



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01-104

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 NR 815.13 (4) refers to the methods for providing confidential treatment of records and other information. However, ch. 281, Stats., does not have a provision regarding confidentiality of records. Is there statutory authority to provide confidential status for these records?

2. Form, Style and Placement in Administrative Code

- a. In the treatment clause of SECTION 5, “are” should replace “is.”
- b. Is there a need in s. NR 600.03 (244) to have two different terms with the same meaning? It is generally better drafting practice to use a single term consistently. Note also the use of “underground injection” and “well injection” which are given the same meaning in s. NR 815.03 (59). See also “wastewater” and “sewage” in s. NR 815.03 (61).
- c. Similarly, it is confusing in s. NR 815.03 (5) to state that a “borehole” is the same as a drillhole, when the terms have different definitions in the rule.
- d. Are the three subdefinitions in s. NR 815.03 (13) necessary? None of these terms appear to be used in the rule. If they serve some purpose, they should be placed in alphabetical order with the other terms that are defined.

e. The term “party,” as defined in s. NR 815.03 (35) and used throughout the rule, is inappropriate. The conventional statutory terminology “person,” as defined in s. 990.01 (26), Stats., should be used.

f. The defined term “state” should be used in s. NR 815.03 (36), and “of Wisconsin” should be eliminated.” This occurs elsewhere in the rule.

g. Section NR 815.12 (2) should begin “No person may. . . .”

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

a. Can a more specific cross-reference or cross-references be substituted for the reference to ch. 281, Stats., in s. NR 815.01 (intro.)?

b. The cross-reference in the note after s. NR 815.03 (7) is incorrect. The proper reference should be to s. Comm 81.01 (53).

c. The reference to the form in s. NR 815.08 (3) should comply with the requirements of s. 227.14 (3), Stats.

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

a. The title of ch. NR 815 is “underground injection wells.” However, it appears that the phrase “underground injection” is used only in the title. The remainder of the rule refers only to “injection wells.”

b. It is not clear why “dug hole” and “bored, drilled or driven shaft” are used in s. NR 815.02 (2) (c) and (d). Is there a reason why “well” is not used in place of these terms?

c. The use of “all” should be reviewed in s. NR 815.03 (2). “Entirely” might be a better word choice.

d. Is “fluid” the correct term in s. NR 815.03 (3)? It is difficult to understand how “backfill” can be a fluid.

e. The definition of “conversion” in s. NR 815.03 (9) refers to both classes and types of injection wells. Section NR 815.04 defines classes of wells but nothing in the rule appears to define types of wells. That term could be clarified.

f. It is not clear what is meant by “commercial domestic establishments” in s. NR 815.03 (12).

g. The distinction between an existing injection well and a new injection well, based on the definitions in s. NR 815.03 (17) and (32), is not clear. For example, an injection well that is constructed before the effective date of the rule but is not in use on the effective date of the rule, and is used as an injection well after the effective date of the rule, does not fit either definition.

It is not a new injection well because it is not first used for underground injection after the effective date of the rule.

h. Is there a reason why both “fluid” and “substance” are used in s. NR 815.03 (25)? It appears that the definition of “substance” includes all fluids.

i. Should “municipal wastewater” be defined in s. NR 815.03 (31) as only the effluent from a treatment works? Should this term also include partially treated wastewater and wastewater prior to treatment?

j. It is not clear why the definition of “operator” in s. NR 815.03 (33) relates to a “facility or activity subject to regulation through the underground injection control program,” while the definition of “owner” in s. NR 815.03 (34) refers simply to “an injection well.”

k. Is there a reason why both “act” and “process” are used in the definition of “plugging” in s. NR 815.03 (37)? It appears that either term would be sufficient. Also, in the same definition, the use of “borehole” and “well” in the same definition is confusing. There is considerable overlap between these terms.

l. The definition of “injection well” refers to the placement of a fluid or substance underground. There does not appear to be a reason in the definition of “point of injection” in s. NR 815.03 (38) to refer to the release of a fluid or substance into the “subsurface environment.” This definition should also use “underground.”

m. The definition of “project” in s. NR 815.03 (41) refers to a group of wells in a single “operation.” It is not clear what would be encompassed within an operation.

n. How does the term “sanitary waste” in s. NR 815.03 (46) differ from “domestic wastewater” as defined in s. NR 815.03 (12)? These terms appear to overlap substantially.

o. It is not clear why the definition of “septic system” in s. NR 815.03 (48) or the use of that term in the rule is necessary if the term “private onsite wastewater treatment system” is defined and used.

p. The reference to surface water and groundwater in the definition of “sewage” in s. NR 815.03 (49) is unclear. The definition refers to surface water and groundwater that “may be present.” Sewage would thus include surface water and groundwater even if it is not mixed with the sewage. Does this also refer to groundwater beneath the residence or other structure?

q. Is the definition of “strata” in s. NR 815.03 (54) really necessary?

r. It is unclear how the definition of “stratum” relates to the definition of “formation.” See s. NR 815.03 (19) and (55). There appears to be substantial overlap between these terms.

s. “Of hazardous waste” should be deleted in s. NR 815.04 (1) (a). This phrase is included in the definition of “generator.” Also in that paragraph, note that “owner” and “operator” are used in a context that is not consistent with the definitions of those terms.

t. Section NR 815.05 (2) would be more useful if it specified who may provide an exemption from designation as an underground source of drinking water. Does this apply to the department? A regulatory agency?

u. Section NR 815.06 (1) and the following provisions might be rewritten in the following form: "Construction of a class I injection well or use of a well as a class I injection well."

v. Does "endangers" in s. NR 815.06 (6) have the same meaning as the defined term "endangerment"?

w. How does the prohibition of certain facilities in s. NR 815.06 (7) to (9) relate to the general prohibition of class V wells in s. NR 815.06 (5)? The prohibition in sub. (5) applies unless construction or use of the injection well is specifically authorized. It would thus appear unnecessary to prohibit the types of facilities listed in subs. (7) to (9), as those would appear to be class V wells.

x. When is it necessary to provide the information required in s. NR 815.08 (1)?

y. As mentioned earlier, it is not clear what is meant by "type" of injection well, as well as "type" of ownership, in s. NR 815.08 (1) (c) and (d).

z. Section NR 815.08 (2) provides exemptions from reporting requirements for certain injection wells. Does the placement of objects as described in s. NR 815.08 (2) (e) fit within the definition of "injection well."