

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 95-188

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.]

[Note: Many of the comments contained in this report are general and apply to problems found throughout the rule. While examples of each of the problems noted are provided, the **entire rule should be reviewed for additional occurrences** of the problems described in these comments.]

1. Statutory Authority

a. In s. NR 506.095 (5), an additional exception should be made for material that is subject to an exception under s. 159.07 (7) (d), Stats.

b. The determination by the Historical Society in s. NR 509.05 (2) (c) is restricted to the area one mile from the proposed facility. The statute does not contain such a restriction. Is there any authority for the department to restrict the statute in this way? [See also s. NR 503.07 (2) (c).]

2. Form, Style and Placement in Administrative Code

a. In s. NR 150.03 (8) (e) 6. f., “s.” should be retained since the new reference is only to one section, not an entire chapter.

b. In the treatment clause of SECTION 22 and in several other treatment clauses, “respectively” should be deleted and “to” should replace “through.”

c. When a rule provision is both renumbered and amended, both treatments should be accomplished in the same SECTION of the rule. For example, SECTIONS 4 and 5 of the rule

should be combined, and the treatment clause should read: “NR 150.03 (8) (e) 5. e. to g. are renumbered NR 150.03 (8) (e) 5. c. to e. and NR 150.03 (8) (e) 5. e., as renumbered, is amended to read:”. In addition, where a rule applies the same treatment to sequential sections of the Administrative Code or to subunits of a single section, those treatments may be combined in a single SECTION of the rule. For example, SECTIONS 55 and 56 of the rule could be combined into a single section as could SECTIONS 90 to 102.

d. In contrast to the preceding comment, SECTION 25 should be broken into multiple SECTIONS, showing separate treatment of the various definitions in s. NR 500.03. Many of the definitions are not being changed at all--six terms starting with the letter “a” alone are unchanged and should not appear in the rule. Many others are changed only slightly, such that amending them, rather than repealing and recreating them, would show more clearly the changes being affected by the rule. Only those terms that are extensively changed should be repealed and recreated.

e. Section NR 500.03 includes far more definitions than are warranted. There are 260 definitions, taking up 20 pages! Numerous terms whose meanings are quite obvious--such as “container,” “discarded material,” “liner ” and “monitoring”--are defined unnecessarily. Other more obscure terms--such as “holocene” and “karst terrane”--are defined, but the definitions given are not different than those found in a dictionary and so are also unnecessary.

Another category of terms that may not need defining are those terms that are used infrequently, if at all, in the rule. In many cases, these terms can be replaced by slightly more descriptive phrases in the portions of the rule in which they are used or otherwise clarified, such that no definition is needed. Possible examples of such terms are “director” and “human tissue.” Another category of terms that do not need defining are types of policies or reports that are required by a rule or statute, such as the term “medical waste reduction policy.” Instead of defining these terms, they could be supplemented in the text of the rule with a cross-reference to the rule or statute creating the requirement, such as “the medical waste source reduction policy under s. 159.07 (8), Stats.”

A final category of terms that typically should not be defined are phrases, such as “areas susceptible to mass movement,” “maximum horizontal acceleration of lithified earth materials” and “monofill cell for residue produced by burning municipal solid waste.” Unless these phrases are used repeatedly, it is usually possible to replace them in the text of the rule with more descriptive language, eliminating the need for a definition.

In addition, since s. NR 500.03 (intro.) states that the definitions in ch. 144, Stats., apply to chs. NR 500 to 536, it is unnecessary to then define a number of specific terms in s. NR 500.03 by reference to specific provisions in ch. 144, Stats. Many definitions could be deleted from the rule, including subs. (212) to (216). Also, definitions that reference provisions of ch. 144, Stats., appear elsewhere in the text of the rule and should be deleted.

f. Definitions should never include substantive requirements, but should only state what a term means. Many of the definitions in s. NR 500.03 include substance. For example, the definition of “feasibility report” includes requirements for information to be included in these reports. The definition of “fine-grained soil environment” includes instructions on how to measure soils. The definition of “free liquids” includes requirements on how to measure liquids.

The definition of “hydrogeologist” is an enumeration of credentials that a hydrogeologist must have for some unspecified purpose (a hydrogeologist is simply a person who studies hydrogeology). The definition of “infectious waste treatment” includes specific requirements for the treatment of specific types of infectious waste. More examples could be given. The substance in these and other definitions should be removed and placed in the text of the rule.

- g. In s. NR 500.03 (2), “s.” should be inserted before the first citation.
- h. Throughout the rule, references to subsections in the same section should refer to “sub. (___),” not to the whole section. [See s. 1.07 (2), Manual.] This comment also applies to references to paragraphs in the same subsection. For example, the reference in s. NR 500.03 (18) should be to “sub. (130).” In addition, “par.” should be used with lettered subunits in which the letter is in parentheses. For example, s. NR 500.08 (3) (b) should refer to “par. (a),” not “sub. (a).”
- i. To retain alphabetical order in the definitions, sub. (35) should precede sub. (32); sub. (38) should precede sub. (37); and sub. (241) should follow sub. (246).
- j. The second and third sentences of s. NR 500.03 (49) are not definitional and should be placed in a note. In the alternative, the sentences could be combined, so that the current first sentence ends with “including concrete, bricks...but not including waste paints...”
- k. Throughout the rule, subdivision numbers and subdivision paragraph letters should end with a period. For example, in s. NR 500.03 (189), “2.” should replace “2”.
- l. The second sentence of s. NR 500.03 (108) should be rewritten as follows: “Incinerator does not include a facility that uses solid waste as a supplemental fuel...”
- m. In s. NR 500.03 (236), “service” should replace “Service.”
- n. Requirements should always be written in the active voice to identify clearly who is required to do what. An example of incorrect drafting style is found in the first sentence of s. NR 502.045 (2); examples of correct drafting style are found in the first sentences of each of the following three subsections. In another example, the third sentence of s. NR 502.05 (4) (b) should read: “The department may grant exceptions from the requirements of...” In a final example, the second sentence of s. NR 502.13 (4) (t) 1. should read: “The facility may use alternative methods of dust control that are approved by the department prior to implementation.”
- o. A rule should not include statements that other provisions of the law apply, unless the rule is applying that provision to a new situation or otherwise expanding upon it. For example, s. NR 502.04 (1) should be omitted. That subsection, in essence, states that certain other provisions of ch. NR 502 apply, just as those provisions say they do. The subsections entitled “General” in many of the sections of ch. NR 502 include similarly unnecessary statements. See, for example, the newly created language in s. NR 502.06 (1) (a) and s. NR 502.07 (1) (a). If the department thinks that such statements are needed to inform the reader of the other provisions’ existence, it may do so through notes.

- p. Section NR 502.045 (intro.) does not appear to be needed and can be omitted.
- q. There is no introductory sentence leading into the list of facilities contained in s. NR 502.045 (1) (a) to (h) or the similar list of facilities in s. NR 502.045 (2) (a) to (f).
- r. The cross-reference in the first sentence of s. NR 502.05 (4) (b) should be to par. (a) 2. to 7.; the cross-reference in the third sentence should be to par. (a) 2. to 6.; the cross-reference in the last sentence should be to par. (a) 1. Similar errors are made in most of the parallel provisions throughout ch. NR 502.
- s. In the treatment clause of SECTION 61, “are” should replace “is.”
- t. The treatment clause of each SECTION must refer to the precise portions of the rule that are being treated. For example, the treatment clause of SECTION 63 should refer to “NR 502.06 (4) (title)”; the treatment clause of SECTION 67 should refer to “NR 502.07 (1)”; and the treatment clause of SECTION 68 should refer to “NR 502.07 (2) (intro.).”
- u. The entire rule should be rewritten in the active voice. For example, s. NR 502.06 (4) (h) should begin: “The department shall provide....” The second sentence should begin: “The owner or operator shall provide....”
- v. In the treatment clause of SECTION 76 and several other treatment clauses, “FOLLOWING” should be lower case.
- w. In s. NR 503.04 (1), the use of the phrase “new landfill” and the phrase “existing landfill” is improper and confusing. The policies throughout the rule affecting “new” and “existing” landfills should be expressed in terms of a particular date in order to clearly state the applicability of various portions of the rule. Also, in sub. (1), the notation “sub.” should be inserted before the cross-references in the second and third sentences.
- x. In s. NR 503.07 (1), the notation “sub.” should be replaced by the notation “subs.”
- y. In s. NR 503.08 (1) (a), the notation “s.” should be inserted before the cross-reference.
- z. In s. NR 503.09 (1) (intro.), the word “below” should be replaced by the phrase “in this subsection.”
- aa. In s. NR 503.09 (9) (c), the notation “s.” should be replaced by the notation “ch.”
- ab. In s. NR 503.10 (2) (d) 1., the notation “ss.” should be replaced by the notation “s.”
- ac. In s. NR 503.10 (2) (g) (intro.), the cross-reference should be stated as “ss. NR 500.05 and 504.07 to 504.11.” [See also par. (h) (intro.).]
- ad. In s. NR 503.10 (2) (h) 1., the phrase “the above design items” should be replaced by the phrase “in this subdivision.” Also, in subd. 3., the citation to “s. NR 504.09 (b)” is incorrect and should be restated.

ae. In s. NR 503.10 (3) (c) 2., the notation “subd.” should be replaced by the notation “par.”

af. In s. NR 503.10 (3) (d) 2., the second sentence is not substantive and belongs in a note to the rule.

ag. In s. NR 503.10 (3) (e) 2., the first cross-reference is incorrectly stated and the notation “subd.” should be replaced by the notation “s.”

ah. In s. NR 503.10 (3) (e) 8., the notation “s.” should be inserted before the cross-reference.

ai. In the Note to s. NR 503.10 (3) (f) 8., the notation “chs.” should be replaced by the notation “ch.” Also, the period after the notation “NR” should be deleted.

aj. In s. NR 503.10 (4) (b) (intro.), the notation “sub.” should be replaced by the notation “s.”

ak. In s. NR 503.10 (4) (h), the notation “ss.” should be replaced by the notation “s.”

al. In s. NR 503.10 (4) (n), the phrase “chs. 500 through 536” should be replaced by the reference “chs. NR 500 to 536.”

am. In s. NR 503.10 (5) (c) 4., the phrase “identified below” should be replaced by the phrase “in this subdivision.”

an. In s. NR 503.10 (7) (b), the notation “ch.” should be inserted before the reference to “NR 140.”

ao. The first sentence of s. NR 504.05 (3) should be omitted and the second sentence should read: “The design capacity of all proposed landfills, except landfills that are exempt under s. 144.44 (2) (nr), Stats., shall be....”

ap. In s. NR 504.06 (4) (a), the phrase “as defined in s. NR 500.03 (85)” should be omitted, since the referenced definition applies to this chapter. However, if this paragraph is the only place in which the term “fine-grained soil environment” is used, the term should be replaced with a description of what is meant and the definition in ch. NR 500 should be omitted.

aq. The second sentence of s. NR 504.06 (5) (b) should be placed in a note.

ar. The last sentence of s. NR 504.06 (5) (h) should refer to par. (j), not sub. (5) (j).

as. In s. NR 504.06 (5) (m), the reference should be to “par. (L).”

at. The renumbering and amending of provisions accomplished in SECTIONS 166 to 176 should be combined, except that the material that is now numbered s. NR 506.07 (1) (j) and (o) should be repealed and the new pars. (i) and (n) should be created separately.

au. Underscored material should not be used in a newly created section. See s. NR 506.085.

av. Section NR 506.13 (1) (intro.) should end with a phrase such as “any of the following apply.” All of the subsequent paragraphs should end with periods rather than semicolons or the word “or.” [See s. 1.03 (intro.), Manual.]

aw. As amended, s. NR 506.155 (1) and (2) deal with the same entities. Therefore, it is suggested that the introductions to these two subsections be omitted and each of the paragraphs from each of the subsections be elevated to the level of subsections. Since the text that is now s. NR 506.155 (2) (a) requires written approval of the department, the comparable language that is being inserted to s. NR 506.155 (intro.) can be omitted.

ax. Throughout the rule, introductory material should end with a colon and lead into the subsequent subunits. [See s. 1.03 (8), Manual.] For example, s. NR 506.19 (intro.) is incorrectly drafted as introductory material. It should be sub. (1) and the subsequent subsections should be subs. (2) to (4).

ay. In s. NR 506.19 (2) (c), “does not apply to” should replace “need not be performed.”

az. In s. NR 507.05 (2), “WSGNHS” should replace “WGNHS” in two places. See the defined abbreviations in s. NR 500.03 (257). See, also, s. NR 503.10 (2) (c) 5.

ba. In s. NR 507.14 (5) (intro.), “but are not limited to” is redundant and should be deleted. In addition, slashed alternatives should not be used in par. (e).

bb. It is unclear why s. NR 507.21 does not have subsection titles since the other subsections in ch. NR 507 have titles.

bc. In s. NR 507.26 (3) (b) 4., the subdivision paragraphs should be lettered “a.,” “b.” and “c.”

bd. In s. NR 504.04 (3) (e) 2., and in numerous other provisions where the effective date of the rule is to be inserted, the notation “[effective date]” or similar notations should be replaced by the notation “the effective date of this rule...[revisor inserts date].” Other examples include ss. NR 507.15 (2) (b) 1. and (d), 507.18 (4) and 507.20 (3) (intro.).

be. Section NR 500.03 establishes the applicability of the definitions section. It is not necessary to create s. NR 508.03 to make definitions in s. NR 500.03 applicable to ch. NR 508. For purposes of clarity, a note could be included in ch. NR 508 to indicate that definitions are located in s. NR 500.03. [See also ss. NR 503.03 and 509.03 and other similar sections.]

bf. In s. NR 508.04 (intro.), the notation “s.” should be inserted before the reference to “NR 140.14” and, in sub. (2), the notation “ss.” should be replaced by the notation “s.” [See also s. NR 508.05 (1), in which the notation “s.” should be inserted before the reference to “NR 507.28 (3).”]

bg. The reference to s. NR 508.05 (4) (b) in s. NR 508.04 (3) should be preceded by “s.” rather than “ss.” Also, that reference and the reference to s. NR 508.04 (3) in s. NR 508.05 (4) (b) are circular.

bh. It appears that “subsection” should be replaced by “section” in s. NR 508.05 (intro.) and (1). Also, “pars. (a) to (c)” in s. NR 508.05 (3) (intro.) should be changed to “this subsection.” Section NR 508.05 also presents a format problem that runs throughout Clearinghouse Rule 95-188. The introduction to this section should be a numbered subsection unless it grammatically leads into the following subunits. The same comment can be raised with respect to the introduction of s. NR 508.05 (3). See, for example, sub. (3) (a) (intro.), which apparently is drafted to lead into the following subdivisions and should be concluded by a colon rather than a period.

bi. The initial letters of the two subdivisions in s. NR 508.05 (3) (c) should be capitalized and the “and” at the end of the first subdivision should be deleted. Also, in this paragraph, the phrase “[effective date of this rule]” should be replaced by the phrase “effective date of this section [revisor inserts date].”

bj. The defined term “limits of filling” should be used in s. NR 508.05 (4) (a).

bk. The cross-reference in s. NR 508.05 (5) should be to “this section.”

bl. The proper form is to refer to “this state” rather than “Wisconsin,” as in s. NR 509.01.

bm. “Solid waste facilities” is a defined term and should be used without repeating the definition as in s. NR 509.02 (1). Also, in that subsection, “including” apparently should be replaced by “and.”

bn. Section NR 509.02 (2) could be clarified substantially by breaking it into paragraphs. In particular, the scope of the exception at the end of that sentence should be clarified. Also, “nor” should be replaced by “or.”

bo. The reference to the proper location for sending information in s. NR 509.05 (1) should be drafted as a note. Also, the cross-reference to “ss. NR 500.05 (3) and NR 500.05 (4)” should be replaced by a reference to “s. NR 500.05 (3) and (4).” Finally, the last cross-reference should read “s. NR 502.04, 503.04, 504.04 or 518.05.” In citing a series of provisions, it is unnecessary to repeat the notation “NR” and the notation “ss.” corresponds with the use of the word “and,” while the use of the notation “s.” corresponds with the use of the word “or.” The entire rule should be reviewed for this problem of citation.

bp. In s. NR 509.05 (2) (e), a semicolon should replace the comma preceding the phrase “in s. NR 504.04.” Also, it appears that the word “in” should be inserted before the reference to “s. NR 518.05.”

bq. The defined term “critical habitat areas” should be used in s. NR 509.05 (3) (b).

br. Throughout the rule, the new material inserted by an amendment should be separated by a space from material that is stricken. See, for example, s. NR 510.01. Also, the underline for material that is inserted by amendment should end with the new material rather than extending into the space after the new material, as in s. NR 510.04.

bs. The titles should be indicated in consistent format. For example, the title of s. NR 510.04 should be in bold type.

bt. In s. NR 510.06 (3), the reference to the “Federal Aviation Administration” should be in lowercase.

bu. In s. NR 510.08 (1), the first occurrence of the notation “ss.” should be replaced by the notation “s.”

bv. In s. NR 510.10 (3), it appears that the word “that” should be inserted after the third occurrence of the word “landfill.”

bw. If renumbering is undertaken in the rule, the renumbering and amendment should be done in the same SECTION. For example, see SECTIONS 293 and 294. In general, it is preferable to avoid renumbering if it is not absolutely necessary. The method of renumbering provisions in one SECTION of the rule and treating these renumbered provisions in following SECTIONS is incorrect, is confusing and should be abandoned.

bx. The last sentence in s. NR 512.08 (intro.) is in the imperative form and should be rewritten to describe who must include the information or bird study. Also, the reference to the “Federal Aviation Administration” should be in lowercase.

by. In s. NR 512.09 (2) (c), the reference to “sub (b)” should be replaced by a reference to “par. (b).”

bz. Commas and periods should not be stricken and then subsequently inserted by amendment. For example, see s. NR 512.11 (1) (e). In this paragraph, the new material should be inserted before the existing comma in the rule. In referring to a series of subunits of the rule, “to” should be used instead of “through.” For example, see SECTION 337.

ca. The full citation to a part of the rule should be used rather than an abbreviated form. For example, see SECTIONS 341 and 342.

cb. In s. NR 512.15 (1), the notation “subs.” should be replaced by the notation “sub.”

cc. The acronym “DOT” is used in s. NR 512.15 (3) (f) but is not defined.

cd. In s. NR 514.05, the resulting cross-reference should read: “ss. NR 500.05 and 504.07 to 504.11.” [See also s. NR 514.06 (intro.).]

ce. New material should be inserted after material that is stricken. For example, see s. NR 514.06 (8).

cf. In s. NR 514.07 (1) (j), the use of the notations “(s)” should be avoided. In construing provisions of the Administrative Code, the singular includes the plural and the plural includes the singular. [See ss. 227.27 and 990.001 (1), Stats.] The entire rule should be reviewed for this problem.]

cg. “Water” should not be deleted and then restored by amendment in s. NR 516.04 (1), as renumbered.

ch. The cross-reference in s. NR 516.04 (2) (b) should be to “par. (a)” and “above” should be deleted. Also, the notation “and/or” should be replaced by the word “or.”

ci. The cross-reference in s. NR 516.04 (3) (d) (intro.) should be to “sub. (2).” Also, that paragraph refers to “applicable solid waste administrative code requirements,” which should be specified by citation, if possible.

cj. In s. NR 516.04 (6), the reference to “NR 500 through 536” should be replaced by reference to “chs. NR 500 to 536.”

ck. In s. NR 516.05 (1) (h), the use of the parenthetical material is inappropriate. If the phrase “in critical areas of below-ground piping” actually means “where several pipes cross or meet,” then the rule simply should make use of the latter phrase. [See also ss. NR 503.10 (5) (e) 8. and 516.06 (1) (j).]

cl. In s. NR 516.06 (2) (e), the notation “s.” should be inserted before the cross-reference.

cm. In s. NR 516.07 (2) (c) 4., it appears that the second sentence should read: “The tensile testing machine shall be equipped..., shall be capable of...and shall display...”

cn. In s. NR 518.04 (6) (b) 4. a., the parenthetical notation should be removed. Also, in subd. 6., the notation “par.” should be replaced by the notation “subd.”

co. In s. NR 518.06 (1) (f), the phrase “subds. 1. through 3. below” should be replaced by the cross-reference “subds. 1. to 3.”

cp. In s. NR 520.04 (1) (b), the reference to the department should be in lowercase. This change should be made throughout the rule.

cq. In s. NR 520.07 (3), the use of the word “etcetera” is improper.

cr. In s. NR 520.08 (3) (a) 4., the cross-reference “ss. NR 520.08 (2) (a) 2. and 3.” should be replaced by the cross-reference “sub. (2) (a) 2. and 3.” Also, in par. (b), it appears that the word “be” should be inserted before the word “provided.”

cs. In s. NR 520.12 (2), the phrase “also, at its discretion” is unnecessary and should be deleted.

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

a. Since the department has a number of other rules that are in the promulgation process, the department should carefully review the cross-references in this rule to ensure that they are consistent with other proposed rules.

b. Section NR 502.08 (2) (h) should include a cross-reference to the provisions of the Wisconsin Administrative Code that incorporate the specifications of ASTM-C 618 Class F and C into the Wisconsin Administrative Code and should include notes indicating how the reader

can obtain copies of the standards. The same comment applies to several other standards referenced elsewhere in the rule.

The rule incorporates a number of analytical methods by reference. Consent for incorporation of these methods must be obtained from the Revisor of Statutes and the Attorney General pursuant to s. 227.21 (2) (a), Stats. The analysis accompanying the rule should, but does not, indicate that this consent has been given.

c. Section NR 502.09 (6) (a) should include cross-references to materials describing the toxicity characteristic leaching procedure and, if required, to provisions relating to incorporation by reference of those materials.

d. In s. NR 502.13 (4) (m), can a more specific reference replace “state air management rules”?

e. In s. NR 503.02 (1), the cite to s. NR 500.03 (197) should be to s. NR 500.03 (157).

f. In s. NR 503.09 (8) (b), should the cite to Table 3 be a cite to Table 1 or 2? [This may be a cite to the amended ch. NR 520.] Also, the cite to the Table would be clearer as “ch. NR 520, Table 3” and would then be consistent to the cite to that Table in s. NR 503.10 (9) (b).

g. In s. NR 503.10 (2) (g) (intro.), the cite to s. NR 500.05 could specify the subsection with which the engineering plans must comply since s. NR 500.05 contains other information that is irrelevant to the report required under s. NR 503.10.

h. Section NR 503.10 (4) (k) cites s. 144.43 (4r), Stats., which is the definition for solid waste disposal. Is this the definition the drafter wishes to cite? If so, the rule or a note should clarify why this citation is used.

i. Section NR 504.06, especially in sub. (2), uses a good deal of technical terminology and refers to numerous technical measurements. Specifically, this section uses the terms “200 sieve,” “90% modified Proctor,” “average liquid limit,” “average plasticity index” and “uniformity coefficient.” It may be appropriate to incorporate a technical document by reference to explain these terms.

j. In s. NR 504.09 (2) (e), it is unclear what standard is being referenced or how it may be obtained.

k. The analysis accompanying the rule should, but does not, identify any statute that the rule interprets. [See s. 1.02 (2) (a), Manual.]

l. The rule contains broad cross-references to entire chapters in the Administrative Code. See, for example, the references to ch. NR 141 in ss. NR 507.04 (5) and (6) and 507.13, the reference to ch. NR 140 in s. NR 507.17 (3) and the reference to “s. NR 507” in footnote 1 in appendix III to ch. NR 507. Can the department be more specific?

m. In s. NR 507.04 (intro.), the reference to ss. NR 507.05 to 507.14 as part of the specification of the requirements for the design, installation, maintenance and operation of all moni-

toring devices appears to be too narrow. For example, sampling procedures required under s. NR 507.17 appear to be part of the operation of a monitoring device.

n. The footnotes in appendix II in ch. NR 507 are misnumbered. For example, the text related to toxaphene refers to Note 10, but there is no note 10 in this appendix. Similarly, appendix IV includes the text for footnotes 2 to 4 but does not place the footnote in the text of the appendix.

o. Section NR 520.04 (1m) (b) 3. refers to forms supplied by the department. If these forms are new, the agency should ensure that the requirements of s. 227.14 (3), Stats., are met. The entire rule should be reviewed for compliance with this statute.

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

a. Section NR 500.03 (18) defines “bedrock” as essentially a synonym of “rock” but, presumably, it is actually a subset of rock. This should be clarified. [However, is it necessary to define “bedrock”?]

b. It would appear that the words “an increase in” should be omitted from the definition of “bird hazard”; the concept of increase is apart from the concept of the hazard.

c. Some of the definitions in s. NR 500.03 may make sense in the context of the specific rule provisions to which they relate, but do not make sense out of that context. For example, the definition of “fracture frequency” leaves one asking: “What fractures; what bedding planes; what core?” This definition could be elaborated somewhat to provide the necessary context. Similarly, the definition of “major soil unit” could be elaborated to provide context.

d. The term “leachate” generally means water or another liquid that has percolated through some other material, but s. NR 500.03 (122) defines the term as such water or other liquid that has been contaminated by percolating through a material. Thus, these liquids are not leachate and so are not regulated in these rules unless they are contaminated. Is this result intentional? Consider also that s. NR 502.12 (10) (a) says “...all run-off that contacts waste shall be managed as leachate.”

e. It seems that the term “lithified earth material,” defined in s. NR 500.03 (130), could be replaced by the word “rock.”

f. Should the definition of “lower explosive limit” refer to “standard atmospheric pressure”?

g. In s. NR 500.07, the first occurrence of the word “And” should not be capitalized.

h. Rule provisions that give the department discretion in either granting exceptions or variances or imposing additional requirements should include provisions indicating what the department can grant or require and a statement of the criteria used to reach a decision. For example, s. NR 502.05 (4) (b) states that the department may require certain facilities to meet specified locational criteria based on specific circumstances. What specified locational criteria

may the department require? Are they limited to those listed in par. (a)? On what specific circumstances may the department make this requirement? Even if the answers to these questions are “any specified locational criteria based on any specific circumstances the department chooses,” it would be clearer if the rule so stated.

Similarly, s. NR 502.10 (2) (a) (intro.) includes the phrase “unless an exemption has been granted.” Presumably, the exemption would be granted by the department; what are the conditions for granting such an exemption?

Section NR 502.09 (3) (b) allows an exemption to be granted upon demonstration by the applicant of “circumstances which warrant such exemptions.” Can more specific standards be prescribed? The entire rule should be reviewed for occurrences of this type of vague language. Also see s. NR 503.04 (1).

i. The second sentence of s. NR 502.08 (4) (q) is incomplete. The phrase “the report shall include” should be inserted before the phrase “a proposed design.”

j. The second and third sentences of s. NR 502.08 (4) (v) relate to requirements for the reclamation of the site of a closed facility and not to a plan of operation, which is the subject of that subsection.

k. The term “wood burning facilities,” which is the title of s. NR 502.11, is not defined; presumably, it means facilities for burning wood. However, air curtain destructors, the subject of s. NR 502.10, are also facilities for burning wood. How are these two terms distinguished?

l. In the last sentence of s. NR 502.11 (2) (c), should the phrase “the department determines that” be inserted before the phrase “groundwater and surface water quality will not be affected”?

m. In s. NR 502.12 (4) (d) 1. and elsewhere, it appears that the term “animal carcasses” would be more appropriate than “animal fatalities.”

n. Section NR 502.12 (11) (k) appears to be redundant, at least in part, with regard to par. (h).

o. In s. NR 502.13 (4) (e), what is meant by the term “bypass solid waste”? In the following paragraph, what is meant by the term “charging area”? Can these terms be replaced by more descriptive phrases?

p. In the last sentence of s. NR 502.13 (5) (a), it appears that the word “compositing” should be substituted for the word “composting.”

q. Throughout ch. NR 503, commas and hyphens are used inconsistently. The drafter should review the chapter to use commas consistently when listing items and to use hyphens in descriptive phrases, such as “6-year” or “off-site,” consistently.

r. In s. NR 503.02 (2), the phrase “except for facilities used for the disposal of solid waste” is confusing. This phrase’s meaning should be clarified.

s. In s. NR 503.04 (1), perhaps the drafter should clarify what may warrant an exception. Must the applicant demonstrate that the circumstances will protect public health? Again, the entire rule should be reviewed for the authority granted to the department to approve an action or make an exception to a requirement without a statement of the basis upon which the approval or exception will be granted.

t. In s. NR 503.04 (2) (d), a hyphen should be inserted between “federal” and “aid” to be consistent with the Wisconsin statutes.

u. In s. NR 503.04 (2) (e), it appears that the first sentence would be clearer if “for” were inserted after both uses of “designed.” This comment also applies to s. NR 503.07 (2) (f) 1.

v. In s. NR 503.04 (3) (d), “will cause or exacerbate” would be clearer and more consistent with the other paragraphs if replaced with “an effect resulting in or exacerbating.”

w. In s. NR 503.07 (3) (b), a comma should be inserted between “(a)” and “(b).”

x. In s. NR 503.08 (1), in the phrase “potential environmental impacts that may occur,” the phrase “that may occur” should be deleted since it has the same meaning as “potential.”

y. Section NR 503.08 (5) (e) could be placed in a separate subsection since it addresses the time after and not during the closure. This comment also applies to s. NR 503.09 (6) (e).

z. In s. NR 503.09 (1) (a), a semicolon should be inserted between “equipment to be used” and “and mode of operation.”

aa. In s. NR 503.09 (3) (d), “personnel meeting” would be clearer as “personnel who meet.”

ab. In s. NR 503.09 (7), it is unclear why s. NR 503.10 (8) is cited since it applies to a person who wishes to expand an existing intermediate size landfill and s. NR 503.09 (7) applies to a person who wishes to expand an existing small size landfill.

ac. In s. NR 503.10 (1), “50,00” should be “50,000.”

ad. In s. NR 503.10 (1) (c), “waste limits” seems vague. Would the phrase “limits of filling,” which is used throughout ch. NR 503, be an appropriate replacement?

ae. In s. NR 503.10 (2) (b) 3., the semicolons between “recreational,” “historical,” “archaeological” and “state” should be commas. Also, the “or” between “state” and “local” should be “and.”

af. In s. NR 503.10 (2) (c) (intro.), a comma should be inserted after “Specifically” in the last sentence.

ag. In s. NR 503.10 (2) (c) 4., it appears that the comma after “groundwater divides” should be deleted and “and” should be inserted.

ah. In s. NR 503.10 (2) (d) 3., the semicolon after “all borings” should be deleted and replaced with “and.”

ai. In s. NR 503.10 (2) (e) 2., “conservative assumptions” appears to be a vague standard. Could this phrase be clarified to explain what is meant by conservative?

aj. In s. NR 503.10 (2) (f) (intro.), the semicolon after “land use information” should be deleted.

ak. In s. NR 503.10 (2) (f) 3., “can” should be replaced with “may.”

al. In s. NR 503.10 (2) (g) 2. e., the comma or “and” after “abandoned groundwater monitoring wells” should be deleted.

am. In s. NR 503.10 (2) (g) 4., does the last sentence refer to something a plan sheet must include or is it a requirement in the construction of a landfill? If it is the latter, the sentence should be included in another section.

an. In s. NR 503.10 (2) (h) 9., it appears that semicolons should be inserted to separate the listed items because the item “gas, leachate and groundwater monitoring” includes a comma.

ao. Section NR 503.10 (2) (h) 10. would be clearer if the third sentence was placed at the end of the subdivision. This would clarify that the fourth sentence refers to the requirement in the second sentence.

ap. In s. NR 503.10 (2) (h) 12., “shall be made” should be deleted and, in subd. 13., “shall be included” should be deleted to make these subdivisions grammatically consistent with the other subdivisions. Also, to make subd. 14. consistent with the other subdivisions, the subdivision could read, “A proposed environmental monitoring plan which, at a minimum, complies....”

aq. In s. NR 503.10 (3) (b) 5., either “minimum” or “at least” should be deleted since they convey the same meaning.

ar. In s. NR 503.10 (3) (e) 5., “for road and bridge construction” should be inserted after “standard specifications.”

as. In s. NR 503.10 (3) (e) 8., should the subdivision specify who must perform the analysis to determine the spacing needed between gas venting trenches?

at. In s. NR 503.10 (3) (f), the subdivisions do not list what a storm water control system must include, but list the requirements a landfill must meet regarding storm water control. Therefore, “the storm water control system shall include the following:” could be replaced with “the storm water control system shall comply with the following:”.

au. In s. NR 503.10 (3) (f) 4., should “6 hour storm” be replaced with “6-hour storm event”?

av. In s. NR 503.10 (3) (h) (intro.), it may be helpful to insert “regulated under this section” after “All landfills.”

aw. In s. NR 503.10 (3) (h) 1., “windblown debris includes” should be “windblown debris include.” Also, perhaps the subdivision should specify what “remoteness of the landfill” means regarding from what it should be remote.

ax. In s. NR 503.10 (4) (a) 13., the comma after “A sign” should be deleted.

ay. In s. NR 503.10 (4) (c), “case by case” should be “case-by-case.”

az. In s. NR 503.10 (4) (d), the last sentence should be placed after the first sentence to clarify that these areas must be topsoiled, seeded and mulched. Also in that paragraph, the semi-colon after “fertilizer applied shall be selected according to” should be deleted.

ba. In s. NR 503.10 (4) (e) 1., it appears that “solid” should be inserted before the first use of “waste.”

bb. In s. NR 503.10 (4) (f), “that” should be inserted after “The department may require.”

bc. In s. NR 503.10 (4) (g) 1., should the phrase “WPDES discharge permit” be “WPDES permit” to be consistent with the definition in s. NR 500.03 (256)?

bd. In s. NR 503.10 (4) (j) 6., the comma after the first use of “solid waste” should be placed after the following “or.”

be. In s. NR 503.10 (4) (m) 1., “inspections shall be made of every incoming load of solid waste” should be placed at the beginning of the sentence since that is the requirement for all the landfills regulated under the section, with only some exceptions.

bf. In s. NR 503.10 (4) (m) 2., “in accordance with ch. NR 524” should be placed after “shall be trained” since the chapter relates to training requirements for personnel, not how to recognize waste not approved for acceptance.

bg. In s. NR 503.10 (4) (m) 5., “PCBs” should be “PCB’s.”

bh. In s. NR 503.10 (4) (n), “locational criteria restriction” should be “locational criteria restrictions.”

bi. Section NR 503.10 (5) (title) may be more appropriate as “CONSTRUCTION REQUIREMENTS” since the subsection does not contain only information on documentation.

bj. Section NR 503.10 (5) (intro.) is more appropriately a paragraph instead of introductory material because the required report is part of the construction requirements, but the subsection does not list aspects of such a report.

bk. In s. NR 503.10 (5) (a), “performing their assigned quality assurance duties” should be “performing assigned quality assurance duties” since the subject of the sentence is singular. Also, it appears the paragraph would be clearer if “throughout the construction” was placed after “continuously on-site” and if it read “performing quality assurance duties relating to the following events.” Is the event described as “documenting buried piping prior to covering” a quality

assurance duty instead of an event? If so, perhaps it should be described as “burying piping prior to covering.” Finally, the word “approval” is confusing. Perhaps the sentence should state that the department may require in writing that a professional engineer be present at certain times.

bl. In s. NR 503.10 (5) (b), “employee” should be spelled “employe” to be consistent with the Wisconsin statutes.

bm. In s. NR 503.10 (5) (c), “immediate beginning” is an awkward phrase. Should the certification section be the first section of any construction documentation report?

bn. In s. NR 503.10 (5) (e) 5., the phrase “design sub-base” is unclear. Does it mean planned sub-bases?

bo. In s. NR 503.10 (5) (f) 3., the comma after “cleanout” should be deleted.

bp. In s. NR 503.10 (5) (g) 6., “Detail drawings, plan view and cross-section” would be clearer as “Detail plan view and cross section drawings” or “Detail drawings of the plan view and cross section.”

bq. In s. NR 503.10 (5) (i) 3. a., “1000” should be “1,000” and “3000” should be “3,000.”

br. In s. NR 503.10 (5) (i) 3. c. and 4. b., the sentences should be redrafted to be grammatically consistent with the other subdivisions. “The department may require that” and “The department may require” could be deleted and “if required by the department” could be placed at the end of each of the sentences.

bs. Section NR 503.10 (6) (b) is repetitive of sub. (6) (a). They should be combined into one paragraph. Also, a comma should be inserted after “shall submit” in both paragraphs.

bt. In s. NR 503.10 (8) (a), “the establishment of” could be inserted after “The department shall interpret expansions to include.”

bu. In s. NR 503.10 (8) (b), “then” in the third sentence could be deleted. Also in that paragraph, “Small size construction and demolition landfills which were not in existence...” should be made singular to agree with the rest of the sentence.

bv. Section NR 504.05 (1) states that certain criteria “apply to all new landfills,” but they only need to be followed “to the greatest extent practicable.” These two statements seem somewhat contradictory. Alternatively, they sound like a self-administered variance procedure. Is the department required to approve deviations from the criteria?

bw. In the second-to-last sentence of s. NR 504.06 (1) (a), what “other landfills” are referred to?

bx. Chapter NR 504 relates to various location and design criteria. However, s. NR 504.06 (1) (b) appears to be a permitting requirement rather than a design criterion. Similarly,

s. NR 504.10 (1) (b) and (c) appear to be permitting requirements and operation requirements, respectively. It appears that these provisions should be placed in different chapters.

by. In s. NR 504.06 (2) (g) and in other similar provisions of the rule, phrases such as “3 horizontal to one vertical” should replace phrases such as “3 units of horizontal distance to one unit of vertical distance.” Alternatively, these terms can be replaced by expressions of slope as a percent, as is done throughout most of the rule.

bz. In s. NR 504.06 (2) (h), the comma in the first sentence should be deleted.

ca. In s. NR 504.06 (3) (h), the phrase “low ground pressure” should be omitted.

cb. Reading s. NR 504.06 (2) (b) and (4) (intro.) in combination, it appears that composite or clay-lined landfills are allowed if the clay liner is at least 10 feet above the seasonal high groundwater table and zone-of-saturation landfills are allowed below the groundwater table, but that no landfills are allowed between the water table and 10 feet above the water table. Should zone-of-saturation landfills be allowable in this circumstance?

cc. In s. NR 504.06 (5) (d) and (e), are “leachate collection trenches” and “leachate collection pipe trenches” the same thing? If so, the terminology in these paragraphs should be reconciled.

cd. The word “specific” at the end of s. NR 506.055 (3) appears to be extraneous and should be deleted.

ce. In s. NR 506.105 (2) (a), it is unclear what is meant by “in situ.” Can an English synonym be substituted?

cf. The department should review the following undefined terms and determine whether a definition is necessary to ensure consistent application of the rule:

- (1) “Soil unit” in s. NR 507.04 (intro.).
- (2) “Other qualified person” in s. NR 507.04 (2).
- (3) “Coarse-grained soil environments” in s. NR 507.05 (1) (c).
- (4) “RQD” in s. NR 507.14 (2) (b).
- (5) “Standard methods,” as used in s. NR 507.17 (7) (intro.).
- (6) “Stabilized methane levels” in s. NR 507.22 (1).
- (7) “Specific units,” as used in footnote 3 in appendix II, footnote 3 in appendix III and footnote 2 in appendix IV in ch. NR 507.

cg. A comma should precede “including” in s. NR 507.16 (1) (b) to (f).

ch. The rule contains a number of provisions that are not clear. The department should review the entire rule and revise it as necessary to ensure its clarity. Examples of these provisions include the following:

- (1) What is the three-digit identification number referred to in s. NR 507.04 (4)?
- (2) Soil sample collection requirements for fine-grained soil environments are specified in s. NR 507.05 (1) (b) and for uniform, coarse-grained soil environments in s. NR 507.05 (1) (c). Are nonuniform, coarse-grained soil environments ever encountered in this soil sampling? If so, should the soil sample collection procedure for that environment be specified in the rule?
- (3) Under s. NR 507.05 (3), an owner or operator may request a variance to the specified 10-foot distance between wells. What procedure should the owner or operator use to request the variance?
- (4) Section NR 507.16 (1) (a) calls for an 8 1/2 by 11 inch or, if appropriate, 11 by 17 inch site map. Can the department specify under what conditions it would be appropriate to use the larger site map?
- (5) Section NR 507.22 (4) refers to exceedances of the “explosive gas level.” It is not clear if this level is any measurement of an explosive gas that exceeds 25% of the lower explosive limit of the gas which is referenced in the first sentence of this subsection.
- (6) Both ss. NR 507.24 and 507.25 establish that the department may require the owner or operator to engage in either additional air monitoring or other monitoring. To ensure consistent application of these sections, can the department specify under what conditions it may require this additional monitoring?

ci. The owner or operator is given an option in s. NR 508.05 (3) (a) of analyzing samples under either of the two subdivisions. How will it be determined which of the two subdivisions applies?

cj. Throughout the rule [see, for example, s. NR 508.05 (3) (b)], “of” is used where “after” would be more precise. The problem with using “of” is that it could mean either 60 days before or after the end of undersampling.

ck. Should s. NR 508.05 (4) (a) refer not only to a municipality whose boundary is within 1,200 feet of the limits of filling, but also the one in which the fill is located?

cl. The title to s. NR 509.04 could be made more descriptive as “request for initial site inspection.” Also, “general” in the title to s. NR 509.05 could be deleted.

cm. Can s. NR 509.05 (1) be clarified to indicate what is an “initial application” or “report” for a solid waste facility?

cn. There is a great deal of information in s. NR 509.05 (1). This might be divided into two or more subsections for clarity.

co. What effect do the seasons have on follow-up inspections in s. NR 509.05 (1)?

cp. The term “addressing” could be clarified in s. NR 509.05 (2) (b) and (c). Also, the defined term “critical habitat areas” should be used in the latter paragraph and in sub. (3) (b).

cq. Should “designed and” be deleted in s. NR 509.05 (2) (f) 1.? Also, how is the distance limitation measured (10,000 feet or 5,000 feet from what, depending on the type of aircraft)? [See also s. NR 503.07 (2) (f).]

cr. The last phrase in s. NR 510.07 (intro.) provides that the following list of items must be discussed. There appears to be no reason to include the phrase “shall be described” in the subsections of s. NR 510.07.

cs. In s. NR 510.08 (2) (c), what standards will the department use to approve alternative methods? [See also s. NR 512.09 (2) (e).]

ct. In s. NR 512.11 (1) (c), residences, buildings and utility lines all appear to be different types of cultural features.

cu. “Composite liner” in s. NR 512.12 (3) (a) should not be hyphenated. Also, should this term be defined? Should the term “composite final cover system” be defined in s. NR 512.12 (3) (b)?

cv. The term “geosynthetic” is used in s. NR 514.07 (1) (intro.). Should this term be defined? How does this term relate to “geomembrane,” which is a defined term?

cw. Is there any substantive difference between “guarantee” and “warranty” in s. NR 516.04 (3) (d) (intro.)? Also, that paragraph should not end with a preposition.

cx. An apostrophe should be included in “Departments” in s. NR 516.04 (5) (a). Also, that word should not be capitalized.

cy. Section NR 516.04 (5) (b) could be clarified by separating it into three paragraphs.

cz. “Then,” which is added by amendment to s. NR 516.05 (1) (f), is superfluous.

da. A citation should be used rather than “the remainder of this chapter” in s. NR 520.05 (1).

db. The first “or” inserted by amendment in s. NR 520.06 (7) (a) is superfluous. The entire rule should be reviewed for this problem.

dc. “Anytime” should be two words in s. NR 520.10.