The Wisconsin Department of Commerce proposes an order to repeal and recreate Comm 5.12; and to create Comm 82.30 (11) (h), Comm 82.36 (10) (d) 10., and Comm 82.40 (8) (k), relating to the assessment of forfeitures for violating plumbing licensing requirements, the installation of tracer wire for locating non-metallic underground pipe, and affecting small businesses.

* * * *

The proposed rules under chapter Comm 82 prescribe the requirements for installing tracer wire in order to locate non-metallic building sewers, private interceptor main sewers, water services and private water mains.

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. There are no known federal regulations or proposed federal regulations for the installation of the tracer wire installation provisions.

7. Comparison with Rules in Adjacent States.

In Minnesota in addition to statutory fines and/or imprisonment, the laws allow the Minnesota Department of Health to administratively impose a penalty of up to $10,000.00 for violation of its various licensing laws in that state. The state of Illinois in addition to other statutory penalties allows the Department of Public Health to assess administratively a civil penalty up to $5,000 for unlicensed plumbing activity. Iowa has state registration for plumbing contractors, but only local licensing. Michigan has a penalty of $1,000.00 per day with a maximum fine of $5,000.00 for violations of its plumbing licensing regulations which may be pursued by the attorney general, local prosecuting attorney or an attorney representing the enforcing agency.

The state of Minnesota has a law requiring cities to create ordinances that include requirements for the installation of tracer wire or an equally-effective means of locating sewer and water laterals. The Minnesota tracer wire law requires that all nonconductive laterals installed after January 1, 2006 be accompanied by tracer wire. Illinois and Iowa have no known state-wide requirements for tracer wire. Michigan has adopted the International Plumbing Code which does not require any tracer wire installation.

The comparisons were completed via a web-search.

8. Summary of Factual Data and Analytical Methodologies.

The Department utilizes advisory councils in analyzing and developing proposed revisions to the Wisconsin Uniform Plumbing Code. The councils involved in the review of the proposed rules were the Plumbing Licensing Council and the Wisconsin Plumbing Code Advisory Council. These councils involve a variety of organizations whose memberships include small businesses and municipal staff. The Department utilizes these councils to gather information on potential impacts in complying with the administrative requirements of this proposal. A responsibility of council members is to bring forth concerns their respective organizations may have with the requirements, including concerns regarding economic impacts. (Copies of the council meetings summaries are on file in the Safety and Building Division.)

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

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

The requirements relating to direct forfeiture under the credentialing code impact businesses of all sizes. The rules are intended to clarify and implement the s.145.12 (5), Stats.

The forfeiture could affect illegal plumbing businesses by the utilization of another enforcement tool to maintain code-compliant installations and therefore, public health and safety and the waters of the state.

The tracer wire rules will not significantly raise the cost of water and sewer installations.

10. Agency Contact.

Lynita Docken, Program Manager, lynita.docken@wisconsin.gov, (608) 785-9349

11. Public Hearing Comments.

The hearing record on this proposed rulemaking will remain open until August 27, 2007. Written comments on the proposed may be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

Council Members and Representation

The proposed rules were developed with the assistance of the following Advisory Councils:

Plumbers Licensing Council:

Dave Jones, Master Plumber
Scott Hamilton, Journeyman Plumber
Lynita Docken, Department of Commerce

Plumbing Advisory Code Council:

Arthur J. Biesek, League of Wisconsin Municipalities
Thomas, Boehnen, Chair, American Society of Plumbing Engineers
Patrick Casey, Wisconsin State AFL-CIO
Hallet Jenkins, City of Milwaukee
Dave Jones, Plumbing Contractor
Gary Kowalke, PHCC/MPA Wisconsin
Jeff Kuhn, Plumbing, Mechanical and Sheet Metal Contractors Alliance
Rudolf Petrowitsch, American Society of Sanitary Engineering
Gene Shumann, Plumbing Designer
David Viola, Plumbing Manufacturers Institute
Joseph Zoulek, PHCC/MPA Wisconsin

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SECTION 1. Comm 5.12 is repealed and recreated to read:

Comm 5.12 Penalties. (1) GENERAL. In addition to the forfeitures provided for in sub. (2), 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.

(2) PLUMBING FORFEITURES. (a) Pursuant to s. 145.12 (5), Stats., the department may assess a forfeiture in the amount listed in pars. (a) to (i) to a violator of the licensing requirements under s. 145.06, Stats.

Note: A violation of each paragraph is considered separately when assessing a first, second or third violation. For example: violating paragraphs (a), (b) and (c) creates a first violation for each paragraph, not a first, second and third violation.

(b) The amount of forfeiture assessed against an individual who does not hold the appropriate type of plumbing license under subch. IX and who installs plumbing when a master plumber is not in charge of the plumbing installation shall be one of the following:

1. First offense - $1,000.

2. Second offense - $1,500.

3. Third and subsequent offense - $2,000.

(c) The amount of forfeiture assessed against an individual who does not hold the appropriate type of plumbing license under subch. IX and who installs plumbing where a master plumber is in charge of the plumbing installation shall be one of the following:

1. First offense - $100.

2. Second offense - $500.

3. Third and subsequent offense - $1,000.

(d) The amount of forfeiture assessed against a master plumber who allows the use of his or her master plumber license for the purpose of obtaining a plumbing permit without that master plumber assuming responsibility for the plumbing installation shall be one of the following:

1. First offense - $1,000.

2. Second offense - $1,500.

3. Third and subsequent offense - $2,000.

(e) The amount of forfeiture assessed against a master plumber who allows another licensed plumber to install plumbing in the master plumber's name when that master plumber is not in charge of the plumbing installation shall be one of the following:

1. First violation offense - $500.

2. Second violation offense - $1,000.

3. Third and subsequent violation offense - $2,000.

(f) The amount of forfeiture assessed against a master plumber who allows an individual who does not hold the appropriate license under subch. IX to install plumbing when that master plumber is in charge of the plumbing installation shall be one of the following:

1. First violation offense - $1,500.

2. Second violation offense - $1,750.

3. Third and subsequent violation offense - $2,000.

(g) The amount of forfeiture assessed against an individual who does not hold an appropriate master plumber license under s. Comm 5.91 and who engages in the business or offers to engage in the business of superintending plumbing installations shall be one of the following:

1. First violation offense - $1,000.

2. Second violation offense - $1,500.

3. Third and subsequent violation offense - $2,000.

(h) The amount of forfeiture assessed against an individual who does not hold a registration as a cross connection control tester under s. Comm 5.99 and who tests cross connection control devices to meet the requirements in s. Comm 82.21 (3) shall be one of the following:

1. First violation offense - $500.

2. Second violation offense - $1,000.

3. Third and subsequent violation offense - $2,000.

Note: See section 145.06, Stats., for exemptions to the licensing requirements.

(i) When a violator creates an imminent health risk the forfeiture amounts under pars. (b) to (h) shall be doubled within the maximum statutory limit of $2,000.

(3) FORFEITURE PROCESS. (a) The department shall assess an administrative forfeiture in writing.

(b) A notice of administrative forfeiture shall include the following:

1. The rule or rules violated.

2. A statement or explanation of how the violation was determined.

3. The amount of forfeiture.

4. A statement or explanation of how the amount of forfeiture was determined.

5. Information about how to contest the notice of administrative forfeiture.

(4) FORFEITURE PAYMENTS. (a) Except as provided in sub. (5), all forfeitures shall be paid to the department within 30 days after issuance of the notice.

(b) An interest penalty shall be imposed in accordance with s. 145.12 (5) (d), Stats., for a forfeiture not paid in accordance with par. (a).

Note: Section 145.12 (5) (d), Stats., reads: In the case of any failure in the payment of a forfeiture, the department shall impose an interest penalty of 12% per year from the time when the forfeiture should have been paid.

(c) The department may refer unpaid forfeitures to the attorney general.

Note: Section 145.12 (5) (e), Stats., reads: The attorney general may bring an action in the name of the state to collect any forfeiture imposed, or interest accrued, under this subsection if the forfeitures or interest has not been paid after the exhaustion of all administrative and judicial reviews.

(5) FORFEITURE APPEAL. (a) A person assessed an administrative forfeiture may request a review of the assessment of forfeiture issued under sub. (2) and the grounds for the assessment in accordance with all of the following procedures:

1. A request for review of an assessment of forfeiture under this subsection shall be on the basis to completely overturn the assessment.

2. A request for review of an assessment of forfeiture shall be made in writing to the administrator of the Safety and Buildings Division.

Note: Requests for a review by the administrator may be forwarded to Administrator, Safety and Buildings Division, P.O. Box 2599, Madison, WI 53707−2599.

3. A request for review of an assessment of forfeiture shall include a statement of the specific reasons why the person believes the administrative forfeiture and the grounds for the assessment should be overturned.

(b) A request for review of an assessment of an administrative of forfeiture and the grounds for the assessment shall be denied if the request is received more than 30 days after issuance of the forfeiture notice.

(c) 1. The administrator shall make a decision on a request for review of an assessment of administrative forfeiture and the grounds for assessment within 15 days of receipt of the request.

2. If the administrator determines that insufficient reasons are provided in a request for review, the request may be denied.

3. A denial of a request for review shall be in writing and shall state the reasons for denial and information about the right to appeal the denial.

4. If the administrator determines that sufficient reasons are provided in a request for review, the request shall be granted.

5. If the administrator grants a request for review, the administrator shall notify the person making the request in writing of the date, time and location where the review will take place and who will conduct the review. The review shall be scheduled within 10 days after the request for review is granted, unless the person requesting the review asks for and is granted an extension.

6. If a review is granted, the person requesting the review shall be provided an opportunity to meet with the administrator or designee to present statements and documents regarding the contested notice of administrative forfeiture and the grounds for the assessment.

7. If a review is granted, the division shall provide technical expertise to represent the department's position.

(6) ADMINISTRATOR REVIEW. (a) The administrator shall issue a written decision within 30 days following a review under sub. (5) (c) 5.

(b) The written decision from the administrator shall include information about appeal rights and procedures if the decision is to deny overturning the assessment of administrative forfeiture and the grounds for assessment.

(7) SECRETARY REVIEW. (a) A person adversely affected by the decision of the administrator under sub. (6) may request a hearing by the secretary to review an assessment of administrative forfeiture and the grounds for assessment in accordance with all of the following procedures:

1. A request for a hearing shall be made in writing to the secretary.

2. A request for a hearing shall include a statement of the specific reasons why the person believes the forfeiture assessment and the grounds for assessment should be overturned.

3. A request for a hearing shall be denied if the request is received more than 30 days after issuance of the decision by the administrator under sub. (6).

(b) A hearing held by the secretary or designee to review the decision of the administrator on an administrative forfeiture shall be a contested case hearing. The hearing and the decision issued after the hearing shall be governed by the provisions under ch. 227, Stats.

SECTION 2. Comm 82.30 (11) (h) is created to read:

Comm 82.30 (11) (h) *Locating requirements*. A means to locate buried non-metallic sewers and private interceptor main sewers discharging to municipal mains shall be accomplished in accordance with one of the following options:

Note: See the appendix for further information.

1. A tracer wire shall be installed in accordance with all of the following:

a. Tracer wire shall be installed along the length of the non-metallic pipe.

b. Tracer wire shall be a minimum of 18 gauge, insulated, single-conductor copper wire or equivalent.

c. Tracer wire shall be located directly above and within 6 inches of the non-metallic pipe.

d. Tracer wire shall be accessible and locatable within the owner's property at 400-foot intervals or increments thereof.

e. Exterior access locations shall include a means of protecting the tracer wire.

f. In-ground sleeves shall be installed as provided in s. Comm 82.35 (5)(a) 2. c. and d.

g. Tracer wire insulation color for non-metallic sewer pipe shall be green.

h. Tracer wire conductivity shall be tested prior to use.

i. Conductive warning tape may not be utilized in lieu of tracer wire.

2. Global positioning system data shall be recorded with the municipality where the non-metallic pipe is installed.

3. Another equally-effective means acceptable to the department shall be employed to mark the location of the non-metallic pipe.

SECTION 3. Comm 82.36 (7) (d) 10. is created to read:

Comm 82.36 (7) (d) 10. a. A means to locate buried non-metallic storm building sewers and private interceptor main sewers that discharge to municipal mains shall be provided in accordance with the options under s. Comm 82.30 (11) (h), except as provided in subd. 10. b.

b. Tracer wire insulation color for non-metallic storm pipe shall be brown.

SECTION 4. Comm 82.40 (8) (k) is created to read:

Comm 82.40 (8) (k) *Locating requirements.* 1. A means to locate buried non-metallic water services and private water mains connected to municipal supply systems shall be provided in accordance with the options under s. Comm 82.30 (11) (h), except as provided in subds. 2. and 3.

2. Tracer wire insulation color for non-metallic, potable water pipe shall be blue.

3. Tracer wire insulation color for non-metallic, non-potable water pipe shall be purple.

END

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