

Filed with LRB: September 25, 2014
Date of Publication: September 27, 2014
Effective Dates: September 27, 2014 through February 23, 2015
Hearing Date: October 27, 2014

EmR1423

STATE OF WISCONSIN
Department of Safety and Professional Services

IN THE MATTER OF RULEMAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES,
PROFESSIONAL SERVICES : ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS #037-14, was approved by the Governor on April 17, 2014, published in Register #701 on May 14, 2014, and approved by the Department on May 29, 2014. This emergency rule was approved by the Governor on September 12, 2014.

ORDER

An order of the Department of Safety and Professional Services to renumber SPS 384 Table 384.10 Rows 1 to 5, to renumber and amend SPS 384 Table 384.10 Row 6, and to create SPS 384 Table 384.10 Rows 1 and 9 and (Note), relating to water-treatment devices.

FINDING OF EMERGENCY

The Department of Safety and Professional Services finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is as follows.

Under current rules, water treatment devices – including water softeners – may need two separate approvals before being used in Wisconsin. The first approval is typically from a third party, such as NSF International, and is based on an industry standard. The second approval is under SPS chapter 384, which addresses situations where a plumbing product must receive approval from the Department. Due to prolonged extreme weather conditions this past winter, spring, and summer, more private well owners than usual have chosen to upgrade their water supply systems this year. The Department has reason to believe that its secondary review is delaying some of these well owners from accessing plumbing products which would improve the safety of their drinking water. These products have been approved under industry standards and are available to consumers in other states but have not yet received approval from the Department. Promulgating revisions through the emergency rule process is needed to avoid further delays in using these products.

ANALYSIS

Statutes interpreted:

Section 145.02 (2).

Statutory authority:

Sections 145.02 (2), 227.11 (2) (a), and 227.24 (1) (a).

Explanation of agency authority:

Under section 145.02 (2), the Department has general supervision of all plumbing in connection with all buildings in Wisconsin, and must prescribe and enforce reasonable standards therefor that must be uniform statewide so far as practicable, in order to safeguard the public health.

Section 227.11 (2) (a) authorizes the Department to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

Section 227.24 (1) (a) of the Statutes authorizes the Department to promulgate rules as emergency rules if preservation of the public peace, health, safety, or welfare necessitates putting the rules into effect prior to the time they would take effect if the agency complied with the otherwise-applicable procedures in chapter 227.

Related statute or rule:

Chapter SPS 382 contains the Department's statewide requirements for construction, installation, and maintenance of all plumbing in connection with all buildings in Wisconsin.

Plain language analysis:

These rule revisions discontinue the Department's review of water treatment devices that (1) are certified as complying with a material-safety standard by a certification body which is accredited by the American National Standards Institute, and (2) are then used in compliance with that listing.

Summary of, and comparison with, existing or proposed federal regulation:

Maximum levels for contaminants in drinking water are established in Title 40 of the *Code of Federal Regulations*, Part 141. Individual states develop and apply health or plumbing codes to achieve compliance with those maximums.

Comparison with rules in adjacent states:

An Internet search of state-level rules for water-treatment devices in the adjacent states yielded the following results:

Illinois: The Illinois Department of Public Health requires their approval of all devices in all plumbing systems, under section 890.210 of subchapter r in chapter I of title 77 of the Illinois Administrative Code. All plumbing devices must comply with an applicable referenced standard,

and be listed by an accepted third-party agency. The only referenced standard for water softener and treatment systems that was found is NSF/ANSI 44–2012, in section 890. Appendix A, Table A.

Iowa: The Iowa state plumbing code incorporates the 2012 edition of the *Uniform Plumbing Code*[®] (UPC), from the International Association of Plumbing and Mechanical Officials. The 2012 UPC requires compliance with and incorporates several industry standards for water treatment devices. The UPC similarly requires testing and listing of these devices – to demonstrate compliance with these standards – by a similarly accredited, third-party certification body.

Michigan: The Michigan state plumbing code incorporates the 2012 edition of the International Plumbing Code[®] (IPC), from the International Code Council[®]. The 2012 IPC requires compliance with and incorporates several industry standards for water treatment devices.

Minnesota: No references to adopted standards for water treatment devices were found in the Minnesota state plumbing code.

Summary of factual data and analytical methodologies:

These rule revisions were developed by reviewing current industry and regulatory best practices, in conjunction with stakeholder input – and in relation to the Department’s corresponding statutory authority.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

Because these rule revisions, in essence, simply discontinue a duplicative review by the Department, they are not expected to negatively affect small business.

Fiscal Estimate:

The Department estimates that these rule revisions will have positive rather than negative fiscal impacts.

Effect on small business:

These rule revisions do not have an economic impact on small businesses, as defined in section 227.114 (1) of the Statutes. The Department’s Regulatory Review Coordinator may be contacted by e-mail at Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Sam Rockweiler, Rules Coordinator, at the Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI, 53708-8366; or at telephone (608) 266-0797; or by e-mail at sam.rockweiler@wi.gov; or by telecommunications relay services at 711.

TEXT OF RULE

SECTION 1. SPS 384 Table 384.10 Rows 1 to 5 and 6 are renumbered SPS 384 Table 384.10 Rows 2 to 6 and 8, and SPS 384 Table 384.10 Row 8, as renumbered, is amended to read:

SPS 384 Table 384.10

(Partial Table – title and column heading are provided for reference only.)

SUBMITTALS TO DEPARTMENT

Product Categories
8. Water treatment devices or bottled water vending machines that make a contaminant reduction claim which is not listed certified by a nationally recognized listing agency as complying with NSF Standard 44 certification body accredited by the American National Standards Institute.

SECTION 2. SPS 384 Table 384.10 Rows 1 and 9 and (Note) are created to read:

SPS 384 Table 384.10

(Partial Table – title and column heading are provided for reference only.)

SUBMITTALS TO DEPARTMENT

Product Categories
1. Bottled-water vending machines that are not listed by a certification body accredited by the American National Standards Institute.
9. Water treatment devices that are not certified to a standard which covers material safety, by a certification body accredited by the American National Standards Institute.

Note: More information about the certification bodies accredited by the American National Standards Institute (ANSI), such as the National Sanitation Foundation, is available at the ANSI website at www.ansi.org; or at 1899 L Street, NW, 11th Floor Washington, DC, 20036; or at telephone 202.293.8020.

SECTION 3. EFFECTIVE DATE. This emergency rule shall take effect upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Dave Ross, Secretary of the
Department of Safety and
Professional Services

File reference: SPS 384/E order and rules2