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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 08-111

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

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

a. The plain language analysis in the rule preface should be expanded to clearly tell the reader how sediment currently is managed and how it will be managed under the new rule. Some of this information is contained in other portions of the rule preface, but it should be consolidated in the plain language analysis so that the reader has an immediate understanding of the purpose of, and the changes made by, the rule.

b. In s. NR 528.03 (11), the second sentence appears to be a requirement that a manager of storm water management structure must meet. If so, it should be relocated into a substantive provision in ch. NR 528.

c. In s. NR 528.04 (2) Note, the phrase “Use of this code” should be replaced by the phrase “compliance with this section.”

d. In s. NR 528.06, the introductory material does not grammatically lead into the following subunits. Thus, the introductory material should be renumbered sub. (1); the remaining subsections should be renumbered; and internal cross-references should be corrected. [See also ss. NR 528.06 (3) and 528.07 (intro.), (4) (b), (5), (6), and (7).]

e. In s. NR 528.06 (3) (a) 1., “will” should be changed to “shall.” This problem also occurs in sub. (3) (a) 2. and 3.

f. In s. NR 528.06 (3) (a) 2. (intro.), the phrase “all of” should be inserted before the phrase “the following.” The entire rule should be reviewed for the appropriate use of phrases such as “all of” and “any of” in introductory material in order to alert the reader whether it is necessary to comply with all of the items in a list of subunits or to comply with merely one of those items. [For example, see also ss. NR 528.06 (3) (b) 5. (intro.), (4) (intro.), and (5) (intro.).]

g. In s. NR 528.07 (intro.), it appears that “may” should be changed to “shall”.

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

a. Section NR 528.05 (1) (b) makes the first reference to a certification form supplied by the department. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

b. In s. NR 528.07 (6) (b), the last cross-reference should read: “This section and ss. NR 528.04 to 528.06 and 528.08.”

c. In s. NR 528.10, the phrase “this rule” should be replaced by the phrase “this chapter.”

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

a. In the explanation of agency authority section of the rule preface, “Department” should be changed to “department.” In the comparison of similar rules in adjacent states section of the rule preface, “catch all” should be changed to “catchall.”

b. In the second paragraph of item 9. in the rule preface, the second occurrence of the word “is” should be replaced by the word “are.”

c. In the Note following s. NR 528.02, “or” should be inserted before “culvert” and the Note should be checked for capitalization. This problem also occurs in the Note following s. NR 528.04 (2).

d. In s. NR 528.04 (1) (b), the phrase “in Table 1” should be inserted after the phrase “locational criteria.”

e. In s. NR 528.04 (1), in the footnote to Table 1, “when” should be capitalized. In sub. (1) (b), the term “end use” is used rather than the defined term “end use of accumulated sediment.” This also occurs in sub (2) (intro.) and s. NR 528.06 (intro.) It appears that the way the term is used throughout the rule may require the creation of a separate definition of “end use,” as the defined term “end use of accumulated sediment” does not appear to be broad enough to convey the department’s intent. In sub. (3), the rule should specify “within 48 hours” of a particular event or situation.

f. In s. NR 528.06 (3) (intro.), the phrase “under the supervision of an environmental professional” is confusing and should be deleted. The same problem occurs in sub. (4) (intro.). In sub. (4) (b), a Note should be added which includes information about who to contact in the department and how.

g. In s. NR 528.06 (4), the introduction should conclude with the phrase “that all of the following steps are taken.”

h. In s. NR 528.07, Table 3, the information in the table and the footnotes should be checked for capitalization. Also, footnote 3 in the table refers to “increased site management.” Who decides what level of increased site management is appropriate? In sub. (5) (intro.), it appears that “provided” should be changed to “if.”