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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 08-056

#### 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 January 2005.]**

#### 1. Statutory Authority

Section 145.26 (6), Stats, which provides for public swimming pool and water recreation attraction plan reviews, states that persons who violate the statute or the rules promulgated under it may be fined not less than \$100 nor more than \$5,000. Section Comm 90.07 states that any person who violates ch. Comm 90 shall be fined not less than \$25 nor more than \$250. The department should either revise s. Comm 90.07 to be consistent with the statute or explain why it believes there is statutory authority for s. Comm 90.07.

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

a. Section Comm 90.02 (1) states that ch. Comm 90 applies to all “new” public swimming pools, water attractions and associated slides and to the reconstruction or alteration of any such “existing” facilities. This statement is ambiguous because, after the rule is promulgated, “new” and “existing” will be meaningless. It is suggested that the applicability of ch. Comm 90 to the construction, reconstruction or alteration of facilities be tied to the effective date of the rule. [See s. 1.01 (9) (b), Manual.]

b. The note following s. Comm 90.03 (7) is substantive and should either be deleted or worked into the text of the definition—“...but does not include backwash piping.”

c. In s. Comm 90.03 (31), “as defined under sub. (21)” should be deleted.

d. In s. Comm. 90.05 (2) (c), the introductory material should be numbered subd. 1. and the subsequent subdivisions should be renumbered. [See s. 1.03 (8), Manual.] A similar change

is needed in s. Comm 90.05 (2) (d) (intro.). Similarly, s. Comm 90.14 (3) (intro.) should end with a colon.

e. References in the rule to “the department of health and family services” should be changed to refer instead to “the department of health services.” For example, see the note to s. Comm 90.02 (1) and s. Comm 90.11 (5) (c).

f. The acronyms ANSI, NSF and ETL, as used in s. Comm 90.10 (7) should be defined. [See s. 1.01 (8), Manual.] In addition, the use of slashed alternatives, such as ANSI/NSF, is improper. [See s. 1.01 (9), Manual.] All of Clearinghouse Rule 08-056 should be reviewed to eliminate the use of slashed alternatives.

g. It is suggested that the phrase “but are not limited to” be deleted from s. Comm 90.10 (9) (b). [See s. 1.01 (7) (c), Manual.]

### **3. Conflict With or Duplication of Existing Rules**

There are a number of cross-references in ch. HFS 172 to specific provisions of ch. Comm 90. Since ch. Comm 90 is being repealed and recreated, there are significant numbering changes. The department should suggest to the department of health and family services that it review all of the references in ch. HFS 172 and correct them if necessary.

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

- a. It is suggested that s. Comm 90.01 list s. 101.02, Stats., as authority for ch. Comm 90.
- b. It is suggested that “chapter” be substituted for “code” in s. Comm 90.05 (2) (f).
- c. The word “subsection” should be substituted for “section” in s. Comm 90.06 (3) (c).
- d. It is suggested that “under sub. (5)” be inserted after “stair” in s. Comm 90.12 (7) (c).

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

a. In repealing and recreating ch. Comm 90, is the department also repealing the appendix to the chapter? This should be clarified. If the appendix is not being repealed, cross-references in the appendix should be reviewed to ensure that they are accurate.

b. The department should consider deleting s. Comm 90.02 (2) from Clearinghouse Rule 08-56. This subsection conflicts with s. Comm 90.02 (1) because ch. Comm 90 does apply to reconstruction or alteration of public swimming pools, water attractions and associated slides that exist prior to the effective date of the rule.

c. The phrase “or local board of health” should be deleted from s. Comm 90.02 (3). Local boards of health do not have the authority to enact ordinances.

d. The term “assertions” in s. Comm 90.04 (4) (c) appears to be a typographical error.

e. The word “a” should be substituted for the third occurrence of “the” in s. Comm 90.05 (1) (a) 1.

- f. The second comma should be deleted from s. Comm 90.05 (3) (a).
- g. “If” should be substituted for the word “When” in s. Comm 90.05 (3) (e).
- h. “Table” should be substituted for “Tables” in s. Comm 90.11 (9) (a).
- i. The word “may” should be substituted for “shall” in s. Comm 90.12 (2).
- j. The phrase “may not” should be substituted for the phrase “not to” in s. Comm 90.12 (4) (b) 8.
- k. The word “consists” should be substituted for “consisting” in s. Comm 90.13 (2) (e) 1.
- l. In s. Comm 90.14 (13) (a) 3., the hyphens should be deleted.
- m. The word “periods” is misspelled in s. Comm 90.16 (3) (a).
- n. Section Comm 90.20, 90.21 and 90.22 specify requirements for wading pools, whirlpools and cold soak pools, and interactive play attractions that are “in addition to or in exception from” other requirements of ch. Comm 90. Clearinghouse Rule 08-056 should be revised to specifically indicate those provisions of ch. Comm 90 that are superseded by these three sections.
- o. The hyphen should be deleted from s. Comm 90.31 (2) (g) 2.
- p. The amount of the fee or a reference to where the amount of the fee may be determined should be included in s. Comm 90.40 (2) (a) 2.