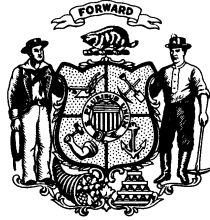


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CLEARINGHOUSE RULE 98-163

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 September 1998.]

1. Statutory Authority

Section 30.135 (2) (a), Stats., as created by 1997 Wisconsin Act 27, provides that, upon receipt of a complete permit application for a placement of a water ski platform or water ski jump in a navigable waterway, the department may proceed on the application without a hearing unless a substantive written objection to issuance of the permit is received. Sections NR 328.03 (2) and 328.05 (1) refer to a requirement that the persons submitting the substantive written objection must appear and present information supporting an objection in a contested case hearing. What is the specific statutory authority for this requirement?

2. Form, Style and Placement in Administrative Code

a. The order states that the rule interprets “s. 30.02, Stats.,” however, s. 30.135 (4), Stats., as created by 1997 Wisconsin Act 27, provides that: “Section 30.02 does not apply to permit applications submitted under this section.” The statute interpreted is s. 30.135, Stats.

b. In s. NR 328.01 “for purposes of water ski exhibition or competition events” should be deleted since the statute does not limit water ski jumps and platforms to those purposes.

c. In s. NR 328.02, the phrase “shall apply” should be replaced by the word “applies.”

d. In s. NR 328.04, the introduction should read: “Under s. 30.135 (2) (a), Stats., notice of a proposed water ski jump or water ski platform shall include all of the following:”. Also, each of the subsections should conclude with a period.

e. In s. NR 328.05 (1), “s. NR 328.05 (2)” should be replaced by “sub. (2).” [See s. 1.07 (2), Manual.] Also, the first sentence of s. NR 328.05 (1), should conclude with the phrase “under s. NR 328.04.”

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

Section NR 328.05 (2) requires an objector to allege that the water ski jump or platform “has an effect on one or more of the following factors.” It would appear the person should allege that the water ski jump or water ski platform has an *adverse* effect. If there is a beneficial effect, there is no need for a hearing.