



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 03-028

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 2002.]

2. Form, Style and Placement in Administrative Code

a. The term “discharge” is defined in s. NR 216.002 (5). “Discharge” appears at many places in the rule. A good test for the effectiveness of a definition is whether the definition can be substituted for the term where the term appears in the rule. There are a number of places where the rule fails this test. “Discharge” is defined as a discharge of pollutants into waters of the state. However, “illicit discharge” as defined in s. NR 216.002 (11), means a discharge to a municipal separate storm sewer system. In some instances, “discharge” is accompanied by some, but not all, words from the definition, as in s. NR 216.002 (9), which refers to the “discharge of pollutants.” This phrase could be replaced by “discharge.” In general, use of the term “discharge” should be reviewed where it occurs in the rule and the use of the term should be harmonized with the definition, or the definition should be changed. See also s. NR 216.002 (38), in which it appears that “runoff pollution into waters of the state” could be replaced by “discharge,” unless this term is meant to include nonpoint sources as well. See also s. NR 216.004 (3), in which “discharge” is followed by “of pollutants to waters of the state,” which repeats a phrase in the definition.

b. The terms defined in s. NR 216.002 (36) and (36m) should be reversed so that they are in alphabetical order. A similar change should be made with subs. (40) and (41).

c. The subsection titles in s. NR 216.003 should be shown in all capital letters. Also, the font for s. NR 216.46 (1) (title) seems larger than the font for the other subsections.

d. In a number of provisions, “all of the following” or “any of the following” or a similar phrase needs to be inserted before the colon in the introductory material. For example, in s. NR 216.024 (3) (intro.), “of the following occur” should be inserted before the colon. In s. NR 216.03 (2) (c), (intro.), “all of the following apply” should be inserted and a period should replace “and” at the end of subd. 1. Also see s. NR 216.07 (1) (a) (intro.) and (b) (intro.) and (3) (intro.).

In several provisions, introductory material does not end in a colon and lead into the subunits that follow. For example, s. NR 216.32 (intro.) should be s. NR 216.32 (1) and the subsequent subunits should be subs. (2) to (5). (Note that they are now inappropriately lettered as paragraphs rather than numbered as subsections.)

The entire rule should be reviewed for instances of these errors and consistency with s. 1.03 (8), Manual.

e. Section NR 216.21 (2) (b) 6. contains a reference to the Resource Conservation and Recovery Act, followed by the acronym for that act. The rule could include a list of acronyms, such as that found in s. NR 205.04.

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

a. Following the introductory paragraph in the definitions section, it would be useful to add a note calling attention to the definitions in ch. NR 205, some of which are applicable to ch. NR 216.

b. Section NR 216.003 (1) contains a reference to substantive requirements of “federal law.” It would be useful to have more information, perhaps in a note, to explain what is the federal law and what is the maximum time period.

c. The note after s. NR 216.03 (1) should be expanded to include information about how the forms may be obtained.

d. Since ch. NR 216 is being repealed and recreated, references in other rules to specific provisions of ch. NR 216 should be reviewed to ensure that they are still accurate. For example, s. NR 162.003 (29) refers to s. NR 216.002 (10); it appears that this should be changed to refer to s. NR 216.002 (11).

e. In the certification statement in s. NR 216.21 (2m) (d) 4., “Wis. Adm. Code” is used after one reference to ch. NR 216, but not after the other. The terms should be consistent.

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

a. Should s. NR 216.002 (7) be modified to indicate the substance that is measured to determine the concentration? Also, is the term “event mean concentration” used in the rule? If not, the definition should be deleted.

b. Should “unless it is” be inserted after “census” in s. NR 216.02 (4)?

- c. It appears that a word or words are missing after “subchapter” in s. NR 216.022.
- d. Sections NR 216.025 and 216.026 refer to “designate” and “designation.” It is not clear from the text of these two sections what is meant by designation; that is, what regulatory effect or purpose is achieved by designation? Also, it is not clear how these sections relate to the rest of the proposed rule.
- e. In s. NR 216.22 (7) (a), should “coverage” replace “covered”?
- f. The word “find” should be changed to “finds” in s. NR 216.24.
- g. The last phrase in s. NR 216.42 (4) should be clarified. It is not clear whether the phrase “shall be in compliance with this subchapter” creates a separate requirement to comply with the subchapter, in addition to the WPDES permit, or whether the discharge is deemed to be in compliance with the subchapter if it is done pursuant to a WPDES permit.
- h. The word “local” is unnecessary as a modifier of “municipality” in s. NR 216.47 (5).
- i. Is the notice to the department under s. NR 216.50 (2) required to be submitted five working days prior to or five working days after an intent to change the plans?