



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-123

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.]

1. Statutory Authority

Section 66.0119, Stats., authorizes a state officer, agent, or employee, having statutory authority to inspect real or personal property for environmental purposes, to apply for, obtain, and execute an inspection warrant. A warrant may be issued for inspection of personal or real properties that are not public buildings upon showing consent to entry for inspection purposes has been refused. Section NR 40.07 (8) (e) 2. and 4. provides that the department or its designee may, if it does not receive an owner’s consent to enter property, seek an inspection warrant and install and maintain physical barriers to limit access to a cave or mine by either individuals or bats. If the department intends to use a special inspection warrant under s. 66.0119, Stats., it should more fully explain its authority to go beyond the inspection purposes of the warrant and to actually install and maintain physical barriers. If the department intends to ask for an inspection warrant under another section of the statutes, it should describe that statute and explain the purposes for which the inspection warrant may be used.

2. Form, Style and Placement in Administrative Code

a. Section NR 40.02 (28m) defines the term “near” for purposes of s. NR 40.07 (8). Since this term only appears in s. NR 40.07 (8), the definition should be created in par. (a) of that section. Paragraph (a) should read: “(a) *Definition.* In this subsection “near a cave or mine” means within 100 feet of a cave or mine.” The remaining paragraphs should be renumbered accordingly and the titles to the paragraphs should be shown in italics.

b. Section NR 40.07 (8) (b) 1. and 2. should begin with the phrase “Except as provided in subd. 4. and par. (d),”. Also, in par. (b) 1., the phrase “the state” should be replaced by the phrase “this state.” Finally, in par. (b) 3., the phrase “but not limited to” is unnecessary and should be deleted.

c. In s. NR 40.07 (8) (c), a comma should be inserted after the reference “1.”

d. In s. NR 40.07 (8) (e) 3., the phrase “negotiated under subd. 2.” should be inserted after the phrase “consent order.”

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

a. Sections NR 40.03 (3m) and 40.07 (8) (d) contain the phrase “*Geomyces destructans* (white nose syndrome).” Because the fungus is thought to cause or relate to white nose syndrome, but is not synonymous with it, the phrase “(white nose syndrome)” should be replaced by the phrase “, the fungus causing or relating to white nose syndrome.”

b. Section NR 40.07 (8) (e) provides in part that a person who owns, controls, or manages property where a cave or a mine may be present, is responsible for limiting access to the cave or mine by either individuals or bats. The phrase “is responsible for limiting” should be replaced by the phrase “shall limit.” Also, if the intended meaning of this provision is that an owner or manager will have this duty only if it asks the manager or owner to install and properly maintain physical barriers to limit access, this provision should explicitly so state. Finally, the note to this provision appears to be substantive and should be incorporated as a standard in the text of the rule.