



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 20-046

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 December 2014.]

1. Statutory Authority

Section NR 114.245 (2) provides, “Deposit amounts, not including applicable court costs, surcharges, and assessments, for violations of ss. NR 114.16 to 114.23 are \$500.00 for each violation”. This does not appear to comply with s. 281.48 (5s) (b), Stats., which provides, “Notwithstanding s. 23.66 (4), the department shall promulgate rules establishing the basic amount of the deposit that may be made under s. 23.66 (1) by a person to whom a citation is issued under par. (a). The rules shall specify a different amount for each offense under subs. (2) to (5)”. The department should explain the authority to create a single, uniform deposit amount or revise that provision to list separate, applicable deposit amounts.

2. Form, Style and Placement in Administrative Code

a. In s. NR 113.03 (6) (Table), the underscoring of “10 inches of silt loam” and “2.2” should be removed since that material is already included in the current rule.

b. In s. NR 113.03 (34h), ““Master Operator” means” should be changed to ““Master operator” means”, capitalizing only the first word.

c. In s. NR 113.03 (32), the new designation “(b)” and the quotation marks should be underscored to reflect the changes from current text.

d. In s. NR 113.03 (38), the new designation “(b)” and the word “Pathogens” should be underscored to reflect the changes from current text. Also, in the treatment clause for the SECTION, the reference to the new paragraph that is created by dividing the current text should be removed ;

this issue also occurs in a number of other SECTIONS where renumbering is used to separate existing text into subunits.

e. In s. NR 113.03 (60), the stricken period should be removed, and the final period should be shown without underscoring.

f. In s. NR 113.04 (2), the final period should be shown without underscoring.

g. In s. NR 113.06 (2) (b), the new designation “2.” should be underscored.

h. In s. NR 113.06 (3) (b) (intro.), the phrase “all of the following” should be underscored to reflect the changes from current text. The department may wish to review the proposed rule, generally, to ensure that the changes from current text are accurately reflected in underscoring and strike-throughs.

i. In the treatment clause for SECTION 59 of the proposed rule, it is not necessary to identify the subunits of the paragraph that are created, as the provision creates s. NR 113.06 (3) (g) in its entirety. The same comment applies to SECTION 65 of the proposed rule.

j. In s. NR 113.07 (1) (b) (intro.), “All” should be underscored because it is newly added material. In addition, it appears that sub. (1) (b) 2. and 3. should be renumbered as sub. (1) (b) 1. a. and b. Also, in pars. (b) 3. (Note) and (c) (Note), both instances of the stricken word “is” that interrupts the underscored material should be moved to appear before the underscored material.

k. In s. NR 113.08 (1) (b) 3., the period after the stricken “of testing” should be removed, and the final period should be shown without underscoring.

l. In s. NR 113.09 (1), it appears that the subsection title “General” before par. (b) should be shown with a strike-through and inserted before par. (a) in SECTION 80 of the proposed rule. Also, in s. NR 113.09 (1), the underscoring of “(b)” should be removed, and the word “that” should be underscored as it is newly added material.

m. In the treatment clause for SECTION 86 of the proposed rule, “(intro.)” should be added after “(6)”.

n. In s. NR 113.11 (2) (a), it is awkward to strike and replace all of the current text other than the word “A” at the beginning of the sentence. Consider revising the treatment to instead repeal and recreate par. (a). If the treatment is not changed, the final period should be shown without underscoring.

o. The treatment in SECTION 97 of the proposed rule should be revised, as subd. 3. cannot be renumbered to itself. Consider separating this provision into two SECTIONS: first, to amend, subd. 3., striking “Application of nutrients from all sources shall be documented.”; and, second, creating subd. 3m. with the intended text.

p. In s. NR 113.11 (3) (a) 1. (Note), “DNR” should be changed to the defined term “the department”. This issue also occurs in sub. (3) (b) 3. (Note), and the entire rule should be checked for this issue. As an alternative to changing these provisions, the department could consider amending the definition of “department of natural resources” in s. NR 113.03 (12) to add “or DNR”.

q. In s. NR 113.11 (3) (b) (intro.), the phrase “all of” that is shown with both underscoring and a strike-through should be removed. Likewise, the striking and underscoring in par. (b) 3. (Note) should be reviewed and revised to reflect the current text.

r. In s. NR 113.11 (3) (c) 2. (intro.) and a., the colon should be shown with underscoring and the final period should be shown without underscoring. In subd. 3. a., the stricken period should be removed and the final period should be shown without underscoring.

s. In s. NR 113.11 (3) (c) 3. g., “this” should be added before “subd. 7.”.

t. In s. NR 113.11 (3) (c) 7. a. and b., “Businesses” should be changed to the singular “A business”.

u. In s. NR 113.12 (2) (e), the notation “s.” should be added before “NR 113.11”.

v. In s. NR 113.12 (3) (b) 3. d., “sub.” should be added before “(6) (a)”, and in subd. par. e., the notation “s.” should be inserted before “NR 113.11”.

w. In s. NR 113.12 (3) (e), “shall not” should be changed to “may not”.

x. In s. NR 113.12 (3) (g) 4. c., “s. NR 113.12 (6) (d)” should be changed to “sub. (6) (d)”.

y. In the title of s. NR 113.12 (4) (a), “Distances” should be changed to the lowercase. This issue also occurs in the paragraph title of sub. (4) (b).

z. In s. NR 113.12 (7) (a) 1. and 2., the subdivision titles should be shown with only an initial capital letter. [s. 1.05 (2) (e), Manual.] In sub. (7) (a) 2., “current version” should be changed to a more specific description. [See s. 1.01 (9) (b) of the Manual.] In sub. (7) (c) 2., 3., and 5., the subdivision titles should be changed to conform to s. 1.05 (2) (e) of the Manual.

aa. Section NR 113.12 is rather lengthy, and the department could consider separating the material into multiple sections for easier readability. For example, the current s. NR 113.12 could be repealed, and ss. NR 113.121 to 113.128 could be created.

bb. In s. NR 113.15 (1), the final period should not be underscored. The same comment also applies to ss. NR 114.153 (9) and (10) and 114.20 (2).

cc. In s. NR 114.16 (2), the new designation “(b)” should be underscored.

dd. In NR 114.17 (1) (intro.), the underscored phrase “The following” should be moved to be shown after the stricken word “Two”, and “2” should be underscored. Also, in the treatment clause for the SECTION, “(intro.)” should be added after “(1)”.

ee. In the treatment clause for SECTION 121 of the proposed rule, it appears that “and (c)” should be added after “(3) (a)”.

ff. In s. NR 114.22 (3), the new designations “(c)” and “(d)” should be underscored.

gg. In the rule caption, the enumeration of treated provisions should be updated as needed to reflect changes made in the text of the rule in response to these comments.

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

a. Throughout the rule analysis prepared by the department, after the first instance an acronym is created, it can be used throughout the analysis. For example, after referring to “the Department of Agriculture, Trade, and Consumer Protection (DATCP)”, the acronym DATCP can be used in the subsequent references to the agency instead of using the full title.

b. In the fifth bullet point of the plain language analysis section prepared by the department, “Family” should be changed to “Families”.

c. In the analysis and supporting documents section of the rule analysis, under the “land application disposal businesses” bullet point, under weekly maximum application rates, “of” should be inserted between “land application” and “large volumes”; and also between “land application” and “septage”.

d. In s. NR 113.03 (32) (a) and (b), creating two definitions of the same term may be confusing to users. If the department intends for the places used in s. NR 113.03 (32) (b) to be examples of what “land with a high potential for public exposure” may include, that material could be included in a note rather than a separate subunit of the rule. A similar issue occurs in s. NR 113.03 (38) (a) and (b).

e. In s. NR 113.03 (39m), “degree” should be changed to “degrees”. In sub. (42m), “Private onsite wastewater systems” should be changed to the singular “Private onsite wastewater system”.

f. In s. NR 113.03 (43) (a) and (b), creating two definitions of the same term may be confusing to users. In this instance, the material in sub. (43) (b) is substantive, so should not be placed in a note; however, the department should consider consolidating the two definitions to increase clarity and reduce confusion. In addition, in sub. (43) (b), it appears that “contain” should be changed to “contains” and “that” should be inserted between “toilet uses” and “receives”.

g. In s. NR 113.03 (65), it appears that “that” should be inserted between “constituents” and “may”.

h. In s. NR 113.05 (1) (c) 2., the Department of Workforce Development is not listed, but is included in sub. (1) (c) 1.; it appears this department should be listed in both subdivisions of the rule. In addition, in sub. (1) (c) 2., “is denied” should be changed to “shall be denied”.

i. In s. NR 113.05 (3) (dg), “the business shall possess” should be changed to “the business shall employ” or “the business shall designate”.

j. In s. NR 113.06 (2) (d) 1., “Tank” should be changed to the lowercase. In sub. (3) (f), “onto” should be changed to “into”.

k. In s. NR 113.07 (3) (c) 3. c., this provision may be clearer if “site to” were changed to “site approval” if it is the department’s intention to re-review the site after it is approved.

l. In s. NR 113.08 (2) (c), it appears that “of” should be changed to “or”.

m. In s. NR 113.09 (2), the last instance of “university” should be capitalized. In sub. (5) (a) 1. and 2., “gallon” should be changed to the plural.

n. In s. NR 113.11 (1) (intro.), “Businesses” should be changed to “A business”. In sub. (1) (cg), “landowners” should be changed to “landowner’s”.

o. Section 281.48 (4m), Stats., provides in pertinent part that DNR “...may not require a site approval for a location where septage is disposed of on land if the person who disposes of the septage is a farmer who owns or leases that location and if the septage is removed from a septic tank which is located on the same parcel where the septage is disposed of”. Section NR 113.11 (2) (a) is confusing, possibly because the word “generates” is used twice for apparently different purposes; therefore, the department should review this section to ensure it is consistent with the statute and with the department’s intent.

p. In s. NR 113.12 (2) (e), “land application sites” should be changed to the singular “a land application site”. The same issue occurs in sub. (3) (b) 3. e.

q. The following comments apply to s. NR 113.12 (3):

(1) In par. (a) 1. and 2., it appears that “department approvable” is unnecessary to include in the submitted plans as they must already be in conformance with the requirements in sub. (7).

(2) In par. (b) 1., “provide” should be changed to “providing”.

(3) In par. (c) (intro.), “facilities” should be changed to “facility”.

(4) In par. (d) 1., it is unclear what is being “added together” in the phrase “The proposed septage storage facility possesses a maximum capacity of 50,000 gallons or less when singly or added together, and located on the same parcel”.

(5) In par. (d) 4. a., can the department be more specific about what “facts required by the department” would include?

(6) In par. (d) 4. f., “the” should be inserted before “submittal” and before “plumbing system”.

(7) In par. (f) (intro.) and 1., it is unclear what an “existing storage facility” means. For example, does this mean a facility that existed before the rule’s effective date? Can the department clarify what “an existing storage facility” is intended to mean? This issue also occurs in sub. (4) (c). In addition, it appears that “only” should be added between “septage” and “storage”.

(8) In par. (f) 3., “storage facility” is used instead of “existing storage facility”. Also, can the department specify the types of “facts” that should be included in the application or provide a cross-reference to where more detail can be found? This issue also occurs in par. (h) 3.

(9) In par. (g) 8. h., “of” should be added between “land application” and “the”.

r. In s. NR 113.12 (4) (a), the second instance of “as provided” should be deleted.

s. In s. NR 113.12 (6) (c) (intro.), “follows” should be changed to “following”.

t. In s. NR 113.12 (7) (c) 3. c., it appears that “The number of” should be added before “Acres” in order to improve clarity. In sub. (7) (d) 3. k., the hyphen in the first instance of “7-day” should be removed.

u. In s. NR 114.24 (2) (intro.), the first word is stricken but no replacement is inserted to begin the sentence. Should the strike-through be removed, or some other material be inserted?