



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-013

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.]

1. Statutory Authority

The rule interprets the statutory phrase “natural body of water” in s. 29.733 (1) (intro.), Stats., to not include a wetland. The cover letter to the Legislative Council Rules Clearinghouse, but not the analysis to the rule, states that:

DNR staff believe it was not the legislature’s intent to prohibit fish farming in these manmade ponds when they created s. 29.733, Stats. To be consistent with the statutory intent, we propose to eliminate the regulation of artificial ponds in isolated wetlands, and thus allow fish farming in manmade isolated wetland ponds without a natural waterbody permit.

The department should document its understanding of legislative intent before concluding that, possibly contrary to the plain language of the statute, the term “natural body of water” does not include a wetland. Further, if the department’s view of legislative intent is correct, why does the definition of “natural body of water” in s. NR 19.91 (3) exclude all wetlands rather than “manmade isolated wetland ponds”?

2. Form, Style and Placement in Administrative Code

a. The department states that the intent of the rule is to allow fish farming in manmade ponds in isolated wetlands without a natural water body permit. However, as drafted, the rule allows the construction of a fish farm in *any* wetland, including wetlands that are connected to

other water bodies, without a natural water body permit. To accomplish the stated intent of the rule, the amendment of the term “natural body of water” should add a second exception to the definition. The best way to draft this might be to put a period after the word “time” and add a sentence stating, ““Natural water body” does not include any of the following:”. The existing exception would be par. (a), and the new exception for artificial ponds in isolated wetlands would be par. (b).

b. Since this rule repeals the only occurrence of the word “wetland” in subch. III of ch. NR 19, apart from the definition of that term in s. NR 19.91 (6), that definition should also be repealed.

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

Section NR 19.94 (7) would be clearer if rewritten to read: “...the department shall proceed to act on the application and either schedule a hearing or provide notice....” Also, in this subsection, why is s. 29.733 (1) (c) 1., Stats., cited rather than all of par. (c)?