

The statement of scope for this rule, SS 022-22, was approved by the Governor on March 17, 2022, published in Register No. 795B on March 28, 2022, and approved by the Natural Resources Board on June 22, 2022. This rule was approved by the Governor on insert date.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING,
AMENDING, REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 542.02 (Note), 542.03 (3), (9), (10) (a) to (c) and (13), 542.06 (1), (2) and (3), 542.07 (2) (h) and (i), 542.08, 542.10 (1) (b) 2. (Note), 542.12, 542.14 (1), 544.03 (2), (3) and (12m), 544.05 (1) (a) 2. and 4., 544.08 (3) (c), 544.09 (1) (c) and (2) (c), 544.11 (2) (d), 544.16 (3) (a) 9., 11., 13., 15., 16., 17., 18., 19., 20., (5) (a), (b), (c), (d), (e), (f), (g), Table 1 and (Note); to **amend** NR 500.03 (190), 502.07 (2f) and (7) (s), 542.01, 542.02, 542.03 (8) and (10), 542.05 (1) (intro.), (e) (intro.), (g), (j) 2., (2) (intro.), (b), (g) (intro.) and 1., 542.06 (intro.), 542.07 (1), (2) (intro.), (a) and (d) 1., 542.10 (1) (a) (intro.) and (2), 542.14 (3) and (5), 544.03 (6m), (8m), (13), (21), (22), (27m), (33), (38), (39), and (39g), 544.04 (7) and (9g), 544.05 (1) (intro.), (3) (a), (b) and (Note), 544.06 (1) (Note), (2) (a), (b) 1., 2., 3., (c) 1., 2. and (d), 544.07, 544.08 (2) (c), (d), (g), (j), (k) and (3) (f), 544.09 (1) (intro.), 544.10 (1), (2), (a), (b), (c), (d), (f), (h), (i) and (j), 544.11 (2) (a), (b) and (c), 544.12 (1) and (2), 544.13 (2), 544.14 (2) (intro.), (a) and (4), 544.16 (1) (a), (b), (2) (a), (b), (3) (title), (a) (intro.), 1., 3., 4., 5., 6., 7., 8., 10., 12., 14., (4) (a), (b), (c), (d), (5) (intro.), (6), (8) (intro.), (c) and (d); to **repeal and recreate** NR 502.05 (3) (g), 502.06 (4) (er), 502.08 (2) (b), 542.04, 542.09, 542.13, 544.04 (1), 544.05 (1) (b) and (c); and to **create** NR 500.03 (107m), (198m) and (238m), 502.05 (3) (j) 8., 502.06 (4) (ew) and (i), 502.07 (7) (t), 542.03 (5m) and (8m), 542.05 (2) (i), 544.02 (3), 544.05 (1) (d), 544.06 (2) (b) 1. a., b., c., 544.08 (3) (f) (Note), 544.09 (2) (e), 544.10 (2) (bm), (cm), (k) and (L), 544.11 (2) (e), 544.14 (2) (a) (Note), 544.16 (1) (d), (Note), (e), (f), (3) (a) 21., 22., 23., (4) (bg), (br), (e), (f), (g), (h), (i), (9) and (10) relating to statewide materials recycling and effective recycling programs and affecting small business.

WA-13-21

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Sections 287.03 and 289.06 (1), Stats.

2. Statutory Authority: Sections 227.11 (a) (intro.), 287.03, and 289.06 (1), Stats.

3. Explanation of Agency Authority: Section 227.11 (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 289.06 (1), Stats., directs the department to promulgate rules implementing and consistent with ch. 289, Stats., related to solid waste facilities.

4. Related Statutes or Rules: Section 287.05 (intro.) and (1), Stats., state “The following are declared to be policies of the state concerning the reduction of the amount of solid waste generated, the reuse, recycling and composting of solid waste and resource recovery from solid waste:

(1) That maximum solid waste reduction, reuse, recycling, composting and resource recovery is in the best interest of the state in order to protect public health, to protect the quality of the natural environment and to conserve resources and energy.”

Chapter NR 520, Wis. Adm. Code, includes criteria and methods for providing proof of owner financial responsibility for closure of a solid waste facility.

5. Plain Language Analysis:

The solid waste reduction, recovery and recycling law was enacted in 1990 (1989 WI Act 335) to promote the development of waste management structures and encourage reduction, reuse and recycling of Wisconsin’s solid waste. The law bans disposal and incineration of certain materials and delegates responsibility to local government responsible units for implementing municipal recycling programs to manage the banned materials. The provisions of 1989 WI Act 335 are found at ch. 287, Stats. In 1993, the department promulgated administrative rules necessary to implement ch. 287, Stats., under ch. NR 544, Wis. Adm. Code.

The general objectives of this proposed rule are to correct, clarify, and update effective recycling program criteria throughout ch. NR 544, Wis. Adm. Code, as well as amend sections of other code chapters related to waste reduction, recovery, and recycling efforts. This rule also makes updates to definitions; changes to storage, collection and transportation, or processing requirements for recyclable materials; minor modifications or corrections to code based on previous statutory changes; and updates to recycling grants authorized under statutes.

NR 500 – General Solid Waste Management Requirements

- Adds or clarifies definitions of “incidental,” “recyclable materials,” “responsible unit” and “transferring of solid waste.”
- Clarifies that glass used as an aggregate replacement is for “clean container” glass.

NR 502 – Solid Waste Facilities (Non-landfill)

- Clarifies definitions of a materials recovery facility and exempt recycling transfer station.

- Requires noncontainerized storage facilities and recycling transfer facilities to keep recyclable materials separate from solid waste and maintain the cleanliness of the materials for recycling purposes.
- Prohibits outdoor transfer of unbaled paper, plastic or other easily airborne material unless contained to prevent litter.
- Requires containers used for the collection of recyclable materials to be clearly labeled.
- Requires collection and transportation service providers that haul recyclables to provide residential recycling tonnage data to responsible units (local governments) by February 1 each year. Data shall include the name of the materials recovery facility(ies) used to process the materials and also be provided to the department upon request.
- Requires collection and transportation service providers to also notify responsible units when a new materials recovery facility is used.

NR 542 – Recycling Grants to Responsible Units

- Adds or clarifies definitions of “multiple-family dwelling,” “prevailing market rate,” “recyclable materials” and “recycling program costs.” Deletes definitions no longer used in the chapter.
- Deletes language referring to pre-2000 recycling grant eligibility and clarifies that eligible responsible units are those with effective recycling programs.
- Clarifies eligible and ineligible grant expenses.
- Deletes grant distribution language, which is no longer applicable.
- Corrects the grant application deadline to coincide with statute.
- Deletes grant assistance condition, grant payment, and dispute resolution language that is no longer applicable or needed in code.
- Specifies that grant payments shall be made by no later than June 1 of the year the grant is made.
- Replaces termination of awards section with repayment of awards (as the effect of a termination of a grant award is its repayment).

NR 544 – Effective Recycling Programs

- Adds materials recovery facilities to the Applicability section. Clarifies definitions of “designated agent,” “floodplain,” “multiple-family dwelling,” “non-residential facilities and properties,” “office paper,” “plastic container,” “recyclable materials,” “rural municipality,” “single commodity materials recovery facility,” and “single-stream collection.” Deletes definitions no longer used in the chapter.
- Specifies that education provided by responsible units under an effective recycling program must be reviewed for accuracy and distributed annually and include information on electronics recycling, batteries, and food waste and composting information.
- Clarifies that responsible units may provide for the collection of tires by providing information on where and how to recycle them.
- Deletes the prohibition on compaction of glass containers with newspaper.

- Deletes the requirement for responsible units to meet a specified pounds per person collection standard and its associated numeric values in Table 1.
- Specifies that a recycling collection system for urban municipalities (those with a population greater than 5,000) shall be curbside at least monthly or a drop-off used by at least 80% of residents documented by drop-off site monitoring records. If the minimum of monthly curbside is provided (versus the more common method of every other week pick-up), access to a drop-off site for recyclables must also be provided.
- Specifies that a recycling collection system for rural municipalities (those with a population of 5,000 or less) shall provide an adequately sized drop-off site for recyclables, open at least two days a month for five hours a day. Alternatively, a rural municipality may opt to provide curbside collection at least monthly (like an urban municipality). If the minimum of monthly curbside is provided (versus the more common method of every other week pick-up) access to a drop-off site for recyclables, for example in another municipality or at a private location, must also be provided.
- Clarifies that any municipality may opt to direct individual residents to contract directly for collection of recyclable materials to meet the requirements outlined for a collection system.
- Clarifies that the provision of providing adequate recycling services to multiple-family properties must include an equal or greater ratio of recycling containers to trash containers and one of the following: minimum total volume of recycling containers provided is 20 gallons per week per dwelling unit, ratio of trash container volume to recycling container volume is at most 2:1, or an alternative method which does not result in recyclable container overflow between collection.
- Clarifies that non-residential properties must provide adequate recyclable container volume to prevent overflow between collection.
- Reduces tenant notification requirements for multiple-family properties and non-residential facilities.
- Updates responsible unit annual reporting requirements to include a compliance assurance plan, financial information (if a recycling grant is received), and a description of recycling education.
- Clarifies that the department may withhold all or part of the recycling grant or take enforcement action if the department finds a responsible unit has not complied with the conditions of an effective recycling program and ch. NR 544.
- Deletes the provision that probation may not exceed one year; clarifies that a responsible unit placed on probation may be required to submit a plan of action to meet program requirements.
- Adjusts for inflation the value of a processed ton of material when used for a variance requested by a responsible unit, from \$40 (1989) to \$98 (2023) based on the consumer price index inflation calculator from the U.S. Bureau of Labor Statistics at <https://data.bls.gov/cgi-bin/cpicalc.pl>.

NR 544.16 Pertaining to certified materials recovery facilities (MRFs)

- Clarifies that “nuisance-free” and “environmentally sound manner” means where litter, odors, and vectors are controlled.
- Excludes MRFs in their first year of operation from meeting the demonstration of sending off-site 75% of material received each year, and clarifies that material sent off-site should be for acceptable recycling, reuse or disposal.

— Requires that MRFs attain owner financial responsibility (OFR) if expecting to receive over 5,000 tons/year of recyclable materials under normal operations or if the facility has received over 5,000 tons in two of the last three years. A MRF may request the release of OFR if it received less than 5,000 tons in each of the last five years and does not expect to exceed 5,000 tons in the following year. MRFs must attain OFR prior to accepting material from a responsible unit (if a new facility) by July 1 of the calendar year after the MRF accepted over 5,000 tons in two of the last three years, or within a year of the effective date of the rule (existing facilities).

— Establishes a minimum glass recycling rate of 12% , which means the weight of glass sent for recycling must be greater than 12% of the weight of total incoming material. If less, a facility must provide justification or submit a glass recycling rate improvement plan within 60 days. More information on development of this rate is described in 9., below. MRFs often receive broken glass or glass mixed with other material, like food, that render the glass unfit for market as a product. In those cases, glass may be disposed of as a residual or in ways not considered “recycling.” In addition, facilities that receive potentially marketable glass are sometimes not designed or operated to effectively capture all of this material. The minimum glass recycling rate sets a minimum baseline to ensure integrity of glass recycling efforts by facilities.

— Establishes a maximum residual rate of 20% for all materials processed by the facility. MRFs often receive non-recyclable materials (like trash, food, non-acceptable plastics, etc.) that are not marketable, or facilities are sometimes not designed or operated to effectively recover all recyclable material. If the residual rate is greater than 20% , a facility must provide justification or submit a residual rate improvement plan within 60 days.

— Creates a requirement for an application for self-certification (intended to differentiate between facility operations and annual tonnage data collection). MRFs are not required to be licensed by the department, but they must submit a self-certification report. The initial application must be submitted within 180 days of the effective date of the rule or within 30 days of most changes in operation. Facility contact information changes must also be submitted to the department within 30 days but do not require the submittal of a new application. The rule clarifies and specifies information to be collected in an application versus the annual self-certification renewal and report.

— Requires that MRFs provide contracted responsible units and collection and transportation service providers with information on acceptable materials.

— Requires that unbaled, easily wind-blown material (paper, plastic) be contained to prevent litter at the facility property.

— Requires the development of short-term (less than 48 hours) and long-term (48 hours or more) contingency plans that a facility will implement in the event of an unexpected shutdown.

— Requires educational material produced by the MRF to identify that it is specific for that facility. A MRF must review educational material within 60 days of a request from a responsible unit contracted with that facility.

— Specifies that materials delivered directly from a responsible unit be inventoried as residential material on the annual self-certification report submitted to the department.

— Adds collection and transportation service providers to existing entities (responsible units and the department) that must be notified of change of service requirements. Notification is required as soon as practicable after unanticipated interruption of service of 48 hours or more or one that results in change of materials acceptance.

—Codifies guidance and existing practices related to beneficial reuse of glass and for facilities requesting residual disposal fee exemptions at landfills.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

The federal government has mostly relied on local and state governments to enact waste management and recycling laws. Federal legislation proposals to mandate minimum national recycling rates have not passed. In the 1970s, the federal Resource Conservation and Recovery Act (RCRA) abolished open dumps and required the Environmental Protection Agency (EPA) to create guidelines for solid waste disposal and regulations for hazardous waste management but did not directly address recycling.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

The department held a virtual preliminary public hearing on the statement of scope on June 6, 2022. Nineteen members of the public attended the hearing, 18 attending for information only and one in support. One member of the public provided testimony on behalf of the Associated Recyclers of Wisconsin (AROW) in support of the scope statement, noting that administrative code should be updated to adapt to changing markets, products, and staffing that has occurred in the recycling industry over time.

8. Comparison with Similar Rules in Adjacent States:

All states bordering Wisconsin (Illinois, Iowa, Minnesota, and Michigan) as well as Indiana have state laws and requirements for recycling. Of the five, Minnesota's program has the most in common with the Wisconsin program. Both the Wisconsin and the Minnesota programs comprehensively impact the residential and the non-residential/commercial/institutional sectors throughout the state. Both delegate authority to implement and enforce state recycling requirements to the local level, although the Wisconsin program assigns this authority to the municipal level while Minnesota's program is delegated to the counties, except for the Minneapolis/St. Paul metro area. Both state programs are also closely monitored, and are supported by state recycling grants.

The Indiana and Iowa recycling programs place a greater emphasis on voluntary localized recycling initiatives and general recycling education. The Illinois program emphasizes the use of economic incentives such as recycling market development and recycled content requirements. Michigan recently undertook a significant recasting of its recycling law and now has a statewide program similar to the Minnesota and Wisconsin comprehensive programs.

Minnesota, Illinois and Iowa do not require owner financial responsibility (OFR) for materials recovery facilities, and Indiana only requires OFR for certain specific recycling operations.

The proposed rule also establishes a minimum glass recycling rate and maximum facility residual rate (unless acceptable justification is provided to the department). Neighboring states do not employ a minimum glass recycling rate; however, Iowa and Michigan recover more container glass because they have container deposit systems. Minnesota indicated their overall glass capture rate was >70%, but this is not calculated the same as the glass recycling rate proposed in the rule.

The proposed rule establishes a maximum overall residual rate of 20% at materials recovery facilities, which means facilities should only be sending a maximum of 20% by weight of all incoming materials for disposal at a landfill. This would include unmarketable recyclable materials and waste. For comparison, Minnesota has a tax incentive for recycling facilities to recycle 85% of material. Iowa requires 75% of material to be recycled to qualify as a "legitimate" recycling operation.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

The department inquired about other states' recycling programs through the Association of State and Territorial Solid Waste Management Officials, State Recycling Leaders group of the national non-profit The Recycling Partnership, and attendees at the national Resource Recycling Conference. The department also solicited feedback in Wisconsin via the department's Waste and Materials Management Study Group (the program's stakeholder advisory group), the Wisconsin Integrated Resource Management Conference, the Wisconsin Council on Recycling, the National Waste and Recycling Association Wisconsin Chapter, the Wisconsin Beverage Association and the Wisconsin Counties Solid Waste Management Association. In an effort to fact-check and understand perspectives of regulated entities, the department held targeted feedback sessions for materials recovery facilities and responsible units. All of these efforts were used to inform the regulatory approach and language used.

Adequate recycling services at multi-family dwellings

To assess rule changes related to providing adequate recycling services at multi-family dwellings, the department sought information on multi-family capacity ordinances from around the United States. Example requirements were received from nine localities in Florida, North Carolina, Texas, Colorado, California and Minnesota. Where specified, capacities ranged from 11 gallons to 24 gallons collected per week, with the most common being 20 gallons per week. Rather than placing a single numerical value on multi-family dwelling recycling services, the department decided to provide qualitative criteria for dwelling owners that include: minimum total volume of recycling containers provided (20 gallons per week per dwelling unit), maximum ratio of trash container volume to recycling container volume (2:1), or an alternative method which does not result in recyclable container overflow between collection events.

Owner financial responsibility (OFR) for materials recovery facilities (MRFs)

The department requires licensed solid waste processing facilities in Wisconsin to provide OFR to cover the costs of closure and clean-up should the operator abandon or be unable to properly close the facility. OFR criteria and methods are included in ch. NR 520. MRFs are processing facilities that are exempt from licensing and currently do not have OFR with the department. The rule seeks to align MRFs with other solid waste processing facilities by requiring OFR for MRFs that annually accept more than 5,000 tons of materials.

In 2012, a MRF in Brown County went out of business and abandoned the facility. The department sought funds for clean-up of the property from the bankruptcy proceedings (sale of equipment) and cleaned up only a portion of the abandoned material. With no additional funds available to clean up the property, the site stayed dormant with remaining unsorted recyclables, plastic and glass. In 2014, vandals broke into the vacant property and set off fireworks, causing a fire that required crews from several area fire departments to extinguish and temporarily closed State Highway 54 ("Fire at Hobart industrial site closes Wis. 54," *Green Bay Press Gazette*, July 9, 2014). Due to the fire and safety concerns, the municipality chose to pay for the balance of the cleanup. The total cost of clean-up exceeded \$16,000. The risk of this occurring again at similar facilities led to the proposed rule requirement for OFR at certain MRFs.

There are 42 MRFs currently certified with the department to accept materials from responsible units. Of those, seven are out-of-state facilities not subject to OFR because the state of Wisconsin would not be the location of a potentially abandoned facility. Facilities vary in size from those that process less than 100 tons per year to facilities that process 175,000 tons per year. In an effort to reduce the economic impact on small operations (including municipally owned and small business MRFs), the department proposes to exempt facilities that process 5,000 tons per year or less. This exempts fifty percent of in-state materials

recovery facilities (17 of 35) from OFR requirements, reducing the impact on small operations, and eliminates the need to set aside the relatively small amounts for OFR that would be required.

Proposal to require a minimum recycling rate for container glass:

Container glass is one of the materials statutorily banned from landfill disposal or incineration. This proposed rule provides a minimum recycling rate that materials recovery facilities must meet for container glass. A majority of facilities make a good-faith effort to recycle the glass they receive, but the department has worked with facilities that label much of their processed glass as residual material. In response to comments from facility owners that have invested in methods to produce as much recycled glass as possible, this recycling rate was developed so that facilities all have the same standard and are on a more even playing field. The minimum glass recycling rate sets a minimum baseline to ensure integrity of glass recycling efforts by facilities.

Most materials recovery facilities accept recyclables in mixed, or “single-stream,” loads. The total incoming weight of materials is reported to the department on annual self-certification reports, along with the weight of each sorted material that was sent out for recycling or reuse. To calculate a reasonable minimum glass recycling rate goal for glass, the department used the most recent five years of data from each MRF to calculate a general glass recycling percent for each MRF (commercial sources and specialty MRFs were excluded, as were MRFs currently exhibiting poor recovery rates for glass). To account for variations across facility operations, the department multiplied the state average glass recycling rate by 70%. This will allow any materials recovery facility recycling achieving at least 70% of the state average to be in compliance. The calculations resulted in a minimum recycling rate requirement for glass of 12% of the total weight of materials each MRF receives. Facilities not meeting the 12% glass recycling rate can achieve compliance by providing justification to the department for the low rate or by implementing a glass recycling improvement plan.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

In addition to the analyses noted in 9., above, the department utilized data collected annually from responsible units and materials recovery facilities. The department receives annual reports from all responsible units and conducts one-on-one evaluations with at least 50 responsible units each year. In addition, the department receives annual certification reports and has conducted well-attended stakeholder meetings with materials recovery facilities each year since 2018. The data and information received from these regular interactions informed decision making during rule development and to prepare the economic impact report.

The department held three feedback sessions for responsible units and materials recovery facilities in May 2023 to receive feedback on rule concepts including economic impact. It is not known which MRFs are technically considered small businesses, however, their feedback is important. A MRF session was held on May 3 with 34 attendees and approximately 20 facilities represented. Responsible unit sessions were held on May 8 (evening) and May 10 (noon hour). A total of 213 participants attended the two sessions.

The department sought feedback on the proposed rule and economic impact from trade groups who represent some small businesses, including the Associated Recyclers of Wisconsin, Solid Waste Association of North America- Badger Chapter, National Waste and Recycling Association- Badger Chapter, Wisconsin Counties Solid Waste Management Association, and the department’s Waste and Materials Management Study Group, from January 2023 through August 2023. This was done via presentations to leadership boards, committees or membership webinars, as well as via a presentation on

rule concepts at the WI Integrated Resource Management Conference (statewide conference of solid waste and recycling professionals and policy makers).

Most proposed rule changes would clarify and update existing code or policy requirements as well as add requirements that ensure universal recycling access and related documentation. Economic benefits, as a result of proposed improvements to effective recycling programs statewide, include preserving natural resources, prolonging landfill space, providing feedstock to businesses and supporting an estimated 20,100 jobs (based on estimates by the Institute for Scrap Recycling Industries [ISRI] Economic Impact Report for Wisconsin, <https://www.isri.org/economic-impact>). ISRI estimates the total economic benefit of recycling in Wisconsin at over \$4.6 billion.

11. Effect on Small Business (initial regulatory flexibility analysis):

The main economic impact of the rule on small businesses is the addition of owner financial responsibility on MRFs. It is difficult to assess the precise number of MRFs that qualify as small businesses. MRFs typically employ office workers, material handlers, heavy equipment operators, maintenance staff, line sorters and managerial positions. In total, these positions likely exceed 25 employees at a substantial number of facilities. The department does not have data on the number of employees at each MRF. Further, the department does not have data on gross annual sales. It is noted that annual sales data will vary considerably year over year as the primary revenue generator for MRFs is the sale of recyclable commodities. Commodity market pricing changes at least monthly (more often for certain materials) and is affected by international and domestic factors, such as other countries buying and selling commodities, transportation challenges in exporting and domestic travel by truck and rail, fuel expenses, labor disputes, paper mill downtime, seasonal fluctuations in supply and demand and other trends. A MRF may exceed gross annual sales of \$5,000,000 in one year and fall below this level in the subsequent year due to commodity market values. A MRF may meet the definition of a small business in certain years and not in others.

However, the department is able to confidently state that the number of potential small businesses affected is small. Excluding municipally owned facilities and those that are not independently owned and operated and dominant in their field, the number of material recovery facilities that may qualify as small businesses is not likely to exceed ten.

To reduce the economic impact on small operations (including municipally owned and private small businesses) and in response to comments received from stakeholders, the proposed rule would exempt materials recovery facilities that process 5,000 tons per year or less from the new requirement to attain OFR. This would exempt approximately fifty percent of in-state materials recovery facilities (17 of 35) from OFR requirements, reducing the impact on small businesses yet protecting the state from the most significant financial risks associated with cleaning up large, abandoned processing operations.

The rule will also reduce annual reporting obligations of MRFs (including those that qualify as small businesses) by limiting requests for certain operational information, not likely to change on an annual basis, to a one-time operational self-certification application. This change will reduce the content of the recurring annual self-certification report and reduce the time needed to complete the report.

12. Agency Contact Person: Kate Strom Hiorns; 101 S. Webster St., PO Box 7921, Madison, WI 53703; (608) 294-8663; kathrynm.stromhiorns@wisconsin.gov

13. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, or email to:

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Madison, WI 53703
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Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wisconsin.gov/calendar>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. NR 500.03 (107m) is created to read:

NR 500.03 (107m) "Incidental" means a minor amount occurring without intention.

SECTION 2. NR 500.03 (190) is amended to read:

NR 500.03 (190) "Recyclable materials" means the items listed ~~in s. 287.07 (1m) to (4)~~, under s. 287.07 (1m), (2), (3), and (4), Stats.

SECTION 3. NR 500.03 (198m) and (238m) are created to read:

NR 500.03 (198m) "Responsible unit" has the meaning specified under s. 287.01 (9), Stats.

(238m) "Transferring of solid waste" includes sorting out of incidental amounts of recyclable materials, incidental amounts of materials that pose a potential threat to transfer operations, and incidental amounts of other materials separated for the intent of reuse or recycling.

SECTION 4. NR 502.05 (3) (g) is repealed and recreated to read:

NR 502.05 (3) (g) A materials recovery facility that maintains materials in marketable condition and that does not have a primary purpose to process waste tires.

SECTION 5. NR 502.05 (3) (j) 8. is created to read:

NR 502.05 (3) (j) 8. Stored recyclable materials are kept separate from other solid waste and in a manner that maintains the cleanliness of those materials for recycling purposes.

SECTION 6. NR 502.06 (4) (er) is repealed and recreated to read:

NR 502.06 (4) (er) A service for the collection and transportation of recyclable materials shall do all of the following:

1. By February 1 of each year, provide each responsible unit, including a responsible unit not under direct contract, with the total tonnage amount of recyclable materials specified under s. 287.07 (4), Stats., collected from single family and 2 to 4 unit residences in the responsible unit in the prior year, specifically including all of the following:

a. Tonnes of materials at the point of collection and from all areas within the responsible unit service area.

b. Names of the materials recovery facilities that processed the materials.

2. Provide to the department upon request the estimated weights of collected recyclable materials specified under s. 287.07 (4), Stats., and identify the materials recovery facilities that processed these materials.

SECTION 7. NR 502.06 (4) (ew) and (i) are created to read:

NR 502.06 (4) (ew) A service for the collection and transportation of recyclable materials specified under s. 287.07 (4), Stats., shall notify a responsible unit within one week of a change in materials recovery facility used.

(i) Containers provided by the service provider for use in a recycling collection system shall be clearly labeled to distinguish their use for recycling purposes only.

SECTION 8. NR 502.07 (2f) and (7) (s) are amended to read:

NR 502.07 (2f) EXEMPT RECYCLING TRANSFER FACILITIES. A facility only for the transfer of items under s. 287.07 (4), Stats., shall comply with the operational requirements ~~in~~under sub. (7) (a), (c), (d), (i), (k), ~~and~~(n), (o), (s), and (t) and the performance standards and closure requirements ~~in~~under s. NR 502.04 (1) and (3) (a) and (b), and, for new or expanded facilities opening after July 1, 2005, the locational criteria in sub. 3, but is exempt from all other requirements of this chapter.

(7) (s) ~~Recyclable material may be~~ Material for recycling that is separated from the incoming waste and stored ~~provided that no fire hazard or nuisance conditions are created~~ shall be managed in a manner to maintain the cleanliness of those materials for recycling purposes and in a manner in which no fire hazard or nuisance condition is created.

SECTION 9. NR 502.07 (7) (t) is created to read:

NR 502.07 (7) (t) Outdoor transfer space shall not be used for unbaled paper, cardboard, plastic, or other materials that can be easily moved by wind or water unless contained by at least a 3-sided bunker with wall height and length greater than the recyclables it contains or other containment of equal and adequate efficacy for litter control.

SECTION 10. NR 502.08 (2) (b) is repealed and recreated to read:

NR 502.08 (2) (b) A materials recovery facility that maintains materials in marketable condition and that does not have a primary purpose to process waste tires.

SECTION 11. NR 542.01 is amended to read:

NR 542.01 Purpose. The purpose of this chapter is to establish rules ~~under s. 287.23, Stats.,~~ for the implementation and administration of a grant program for planning, constructing, or operating effective recycling programs ~~with one or more of the components specified in s. 287.11 (2) (a) to (h) and 287.23, Stats.~~ in accordance with ss. 287.11 (2) (a) to (h) and 287.23, Stats.

SECTION 12. NR 542.02 is amended to read:

542.02 Applicability and cross referencing. This chapter applies to all applicants and recipients of funding under s. 287.23, Stats., for planning, constructing, or operating a recycling program. ~~This chapter does not apply to applicants for financial assistance for waste reduction and recycling demonstration grants under s. 287.25, Stats., nor the waste tire grant program under s. 287.17, Stats.~~

SECTION 13. NR 542.02 (Note) is repealed.

SECTION 14. NR 542.03 (3) is repealed.

SECTION 15. NR 542.03 (5m) is created to read:

NR 542.03 (5m) "Multiple-family dwelling" means a structure containing 5 or more residential units, including units that are occupied seasonally.

SECTION 16. NR 542.03 (8) is amended to read:

NR 542.03 (8) "Prevailing market rate" has the meaning specified in s. 287.23 (1) (d), Stats. ~~This means a reasonable estimate of the price of a recyclable material that will be paid by a collection facility serving the area within the boundaries of a responsible unit during the year for which an application for assistance is submitted.~~

SECTION 17. NR 542.03 (8m) is created to read:

NR 542.03 (8m) "Recyclable materials" has the meaning specified in s. NR 544.03 (33).

SECTION 18. NR 542.03 (9) is repealed.

SECTION 19. NR 542.03 (10) is amended to read:

NR 542.03 (10) "Recycling program costs" means the costs incurred for collection, transportation, processing, and marketing ~~costs incurred as a result of any of the following:~~ of materials specified under s. 287.07 (2), (3), and (4), Stats.

SECTION 20. NR 542.03 (10) (a) to (c) and (13) are repealed.

SECTION 21. NR 542.04 is repealed and recreated to read:

NR 542.04 Applicants. A responsible unit that has been determined by the department to have an effective recycling program is eligible to apply for grant assistance under this chapter.

SECTION 22. NR 542.05 (1) (intro.), (e) (intro.), (g), (j) 2., (2) (intro.), (b), (g) (intro.) and 1. are amended to read:

NR 542.05 (1) ELIGIBLE COSTS. The grantee's effective recycling program costs, net of the sale of recovered materials, that are reasonable and necessary for planning, constructing, or operating ~~a~~ an effective recycling program during a grant year are eligible for grant assistance. Eligible costs may include, ~~but are not limited to~~ any of the following:

(e) Capital purchases for any of the following:

(g) Costs of collecting ~~recyclables~~, marketing and transporting ~~recyclables to market~~; materials specified under s. 287.07 (2), (3), and (4), Stats., from a single family or a 2- to 4-unit dwelling.

(j) 2. The proportionate share of the remaining costs ~~as calculated as a~~ equal to the proportion of recovered ~~recyclables~~ recyclable materials to total waste, by weight; ~~and~~.

(2) INELIGIBLE COSTS. Costs not directly associated with or not necessary for the planning, construction, or operation of an effective recycling program are not eligible for grant assistance. Ineligible costs include, ~~but are not limited to~~ all of the following:

(b) ~~The costs~~ Costs of collecting and disposing of municipal solid waste not separated for recycling, except as provided for ~~in~~ under sub. (1) (k);.

(g) Costs incurred in a contract ~~which~~ that creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a grantee participates in the selection, awarding, or administration of a contract supported by this program and when any of the following occurs:

1. The official or employee, or ~~his or her~~ a partner or immediate family member of the official or the employee, has an ownership interest in the firm selected for the contract; ~~or~~.

SECTION 23. NR 542.05 (2) (i) is created to read:

NR 542.05 (2) (i) Costs of collecting, transporting, or marketing recyclable materials from a multiple-family dwelling or commercial, retail, industrial, or governmental facility.

SECTION 24. NR 542.06 (intro.) is amended to read:

NR 542.06 Distribution of grant assistance. The department shall award a grant to each eligible responsible unit that submits a complete application for allowable expenses. The amount of the grant shall be ~~determined as follows:~~ distributed as described under s. 287.23 (5b) and (5p), Stats.

SECTION 25. NR 542.06 (1), (2) and (3) are repealed.

SECTION 26. NR 542.07 (1), (2) (intro.), (a) and (d) 1. are amended to read:

NR 542.07 (1) PROCEDURE. A completed application shall be submitted to the department by ~~September~~ October 1 in the year preceding the year for which the assistance is sought. ~~Application~~ Applications shall be made on forms provided by the department and submitted in accordance with ~~the department~~ the department instructions ~~provided~~.

(2) CONTENTS OF APPLICATION. An application shall contain information from responsible units required under s. NR 544.10 and all of the following:

(a) A resolution ~~of adopted by~~ adopted by the responsible unit authorizing ~~its~~ a representative to file the grant application. The authorized representative shall be an official or ~~employee~~ employee employed position of the responsible unit;

(d) 1. Making continued progress in creating an effective recycling program as defined under s. 287.11, Stats. ~~by January 1, 1995;~~

SECTION 27. NR 542.07 (2) (h) and (i) are repealed.

SECTION 28. NR 542.08 is repealed.

SECTION 29. NR 542.09 is repealed and recreated to read:

NR 542.09 Grant payments. The department shall disburse all grant payments no later than June 1 of the year for which the grant is made.

SECTION 30. NR 542.10 (1) (a) (intro.) is amended to read:

NR 542.10 (1) (a) *Accounting procedures*. Financial ~~schedules and statements~~ information filed with ~~grant applications and payment requests~~ a grant application shall ~~be include~~ include estimated eligible costs

based on records maintained under generally accepted accounting principles ~~which~~ that meet all of the following minimum requirements:

SECTION 31. NR 542.10 (1) (b) 2. (Note) is repealed.

SECTION 32. NR 542.10 (2) is amended to read:

NR 542.10 (2) RECORDS RETENTION AND AUDITING. All responsible units receiving grant funds are subject to audit and shall retain all records pertaining to their programs ~~until~~ for at least 3 years following the end of their participation in the program.

SECTION 33. NR 542.12 is repealed.

SECTION 34. NR 542.13 is repealed and recreated to read:

NR 542.13 Repayment of awards. The department may request repayment of all or part of a grant award if it determines at least one of the following has occurred:

- (1) The responsible unit spent grant funds on activities not eligible for assistance under s. NR 542.05.
- (2) The responsible unit did not maintain an effective recycling program in the year for which the grant was awarded.
- (3) The responsible unit failed to submit information required under this chapter or ch. NR 544.
- (4) The responsible unit is in non-compliance with s. 287.11, Stats., or the provisions of this chapter or ch. NR 544.

SECTION 35. NR 542.14 (1) is repealed.

SECTION 36. NR 542.14 (3) and (5) are amended to read:

NR 542.14 (3) Payment otherwise due to the grantee under s. NR 542.09 may be withheld.

- (5) The department may seek recovery of some or all payments under s. NR 542.13.

SECTION 37. NR 544.02 (3) is created to read:

NR 544.02 (3) Materials recovery facilities as defined under s. 287.27 (1), Stats., including a materials recovery facility used as part of an effective recycling program.

SECTION 38. NR 544.03 (2) and (3) are repealed.

SECTION 39. NR 544.03 (6m), and (8m) are amended to read:

NR 544.03 (6m) “Designated agent” means any person who, on behalf of or by agreement with the owner or operator of a ~~multi-family~~ multiple-family dwelling or of a non-residential facility or property, provides goods or services at that location.

(8m) “Floodplain” ~~means the land which has been or may be hereafter covered by flood water during the regional flood as defined in ch. NR 116, and includes the floodway and the flood fringe as defined in ch. NR 116~~ has the meaning specified in s. NR 500.03 (87).

SECTION 40. NR 544.03 (12m) is repealed.

SECTION 41. NR 544.03 (13), (21), (22), (27m), (33), (38), (39), and (39g) are amended to read:

NR 544.03 (13) “Multiple-family dwelling” means a ~~property structure~~ containing 5 or more residential units, including ~~those which~~ units that are occupied seasonally.

(21) “Non-residential facilities and properties” means commercial, retail, industrial, institutional, and governmental facilities and properties. ~~It~~ “Non-residential facilities and properties” includes any location at which goods or services are provided or manufactured, including locations under construction, demolition, or remodeling, or used for special events such as, ~~but not limited to~~, fairs, festivals, sport venues, conferences, and exhibits.

(22) “Office paper” means a variety of high grade printing and writing papers ~~from offices in non-residential facilities and properties. Printed white ledger and computer printout are examples of office paper generally accepted as high grade. This term~~ “Office paper” does not include industrial process waste or newspaper and packaging.

(27m) “Plastic container” ~~means a rigid plastic container including those made of PETE (#1), HDPE (#2), PVC (#3), LDPE (#4), PP (#5), PS (#6), and other resins or multiple resins (#7)~~ has the meaning specified under s. 287.01 (6), Stats.

(33) "Recyclable materials" means materials listed ~~in s. 287.07 (1m) to (4)~~, under s. 287.07 (1m), (2), (3), and (4), Stats.

(38) "Rural municipality" means a municipality with a ~~permanent~~ population of ~~70 persons per square mile or fewer, as determined under s. 287.24 (1), Stats.~~ 5,000 or less, based on the most recent decennial or special census or the most recent subsequent population estimate under s. 16.96, Stats.

(39) "Single commodity materials recovery facility" means a materials recovery facility ~~where that processes~~ only one of the materials specified in s. 287.07 (3) and (4), Stats., not mixed with other solid waste, ~~is processed for reuse or recycling by conversion into a consumer product or a product which is used as a raw material in a commercial or industrial process.~~

(39g) "Single-stream collection" means a system for co-mingled collection of recyclable fibers, containers, or other ~~recyclable~~ materials intended for recycling in which ~~these the~~ materials are separated from solid waste at the point of collection and ~~are~~ transported unsorted by commodity type to a processing facility to be ~~sorted~~ processed into marketable commodities.

SECTION 42. NR 544.04 (1) is repealed and recreated to read:

NR 544.04 (1) A public information and education program that addresses all of the following:

(a) Recycling of materials specified under s. 287.07 (1m), (2), (3), and (4), Stats.

(b) Recycling of electronic devices under s. 287.07 (5) (a), Stats., and opportunities for recycling electronic devices and batteries.

(c) Prohibitions on landfill disposal of oil filters and oil absorbent materials listed under s. 287.07 (4m), Stats.

(d) Waste reduction and reuse efforts at single family and 2- to 4-unit residences, multiple-family dwellings, and non-residential facilities and properties.

(e) Reasons and ways to reduce food waste and composting opportunities and locations.

(f) Program start-up and regular distribution of current program information that shall be checked at least annually to confirm accuracy and to confirm the materials accepted at a material recovery facility used as part of the program.

Note: Distribution of education and outreach materials by the responsible unit may include public posting including online posting, electronic and printed mailings, and use of social media. Public outreach materials are available for use at no cost and may be obtained from the Department of Natural Resources, Bureau of Waste Management at 101 S. Webster St, P.O. Box 7921, Madison, WI 53707.

SECTION 43. NR 544.04 (7) and (9g) are amended to read:

NR 544.04 (7) A requirement that owners of ~~multiple-family~~ multiple-family dwellings and non-residential facilities and properties or their designated agents provide for the recycling at their facilities and properties of materials specified in s. 287.07 (3) and (4), Stats.

(9g) ~~Beginning August 1, 2006, a~~ A compliance assurance plan describing the procedure the responsible unit will follow to address at a minimum one act of non-compliance with recycling requirements specified in its recycling ordinance ~~which~~ that is commonly encountered by the responsible unit.

SECTION 44. NR 544.05 (1) (intro.) is amended to read:

NR 544.05 (1) (a) *General requirements.* Except as provided ~~in~~ under sub. (3), systems for collecting the materials specified ~~in~~ under s. 287.07 (3) and (4), Stats., from single family and ~~2 to 4-unit~~ 2- to 4-unit residences shall meet all of the following requirements:

SECTION 45. NR 544.05 (1) (a) 2. and 4. are repealed.

SECTION 46. NR 544.05 (1) (b) and (c) are repealed and recreated to read:

NR 544.05 (1) (b) *Collection systems in urban municipalities.* A municipality with a population greater than 5,000 shall provide, contract for provision of, or otherwise provide for, a system for collection of the materials specified under s. 287.07 (3) and (4), Stats., from each single family residence and 2- to 4-unit residence. The collection system shall provide one of the following or be a combination that ensures all residents of the municipality are provided with recycling service for the specified materials:

1. Curbside collection at least monthly for all the materials specified under s. 287.07 (4), Stats. A municipality that provides curbside collection monthly shall ensure that residents have access to a drop-off collection service.

2. A drop-off collection system that is utilized at least monthly by at least 80 percent of the single family and 2- to 4-unit residences in the municipality as documented by drop-off site monitoring records.

(c) *Collection systems in rural municipalities.* A municipality with a population of 5,000 or less shall provide, contract for provision of, or otherwise provide for each single family and 2- to 4-unit residence either drop-off or curbside collection service for the materials specified under s. 287.07 (3) and (4), Stats. The collection system shall provide one of the following or be a combination that ensures all residents of the municipality are provided with recycling service for the specified materials:

1. A drop-off collection service. A rural municipality that only provides drop-off collection service shall ensure that all of the following conditions are met:

a. The size of the facility is adequate to meet the needs of single family and 2- to 4-unit residences to recycle the materials specified and the total volume of recycling containers is sufficient to avoid overflow during the time periods between collection of material for delivery to a processing facility.

b. The site is open at least 2 days each month for a minimum of 5 hours each day, unless demonstrated by the municipality that fewer hours adequately meet the needs of the residents.

2. A curbside collection service that is provided at least monthly. A rural municipality that provides monthly curbside collection shall ensure that residents also have access to a drop-off collection service.

SECTION 47. NR 544.05 (1) (d) is created to read:

NR 544.05 (1) (d) *Individual collection services.* A municipality may meet the collection system requirements for an effective recycling program if it requires its residents of single family and 2- to 4-unit residences in the responsible unit region to contract individually for at least monthly curbside collection and recycling of the materials specified under s. 287.07 (4), Stats.

SECTION 48. NR 544.05 (3) (a), (b) and (Note) are amended to read:

NR 544.05 (3) (a) A responsible unit may apply to the department under s. NR 544.08 (3) for approval of an alternate collection system that does not ~~comply with~~ meet the requirements under sub. (1) (a) 1. ~~and 2.,~~ and either par. (b) or (c).

(b) A responsible unit may apply to the department under ss. NR 502.08 and 544.08 (3) for approval of an alternative processing system that does not ~~comply with~~ meet the requirement under sub. (2) (b).

Note: ~~Examples of alternative~~ Alternative processing and collection systems ~~which that~~ that may be approved under this paragraph include ~~but are not limited to, mixed waste processing and co-collection systems that~~ do not maintain the physical separation of solid waste from recyclable materials during collection or transportation.

SECTION 49. NR 544.06 (1) (Note), (2) (a) and (b) 1. are amended to read:

NR 544.06 (1) Note: A responsible unit is authorized ~~by~~ under s. 287.09 (3) (b), Stats., to adopt an ordinance to enforce the recycling program established under s. 287.09 (2) (a), Stats., to comply with ~~s. 287.07 (1m) to (4)~~ s. 287.07 (1m), (2), (3), (4), (4m), and (5), Stats., and the priorities under s. 287.05 (12), Stats.

(2) (a) A requirement that the occupants of single family and ~~2 to 4 unit~~ 2- to 4-unit residences, multiple-family dwellings and non-residential facilities and properties in the region either separate for recycling the materials specified under ~~s. 287.07 (1m) to (4)~~ s. 287.07 (1m), (2), (3), and (4), Stats., from postconsumer waste generated in the region or send the material to a licensed processing facility that recovers for recycling those materials from solid waste in as pure a form as is technically feasible. This requirement does not apply to solid waste ~~which that~~ is burned as a supplemental fuel at a facility if less than ~~30%~~ 30 percent of the heat input into the facility is derived from the solid waste burned as supplemental fuel in accordance with s. 287.07 (7) (bg), Stats.

(b) 1. Provide adequate, separate containers for the recycling program established in compliance with the ordinance. The number of recycling collection containers shall at least equal the number of trash collection containers and at least one of the following shall be met:

SECTION 50. NR 544.06 (2) (b) 1. a., b., and c. are created to read:

NR 544.06 (2) (b) 1. a. The minimum total volume of container space for recycling is equal to 20 gallons per week per dwelling unit.

b. The ratio of trash container volume to recycling container volume is at most 2:1.

c. An alternative method that does not result in recyclable container overflow during the time period between collection of materials for delivery to a recycling facility.

SECTION 51. NR 544.06 (2) (b) 2., 3., (c) 1., 2. and (d) are amended to read:

NR 544.06 (2) (b) 2. Notify tenants in writing at the time of renting or leasing the dwelling and at least semi-annually thereafter of how to appropriately recycle the materials specified under ~~s. 287.07 (1m) to (4)~~ s. 287.07 (1m), (2), (3), and (4), Stats., at this location. This notification shall include ~~reasons to reduce and recycle waste, which what~~ materials are collected at this location, and how to prepare ~~recyclable the~~ recyclable the materials in order to meet the processing requirements, ~~and collection methods or sites.~~ The notification shall indicate locations ~~and hours of operation~~ of drop-off collection sites for recyclable to recycle materials not collected on-site, ~~including a contact person or company, address and phone number.~~

3. Provide for the collection of recyclable materials specified under s. 287.07 (4), Stats., separated from the solid waste by the tenants, and the delivery of recyclable the materials to a recycling facility. The total volume of the recycling containers shall be sufficient to avoid overflow during the time period between collection of materials for delivery to a recycling facility.

(c) 1. Provide adequate, separate containers for the recycling program established under this section. The total volume of recycling containers shall be sufficient to avoid overflow during the time period between collection of materials for delivery to a recycling facility.

2. Notify in writing, at least semi-annually, all users, tenants and occupants of the facilities and properties, including members of the public who use services provided by the facilities and properties, of how to appropriately recycle the materials specified under ~~s. 287.07 (1m) to (4)~~ s. 287.07 (1m), (2), (3), and (4), Stats. at this location. This notification shall include ~~reasons to reduce and recycle waste, which what~~ materials are collected; at this location and how to prepare ~~recyclable the~~ recyclable the materials in order to meet the processing requirements ~~and collection methods or sites.~~ The notification shall indicate locations ~~and hours of operation~~ of drop-off collection sites for recyclable materials not collected on-site, ~~including a contact person or company, address and phone number.~~

(d) A prohibition on disposing of in a solid waste disposal facility or burning in a solid waste treatment facility the materials specified ~~in s. 287.07 (3) to (4)~~ under s. 287.07 (1m), (2), (3), (4), (4m), and (5) (a), Stats., which have been separated for recycling.

SECTION 52. NR 544.07 is amended to read:

NR 544.07 Record-keeping requirements. A responsible unit subject to this chapter shall maintain records supporting its application and documenting its compliance with this chapter. The records shall be ~~kept at a~~

~~single location and be available~~ for department review. The responsible unit shall retain its records related to the annual program report submitted under s. NR 544.10 for at least 3 years following the submittal of that year's annual program report.

SECTION 53. NR 544.08 (2) (c), (d), (g), (j) and (k) are amended to read:

NR 544.08 (2) (c) A description of the collection system for ~~single family~~ single family residences and ~~2 to 4 family residential dwelling units~~ 2- to 4-unit residences. A responsible unit shall also apply for the approval of an alternative collection or processing system under sub. (3) if the collection system is not consistent with the requirements under s. ~~NR 544.05 (1) (a) 1. And 2., and either par. (b) or (c)~~ s. NR 544.05 (1) or (2).

(d) A description of the systems for processing and marketing recyclable materials collected from single family residences and ~~2 to 4 family residential dwelling units~~ 2- to 4-unit residences.

(g) A description of its system of enforcement and, ~~beginning August 2006,~~ a copy of its compliance assurance plan as required ~~in~~ under s. NR 544.04 (9g).

(j) A description of opportunities for residences to reduce, reuse, or recycle ~~those items~~ the materials specified under s. ~~287.07 (1m) and (2)~~ s. 287.07 (1m), (2), (4m), and (5) (a), Stats., including opportunities provided by the private sector.

(k) ~~A description of provisions for~~ A statement that the management of solid waste that is generated in the responsible unit and that is not separated or recovered for recycling, ~~and whether that waste~~ is managed in a manner consistent with the highest feasible solid waste management priority under s. 287.05 (12), Stats.

SECTION 54. NR 544.08 (3) (c) is repealed.

SECTION 55. NR 544.08 (3) (f) is amended to read:

NR 544.08 (3) (f) A demonstration of ~~that~~ the amount of residual ~~materials~~ material resulting from the proposed alternative systems will not exceed the average residual amount that is generated from other materials recovery facilities of similar size or capacity.

SECTION 56. NR 544.08 (3) (f) (Note) is created to read:

NR 544.08 (3) (f) Note: Information on the average residual amount generated from materials recovery facilities may be obtained from the Department of Natural Resources, Bureau of Waste and Materials Management at 101 S. Webster St., P.O. Box 7921, Madison, WI 53707.

SECTION 57. NR 544.09 (1) (intro.) is amended to read:

NR 544.09 (1) APPROVAL OF APPLICATION. The department shall approve a responsible unit's application as effective if all of the following are met:

SECTION 58. NR 544.09 (1) (c) and (2) (c) are repealed.

SECTION 59. NR 544.09 (2) (e) is created to read:

NR 544.09 (2) (e) Failure to submit complete information under s. NR 544.08 (3) for alternative collection or processing systems, if applicable.

SECTION 60. NR 544.10 (1), (2), (a) and (b) are amended to read:

NR 544.10 Annual Program Report. (1) REPORT. A responsible unit with an approved effective recycling program shall submit a report to the department under this section by April 30 of each year documenting program activity for the prior calendar year. For all measurements, a responsible unit shall use sampling methods or measurements specified by the department. The report shall demonstrate to the satisfaction of the department that the recycling program meets the requirements of this chapter and any conditions of the approved program. ~~Reports~~ The report shall be submitted on ~~forms~~ a form supplied by the department.

(2) CONTENTS OF REPORT. ~~The~~ At a minimum, the report shall consist of all of the following:

(a) A statement indicating that the program is operating as initially approved ~~is operating~~ or, if there have been changes during the report year, a description of those changes.

(b) A statement that the recycling ordinance ~~is still in effect and a report on~~ and efforts to enforce that ordinance are still in effect.

SECTION 61. NR 544.10 (2) (bm) is created to read:

NR 544.10 (2) (bm) A statement that the compliance assurance plan is in effect to support the recycling ordinance.

SECTION 62. NR 544.10 (2) (c) is amended to read:

NR 544.10 (2) (c) A statement that the collection system for single family and ~~2 to 4-unit~~ 2- to 4-unit residences is operating, and, if there have been changes during the reporting year, a description of those changes.

SECTION 63. NR 544.10 (2) (cm) is created to read:

NR 544.10 (2) (cm) A statement that all materials specified under s. 287.07 (4), Stats., are collected from single family and 2- to 4-unit residences.

SECTION 64. NR 544.10 (2) (d), (f), (h), (i) and (j) are amended to read:

NR 544.10 (2) (d) ~~The tonnage collected of each material listed in Table 1, except that a multiple-municipality responsible unit, with a combination of rural and other municipalities, may meet a prorated standard for each material for the entire responsible unit. If the tonnage collected does not meet the total standard for Table 1, the report shall include an explanation for the failure to meet that standard and a proposal for improving collection in the following year~~ the materials specified under s. 287.07 (4), Stats.

(f) A statement identifying how recyclables materials collected from single family and ~~2 to 4-unit~~ 2- to 4-unit residences are processed and marketed. ~~Weight slips for marketed materials and copies of contracts shall be kept on file.~~

(h) A statement on opportunities for residents to reduce, reuse, or recycle ~~those~~ the materials specified ~~in s. 287.07 (1m) and (2);~~ under s. 287.07 (1m), (2), (4m), and (5) (a), Stats.

(i) ~~A description of~~ A statement that the provisions for the management of solid waste that is generated in the responsible unit's region and that is not separated or recovered for recycling ~~and whether that solid waste~~ is managed in a manner consistent with the highest feasible solid waste management priority under s. 287.05 (12), Stats.

(j) ~~A description of~~ A statement that efforts are ongoing to improve the effectiveness of the recycling program, including waste reduction and reuse initiatives and efforts to increase collection of ~~recyclables~~ recyclable materials.

SECTION 65. NR 544.10 (2) (k) and (L) are created to read:

NR 544.10 (2) (k) If the responsible unit received a grant under ch. NR 542 for the reporting year, a financial report.

(L) A description of the public information and education program of the responsible unit during the reporting year.

SECTION 66. NR 544.11 (2) (a), (b), and (c) are amended to read:

NR 544.11 (2) (a) Modify or condition the responsible unit program approval issued under s. NR 544.09

~~(1) if the responsible unit has had minor problems in maintaining its effective recycling program in compliance with its program approval and the requirements of this chapter.~~

~~(b) Place the program on probation for no more than one year if the department determines that the responsible unit has had significant problems in maintaining its effective recycling program in compliance with its program approval or the requirements of this chapter and if it appears that compliance may be achieved within one year. A responsible unit under probation shall comply with s. NR 544.12.~~

~~(c) Terminate the program approval if the department determines that the responsible unit has had significant problems in maintaining its effective recycling program in compliance with its program approval or the requirements of this chapter and if it does not appear that compliance may be achieved within one year or for failure to satisfy the terms of its probationary approval issued under s. NR 544.09 (1) or take enforcement action under ss. 287.91 or 287.95, Stats.~~

SECTION 67. NR 544.11 (2) (d) is repealed.

SECTION 68. NR 544.11 (2) (e) is created to read:

NR 544.11 (2) (e) Withhold or request repayment of all or part of a grant payment to a responsible unit under this section and ss. NR 542.04 (2) and 542.13.

SECTION 69. NR 544.12 (1) and (2) are amended to read:

NR 544.12 Programs under probation. (1) A responsible unit that has been placed on probation under s. NR 544.11 (2) (b) has an effective recycling program for the purposes of ss. 287.07 (7) and 287.23, Stats. ~~The probation period may not exceed one year.~~

(2) A responsible unit that has been placed on probation under s. NR 544.11 (2) (b) ~~shall~~ may be required to submit a plan to the department describing the actions it intends to take to meet the requirements of this chapter. The department shall review this plan and may require conditions in its approval. ~~A responsible unit's recycling program~~ The department shall be monitored by the department ~~monitor a responsible unit's recycling program~~ to ensure compliance with the probationary plan.

SECTION 70. NR 544.13 (2) is amended to read:

NR 544.13 (2) It provides for curbside collection of the non-combustible materials listed ~~in~~ under sub. (1) in municipalities that have a population ~~of 5,000 or with an aggregate population density of at least 70 persons per square mile~~ greater than 5,000.

SECTION 71. NR 544.14 (2) (intro.) and (a) are amended to read:

NR 544.14 (2) VARIANCES REQUESTED BY THE RESPONSIBLE UNIT. A responsible unit with an effective recycling program may request a variance for up to one year to the requirements ~~in~~ under s. 287.11 (2) (b) and (er), Stats., for a material identified ~~in~~ under s. 287.07 (3) or (4), Stats., that is generated in the responsible unit's region. The department shall grant a variance if it determines the cost of selling processed material as defined ~~in~~ under s. 287.11 (2m) (a) 2., Stats., exceeds ~~any~~ at least one of the following:

(a) ~~Forty-Ninety-eight~~ dollars per ton of processed material, as ~~annually~~ periodically adjusted by the department to reflect changes in price levels due to inflation since ~~1989~~ 2023.

SECTION 72. NR 544.14 (2) (a) (Note) is created to read:

NR 544.14 (2) (a) Note: The consumer price index (CPI) Inflation Calculator is available from the U.S. Bureau of Labor Statistics at <https://data.bls.gov/cgi-bin/cpicalc.pl>.

SECTION 73. NR 544.14 (4) is amended to read:

NR 544.14 (4) EXEMPTIONS. The department may grant exemptions from nonstatutory requirements of this chapter upon request of the responsible unit when the department determines that an exemption is needed to allow or encourage the management of solid waste in accordance with s. 287.05, Stats., and ~~where~~ when the exemption will be consistent with the intent of this chapter. Before granting an exemption, the department shall take into account factors such as good cause; or circumstances beyond

the control of the responsible unit ~~or out of state unit and financial hardship~~. When the circumstances for which the exemption was granted are no longer valid, the department shall rescind the exemption and revise the effective recycling program approval.

SECTION 74. NR 544.16 (1) (a) and (b) are amended to read:

(a) Operate and maintain the facility in a nuisance-free and environmentally sound manner in which litter, odors, and vectors are controlled.

(b) ~~Maintain~~ Excluding materials recovery facilities in the first year of operation, maintain records to verify that not less than 75 percent of the volume of materials accepted were ~~recycled or~~ transported from the facility to acceptable recycling, reuse, or disposal processes within 12 months of receipt at the facility, unless otherwise approved by the department.

SECTION 75. NR 544.16 (1) (d), (Note), (e), and (f) are created to read:

NR 544.16 (1) (d) Provide proof of financial responsibility for the cost of closure of the facility following the procedures in ch. NR 520 if a facility expects to accept more than 5,000 tons of materials in the upcoming calendar year with normal operation or has accepted more than 5,000 tons of materials in 2 of the last 3 calendar years. A facility may request release of financial responsibility if it accepted less than 5,000 tons of materials for 5 consecutive years and does not expect to accept more than 5,000 tons of materials in the upcoming calendar year. A facility shall establish proof of financial responsibility by submitting a form provided by the department at the following times, as applicable:

1. Prior to accepting materials from a responsible unit if the facility is a new materials recovery facility.
2. By July 1 of the calendar year after a materials recovery facility has accepted more than 5,000 tons of materials in 2 of the last 3 calendar years.
3. Within 12 months after the effective date of this section [LRB inserts date] if the facility is in operation on the effective date of this section [LRB inserts date].

Note: The form may be obtained from the Department of Natural Resources, Bureau of Waste and Materials Management at 101 S. Webster St., P.O. Box 7921, Madison, WI 53707.

(e) For recyclables that are not reported on the self-certification report under sub. (4) as being from a commercial source, comply with one of the following requirements for container glass recycling:

1. Send for recycling or reuse each calendar year an amount of glass that equals more than 12 percent of the total weight of recyclable material accepted.

2. If the facility's percent of glass sent for recycling or reuse in a calendar year is less the minimum required under subd. 1., the facility shall submit justification to the department explaining why the minimum was not met. If the facility's justification is not acceptable to the department based on requirements under ch. 287, Stats., and this chapter, the facility shall submit a glass recycling rate improvement plan that is acceptable to the department based on the requirements under ch. 287, Stats., within 60 days of request for a plan.

(f) Maintain an annual residual rate that shall meet one of the following requirements:

1. A residual rate of 20 percent or less as calculated by total tons of accepted materials sent for disposal as a percent of total tons of processed material in a calendar year, as reported on the annual self-certification under sub. (4). Materials disposed of using a waiver under s. 287.07 (7) (g), Stats., shall be excluded from the residual rate calculation.

2. If the facility's residual rate is greater than the maximum required under subd. 1., the facility shall submit justification to the department. If the facility's justification is not acceptable to the department based on requirements under ch. 287, Stats., and this chapter, the facility shall submit a residual rate improvement plan that is acceptable to the department based on the requirements under ch. 287, Stats. within 60 days of request for a plan.

SECTION 76. NR 544.16 (2) (a), (b), (3) (title), (a) (intro.), 1., 3., 4., 5., 6., 7. and 8. are amended to read:

NR 544.16 (2) (a) Unless exempt under par. (b), the owner or operator of a materials recovery facility that serves as a component of a responsible unit's effective recycling program shall certify to the department that it meets the requirements ~~of~~ under subs. (3) to (8) (14) and that it shall continue to meet these requirements until a modified self-certification application is provided to the department under sub. (3) or the facility no longer needs to self-certify.

(b) ~~Single commodity materials recovery facilities are~~ A single commodity materials recovery facility is exempted from the self-certification requirements under par. (a) unless the department determines that

self-certification or other reporting is necessary to ensure compliance with the requirements ~~in~~under sub. (1). A self-certification determination shall be effective for a period of one year.

(3) SELF-CERTIFICATION OF OPERATION APPLICATION.

(a) The owner or operator of a materials recovery facility shall submit ~~a~~an application for self-certification ~~for~~of operation prior to first accepting recyclable materials from any responsible unit. The owner or operator of a materials recovery facility operating as of the effective date of this section [LRB inserts date] shall submit an application for self-certification for operation within 180 days of the effective date of this section [LRB inserts date]. An updated self-certification for operation application shall be submitted within 30 days of any change in the information required under subs. 2. to 23. The owner or operator shall submit all of the following information to the department on a form supplied by the department:

1. The name of the owner and operator, and corresponding mailing and email addresses and telephone numbers. Changes to owner and operator names and contact information shall be provided to the department in writing within 30 days of a change.

3. A description of the materials recovery operations ~~and the days and hours during which services are provided,~~ including a drawing or description of how material moves through the facility, the equipment and methods used for sorting the materials, any processing in addition to sorting performed at the facility, and other information as determined by the department.

4. A list of all responsible units that use the materials recovery facility, if known.

5. A list and description of all ~~recyclable~~ materials expected to be accepted at the materials recovery facility.

6. A statement describing whether incoming ~~recyclable~~ materials are received pre-sorted into individual commodities or commodity groups; or collected in a single-stream or other alternative collection system.

7. The covered storage capacity for ~~recyclable~~ accepted materials.

8. The exposed storage capacity for ~~recyclable~~ accepted materials, the types and maximum quantities of ~~recyclable~~ accepted materials to be stored outdoors at any time, and the procedures used to prevent the spread of litter and to prevent discharge of contaminants to the environment from these ~~the~~ materials.

SECTION 77. NR 544.16 (3) (a) 9. is repealed.

SECTION 78. NR 544.16 (3) (a) 10. is amended to read:

NR 544.16. (3) (a) 10. The processing capacity of the materials recovery facility for ~~recyclable~~ accepted materials.

SECTION 79. NR 544.16 (3) (a) 11. is repealed.

SECTION 80. NR 544.16 (3) (a) 12. is amended to read:

NR 544.16 (3) (a) 12. A description of the procedures used to prevent nuisance conditions and control litter, odors, and vectors at the materials recovery facility.

SECTION 81. NR 544.16 (3) (a) 13. is repealed.

SECTION 82. NR 544.16 (3) (a) 14. is amended to read:

NR 544.16 (3) (a) 14. ~~The~~ A description of the procedures used to effectively minimize residual material.

SECTION 83. NR 544.16 (3) (a) 15., 16., 17., 18., 19., and 20. are repealed.

SECTION 84. NR 544.16 (3) (a) 21., 22., and 23. are created to read:

NR 544.16 (3) (a) 21. The maximum amount that the facility may have onsite at one time for each of the following:

a. Sorted accepted materials by commodity type.

b. Unsorted accepted materials.

c. Residual materials.

22. For a facility that is required to provide proof of owner financial responsibility under sub. (1) (d), the cost of closure as determined under s. NR 520.07 (2m) for materials under subd. 21. The cost of closure under s. NR 520.07 (2m) (a) 1. shall include any materials that the department has determined have a net negative or inconsistent value after determining any loading, transportation, and disposal fees.

23. Statements certifying all of the following:

- a. The materials recovery facility will produce recovered materials in accordance with market quality specifications.
- b. The owner or operator of the materials recovery facility will provide information on the types of materials accepted for recycling to each responsible unit contracted with the facility. This information shall be shared annually and within 30 days of a change and shall be made available for inspection upon department request.
- c. The owner or operator of the materials recovery facility will provide information on the types of materials accepted for recycling to each collection and transportation service provider contracted with the facility. This information shall be shared annually and within 30 days of a change and shall be made available for inspection upon department request.
- d. The owner or operator of the materials recovery facility will provide by February 1 of each year sufficient information so that a responsible unit from which tonnage has been delivered and identified in the prior calendar year can comply with the reporting requirements under s. NR 544.10 (2) (d). For all measurements, the owner or operator of the materials recovery facility shall use sampling methods or measurements acceptable to the department.
- e. Accepted materials will not be stored in wetlands as defined under s. NR 500.03 (258).
- f. Accepted materials will not be stored in a floodplain as defined under s. NR 500.03 (87). This paragraph does not apply to a materials recovery facility at which recyclable materials were stored in a floodplain on or before November 1, 1992, provided that the area in which the recyclable materials are stored is not increased.
- g. The owner or operator of the materials recovery facility will comply with the disposal and incineration prohibitions under s. 287.07 (1m), (2), (3), (4), (4m), and (5) (a), Stats.
- h. The storage capacity is adequate to maintain the quality and quantity of the accepted materials for markets.
- i. The processing capacity of the materials recovery facility is adequate to accommodate the quantities of accepted materials that will be received.

j. The exposed outdoor storage capacity will not be used for unbaled paper, cardboard, plastic, or other materials that can be easily moved by wind and water, unless contained by at least a 3-sided bunker with wall height and length greater than the recyclables it contains or other containment of equal and adequate efficacy for litter control.

k. The facility has a contingency plan that will be used in the event of a shut-down or closure of 48 hours or less and a contingency plan that will be used in the event of a shut-down or closure greater than 48 hours.

L. Information created and distributed by the facility after the effective date of this section [LRB inserts date] regarding materials accepted for processing by the facility, including details on commodity types or special needs for collection, is accurate as of a specific date and indicates that the information is only specific to that facility, identified by name and address.

m. Within 60 days of a request from a responsible unit contracted with the materials recovery facility, the facility will review for accuracy the information about acceptable materials and rules on outreach and education material created for the responsible unit.

SECTION 85. NR 544.16 (4) (a) and (b) are amended to read:

NR 544.16 (4) (a) Certification that the facility has been and will continue to be maintained and operated in conformance with the information submitted ~~upon initial self-certification or upon subsequent notification of change to the department~~ in the most recent self-certification application.

(b) An inventory of ~~recyclable~~ materials, by source and category and expressed in tons, accepted from responsible units ~~as of both January 1 and December 31 of~~ for the previous calendar year, ~~and the total tonnage of this material processed off site in the previous calendar year.~~

SECTION 86. NR 544.16 (4) (bg) and (br) are created to read:

NR 544.16 (4) (bg) An inventory of materials, by weight and commodity type, that were processed onsite and sent offsite for reuse or recycling in the prior calendar year.

(br) An inventory of materials, by weight and commodity type, that were sent offsite for processing in the prior calendar year and the names of those processing facilities.

SECTION 87. NR 544.16 (4) (c) and (d) are amended to read:

NR 544.16 (4) (c) Certification by the owner or operator of the materials recovery facility that records are maintained to verify that not less than ~~75%~~ 75 percent of the volume of materials accepted were ~~recycled~~ ~~or~~ transported from the facility for acceptable recycling, reuse or disposal within 12 months of receipt at the facility, unless otherwise approved by the department. This requirement need not be met for the first year of operation of newly established materials recovery facilities.

(d) The total quantity ~~expressed in tons, by weight,~~ of residual material generated at the materials recovery facility during the previous calendar year and the percentage of the total amount of ~~incoming~~ ~~recyclable~~ processed materials that was residual material during the previous calendar year.

SECTION 88. NR 544.16 (4) (e), (f), (g), (h) and (i) are created to read:

NR 544.16 (4) (e) Certification that the facility did not exceed any of the storage maximums identified on its self-certification of operation application during the previous calendar year.

(f) The name of the owner and operator and corresponding mailing and email addresses and telephone numbers.

(g) The legal name of the materials recovery facility and the street address at that location.

(h) A list of all responsible units that used the materials recovery facility in the prior year.

(i) A list and description of all materials currently accepted at the materials recovery facility, where materials are stored, and other details as requested by the department.

SECTION 89. NR 544.16 (5) (intro.) is amended to read:

NR 544.16 (5) INVALIDATION OF SELF-CERTIFICATION OF OPERATION. ~~The department shall use the information provided under this section during routine inspection of materials recovery facilities and as needed in response to complaints.~~ Should significant discrepancies between actual operations and information submitted under this section be found, or if a materials recovery facility fails to comply with requirements under this section, the department may invalidate the materials recovery facility's self-certification and thereby disqualify the materials recovery facility as a component of a responsible unit's effective recycling program. ~~The department may invalidate a materials recovery facility's self-certification if any of the following conditions exist:~~

SECTION 90. NR 544.16 (5) (a), (b), (c), (d), (e), (f) and (g) are repealed.

SECTION 91. NR 544.16 (6), (8) (intro.), (c) and (d) are amended to read:

NR 544.16 (6) RECERTIFICATION. The owner or operator of a materials recovery facility with an invalidated self-certification under sub. (5) may resubmit the self-certification information required under ~~sub. (3)~~ subs. (3) and (4) to the department and request a review after correcting all deficiencies. The department may re-certify a materials recovery facility if it determines that the materials recovery facility is in compliance with all requirements of this section and has put in place appropriate policies and procedures to remain in compliance with the requirements of this section.

(8) NOTIFICATION OF CHANGE OF SERVICE. The owner or operator of a materials recovery facility ~~which that~~ is self-certified under this section shall provide written notification to the department, collection and transportation service providers, and responsible units that have contracted directly with the facility for services as follows:

(c) At least 60 days prior to ~~initiating processing of recyclable materials collected in a single-stream collection system~~ changing the method of receiving incoming materials, including whether the materials are received pre-sorted into individual commodities or commodity groups, or collected in a single-stream or other alternative collection system.

(d) As soon as practicable after the occurrence of an unanticipated interruption of service ~~to a responsible unit for a period of more than one week~~ of 48 hours or greater or any interruption of service that results in a change of material acceptance.

SECTION 92. NR 544.16 Table 1 and (Note) are repealed.

SECTION 93. NR 544.16 (9) and (10) are created to read:

NR 544.16 (9) CLAIMING A DISPOSAL FEE EXEMPTION FOR RESIDUAL MATERIALS. (a) An owner or operator of a materials recovery facility that claims a fee exemption under s. 289.63 (6) (d), 289.64 (4) (d), 289.645 (4) (h), or 289.67 (1) (fj), Stats., shall submit all of the following information, at a minimum, within one week of the end of each calendar quarter to each landfill that accepts the residual materials:

1. The total amount of residual materials generated by the materials recovery facility in the calendar quarter.

2. The amount equal to 10 percent of the total amount of incoming materials accepted for processing in the calendar quarter.

3. The amount of residual materials claimed for a fee exemption in the calendar quarter.

4. The name and title of the materials recovery facility representative who is certifying that the facility is eligible for a fee exemption in the calendar quarter.

(b) Landfills that accept the residual materials for disposal shall submit to the department a copy of the documentation for a fee exemption from the materials recovery facility.

(10) BENEFICIALLY REUSING PROCESSED CONTAINER GLASS WITHIN A LANDFILL. A materials recovery facility that chooses to partner with a landfill and provide processed container glass, which is otherwise banned from landfill disposal, for an approved beneficial reuse activity within that landfill under s. 287.07 (7) (f), Stats., shall maintain a copy of the applicable landfill plan of operation modification approval onsite and shall provide all of the following information to a landfill each time a landfill requires a new plan of operation modification approval from the department:

(a) A comparison demonstrating that the financial cost for beneficial reuse of the processed container glass at the landfill property is less than the cost for recycling that same amount of container glass when the processed container glass is in marketable condition, or less than the cost of reusing the processed container glass outside of a landfill when the container glass is in marketable condition. The comparison shall include the cost of providing marketable quality glass to 2 non-landfill markets compared with the cost of the proposed landfill beneficial reuse. This analysis shall be specific to the facility and include transportation costs and the cost of supplying the processed container glass to the end user compared to the transportation costs and the cost of supplying the processed container glass to the landfill. The cost analysis may include costs that a facility may spend processing the container glass to marketable conditions for recycling or non-landfill beneficial reuse and the cost that a facility may spend processing the container glass to the specifications for the proposed landfill beneficial reuse.

(b) An environmental comparison demonstrating that the beneficial reuse of processed container glass at a landfill will replace a product that requires higher energy use or produces higher greenhouse emissions per ton than the beneficial reuse of the processed container glass.

Note: Residual crushed glass, a minor byproduct that may be generated in the process of cleaning or sorting container glass into marketable material, does not require comparison data from the material recovery facility for beneficial reuse in a landfill.

SECTION 94. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 95. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].