



WISCONSIN LEGISLATIVE COUNCIL

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CLEARINGHOUSE RULE 01-067

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. Section NR 809.50 (4) to (6) do not relate to the title of that section or follow from the introductory language. There are two possible solutions: (1) renumber s. NR 809.50 (title) and (intro.) to be s. NR 809.50 (1) (title) and (intro.), renumber s. NR 809.50 (1) to (3) to be s. NR 809.50 (1) (a) to (c), renumber s. NR 809.50 (4) to (6) to be s. NR 809.50 (2) to (4), and provide a broader title to the entire section that relates to all of these provisions; or (2) place s. NR 809.50 (4) to (6) in a separate section.

b. What is the significance of the identification in s. NR 809.50 (5) and Table B of best available technologies (BATs)? Are community water systems required to implement these BATs? If so, which ones and under what circumstances? The requirements need to be explicitly stated and clearly laid out with language such as, “A community water system that exceeds the MCL specified in sub. (1) shall”

c. There is no text whatsoever in s. NR 809.50 (6) to accompany or explain Tables C and D. It appears that Table D identifies the technologies that are acceptable for addressing specified contaminants in water systems. The significance of Table C is more mysterious. Are the limitations binding? What is meant by basic, intermediate and advanced skill levels and how are they determined? Again, are these skill level requirements binding? None of this is explained, although it should be, as Table D should be. If the information in Table C is only advisory in nature, it should not be included in the rule, although a note in the rule could identify sources of such advisory information.

d. Defined terms should be used consistently throughout the rule. The title of Table C should use the defined term, “small water systems” instead of the term “small systems.” Section NR 809.53 should consistently use the defined term “community water system” instead of its occasional use of the term “system.” Footnote 2 to Table C should not repeat the definition contained in s. NR 809.04 (55).

e. Maximum contaminant levels (MCLs) are established using full text, in s. NR 809.50 (1) to (3), while maximum contaminant level goals (MCLGs) are established using a table, in s. NR 809.515. They could be established using a consistent format. Either the MCLs could be presented in a table, even the same table as the MCLGs, or a single sentence could be written stating that the MCLG for each of the four contaminants is zero.

f. In s. NR 809.53 (1), the material in par. (a) is not an introduction to the following two subdivisions. Consequently, this material should be numbered subd. 1. and the remaining subdivisions and cross-references should be renumbered accordingly. Also, the paragraphs in sub. (1) should be consistent in their use of titles. [With respect to the correct use of introductory material, see also subs. (2) (a) and (b) and (3) (c).]

g. At the end of s. NR 809.53 (1) (a) 1., the internal cross-reference should be to “par. (b) 2. c.”

h. The first two subdivisions of s. NR 809.53 (1) (b) should be rewritten. Subdivision 1. should read: “Except as provided in subd. 2., a community water system shall collect” Subdivision 2. (intro.) should read: “As an alternative to the requirement of subd. 1., a community water system may comply with one of the following:”. In each of the following subdivision paragraphs, the phrase: “To satisfy initial monitoring requirements” should be omitted. Also, there should be no title to subd. 2., unless titles are provided for the other subdivisions.

i. The phrase “hereafter called a sampling point,” in s. NR 809.53 (2) (a) (intro.), is not a proper way to define a term. If needed, a definition should be added to s. NR 809.04. However, there seems to be no reason to do so, since this is simply replacing a defined term (entry point) with a different term--why is the previously defined term not adequate? This duplication of terms for the same meaning muddies the rule.

j. In s. NR 809.53 (2) (b) 1. and 3., the indication of the preferred method should be placed in a note, since it is only a suggestion and is not a requirement.

k. In s. NR 809.53 (2) (c), the word “cannot” should be replaced by “may not.” Alternatively, the provision could be written more forcefully as a prohibition on the department granting the described waiver. In par. (d), the phrase “are allowed to” should be replaced by “may.”

l. In s. 809.53 (3) (d), the phrase “has the discretion to” should be replaced by the word “may.”

m. Section NR 809.905 uses a meaning of “small water system” that differs from the meaning given in the definition in s. NR 809.04. The rule should amend the definition to indicate how the term is used with regard to monitoring requirements for radionuclides. Alternatively, the rule could simply refer to “community water systems that serve 10,000 persons or fewer.”

n. The term, “NPDWR,” used in s. NR 809.905 (7), should be either defined or replaced by a more descriptive term.

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

a. The rule is inconsistent in the way that units are abbreviated. In particular, “picocuries per liter” should be represented as “pCi/l,” not as “pCi/L,” “pCi/L” or “pCi/1,” as occurs throughout the rule. Similarly, “grams per liter” should be represented as “g/l,” not “g/L.”

b. Section NR 809.50 (4) (title) refers to “gross beta particle and photon radioactivity” and that subsection refers to related provisions in s. NR 809.51 (1). In this latter section, the word “gross” is not used to refer to this type of radiation; should it be omitted from s. NR 809.50 (4) (title)? Also, in s. NR 809.50 (4), the word “with” should be inserted before the reference to s. NR 809.51 (1).

c. In s. NR 809.50 (6), the final note to Table C should conclude with a period. Also, in the note to Table D, what is the meaning of the reference to “141.66 (h)”?. If this is a reference to a provision in the code of federal regulations, this should be indicated clearly.

d. In s. NR 809.515, “deare” should be replaced by “are.”

e. In s. NR 809.52 (4), the relationship of the last clause of the second sentence (following “95% confidence level”) to the rest of that sentence is unclear. Is this a definition of the 95% confidence level? If so, it is unnecessary. In any case, it needs fuller explanation. The same comment applies to the parenthetical material in s. NR 809.53 (1) (e), except that the symbol for sigma is missing from that material.

f. Section NR 809.53 (1) (a) 1. refers to community water systems that use groundwater, surface water or both. What other sources of water could a system use? Is this everything? If so, the rule should simply refer to community water systems. The same comment applies to the phrase, “both surface and ground water” in s. NR 809.53 (2) (a) (intro.) and in subsequent provisions.

g. In s. NR 809.53 (1) (b) 2., a time period is indicated with a precise end date but an imprecise starting date. Should the starting date be June 1, 2000? Should it be June 30, 2000?

h. In s. 809.53 (1) (c) 4., the notation “, e.g.,” should be replaced with the phrase “. For example,”.

i. The word “composite,” an adjective or noun, is used as a verb in s. NR 809.53 (1) (d). A proper verb for treating sample results in a composite manner should be used; alternatively, a longer and more descriptive phrase could be used. See sub. (2) (b) 1., 2. and 3. for better use of the word. Even in these examples, though, some explanation of how a composite is created would help--is this a simple average, or is it something else?

j. In s. NR 809.53 (2) (a) (intro.), should “designed” be “designated”?

k. What is the meaning of the phrase, “screening level,” in s. NR 809.53 (2) (a) 1.? It appears superfluous. The term appears again in s. NR 809.53 (2) (d) and (e), without definition or explanation.

l. In s. NR 809.53 (2) (a) 2. and subsequent provisions, what is a nuclear facility? Does this refer to a nuclear powered electric generation facility? If so, it should say so; if not, it should further explain what is meant or, alternatively, provide a definition of the term. Similarly, the term “release from a nuclear facility” is vague.

m. In s. 809.53 (2) (b), the word “removed” in the last sentence should be replaced by the word “removes.”

n. In s. NR 809.53 (2) (f), both occurrences of the word “which” should be replaced by “that.”

o. In s. NR 809.53 (3) (c) 2., what samples are included in the running average? From the preceding subdivision, it would appear to be those samples taken in the same calendar year--is this correct? If so, it should state as much.

p. Section NR 809.905 (1) (intro.) does not constitute a complete sentence, either on its own or in combination with either par. (a) or (b). Furthermore, the wording of pars. (a) and (b) is very awkward and confusing.

q. In s. NR 809.905 (6), it appears that the final cross-reference should be replaced by the cross-reference “s. NR 809.90 (4) (a) or s. NR 809.90 (4) (b) and (c).”