



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 05-113

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 January 2005.]

General Comment

In general, comments in this report that pertain to s. Comm 21.125 apply also to parallel provisions of subch. III of ch. Comm 60.

2. Form, Style and Placement in Administrative Code

a. This rule is written almost exclusively in the passive voice, as it appears is most of the building code. While this works when describing design requirements, which is what most of the building code does, it leads to ambiguity when requiring a person to do something, which is what this rule does. The problem is that it does not indicate who the requirement applies to. For example, in s. Comm 20.09 (4) (b) 1., who is required to prepare a storm water management plan? Section Comm 21.125 (1) (a) 4. is particularly confusing. It states that the required practices shall have the quality of being approved by the department or on a DNR list, but it means, presumably, that someone (the owner or owner’s agent? the general contractor? the excavation subcontractor?) must select practices from among those approved by the department (or does it mean that the person has to apply to the department for approval?) or listed by the DNR. Section Comm 21.125 (1) (e) 1. (intro.) is an example of correct drafting, using the active voice.

Chapter Comm 60 partially addresses this problem by stating, in s. Comm 60.03, that the owner or owner’s agent is responsible for compliance with that chapter. But, for greater clarity and correct drafting, and in particular because it is all new text and, so, easy to correct at this time, that chapter should be redrafted in the active voice.

b. In general, the rule subdivides provisions more than is necessary. For example, ss. Comm 21.125 (1) (a) could be written: "... deposition of soil or sediment to the waters of the state and to adjacent properties." Section Comm 21.125 (1) (e) 2. (intro.) and 3. (intro.) could be written as a single introductory clause followed by three subdivisions. Section Comm 60.13 (1) (a) could be written as follows:

Comm 60.13 (1) (a) An owner or owner's agent shall prepare an erosion and sediment control plan that delineates the erosion and sediment control practices that will be employed at a site where the owner or owner's agent will conduct land disturbing construction activity. The plan shall be of sufficient detail to document compliance with s. Comm 60.20, and shall include a site plan that shows all of the following:

1. The areas of land disturbing ...
2. The preconstruction ground ...

There are numerous other examples in the rule.

c. SECTION 1 of the rule should include a note to the Revisor of Statutes indicating whether the new s. Comm 2.36 is to be in subch. III or IV of ch. Comm 2. Also, the phrase "shall be" should be replaced by the word "is."

d. The note following s. Comm 20.08 (1) appears substantive. Does the department mean to establish what is stated in the note, or is it only a restatement of something established elsewhere? If it is the former, it should be moved to the text of the rule.

e. Section Comm 20.09 (4) (a) 1. should be drafted as follows:

Comm 20.09 (4) (a) 1. "Site plan." A site plan showing all of the following:

- a. The location ...
- b. etc.

f. Subdivision paragraphs are cited, using the cross-reference in s. Comm 21.125 (1) (f) 1. a. as an example, as "subd. 1. c." Similarly, the cross-references in ss. Comm 21.125 (1) (f) 1. b. and 2. a. should be "subd. 1. c." and "subd. 2. b.," respectively. [See s. 1.07 (2), Manual.]

g. Section Comm 21.125 (2), being all of one sentence while sub. (1) is several pages, should be drafted as a separate section. In addition to being more logical, this would eliminate the need for the numerous subdivision paragraphs in sub. (1). For example, the paragraphs would become subsections and subdivisions would become paragraphs. [See s. 1.03 (6), Manual.]

h. In s. Comm 60.13 (2) (b), instead of requiring compliance with s. Comm 60.30, which requires compliance with s. NR 151.12, s. Comm 60.13 (2) (b) should require compliance with s. NR 151.12. In addition to not requiring the reader to follow two cross-references, this change would eliminate the need for subch. IV of ch. Comm 60, since that is the *only* thing that subchapter says.

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

a. Section Comm 21.125 (1) (d) is vague. The note is helpful, but insufficient. How does one know what methods, other than the method identified in the note, are accepted by the department?

b. In s. Comm 21.125 (1) (f) 1. a., it appears that the word “of” should be inserted after “failure.”

c. Reading ss. Comm 60.03 and 60.04 (4) together, it appears that, if person A has an easement providing access across the land of person B, when A builds a road on that easement, B is equally responsible as A for erosion control, etc. Is that what the department intends?

d. Section Comm 60.11 should read: “A municipality certified under s. Comm 61.70...” However, there is no s. Comm 61.70; the correct citation appears to be s. Comm 61.60.