

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WA-11-22

Relating to: Revisions to chs. NR 500 to 524 related to landfills, solid waste management fees, financial responsibility and reporting requirements

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:

Wisconsin's solid waste management rules were substantially revised in the 1990s to comply with federal municipal solid waste landfill requirements with limited updates since. Wisconsin's rules were developed to be as protective as the standards in that section of the Resource Conservation and Recovery Act, commonly referred to as RCRA Subtitle D. The proposed rule would amend portions of chs. NR 500 to 524, Wis. Adm. Code, to incorporate changes to solid waste landfill requirements, solid waste management fees, financial responsibility, and reporting requirements. The proposed rule would revise existing administrative code to reflect current industry standards and experience gained over the last 30 years related to the design, construction and operation of solid waste landfills while continuing to protect public health and the environment.

The rule would incorporate general corrections and clarifications to language throughout chs. NR 500, 504, 506, 507, 508, 509, 510, 512, 514, 516, 520, and 524, Wis. Adm. Code. The rule may repeal ch. NR 510, Wis. Adm. Code, related to pre-feasibility reports for proposed new landfills or expansions of existing landfills, because pre-feasibility reports are optional and this option has not been used by a landfill applicant since it became effective in 1996.

Rule revisions related to landfill design and construction standards may include:

- Allowance and criteria for alternative liner material, alternative final cover and final cover slope design, final cover native seed mixes, separation distance to groundwater, and other alternatives where appropriate.
- Updates to landfill locational and performance criteria that determine where they can be built and guidelines to prevent detrimental effects.
- Updates to landfill gas management, leachate collection, and storm water management system requirements.
- Updates to construction testing and documentation requirements, including requirements related to pre-construction reports.

Rule revisions related to landfill operations, monitoring, reporting, and operator certification may include:

- Incorporation of requirements for annual reporting, recordkeeping, notification, and reporting.
- Minimum standards for long-term care after closure.
- Incorporation of requirements for early landfill gas collection, gas monitoring, reporting and maintenance, and monitoring well abandonment.
- Updates to requirements for alternate daily cover, leachate line jetting (cleaning), free liquid waste and sludge acceptance and reporting, leachate recirculation, petroleum contaminated soil disposal, waste characterization, and environmental monitoring.
- Allowance for placement of additional waste on side slopes and placing waste to interim waste grades due to settlement, which is currently prohibited or not specifically addressed in code.
- Updates to operator certification, continuing education, and renewal requirements.

Rule revisions related to landfill siting and plans of operation may include:

- Requirements for well abandonment schedules, special waste acceptance plans, litter and odor control plans, final cover sequencing plans, and evaluation of existing gas and leachate systems.
- Updates to procedures for a feasibility report, organic stability operations, plan of operation modifications, and new requirements for periodic plan of operation updates.
- Clarification of feasibility modification, initial site inspection, locational exemption, and initial construction approval procedures.
- Public involvement or notification requirements.

Rule revisions related to all solid waste facility fees (not just for landfill operations), landfill tonnage and capacity reporting, and owner financial responsibility may include:

- Updates to the license fee surcharge and solid waste plan review and inspection fees, license renewal application requirements, owner financial responsibility procedures, and the interest rate and independent estimate of earning rate requirements.
- Requirements for an annual topographic survey and updates related to solid waste conversion factors when assessing and reporting remaining landfill capacity.

The rule may include revisions related to coal combustion residual landfill requirements if corrections or revisions to recently updated code (Board Order WA-17-18) are required to obtain U.S. Environmental Protection Agency approval of a state permit program.

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 a comprehensive update of municipal solid waste and industrial landfill requirements and fees assessed for all solid waste facilities, such as landfills, solid waste collection and transportation, storage, and processing facilities. Many of the proposed rule revisions reflect existing policies and practices and the proposed rule would provide additional clarification or criteria. The revisions would streamline processes by eliminating ambiguity or the need for certain conditions or grants of exemption. Some of the proposed rule revisions being considered may reflect new allowances or requirements requested by stakeholders, such as

the use of a geosynthetic clay layer to replace a portion of the clay layer in the liner of a municipal solid waste landfill. The proposed rule would improve the management of landfills in Wisconsin, create additional efficiencies and reflect experience and industry changes over the last 30 years. The proposed rule would include updates to fees and owner financial responsibility and reporting requirements, which have not been updated since 2006 or earlier.

The department evaluated the option of not pursuing rule revisions at this time. While this option allows for continued regulation of landfills that has proved effective in protecting the environment and public health, it limits the department's ability to incorporate industry advances in landfill design or create more efficient regulatory processes. Without this rule, the department would continue to evaluate requests for alternatives and exemptions to landfill design and construction on a more time consuming, case-specific basis. In addition, the fee structure currently in place does not reflect changes in costs due to inflation since 2006 and is increasingly unsustainable financially. Statutes require the department to establish by rule solid waste review fees at a level anticipated to recover the solid waste program staff review costs of conducting solid waste review activities.

The department also evaluated an option of a more comprehensive rule package to update other solid waste management requirements. However, this would require involvement by a larger and more varied assemblage of stakeholders. It would require more staffing to complete within the required rulemaking timeframe and create additional complexities within the rule making process. 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 289.05(1) and (3), Wis. Stats., requires the department to promulgate rules establishing minimum standards for construction, operation, and closure of solid waste facilities. Sections 289.06(1) and 227.11(2)(a), Wis. Stats., also confer rule making authority to the department to promulgate rules implementing ch. 289, Wis. Stats.

Section 289.61, Wis. Stats., requires the department 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 the department establish solid waste review fees 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 500 to 524, Wis. Adm. Code, which were promulgated under these statutory authorities. Any revisions must also be submitted to the U.S. Environmental Protection Agency for a determination of adequacy related to the applicable federal requirements under subtitle D of the Resource Conservation and Recovery Act (RCRA, 40 CFR Part 258).

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 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 landfill owners and operators, including both public entities and private companies and their contractors. Proposed changes to landfill design or operation requirements and fees may result in cost increases as well as economic benefits for landfill owners and operators. Although this rule does not directly affect customers of landfills and other solid waste facilities, modified fees or other cost impacts may in practice be passed on to those residents and businesses. All state residents and businesses benefit from maintenance of an orderly and environmentally protective system of solid waste management.

There are currently 59 active licensed municipal solid waste and industrial landfills and thousands of closed landfills in Wisconsin. As of June 2022, there were approximately 640 non-landfill solid waste facilities (compost, incinerator, processor, storage and transfer facilities) and 1,200 collection and transport licensees.

Municipalities in which landfills are located or nearby municipalities and their residents may be affected because of opportunities for public participation related to landfill plan reviews. The rule will not affect the authority for local approvals related to landfill siting, which is established by statute. More generally, residents and businesses are indirectly affected by state solid waste management policies and standards because they rely on the existence of an efficient system for disposing of solid waste and the protection from risks to public health and the environment 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:

The proposed rule will need to be consistent with federal criteria under subtitle D of the Resource Conservation and Recovery Act (RCRA, 40 CFR Part 258) so that the department can obtain U.S. Environmental Protection Agency approval of the rule revisions and maintain its authority to regulate solid waste disposal facilities in Wisconsin.

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

The proposed rule is expected to result in both economic benefits and costs as a result of changes to design or other requirements. Overall, the rule is expected to have a moderate cost impact (\$50,000 to \$5 million) on solid waste facility owners and operators, including landfill facilities, for plan review, licensing, construction, operation, and monitoring and reporting.

Portions of the rule may have a positive economic impact on landfill facility owners and operators due to reduced construction costs or other efficiencies. The benefits will likely vary for each landfill based on differences in locally available construction materials and costs across the State and some landfills may not realize any construction cost changes because of locally available materials. Increased operating costs are not expected to be significant and may be offset by benefits realized from other changes within the proposed rule. The benefits and impacts will be evaluated in more detail during the economic impact analysis based on the requirements in the draft rule.

The rule proposes changes to plan review and licensing fees consistent with s. 289.61, Wis. Stats., which requires the department adopt by rule a graduated schedule of reasonable license and review fees for solid waste license and review activities at a level anticipated to recover the solid waste program staff review costs, and to accommodate inflationary increases. Any impacts from modified fees may be passed on by facility operators to the generators of the waste being managed (businesses, municipalities and residential customers). These impacts will be evaluated in more detail during the economic impact analysis based on facility type, size and disposal amounts.

An unknown number of solid waste facilities may meet the definition of a small business that would be subject to changes in plan review and licensing fees. It is projected that the economic impact of this rule would be minimal or moderate for small businesses. Additional information will be collected during the economic impact solicitation period.

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

The department anticipates holding one in-person public hearing, with an option for anyone to join virtually, in the month of September 2024. The hearing will be held in Madison, WI.

The department will hold the hearing in-person as well as 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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