



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01-090

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

a. Has the Land and Water Conservation Board (LWCB) reviewed this rule as required by s. 92.04 (3) (a)?

b. The definition of “local regulation” under s. ATCP 50.01 (15) includes county zoning [s. 59.69, Stats.]. County zoning has the potential to include provisions that “affect” soil and water conservation, but do not relate directly to conservation practices. Note that s. ATCP 50.54 (1) requires local regulations to be “reasonably consistent” with ch. ATCP 50. Is there authority for the Department of Agriculture, Trade and Consumer Protection (DATCP) to require county zoning to be consistent with ch. ATCP 50, and will it be reasonably clear which of the zoning regulations “affect” soil and water conservation on farms?

c. Do the requirements of s. ATCP 50.54 apply to local regulations that were enacted prior to the effective date of the rules? Also, should the note after that subsection also list ss. 92.11 and 281.16 (3) (e), Stats.?

2. Form, Style and Placement in Administrative Code

a. The table of contents to subch. II includes a section on initial applicability. There is not an initial applicability provision in this subchapter.

b. A number of the notes address the reader as “you.” Although not necessarily inappropriate, this is not conventional drafting practice and is not the normal tone for legal drafting. See the notes after ss. ATCP 50.04 (3) (e) 9. and 50.06 (2).

c. In s. NR 50.01 (29), “rule” should replace “regulation” in two places.

d. In s. NR 50.30 (2) (a), the font size should be the same as that used in the rest of the rule.

e. In s. NR 50.46 (2), the paragraphs after par. (z) should be pars. (za), (zb)

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

a. Are the statutory cross-references under s. ATCP 50.01 (29) too broad?

b. Would s. 16.964 (6) (a), Stats., be a better reference than the federal cross-reference in s. ATCP 50.01 (31)?

c. The note after s. NR 50.40 (17) (b) should refer to s. ATCP 50.01 (35).

d. Section ATCP 50.60 contains only a cross-reference to s. 92.15, Stats., while ss. ATCP 50.56 and 50.58 elaborate on the statutory provisions. Is this difference intended?

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

a. The rule uses notes extensively, which is generally useful. However, some of the notes are not informative. For example, see the note after s. ATCP 50.01 (1).

b. The definition of “cost-share grant” in s. ATCP 50.01 (4) refers to a grant for “all” of the cost. Are there any grants that reimburse all of the cost of a conservation practice?

c. The phrase “for agricultural purposes” is included in s. ATCP 50.01 (13) (b), but not in par. (a). Should it be included in both paragraphs?

d. It would be useful to include the text of the statutory definitions in notes after s. ATCP 50.01 (21) and (22).

e. The cross-references in s. ATCP 50.01 (25) should be checked. The cross-reference to s. ATCP 50.56 (3) (b) only refers to s. ATCP 50.04 (3). The text of s. ATCP 50.62 (5) (a) does not require a plan.

f. Section ATCP 50.54 (1) requires local regulations to be “reasonably consistent” with ch. ATCP 50. However, a different standard is established in s. ATCP 50.12 (2) (b), which requires notation of local regulations that “differ materially” from ch. ATCP 50. Does this create an inconsistency?

g. Section ATCP 50.12 (2) (d) and (e) refer to “key” water quality and soil erosion problems. This apparently means that some problems must be identified and others are not required to be identified. Is there a standard for determining what is a “key” problem?

h. “Priority” farms must be identified in s. ATCP 50.12 (2) (f), but the rule does not indicate what is a priority farm. The note after this provision indicates criteria that can be used to identify a priority farm. However, the rule could clarify this matter by indicating why priority farms are to be identified.

i. Should s. ATCP 50.12 (4) (b) specify the method used to notify land owners? Also, can the opportunity to present information be clarified? Is this opportunity individually or in a public hearing? Finally, “sub.” should replace “subs.”.

j. Section ATCP 50.32 (7) (c) 1. refers to the “contract number” of an independent contractor. Is this the number of the contract or the contractor?

k. Will the contract under s. ATCP 50.40 (8), which must be recorded pursuant to par. (L), meet the recording requirements of s. 706.05, Stats.?

l. Section ATCP 50.46 (7) (b) refers to “good cause,” while sub. (9) (a) refers to “cause.” Should these be consistent?

m. Should “Misrepresent” in s. ATCP 50.48 (5) (c) be changed to “Represent”?

n. Both s. ATCP 50.54 (1) and (2) refer to any local regulation, but s. ATCP 50.54 (3) refers only to a county ordinance. Is there a reason for this difference?

o. The last sentence of s. ATCP 50.81 (2) (c) is unnecessary. DATCP authority to waive requirements is established in s. ATCP 50.02.