

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 00-161**

### **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.]**

#### **2. Form, Style and Placement in Administrative Code**

- a. The form of the reference to 40 C.F.R. s. 141.89 (a) (1) (ii) in s. NR 809.542 (2) (c) does not conform with preferred drafting style. The notation “s.” should be used. [See s. 1.07 (3) (b), Manual.]
- b. The rule contains two each of SECTION 2, SECTION 3 and SECTION 4.
- c. The second SECTION 3 should be combined with the second SECTION 4 with a treatment clause that reads “NR 809.543 (8) is repealed and recreated to read:”.
- d. In the last sentence of s. NR 809.543 (8), the phrase “have discretion to” should be replaced by the word “may.”
- e. The preferred drafting style for the treatment of introductory material is to end the introductory material with a colon and to include words like “all of the following” or “any of the following.” [See s. 1.03 (8), Manual.] This style was not followed in a number of provisions in the rule, including ss. NR 809.543 (8) (intro.) and 809.55 (8) (intro.).
- f. In s. NR 809.545 (2), the notation “e.g.” is used. The entire rule should be reviewed for the elimination of this notation and the notation “i.e.” In this provision, the phrase “such as contracts and local ordinances” should be used.

g. In s. NR 809.5 (4) (b), the phrase “shall have the option to” should be replaced by the word “may.”

h. The rule should avoid using parentheses. For example, in s. NR 809.545 (4) (a), “the resident(s)” should be replaced by “each resident.” The text in parentheses in the note following s. NR 809.548 should be set apart with commas.

i. Since the rule does not amend s. NR 809.546 (1) (a), the treatment clause in SECTION 8 should delete the reference to par. (a).

j. In s. NR 809.546 (1), the internal reference to s. NR 809.546 should be to “this section,” and the reference to subch. VI should be formatted as “subch. VI to ch. NR 809.” Also, the reference to “ss. NR 809.546 (1) (e) 2. e. and 809.546 (1) (e) 4. c.” should be replaced by reference to “par. (e) 2. e. and 4. c.”

k. Since SECTION 10 of the rule creates s. NR 809.546 (1m), “(title)” should not be included in the citation to s. NR 809.546 (1m) preceding the title to this subsection. Also, the phrase “shall include the following text” is imprecise and requires a specific cross-reference. In the alternative, this phrase could conclude the introduction and grammatically lead into the following paragraphs.

l. In s. NR 809.546 (3) (b) (intro.), “(intro.)” should follow the cite to “NR 809.546 (3) (b)” and “sub.” should be substituted for “subs.”

m. The new paragraph of text inserted at the end of s. NR 809.546 (3) (b) 1. should be placed in a separate subdivision.

n. The treatment of the internal references in s. NR 809.546 (3) (b) 3. should read “sub. (1) (b) and (d) and (1m) (b) and (d).”

o. In the treatment clauses for SECTIONS 12 and 24, “are” should be substituted for “is.”

p. In s. NR 809.547 (2) (e), the phrase “has the discretion to” should be replaced by the word “may.”

q. The reference preceding the text of s. NR 809.547 (4) (d) 2. should be “(4) (d) 2.” rather than “2.”

r. In s. 809.547 (4) (d) 4. a., the phrase “, at its discretion,” should be deleted.

s. In the treatment clause for SECTION 22, “6. to 8.” should be substituted for “6., 7., 8.”

t. Section NR 809.547 (7) (intro.) and (g) (intro.) should use the defined term “small water system” rather than “small system.” The entire rule should be reviewed for the appropriate use of the phrase “water system.” Also, the word “regulations” should be replaced by the word “rules.”

u. In s. NR 809.547 (7) (a) 1. b., the reference to the U.S. Code should not include periods in “USC” and the reference to the named federal act should be defined and placed in a note. [See s. 1.07 (3) (a), Manual.]

v. In s. NR 809.547 (7) (c), the word “through” should be replaced by the word “to.”

w. In s. NR 809.547 (7) (e) (intro.), “shall” should be substituted for “will.” [See s. 1.01 (2), Manual.]

x. Since a note should follow the applicable rule section, the text of SECTION 23 should follow SECTION 28 and the treatment clause of the SECTION creating the note to s. NR 809.548 should indicate that the note follows s. NR 809.548 (6). [See s. 1.09 (1), Manual.]

y. In the treatment clause for SECTION 27, the word “to” should be deleted.

z. The creation of s. NR 809.548 (5) (b) 2. should be moved from SECTION 27 to a new SECTION.

aa. The internal reference at the end of s. NR 809.548 (5) (e) should be to “par. (b) 1. or 2.” rather than “par. (b) 1. or (b) 2.”

ab. “Sampling point” is defined twice, once in s. NR 809.549 (1) (a) 1. and once in s. NR 809.549 (1) (a) 2. The preferred drafting style is to place all definitions in s. NR 809.04. [See s. 1.02 (3) (b), Manual.]

ac. The note following s. NR 809.549 (1) (a) 2. appears to contain a substantive provision, contrary to preferred drafting style. [See s. 1.09 (1), Manual.]

ad. The treatment of ss. NR 809.549 (5) (a) (intro.) and (b) (intro.) and 809.55 (1) (c) (intro.) should include the treatment of the period in current ss. NR 809.549 (5) (a) and (b) and 809.55 (1) (c) (intro.).

ae. In the treatment clauses of SECTIONS 32 and 34, the word “to” should be replaced by the word “and.”

af. The treatment clause for SECTION 38 should read: “NR 809.55 (1) (c) 4. is amended to read:”.

ag. In s. NR 809.55 (1) (e), the last sentence should be placed in a note to the rule.

ah. In s. NR 809.55 (5) (d), the phrase “, at their discretion,” should be deleted.

ai. The treatment of s. 809.55 (6) in SECTIONS 42 and 43 should be combined into one SECTION that repeals and recreates s. NR 809.55 (6).

aj. Since existing subsections in s. NR 809.55 have titles, s. NR 809.55 (8) should have a title.

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

a. The references in the analysis accompanying the rule to “amendments to 40 CFR 141, 142 and 143” and to “changes in 40 CFR” are incomplete and do not provide a reader sufficient information to easily identify the relevant amendment or change.

b. The references in s. NR 809.546 (1) (intro.) to s. NR 809.546 (1) (e) 2. e. and 4. c., are incorrect as there is no par. (e) in s. NR 809.546 (1).

c. The reference in s. NR 809.546 (1) (intro.) to the “public education language requirements in s. NR 809.546 are contained in s. NR 809 subch. VI” is vague. The specific provisions containing these requirements should be cited.

d. The reference in s. NR 809.546 (3) (h) 1. to “par. (b) 5.” is incorrect as par. (b) does not contain a subd. 5.

e. The reference in s. NR 809.547 (7) (e) (intro.) to “pars. (c) 1. to 3.” is incorrect as par. (c) does not contain any subdivisions.

f. The reference in s. NR 809.549 (5) (a) (intro.) and (b) (intro.) to the definition of “compliance cycle” in s. NR 809.04 is unnecessary, as the definitions in s. NR 809.04 appear to apply to all of ch. NR 809. To clarify this applicability, the department should insert introductory language in s. NR 809.04 following the title “Definitions.” that reads “In this chapter:”.

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

a. The phrase “may also be deemed” in s. NR 809.542 (2) (c) 1. is potentially ambiguous, as it is not clear who makes the determination, the department or the water system operator, and on what basis this discretionary determination is made. A preferable drafting style would be to write this provision in the active voice.

b. The first sentence in s. NR 809.542 (2) (c) 3. contains two notification requirements and is grammatically incorrect. Does the department intend to have two separate notification requirements under this subdivision?

c. The requirement in s. NR 809.546 (1m) (intro.) that a nontransient noncommunity water system’s public education program must include either the text specified in par. (a) or the “following text” is confusing because the rule does not provide any guidance on choosing between these options and because par. (a) is part of the “following text.”

d. The reference to the delivery of “the information in par. (a)” in s. NR 809.546 (3) (b) 1. is ambiguous since par. (a) does not specify the contents of public education materials but does require that for communities where a significant proportion of the populations speaks a language other than English, the public education materials must be communicated in the appropriate languages.

e. The rule should be consistent in its spelling of “first draw.” Section NR 809.547 (1) (h) and (2) (a) do not hyphenate this phrase; new provisions in s. NR 809.547 (2) (b) and (e) hyphenate this phrase.

f. The requirement in the second inserted sentence in s. NR 809.547 (2) (b) that the sample be one liter in volume is redundant with the one liter sample volume requirement in the first sentence in s. NR 809.547 (2) (b).

g. Is the September 30, 2000 deadline in s. NR 809.547 (7) (g) 2. appropriate in light of the fact that the rule, once promulgated, will be effective after that date? The entire rule should be reviewed for the appropriate use of dates.

h. A number of the footnotes to the table in the note following s. NR 809.548 contain misspelled words. See, for example, “moitoring” and “effom” in footnote 7.

#### **6. Potential Conflicts With, and Comparability to, Related Federal Regulations**

The analysis accompanying the rule states that the changes to ch. NR 809 “reflect changes in 40 CFR, and are necessary to assure that our administrative rules are consistent with federal regulations.” To assist the reader in reviewing this consistency, the analysis should identify how the rule makes ch. NR 809 consistent with these federal regulations.