

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**Terry C. Anderson**  
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 00-164**

### **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**

In s. NR 350.10 (3) (b), it seems that a third party obligor could provide the department 90 days notice that it was canceling, but would still be obligated if the proponent were to fail to get a replacement. Is there statutory authority to do this?

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

- a. Section NR 350.09 (1) should be placed in s. NR 350.08.
- b. In s. NR 103.08 (4) (a), “when it determines that” should be changed to “if it determines all of the following:”. In addition, the “and” should be removed from the end of subs. 1. and 2. The same should be done in s. NR 103.08 (4) (e).
- c. Throughout the rule, semicolons at the end of a provision should be replaced by periods. See s. NR 103.07 (2m).
- d. In s. NR 350.05 (1), “may” should replace “can.”
- e. In s. NR 350.09 (3) (d), would it be clearer if the last sentence were moved to the beginning of s. NR 350.09 (3) (f)?

f. In s. NR 350.10, the sentence following “Financial assurances” that appears to be an introduction should be given a number, and the following subsections should be renumbered accordingly. The new sub. (1) will also need a title so that it matches the rest of the subsections.

g. In s. NR 350.12 (3) (a), there are four subdivisions that are not connected to the preceding paragraph.

h. In s. NR 350.13 (5), “shall” should replace “will.”

i. Since s. 23.321 (2), Stats., will not take effect until August 1, 2001, the rules based on this statute should have the same effective date.

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

a. In s. NR 103.07 (5), the rule defines working days as excluding holidays designated under s. 196.193 (3), Stats. However, that statutory provision deals with water and sewer rate increases.

b. In s. NR 350.06 (3) (b), the cite should be to s. NR 103.07 (2m).

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

a. In s. NR 103.08 (1k) (c), it is unclear whether submission any time during the review process is considered timely, or whether a submission must be made during the review process and also be in a timely fashion.

b. In s. NR 103.08 (1k) (d), “under” should be eliminated from the clause “. . . and under s. NR 2.19.”

c. In s. NR 103.08 (4), the whole subsection would be clearer if it were reorganized. First, the first sentence that operates as an introduction is redundant and could be eliminated. Second, the requirements of par. (e) seem to be the default standard, while the situations described in pars. (a), (b), (c) and (d) are the exceptions. Thus, all the information in par. (e) could be moved up to become par. (a), and the current pars. (a), (b), (c) and (d) would be renumbered accordingly. In the new par. (a), “All other activities. For all activities that do not meet the conditions in par. (a), (b), (c), or (d), . . .” would be deleted, and replaced with something to the effect of “*General.* Except as provided in pars. (b), (c), (d), and (e), . . .”

d. In s. NR 103.08 (4) (b), (c), and (d), the use of “. . . do not meet the conditions in par. . . .” is unclear. Is it meant to refer to activities that are described in the previous paragraph, but fail to satisfy the requirements of the chapter as listed? Or, is it meant to refer to just the activity? For example, could an activity that falls within the definition in par. (a), but fails to satisfy par. (a) 1., 2. or 3., be an activity defined in par. (b)? Stated more explicitly, would an activity that adversely affects a wetland in an area of special natural resource interest but for which a practicable alternative exists that would avoid the adverse impacts fall within par. (b) if the activity were wetland dependant?

e. In s. NR 103.08 (4) (a) to (e), “when it determines” should be changed to “if it determines.”

f. In s. NR 103.08 (4) (b), the first sentence would be clearer if it were broken up into two or more sentences. The same applies to s. NR 103.08 (4) (c) and (d).

g. In s. NR 350.03 (1), “incorporating” should be changed to “incorporates.”

h. In s. NR 350.03 (15), what does “combination” mean in this context? Further, some words need to be added for “. . . and listed in s. NR 103.03 (1)” to make sense.

i. In s. NR 350.03 (17), what does “general visions” mean?

j. In s. NR 350.03 (28), the sentence would be clearer if it were to read “. . . a mitigation project that does not involve the purchase of bank credits.”

k. In s. NR 350.04, there needs to be some context to the rule. For example, sub. (1) talks about applicants consulting with the department without explaining who these applicants are or what they are applying for.

l. In s. NR 350.04 (3), “project specific” should be changed to “project-specific.”

m. In s. NR 350.05 (4), what is “passive maintenance and management”?

n. In s. NR 350.06 (3) (a), how many credits must be purchased? Are the credits purchased in addition to other mitigation efforts, or are the purchased credits to be the only means of mitigation?

o. In s. NR 350.07 (1), it is unclear whether the techniques used to develop the sight are being compared to the baseline and post-construction conditions, or whether they are being examined as a separate consideration in determining the number of acres.

p. In s. NR 350.07 (4), the second sentence is unclear. Is the sentence referring to management activities that have not been undertaken? If so, the wording needs to be changed to something like “. . . an approved plan for intensive management activities . . . .”

q. In s. NR 350.09 (2) (h), “letter or compliance” should be changed to “letter of compliance.”

r. In s. NR 350.09 (3) (b), the use of the passive voice makes it ambiguous who is setting the performance standards. To the extent possible, passive voice should be replaced throughout the rule.

s. In s. NR 350.09 (3) (b), the third sentence is unclear. Does it mean that the applicant or bank sponsor may impose additional objectives on itself, or that the department can impose additional objectives?

- t. In s. NR 350.09 (3) (e), the word “design” should be eliminated.
- u. In s. NR 350.10 (3) (a), is it supposed to say “obligor” instead of “obligee”? Presumably the department is the obligee. [See s. NR 350.10 (3) (d).] The use of a dependant clause that starts with “which” makes it seem that all forms of financial assurance must include a third party as “obligee.” Is that the intent?
- v. In s. NR 350.12 (1) (f), what does “milestones” mean in this context? How does “milestones” apply to monitoring?
- w. In s. NR 350.13 (1), “This registry shall provide” should be changed to “The department shall provide.”
- x. In s. NR 350.13 (3), should the term “bank site” be defined to distinguish it from “bank”?
- y. In s. NR 350.13 (4), the sentence would be clearer if everything before the word “participation” were deleted, and the sentence were to read something like: “Participation in the establishment of a mitigation bank does not constitute ultimate authorization for specific projects . . . .” Nonetheless, it is unclear to what projects the sentence is referring.
- z. In s. NR 350.13 (5), should the second sentence begin: “The total potentially available credits”?