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CLEARINGHOUSE RULE 97–057

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. Rather than the effective date of the "rule," s. NR 132.085 (1) should refer to the effective date of the "subsection." [See, also, s. NR 182.075 (1) (a).]

b. Subsection titles are included in s. NR 182.075 (1) and (1s). Not all of the subsections in s. NR 182.075 have titles. Titles should be added to the remaining subsections, or these two subsection titles should be deleted.

c. The word "and" should be included after "(intro.)" in the treatment clause of SECTION 7.

d. Prior to the renumbering of s. NR 182.075 (1s) (a), the current title of s. NR 182.075 (1s) must be repealed. Also, regarding the title of s. NR 182.075 (1s) (a), as renumbered, the comment in b., above, on subsection titles should be noted. Finally, the first cross-reference to the Administrative Code should read: "Sections NR 140.24 to 140.27 or 182.13 (1) (g)." [See, also, the sequence of the cross-reference in s. NR 182.08 (2) (e) 9.]

e. Indication of the plural by "(s)" is inappropriate. See s. NR 182.08 (2) (e) 9.

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

a. Section NR 182.075 (1) (a) commences with an exception to s. NR 140.03. Section NR 140.03 provides that ch. NR 140 does not apply to mining facilities, practices and activities.

It would be more direct to amend s. NR 140.03, rather than to achieve the same result by making an exception in s. NR 182.075 (1) (a) to the exception in s. NR 140.03.

b. A reference to statutory authority in the text of the rule, as provided in s. NR 182.075 (1) (a), is superfluous. If a description of the statutory authority is necessary, it should be included in a note.

c. The cross-reference in s. NR 182.075 (1s), as renumbered, should apparently be to s. NR 182.13 (2) (g).

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

a. In s. NR 132.085 (1), "The provisions of this section apply" should be replaced by "This section applies."

b. In general, nouns should be used in singular form. Rather than "all mining permit applications," s. NR 132.085 (1) should refer to "a mining permit application." Also, "that is" should be placed after "application."

c. The phrase "considered for approval" in s. NR 132.085 (1) is unclear. Does this refer to a mining permit application that is in the process of being considered for approval on the effective date of this subsection? If so, it would be more precise to apply the rule to "a mining permit application for which the permit has not been issued on the effective date of this subsection . . . . [revisor inserts date]."

d. Section NR 132.085 (2) requires the applicant for a mining permit to submit certain information as part of the permit application. If s. NR 132.085 (1) makes these requirements applicable to a mine for which a permit application has already been submitted, does this subsection need to be clarified to specify how the additional information is submitted?

e. In s. NR 132.085 (3), and in a number of other places in the rule, the word "preventative" is used. Although this is a legitimate word, it contains an unnecessary syllable and sounds unduly bureaucratic; "preventive" would suffice. Also, these actions are referred to "preventative and remedial measures" in s. NR 132.085 (3), but are referred to as "activities" in s. NR 132.085 (4).

f. Section NR 132.085 (3) refers to measures "identified" in sub. (4). "Listed" would be a better word. Also, the titles to ss. NR 132.085 and 135.085 (3) refer to a "trust agreement." Subsection (3) also refers to a "trust account" and a "trust fund." The remainder of the rule refers to this only as a "trust." Is there a reason for the different terms?

g. The last sentence of s. NR 132.085 (3) could be expressed directly. "That there be no withdrawal" could be replaced by "that no withdrawal may be made."

h. The phrase "created and" is superfluous in s. NR 132.085 (4) (intro.). Also, "adequate" and "funds" should be reversed.

i. In s. NR 132.085 (4) (a), the term "hazardous substances" is used, but this term is not defined in ch. NR 132. Also, what kind of "environmental contamination" would not be

classified as a "hazardous substance"? How do both of these phrases relate to "contaminants," the term used in s. NR 132.085 (4) (b)?

j. Does the remedial action activity listed in s. NR 132.085 (4) (c) duplicate or overlap the requirements of long-term care of the mining waste facility?

k. Section NR 132.085 (5) (a) requires a schedule of payments to be established. Who establishes the schedule? Also, "calendar" is an odd, and perhaps an inappropriate, word to use.

l. Section NR 132.085 (5) (b) describes a "standard." To what does this standard apply?

m. Is "reasonable" necessary in s. NR 132.085 (5) (b)? A standard of reasonableness should apply, without the need for stating it, to all determinations under the rule.

n. Is it necessary to refer to "risks and impacts identified by the department" in s. NR 132.085 (5) (c)? It would be more direct simply to refer to the environmental impact statement. Also, it appears that the last phrase in that sentence, "the measure is reasonably anticipated necessary to address those risks and impacts," substantially duplicates the first phrase in the same sentence.

o. The word "purposes" in s. NR 132.085 (5) (e) should be changed to "activities." In that same paragraph, "such" should be changed to "that." In that paragraph, the phrase "the trust shall include adequate funding" duplicates the statement in s. NR 132.085 (4) (intro.). Why is the phrase "with adjustments made as needed" included in s. NR 132.085 (5) (e), but not in any other place in the rule?

p. Section NR 132.085 (6) (a) refers to the "permittee," while s. NR 132.085 (5) (a) and (e) refer to the "operator."

q. Section 293.57, Stats., appears to make the reference to successors in interest in s. NR 132.085 (6) (a) and (b) unnecessary.

r. Section NR 132.085 (9) (a) establishes requirements for periodic reevaluation. The second sentence relates to assumptions made in the initial determination of funding. Is there any reason why assumptions made in periodic reevaluations should not also be considered?

s. In s. NR 132.085 (9) (c), in the statutory reference, the word "to" should be replaced by the word "and."

t. Section NR 132.085 (9) (d) requires a hearing to be held under s. 293.43, Stats. This is the mining master hearing. Is this the correct reference? Would an ordinary contested case hearing be more appropriate?

u. Section NR 182.07 (1) (j) refers to the "violation" of groundwater quality enforcement standards. The term used in s. NR 140.26 and elsewhere is "attained or exceeded." Is there any reason for the difference?

v. Section NR 182.075 (1) (a) establishes groundwater quality standards both for mining waste facilities and for other facilities on a mining site. However, ch. NR 182 relates only to

mining waste facilities. It would appear to be more appropriate to create groundwater quality provisions both in chs. NR 132 and 182. Also, s. NR 182.075 (1) (a) does not mention the mine, but the remainder of s. NR 182.075 contains provisions applicable to the mine.

w. Section NR 182.075 (1) (a) refers to mining waste facilities "regulated under this chapter." "Mining waste" is a defined term and the meaning of "mining waste facilities" is obvious. Unless the additional phrase is meant to establish a distinction between mining waste facilities regulated under ch. NR 182 and mining waste facilities that are not regulated under that chapter, this phrase is superfluous. [See also s. NR 182.075 (1) (b) 1.]

x. What precisely is meant by "approved" in the applicability provision in s. NR 182.075 (1) (a)? Is this issuance of a mining permit or some other event?

y. The phrase "the provisions of" in s. NR 182.075 (1) (a) is superfluous.

z. Section NR 182.075 (1) (b) 1. and 4. refer to the "outer" edge of the facility, but this word is not used to modify "edge" in s. NR 182.075 (1) (b) 2. and 3. Is there any reason for this difference? Also, it should be noted that s. NR 140.22 (3) (a) includes a method for measuring the distance to the boundary of the design management zone. Is there any reason to partially duplicate this method in s. NR 182.075? Would it be more direct and less likely to create confusion to establish horizontal distances for the design management zone by a table as provided in Table 4 in ch. NR 140?

aa. Section NR 182.075 (1) (b) 1., 3. and 4. provide for the reduction of the size of the design management zone. Section NR 182.075 (1) (b) 2. provides for the expansion or reduction of the size of the design management zone. Are the former provisions intended to be an exception to s. NR 140.22 (3), which allows both expansion and reduction of the design management zone? In general, as provided in s. NR 182.075 (1) (a), compliance with ch. NR 140 is required. If these provisions are meant to be an exception to ch. NR 140, they should be clearly described as such.

ab. Section NR 182.075 (1) (b) 2. and 4. refer to a "mine" and s. NR 182.075 (1) (b) 3. refers to a "metallic mineral mine." Is there any reason for this difference? Also, it should be noted that the term "mine" is not defined in ch. NR 182. Does this term need to be defined? Also, the comma after the word "leased" should be deleted and a comma should be inserted after the word "applicant."

ac. It should be considered whether the reference to the "outer edge of the mine workings" in s. NR 182.075 (1) (b) 4. is necessary in light of the methods for establishing the size of the design management zone in s. NR 140.22 (3). If this provision is retained, a method should be included in the rule for determining the location of the outer edge of the mine workings, with reference to a vertical plane. [See comment 2., above.]

ad. The first sentence of s. NR 182.075 (1p) refers to groundwater quality standards. This could be clarified by cross-referencing ch. NR 140 as the source of the standards.

ae. Section NR 182.075 (1p) refers only to groundwater protection related to the waste site. Other portions of s. NR 182.075 relate also to the mine and facilities associated with the mine. Is there any reason for this difference?

af. The phrase "deleterious impact" in s. NR 182.075 (1p) should be changed to "deleterious effect."

ag. It appears that the beneficial uses referred to in s. NR 182.075 (1p) are beneficial uses of groundwater. It might be appropriate to clarify this.

ah. The last sentence of s. NR 182.075 (1p) is difficult to understand. Additional reference to the types of department actions contemplated would clarify this sentence.

ai. Section NR 182.075 (1s), as renumbered, commences with provisions regarding department determination of the adequacy of a contingency plan. However, there does not appear to be a requirement in the rule for the applicant to prepare a contingency plan. This section also combines provisions regarding the determination of adequacy of a contingency plan and subsequent actions after the commencement of mining, regarding evaluation of the contingency plan. It may be appropriate to separate these into separate subsections or sections.

aj. Section NR 182.075 (1u) (a) refers to monitoring requirements applicable to a "site." This term is not defined in ch. NR 182. Also, s. NR 182.075 (1u) (a) and (b) refer to monitoring locations "approved" by the department. It may be appropriate to indicate how the department establishes these locations and when the determination of monitoring locations is made in the permit approval process.

ak. Groundwater must be monitored prior to start-up of a "site" under s. NR 182.075 (1u) (d). The monitoring must be done "in the vicinity" of the site. Will there be a process for determining where monitoring must be done prior to start-up? How does "in the vicinity" relate to the specific monitoring locations approved under s. NR 182.075 (1u) (a) and (b)?

al. The second sentence of s. NR 182.075 (1u) (d) describes parameters which must be analyzed. Is it intended that these parameters are to be the same as those that must be monitored upon commencement of operation of the site? If so, is this sentence unnecessary? Also, can a cross-reference be provided to the state groundwater standards specified by the department?

am. The phrase "has good reason to" in s. NR 182.075 (1x) (a) (intro.) imposes a requirement which does not appear to be necessary.

an. The assessment required in the last sentence of s. NR 182.078 (2) (e) 9. duplicates the requirements in s. NR 140.28 (2). Is there any need to repeat this?