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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Scott Grosz and Jessica Karls-Ruplinger  
Clearinghouse Co-Directors

Terry C. Anderson  
Legislative Council Director

Laura D. Rose  
Legislative Council Deputy Director

### CLEARINGHOUSE RULE 13-054

#### 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.]**

#### 1. Statutory Authority

The analysis should identify s. 281.17 (3), Stats., along with s. 227.11, Stats., as providing authority for the department to promulgate this rule.

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

a. The analysis incorrectly states that the rule repeals and recreates subch. I of ch. NR 114, Wis. Adm. Code. It should state that the rule amends that subchapter, removing references to wastewater treatment plant operators, and creates subch. IV of the same chapter to address certification of wastewater treatment plant operators separately from certification of waterworks operators.

b. Based on the treatments in the proposed rule, it appears the department would more clearly achieve its intent by repealing and recreating s. NR 114.03 (6) in a separate rule SECTION.

c. With the repeal of s. NR 114.03 (6) (b), the definition of “experience in the operation of a waterworks” is addressing only the first year of experience. Is this the department’s intent? If not, it would appear that the phrase, “in the first year of experience” should be stricken.

d. In the treatment of s. NR 114.03 (12), the amendment of the last phrase should be drafted as follows: “...any ~~water or wastewater treatment plant~~ waterworks.” [s. 1.06 (2), Manual.]

e. SECTION 5 should repeal all of s. NR 114.03 (14); as drafted, it repeals only pars. (a) to (c) and not s. NR 114.03 (14) (intro.).

f. In SECTION 9, the second “(b)” should be omitted. Also, since this results in a paragraph with only one subdivision, the rule should consolidate the introduction and remaining subdivision into a paragraph, renumbered par. (b) and amended, as needed for grammatical purposes.

g. In SECTION 12, “(intro.)” should be inserted following “NR 114.10” in both the treatment clause and the rule provision. Similarly, in SECTION 13, “(title)” should be inserted following “NR 114.12” in the rule provision, as it is in the treatment clause. Also, in the treatment of s. NR 114.10 (intro.), there is a stray underscoring mark following the word “at”, which should be deleted

h. SECTION 14 should repeal s. NR 114.12 (1); by repealing only pars. (a) to (d), the rule leaves s. NR 114.12 (1) (title) in the Administrative Code.

i. The title of subch. IV should be written in Roman numerals, in the text as well as in the relating clause of SECTION 16.

j. The department may want to start the numbering of sections in subch. IV at a number higher than 114.38 (such as 114.40, or even higher), to allow room for future additions to subch. III.

k. The first word of every subunit of a rule should be capitalized. Sections NR 114.40 (24) (a) to (e) should be corrected in this regard.

l. Rules should be written using “shall” and “may” in reference to required or permitted actions. [s. 1.01 (2), Manual.] Sections NR 114.42 (4) and (5) should be rewritten using these words in place of “will”. Writing in the active voice will help: “The department may not return examinations...”. The entire rule should be reviewed for similar uses of “will” and revised accordingly.

m. With regard to s. NR 114.44:

(1) The first words of s. NR 114.44 (1) (a) to (f) should be capitalized.

(2) Paragraphs (a) to (e) of s. NR 114.44 (1) should each end with a period, not “; or”.

(3) The unnumbered sentence following s. NR 114.44 (1) (f) needs a number. There are at least two options: number it s. 114.44 (2), and adjust the numbering of the following subsections; or renumber s. NR 114.44 (1) (intro.) and (a) to (f) as s. NR 114.44 (1) (a) (intro.) and i. to v. and number the unnumbered sentence s. NR 114.44 (1) (b).

n. Notes are not a part of a rule; they are for explanatory purposes only, and not to create substance. Consequently, it appears the matter in the note following s. NR 114.45 (1) Table 2. should be moved into the text of the rule, perhaps in s. NR 114.45 (3).

o. In s. NR 114.48 (1), “on the effective date of the code” should be replaced with “on the effective date of this subsection .... [LRB inserts date]”.

p. The effective date clause should be written as follows:

SECTION 17. EFFECTIVE DATE. (1) Except as provided in sub. (2), this rule shall take effect on the first day of the 13<sup>th</sup> month beginning after publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats., or on January 1, 2015, whichever is later.

(2) SECTION 16 of this rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

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

a. In the definition of “operator-in-training,” in s. NR 114.40 (16), what basic wastewater examination and what one year of specific subclass experience are intended? Cross-references to the relevant provisions of the Administrative Code would help clarify this definition. Numerous other, similar provisions of the rule should be provided with cross-references.

b. If a rule requires a form, it must include a note instructing readers where or how to obtain the form. In addition, the promulgating agency must include a copy of the form in the materials it submits to the Legislature. [s. 1.09 (3), Manual.] This rule does not comply with these requirements with regard to the form described in s. NR 114.42 (1).

c. Should the cross-reference in s. NR 114.45 (1) refer to Table 1 rather than s. NR 114.44 (3)?

d. In s. NR 114.46 (3), the reference “under sub. (4)” should be inserted following “continuing education requirements”.

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

a. Section NR 114.40 includes a number of definitions that don’t seem necessary. Some are terms with obvious meanings, such as “certificate”, “certified operator”, and “owner”. Others are terms that are used only once, such as “graduate degree”, “health and safety training”, and “undergraduate degree”. In these cases, any difference from the usual meaning of the term can likely be conveyed in the text, without need for a definition. Also, it does not seem necessary to define the term “level”, but note as well that the word is used at least once in the rule, in s. NR 114.40 (21), in a way that has nothing to do with the way it is defined.

b. Section NR 114.40 (1) defines “advanced coursework” in terms of allowing students “to gain deeper insight and knowledge...”. Deeper than what? Deeper than coursework for an associate degree? Is “advanced coursework” coursework related to an advanced degree (M.S. or Ph.D., as defined in this rule)? This definition should be either clarified or omitted.

- c. In s. NR 114.40 (2), “2-year” should be hyphenated.
- d. “Direct responsible charge”, a noun, is defined in the rule as if it were a verb. A correct definition would be something like “responsibility for providing detailed direction...”.
- e. The use of the word “experience” in the definition of “experience”, in s. NR 114.40 (7), approaches circularity. It might be clearer to say “In the first year of employment at a wastewater treatment facility...” and “In subsequent years of employment at a wastewater treatment facility...”. However, s. NR 114.40 (7) (c) remains unclear because of the use of the undefined term “wastewater experience”--how is that different from other “experience”?
- f. In the definition of “operator-in-charge”, the first occurrence of the word “are” should be omitted. Also, “director of public works” should be replaced with “directors of public works”.
- g. The rule is inconsistent in the use of the words “sewer” and “sewage”, particularly in reference to collection systems.
- h. In the definition of “tertiary phosphorus removal”, the word “meeting” is redundant and should be omitted.
- i. The rule should use defined terms consistently. Definitions in this rule distinguish between treatment works and wastewater treatment plants, but the rule also refers, from time to time, to treatment plants, wastewater treatment works, and wastewater treatment systems. If these latter terms have meanings different from the defined terms, those meanings should be put in definitions; if they are just variants of the defined terms, the defined terms should be used, instead.
- j. In s. NR 114.41 (1), what changes does the last sentence refer to--changes in personnel? Changes in operations? Changes to facilities? This reference should be explained more fully.
- k. In s. NR 114.44 (2), the words “be required to” should be omitted.
- l. Section NR 114.45 (a) should be rewritten as a full sentence. [Cf. s. NR 114.45 (b).]
- m. Section NR 114.45 (5) is confusing. What does “development and availability” refer to, a sanitary sewer collection system, or a study guide and examination related to such systems? The terms in this sentence need explanation.
- n. In s. NR 114.47 (1) (intro.), “as provided in this section” is superfluous and should be omitted.