



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 12-027

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 November 2011.]

2. Form, Style and Placement in Administrative Code

a. Much of the new rule text created in this order, and much of the existing text being amended, is written in the passive voice. At the least, the new text should be revised to use the active voice to the extent practicable; in addition, this order would be an opportunity to make similar revisions to existing text. [See s. 1.01 (1), Manual.]

Section NR 210.12 (2) provides an example of the lack of clarity that can follow from the passive voice--it does not say who does what. It should read: “***The department*** may authorize ***a permittee*** to practice blending if ***the permittee*** operates a sewage treatment facility approved by the department...and complies with all other requirements of this section.”

b. In SECTIONS 2, 4, 9, and 12, the notation “NR 110.03” should be included for the first subsection treated by the SECTION but not for the subsequent subsections. [See s. 1.04 (2) 4., Manual; in particular, see the example.]

c. To maintain correct alphabetical order, the definition of “sewer extension” should be numbered before the definition of “sewerage system.” For the same reason, the existing definition of “sewer service area” should be renumbered between “sewer extension” and “sewerage system.” [See s. 1.01 (7) (a), Manual.]

d. The second sentence of the definition of “treatment process” should be written in the singular. [See s. 1.01 (9) (e), Manual.] The defined term should be shown again in quotes:

“Treatment process’ includes...” In addition, the phrase “but are not limited to” should be omitted; it is implied by the word “includes.” [See s. 1.01 (7) (d), Manual.]

e. At the beginning of what is currently numbered NR 110.05 (4) (a) 1., “A” should be stricken and “a” should be underscored.

f. In SECTION 16, the renumbering of s. NR 110 (5) (d), (e), and (f) is not necessary.

g. If the rule uses the acronym “SECAP,” it must provide a definition of that term. It is not sufficient to simply present the acronym in parentheses following the first occurrence of the full term, as the rule does in ss. NR 110.10 (4) and 210.24. All the definition need say is “SECAP’ means a system evaluation and capacity assurance plan under s. ...”. This comment applies also to the use of the acronym CMOM. [See s. 1.01 (8), Manual.]

h. It is inaccurate to state in s. NR 110.10 (4) (intro.) that a SECAP under that subsection must be in accordance with s. NR 210.24. In fact, the reverse is true: A SECAP authorized under s. NR 210.24 must conform to the requirements outlined in s. NR 110.10 (4). With this in mind, the department may want to consider a different organization of the provisions relating to SECAPs. In one section (we would suggest s. NR 210.24), list all of the circumstances in which the department may require preparation of a SECAP in the first subsection, specify what a SECAP must include and what it may include in the second and third subsections, and present any additional information, such as the statement in s. NR 210.24 (3) that a SECAP is reviewable under s. 281.41, Stats., in additional subsections. There would be no need for provisions such as s. NR 110.11 (3) stating that the department may require a SECAP under that provision, although notes in those locations could be used to aid the reader.

i. Rules consist of requirements, prohibitions, and exceptions; all explanatory and other material is placed in notes. Accordingly, the first two sentences of ss. NR 110.13 (6) and 110.15 (5) (h) should be placed in notes, as they do not create new requirements or prohibitions, but rather explain the application of other provisions. Note that s. NR 210.21 applies without being restated here. Similarly, the second sentence of s. NR 210.12 (1) should be placed in a note, as should the last sentence of s. NR 210.23 (5) (a). [See s. 1.09 (1), Manual.]

j. In the treatment of s. NR 205.07 (1) (s), note the following:

(1) Only those portions of this paragraph that are changed should be shown; the treatment clause should read: “NR 205.07 (1) (s) (title), 2.a., 3., and 4. are amended to read:”.

(2) The second occurrence of “~~The permittee~~” in subd. 1. should be deleted.

(3) The new sentence created in subd. 1. should be changed to the active voice, as the second sentence is written.

(4) In subd. 2. a., “~~Any anticipated~~” should be moved to the beginning of the sentence.

k. In s. NR 205.07 (1) (u) 2., each subdivision paragraph should be numbered as a letter followed by a period, rather than a letter in parentheses. [See s. 1.03 (2) (e), Manual.]

l. SECTION 39 purports to repeal and recreate s. NR 208.05 (3) (m) (intro.), but what are actually changed are the title and the table that follows the introduction. The relating clause should be revised to reflect this, and the introduction should not be shown in the text.

m. Definitions never include substantive provisions. [See s. 1.01 (7) (b), Manual.] The requirements relating to disinfection and sampling in the definition of “blending” [s. NR 210.03 (2e)] are examples of substantive provisions that should be moved from the definition to an appropriate place in the main text of the rule.

n. The treatment clause of SECTION 47 should show the entire citation of the new numbering [i.e., s. NR 210.03 (12)]. Note also that the text of this section incorrectly numbers this provision as NR 210.03 (13).

o. Section NR 210.02 should be amended to read: “Except as provided in s. NR 210.19,...”. Also, s. NR 210.035 is duplicative of s. NR 210.02 and should be omitted.

p. Section NR 210.02 should be amended to state something like: “Except as provided in s. NR 210.19, this chapter applies to...”. In addition, any subchapter whose applicability is the same as that specified in s. NR 210.02 (e.g., subch. II) should not be given an applicability provision, as it only duplicates s. NR 210.02--i.e., s. NR 210.035 should be omitted.

q. Section NR 210.12 (1) (a) and (c) should be written in the same sentence structure as the other paragraphs of that subsection. Specifically, par. (a) could be written as “The operator monitors effluent from...”; and par (c) could be written as “Blending occurs temporarily and only during...”.

r. All but the last sentence of s. NR 210.205 and the first sentence of s. NR 210.21 appear to only restate requirements established elsewhere, in which case they are superfluous and should be omitted or placed in notes. Or is there a different purpose in these statements, not apparent on their face?

s. Section NR 210.21 (3) (d) should be rewritten in the singular and to include a citation to the monitoring reports it refers to: “A permittee that is required to submit a wastewater discharge monitoring report under s. NR...shall...”. Subsection (5) should begin: “A permittee shall...”. [See s. 1.01 (9) (e), Manual.]

t. Section NR 210.22 (2) is redundant with sub. (1) and should be omitted.

u. Section NR 210.23 (2) combines elements of a delayed effective date and a statement of initial applicability, although neither of those drafting formats works well to accomplish the apparent desired result. Consider the following alternative language: “(2) IMPLEMENTATION DEADLINE. The holder of a WPDES permit shall implement a capacity, management, operation, and maintenance program under this section no later than the first day of the 36th month beginning after the effective date of this subsection [LRB inserts date] or no later than an earlier date specified in the permit.”.

v. The paragraphs of s. NR 210.23 (4) do not follow grammatically from s. NR 210.23 (4) (intro.). The easiest fix might be to omit the introduction.

w. Section NR 210.23 (6) seems to imply that a permittee gets an exemption just by explaining why it is justified. Is there no department review and approval of this? This provision appears to be incomplete.

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

a. What is the relationship of a building sewer, as defined in s. NR 110.03 (6s), to a building? Presumably, it relates to a particular building; if this is the case, it could be rewritten as "...that part of the drain system of a building not within or under the building that conveys discharge from the building to...".

b. The first comma in s. NR 110.05 (3) (b) is incorrect and should be repealed (i.e., should be stricken).

c. Both occurrences of "which" in s. NR 110.10 (4) (a) should be replaced with "that." The same applies to s. NR 210.23 (4) (c) 5.

d. To follow grammatically from the introductory language, s. NR 110.15 (5) (d) 1. to 3. should only present the subject of the sentence, not the verb; the verb is in the introduction ("shall be provided"). For example, subd. 1. should read: "An emergency power generator with sufficient generating capacity to...".

e. In s. NR 205.07 (1) (u) 3. (intro.), it would appear that "applies" would be a better word choice than "occurred."

f. Section NR 210.12 (1) (a) says, essentially, that: (a) a facility must meet the effluent limits in its permit; and (b) a facility is only required to meet ("at a minimum") the effluent limits specified in s. NR 210.07 (1) (a) to (d). These are obviously contradictory. If the department intends to allow an exception from effluent limits other than those specified in s. NR 210.07 (1) (a) to (d), the rule needs to state this clearly and specify the conditions under which that exception is allowed.

g. Section NR 210.12 (3) (c) appears to be saying that a separate report is required for each location where an overflow occurs and for each day. This should be clarified, perhaps by adding the word "separate" in some manner.

h. In s. NR 210.23 (3) (intro.), "assure" should be "ensure." The same comment applies to s. NR 210.23 (4) (c) (intro.).

i. In s. NR 210.23 (4) (f) (intro.), "implement" should be replaced with "ensure"; in each of the following subdivisions, "ensure" or "ensure that" could then be omitted. Note that subd. 5. is not a complete sentence; presumably, the requirement is that emergency operations appropriate to the event are in place or are implemented.

j. Similar to the preceding comment, in s. NR 210.23 (5) (intro.), "meet the following requirements:" should be replaced with "do all of the following:".