



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 10-060

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 second and third sentences of the definition of “consecutive water system” are explanatory and so should be placed in a note, rather than in the definition.

b. The definitions of sectors should be redrafted using lower case letters. For example, see s. NR 852.03 (3), (13), and (15). Also, in s. NR 852.07 (1) and (2) (a), “Department” and “Public Service Commission” should be lower case.

c. The definition of “water use audit” is sufficiently obvious that it does not seem to be necessary. If any of the information contained in it is necessary, it should be placed in a substantive provision of the rule.

d. Tables 1 and 2 should be rewritten using the active voice, clearly stating who shall do what, rather than simply stating that something shall be done. Sections NR 852.08 and 852.09 should also be rewritten in the active voice.

e. In the entry CI-1 of Table 1, what department guidelines are referred to? Both here and in other similar table entries, the rule should indicate the guidelines intended.

f. A number of provisions do not make correct use of the introduction format. [See s. 1.03 (2) (h), Manual.] In particular, s. NR 852.05 (intro.) does not lead into s. NR 852.05 (1) and (2), as s. NR 852.05 (2) (intro.) does not lead into pars (a) and (b); the same applies to s. NR 852.08 (2) (intro.). In each of these cases, either the subunits should be incorporated into what is

now drafted as an introduction or the introduction should be renumbered at the same level as the subunits. In s. NR 852.07 (2) (intro.), “all of the following” should be inserted before the colon.

g. Section NR 852.05 (1) and (2) (intro.) are not written in full sentences. This section might work better if sub. (1) were revised to state that, except as provided in sub. (2), a person in Tier 2 or 3 shall do everything in Table 2 except those things that are not environmentally sound and economically feasible. Subsection (2) then would state that, as an alternative to the requirement of sub. (1), a person in Tier 2 or 3 may propose and with department approval implement a set of CEMs selected from Table 2 or other measures that the person can demonstrate will collectively reduce water use or increase water reuse or efficiency by at least 10%.

h. In the IR-R1 entry in Table 2, what is the Wisconsin Irrigation Scheduling Program? Some reference should be provided to identify this program.

i. Section NR 852.06 (intro.) should require affected persons to *do* all of the following (rather than to *complete* all of the following) and should end in a colon.

j. In s. NR 852.07 (2) (intro.), “shall” should replace “must”.

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

a. The department must include the missing web addresses in the notes following ss. NR 852.07 (1) and 852.08 (2) (intro.) prior to submitting the rule to the Legislature for final review.

b. Internal references are needed in a number of places in this chapter, to tie relevant provisions to each other. For example, are the water conservation plans referred to in s. NR 852.07 the plans that s. NR 852.04 (1) requires all persons subject to this chapter to prepare? If so, s. NR 852.07 should be revised to refer to water conservation plans under s. NR 852.04 (1); if not, it should more clearly indicate what plans it is referring to. Similarly, s. NR 852.10 (1) should state that “[t]he department shall review water conservation plans *required under* _____...” to make clear what plans are meant. The rule should be reviewed for other instances where cross-references would clarify the rule’s intent.

c. In s. NR 852.07 (2) (a), it is not clear what is meant by “the water audit procedures indicated in ch. PSC 185”. A search of ch. PSC 185 turned up no occurrences of the word “audit”. Can a more specific reference be provided? And what does “indicated” mean?

d. In s. NR 852.11 (2), “this chapter” should replace “these rules”.

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

a. Does the department intend to include a note following s. NR 852.02 (1) (c) 2., similar to the ones following the other subunits of that subsection?

b. Section NR 852.09 is very ambiguous. Who may conduct the described analysis (drafting in the active voice is needed), and for what purpose (a cross-reference to the relevant rule provisions is needed)? What standards apply to a determination of whether a CEM is

environmentally sound or economically feasible? What is the point of stating that the department “may” provide analysis tools and, if the department provides a tool, is a person performing the analysis obliged to use the tool? How does one know if there is a tool, and how does one find it?