



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 03-118

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.]

General Comment

The provisions of this rule that apply to ch. NR 405 are almost identical to those that apply to ch. NR 408. Many comments in this report regarding specific provisions relate to ch. NR 405. Note that in most of these cases, the comment applies equally to the parallel provision in ch. NR 408.

2. Form, Style and Placement in Administrative Code

a. Although the analysis does not state as much, it is clear that the department is using the authority under s. 227.14 (1m), Stats., to deviate from standard Wisconsin bill drafting format and to adopt instead the format of the federal regulations on which the rule is based. The resulting rule is as unclear and difficult to read as the federal model. To borrow from the air management idiom, it could be said that the rule exceeds the ambient standard for opacity.

b. The grossest deviation from the standard Wisconsin bill drafting format is the placement of extensive substantive provisions in sections that nominally are definitions. Chapters NR 405 and 408 as wholes could be made much more usable if this material were taken out of the definitions, grouped together with related provisions, and organized in a logical sequence.

c. Further clarity could be added by making use of the active voice. The rule is drafted largely in the passive voice.

d. In some places in the rule, it appears that the department is making a conscious effort to convert from use of the term “pollutant” to the term “contaminant,” but in many other places the former term is left unaltered in existing language or used in new language. The rule should be consistent in its use of these terms.

e. When the introduction format is used, the material that follows the introduction should be a part of the introduction, flowing from it grammatically, conceptually, or both. In contrast, the rule frequently numbers material as an introduction when that material should be at the same level of organization as the material that follows it. For example, s. NR 405.02 (2m) (intro.) and (a) to (d) should be numbered s. NR 405.02 (2m) (a) to (e).

f. When an introductory clause precedes a list, such as a list of permit conditions or required elements of an application, it is necessary to indicate whether all or any of the listed items are required or sufficient. For example, s. NR 405.02 (21) (b) (intro.) should end with the phrase “any of the following:”. Similarly, s. NR 405.16 (3) (e) (intro.) should end with the phrase “all of the following:”. Also, s. NR 408.02 (23) (e) (intro.) should end with either the phrase “any of the following apply:” or the phrase “all of the following apply:”.

g. The rule uses many acronyms, some of which are defined and others of which are not. Acronyms that are not defined in s. NR 400.02, 400.03, 405.02, or 408.02, as affected by the rule, include IC, MACT, NSPS, ODS, ODP, RBLC, NAAQS, and AQRV. Note that presenting an acronym in parentheses following the first use of the term in the text, as the rule does for ODS, ODP, and RBLC, does not constitute a definition. Also, if a term is used only once or twice, as in the case of IC, RBLC, NAAQS, and AQRV, it should simply be written out.

h. Examples and other explanatory material should be placed in notes, rather than in the text of rules. Examples of material that should be moved to notes include:

- The last clause of s. NR 405.02 (24m) (e) 1.
- The three “for example” clauses in s. NR 405.02 (25b).
- The last clause of s. NR 405.02 (25i) (a).
- The last sentence of s. NR 405.02 (27m) (e).
- The last clause of s. NR 405.16 (3) (e) 3.

i. In SECTION 11A. (which should be SECTION 11a.), “8., 17., and 18.” should replace “8, 17, and 18”.

j. The term, “continuous emissions rate monitoring system” is defined in both ch. NR 405 and ch. NR 408, but not used in either chapter outside of those definitions. The definitions should be deleted.

k. The second sentence of s. NR 405.02 (24e) should read: ““Planned startup or shutdown” does not include a startup or shutdown that is caused....” Note also that the word “by” before the word “part” in that sentence appears to be an error.

l. In s. NR 405.02 (24m) (f) 2. d., the word “this” before the references to subds. 2. b. and 2. c. should be omitted. The format “this subd. 2. b.” is used only for an internal reference at

the subdivision paragraph level, that is, for example, for a reference to subd. 2. b. occurring within subd. 2. b.

m. Titles are not a part of a rule, and so a rule should not rely on a title to convey any of its meaning or any requirements. Consequently, in provisions such as s. NR 405.02 (27m) (a) and (b), the words that make up the titles need to be repeated in the text of the rule, as is done in s. NR 405.18 (5) (a) and (b). At that point, though, it becomes apparent that the titles are not necessary or particularly helpful and they should be omitted.

n. The paragraphs that follow s. NR 405.19 (8) (intro.) are not of a consistent format—some are phrases and others are full sentences. These should be made consistent.

o. Section NR 405.19 (9) (c) appears to be missing. The rule should be modified to either provide a provision of that number or to renumber the following paragraphs as pars. (c) and (d). There *is* a parallel provision in ch. NR 408.

p. The subdivisions that follow s. NR 405.21 (1) (b) (intro.) do not follow grammatically from the introduction and so their meaning is not evident. Each subdivision should read as a continuation of the sentence started by the introduction.

q. The definition of “PAL effective date” in s. NR 405.21 (2) (d) should read: “...means the date of issuance of the PAL permit except that, in the case of an increased PAL, “PAL effective date” means....”

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

a. In s. NR 405.02 (24) (d), the word “credible” should be replaced by the word “creditable.”

b. The construct of s. NR 405.02 (27m) (d) does not parallel that of the other paragraphs of that subsection. Should it say that a significant emissions increase is considered to occur if a project causes a clean unit to lose that designation?

c. Based on the example given, it appears that s. NR 405.02 (27m) (e) should refer to the methods specified in pars. (a) to (d), not only pars. (a) to (c).

d. Section NR 405.18 (2) (d) uses the phrase “is not a clean unit,” while parallel provisions elsewhere in the rule use the phrase “was never a clean unit.” Is this difference intentional?

e. Many provisions of the rule relate to a determination of whether an emissions increase is significant, but the rule does not anywhere make clear the significance of such a determination. What is needed, it appears, is new language, for example in ss. NR 405.07 and 408.03, stating, that for purposes of applying those provisions, whether an emissions increase is significant shall be determined in accordance with the various provisions created by this rule. Similar provisions are needed to clarify the meaning of “netting at clean units” and to avoid the use of jargon such as “netting analysis” in s. NR 405.18 (8).

f. Section NR 405.18 (9) and subsequent provisions of the rule relating to the effect of redesignation on the clean unit designation are unclear. In particular, the statement in par. (b) that “the clean unit designation is not affected by any redesignation” conflicts with the

statements in pars. (a) and (c) of how redesignations *do* affect the clean unit designation. Should par. (b) say, instead, “the clean unit designation is not affected by any *subsequent* redesignation *to attainment*”?

g. Sections NR 405.19 (1) and (2) (intro.) conflict. The former states that all of s. NR 405.19 applies to emissions units that do not qualify as clean units, while the latter states that sub. (2) applies to clean units.

h. In s. NR 405.18 (9) (a), the second “that” should be replaced by “in which.” In s. NR 405.19 (1), both occurrences of “which” should be replaced by “that.”

i. Since there are no PALs in the entire ch. NR 400 series other than those in this rule, it is not only confusing, but unnecessary to provide separate definitions of “PAL” and “actuals PAL” and then to state that “PAL” actually means “actuals PAL.” The rule should use a single term and a single definition. Also, since the term “PAL” is used outside s. NR 405.21, that definition should be provided in s. NR 405.02. Note finally that, in spite of the statement that “PAL” will be used in place of “actuals PAL,” the term “actuals PAL” appears in several subsequent provisions of the rule.

j. In ss. NR 405.21 (2) (i) and 408.14 (2) (i), “Plant-wide” should replace “Plantwide.”

k. In s. NR 405.21 (6) (c), “shut down” should replace “shutdown.”

l. In s. NR 405.21 (7) (a), what is meant by “applicable source-wide emissions limitation”? This term is not used anywhere else in the ch. NR 400 series.

m. Section NR 405.21 (2) (e) defines “PAL effective period” as a period starting on the PAL effective date and ending 10 years later. Section NR 405.21 (4) (a) 6. and (8) (a) then both require the department to establish a 10-year PAL effective period. The latter provisions, or the definition, clearly are not necessary.

n. The title to s. NR 405.21 (12) (i) should be omitted. [See s. 1.05 (1), Manual.]

o. In s. NR 405.21 (13) (a), should the phrase “of this section” be inserted after “any requirement”?

p. By comparison to the respective titles and to the parallel provisions in ch. NR 405, it would appear that the phrase “or requalifies by implementing new control technology” should be inserted following “under sub. (3) (a) and (b)” in s. NR 408.11 (5) (a) and the phrase “using an existing control technology” should be inserted following “under sub. (3) (c)” in s. NR 408.11 (5) (b).

q. In s. NR 408.10 (5) (b), “a” should be deleted from the second sentence.

r. In s. NR 408.14 (6) (f), “tons per year” should replace “tons/yr.”