

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WA-09-25

Relating to: Revisions to chs. NR 660 to 679 relating to technical corrections, clarifications, and minor modifications to hazardous waste regulations, and repeal of superseded NR 187 household hazardous waste grant program regulations.

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rule will be proposed as a permanent rule.

2. Detailed description of the objective of the proposed rule:

The Wisconsin Department of Natural Resources (department) is authorized by the U.S. Environmental Protection Agency (EPA) to manage a state program recognized as equivalent to the federal Resource Conservation and Recovery Act (RCRA). In Wisconsin, this is primarily managed within the Hazardous Waste Prevention and Management section. To maintain program authorization, Wisconsin must have analogous regulations to the federal hazardous waste regulations found in 40 CFR 260 to 279. Wisconsin has promulgated these equivalent regulations in chs. NR 660 to 679, Wis. Adm. Code.

The purpose of the proposed rulemaking is to amend chs. NR 660 to 679, Wis. Adm. Code, to make necessary corrections and modifications to the state regulations and to repeal ch. NR 187, Household Hazardous Waste Grant program, from Wis. Adm. Code.

- The EPA promulgated rules that correct or clarify specific provisions in the existing hazardous waste regulations that were promulgated in the federal Hazardous Waste Generator Improvements rule, the Hazardous Waste Pharmaceuticals rule, and the Definition of Solid Waste rule. These corrections became effective at the federal level on December 7, 2023, and five withdrawn amendments to the corrections were finalized on February 10, 2025. The department's proposed rule will make corrections that fall within the same sections of the hazardous waste regulations of chs. NR 660 to 679, Wis. Adm. Code, and additional corrections or clarifications that are independent of these three federal rules. Examples of the types of corrections being made in this rule include: correcting typographical errors, correcting incorrect or outdated citations, making minor clarifications or modifications, expanding definitions, and updating addresses.
- The "Clean Sweep program" is a program for the collection and disposal of household hazardous waste. Household hazardous waste could include any product found in your home, yard or garage generated by normal household activities such as used oil, paints, and batteries. The purpose of the grant program is to provide financial assistance to municipalities to create and operate local "Clean Sweep" programs for the collection and disposal of household hazardous waste. These programs are intended to divert such wastes away from municipal landfills, sewers, and septic systems and to provide for the management of household hazardous waste in a licensed hazardous waste treatment, storage, or disposal facility. Chapter NR 187, Wis. Adm. Code, is obsolete

because the household hazardous waste grant program is currently being managed by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) ch. ATCP 34, Wis. Adm. Code, Clean Sweep program. Chapter NR 187, Wis. Adm. Code, was created as an emergency rule effective November 22, 1985. Chapter ATCP 164, Wis. Adm. Code, was created by emergency rule effective August 14, 1990, and renumbered ch. ATCP 34, Wis. Adm. Code, in April 1993. In 2003, the state legislature merged the department's existing Household Hazardous Waste program with DATCP's agriculture hazardous waste program under the jurisdiction of DATCP. Chapter ATCP 34, Wis. Adm. Code, was repealed on December 31, 2004, and a new ch. ATCP 34, Wis. Adm. Code, was created effective January 1, 2005.

The department will evaluate adoption of equivalent content and format of the promulgated federal regulations. Additional rule changes, such as more specific definitions, may also be pursued which are reasonably related to those discussed within this scope statement.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Chapters 660 to 679, Wis. Adm. Code, establish regulations pertaining to the management of hazardous waste. Current state hazardous waste regulations contain spelling and grammatical errors, citation errors, unclear definitions, and missing federal code language. The department is proposing this rule to update and correct state regulations including any potential technical corrections finalized by EPA during the proposed rulemaking process. This rule will also clarify requirements to align with federal regulations and expand definitions in Wisconsin code. The alternative to the proposed updates and corrections would be to not make any corrections or clarifications to the rule. This would risk creating inconsistencies with the federal hazardous waste regulations and causing confusion in the regulated community on hazardous waste requirements.

The Household Hazardous Waste grant program first created under ch. NR 187, Wis. Adm. Code, is currently regulated under ch. ATCP 34, Wis. Adm. Code, and managed under DATCP's Clean Sweep program. DATCP provides grants to communities and events that provide collection of waste streams including household hazardous waste that are regulated under ch. NR 187, Wis. Adm. Code. As required under 227.29 (1), Wis. Stats., the department shall report to the Joint Committee for Review of Administrative Rules (JCRAR) any rules that are duplicative or superseded by another rule. Repealing ch. NR 187, Wis. Adm. Code, will alleviate confusion over which agency manages the grant program for the collection of household hazardous waste and address the duplicative and superseded rule.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 287.03(1)(a), Wis. Stats., directs the department to promulgate rules to implement the Solid Waste Reduction, Recovery and Recycling program pursuant to ch. 287, Wis. Stats.

Sections 289.05 and 289.06, Wis. Stats., direct the department to promulgate rules establishing solid waste management standards. Pursuant to ss. 291.05 and 291.07, Wis. Stats., the department is required to promulgate rules for the implementation of RCRA and the methods of treatment or disposal of hazardous wastes.

Additional statutes which may relate to, or be affected by, the proposed rule revisions include ss. 227.11(2)(a) and 227.14(1m), Wis. Stats. Section 227.11 (2) (a), Wis. Stats., provides that a state agency "may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute," subject to certain restrictions. As authorized by s. 227.14 (1m), Wis. Stats., the format of the proposed rules is similar to the federal

regulations published in the code of federal regulations by the U.S. Environmental Protection Agency (EPA) under the Federal Resource Conservation and Recovery Act (RCRA).

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates that approximately 800 hours of staff time will be required to complete the proposed rule.

6. List with description of all entities that may be affected by the proposed rule:

The proposed rules will:

- likely have a minor impact on regulated classes of hazardous waste generators, transporters, universal waste handlers, used oil managers, and treatment, storage, and disposal facilities that are affected by technical corrections, clarifications, and modifications;
- likely not have any effect for the regulated community by repealing ch. NR 187, Wis. Adm. Code.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The proposed rule's technical corrections, clarifications and minor modifications, and expanded definitions would ensure equivalency and consistency with federal regulations. As part of the biennial review to the JCRR, the department identified ch. NR 187, Wis. Adm. Code, as redundant and is required to address this rule pursuant to 227.29 (1), Wis. Stats. Repealing ch. NR 187, Wis. Adm. Code, will help alleviate confusion with regulations in effect in ch. ATP 34, Wis. Adm. Code. There is no federal equivalent to this grant program.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

The total economic impact of this proposed rule is expected to be minimal (less than \$50,000). Most of the corrections, clarifications or minor modifications, and expanded definitions are minor in nature and should not result in major changes to current practices. The adoption of the federal and state technical corrections, expanded definitions, and minor modifications or clarifications will likely have a minor impact on regulated classes of generators; transporters; transfer, storage and disposal facilities; and universal waste and used oil managers.

There is no anticipated economic impact from the repeal of the ch. NR 187, Wis. Adm. Code, grant program from the Wisconsin hazardous waste code. These regulations are already in effect under ch. ATP 34, Wis. Adm. Code, and there will be no change in implementation of the Clean Sweep program. Overall, the rule is not anticipated to have any regulatory cost for small businesses.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding a virtual public hearing on or around November 2027 to provide an opportunity for businesses, industries, municipalities, environmental groups, and the public throughout the state to participate.

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Signed by:

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For Karen Hyun, Ph.D., Secretary
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Date Submitted