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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE 02-064

AN ORDER to create NR 447.19, relating to citation authority for asbestos program violations.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-02-2002 RECEIVED BY LEGISLATIVE COUNCIL.

05-30-2002 REPORT SENT TO AGENCY.

RNS





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### CLEARINGHOUSE RULE 02-064

#### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

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

a. Section 285.86 (2) authorizes promulgation of rules relating to issuance of citations for asbestos violations. However, sub. (3) requires the department to submit the proposed rules to the Department of Justice and obtain that department's approval. The analysis of the rule should indicate whether the approval by the Department of Justice has been obtained.

b. The colon in s. NR 447.19 (1) should be deleted.

Report to  
Legislative Council Rules Clearinghouse  
NR 447.19, Wis. Adm. Code  
Natural Resources Board Order No. AM-20-02

Wisconsin Statutory Authority

ss. 285.86, Stats., interpreting ss. 23.50 to 23.99, Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

A statutory change in s. 285.86, Stats., has given the Department authority to create an asbestos citation system and to collect forfeitures. The proposed rule revision creates citations and forfeiture amounts for asbestos abatement and demolition operation violations. This provides the Department a tool that addresses violations that are significant for enforcement action but may not rise to the level of referral to the Department of Justice. Currently the Department is devoting significant time in dealing with violations of ch. NR 447 through the stepped enforcement program. The majority of these violations are significant for enforcement action and would result in case overload situations for the Department of Justice. This change would speed up the enforcement process, result in better compliance with the ch. NR 447 rule and provide less risk of exposure to the public and the environment. The citation rule would also create a more level playing field for the asbestos abatement and demolition contractors who are complying with the rule.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Liaisons

Mark Davis, Bureau of Air Management – 266-3658  
Michael Scott, Bureau of Legal Services – 266-7527  
Carol Turner, Bureau of Legal Services - 266-1959

Submitted on May 2, 2002

**Fiscal Estimate — 2001 Session**

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number <i>AM-20-02</i>

**Subject**  
 Revision of NR 447, pertaining to the creation of rules for an asbestos citation authority

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.  
 Yes       No  
 Decrease Costs

Local:  No Local Government Costs

1.  Increase Costs  
 Permissive       Mandatory  
 2.  Decrease Costs  
 Permissive       Mandatory

3.  Increase Revenues  
 Permissive       Mandatory  
 4.  Decrease Revenues  
 Permissive       Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties       Others  
 School Districts       WTCS Districts

**Fund Sources Affected**  
 GPR       FED       PRO       PRS       SEG       SEG-S

Affected Chapter 20 Appropriations

**Assumptions Used in Arriving at Fiscal Estimate**

Estimate 1000 additional hours or 0.5 FTE for issuance of citations and accompanying court time.  
 0.5 FTE equivalent to 30,000 dollars annually. The cost may be absorbed by a reduction in equivalent time of other staff currently involved in the stepped enforcement program.

**Long-Range Fiscal Implications**

Citation issuance should decrease over time as the regulated community becomes aware of the department's position on asbestos and demolition violations.

Prepared By: Mark Davis	Telephone No. 608-266-3658	Agency AM/7
Authorized Signature <i>Mark Davis</i>	Telephone No. 266-2794 3	Date (mm/dd/ccyy) 03-27-02

**Fiscal Estimate Worksheet — 2001 Session**  
 Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number AM-20-02

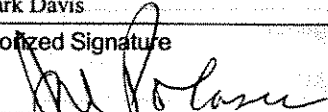
Subject  
 Revision of NR 447, pertaining to the creation of rules for an asbestos citation authority

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):  
 None

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations — Salaries and Fringes		\$ 30,000	\$ -
(FTE Position Changes)		( 0.5 FTE )	( FTE )
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
<b>Total State Costs by Category</b>		\$ -	\$ -
<b>B. State Costs by Source of Funds</b>			
GPR		\$ -	\$ -
FED			-
PRO/PRS		30,000	-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$ -	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
<b>Total State Revenues</b>		\$ -	\$ -

**Net Annualized Fiscal Impact**

	State	Local
Net Change in Costs	\$	\$
Net Change in Revenues	\$	\$

Prepared By: Mark Davis	Telephone No. 608-266-3658	Agency AM/7
Authorized Signature 	Telephone No. 276-2794	Date (mm/dd/ccyy) 03-27-02

ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **create** NR 447.19 relating to citation authority for asbestos program violations.

AM-20-02

Analysis Prepared by the Department of Natural Resources

Authorizing statute: s. 285.86, Stats.

Statutes interpreted: ss. 23.50 to 23.99, Stats.

The Department has received statutory authority to create a citation system for the asbestos program. The system created allows the Department staff to document clear violations and assess a forfeiture. The citation system includes violations of certain asbestos program requirements that include pre-inspection, notification, asbestos emission control, waste disposal, and both active and inactive waste disposal site requirements.

SECTION 1. NR 447.19 is created to read:

**NR 447.19 Penalties.** (1) The department may take appropriate enforcement action against any owner or operator of a demolition or renovation activity or any owner or operator of an active or inactive landfill, to which this chapter applies, that violates this chapter. Appropriate enforcement action includes: letters of noncompliance, notices of violation, citations, referrals to the Wisconsin department of justice, and deferral or referrals to the United States environmental protection agency. Any enforcement action the department may take shall be based upon factors such as severity, duration, frequency and environmental or health risks of the violation.

(2) Citations may be issued for violations of the following regulatory requirements: s. NR 447.06 (1), the pre-inspection; s. NR 447.07 (1) and (3), notification; s. NR 447.08 (1), (2)(a) and (b), (3), (4)(a) and (b), (5), (6)(a), (b), (c) and (d), (9) and (10), asbestos emission control; s. NR 447.13 (1), (2), (3) and (4), waste disposal; s. NR 447.14 (1) and (2), inactive waste disposal sites; and s. NR 447.17 (1), (2), (3), (4), (5)(a), (6), (7) and (10), active waste disposal sites. A citation may be issued which requires a forfeiture of not less than \$500, nor more than \$5,000, for each violation. Each day of continued violation is a separate offense.

(3) When any owner or operator is found in violation of the regulatory requirements listed in sub. (2) by any court of this state, and the violation remains of record and unreversed, for any second or subsequent violation of the regulatory requirements listed in sub. (2) occurring within a five-year period from the date of the prior adjudication, the minimum and maximum citation forfeitures shall be doubled.

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The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Darrell Bazzell, Secretary

(SEAL)