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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-058

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.]

1. Statutory Authority

Section 94.73 (3) (a), Stats., establishes time frames within which applications for reimbursement may be made, which are approximately reproduced in s. ATPC 35.10 (1); s. ATPC 35.06 (5) allows retroactive eligibility for reimbursement, notwithstanding those time frames. Is it the intent of s. ATPC 35.06 (5) to create an exception to s. 94.73 (3), Stats.? This should be clarified and if the intent is to create such an exception, the statute authorizing this should be cited.

2. Form, Style and Placement in Administrative Code

- a. In s. ATPC 35.01 (17m) (d) and (f), “pipelines” should replace “pipe lines.”
- b. In the treatment clause for SECTION 4, “ATPC 35.03 (3)” should be inserted before “(h).”
- c. On page 4, line 3, the notation “ATPC 35.03 (3)” should be omitted.
- d. A note should be added following s. ATPC 35.03 (3) (g) indicating where copies of the landspreading authorization form, referred to in that paragraph, can be obtained. Also, a copy of the form should be included in the rule package.

e. On page 5, lines 7 and 8, both occurrences of the word “and” should be replaced by the word “or.”

f. In s. ATPC 35.04 (6) (intro.), second sentence, “any of the following corrective measures” should replace “corrective measures under pars. (a) to (c)” and a colon should replace the period.

g. The language being inserted into s. ATPC 35.08 (3) does not belong in sub. (3), since it does not relate to requests for additional information; rather, it belongs in sub. (5), with other provisions relating to the disapproval of applications.

h. On page 11, lines 1 and 2, the rule fails to use proper striking and underscoring to indicate the changes being made. Specifically, that provision should end with the following format: “under ~~sub.~~ subs. (6) and (7).”

i. The placement of s. ATPC 35.31 interrupts the flow of provisions relating to determining the amount of reimbursement. It would be better placed after s. ATPC 35.32. Also, “chapter” should replace “rule” in sub. (1). Note, however, that this section is not necessary, since the department has the authority to establish the proposed council under s. 15.04 (1) (c), Stats., and since rule-making is not necessary to exercise that authority.

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

a. On page 6, line 21, the reference to s. ATPC 30.36 should be omitted, since the referenced section does not establish requirements with which containment structures can comply.

b. On page 10, line 8, should the inserted language refer to subs. (2) to (7)? The same question applies with regard to page 12, lines 7 and 9.

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

a. In s. ATPC 35.03 (3) (intro.), it might be clearer to require that an application be made at least five days prior to the ***proposed*** date of landspreading, since landspreading cannot be done without a permit. Also, is a “department business day” different from what is commonly understood by the term “business day”? If so, that term should be defined or otherwise explained; if not, the more common term “business day” should be used instead.

b. The material on page 5, line 11, should read as follows: “Reasonable costs for tillage that is in excess of normal tillage and that is needed to reduce soil compaction”

c. The term “pre-landspreading screening,” used on page 6, lines 14 and 15, is jargon. The term should be replaced by a more descriptive phrase.

d. It appears that the word “complied” on page 6, line 21, should be replaced by the word “complies.”

e. The containment structures described on page 6, line 20, are described differently than those described in the sections referred to on the following line--the former are limited to those constructed of concrete, asphalt, steel or synthetic materials, while the latter are those constructed of asphalt, concrete or other nonabsorbent material. Is there an actual difference between these? Should this language be made consistent? The language on page 7, line 3, is different still.

f. The new s. ATCP 35.14 (30) seems unnecessary, since the cross-referenced sections are quite explicit as to what is allowed and the clear implication is that other such expenses are not allowed.

g. Section ATCP 35.16 (2m) (e) creates a requirement that applies only to costs related to contract services. However, it would appear that this requirement would appropriately apply to other project costs, as well. Should this requirement be included in s. ATCP 35.06?

h. On page 11, line 19, should the word "bids" be replaced with the phrase "submits a bid or cost estimate," to be consistent with the changes being made in the preceding paragraphs?

i. Much of the language in s. ATCP 35.18 (1) (a) duplicates language in the introduction, and so should be omitted. That paragraph should simply be amended by striking through the phrase "if the responsible person took the corrective action after October 13, 1997." Also, the word "eligible" is omitted from the recreated version of this paragraph, although it is being inserted into two subsequent provisions of the rule--is this omission intentional?