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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

Robert Marchant
Senate Chief Clerk
B20 Southeast, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707-7882

Patrick Fuller
Assembly Chief Clerk
Room 401
17 West Main Street
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 09-021

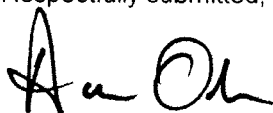
RULE NO.: Comm 5.12


RELATING TO: Administrative Forfeitures for POWTS Governmental Unit Employees

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,



 Richard J. Leinenkugel
Secretary

Senator Fred Risser
President of the Senate
Room 220 South, State Capitol
Madison, Wisconsin 53707

Representative Michael Sheridan
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53708

Dear Senator Risser and Representative Sheridan:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 09-021

RULE NO.: Comm 5.12

RELATING TO: Administrative Forfeitures for POWTS Governmental Unit Employees

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.


The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,



 Richard J. Leinenkugel
Secretary

RULE REPORT

Department of Commerce

Clearinghouse Rule No.: 09-021

Rule No.: Comm 5.12

Relating to: Administrative Forfeiture for POWTS Governmental Unit Employees

Contact person for substantive questions:

Contact person for internal processing:

Name Jim Quast

Name Lori Ann Curley

Title Program Manager

Title Communications Specialist

Telephone Number 608/266-9292

Telephone Number 608/261-8504

1. Basis and purpose of the proposed rule.

Section 145.02, Stats., grants the Department of Commerce general authority for protecting the health, safety and welfare of the public by establishing reasonable and effective standards for Private Onsite Wastewater Treatment Systems (POWTS) including the licensing of individuals to inspect POWTS. Section 145.20, Stats., delineates the responsibilities and duties of governmental units administering and enforcing the laws and rules pertaining to POWTS.

2. How the proposed rule advances relevant statutory goals or purposes.

Section 145.12 (5) (a), Stats., as affected by 2007 Wisconsin Act 197, authorizes the Department to directly assess forfeitures to governmental unit employees who violate the limitations under s. 145.20, Stats., for POWTS employees that perform work outside of the scope of their governmental unit responsibilities.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

No changes were made to the rule analysis or the fiscal estimate.

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Comm 5.12

Amendment No. if Applicable

Subject

Administrative Forfeitures for POWTS Governmental Unit Employees

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

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

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The 2007 Wisconsin Act 197 affects governmental unit employees who administer and enforce regulations pertaining to design, installation and maintenance of POWTS by limiting the activities that such employees may undertake outside of their governmental employment. The proposed rules implement administrative forfeitures authorized under 2007 Wisconsin Act 197 for violations of these limitations. The department does not anticipate that the rules will substantially increase its workload and the workload can be accommodated within current resources.

Long-Range Fiscal Implications

No long range fiscal implications are anticipated.

Agency/Prepared by: (Name & Phone No.)
Commerce/James Quast, 266-9292

Authorized Signature/Telephone No.

Am Oh 6-8976

Date

3-3-09

FISCAL ESTIMATE WORKSHEET
 Detailed Estimate of Annual Fiscal Effect
 DOA-2047(R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
 Comm 5.12

Amendment No.

Subject

Administrative Forfeitures for POWTS Governmental Unit Employees

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs By Category	\$ 0	\$ -0
B. State Costs By Source of Funds		
GPR	\$	\$
FED		-
PRO/PRS	0	-0
SEG/SEG-S		-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS	0	-0
SEG/SEG-S		-
TOTAL State Revenues	\$ 0	\$ -0

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS \$ 0

\$ 0

NET CHANGE IN REVENUES \$ 0

\$ 0

Agency/Prepared by: (Name & Phone No.)
 Commerce/James Quast, 266-9292

Authorized Signature/Telephone No.

James Quast 6-8976

Date

3/3/09

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 09-021

RULE NO.: Comm 5.12

RELATING TO: Administrative Forfeitures for POWTS Governmental Unit Employees

Final regulatory flexibility analysis not required. (Statement of determination required.)

The proposed rules implement the mandates imposed by 2007 Wisconsin Act 197. The Act affects governmental unit employees who administer and enforce regulations pertaining to design, installation and maintenance of POWTS by limiting the activities that such employees may undertake outside of their governmental employment. The department does not believe that the proposed rules will increase the effect on small businesses over that imposed by the Act.

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.
2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

(Continued on reverse side)

**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 09-021		Hearing Location: Conference Room 3B, 201 W. Washington Ave.	
Rule Number: Comm 5.12		Hearing Date: Wednesday, April 15, 2009	
Relating to: Administrative Forfeitures for POWTS Governmental Unit Employees			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Speaker #1	Ann Gryphan, Wisconsin Onsite Water Recycling Association	Supports the rule changes, but would like to add "and adjacent counties" to Comm. 5.33 (6).	The rules have been modified to incorporate this suggestion.
Exhibit #2	Ted Weter Iowa County Sanitarian	"I personally feel this bill is biggest waste of money, time and resources in state history, but it must make someone feel special."	The proposed rules implement the enacted legislation, 2007 Wisconsin Act 197.



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 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 **09-021**

AN ORDER to amend Comm 5.12 (a) and 5.33 (6); and to create Comm 5.12 (2m), relating to the assessment of forfeitures for POWTS governmental unit employees.

Submitted by **DEPARTMENT OF COMMERCE**

03-11-2009 RECEIVED BY LEGISLATIVE COUNCIL.

04-07-2009 REPORT SENT TO AGENCY.

RS:REL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-021

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. In the treatment clause of SECTION 1, "(1)" should be added after "Comm 5.12."
- b. In s. Comm 5.12 (2m) (b) (intro.), the notation ", Stats.," should be inserted after the statutory cross-reference.
- c. The Note following s. Comm 5.12 (2m) (a) states that s. 145.20 (6) (a), Stats., is reprinted in the appendix; however, the appendix to Comm 5 does not include this provision. If the department wants to include a copy of s. 145.20 (6) (a), Stats., in the appendix, the appendix should be amended to accomplish this.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 09-021

RULE NO.: Comm 5.12

RELATING TO: Administrative Forfeitures for POWTS Governmental Unit Employees

Agency contact person for substantive questions.

Name: Jim Quast

Title: Program Manager

Telephone No. 608/266-9292

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

(Continued on reverse side)

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached



State of Wisconsin \ Department of Commerce

RULES IN FINAL DRAFT FORM

Rule No.: Comm 5.12

Relating to: Administrative Forfeitures for POWTS Governmental Unit
Employees

Clearinghouse Rule No.: 09-021

The Wisconsin Department of Commerce proposes an order to amend Comm 5.12 (1), Comm 5.33 (6), and Comm 5 Appendix A5.12; and to create Comm 5.12 (2m), relating to the assessment of forfeitures for POWTS governmental unit employees.

ANALYSIS OF PROPOSED RULES

1. Statutes Interpreted.

Sections 145.12 (5) (a) and 145.20 (6), Stats., as affected by 2007 Wisconsin Act 197

2. Statutory Authority.

Sections 145.12 (5) (a) and 145.20 (6), Stats., as affected by 2007 Wisconsin Act 197

3. Related Statute or Rule.

None

4. Explanation of Agency Authority.

Section 145.02, Stats., grants the Department of Commerce general authority for protecting the health, safety and welfare of the public by establishing reasonable and effective standards for Private Onsite Wastewater Treatment Systems (POWTS) including the licensing of individuals to inspect POWTS. Section 145.20, Stats., delineates the responsibilities and duties of governmental units administering and enforcing the laws and rules pertaining to POWTS. Section 145.12 (5) (a), Stats., as affected by 2007 Wisconsin Act 197, authorizes the Department to directly assess forfeitures to governmental unit employees who violate the limitations under s. 145.20, Stats., for POWTS employees that perform work outside of the scope of their governmental unit responsibilities.

5. Summary of Proposed Rules.

The proposed rules under chapter Comm 5 delineate the procedures for implementing the forfeiture assessments for POWTS governmental unit employees violating the outside employment limitations established under 2007 Wisconsin Act 197. The proposed rules establish a schedule for forfeitures based upon various situations and/or activities. Current rules delineate a process for appealing a forfeiture assessment.

6. Summary of, and Comparison with Existing or Proposed Federal Regulations.

There are no known federal regulations or proposed federal regulations that could be compared to the direct forfeiture provision.

7. Comparison with Rules in Adjacent States.

A search of the rules in adjacent states found that Minnesota, Iowa, Illinois, and Michigan do not have any regulations regarding conflict of interest related to their onsite sewage program governmental unit employees. The comparisons were completed via a web search.

8. Summary of Factual Data and Analytical Methodologies.

The proposed rules were developed by reviewing the provisions under ss. 145.12 (5) (a) and 145.20 (6), Stats., as created by 2007 Wisconsin Act 197, as well as existing administrative rules for administrative forfeitures administered by the Department of Commerce.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report.

The 2007 Wisconsin Act 197 affects governmental unit employees who administer and enforce regulations pertaining to design, installation and maintenance of POWTS by limiting the activities that such employees may undertake outside of their governmental employment. The proposed rules implement administrative forfeitures authorized under 2007 Wisconsin Act 197 for violations of these limitations.

The department does not believe that the proposed rules will increase the effect on small businesses over that imposed by the Act.

An economic impact report has not been required pursuant to s. 227.137, Stats.

10. Agency Contact.

James Quast, Program Manager, jim.quast@wisconsin.gov, (608) 266-9292

11. Public Hearing Comments.

The hearing record on this proposed rulemaking will remain open until 4:30 pm, Thursday, April 23, 2009. Written comments on the proposed may be submitted to James Quast, at the Department of Commerce, P.O. Box 8689, Madison, WI 53701-2689 or Email at jim.quast@wisconsin.gov.

SECTION 1. Comm 5.12 (1) is amended to read:

Comm 5.12 (1) GENERAL. In addition to the forfeitures provided for in ~~sub.~~ subs. (2) and (2m), penalties for violations of the provisions of this chapter may be assessed in accordance with the respective penalty provisions in the statutes, depending upon the license, certification or registration category or activity involved.

SECTION 2. Comm 5.12 (2m) is created to read:

Comm 5.12 (2m) POWTS FORFEITURES. (a) Pursuant to s. 145.12 (5) (a), Stats., the department may assess a forfeiture in the amount listed in par. (b) to a violator of the restriction requirements under s. 145.20 (6) (a), Stats.

Note: See the appendix for a reprint of 145.20 (6) (a), Stats.

(b) The amount of forfeiture assessed against an individual who violates the restriction requirements under s. 145.20 (6) (a), Stats., shall be one of the following:

1. First offense - \$1,000.
2. Second offense - \$1,500.
3. Third and subsequent offense - \$2,000.

SECTION 3. Comm 5.33 (6) is amended to read:

Comm 5.33 (6) RESPONSIBILITIES. A certified soil tester who, as ~~either~~ an employee of a local governmental unit ~~or under contract to a local governmental unit~~, is responsible for administering regulations governing ~~privately owned private onsite~~ wastewater treatment systems may not provide soil evaluations relative to the design, installation or maintenance of private sewage onsite wastewater treatment systems within the boundaries of the local governmental unit and adjacent local governmental units.

SECTION 4. Comm 5 Appendix, Section A5.12 is amended to read:

A5.12 Penalties. Section 101.02 (12), Stats., states that *every day during which any person fails to observe and comply with any order of the department or to perform any duty enjoined by ss. 101.01 to 101.25, shall constitute a separate and distinct violation of the order or the statute.*

Section 101.02 (13) (a), Stats., states that *if any person violates ss. 101.01 to 101.25, or fails or refuses to perform any duty lawfully enjoined, within the time prescribed by the department, for which no penalty has been specifically provided, or fails, neglects or refuses to obey any lawful order given or made by the department, for each such violation, such person shall forfeit and pay into the state treasury a sum not less than \$10 nor more than \$100 for each such offense.*

Section 145.12, Stats., states:

(1) Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as a master plumber, as an automatic fire

sprinkler contractor or as a business establishment holding an automatic fire sprinkler—maintenance only registration certificate without first having secured the required license or certificate, or who otherwise violates any provisions of this chapter, shall be fined not less than \$100 nor more than \$500 or imprisoned for 30 days or both. Each day such violation continues shall be a separate offense.

(2) Any person violating this chapter or failing to obey a lawful order of the department, or a judgment or decree of a court in connection with this chapter, may be imprisoned for not more than 3 months or fined not more than \$500.

(3) Any master plumber who shall employ an apprentice on plumbing representing the apprentice to be a journeyman, or who shall charge for an apprentice a journeyman's wage, shall be punished by a fine of not more than \$25, or by imprisonment in the county jail for not more than 30 days. Each day of violation shall be a separate offense.

(4) Any person who violates any order under s. 145.02 (3) (f) or 145.20 (2) (f) or any rule or standard adopted under s. 145.13 shall forfeit not less than \$10 nor more than \$1,000 for each violation. Each violation of an order under s. 145.02 (3) (f) or 145.20 (2) (f) or a rule or standard under s. 145.13 constitutes a separate offense and each day of continued violation is a separate offense.

Section 145.20 (6), Stats., states:

(6) RESTRICTIONS ON REVIEWERS AND INSPECTORS. (a) Except as provided in par. (b), a governmental unit employee who has responsibilities related to any of the activities under sub. (2) (a) to (i) may not do any of the following in the county in which the employee is employed or in an adjacent county:

1. Conduct any activities for which certification is required under s. 145.045 (1), except that the employee may review and verify soil tester reports as provided in sub. (2) (a).

2. Install, design, maintain, repair, or sell a private sewage system, component of a private sewage system, drain field designed to serve a private sewage system, or pipe from a private sewage system to the immediate inside of the existing or proposed foundation wall of the building served by the private sewage system.

(b) Paragraph (a) does not apply to activities performed by an employee on property owned by the employee that is outside of the governmental unit for which the employee works.

END

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.
