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CLEARINGHOUSE RULE 94-182

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 October 1994.]

2. Form, Style and Placement in Administrative Code

a. The two-sentence analysis of this 40-page rule is not adequate to inform a reader of the changes that are proposed. [See s. 227.14 (2) (a), Stats., and s. 1.02 (2), Manual.]

b. Throughout the rule, the wording “a person” should be used instead of “the person.” Also, the wording “his or her permit” should be used instead of “their permit.” The word “if” should be used instead of the phrase “in the event.”

c. It is unnecessary to renumber s. NR 110.26 (10) (d) to (f). The new paragraph titled “Liquid sludge storage facilities” could be numbered s. NR 110.26 (10) (dm).

d. Provisions that are merely recommendations, not absolute requirements, should be placed in notes, rather than in the text of the rule. This applies to the recommendations contained in s. NR 110.26 (10) (d) 3 and 4.

e. The reference to “pars. (a) to (g)” in s. NR 200.03 (2) should be replaced by a reference to “sub. (1).”

f. SECTION 16 of the rule purports to amend s. NR 200.05 (4) (b). In that paragraph, the word “volumes” is replaced by the word “columns” although there is not striking and underscoring to indicate that this is an amendment and it is not clear that this is not merely a typographical error. If the paragraph is **not** being changed, it should not be included in the SECTION. If it **is** being changed, the change should be indicated through strike-throughs and underscoring.

g. The two blocks of text in s. NR 204.01 should be given subsection numbers.

h. The rule makes frequent use of phrases such as “this rule,” “these rules,” “this code” and “this requirement.” These should be replaced by specific references. For example, s. NR 204.02 (1) should refer to “this chapter.” In s. NR 204.05 (2) (c) 2. a., does “this code” refer to all of ch. NR 204, only s. NR 204.05 or some subunit of that section? In s. NR 204.05 (7) (c), does “this requirement” refer to the requirement to report the amount of available nitrogen, the requirement to include nitrogen from other sources in that report, or both? In s. NR 204.11 (1) (b), does “this requirement” refer to the basic requirement for sludge storage capacity, the compliance deadline, or both?

i. The rule should be written in the active voice, clearly indicating **who** is required to do **what**. For example, in s. NR 204.02 (2), who is responsible to ensure that a permit is issued to the generator of sewage sludge, the generator or the Department of Natural Resources? Although the answer to this seems obvious, consider s. NR 204.06 (4) (d). Who is required to notify the department when 90% of the lifetime cumulative metal loadings has been reached, the site owner, the sludge hauler or applicator or the sludge generator? An example of good use of the active voice is found in s. NR 204.09 (4) (intro.). This style should be used consistently throughout the rule.

j. The definitions in ch. NR 204 are quite excessive. Where a term is used only once or twice, the meaning of the term can usually be given in the text of the rule. This would eliminate the need to define, for example, “dry run.” Where a term is defined in another chapter of the Administrative Code and is used once or twice, a cross-reference to the definition can be included in the text. For example, the rule could replace all references to “community well” with references to “community water system, as defined in s. NR 812.07 (24).” Finally, there are numerous definitions that appear unnecessary because of the obvious or generally accepted meanings of the terms or the vague nature of the definitions provided. Definitions that could possibly be omitted include “air pollution control device,” “bedrock,” “density of microorganisms,” “geometric mean,” “groundwater,” “pathogens,” “pH,” “recreation area,” “research plots,” “restricted public access,” “soil,” “soil conservation practice,” “soil pH” and “threatened or endangered species.”

k. Throughout the definitions, “means” should replace “is.” For example, see s. NR 204.03 (28) and (33).

l. Definitions should not contain substantive requirements. Inclusion of the notation “(dry weight basis)” in the definition of “agronomic rate” is an instruction on how to calculate the rate, rather than part of the definition of the term. If the rule is to give instructions on calculating agronomic rate, those instructions should be placed in a substantive provision of the rule. Also, throughout the rule, parenthetical material should either be deleted or incorporated into the text. [See s. 1.01 (6), Manual.]

m. Since the definition of “high groundwater level” concludes with a statement that it will be established by the presence of mottles, the definition should be rewritten simply in terms of the presence of mottles. However, it appears that the definition could be omitted and this information could be conveyed in the text of the rule.

n. The material following the last semi-colon in the definition of “land application” should be omitted. Also, the semi-colons should be replaced by commas.

o. It appears that the terms “monthly average--sludge” and “monthly average--incineration” are not used in the rule and so should not be defined. If these definitions are intended to specify the methods of calculating averages under different circumstances, those instructions should be placed in the text of the rule, not in definitions. Also, the two terms are set forth in reverse alphabetical order.

p. Section NR 204.03 (48) defines “permit” as “a WPDES permit,” while the text of the rule usually uses the term “WPDES permit.” The rule should consistently refer to “WPDES permit” and omit the definition of “permit.” Similarly, the department should choose between the terms “sludge” and “sewage sludge,” define the chosen term and use it consistently.

q. The definitions of “research plots” and “restricted public access” both contain substance. The information contained in these definitions could be conveyed in the text of the rule and the definition could be omitted.

r. Section NR 204.03 (70) defines “soil compaction” as a standard, while the only occurrence of the term in the rule uses it as a general concept. It appears that this definition could be omitted.

s. The last sentence of the definition of “stack height” should be placed in a note. This comment applies similarly to subsequent provisions in which the availability of materials incorporated by reference is described.

t. Section NR 204.04 is entitled “PERMIT REQUIREMENT.” However, this section does not include all permit requirements in ch. NR 204. The department should either collect all permit requirements together in this section or provide a narrower, more descriptive title for this section.

u. Section NR 204.05 (1) (intro.) should begin: “A permit holder shall submit a general information report....”

v. Since titles are not part of a rule, s. NR 204.05 (1) should begin with “A general information report...” rather than “This report....”

w. Each item in a list, such as a list of requirements or a list of items to be addressed in a report, should follow both grammatically and conceptually from the introductory language preceding the list. The rule violates this principle in a number of instances. For example, in s. NR 204.05 (1) (f), the words “Indicate if” should be replaced by “Whether the.” Also, s. NR 204.05 (7) (h) and (i) do not describe information to be included in the report described in sub. (7) (intro.), and so should be placed elsewhere in the Administrative Code. Section NR 204.06 (2) (c) 8 lists soil conditions that must be met, but subs. d to g do not describe soil conditions; these two items should be placed elsewhere in the Administrative Code. As a final example, the various lists in s. NR 204.06 (3) are a hodgepodge of full and partial sentences. A consistent format that follows grammatically from the introductory material for each list should be devised and used.

Also, introductory material should always end with a colon. [See s. 1.03 (8), Manual.] For example, see ss. NR 204.06 (3) (b) (intro.) and 204.09 (3) (intro.) and (4) (intro.). The entire rule should be reviewed for instances of this error.

x. The two subdivisions of s. NR 204.05 (2) (c) should be numbered “1” and “2”, rather than “(1)” and “(2).” Also, the references to subdivisions in s. NR 204.05 (2) (c) 1. a. and c. should be replaced by references to subdivision paragraphs. [See s. 1.07 (2), Manual.]

y. The table following s. NR 204.05 (2) (c) 1. b. should be numbered Table 1, and that subdivision paragraph should refer to it by number.

z. In s. NR 204.05 (2) (c) 1. c., the word “will” should be replaced by the word “shall.” Also, “shall determine” should replace “determine.”

aa. Titles should be used consistently within the subdivisions of a rule. Either a title should be provided for s. NR 204.05 (2) (c) 1 or the title for s. NR 204.05 (2) (c) 2 should be deleted. Similarly, s. NR 204.05 (9) (g) should not be the only paragraph of that subsection to be given a title.

ab. In s. NR 204.06 (2), either titles should be provided for pars. (a) and (d) or the titles to pars. (b) and (c) should be deleted.

ac. The phrase “but not limited to” in conjunction with the word “includes” at the beginning of a list is unnecessary because the word “includes” implies that the following list is not exclusive. This is particularly true if the list includes an item that allows the inclusion of anything else, at the department’s discretion or at someone else’s discretion.

ad. It is incorrect form to define a term by describing it and following the description with a parenthetical identification of the term and to then use the term in quotes throughout the rule. See, for example, the treatment of the term “soil information sheet” in s. NR 204.05 (6).

ae. The last sentence of s. NR 204.05 (6) (f) creates an exception to the application of Table 1 and does not relate to site evaluation information. That sentence should be placed in s. NR 204.06 (2) (d).

af. Section NR 204.05 (7) (title) and (intro.) refer variously to “bulk sludge land application records report,” “sludge application reports” and “records report.” This terminology should be made consistent.

ag. Sections NR 204.05 (7) (c) 1 and 2 should both end with a period rather than with “; or.” [See s. 1.03 (intro.), Manual.]

ah. The term “exceptional quality sludge” should not be placed in quotation marks in s. NR 204.05 (9) (a) (intro.).

ai. The example in s. NR 204.05 (9) (f) should be deleted from the text and placed in a note.

aj. In s. NR 204.06 (2) (c) 8. f., “microcuries per acre” should be spelled out and the parenthetical comment regarding microcuries and picocuries” should be omitted or placed in a note.

ak. Section NR 204.06 (3) should be rewritten. The introduction should be discarded and the remaining material should be divided into three separate subsections, one to address vector attraction control, one to address pathogen reduction and one to address inorganic pollutant limits or metal limits. [Section NR 204.06 (3) (intro.) and (d) (title) use different terms to describe the third topic of this subsection.]

The subsection regarding vector attraction control would state simply that “a permittee shall implement one of the following vector attraction control measures:”. The material that is now in pars. (a) and (b) could then be presented as a single list, since a permittee is required to implement only one measure from the two lists, combined. Each item in the list should be given the same grammatical structure.

The subsection relating to pathogen reduction should start with a paragraph regarding pathogen classes, which would clearly identify Class A and Class B sludges. Subsequent paragraphs would create different pathogen reduction requirements for Class A and Class B sludges. However, it is not clear that the Class A and Class B distinction serves any purpose other than to identify two alternative sets of requirements. If this is the case, it is suggested that this confusing concept be abandoned and that the introduction to the subsection on pathogen reduction simply state that a permittee must comply with either of two sets of requirements.

al. The contents of s. NR 204.06 (3) (c) 2. d. and 3. c. should be broken into lists. If the organization suggested in the preceding comment is adopted, the numbering system would allow for this.

am. The references to “par.” in s. NR 204.07 (1) should be replaced by references to “sub.”.

an. Section NR 204.07 (2) (c) 2 should be omitted, since the term “exceptional quality sludge” is a defined term and that subdivision merely repeats the definition.

ao. Section NR 204.09 (4) (f) (intro.) 1 and 2 should be consolidated into a single undivided paragraph, which would read as follows:

NR 204.09 (4) (f) The owner or operator of a continuous emission monitoring system shall submit quarterly excess emission reports to the department. The report shall be submitted within 30 days following the end of each calendar quarter on a form provided by the department or in a format approved by the department. The report shall identify any month in which the monthly average of total hydrocarbons or carbon monoxide emissions exceed the applicable emission limitation.

ap. The title of s. NR 204.09 (5) is “MANAGEMENT PRACTICES.” However, with the exception of par. (g), the entire subsection relates to monitoring. These provisions should be combined with sub. (4) in a single subsection on monitoring. In particular, sub. (5) (a), which relates to continuous monitoring for total hydrocarbons and carbon monoxide, addresses the same subject as sub. (4).

aq. The title of s. NR 204.09 (6) is “REPORTING FREQUENCY.” Again, this subsection deals as much with monitoring as with reporting. Clearer organization and more precise titles are needed.

ar. Section NR 204.09 (7) (intro.) should be rewritten as follows: “A person who fires sewage sludge in a sewage sludge incinerator shall develop and retain for a period of time specified in the person’s WPDES permit, but for not less than five years, all of the following:”.

as. In s. NR 204.11 (1) (b) (intro.), the acronym “MGD” should be spelled out. Also, that introduction should end with the phrase: “the permittee shall do one of the following:”.

at. In s. NR 204.12 (2), the phrase “All permittees defined by s. NR 204.04 (2)” should be replaced by the phrase “A permittee who imports bulk sludge into the state.”

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

a. Does the definition of “historical site” intend to refer to the State Register of Historic Places under s. 44.36, Stats.? If so, that statute should be cross-referenced.

b. Section NR 204.05 (9) (a) 2 and subsequent provisions should include a cross-reference to indicate what provisions are meant by “the Class A pathogen requirements.” [However, see comment 2, ah.]

c. A cross-reference should be supplied in s. NR 204.06 (1) identifying the section under which sludge may be certified as exceptional quality sludge. Also, in that subsection, “sub. (2) (b) 4 and (c) 1” should replace “subs. (2) (b) 4 and (2) (c) 1.”

d. Section NR 204.09 (4) (intro.) should include a cross-reference to identify the sources that are required to conduct continuous emission monitoring.

e. In s. NR 204.09 (7) (c), “sub. (2) (a)” should replace “s. NR 204.09 (2) (a).” A similar change should be made in s. NR 204.09 (7) (d).

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

a. In s. NR 110.26 (7) (b), the notation “C”, for Celsius, should follow the notation “55°.”

b. The definition of “annual pollutant loading rate” is imprecise. Who determines what amount can be applied? Is this a regulatory limit that can be identified by cross-reference? The definition of “application rate” is similarly vague. Also, a hyphen should be inserted after “365.”

c. In the definition of “hauler,” the comma should be deleted and the language following it should read “or a storage or disposal facility.”

d. In the definition of “hourly average,” the comma and the last three words should be omitted.

e. Should the definition of “stabilization of sludge” refer to the “specific oxygen uptake rate” (emphasis added)?

f. In s. NR 204.05 (1) (e), the phrase “in days” is not very descriptive of the concept that is intended. One alternative would be to say “, expressed as the total volume of the storage system divided by the daily volume of sludge generation.” Another alternative would be to say “, expressed as the number of days worth of sludge generation that can be stored.”

g. The plural of analysis, which is analyses, is misspelled in s. NR 204.05 (2) (c) 2 a.

h. Section NR 204.05 (2) (c) 2. b. makes sense only for annual reports; what is the deadline date for reports that are submitted more frequently? Also, the reference to “NR 204.05” in that subdivision paragraph should be replaced by a reference to “this section.”

i. Section NR 204.05 (4) does not dictate the frequency of the required reports, as do the other subsections of that section.

j. The last sentence of s. NR 204.05 (6) (c) treats the term “soil test” as a verb, which it is not.

k. The discussion of the “soil information sheet” is confusing. From s. NR 204.05 (6) (c), it appears to be a reference document, while its discussion in par. (d) makes it appear to be a work sheet. This should be more clearly explained.

l. Section NR 204.06 (1) should be broken into several separate paragraphs, for greater clarity and readability.

m. Section NR 204.06 (2) (c) 7. b. is not a full sentence.

n. In Table 1, is the slope set forth in degrees? Also, there is overlap between the categories. For example, if the slope is exactly 6, is this included in the 0-6 or 6-9 category?

o. In the second sentence of s. NR 204.06 (3) (a) 4, the comma following “2% solids or less” should be a period and the following material should begin a new sentence.

p. In s. NR 204.06 (4) (b), the phrase “most leguminous crops” is insufficiently precise for regulatory purposes. Does the department intend to refer to all leguminous crops other than soy beans?

q. Section NR 204.06 (4) (c) uses the undefined term “lifetime cumulative metals loadings.” Does this term refer to the total amount of metals that have been applied over the lifetime of a site or to the amount of metals that have accumulated on the site as a result of sludge applications? This concept needs clarification and may warrant a definition.

r. The second sentence of s. NR 204.07 (1) is sufficiently vague that it could be interpreted as saying that all it takes to get bulk sludge certified as exceptional quality sludge is to distribute it commercially or use it on a lawn or home garden. This sentence should read: “No person may commercially distribute or apply on a lawn or home garden any bulk sludge that is not certified under s. NR _____ as meeting the definition of exceptional quality sludge.”

s. In s. NR 204.07 (3) (intro.), the word “which” should be omitted.

t. In s. NR 204.08, “to” should replace the hyphen.

u. Section NR 204.09 (3) is very imprecisely worded. First, the hydrocarbon and carbon monoxide concentrations are not being corrected, but rather the reported measurements of these concentrations are being corrected. Also, the calculation required under par. (b) is unclear. Is there a single calculation for each pollutant, correcting for both moisture and oxygen, or are two calculations made for each pollutant? That is, is the corrected total hydrocarbon concentration reported as a single value, being the product of the measured hydrocarbon concentration times the correction factor for 0% moisture times the correction factor for 7% oxygen or are two values reported, one being corrected for 0% moisture and the other being corrected for 7% oxygen? This needs to be explained more fully.

v. Some of the land uses described in s. NR 204.10, such as sod farms, nurseries and Christmas tree plantations, are agricultural uses, contrary to their characterization in that section.

7. Compliance With Permit Action Deadline Requirements

In compliance with s. 227.15 (2) (h) and 227.116, Stats., a deadline for department action on variance requests should be included in s. NR 204.15.