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CLEARINGHOUSE RULE 99-025

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. The note after s. NR 169.09 (1) (a) 4. appears to create a substantive requirement regarding documentation that should be included in the rule text.
- b. The date in the title of s. NR 169.09 (3) should be written out.

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

- a. The analysis should refer to the statutes creating the dry cleaner environmental response program, ss. 292.65 and 292.66, Stats., and any other specific statutory authority, rather than referring generally to ch. 292, Stats.
- b. The dry cleaner environmental response council is created under s. 15.347 (2), Stats., not s. 292.65 (13), Stats. See ss. NR 169.05 (5) and 169.29 (1) (a) (intro.).
- c. In s. NR 169.03, the notation “ss.” should be replaced by the notation “s.”
- d. The reference to ch. NR 708 in s. NR 169.09 (1) (b) 6. (intro.) should be more specific, if possible. Is s. NR 708.15 the correct reference?
- e. The cross-reference in s. NR 169.21 (6) (b) 1. c. should be to “subd. 1. b.”

- f. The cross-reference in s. NR 169.21 (6) (b) 1. d. is incorrect.

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

- a. The statement of the purpose of the rule in s. NR 169.01 does not mention, in connection with the investigation and cleanup of dry cleaning facilities, that the dry cleaning facilities must have caused soil or groundwater contamination.

- b. The word “and” should be inserted after “chapter” in the second sentence of s. NR 169.03.

- c. The definitions of “contractor,” “consultant” and “general contractor” in s. NR 169.05 are confusing and, in some respects, circular. A consultant is defined as a person under contract and a contractor is defined to include a consultant. Also, a general contractor is defined to mean a consultant. It is difficult to understand how these terms relate to each other.

- d. Section NR 169.05 (3) (b) refers to “trucking” but does not indicate what may be hauled by a truck. Does this apply only to contaminated soil, or does it apply to anything else that might be carried by a truck? See also s. NR 169.21 (4) (a) 2.

- e. In s. NR 169.05 (7), the word “include” should be replaced by the word “includes.”

- f. The defined terms “dry cleaning services,” “dry cleaning activities” and “dry store” do not appear to be used in the rule.

- g. “Whose” in s. NR 169.05 (14) should be changed to “the use of which.”

- h. The term “program year” is defined in s. NR 169.05 (20) but does not appear to be used in the rule. Although this term is defined in the statutes, it is not used in either s. 292.65 or 292.66, Stats. In any case, there does not appear to be any reason why “fiscal year” should not be used because this term has the same meaning.

- i. “Qualification based” should be hyphenated in s. NR 169.05 (21).

- j. Contrary to the statement in s. NR 169.07 (1), s. 292.65 (4) (a), Stats., does not define “eligible applicants.” This statute states that an owner or operator is *eligible for an award* if the owner or operator meets certain specified statutory requirements.

- k. The phrases “to the department” and “to the satisfaction of the department” are used in s. NR 169.09 (1) (a) 1. and 3. and at other places in the rule. These phrases are superfluous. There is no reason to think the documentation would be provided to any other agency and clearly all elements of the application must be to the satisfaction of the department. If some statement regarding department approval of the application is necessary, that should be included in a single, separate provision, rather than sprinkling it randomly throughout the rule.

- l. Section NR 169.09 (1) (a) 1. uses the present tense, while subd. 3. uses the past tense. The department should use one or the other uniformly.

m. The word “per,” although grammatically correct as used in s. NR 169.09 (1) (a) 1., and a number of other provisions in the rule, should be replaced by the more conventional word “under.”

n. Section NR 169.09 (1) (a) 4. should be clarified to indicate whether concurrence must be obtained from the department project manager before or after the \$10,000 cap is exceeded.

o. It is not clear whether s. NR 169.09 (1) (a) 5., (b) 11. and (c) 11. require the application to be submitted within 120 days before or after completing an immediate action. Also, “immediate” should be added before “action” in the second and third sentences of par. (a) 5.

p. In s. NR 169.09 (1) (b) 6., the following subparagraphs each should begin with a capital letter.

q. The scope of reimbursement for interim actions as specified in s. NR 169.09 (1) (b) (intro.) appears to be consistent with s. 292.66, Stats. However, the defined term “interim action” in s. NR 169.05 (15) is substantially broader than this portion of the rule. This provision might be clarified to indicate that only those interim actions specifically described in the statute and rule are eligible for reimbursement.

r. Section NR 169.09 (1) (b) (intro.) requires an “eligible applicant” to do certain specified things. However, under s. 292.65 (4) (a), Stats., the items listed in this paragraph must be completed by the applicant in order for the applicant to be eligible for an award.

s. Either “interim action report” or “interim action options report,” as used in s. NR 169.09 (1) (b) 6., 7. and 8. should be chosen and used consistently.

t. Section NR 169.09 (1) (b) 6. should indicate whether the requirements for the report specified in the rule are in addition to those required by s. NR 708.15.

u. The second note after s. NR 169.09 (1) (b) 6. is unclear. Chapter NR 749 does not appear to impose a fee for reviewing the interim remedial action report for a dry cleaning facility.

v. Why is a provision regarding remedial actions, s. NR 169.09 (1) (b) 10., included in the paragraph regarding interim actions?

w. Section NR 169.09 (1) (b) 11. defines completion as when “field installations are completed” while s. NR 169.09 (1) (a) 5. refers to “when the equipment is installed.” Is there any reason for this difference?

x. In s. NR 169.11 (3) (a) 3., the first occurrence of the word “cost” should be replaced by the word “costs.” In sub. (3) (a) 12., the word “a” should be replaced by the word “an.”

y. The risk in s. NR 169.13 (2) must be “significant” while the risk in s. NR 169.13 (1) must be only “imminent.” Could the risk in category A be imminent but insignificant?

z. “Directed” should be deleted in s. NR 169.15 (1).

aa. “To” should be replaced by “for” in s. NR 169.15 (3) (intro.). The references to “funds collected annually” and “funds collected on an annual basis” in s. NR 169.15 (3) (a) and (b) should be made consistent and some indication should be included as to what these phrases mean.

ab. The title of s. NR 169.15 (3) (intro.) refers to “classification,” while par. (a) refers to “class” and par. (c) 2. refers to “category.” These terms should be made consistent.

ac. There does not appear to be a reason why the specific date referenced in the note after s. NR 169.15 (4) (b) 2. should not be included in the rule text, rather than using the “three months prior to the final date” language.

ad. The statement required in s. NR 169.17 (2) (a) 3. relates to applications to another governmental agency. Should the owner or operator also indicate whether an application is being made for other funds available from the department?

ae. Is the description required by s. NR 169.17 (2) (e) relevant in urban areas?

af. Section NR 169.17 (2) (f) requires an “accurate legal description” which “corresponds with the most recent parcel description.” However, the most recent parcel description might not be accurate.

ag. Section 169.17 (2) (h) refers to “cross-referencing” of costs (which, incidentally, should be hyphenated) while par. (j) (intro.) refers to “keyed or cross-referenced” and par. (k) refers to “matches.” These terms should be used consistently and, if “cross-referencing” is retained, the meaning of that term should be clarified.

ah. What is a “substitute W-9 tax form” as described in s. NR 169.17 (2) (L)? The Department of Revenue does not include a form W-9 in its list of forms. Also, it is not clear what “substitute” means. Is this a federal form?

ai. In s. NR 169.17 (2) (m), it appears that the note following this provision should be placed following par. (q).

aj. In s. NR 169.21 (2) (c) 1., it appears that the word “and” should be inserted after the word “services.”

ak. “Occurrence based” should be hyphenated in s. NR 169.21 (6) (b) 1. c.

al. In s. NR 169.25 (4) (c), the phrase “this reimbursement” should be replaced by the phrase “the reimbursement award.”

am. The department should consider whether s. NR 169.29 is necessary. It does not appear to add anything that is not already provided by statute, and it creates confusion because it uses an incorrect statutory reference regarding the creation of the council and provides that the purpose of the council is to advise the department “on rules promulgated to implement” the statute, while the statutory authority of the council is in fact broader than that. If retained, s. NR 169.29 (3) should provide that: “This chapter does not apply after June 30, 2032.”