



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01-087

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 Comm 10.13 subjects above-ground tanks under 5,000 gallons to regulation, but s. 101.09 (2) (c), Stats., exempts such tanks from regulation. The department should describe its authority for the rule.

2. Form, Style and Placement in Administrative Code

a. Section Comm 10.125 (1) (intro.) provides that specific approval shall be obtained in writing from the department for certain items. The use of the passive voice makes the provision unclear. Although the rule implicitly requires the owner or operator to seek specific approval, the language does not clearly so state. A preferred format would be: “An owner or operator of . . . shall receive written approval from the department before using any of the following procedures or items:”.

b. In s. Comm 10.125 (1) (a), the phrase “this code” should be replaced by the phrase “this chapter.” (The entire rule should be reviewed for this problem.) Also, the phrase “federal law” should be replaced by discrete citations to federal law, if possible.

c. In s. Comm 10.125 (2) (a), the phrase “, at its discretion” is unnecessary and should be deleted.

d. In s. Comm 10.13 (2) (d) 1., “storage tank undergoing a” should be deleted.

- e. In s. Comm 10.26 (2) (intro.), the hyphen should be replaced by the word “to.”
- f. In s. Comm 10.415 (9) (a), the comma is being added, so it should be underlined.
- g. In s. Comm 10.51 (2) (a) 4., the second occurrence of the word “a” should be replaced by the word “an.” [See also s. Comm 10.55 (2) (b).]

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

Section Comm 10.345 (2) (a) requires compliance with “. . . sub. (1) (c) to (e)” However, sub. (1) (e) is repealed by SECTION 23.

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

a. In s. Comm 10.125 (3) (a) 1., it appears that the words “concepts” and “technology” should be added to the list of approval items in order to be consistent with sub. (2) (a). Similarly, in sub. (3) (a) 2., the use of the term “product” is inconsistent with the list contained in sub. (2) (a). The term “product” should be replaced by a repetition of the list.

b. Section Comm 10.125 (4) uses the phrase “listed and labeled,” and in a number of places in the rule “and labeled” is inserted after “listed.” While the definition of “listed” includes placing a label on the equipment, it would be clearer to either define “labeled” separately, or to define the whole phrase “listed and labeled.”

c. In s. Comm 10.13 (2) (c), does the phrase “name change” apply both to the owner and to the facility?

d. In s. Comm 10.25 (intro.), “standards when approved” should be changed to “standards if the alternate standard is approved.” Also, it appears that this provision would be more clear if a comma were inserted after the first occurrence of the word “department;” if a comma were inserted after the cross-reference; and the introduction concluded with the phrase “under all of the following conditions;”.

e. In s. Comm 10.26 (intro.), the wording is confusing. Could “where the indicated standards are referenced in” be replaced with “in lieu of”?

f. In s. Comm 10.415 (b) 1. to 3., “involving” should be changed to “for.”

g. In s. Comm 10.51 (2) (a) 2., what constitutes a “nationally recognized association”?

h. In s. Comm 10.51 (4) (a), the wording is awkward. It would be clearer if “. . . shall be provided with access” were changed to “. . . shall be designed and constructed so as to allow access”

i. In s. Comm 10.51 (5) (b) 1. to 3., the verbs should be changed to the singular form: “restrict” to “restricts,” “alert” to “alerts,” and “shut” to “shuts.”

j. In s. Comm 10.51 (6) (b), the provision can be made more clear by inserting the word “performed” after the phrase “shall be.”

k. Section Comm 10.51 (7) is difficult to read. It might be clearer if “piping and any system” were changed to “piping, or any system.” Further, “the owner, inspector” should be changed to “the owner, the inspector.”