

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WA-14-24

Relating to: Revisions to chs. NR 157 and 500 to 526, related to non-landfill solid waste management.

Rule Type: Permanent

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

The rules will be proposed as a permanent rule.

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

Most of the non-landfill solid waste rules were last updated in 2006. Goals of these updates are to account for new waste management technologies and practices, increased frequency of certain waste-generating events such as avian influenza, new materials and contaminants in the waste stream, increased proposals for reuse and recycling for a wider range of materials, and modifying language that in practice has proven to be confusing or ambiguous to current users.

Updates may include:

- Detailing requirements for the most common low hazard exemption requests received and expected to be received by the department, such as lead painted concrete as fill, street sweepings as fill, gypsum wallboard (drywall) as an agricultural additive, treated wood as animal bedding, waste brine as road deicer, glass as drainage media, and tires as tire-derived asphalt.
- Simplifying approval and licensing categories by combining storage and transfer facilities into a single regulatory type, removing the processing subtype for waste being used in structural materials and consumer products, and removing some facility size distinctions.
- Updating exemptions and requirements to reflect a wider range of materials managed as separated waste streams such as shingles, construction and demolition waste, tires, yard waste/storm debris, medications and confiscated drug waste, used oil, rechargeable batteries, and food waste.
- Updating open burning exemptions and requirements to reflect current public feedback and environmental considerations.
- Revising the approval framework to allow for mobile processing units and general permits.
- Considering requirements for infectious waste processing facilities to grind infectious waste sharps.
- Revising reporting and other requirements for infectious waste generators.
- Codifying current processes for validating infectious waste treatment, transferring operating licenses, and landspreading clean wood ash.
- Updating the polychlorinated biphenyl (PCB) waste management code to better match the structure used for other waste materials.
- Updating on-farm composting and processing requirements for mass carcass events such as those caused by avian influenza.

- Updating processing requirements to cover specific needs for processing technologies that are becoming more common such as anaerobic digestion and vermicomposting.
- Considering how to maintain human health and environmental protections from contaminants such as polyfluoroalkyl substances (PFAS), 6PPD-quinone, microplastics, and polycyclic aromatic hydrocarbons (PAHs).
- Adding a less expensive, expedited plan review category for simple updates.
- Increasing plan review and licensing fees to better reflect the cost of the reviews.
- Considering the program policies on relicensing habitually or egregiously noncompliant facilities.
- Creating a definition for when a recycled or repurposed material is no longer a solid waste and therefore, no longer subject to waste rules and owner financial responsibility.
- Adding harvested aquatic plants to the exemptions that don't require written department approval to landspread.
- Clarifying exemptions for clean soil and fill materials.
- Standardizing annual reporting requirements for approved facilities.
- Clarifying the regulatory authority for some management facilities between hazardous waste code, wastewater code, and improving setback consistency with drinking water code.
- Clarifying the department authority to consider diverse situations and proposals by allowing case-specific written exemptions and authority to condition approvals.

Additional rule changes may be pursued which are reasonably related to those discussed here.

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:

The proposed rule is an update of non-landfill solid waste code. This includes code that covers waste fill and landspreading locations; waste transporters; waste storage, transfer, and processing facilities; infectious and PCB waste generators; and fees assessed for non-landfill solid waste facilities and infectious waste generators. Many of the rule revisions being considered reflect existing policies and practices but with additional clarification or criteria. The revisions would streamline processes by removing ambiguities that make it difficult for applicants to understand the requirements. Some of the proposed rule revisions being considered may reflect new allowances or requirements requested by stakeholders, such as a reduction in the requirements by offering general permits and reducing treatment requirements for infectious waste sharps. The proposed rule would improve the management of solid waste facilities in Wisconsin, create additional efficiencies, and reflect experience and industry changes over the last 18 years. It would also include updates to fees which have not been updated since 2006.

The department evaluated the option of not pursuing rule revisions at this time. While this option allows for continued regulation of solid waste facilities that has proven effective in protecting the environment and public health, it limits the department's ability to adjust to technological advances, a changing waste stream, and increased interest in recycling proposals, and doesn't provide the opportunity for creating more efficient regulatory processes. Without this rule, the department would continue to evaluate requests for low hazard exemptions on a more time-consuming, case-specific basis and would struggle to fit various waste-type-specific recycling proposals into a code primarily written for municipal solid waste. Additionally, it would struggle under a fee structure that has not kept up with changes in costs since 2006.

The department also evaluated the option of pursuing a more comprehensive rule package to include updates to construction and demolition landfills. However, it would require more staffing, from a different specialty area, and a completely different set of stakeholders, making it difficult to complete within the required rulemaking timeframe. The department will assess subsequent rulemaking efforts to cover additional solid waste management needs outside of the scope of this rulemaking.

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

Section 227.11(2)(a)(intro.), 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.

Section 287.03, Stats., directs the department to promulgate rules necessary to implement ch. 287, Stats., related to solid waste reduction, recovery, and recycling.

Section 289.05(1), Stats., requires the department to promulgate rules establishing minimum standards for construction and operation of solid waste facilities.

Sections 289.06(1), Stats., provides rule making authority to the department to promulgate rules implementing ch. 289, Stats.

Section 289.61, Stats., requires the department to adopt by rule a graduated schedule of reasonable license and review fees to be charged for solid waste license and review activities. The statute requires that the review fees are established at a level anticipated to recover the solid waste program staff review costs of conducting solid waste review activities.

The proposed rule includes revisions to chs. NR 157 and 500 to 526, Wis. Adm. Code, which were promulgated under these statutory authorities. Any revisions will also be consistent with s. 289.51, Stats.

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 1,500-2,000 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 rule will primarily affect owners and operators of facilities for the non-landfill management of solid waste, including storage facilities, transporters, transfer facilities, processors, incinerators, air-curtain destructors, woodburners, composters and municipal solid waste combustors. These facilities are both private and public entities and include small and large businesses. This rule will also directly impact infectious waste generators. Although this rule does not directly affect customers of solid waste facilities, residents, businesses, and local units of government are indirectly affected by state solid waste management policies and standards because they rely on having an efficient system for solid waste disposal and the protection from environmental and public health risks that state solid waste codes provide.

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:

Federal law does not regulate non-landfill solid waste management facilities. Federal PCB waste management regulations can be found in 40 CFR Part 761. Federal regulations require some facilities to

be registered and some to be approved. The department has spoken to the U.S. Environmental Protection Agency about their program and how best to work in tandem with those regulations.

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

The department's preliminary determination is that the proposed rule change will have a moderate economic impact between \$50,000 and \$5,000,000 annually. Most rule changes would clarify and update existing code and policy requirements. Some rule updates could raise plan review and licensing fees.

Economic benefits may include:

- Improving clarity and specificity of submittal requirements, which would decrease the time spent between the facility or consultant and the department.
- Revising the requirements for infectious waste facilities to grind sharps, which would reduce operating costs.
- Drafting code language to separately detail the environmental protections needed for farms after a mass casualty event such as avian influenza, making it easier for farms to understand and manage these requirements without hiring a consultant.
- Drafting code language to separately detail the environmental protections needed for municipalities managing disaster debris, making it easier for municipalities to understand and manage these requirements without losing potential Federal Emergency Management Agency funding by having a waste code violation.
- Reducing plan review fees by creating a new review category for certain simple reviews.
- Increasing operational flexibility for businesses through general permits, mobile processing approvals, and the ability to include approval conditions, which would allow for them to adapt their business plans for easier economic success.
- Increasing the ability for industrial and commercial businesses to manage wastes through reuse, recycling, and repurposing rather than paying for disposal.
- Clarifying regulatory language to close loopholes and make sure good-actor businesses aren't being undercut.
- Exempting the landspreading of aquatic plants from needing a solid waste landspreading approval, which will save on approval costs for lake districts.
- Offering clearer guidance on how to manage wastes in a manner that won't create negative environmental impacts, which may decrease enforcement and cleanup costs.

Economic costs may include:

- Increased review and licensing fees to meet the statutory requirement for the fees to cover department review costs.
- Increased management costs for entities that heavily rely on open burning of waste.
- New review and/or licensing fees for facilities managing hazardous waste that don't currently pay for hazardous waste review or licensing fees.
- Increased operating costs for facilities due to new requirements such as improved fire control measures.

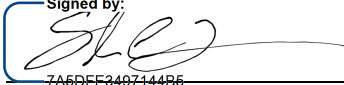
Most economic impacts listed above will impact small businesses, as many non-disposal solid waste facilities likely meet the definition of a small business.

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

The department anticipates holding one public hearing in July, 2026. The department will hold the hearing virtually to allow for as many people to attend as possible. Comments may be provided by mail, phone and email as well as in-person.

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10/22/2024 | 10:37 AM CDT

Date Submitted