



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-052

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 December 2014.]

1. Statutory Authority

The proposed rule does not appear to meet the standard that is required to submit a petition under s. 227.26 (4), Stats., for expedited repeal of an unauthorized rule. An “unauthorized rule” is a rule for which an agency lacks the authority to promulgate the rule due to the repeal or amendment of the law that previously authorized its promulgation. In this case, the department does not cite the repeal or amendment of any law that has changed the department’s rulemaking authority.¹

2. Form, Style and Placement in Administrative Code

In the rule summary’s listing of statutory authority, the citation to s. 283.33, Stats., could be revised to more precisely cite to sub. (8) of that section. Also, the citations to ss. 227.26 (4) and

¹ Although the proposed rule does not appear to meet the standard that is required for expedited repeal of an unauthorized rule, the rule does appear to be in conflict with state law and could be submitted for repeal under the permanent rule procedures. Under state law implementing the federal Clean Water Act, the discharge of any pollutant to waters of the state or the disposal of sludge from a treatment work must be authorized by a water pollutant discharge elimination system (WPDES) permit *from the department* under ss. 283.31 and 283.33, Stats. In this case, the affected rule provision authorizes the department to determine that a municipal separate storm sewer system is in compliance with permit coverage, and will not be required to hold a permit, where the storm water discharge is in compliance with a memorandum of understanding *with another agency* of the state. Because the department is not authorized to defer its decision-making authority under the WPDES program, the rule could be considered to be in conflict with state law, and would be subject to review and reporting under s. 227.29 (1) (d), Stats.

227.29 (1) (a), Stats., should be removed. Those provisions establish the expedited repeal process and require an annual report by each agency of unauthorized rules, respectively. They do not remove or confer rulemaking authority for the subject matter addressed in the proposed rule.

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

In the rule summary's explanation of agency authority, the reference to "(department)" after the full name of the department could be deleted.