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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 98-196

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 September 1998.]

2. Form, Style and Placement in Administrative Code

- a. Subchapter titles should be written in solid capital letters. [See s. 1.05 (2) (a), Manual.]
- b. The terms defined in s. NR 106.82 should be placed in alphabetical order. As such, the definition of “weekly average interim limitation” should follow the definition of “tier 3 source reduction” rather than being placed in s. NR 106.82 (5).
- c. Each subunit of a rule should begin with a capital letter. For example, see s. NR 106.82 (4) (a) and (b) and (5) (a) and (b).
- d. In the second sentence of s. NR 106.83, “may” should replace “has the authority to.” The third sentence contains no substantive provisions and should either be eliminated or combined with the next sentence (e.g., “If a permittee has difficulty . . . , the department may . . .”).
- e. The last sentence in s. NR 106.83 should use the defined term “calculated limitation” rather than the term “calculated effluent limitation.”
- f. A hyphen should be inserted after “quality” in s. NR 106.85 (2) and elsewhere in the rule.

g. The phrase “but are not limited to” in s. NR 106.90 (1) (intro.), (2) (intro.) and (3) (intro.) is redundant and should be deleted from these three subsections.

h. Since the contents of s. NR 106.90 (1) (d) 1. and 2. and (e) 1. and 2. are identical, pars. (d) and (e) should be combined.

i. The department should review all of the definitions in s. NR 106.82 to ensure that they do not contain substantive provisions, pursuant to s. 1.01 (7) (b), Manual. For example, the acceptable procedures for calculating the upper 99th percentile of the permittee’s representative data under s. NR 106.82 (4) (a) and (5) (a) are substantive provisions. The definitions of tier 1, tier 2 and tier 3 source reduction in s. NR 106.82 (9) to (11) contain substantive criteria in establishing these types of source reduction activities. The clarity of the rule would be improved if these criteria were given in the appropriate introductions to the examples of these types of source reduction measures in s. NR 106.90 (1) (intro.), (2) (intro.) and (3) (intro.).

j. In several provisions in s. NR 106.90, the colon should be replaced by a comma. For example, see subs. (1) (c) and (f) and (2) (a).

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

The reference in s. NR 106.82 (1) to the calculation of a water quality-based effluent limitation in accordance with s. NR 106.06 is vague; it should be to a more specific provision in s. NR 106.06. Similarly, the reference in s. NR 106.88 (6) to s. NR 106.07 should be to a more specific provision in s. NR 106.07.

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

a. The department should review the use of the undefined term “voluntary source reduction activities” in the definitions in s. NR 106.82 (9) to (11) to determine if this term should be defined in the rule or if a different term should be used to improve the clarity of the rule. In particular, the use of “voluntary” is potentially confusing. Are these activities voluntary, that is completely discretionary for the permittee? Are these activities voluntary for persons using or discharging to the facilities of the permittee, such as a publicly owned treatment works user?

b. The department should review the treatment of lists of provisions in the rule to ensure that they are clear, grammatically correct and conform to preferred drafting style. Under the preferred drafting style, an introduction to a list indicates whether the elements of the list are inclusive or exclusive, i.e., “. . . all of the following:”, or “any of the following:”, and each element ends with a period. This style was not followed in a number of provisions of the rule, including s. NR 106.89 (3) and the various lists in s. NR 106.90.

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

Since department staff indicates that the U.S. Environmental Protection Agency has established acute and chronic toxicity criteria for chloride, the analysis to the rule should identify the specific related federal regulations and provide an analysis of how the state rule and federal regulations conflict or compare, so that a reader will be able to determine the potential conflicts with, and comparability to, related federal regulations.