

Clearinghouse Rule 10-128

BEFORE THE DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING Natural Resources Board Order WA-33-10

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats., the Department of Natural Resources will hold a public hearing on **repeal** of NR 502.12(1)(a) to (f), (8)(a)4. and 6. and (9); **renumbering** of NR 502.12(8)(a)5., 7. and 8.; **renumbering and amendment** of NR 502.12(4)(e)3.(note); **amendment** of NR 500.03(45), (185), (253) and (262), NR 502.12(title), (1)(intro.) and (note), (2), (3)(title), (intro.) and (a), (4)(title), (intro.), (c), (e)(intro.) and 3., (5)(title), (intro.), (b) to (e) and (f)(intro.), 1. and 2., (6)(title), (intro.), (b), (c) and (e), (7)(title), (intro.), (a) to (c), (8)(title) and (a)(intro.), (10)(intro.) and (a) to (e), (h)3. and (j)(note), (11)(intro.), (a) and (b), (12)(a) and (b), (13)(title), (intro.), (b), (e), (f), (g), (h) and (k), (14)(a) and NR 518.04(1)(intro.), (b) and (i); **repeal and recreation** of NR 502.12(4)(e)2., (7)(e) and (f), (8)(b), (11)(d), (15), (table 1) and (table 2); and **creation** of NR 500.03(20r), (29), (30g), (30r), (44m), (86m), (88m), (155m), (219m) and (253m), NR 502.12(4)(e)4., (8)(c), (11)(e), (13)(m), (n), (o) and (p), and (16), Wis. Adm. Code, relating to composting of solid waste, at the date, time and locations listed below.

Hearing Information

The hearing for this matter will be held at 10:00 a.m. on Monday, December 13, 2010 at the following locations simultaneously (the locations will be linked electronically):

Room 513, State Natural Resources Building (GEF 2)
101 South Webster St.
Madison, WI 53707

DNR Oshkosh Service Center
625 E. Cty Road Y, Suite 700
Oshkosh, WI 54901

DNR Northern Region Rhinelander Headquarters
107 Sutliff Avenue
Rhinelander, WI 54501

DNR Southeast Region Headquarters
2300 N. Martin Luther King, Jr. Drive
Milwaukee, WI 53212

DNR West Central Region Headquarters
1300 West Claremont Avenue
Eau Claire, WI 54702

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Brad Wolbert at 608-264-6286, Brad.Wolbert@wisconsin.gov. A request must include specific information and must be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System website at <http://adminrules.wisconsin.gov>. If

you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Brad Wolbert at 608-264-6286, Brad.Wolbert@wisconsin.gov.

Submitting Comments

Comments on the proposed rule must be received on or before Tuesday, December 21. Written comments may be submitted via U.S. mail, fax, E-mail or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Brad Wolbert, Bureau of Waste and Materials Management,
Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, WI 53707

Phone: 608-264-6286
Fax: 608-267-2768
E-mail: Brad.Wolbert@wisconsin.gov.

Analysis Prepared by the Department of Natural Resources

1. Statutes Interpreted

ss. 287.05, 289.30 and 289.31, Stats.

2. Statutory Authority

ss. 227.11, 289.05, 289.06, 289.07 and 289.43, Stats.

3. Explanation of Agency Authority to Promulgate the Proposed Rule under the Statutory Authority

Section 227.11, Stats., confers general agency rule-making authority. Sections 289.05, 289.06 and 289.07, Stats., assign the duty and provide the authority to the Department to promulgate rules implementing ch. 289, Stats. Section 289.43, Stats., gives the Department the authority to specify by rule types of solid waste facilities that are not required to be licensed under ss. 289.21 to 289.32 or types of solid waste that need not be disposed of at a licensed solid waste disposal facility.

4. Related Rule or Statute

None

5. Plain Language Analysis of the Proposed Rule

Composting is regulated as a form of solid waste processing that converts decomposable organic materials to a substance with many beneficial uses and avoids the adverse environmental impacts of landfill disposal or incineration. The proposed rule revisions would (1) expand the types and quantities of decomposable organic materials that could be composted with minimal regulation, and (2) provide a voluntary set of quality standards for certain finished compost products, allowing commercial and municipal composters to distinguish their high-quality compost products in the marketplace.

6. Summary of and Preliminary Comparison of Existing or Proposed Federal Regulations Intended to Address the Activity to be Regulated by the Proposed Rule

None.

7. Comparison of Similar Rules in Adjacent States (MN, IA, IL and MI)

Adjacent states' compost regulations have a number of basic similarities to those of Wisconsin, but vary significantly from each other in their details. Note that Michigan, Minnesota and Illinois, like Wisconsin, are in various stages of revising their composting regulations, in large part as a response to burgeoning interest among food residuals generators nationwide in diverting their material from landfills. Iowa's compost regulations are relatively new, and Iowa's DNR is considering proposals to revise them to facilitate larger-scale food residuals composting.

Minnesota regulations establish two categories of composting facilities: (a) yard material facilities, which are subject to a permit-by-rule system similar in effect to Wisconsin's exemption for yard material compost sites with less than 20,000 cubic yards' capacity, and (b) facilities for composting all other materials, which must obtain individual permits. Minnesota requires all composting facilities to file an annual report with the state regulatory agency. Facilities accepting decomposable material other than yard residuals for composting are subject to design and other permit requirements that were developed for municipal solid waste composting. These have been criticized as being overly strict when applied to materials like food scraps and non-recyclable paper—hence the effort underway to revise the composting rules to establish a “middle” category of composting facility that would avoid some of the current regulatory impediments to composting food and other source-separated decomposable materials. For non-yard facilities, Minnesota's rules require testing of the compost product, and imposes quality standards under a classification system that distinguishes between high quality (Class I) compost suitable for unrestricted use, and Class II compost, the use of which is restricted. The metals standards for the two compost classes are based on federal standards for landspreading sewage sludge, or biosolids, contained in Part 503 of the federal Clean Water Act. Minnesota does apply a more stringent limit to mercury content as well as a PCB limit.

In **Illinois**, composting is relatively highly restricted by the state. Composting facilities must be individually permitted similar to facilities such as landfills, except for facilities at which landscape material is composted and used on an agricultural crop farm. The practical implication of this regulatory system is that food scrap composting is not economically feasible in Illinois. Illinois legislators have recently proposed bills to remove the regulatory barriers to food scrap composting.

In **Michigan**, the composting rules are being revised to align composting of food scraps and other decomposable materials with composting of yard residuals. Current Michigan rules do not include general standards for composting materials other than yard residuals, and composters of more than 500 cubic yards are required to obtain a solid waste processing permit. The exception to this requirement is food scraps, which, because they are not considered solid waste in Michigan, are not subject to any composting requirements. In practice, Michigan has very few composting sites other than those for yard residuals in part because local authorities are hesitant to issue permits for food scrap composting in the absence of state rules. Michigan's proposed rules would allow source-separated compostable materials similar to Wisconsin's proposed definition to be composted with yard residuals without plan review, a site-specific permit or an overall limit on the size of the site. The rule would impose operational standards on composting facilities that are comparable to Wisconsin's, with more stringent standards for liners and for control of liquids. Farm sites would be subject to fewer restrictions so long as they were not operating as a large commercial compost operation. The proposed compost facility standards include annual reporting requirements and requirements for testing and labeling of compost products, but do not impose numerical standards for chemical constituents in general-use composts made from yard residuals or source-separated compostable materials.

Iowa's compost regulations establish a tiered system similar to Wisconsin's in concept, with exemptions for small, on-premises and agricultural sites, a permit-by-rule provision for yard

residual composting facilities, and an individual permit system for larger composting facilities accepting materials other than yard residuals. Permit-by-rule facilities as well as permitted facilities are required to report volumes annually. Iowa allows permit-by-rule composting of mixed food and yard materials up to 2 tons per week, as well as unlimited quantities of yard residuals and on-farm ag materials. Permit-by-rule and permitted facilities have operational and design requirements comparable to those in Wisconsin for exempt and non-exempt facilities, respectively. Compost from permitted facilities must be tested for pathogens and metals, and meet standards equivalent to federal Part 503 biosolids standards, in order to be applied to land or marketed. Permitted facilities receiving more than 5,000 cubic yards of feedstock annually are subject to financial assurance requirements.

8. *Summary of the Factual Data and Analysis Methodologies that the Agency Used in Support of the Proposed Rule and How Any Related Findings Support the Regulatory Approach Chosen for the Proposed Rules*

The Department developed the proposed rule in response to a petition for rulemaking brought by composters and recyclers through the Associated Recyclers of Wisconsin (AROW). To ensure sound and informed technical and policy analysis, the Department formed a technical advisory committee composed of stakeholders representing municipal and commercial composters, the University of Wisconsin, AROW, the environmental community, the Wisconsin Department of Transportation (a potential large-scale user of compost) and the Wisconsin Department of Agriculture, Trade and Consumer Protection. Department staff also consulted with a number of other external interested parties from municipal government, the waste disposal industry, compostable materials generators and other groups. Staff performed an extensive comparison of compost regulations and compost quality standards in other states, Canada and Europe, and reviewed the development of the current federal risk-based metals limits for biosolids.

9. *Any Analysis and Supporting Documentation that the Agency Used in Support of the Determination of the Proposed Rule's Effect on Small Business*

Small businesses were the driving force behind the petition for rulemaking that prompted the Department to develop these rules. The Department consulted directly with small businesses through the technical advisory committee during the development of the proposed rule language, and also worked closely with staff of the University of Wisconsin's Solid & Hazardous Waste Education Center, who are familiar with the concerns of small composting businesses and compostable materials generators.

10. *Anticipated Cost Incurred by the Private Sector*

Private sector impacts from the proposed rule revisions are expected to be neutral to positive. The proposed rules do not require generators of compostable materials to compost or to alter their current arrangements for waste disposal. However, many generators of compostable materials, including small-to-medium size groceries and large national food retailers, hospitals, event sponsors, restaurants and institutions, have encountered difficulties finding an outlet for diverting food scraps from landfill disposal. The proposed rule addresses this need. In facilitating the development of composting businesses and infrastructure, the proposed rule would provide generators with additional options for disposing of unwanted materials, some of which might cost less than landfill disposal. These generators believe it is in their long-term business interests to divert organic materials from landfilling.

Composters should benefit from being able to accept additional materials into their operations without complex permit requirements. Composters that choose to make Class A compost as defined under the proposed rule may incur additional costs for testing, although some of these composters already perform such testing on their own initiative. Private sector composters may also incur minor increased costs for recordkeeping and annual reporting, although these costs will be minimized by use of a simple, standard form, and may be mitigated by (1) the operational utility

of the data that they will be generating, and (2) the larger array of materials that their facilities can accept under the rule while maintaining a relatively low level of regulatory oversight.

Waste hauling companies should still be able to enter into contracts and perform work hauling food and other compostable materials, even if the destination of those materials changes from the landfill to a composting facility. Waste disposal companies have expressed interest in operating their own compost facilities to accept yard and food materials, and several facilities in Wisconsin have already commenced operations. The economics of these waste disposal company activities are not clear, but the costs of operating a small compost facility are likely outweighed by the benefits to the landfill facility of the compost that is being produced to serve as topsoil, cover soils, or a marketable product.

11. Effect on Small Business

The proposed rule is expected to have a small and generally positive impact on small businesses. Small businesses potentially affected by the rule include commercial composters, farmers that compost material brought in from offsite, small businesses that generate food and other compostable material, and small waste hauling businesses.

The rule does not mandate composting. It would make it easier for commercial and municipal composters as well as farmers to accept a variety of source-separated compostable materials, which may enable them to expand their businesses and find new customers. Some composters, such as those producing Class A compost, will have to comply with additional regulations regarding product testing. Most commercial and municipal composters (but not farm composters using only farm-derived inputs) will need to submit an annual estimate of the amount of compost they produce. This reporting requirement has been minimized as much as possible while still providing information needed by the agency to quantify composting activity in Wisconsin.

Small waste hauling businesses may see changes or increases in their businesses if source-separation of organic materials becomes more commonplace. Food scrap generators and other small businesses generating compostable materials may benefit from having a broader choice of options for managing their unwanted organic materials. Keeping organic materials separate from the waste stream may require changes in hauling contracts for those generators that choose to send their material to be composted, and less frequent pickup of non-putrescible material would partly offset the additional cost associated with separate organics pickup. Eventually, split collection trucks may allow both simultaneous pickup of materials destined for composting and for landfilling.

The Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us, or by calling 608-266-1959.

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate Summary

The main fiscal effect of the proposed rule would be a decrease in revenue to the state from the landfill tipping fee. The extent of the revenue decrease would depend on how many tons of additional material are diverted from landfilling to composting as a result of the rule. Local costs and revenues are not expected to be significantly affected. The financial effect of the proposed rule on the private sector may be significant and positive for composting facilities, as they would be

able to accept additional raw materials with minimal additional regulatory burden. Landfill operators can control the impacts of the loss of tonnage to their facilities by entering the compost business themselves, as many have already done. Compost operators' revenue potential would increase due to the establishment of codified standards for high quality or "Class A" compost afforded by the proposed rule. This high quality compost may command a premium price in the marketplace.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary