the phrase "for purposes of this

subsection" and should end with the phrase "described in ss. NR 690.13 (1) and (3) and 690.33 (1) and (3)." Also, Notes in ch. NR 690 should be reviewed.

e. Like notes, definitions should not include substance. [See s. 1.01 (7), Manual.] The second sentence of the definition contained in s. NR 600.03 (92) is substance which should be placed in the body of the rule. Similarly, the second and third sentence of the definitions in s. NR 633.03 (3) and (4) are substantive requirements which should be placed in the text of the rule. All definitions used in this rule should be reviewed for this error.

f. Once a term has been defined, the defined term should be used and the substance of the definition should not be repeated in the text. For example, in s. NR 600.03 (249p), the phrase "a person engaged in the off-site transportation of universal waste by air, rail, highway or water" reproduces verbatim the definition of "universal waste transporter"; the defined term should be used instead. Similarly, the definition of "universal waste" is reproduced frequently throughout the rule instead of using the term itself.

g. The rule should include a provision to update the cross-references contained in s. NR 600.06 (1) and (2).

h. Section NR 600.06 (5) should begin with the phrase "Notwithstanding sub. (2)."

i. SECTION 32 appears to contain a number of incorrect references. The first three Notes referred to do not exist and there are only two Notes following Table II to s. NR 605.09 (2) (a). In addition, there are two Notes following s. NR 605.13, although this SECTION does not indicate which Note is to be repealed.

j. The rule is inconsistent in its use of introductory language. [See s. 1.03 (8), Manual.] The rule takes the opportunity to correct some errors in the existing Administrative Code in the use of this format (e.g., s. NR 605.05 (8) (intro.)), but fails to take the opportunity to make similar corrections in other cases (e.g., s. NR 605.05 (9) (intro.) and (10) (a) (intro.)) and even creates new examples of incorrect use of this format (e.g., s. NR 633.07 (2) and similar provisions in that and the following sections).

Material that follows an introductory clause must follow both grammatically and conceptually from the language of the introductory clause. Numerous errors related to this concept are found in the rule. For example, in order to follow grammatically from s. NR 605.04 (1) (b) (intro.), s. NR 605.04 (1) (b) 10. should begin with the words "It is." Similarly, the word "Is" should be dropped from the beginning of s. NR 610.07 (1m) (a) to (f). To conform to s. NR 615.05 (4) (c) (intro.), s. NR 615.05 (4) (c) 8. should read "Each generator complies with . . . ." Subdivisions 1. to 7. should be modified similarly. Also, s. NR 665.06 (1) (d) 10. does not follow conceptually from s. NR 665.06 (1) (d) (intro.). For this reason, it should be numbered as a separate paragraph rather than a subdivision of par. (d). The same comment applies to existing s. NR 665.06 (1) (d) 9. Similarly, s. NR 605.05 (2) (h) should be placed elsewhere.

k. The treatment of s. NR 605.10 (7) (a) should be placed before the treatment of Appendix V of ch. NR 605.

l. In the address contained in current s. NR 615.12 (1) (intro.), there is a line which reads "RCRA Enforcement Division (05-520)," which is missing in the text of the proposed rule. This line needs to be shown, either with or without a strike-through.

m. What is drafted as s. NR 615.14 (intro.) should be drafted as a subsection to s. NR 615.14, since it is not in the form of an introduction.

n. At the beginning of the third paragraph on page 61, the notation "(b) 3." should be replaced by the notation "3."

o. In s. NR 630.04 (16) and elsewhere, codes such as D001 and D003 are used without any definition or explanation. These codes should either be omitted or clearly explained.

p. In the Note following s. NR 630.04 (18), two references to "department regulations" should be changed to "department rules."

q. SECTION 78 amends s. NR 630.07, a section which does not exist in the published Administrative Code. In addition, SECTION 83 creates a par. (c) in a subsection where there are no existing paragraphs. These provisions appear to be misplaced.

r. Section NR 630.30 (5m) refers to two offices within the Targeting and Data Division. Is this intended? Also, can the address be placed in a note?

s. Section NR 631.06 (2) (k) should be treated in two SECTIONS separate from SECTION 89. The first SECTION would create s. NR 631.06 (2) (k) (intro.) and the second SECTION would amend s. NR 631.06 (2) (k) 1. and 2. Note that s. NR 631.06 (2) (k) 3. and 4. are not affected, although the treatment clause of SECTION 89 suggests otherwise.

t. In SECTION 92, the notation "(intro.)" should be inserted after "NR 631.07 (2)" in both the treatment clause and the text. In SECTION 94, that same notation should be omitted from both the treatment clause and the text. Also, in SECTION 95, the treatment clause should show that more than just s. NR 632.02 (2) (intro.) is affected.

u. In the newly created ch. NR 633, there are a number of examples of rule units which begin with an introductory clause ending with a colon and followed by a list of conditions or requirements. Each item that is listed should be created as a separate subunit. For example, in s. NR 633.03 (11), the material beginning with "The vapor pressure of one or more" should be numbered par. (a); the material beginning with "The total concentration of" should be numbered par. (b). Several other examples of this are found, especially in s. NR 633.12 (6) and (8).

v. In s. NR 633.04 (2) (b) 3., "the owner or operator shall" should be deleted. See par. (b) (intro.).

w. In s. NR 633.05, either sub. (3) is missing or what is numbered sub. (4) should be numbered sub. (3). If the latter is the case, which is suggested by the cross-references contained in what is drafted as sub. (4), then those cross-references need to be corrected, as well.

x. There is a tremendous amount of duplicated language in ch. NR 633, especially in ss. NR 633.07 to 633.10. It appears that organizing this material by types of regulatory requirements, such as monitoring and inspection requirements, rather than by type of regulated facility, such as tanks or impoundments, could reduce the size of these sections.

y. In s. NR 633.06 (2) (g) 2., should the cross-reference be to sub. (1), rather than subd. 1.?

z. Chapter NR 633 presents several acronyms by spelling out the term first and presenting the acronym in parentheses and then uses the acronyms in the text of the rule. Examples of these terms include "RMR," "MR," "ppmw" and "ppmv." If the acronyms are to be used in the text, they should be defined in a definition section first.

aa. Chapter NR 633 uses the terms "Tank Level 1 controls" and "Container Level 1 standards and Container Level 2 standards" without definition. It is unclear whether these terms refer to the standards created by the rule or some other standards, such as standards contained in the Code of Federal Regulations. In either case, the terms should either be defined or replaced with cross-references to the standards to which they refer.

ab. Section NR 633.06 (4) (e) 1. should read: "Air containing less than 10 ppmv hydrocarbon in the air." and the following Note should be omitted.

ac. Section NR 633.07 (2) (intro.) should read: "Owners and operators controlling air pollutant emissions from a tank using tank level 1 controls shall meet all of the following requirements:". Similar changes in introductory material should be made in numerous places throughout the rule. For other examples, "following materials" should replace "materials listed in subds. 1. to 4." in s. NR 605.05 (2) (h) (intro.); "following wastes" should replace "wastes listed in subds. 1. to 3." in s. NR 605.05 (2) (i) (intro.); and "following criteria:" should replace "criteria in subpars. a. to c." in s. NR 605.05 (2) (i) 2. (intro.).

ad. The word "organics" in s. NR 633.07 (2) (b) 3. b. is jargon. A better term would be "organic compounds."

ae. The phrase "as defined in s. NR ____" is unnecessary when contained in a section to which the cross-referenced definition applies and should be omitted. For example, see s. NR 633.07 (4) (a) 2. a. and (5) (a) 2. a.

af. Section NR 633.07 (5) (a) 2. Note describes the use of the terms "primary seal" and "secondary seal," but this does not constitute a legal definition of the terms. Since the terms are used very few times in the rule, it is suggested that they be replaced by descriptive phrases, such as "the upper seal" and "the lower seal."

ag. The relationship between s. NR 633.09 (1) and (2) (a) and (3) (a) is unclear. All three provisions appear to be applicability statements, but they are described of in terms of different attributes. What is needed is a single statement of the applicability of that section. Elimination of the terms "Container Level 1," "Container Level 2" and "Container Level 3" might help clarify these provisions.

ah. Section NR 633.09 (7) (a) should be rewritten in the active voice, in a form such as the following: "An owner or operator shall perform tests in accordance with method 27 of 40 CFR part 60, appendix A for the purpose of . . . ."

ai. Section NR 633.12 (4) (a) 5. and 6. should be renumbered as pars. (b) and (c) and subd. 7. should be renumbered subd. 5.

aj. The language inserted into s. NR 665.06 (4) duplicates the language created in s. NR 665.06 (1) (d) 10. All or portions of one or the other should be eliminated.

ak. Sections NR 675.03 (1m), (4m), (7m) and (7p) are not drafted in the form of definitions. [See s. 1.01 (7), Manual.]

al. SECTION 126 should be broken into two SECTIONS, the first of which would amend s. NR 675.03 (8) (intro.) and the second of which would repeal s. NR 675.03 (8) (a) to (c).

am. The term "De minimis" should be defined in the rule, not in the Note at the top of p. 146. For example, see sub. (4) on that page.

an. SECTION 129 states twice that the first Note of s. NR 675.21 (1) is repealed, but not the second Note. One of these statements can be deleted. Also, it is not necessary to state that the second Note is not repealed.

ao. The title of s. NR 675.07 should not be shown when s. NR 675.07 (1) is affected.

ap. Rather than using the parenthetical acronym for the Clean Water Act in s. NR 675.09 (4) (a) 1. and (6), this term could be defined, and the reference to the Code of Federal Regulations could be provided.

aq. A number of titles in the rule, such as the title to s. NR 675.17, use a hyphen. It is a more common drafting practice to use a semicolon for this purpose.

ar. The phrase "stormwater impoundments" is used in s. NR 675.19 (2) (d) 2., followed by the phrase "as defined in s. NR 675.03." When a term is defined, the latter phrase is unnecessary. This problem occurs throughout the rule.

as. It is not clear why a title for s. NR 675.21 needs to be retained. A note can be used to indicate the contents of an earlier statute. The Note in the rule could be redrafted to provide more information. It is not clear in the Note that the table referred to is the table previously contained in s. NR 675.21 that is repealed by the rule. It should also be considered whether a note should be included to explain the repeal of Table 2 and Table 3 in s. NR 675.22.

at. SECTION 146 creates both a note and a table entry. It would be simpler to treat these in separate SECTIONS.

au. It is not clear how the new material in SECTION 152 is proposed to be added to Appendix III.

av. The proper format should be used for titles. All capital letters and underlining should be used for section headings, all capital letters for subsection headings and upper and lowercase letters with underlining for paragraph headings. See ss. NR 675.23 and 675.28 and numerous other places in the rule.

aw. It appears that the references in s. NR 680.06 (8m) and (15) (a) should be to "this subsection."

ax. The numbering in s. NR 685.07 (7) (a) should be corrected to eliminate the single subdivision.

ay. There is no need for the first sentence of s. NR 690.03 (intro.) because the definitions in s. NR 600.03 apply to ch. NR 690 by the terms of s. NR 600.03. If it is necessary to inform the reader that the definitions in s. NR 600.03 also apply, that information should be provided in a note. The remainder of the introductory paragraph should be shortened to "In this chapter:".

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

a. The cross-reference to "FIFRA" in s. NR 690.06 (1) (a) 1. should use the U.S. Code reference.

b. Throughout ch. NR 690, the cross-reference to s. NR 690.03 is unnecessary when using a defined term. For example, see s. NR 690.07 (1).

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

a. A comma should be included at the end of the underscored material in s. NR 590.02 (5).

b. A semicolon should be inserted before the word "and" in s. NR 590.06 (1) Note.

c. Section NR 605.05 (1) (x) Note refers to "oil-bearing hazardous wastes listed in s. NR 605.08 . . . ." However, the cross-referenced section does not list wastes. This provision should be clarified.

d. In s. NR 605.05 (2) (d) 2., a comma should be inserted after the word "refining."

e. Section NR 605.05 (2) (g) distinguishes between the terms "recycled," "reused" and "reclaimed." Of these terms, "recycled" is the only one that is defined. How are the other terms being distinguished?

f. Section NR 605.05 (2) is a list of exempted materials. Paragraph (i) refers to "Inherently waste-like materials" but never makes clear what the term means or what materials are or are not exempt. This needs clarification.

g. Section NR 605.05 (2) (i) 3. states that the department "will add a waste to the list" if certain conditions are met. How will the department do so? Will it be done by rule? See ss. 227.01 (13) and 227.10 (1), Stats.

h. In SECTION 39, "NR 605.05 (10)" should be inserted before "(d)."

i. In the Note following s. NR 605.05 (10) (b), a parenthesis is missing.

j. Section NR 610.07 (1) (c) 1. g. and 2. d. do not follow from the introductory material that precedes them. In particular, both provisions need a verb.

k. In s. NR 631.06 (2) (n) 2. a., there is a superfluous "of."

l. In s. NR 632.11 (4) (c), the word "permanent" is misspelled.

m. The title of ch. NR 633 would be more descriptive if it included the words "hazardous waste" before the word "tanks."

n. In s. NR 633.03 (17) (a) and (b), the phrase "the point of waste origin means" should be deleted.

o. Why does s. NR 633.04 establish deadlines that are already passed?

p. Section NR 633.05 (2) (intro.) should be rewritten as follows: "The following are exempt from the standards specified in ss. NR 633.07 to 633.10:".

q. In s. NR 633.05 (2) (b) 9. (intro.), there is a superfluous comma in the second line.

r. In s. NR 633.06 (1) (c) 4., the notation "(C)" should be replaced by "($\overline{C}$)".

s. In s. NR 633.06 (2) (i) 3., should the term "organic biodegraded" be "organic mass biodegraded"?

t. Section NR 633.06 (4) (a) should be rewritten in the active voice, in a form such as the following: "An owner or operator shall conduct tests in accordance with _____ for the purpose of _____."

u. Section NR 633.06 (4) (d) 2. refers to "approximately, but less than 10,000 ppmv." It is not clear what "approximately" means. Would 8,000 ppmv be considered "approximately" 10,000 ppmv? Would 9,000?

v. In s. NR 633.07 (5) (c) 1. d., in the last line, there is a superfluous "are."

w. In s. NR 633.13 (1), near the end of the first sentence, there is a superfluous "of."

x. Section NR 675.06 (3) (intro.) discusses "(c)ombustion of the hazardous waste codes listed in ch. NR 675 Appendix VIII . . . ." Presumably, this should refer to hazardous wastes listed by code in the referenced appendix.

y. Section NR 675.06 (3) (c) should be rewritten as follows: "The waste, at point of generation, has a heating value greater than or equal to 5,000 btu per pound." The following Note should be omitted.

z. In s. NR 675.07 (1) (j), the word "be" should be inserted before the phrase "extended beyond five years."

aa. The term "zero discharger" is used in s. NR 675.09 (4) (a) 1. The meaning of this term is not apparent and a definition would be useful.

ab. In s. NR 675.09 (4) (a) 2., a space should be inserted before the first occurrence of the word "waste."

ac. Section NR 675.17 (8) (b) and (d), and several other places in the rule, refer to "persons" who have been granted an exemption or extension. It is not clear from the rule who these "persons" are.

ad. Section NR 675.17 (9) refers to the "initial generator." Does this imply that a hazardous waste can have more than one generator?

ae. In s. NR 675.19 (1) (a), the material following the second sentence forms an incomplete sentence.

af. The word "equally" in the Note after s. NR 675.19 (1) (a) should be replaced by "equal to."

ag. Section NR 675.19 (2) (h) should refer to the "applicable levels in ss. NR 675.20 to 675.28." Also, it should be considered whether the word "levels" is adequate to inform the reader which portions of ss. NR 675.20 to 675.28 are included in this reference.

ah. Section NR 675.20 (1) (intro.) refers to "the table." It would be helpful to indicate which table is meant by this reference.

ai. Section NR 675.20 (1) (a) and (b) require hazardous constituents to be "at or below" certain values. Should the rule indicate ***when*** the hazardous constituents must be at or below these values?

aj. Section NR 675.20 (1) (a) refers to a table headed "Total Waste Standards" and s. NR 675.20 (1) (c) refers to a table headed "Technology Standard." However, there do not appear to be any tables with these headings in the existing or proposed rule.

ak. Section NR 675.20 (2) (intro.) refers to "concentration level standards" but does not indicate how this term relates to any of the tables.

al. Section NR 675.20 (2) (b) forms an incomplete sentence.

am. Section NR 675.20 (2) (c) refers to wastes "covered by" certain standards. It would be more typical to refer to wastes "subject to" certain standards.

an. In the Note to s. NR 675.21, the word "previously" should be replaced by a specific date. [See also the Notes to ss. NR 675.22, 675.23 and 675.26.]

ao. In s. NR 675.22 (4) (b), the first occurrence of the word "the" should be replaced by the notation "~~the~~ The."

ap. Section NR 675.22 (5) refers to a "table of treatment standards." It is not clear where this table is located. Also, that subsection refers to the "waste code" without any indication of what is meant by that term.

aq. Section NR 675.28 refers to "Table UTS." However, this acronym is used only in the text of s. NR 675.28 and is not in fact the heading of the table.

ar. Appendix VIII of ch. NR 675 has a variety of problems, including the following:

(1) The cross-reference after certification statement A is incorrect, because s. NR 675.07 (1) (d) 3. no longer exists.

(2) Several of the referenced statutes, including s. NR 675.07 (1) (d) 2. and (2) (e) 4. do not contain a requirement to submit a certification statement.

(3) The reference to ss. NR 675.20 to 675.28 in certification statement C is not the same as the cross-reference referred to in brackets.

(4) Certification statement E differs from the certification statement in the rule referred to in brackets. In general, it is not clear why certification statements are included both in Appendix VIII and the rule text.

as. It is unclear why the list of universal wastes must be included in s. NR 680.02, because these three universal wastes are included within the definition of "universal waste." Also, the phrase "as described in" is not accurate, because the referenced provisions relate to applicability and do not contain descriptions.

at. "Feasibility" is misspelled throughout s. NR 680.06 (1m).

au. Section NR 680.06 (1m) (b) should refer to a "public meeting" rather than a meeting with the public. Also, the word "community" should be replaced by a more appropriate term, such as "members of the public" or "affected individuals." Also, should this provision indicate the appropriate locations for the public meeting, accessibility requirements for disabled persons or times when the meeting may be scheduled?

av. Section NR 680.06 (1m) (d) 1. a. could be clarified. There is no jurisdiction that is "equivalent" to a county. It is not clear what is meant for a county to "host" the proposed facility.

aw. The cross-reference in s. NR 680.06 (1m) (c) should be to "this section." Also, the cross-reference in s. NR 680.06 (1m) (d) 1. d. should be to "sub. (12) (a) 4."

ax. "Any person" or "persons" should be used rather than "people" in s. NR 680.06 (1m) (d) 2. d. Also, should this provision refer to any special equipment that may be required to participate in the meeting?

ay. Section NR 680.06 (8m) (b) 2. c. should refer to an address to which "a person may write . . . ."

az. Section NR 690.02 should be rewritten to read:

> NR 690.02 **Applicability**. This chapter applies to universal waste handlers and universal waste transporters. This chapter does not apply to household waste excluded from regulation as hazardous waste by s. NR 605.05 (1) (a).

Universal waste handlers and universal waste transporters are defined in terms of universal waste, which also is a defined term. It is not necessary to continually repeat that universal waste includes batteries, pesticides and thermostats.

ba. It is not clear why it is necessary to include definitions of the same terms in s. NR 600.03 and s. NR 690.03, or why some of these definitions differ slightly.

bb. Although the department is copying most of s. NR 690.03 from federal rules, that is not an excuse to create rules at the state level that simply do not make sense. For instance, the definition of "generator" means any person, ***by site***, who meets certain conditions. It strains common sense to understand how a person can be a site. Also, the comprehensive redundancy is unnecessary. For example, in s. NR 690.03 (5), which defines "large quantity handler of universal waste," there is no reason to follow the defined term "universal waste" with "batteries, pesticides or thermostats," which are listed in the definition of "universal waste." Also note that a person who accumulates exactly 5,000 kilograms of universal waste can be both a large handler and a small handler.

bc. In s. NR 690.03 (6), the word "he" should be replaced by the phrase "the person."

bd. In s. NR 690.05 (1) (a), the reference to s. NR 690.05 should be replaced by a reference to s. NR 690.03.

be. The Note after s. NR 690.05 (3) (a) does not make sense. The date when a battery is discarded and the date when it is sent for reclamation may not be the same dates. How can the Note state that these dates are the same if they are not? Similarly, it is unclear how an unused battery can be deemed discarded in s. NR 690.05 (3) (b) on the date that the handler ***decides*** to discard it if it is not in fact discarded on that date.

bf. In s. NR 690.13 (1) (b) (intro.), the word "section" should be replaced by the word "paragraph."

bg. The second sentence of s. NR 690.30 is inconsistent with the definition of "large quantity handler of universal waste." Similarly, s. NR 690.32 (1) (a) is inconsistent with the same definition, because a person cannot be a large quantity handler of universal waste ***until*** the person reaches the 5,000 kilogram limit.

bh. In s. NR 690.33 (1) (b) (intro.), the material should conclude with a colon rather than a period. [See also sub. (3) (c) 1. (intro.).]

bi. It is not clear why s. NR 690.36 differs from s. NR 690.16.

bj. The introductory paragraph of s. NR 690.32 (2) should include a cross-reference, presumably to the notification required "in sub. (1) (a)."

bk. In s. NR 690.39 (2) (b), to what does the phrase "or other type of universal waste" refer? Chapter NR 690 allows for no other type of universal waste. [See 40 CFR s. 273.39 (b) (2).]