



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-074

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

In the rule summary’s listing of statutory authority, the department should consider listing the more precise citations that are provided in the narrative explanation of agency authority.

2. Form, Style and Placement in Administrative Code

a. SECTION 3 proposes to renumber and amend s. NR 811.08 (3), creating several new paragraphs. These new paragraphs largely preserve the language describing examples of projects not requiring a professional engineer’s seal. However, the language in par. (a) is slightly different from the existing language (“Replacement with similar equipment not affecting pumping capacity” versus “pump replacement with similar equipment not affecting pumping capacity”). Given that the other examples retain the existing language, should the existing language also be retained for the purposes of par. (a)?

b. SECTION 6 proposes, in part, to create s. NR 811.12 (1) (g) (intro.). Within this treatment, the introductory text provided includes the provision’s title, despite the title already existing in the current code. The creation of an (intro.) from a (title) may be better characterized as a renumbering and amending, rather than a creation. The same consideration may also be made for the creation of s. NR 811.12 (14) (intro.) in SECTION 18 and the creation of s. NR 811.853 (intro.) in SECTION 123. To make the changes clear, show the existing title without underscoring, and the new material with underscoring. In addition:

- (1) A similar consideration may be made with respect to the creation of s. NR 811.13 (intro.) in SECTION 21 (which omits the existing title from the newly created introductory text). The treatment may be better accomplished by renumbering s. NR 811.13 (title) as s. NR 811.13 (intro.) and including both the title and introductory text in the proposed rulemaking order. To make the changes clear, show the existing title without underscoring, and the new material with underscoring.

c. SECTION 13 proposes to renumber s. NR 811.12 (11) as s. NR 811.12 (11) (intro.). This treatment seeks to correct an existing issue where the text does not end in a colon (as required in current drafting conventions, under s. 1.06 (1), Manual). However, this treatment is better characterized as an amendment, as the existing text is already classified as an (intro.) despite the lack of a colon. In addition:

(1) The same consideration applies to SECTIONS 14, 17, 25, and 49. The proposed rulemaking order should be reviewed for any other instances.

d. In SECTION 19 of the proposed rulemaking order, the text of s. NR 811.12 (14) (a) (title) should be omitted from the treatment. [See s. 1.10 (2) (c) 3., Manual.]

e. In SECTION 22 of the proposed rulemaking order, the text of s. NR 811.13 (4) (title) should be separated on a separate line from s. NR 811.13 (4) (a) within the treatment. In addition:

(1) The treatment clause in SECTION 22 should indicate that subs. (2) (intro.), (4) (d) (intro.), and (5) (intro.) are amended. The current treatment clause does not specify that the (intro.) text, specifically, is amended for each.

f. SECTION 24 of the proposed rulemaking order uses the term “such cases” in s. NR 811.19 (5). Although this language is present in the existing code, the word “such” can create ambiguity and should not be used in place of an article. A similar consideration could be made with respect to s. NR 811.85 (2) (Note) in SECTION 121 and s. NR 811.861 (2) (Note) in SECTION 148. [See s. 1.08 (1) (g), Manual.]

g. In SECTION 25 of the proposed rulemaking order, the amendment to s. NR 811.19 (5), in part, replaces “[a]ny proposal which would result in a diversion...” with “[a]ny proposal that will result in a diversion”. However, the word “would” is entirely omitted from SECTION 24. It should be included and struck through.

h. SECTION 27 provides that “NR 811.21 (2a) (Note) is created”. This format should be revised to instead indicate that “NR 811.21 (2) (a) (Note) is created”.

i. SECTION 28 proposes to create s. NR 811.22 (1m), a subunit within a series of subunits detailing things that intake structures must provide for. However, the proposed text does not complete the sentence provided in s. NR 811.22 (intro.). Each subunit following an introduction should complete the idea and result in a complete sentence when read with the introduction. [See s. 1.11 (2), Manual.] In addition:

(1) The same consideration should be made with respect to SECTIONS 32 and 55. Similarly, within SECTION 4, s. NR 811.09 (1) (h) 2. g. does not complete the sentence in s. NR 811.09 (1) (h) 2. (intro.).

j. The treatment proposed in SECTION 57 should precede the treatment proposed in SECTION 56 within the rulemaking order.

k. SECTION 59 proposes to repeal and recreate s. NR 811.40 (1) (L). This includes the creation of a title for s. NR 811.40 (1) (L). However, paragraph titles should only be used if all paragraphs in the affected subsection have paragraph titles. [See s. 1.10 (2) (a) 2., Manual.] To address this issue, it appears that the title may be omitted.

l. In SECTION 68, the text indicating the section (before the word “clarification”) should be bolded.

m. The underscoring included within s. NR 811.495 (2) in SECTION 75 should be omitted, as an entirely new section is being created.

n. In SECTION 84, the treatment to change “ss.” to “s.” should be done by striking “ss.” in its entirety and adding an underscored “s.” [See s. 1.04 (4) (b), Manual.]

o. In SECTION 86, the treatment of s. NR 811.57 (2) should be described as an amendment to s. NR 811.57 (2) (intro.). Additionally, the period at the end of s. NR 811.57 (2) (j) 3. should not be underscored.

p. In SECTION 98, the word “drains” at the beginning of s. NR 811.64 (3) (a) 2. is both underlined and stricken through. It should only be stricken through.

q. In SECTION 101, s. NR 811.64 (4) (c) 2. is renumbered s. NR 811.64 (4) (c). It appears this treatment is included to address the fact that the repeal of s. NR 811.64 (4) (c) 1. would leave only one subunit in s. NR 811.64 (4) (c). However, it is somewhat unclear from this treatment whether the intent is to retain the text of s. NR 811.64 (4) (c) (title), as currently promulgated, as a title. A title should be included to mirror the other paragraphs in the subsection. [See s. 1.10 (2) (a) 2., Manual.] Consider, instead, revising the treatment to consolidate s. NR 811.64 (4) (c) (title) and 2. and renumber as s. NR 811.64 (4) (c). [See s. 1.04 (7), Manual.]

r. In SECTION 120, the treatment clause reads, “NR 811.85 is renumbered NR 811.**815** (intro.) and amended to read”. The citation should instead be revised to indicate that “NR 811.85 is renumbered NR 811.**85** (intro.) and amended to read”. [Emphasis added only to highlight the change.]

s. In SECTION 144, amending s. NR 811.859 (1) (intro.), the underscored period preceding the underscored material should be removed to reflect the current text of the rule.

t. The caption for the proposed rulemaking order should be updated to reflect any changes made in response to these comments.

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

a. SECTION 9 of the proposed rulemaking order provides, in part, that lengths of casing must be marked in accordance with ASTM or API marking specifications and with s. NR 812.11 (6) (d). However, s. NR 812.11 (6) (d) itself establishes requirements relating to marking pipe in accordance with ASTM or API specification. Is it necessary for s. NR 811.12 (7) (b) to reference the ASTM and API marking specifications when it appears that this may already be required by reference?

b. SECTION 111 proposes, in part, to amend s. NR 811.70 (1). Within this treatment, the term “code complying” (“...delivering code complying pressures and flows”) could be clarified. For example, the provision could be modified to specify the code (or the portion of the Administrative Code) to which this refers.

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

a. In SECTION 2 of the proposed rulemaking order, the definition of “dimension ratio” should read “...outside diameter of the pipe...” rather than “...outside diameter or the pipe...”. [Emphasis added only to highlight the change.]

b. In SECTION 10 of the proposed rulemaking order, s. NR 811.12 (9) (b) and (c) are included as requirements that a packer must meet. However, these paragraphs do not generally describe requirements of packers. Paragraph (b) describes various actions for which a packer may be used and par. (c) describes a restriction on the use of packers, rather than a requirement for packers themselves. Could these paragraphs be rewritten to specifically describe packer requirements? Alternatively, the introductory text could be rewritten so that the subunits are not describing requirements of a packer.

c. Throughout the proposed rulemaking order, the term “abandoning” is largely replaced with “filling and sealing”. However, in the treatment of s. NR 811.13 (8) within SECTION 22, the term “unabandoned” is retained. It may be beneficial to replace this term with alternative language to mirror the changes proposed elsewhere in the rulemaking order.

d. SECTION 24 of the proposed rulemaking order provides, in part, that “[a] water system shall contact the department to determine the required minimum depth of grouted casing”. This language could be amended to more clearly specify the entity that is required to contact the department (e.g., the “owner of the water system” rather than “the water system”). Based upon the definition in s. NR 811.02 (74), a “water system” does not appear to be the entity that would carry out certain required actions. [See s. 1.05 (1) (d), Manual.] In addition:

- (1) Similar considerations could be made with respect to other SECTIONS of the proposed rulemaking order (e.g., SECTIONS 7, 18, 25, 26, 41, 43, 94, 109, 143, 144, and 147).

e. In SECTION 40, the word “insure” should be revised to “ensure”. Additionally, the term “other-than-municipal water systems” could be replaced with more formal language.

f. In SECTION 45, the phrase “...if water drawdown has not resulted in the sanitary seal to be compromised...” could be rephrased to improve readability. For example, the modified text could read “...if water drawdown has not compromised the sanitary seal...”.

g. In SECTION 54, the spelling for the word “programed” should be revised to “programmed”.

h. In SECTION 59, it is somewhat unclear whether fluoride, ammonia, powders, and gases must be stored collectively, in a separate room, or if these substances must each be stored in separate rooms from each other.

i. SECTION 60 could be revised to improve clarity and readability. As written, it appears that the phrase “shall meet the following requirements as applicable” refers to gases, rather than systems to vent gases. Additionally, the provision may benefit from being broken into multiple sentences.

j. Within SECTION 61, the creation of s. NR 811.40 (1) (n) 2. is missing the word “to” following “shall be vented”.

k. In SECTION 62, it is somewhat unclear the systems to which s. NR 811.43 (1) applies. The words “existing and new” could perhaps be omitted as these terms do not appear necessary for determining whether the disinfection capability requirements under the subsection apply to a particular system.

l. Within SECTION 67, s. NR 811.45 (3m) (b) 1. references “gallons per minute/square foot”. This should be written as “gallons per minute per square foot” to mirror the style used elsewhere in the existing code.

m. Within SECTION 67, s. NR 811.45 (3m) (b) 3. states that the maximum volumetric air to water ratio at peak water flow “should be 80:1”. If the intent is for this maximum ratio to be a binding limit, the word “should” should be revised to “shall”.

n. In SECTION 67, the text of s. NR 811.45 (3m) (d) 3. could be rearranged for clarity. For example, the provision could read, “An air flow meter or an alternative method to determine air flow shall be provided on the influent air line”.

o. SECTION 72 provides, in part, that “[h]ousing and ventilation for ammoniation shall meet the requirements under subs. (5) and (6) for chlorine, except that the exhaust fan inlet shall be near the ceiling and the fresh air inlet shall be near the floor”. Notably, SECTION 71 amends sub. (6) (b) to specify that the exhaust fan for a chlorine gas room must be within 12 inches of the floor. The text of s. NR 811.48 (8) (a) could be clarified to indicate whether a comparable, 12-inch requirement applies to the exhaust fan inlet or the fresh air inlet for ammoniation.

p. Ammonia storage requirements are addressed in various portions of the proposed rulemaking order. See, e.g., s. NR 811.40 (1) (L), within SECTION 59, and s. NR 811.48 (8) (a), within SECTION 72. It appears that s. NR 811.40 (1) (L) 2. could be modified to better clarify that gaseous ammonia and chlorine must be stored separately.

q. Within SECTION 72, the final sentence of s. NR 811.48 (8) (c) 4. could be broken into two separate sentences, for clarity (with one sentence addressing cooling and the other addressing dilution and mixing).

r. Within SECTION 73, the final sentence of s. NR 811.49 (1) (c) could be rephrased for clarity. For instance, the sentence could be modified to read: “The department may approve higher rates than indicated in this paragraph with sufficient justification by the design engineer or by pilot testing under s. NR 811.44.”.

s. In s. NR 811.52 (3) (d), within SECTION 81, an underscore is used to provide a space between the word “greens” and the word “and”. This space should be omitted, as “greensand” appears to be the correct term. Additionally, the final sentence of this provision could be rephrased for clarity. For instance, the sentence could be modified to read: “Lesser backwash rates may be used if justified to the department by filter vessel manufacturers or through pilot studies under s. NR 811.44.”.

t. Throughout the proposed rulemaking order and the existing text of ch. NR 811, the word “downturned” is used as an adjective both with and without a hyphen. The term should be presented in a consistent manner, if possible.

u. In SECTION 106, a hyphen could be inserted between the word “one” and the word “foot” in “...with the upstream location or the one foot requirement...”.

v. In s. NR 811.69 (1), within SECTION 110, the term “must” should be revised to “may” or “shall”, or other specific indicator that accurately conveys the intent of the provision.

w. In s. NR 811.69 (3), within SECTION 110, the term “lead free” is given separate definitions with respect to solders and flux and with respect to pipes and pipe fittings. This provision could be rewritten such that the term “lead free” is not “defined” and the provision

simply specifies that solder or flux shall contain not more than 0.2 percent lead and that a pipe or pipe fitting shall contain not more than 0.25 percent lead. Alternatively, the phrase “is defined” could be revised to “means”, the term “lead free” could be shown in quotation marks, and both instances of “as containing” could be revised to “containing”.

x. SECTION 112 proposes, in part, to amend s. NR 811.71 (7). Within this treatment, “3.0 feet per second” could instead read “3 feet per second” (assuming that the higher level of precision is not necessary to accomplish the intent of the rule). Also, the final period in s. NR 811.71 (5) (Note) should be shown with a strike-through.

y. Within the text of SECTION 120, both instances of the abbreviation “subch.” should be spelled out as “subchapter”, and the word “must” should be revised to “shall”.

z. SECTION 121 proposes, in part, to create s. NR 811.85 (1). The two sentences within proposed s. NR 811.85 (1) (intro.) could perhaps be combined. In addition:

(1) In proposed s. NR 811.85 (1) (a) 1, a space should be provided after “1.”.

(2) The proposed text of s. NR 811.85 (1) (a) 2. could be rephrased to enhance clarity.

aa. In SECTION 142, the final sentence of s. NR 811.858 (3) could be broken into multiple sentences to improve readability. Similar consideration could be made with respect to the final sentence of s. NR 811.861 (2), within SECTION 147.

bb. In SECTION 150, the spacing should be reviewed. Specifically, it appears that the underscore before the stricken “The” at the beginning of the text is unnecessary. Additionally, there should be a stricken space after the word “backwashes”.