

**BEFORE THE DEPARTMENT OF NATURAL RESOURCES
NOTICE OF PUBLIC HEARINGS
WA-30-09 and WA-31-09(E)**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 289.67 (2) (de) and 291.07 (2) Stats., interpreting ss. 227.11 (2) (a) and 289.67 (2) (b) 1., Stats., and pursuant to ss. 227.11 (2) (a), 227.24 (1) (a), 289.67 (2) (de) and 291.07 (2) Stats., and s. 9137 (2) of 2009 Wisconsin Act 28, interpreting ss. 227.11 (2) (a) and 289.67 (2) (b) 1., Stats., the Department of Natural Resources will hold public hearings on proposed Natural Resources Board Order No. WA-30-09 and on Natural Resources Board Emergency Order No. WA-31-09(E) pertaining to the definitions of hazardous waste “large quantity generator” and “small quantity generator.” The emergency order was published and took effect on March 17, 2010.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held live in Madison and via the Internet by “Live Meeting” or conference telephone in Green Bay, Milwaukee and Eau Claire on:

Monday, April 26, 2010 at 9 am

Room G-09, Natural Resources State Office Building, 101 S. Webster Street, Madison Wisconsin

Lake Michigan Room, DNR Northeast Region Headquarters, 2984 Shawano Ave., Green Bay, Wisconsin

Room 139, DNR Southeast Region Headquarters, 2300 N. Dr. Martin Luther King, Jr. Drive, Milwaukee, Wisconsin

Room 162, DNR West Central Region Headquarters, 1300 W. Clairemont, Eau Claire, Wisconsin

The emergency order, proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Pat Chabot, Bureau of Waste and Materials Management, P.O. Box 7921, Madison, WI 53707-7921 or by email to Patricia.Chabot@Wisconsin.gov. Comments may be submitted until April 30, 2010. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the rules and fiscal estimate may be obtained from Ms. Chabot.

Analysis of the rule. The 2009-2011 biennial budget (2009 Wisconsin Act 28, s. 2659) amended s. 289.67 (2) (b) 1., Stats., to increase the annual base fee for large quantity and small quantity generators of hazardous waste. Section 2662 of Act 28 also created s. 289.67 (2) (de), Stats., which requires the DNR to promulgate a rule that defines “large quantity generator” and “small quantity generator” for purposes of the fees. Under current hazardous waste rules, generator status is functionally described in text but there are no specific, comprehensive definitions.

Section 9137 (2), a non-statutory provision in Act 28, allows the DNR to promulgate the required definitions through the emergency rule making procedures without having to provide a finding of emergency. The emergency order took effect March 17, 2010 and will remain in effect until July 1, 2011, or until a corresponding permanent rule takes effect if it is adopted sooner.

The emergency order added a definition of “large quantity generator” and revised the definition of “small quantity generator” in ch. NR 660, Wis. Adm. Code. Under prior hazardous waste rules, standards are set for large quantity and small quantity hazardous waste generators, so their status is functionally described, but there were no specific, comprehensive definitions of these terms. This proposed permanent rule is

identical to the emergency rule. The definitions are consistent with and based upon the functional descriptions or standards that currently identify large quantity and small quantity generators.

Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule. There is no specific definition of “large quantity generator” in the U.S. Environmental Protection Agency’s hazardous waste regulations in 40 CFR § 260.10, upon which s. NR 660.10 is based. Large quantity generator status is functionally described in text in 40 CFR Part 262, *Standards Applicable to Generators of Hazardous Waste*. 40 CFR § 260.10, includes a definition of “small quantity generator” but the definition is incomplete. Small quantity generator status is functionally described in text in 40 CFR Part 262. The department proposes to add explicit, complete definitions of large and small quantity generators to s. NR 660.10 based on the state and federal functional definitions.

Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan).

Minnesota’s hazardous waste rules in s. 7045.026 define large and small quantity generators. These definitions are similar to the definitions in the proposed rule. Iowa does not have a federally authorized hazardous waste program. The program is administered by the U.S. Environmental Protection Agency Region 7 office in Kansas City, Mo., and the federal regulations are in effect in the state. Illinois’ hazardous waste rules have a definition for small quantity generator that is equivalent to the definition in the federal regulations. There is no definition of large quantity generator; however, a note after 35 Ill. Adm. Code 7220.127 states that the “[Illinois Pollution Control] Board interprets the term large quantity generator to mean a hazardous waste generator that is not a small quantity generator.” Under Michigan’s rules in R 299.9107 (v), the definition of small quantity generator is equivalent to the federal definition. Large quantity generator is not defined in rule.

Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule. The proposed definitions are required by statute and reflect current state and federal functional definitions of “large quantity generator” and “small quantity generator” used in the state’s hazardous waste management program and by US EPA.

Analysis and supporting documentation that the agency used in support of the agency’s determination of the rule’s effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report. See above.

Effects on small business, including how the rule will be enforced. The proposed rules affect small businesses that are large quantity or small quantity generators of hazardous waste. There is no direct correlation between the definitions of “small business” and “large quantity generator” or “small quantity generator”, so a precise assessment of the definitions’ effect on small business is not possible. Small businesses may be either large quantity or small quantity generators of hazardous waste, or neither. In any case, under the revised hazardous waste generator base fee statute, the maximum additional amount that a large quantity generator would have to pay is \$470. A small quantity generator would pay a maximum of \$350 more than in past years.

Under the statutory language in effect before the 2009-2011 biennial budget bill (2009 Wisconsin Act 28), all large quantity generators and small quantity generators who were required to submit a hazardous waste annual report were required to pay a base fee of \$210 and \$20 per ton for hazardous waste generated during the reporting year. The tonnage fee did not apply to any wastes that were recycled or reused, and if a generator recycled or reused all of its hazardous waste, it was not required to pay the base fee either.

Act 28 amended the statutes to increase the base fee from \$210 to \$350 for small quantity generators, and to \$470 for large quantity generators. It also increased the maximum fee any generator would have to pay from \$17,000 to \$17,500 per year. In addition, the base fee was applied to all generators who are required to report, regardless of whether they recycled or reused any or all of their wastes. The per ton fee remains at \$20 per ton.

No new recordkeeping or reporting requirements are created and no new skills are required to comply with the proposed rules.

The proposed rules are definitions only, but are a key component of the hazardous waste generator annual fee requirements set out in recently-revised s. 289.67, Stats. The fee requirements (statutes and rules) will be enforced by department staff through compliance assistance, complaint follow-up and inspections. If a violation is found, the department normally uses a stepped enforcement process similar to the process it uses for other environmental programs.

This stepped process includes the following:

- Notice of non-compliance, this is typically the first step in dealing with a problem and is usually done by a program specialist through a letter to the generator. It's expected that the generator, once notified of the problem will, correct the problem quickly.
- Notice of Violation, this is typically the second step in dealing with a problem and is a higher level of enforcement. Typically, the Notice of non-compliance hasn't resulted in the problem being resolved and this next step includes an opportunity for a face-to-face meeting with program and enforcement staff. At this meeting, it's expected that the generator will make commitments to resolve the problem and will follow through.
- Referral to the Attorney General for prosecution and injunctive relief, when appropriate. In addition to being liable for unpaid fees, a person who fails to pay fees in a timely manner may be subject to statutory enforcement mechanisms and penalties for hazardous waste violations as established in subchapter V. of ch. 291, Stats.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Patricia Chabot at (608) 264-6015 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin March 19, 2010

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary