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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 04-135

#### 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 October 2002.]**

#### 1. Statutory Authority

Section Comm 26.08 states that permits will be valid for two years. As stated in the note, s. 101.935 (2) (c), Stats., provides that permits are valid for a two-year period that begins on July 1 of the even-numbered year and ends on June 30 of the next even-numbered year. Permits issued after the beginning of a permit period are only valid until the end of the period.

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

a. 2003 Wisconsin Acts 118 and 145 place a number of additional requirements on agency rule-making. It is suggested that the rule be reviewed for compliance with the requirements of those Acts. See the Memo from the Clearinghouse to all agencies dated April 13, 2004.

b. In s. Comm 26.07, the first sentence should be changed to the active voice. This is a problem that occurs throughout the rule. In addition, “...which is affected...” should be “...that is affected....”

c. Section Comm 26.37 (4) and (5) would be better structured if all of sub. (5) were placed after the first sentence in sub. (4) and the last two sentences of sub. (4) were moved to become sub. (5).

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

a. In s. Comm 26.36 (1) (i), is s. Comm 26.32 (9) the appropriate cross-reference?

b. In s. Comm 26.45 (3), is s. Comm 26.40 the correct cross-reference? Would it be more accurate to reference s. PSC 185.65 (2)?

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

a. Section Comm 2.33 (3) provides that the department assess an inspection fee, not to exceed \$100, for each inspection of a new manufactured home park, park expansion, or complaint. First, the use of the word “inspection” does not correlate with the use of the word “complaint.” Second, the rule should set the inspection fee with more certainty; a statement that the fee will not exceed \$100 leaves much room for the unequal imposition of a fee.

b. Section Comm 26.09 (2) (a) is one very long sentence. It would be easier to comprehend if it were broken up to read “...operator in writing. The notice shall specify the changes....” This type of sentence occurs throughout the rule.

c. In s. Comm 26.09 (2) (b), the first sentence is extremely long and awkward. It should be redrafted. The third sentence is confusing. What does “other operations or methods of operation” refer to?

d. It would help the rule’s readability if “operator” were defined as “a manufactured home park operator” and “contractor” were defined as a “manufactured home park contractor.” The terms “manufactured home park” and “manufactured home park occupant” could similarly be defined as “park” and “occupant.”

e. In s. Comm 26.10 (2), “...means the village...” should be “...means a village....”

f. In s. Comm 26.10 (7), the last clause seems redundant. Why is the operator or contractor’s failure to meet its obligation to supply water and sewer service not simply a wrong, grievance, or injury?

g. In s. Comm 26.10 (14), “and/or” should be “or” and “..., or both” should be added to the end of the sentence.

h. In s. Comm 26.10 (16), it appears that the phrase “mobile home” should be inserted before the phrase “park occupant.” Also, the phrases “like infirmities incurred at any age” and “frailties associated with being very young” are quite unclear.

i. In s. Comm 26.10 (19), “...plots of land...” should be “...sites....”

j. In s. Comm 26.12 (1) (b), “The basic unit...” should be “Each basic unit....”

k. In s. Comm 26.12 (4) (a), the phrase “Except as provided in par. (b),” should be inserted at the beginning of the paragraph. Also, may the local agents of the department make the determinations specified in this subsection? Finally, in pars. (a), (c), and (d), the word “which” should be replaced by the word “that.”

l. In s. Comm 26.27, the first sentence is confusing. In addition, in the first sentence “which” should be changed to “that.”

m. In s. Comm 26.28, what constitutes “written notice of the rules”? A copy of the rules? A statement that rules exist?

n. In s. Comm 26.30 (2), “...facilities which serve...” should be changed to “...facilities that serve....”

o. In s. Comm 26.30 (3) (a), “...department which demonstrates...” should be changed to “...department that demonstrates....”

p. In s. Comm 26.31, “...may be based...” should be changed to “...shall be based....”

q. In s. Comm 26.32 (4), what happens if the lease is silent as to the allocation of partial payments?

r. In s. Comm 26.32 (5), “...penalty which would not...” should be “...penalty that would not...” Also, the phrase “manufactured home park occupant” should be replaced by the phrase “a manufactured home park occupant’s.”

s. In s. Comm. 26.32 (6), it is unclear whether the subsection contemplates one late charge or many; are there separate late charges for current water and sewer service, and for arrears? If it is many, the last sentence should make clear whether the limit on late charges applies to each charge or to the total of all late charges. Finally, this subsection refers to sub. (4), which provides that if payments for water and sewer service are included with rent payments, the terms for the allocation of partial payments set forth in the lease agreement shall apply. However, s. Comm 26.29 provides that the provisions of Part 3 are not applicable to manufactured home park operators or manufactured home park contractors who include the costs associated with water and sewer service in their rental fees. Section Comm 26.29 should make an exception for the provisions of s. Comm 26.32 (4) and (6).

t. In s. Comm. 26.32 (7) (a), is “the new charge” the “late payment charge”? If so, it should say “late payment charge.” Further, “date of initiation” is confusing. Initiation of what?

u. In s. Comm 26.32 (8) (a), reference is made to “new” manufactured home park occupants. The rule will be clearer if a reference is made to manufactured home park occupants beginning their occupancy on or after a specific date.

v. In s. Comm 26.32 (9), the term “responsible party” should be defined. The same term also appears in s. Comm 26.35 (2) (a). Further, the use of the passive voice in the third sentence makes the sentence confusing. If the sentence is meant to provide authority for an operator or contractor to disconnect service, it should read: “An operator or contractor may disconnect service if the occupant or other responsible party fails....”

w. In s. Comm 26.34 (1) (e), as the paragraph currently reads, the operation of nonstandard equipment need not interfere with the service of others in order to qualify for disconnection. Is that the intent? In addition, “...manner which...” should be “...manner that....”

x. In s. Comm 26.34 (4), is it the intent of the subsection to allow an operator or contractor to disconnect service that is being obtained by a potentially unsafe method only when that method is interfering with the metering?

y. In s. Comm 26.34 (5) (d), “...area which includes...” should be “...area that includes....”

z. In s. Comm 26.34 (7), since the operator or contractor is being prohibited from doing something, it seems that the “due notice” is provided to the operator or contractor. The subsection should be redrafted to make that clearer.

aa. In s. Comm 26.35, it seems unusual to have the postponement exist for up to 21 days, but to also require that the recommendation specify a time period during which the disconnection would “aggravate the circumstances.” Is the time period specified in the recommendation relevant? Further, “official which” should be changed to “official that.”

bb. In s. Comm 26.35 (2) (c), the second sentence is another good example of how passive voice can create ambiguity. Who is going to take the actions to avoid disconnection?

cc. In s. Comm 26.35 (2) (d), how is the paragraph related to s. Comm. 26.38? If it is just a reiteration of that section, then a cross-reference should be added so that the paragraph is not interpreted to create a separate appeal right.

dd. In s. Comm 26.35 (3), the sentence should be broken up into at least two sentences. For example “...business matters. If the operator or contractor is not available for all business matters, it shall be considered to be available if it provides personnel that...”

ee. In s. Comm 26.36 (1) (b) 2., the word “a” should be inserted before the word “deferred.”

ff. In s. Comm 26.36 (1) (e), “...any disagreement...” should be “...any charge....”

gg. In the note following s. Comm 26.36 (2), the full contact information for the department should be included.

hh. In s. Comm 26.38 (2) (b), should the operator or contractor have already conducted an investigation?

ii. In s. Comm 26.38 (3) (b), “...from the time that a request...” should be “...from the date that a request...” Further, it seems that there should be some requirement that the department inform the parties of the date of consideration. It also appears that the requirement to provide notice of consideration “15 business days prior to consideration” is a rather exact responsibility for the department to impose upon itself. Perhaps notice should be provided no less than 15 business days prior to consideration.

jj. In s. Comm 26.38 (4), “...of mailing the department determination.” should be “...after the date the department mailed the determination.”

kk. In s. Comm 26.38 (5) (a), what happens if the operator or contractor fails to meet a condition? Further, the sentence is awkward. Is it the intent of the sentence to bar subsequent hearings, or simply to make them permissive?

ll. In s. Comm 26.38 (5) (c), "...following the conclusion of the hearing." seems to imply that the decision must be immediate. Is that the intent?

mm. In s. Comm 26.38 (6), "...which are not..." should be "...that are not..."

nn. In s. Comm 26.39, the complaint procedure should be made clearer. Subsection (1) authorizes the occupant to complain to the department. Subsection (2) states that complaints shall be resolved according to s. Comm 26.38, which requires the occupant to first attempt to resolve the dispute with the operator or contractor. Does sub. (1) eliminate the requirement to work out the dispute before coming to the department?

oo. In s. Comm 26.41, "...testing all of its..." should be "...testing of all of its..."

pp. In s. Comm 26.44 (2), should "...request or dispute." be "...request or complaint."?

qq. In s. Comm 26.45 (3), what happens if the meter is under registering? Does the reference to s. Comm 26.40 answer this question?

rr. In s. Comm 26.45 (4), "...shall be made to..." should be "...shall be provided to..."

ss. In s. Comm 26.48 (1), "...with safety to its employees, manufactured..." should be changed to "...with the safety of its employees, the manufactured..."

tt. The implication of s. Comm 26.49 (2) is that the cost of maintenance will be at the expense of the manufactured home park occupant if the manufactured home park occupant physically damages piping or discharges improper materials. This responsibility should be affirmatively stated.