



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-121

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.]

1. Statutory Authority

Section 281.34 (4) (a), Stats., provides that the Department of Natural Resources must review an application for approval of certain high capacity wells using the environmental review process contained in its rules promulgated under s. 1.11, Stats. Sections NR 820.30 (2) and 820.31 (3) appear to provide for approval of certain high capacity wells without using the environmental review process contained in the department’s rules promulgated under s. 1.11, Stats. If this is the case, what is the statutory authority for the approach taken in the rule provisions? Or, can these rules be categorized as the result of the broad application of the environmental review process, in accordance with the statutes, to situations of minor environmental impact?

2. Form, Style and Placement in Administrative Code

a. In s. NR 820.12, the introductory material should be deleted and replaced with “In this chapter:”. [See s. 1.01 (7) Manual.]

b. In s. NR 820.12 (13) Note, the notation “Stats.,” and appropriate surrounding punctuation should be removed from the quoted material in order to accurately reflect the text of the statutes. [See also s. NR 820.12 (22).]

c. In s. NR 820.20 (1) (intro.), the first sentence should conclude with a colon and the second sentence, appropriately redrafted, should be placed in a new sub. (2). Further, in the second sentence, how is a local governmental unit explicitly excluded? If the exclusion is

referring to the exceptions provided in sub. (1) (a) 6. and 7., than the phrase is unnecessary. If a local governmental unit is explicitly excluded by some other process, than the rule should state how the exclusion occurs.

d. In s. NR 820.30 (1) (intro.), “all of” should be inserted before “the following.” In sub. (1) (a), it appears that “identified under s. 281.15, Stats.,” should be inserted after “outstanding resources waters,” and “exceptional resource waters.” The entire rule should be checked for this problem. In sub. (1) (b), “class 1, 2, or 3” should be inserted before “trout stream.” The same problem occurs in sub. (1) (e), and the entire rule should be checked for this problem. In subsections (1) (a) to (d), articles should be inserted at the beginning of the subsections; for example, in sub. (1) (a), “The” should be inserted before “Name.” In sub. (3) (a) 5., “could” should be changed to “may.”

e. In s. NR 820.30 (2), the introduction should be renumbered as par. (a); the reference to pars. (a) to (d) should be replaced by a reference to pars. (b) to (e); and pars. (a) to (d) should be renumbered pars. (b) to (e). Similar comments apply to s. NR 820.31 (3).

f. Section NR 820.30 (4) should begin with the phrase “all of.” A similar comment applies to s. NR 820.31 (5).

g. In s. NR 820.31 (5), the subsection beginning with “Following receipt...” should be numbered as par. “(c),” and the remaining paragraphs should be renumbered accordingly.

h. The entire rule should be reviewed for the use of consistent terminology. For example, although the term “well” is defined in both the statutes and in the rule, it appears that in many cases the rule is referring to another defined term, “high capacity well.” Also, s. 281.34, Stats., in a number of places refers to a “significant environmental impact.” However, the rule in numerous places refers to a “significant adverse environmental impact” and also defines the term. If there is a purpose to making use of the additional word “adverse” the department should explain that purpose.

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

a. Section NR 820.13 (1) refers to forms provided by the department. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

b. In s. NR 820.30 (7), a more specific citation should be used instead of “ch. 280, Stats.”

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

a. In the plain language analysis section of the rule analysis, in the second paragraph, “trout stream” should be changed to “trout streams.” In the effect on small business section of the rule analysis, “Department” should be changed to “department.”

b. In the table of contents for the newly created ch. NR 820, the description of the title for s. NR 820.20 is not consistent with the title in the text of the rule.

c. In s. NR 820.10, it appears that the second sentence should be rewritten to read: "...outstanding resource waters, and exceptional resource waters and involving groundwater withdrawals with high water loss."

d. In s. NR 820.11, "utility district" should be changed to "utility districts." In the last sentence, both instances of the word "that" should be changed to "who."

e. In s. NR 820.12 (2), "is" should be inserted before "classified." This problem also occurs in subs. (3) and (4). In sub. (3), a comma should be inserted after "next." In sub. (13), the extra parentheses around "(c)" should be deleted.

f. In s. NR 820.13 (1), "methods and forms provided by the department" is vague. The "methods" the department will use should be clarified, and a note indicating where and how the forms can be obtained should be added. In sub. (3), the "method prescribed by the department" should be clarified in the rule. This problem also occurs in sub. (4). Also in sub. (4), it appears that the terms "individual capacity to withdraw," "maximum pumping capacity," and "individual maximum pumping capacity" are intended to refer to different things, but it is unclear what each term means. Can the department clarify this provision?

g. In s. NR 820.30 (1) (e), it appears that the first occurrence of the word "and" should be replaced by a comma. Also, in pars. (g) and (h), why are the phrases "or level" and "and level" used in view of the definition of the term "80% exceedance flow" in s. NR 820.12 (7)?

h. In s. NR 820.30 (2) (intro.), can the department clarify what "conditions to ensure that the well will not result in significant adverse environmental impacts" will include? In sub. (4) (d), can the department clarify what "critical resources" and "critical aquatic resources" include?

i. In s. NR 820.31 (5) (c), it appears that the phrase "at least" should be inserted before the number "80%."