WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-102

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

2. Form, Style and Placement in Administrative Code

a. The agency should consider revising s. Tax 18.05 (1) (d) and (e) to more precisely delineate the types of easements and programs that are encompassed in the revised definition. Both provisions refer to "qualifying easements or programs" but do not expressly specify which types of easements and programs are "qualifying". The plain language analysis refers to "federal and state pollution control and soil erosion programs". If the intent is to limit the scope of the provisions to pollution control and soil erosion programs, that limitation should be made explicit in the text of the provisions. Although the provisions require programs and easements to adhere to specified standards and practices, it is not clear that easements and programs other than pollution control and soil erosion programs would be found not to comply with the referenced standards and practices. One approach for revising the provisions would be to create subdivisions that enumerate the criteria for inclusion within the definition. For example, the introduction in s. Tax 18.05 (1) (d) could be revised to read: "Commencing with the January 1, 2015 assessment, land without improvements subject to a temporary federal or state easement or enrolled in a temporary federal or state program, if all of the following apply:". If that approach is taken, consider merging the two provisions into a single paragraph that covers both temporary and permanent easements and programs. In that scenario, one subdivision (relating to the return of land to agricultural use) would be applicable only to temporary easements.

b. In the effective date section, the agency might consider specifying an effective date, rather than using the general effective date of the first day of the month following publication,

because the proposed rule does not apply until January 1, 2015. [s. 1.02 (4) (b), Manual; see also s. 1.02 (4) (c), Manual.]

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

Section Tax 18.05 (1) (d) and (e) refers to "standards and practices provided under the July 2011 No. 667 version of s. ATCP 50.04, 50.06, 50.72, 50.83, 50.88, or 50.98". It appears that none of these rule sections were treated in ATCP rules published in Register July 2011 No. 667. However, that Register did contain a scope statement for proposed rules relating to ch. ATCP 50, which became Clearinghouse Rule (CHR) 13-016. Is it the intent to include changes made to ch. ATCP 50 by CHR 13-016 (which has not yet been promulgated)? If so, the agency should replace "standards and practices provided under the July 2011 No. 667 version of s. ATCP 50.04, 50.06, 50.72, 50.83, 50.88, or 50.98" with "standards and practices contained in s. ATCP 50.04, 50.06, 50.72, 50.83, 50.88, or 50.98"? The latter reference will capture the contents of CHR 13-016 once it is promulgated. Alternatively, if the agency wants to not incorporate subsequent amendments to the ch. ATCP 50 sections, the reference to those sections could be replaced with "standards and practices contained in s. ATCP 50.04, 50.06, 50.72, 50.83, 50.88, or 50.98, Register July 2011 No. 667".

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

In s. Tax 18.05 (1) (d), following the phrase "when it was entered into the easement or program, and", the word "that" should be removed.