

Report From Agency

REPORT TO LEGISLATURE

NR 600 Series, Wis. Adm. Code
Related to the generation, transportation, recycling, treatment, storage
and disposal of hazardous waste, universal waste, and used oil.
Board Order No. WA-40-10
Clearinghouse Rule No. CR 16-007

Basis and Purpose of the Proposed Rule

The proposed rules address federally required updates to the current state rules that regulate the generation, transportation, recycling, treatment, storage and disposal of hazardous waste, universal waste and used oil. The Order revises current rules to incorporate required updates generated from U.S. Environmental Protection Agency (EPA) regulations, including: allowing mercury containing equipment to be managed under the reduced requirements of the universal waste rules; conditional exclusions from the rules for management of solvent-contaminated wipes and electronic cathode ray tubes (CRTs) that are recycled; allowing alternative management standards for hazardous wastes generated in academic laboratories and a streamlined permitting process for certain hazardous waste management facilities.

The Natural Resources Board (NRB) first adopted rules for the management of "toxic and hazardous waste" in the late 1960s as part of the Solid Waste rules. In 1981, a separate chapter for hazardous waste rules (NR 181) was established. In 1996, these rules were revised and renumbered into the NR 600 series. Throughout the history of the hazardous waste program, the Board has revised the hazardous waste management rules on numerous occasions to keep pace with state statutory changes and new federal regulations. The most recent NRB adoption of hazardous waste rule revisions occurred in 2010, and involved, in part, the definitions of hazardous waste generator classifications.

This Order includes new rules based on federal hazardous waste regulations already in effect along with federally-identified housekeeping and technical error corrections. The Wisconsin Department of Natural Resources (department) is required to adopt rules that are at least equivalent to federal regulations under the Resource Conservation and Recovery Act (RCRA) in order to maintain EPA authorization to administer the hazardous waste program in Wisconsin. Federally required updates in this Order that are deemed more stringent than current regulations include a rule specific to hazardous waste combustors and the addition of a new federally listed waste. However, the hazardous waste combustor regulation does not affect any current Wisconsin hazardous waste facilities and businesses affected by the addition of the listed waste currently comply with this federal rule, as it became effective nationwide upon promulgation at the federal level.

Summary of Public Comments/Apearances at the Public Hearing

The public hearing notice was published by the department in the Legislative Bureau Administrative Register, on the Department of Administration website, and in the department public hearing calendar (online) on January 15, 2016. A public meeting was held in Madison, Wisconsin on February 11, 2016. The public comment period ended on February 22, 2016. The public meeting had zero (0) public attendance. The department received no written comments by email or letter prior to the end of the February 22, 2016 public comment period.

Modifications Made

No modifications were made based on public comments or public hearings.

Changes to Rule Analysis and Fiscal Estimate

The department solicited public comments, including seeking feedback from local governmental and municipal associations, on the economic impact analysis during August of 2015. No comments were received and the rule is expected to have no negative economic impacts. Based on the Fiscal Estimate/Economic Impact Analysis, it is expected that positive economic impacts would be possible for small businesses as several of the rule changes are actually relaxations and as such will result in either direct (decreased regulatory costs) or indirect (administrative time savings) cost savings for businesses and entities in affected business sectors. The federal economic impact analysis, required as part of the rule promulgation process, determined that the proposed new and modified regulations would cause "minimal impact, with little or no change in market prices or production." Additionally, the majority of these changes (and

specifically the changes that are not considered relaxations) were promulgated under the authority of RCRA as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Regulations promulgated under HSWA are effective in all states at the same time, regardless of state authorization status. Thus, most entities and businesses in affected sectors have already implemented many of the changes and will be unaffected by state promulgation of these rules.

Response to Legislative Council Rules Clearinghouse Report

The department delivered the Board Order Number WA-40-10, the Report to the Legislative Council Rules Clearinghouse, and the Fiscal Estimate / Economic Impact Analysis to the Legislative Council Rules Clearinghouse (LCRC) on January 7, 2016. Comments were received from the LCRC on February 4, 2016. The LCRC comments (Clearinghouse Rule 16-007) and the department's responses are summarized in the attached table.

A significant portion (~75%) of the changes recommended by the LCRC, and subsequently revised within the Board Order, involved WI formatting preferences, language modifications to improve clarity or the use of plain language, and citation issues. Several LCRC recommendations would affect administrative rule language or would require substantial time to review or to renumber within the Board Order. As the Board Order rule language was taken directly from federal rule language, and as the current rule package has preliminary approval from the EPA, significant changes to the Board Order administrative rule language could impact receiving final approval of the rule package by the EPA. Final language was reviewed and agreed to by the Wisconsin DNR Bureau of Legal Services. The attached table outlines how each LCRC comment was addressed in the final version of the Board Order.

Final Regulatory Flexibility Analysis

Federal rules require an economic impact analysis for promulgation, and without exception all of these changes were deemed by federal analysis to cause "minimal impact, with little or no change in market prices or production." Additionally, several of the rule changes are relaxations and as such will result in either direct (decreased regulatory costs) or indirect (administrative time savings) cost savings for businesses and entities in affected business sectors. Additionally, many of these changes (and all that are not relaxations) were promulgated under the authority of RCRA as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Regulations promulgated under HSWA are immediately effective in all states, regardless of state authorization status.

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| 2. Form, Style, and Placement in Administrative Code | | | | | |
|--|--|---|-----|------------------------|--|
| 2a | <i>Ins. NR 660.10 (9m), "Cathode ray tube or CRT" should be changed to "Cathode ray tube" or "CRT".</i> | SECTION 1 | YES | Clarity | Revised to "Cathode ray tube" or "CRT" |
| | <i>Also, it appears that separate definitions should be created for "used, intact CRT" and "used, broken CRT".</i> | SECTION 1 | NO | | Retained federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. |
| | <i>Ins. NR 660.10 (70m), the parentheses should be replaced with commas.</i> | SECTION 2 | NO | | Retained existing W.A.C. language, for clarity and consistency. |
| 2b | <i>Ins. NR 661.03 (1)(b) 4. a., the underscoring should be removed because this section is being repealed and recreated.</i> | SECTION 12 | YES | Format | Underscoring removed |
| 2c | <i>Ins. NR 661.04 (1)(z) 1., "must" should be changed to "shall". This problem also occurs in sub. (1)(z) 4., and 5. (intro.), s. NR 661.04 (2)(r) 1., s. NR 662.213 (1)(b), s. NR 665.0195 (3), and s. NR 665.1034 (3) (a) 2.,. The entire rule should be checked for this issue.</i> | SECTION 16, 18, 26, 41, 64, 113, 127, 165, 162, 165, 167, 169, 208, 222, and 225. | YES | WI language preference | Entire rule packaged reviewed. The word "must" was changed to "shall" or "is required to" in 62 of the original 74 instances. |
| | <i>In sub. (1)(z) 5. (intro.), "all of" should be added between "site" and "the". This issue also occurs ins. NR 661.04 (2)(r) 5. (intro.).</i> | SECTION 16 and SECTION 18 | YES | Clarity | Generators shall maintain at their site all of the following documentation: |
| 2d | <i>Ins. NR 661.04 (2)(o) 4., the symbol before "1317(b)" should be changed to "s.".</i> | SECTION 17 | YES | WI format preference | Consistent Department citation to the USC code requires the removal of both the symbol "§ " and the "s." - NR 661.04(2)(o) 4. has been modified to read: ...rail or dedicated pipe is regulated under ch. 283, Stats., or 33 USC 1317 (b) or 1342. |
| | <i>This also occurs ins. NR 661.32 (1) Table. (also in NR 662.021)</i> | SECTION 25 and 36. | YES | WI format preference | Consistent Department citation to the USC code requires the removal of both the symbol "§ " and the "s." |
| 2e | <i>Ins. NR 661.32 (2)(a), it appears that quotation marks should be added around the first instance of "dyes or pigments production".</i> | SECTION 26 | NO | | Retained federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. |

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| 2e | <i>Also, it appears that "under sub. (3)" should be added after "For the purposes of the K181 listing".</i> | SECTION 26 | YES | Clarity (citation) | NR 661.32 (2) LISTING SPECIFIC DEFINITIONS. (a) For the purposes of the K181 listing under sub. (3), dyes or pigments production... |
| | <i>This issue also occurs in sub. (2)(d).</i> | SECTION 26 | NO | | Referenced citation not clear, there is no "sub. (2)(d)" in Section 26. |
| | <i>In sub. (2)(b) 4. (intro.), "all of" should be inserted between "Keep" and "the". [actually sub. (4)(b)4.]</i> | SECTION 26 | YES | Clarity | Keep all of the following records on site for the three most recent calendar years in which the hazardous waste determinations are made: |
| | <i>This issue also occurs in sub. (2)(c) 10. (intro.). [actually sub. (4)(c)10.]</i> | SECTION 26 | YES | Clarity | Keep all of the following records on site for the three most recent calendar years in which the hazardous waste determinations are made: |
| | <i>In sub. (2)(c) 1., it appears that the notation "sub. 3.", should be changed to "sub. (3)". [actually sub. (4)(c)1.]</i> | SECTION 26 | YES | Format | Determine which K181 constituents listed in sub. (3) are reasonably... |
| | <i>In sub. (2)(c) 2., "described in par. (b)" should be changed to "described in par. (b) 1."</i> | SECTION 26 | NO | | Referenced citation not clear, there is no "sub. (2)(c)(2)" in Section 26. In sub (4)(c)2. "par. (b) 1" is not the correct reference, it is "par. (b)." |
| 2f | <i>In s. NR 661.38 (3)(g) (intro.), the notation "(intro.)" added after the paragraph title should be deleted.</i> | SECTION 28 | YES | Format | SECTION 28. NR 661.38 (3) (g) (intro.) is amended to read: NR 661.38 (3) (g) Waste analysis plans. The generator of a ... |
| 2g | <i>In the title of s. NR 661.39, either "cathode ray tubes" or "CRTs" should be used, but not both.</i> | SECTION 29 | NO | | Retaining federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. |
| 2h | <i>In SECTION 32, it appears that the title of the Appendix being amended should be deleted from the treatment clause.</i> | SECTION 32 | YES | Format | SECTION 32. NR 661, Appendix VII is amended to add the following entry, inserted after the entry K178: |
| | <i>The same issue occurs in SECTION 33.</i> | SECTION 33 | YES | Format | SECTION 33. NR 661, Appendix VIII is amended to add the following entries, inserted in alphabetical order of common name: |
| 2i | <i>In s. NR 662.010 (10) (intro.), the material in the parentheses should be created as a separate sentence.</i> | SECTION 35 | YES | WI format preference | NR 662.010 (10) For purposes of this subsection, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in s. NR 662.200. The laboratories owned by an eligible academic entity that chooses to be subject to the |

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| | | | | requirements of subch. K are not subject to the following: | |
| 2j | <i>In SECTION 36, it appears that this information should be added to s. NR 662.022 as a note, instead of creating a new section.</i> [NR 662.021 is correct reference] | SECTION 36 | YES | Format | SECTION 36. NR 662.021 is created to read: NR 662.021 Manifest tracking numbers, manifest printing, and obtaining manifests. Note: For information on manifest tracking numbers, manifest printing or obtaining manifests, refer to 40 CFR 262.21. |
| 2k | <i>In s. NR 662.200 (6), the sentence "A regularly scheduled removal of unwanted material as required s. NR 662.208 does not qualify as a laboratory clean-out.", is substantive and should not be included in the definition of "Laboratory clean-out". [Sees. 1.01 (7) (b), Manual.]</i> | SECTION 41 | YES | WI format preference | (6) "Laboratory clean-out" means an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materials from the laboratory. A clean-out may occur for several reasons. It may be on a routine basis (e.g., at the end of a semester or academic year) or as a result of a renovation, relocation or change in laboratory supervisor or occupant. Note: A regularly scheduled removal of unwanted material as required by s. NR 662.208 does not qualify as a laboratory clean-out. |
| | <i>A similar issue occurs in sub. (12) by including substantive material in the last sentence of that subsection.</i> | SECTION 41 | NO | Retaining federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. | |
| 2l | <i>In s. NR 662.202, in the subchapter title, "Requirements" should be changed to "requirements".</i> | SECTION 34 and 41 | YES | Format | NR 662.202 Alternative requirements. (1) LARGE QUANTITY GENERATORS ... |
| 2m | <i>In s. NR 662.203 (2) (intro.), it appears that "all of" should be inserted between "out" and "the".</i> | SECTION 41 | YES | Clarity | (2) When submitting the site identification form, the eligible academic entity shall, at a minimum, fill out all of the following fields on the form: |
| 2m | <i>The same issue occurs ins. NR 662.204 (2) (intro.).</i> | SECTION 41 | YES | Clarity | (2) When submitting the site identification form, the eligible academic entity shall at a minimum fill out all of the following fields on the form: |

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| 2n | <i>Ins. NR 662.206 (1) (b) 2. (intro.), ",but are not limited to" should be deleted. [Sees. 1.01 (9) (f), Manual.]</i> | SECTION 41 | NO | Retaining federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. | |
| | <i>The same issue occurs ins. NR 662.207 (3) (intro.).</i> | SECTION 41 | NO | Retaining federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. | |
| | <i>In sub. (2) (intro.), it appears that "assure" should be changed to "ensure".</i> | SECTION 41 | NO | Retaining federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. | |
| 2o | <i>In the treatment clause for s. NR 662.220, "(intro.)" should be changed to "(title)".</i> | SECTION 44 | NO | Under legislative drafting style, in this circumstance, the title is treated as part of the (intro.) and you don't need to cite both the title and intro. | |
| 2p | <i>Ins. NR 664.0016 (1) (d), "Occupational Safety and Health Administration" should be changed to lowercase.</i> | SECTION 47 | YES | WI format preference | NR 664.0016 (1) (d) For facility employees that receive emergency response training pursuant to occupational safety and health administration (OSHA) ... |
| 2q | <i>Ins. NR 664.0052 (2), it appears that "National Response Team's" should be changed to lowercase.</i> | SECTION 48 | YES | WI format preference | The EPA recommends that the plan be based on the national response team's (NRT) integrated contingency plan guidance. |
| | <i>This issue also occurs ins. NR 665.0052 (2).</i> | SECTION 94 | YES | WI format preference | The EPA recommends that the plan be based on the national response team's (NRT) integrated contingency plan guidance. |
| 2r | <i>In the treatment clause of SECTION 157m, "correspondingly" should be deleted.</i> | SECTION 157m | YES | Format | renumbered NR 666.903(2) to (16), and NR 666.903 (11) (intro.) and (a), (12) and (13) are amended to read: |
| 2r | <i>Additionally, SECTIONS in the proposed rule should not be indicated using the insertion style used for actual rule text.</i> | SECTION 157m | NO | Format comment understood. Changes at this time will have no effect or language or rule intent but would require substantial Section renumbering. Will address in future rule packages. | |
| 2s | <i>In the treatment clause of SECTION 159, "renumbered and" should be added between "are" and "amended".</i> | SECTION 159 | YES | Format | SECTION 159. NR 666 Appendix IX, Section 1.0 and Section 4.0 (intro.) are renumbered and amended to read: |

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| 2t | <i>SECTIONS 166 and 167 should be combined with SECTION 165 because the same treatment applies and there is no intervening subunit that is affected by a different treatment. [s. 1.04 (2), Manual.]</i> | SECTION 166 and 167 | NO | Format comment understood. Changes at this time will have no effect on language or rule intent but would require substantial Section renumbering and formatting. This issue will be addressed in the next rule package. | |
| 2u | <i>SECTIONS 176 and 177 should be combined because the same treatment applies and there is no intervening subunit that is affected by a different treatment. [s. 1.04 (2), Manual.]</i> | SECTION 176 and 177 | | | |
| 2v | <i>SECTIONS 190 and 191 should be combined because the same treatment applies and there is no intervening subunit that is affected by a different treatment. [s. 1.04 (2), Manual.]</i> <i>Compliance with this provision of the Manual should be ensured throughout the rule</i> | SECTION 190, 191 ALL | | | |
| 2w | <i>Ins. NR 670.010(13)(a) 1., consider removing the term "etc." [s. 1.01 (9)(c), Manual.]</i> | SECTION 195 | YES | WI format preference | NR 670.010 (13)(a) 1. Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers or other potentially sensitive receptors), unique dispersion patterns, and other relevant factors. |
| | <i>etc. issue continued</i> | SECTION 29 | YES | WI format preference | NR 661.39 (1)(e) 1. e. A description of the means by which each shipment of the CRTs will be transported (for example, mode of transportation vehicle such as air, highway, rail, water, and types of containers such as drums, boxes, and tanks). |
| 2w | <i>etc. issue continued</i> | SECTION 162 | YES | WI format preference | NR 667.0015 (2)(b) The schedule shall identify the equipment and devices you will inspect and what problems you look for, such as malfunctions or deterioration of equipment (for example, inoperative sump pump or leaking fitting). |

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| 2w | <i>etc. issue continued</i> | SECTION 162 | YES | WI format preference | <p>NR 667.0191 (3) (b) The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:</p> <ol style="list-style-type: none"> 1. Corrosion-resistant materials of construction such as special alloys and fiberglass reinforced plastics. 2. Corrosion-resistant coating (such as epoxy and fiberglass) with cathodic protection (for example, impressed current or sacrificial anodes). 3. Electrical isolation devices such as insulating joints and flanges. |
| | <i>etc. issue continued</i> | SECTION 162 | YES | WI format preference | <p>NR 667.0201 What shall I do when I stop operating the tank system? When you close a tank system, remove or decontaminate all waste residues, contaminated containment system components (for example, liners),</p> |
| | <i>etc. issue continued</i> | SECTION 162 | YES | WI format preference | <p>NR 667.1102 (4) Take measures to control fugitive dust emissions such that any openings (such as doors, windows, vents, and cracks) exhibit ...</p> |
| | <i>etc. issue continued</i> | SECTION 162 | YES | WI format preference | <p>...system components (such as liners), contaminated...</p> |
| | <i>etc. issue continued</i> | SECTION 217 | YES | WI format preference | <p>(j) Buildings; treatment, storage or disposal operations; or other structure (such as recreation areas, runoff control systems, access and internal roads, storm, sanitary and process sewerage systems, loading and unloading areas, and fire control facilities)</p> |

| Clearinghouse Comments | WA-40-10 Section | Revised | Discussion | WA-40-10 revised language |
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| 2x | <i>Throughout the rule, consider avoiding the use of the words "you" and "your."</i> | ALL | NO | Per WI general statute 227.14 <i>Preparation of proposed rules</i> , an agency may use the format of published federal regulations published. The federal regulatory language specifically applied “you” and “your” throughout the final promulgated federal rules which are addressed with this Order. |
| 4. Adequacy: References to Related Statues, Rules, and Forms | | | | |
| 4a | <i>Section NR 668.01 (6)(c) refers to thermostats as described in s. NR 673.04, but SECTION 227 repeals the word "thermostat" from s. NR 673.04 and replaces it with the term "mercury-containing equipment".</i> | SECTION 163 | YES | Reference correction SECTION 163. NR 668.01 (6) (c) is amended to read: NR 668.01 (6) (c) Thermostats Mercury-containing equipment as described in s. NR 673.04. |
| 4b | <i>Section NR 670.001(3)(b) 8. c. refers to thermostats as described in s. NR 673.04, but SECTION 227 repeals the word "thermostat" from s. NR 673.04 and replaces it with the term "mercury-containing equipment."</i> | SECTION 191 | YES | Reference correction c. Thermostats Mercury-containing equipment as described in s. NR 673.04. |
| 5. Clarity, Grammar, Punctuation and Use of Plain Language | | | | |
| 5a | <i>In the plain language analysis prepared by the department, in the introductory sentence it appears that "law" should be added between "state" and "changes".</i> | NA | YES | Confirmed federal code language 5. Plain language analysis of proposed rule: The rule incorporates into state law changes made to federal hazardous waste regulations ... |
| 5b | <i>In Part E of the plain language analysis, consider clarifying whether this part also applies to the changes in SECTIONS 247, 249, 251, and 252 that change the standard for used oil from "greater than or equal to 1,000 ppm total halogens" to "greater than 1,000 ppm total halogens."</i> | | NO | The Part E discussion is inclusive of the changes outlined in the Sections referenced. |
| 5c | <i>In Part I of the plain language analysis, consider clarifying which rule changes are being made pursuant to the Resource Conservation and Recovery Act Burden Reduction Initiative. For example, is the initiative the basis for the change in SECTION 165 that allows a generator to choose not to make the determination of whether the waste must be treated? Is the initiative the basis for the change in SECTION 165 that removes the requirement that an authorized representative certify that contaminated soil does not contain listed hazardous waste? Is the initiative the basis for the change in SECTION 167 that replaces the requirement that an owner or operator of a recycling facility submit a certification for each shipment of waste with a requirement that a certification be submitted only for the initial shipment of waste?</i> | | NO | Changes at this time will have no effect on language or rule intent but would require substantial time and review. This issue will be addressed in the next rule package. |

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| 5d | <i>Section NR 660.11 should be reviewed in its entirety in order to ensure that periods are added at the end of every sentence.</i> | SECTION 9 | YES | Confirmed federal code language | Entire NR 660.11 reviewed/edited |
| 5e | <i>In s. NR 661.03 (1)(b) 4. a., it appears that the hyphen between "derived-from" should be deleted.</i> | SECTION 12 | NO | Retaining federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. | |
| | <i>This problem also occurs in sub. (1)(b) 4. g.</i> | SECTION 12 | NO | Retaining federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. | |
| | <i>In s. NR 661.03 (1)(b) 4. g. it appears that the first instance of "part per millions" should be changed to "part per million".</i> | SECTION 12 | YES | Confirmed federal code language | ...wastewater treatment or pretreatment system does not exceed one part per million, or the total... |
| 5f | <i>Although parentheses are used throughout the current chs. NR 661, 662, 663, 664, 665, and 670, please note that the continued use of parentheses in rules should be avoided. [See s. 1.01 (6), Manual.]</i> | NA | NO | Retaining federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. | |
| 5g | <i>Ins. NR 661.03 (1)(b) 4. d., while the notation "e.g." is used throughout the current rule provision, please note that instead of "e.g.", the phrase "for example," should be used. The entire rule should be checked for this issue.</i> | SECTIONS: 12, 17, 26, 29, 41, 70, 72, 74, 82, 113, 114, 126, 160, 162, 217, 222, 227, 233, 236, 239 | YES | WI format preference | Entire rule package checked for this issue – 38 instances of "e.g." removed from code through amended language. |
| 5h | <i>Ins. NR 661.03 (1)(b) 4. f., while the notation "i.e." is used throughout the current rule provision, please note that instead of "i.e." the department should insert a description or explanation that clarifies the meaning of this provision. The entire rule should be checked for this Issue.</i> | Analysis 5. D. and SECTIONS: 12, 29, 41, 71, 167, 179, 199, 200, 211, 212, 217, 237, 244 | YES | WI format preference | Rule package was checked for this issue. Fourteen (14) instances of "i.e." were removed from code through amended language. |

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| 5i | <i>Ins. NR 661.03 (1)(b) 4. f., "Director" should be changed to "director" and the full job title should be included.</i> | SECTION 12 | YES | WI format preference | If the department rejects the sampling and analysis plan or if the department finds that the facility is not following the sampling and analysis plan, the department shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected. |
| 5j | <i>In s. NR 661.04 (2)(o) 5., "There is one exception:" should be changed to "One exception to these requirements is the following:"</i> | SECTION 17 | YES | Grammar | One exception to these requirements is the following: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (for example, shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this subdivision after the emergency ends. |
| | <i>In sub. (2)(r) 6. a., ", or" should be deleted and replaced with a period.</i> | SECTION 18 | YES | WI format preference | a. To a municipal solid waste landfill regulated under 40 CFR part 258, including 40 CFR 258.40, or to a hazardous waste landfill regulated under chs. NR 664 or 665. |
| 5k | <i>In s. NR 661.35 (2)(b) 3. a., how will a generator determine what "an appropriate method" is?</i> | SECTION 27 | YES | Clarity | a. Test rinses by using an appropriate method, for example by using an analytical method from EPA SW-846, incorporated by reference in s. NR 660.11. |
| 5l | <i>Ins. NR 661.39 (2)(b) 1., the reference to "s. NR 660.10 (19g)" should be changed to "s. NR 660.10 (19j)".</i> | SECTION 29 | YES | Reference | (b) Processing 1. All activities specified in pars. (b) and (c) of the definition of CRT processing in s. NR 660.10 (19j) shall be performed within a building with a roof, floor and walls. |
| 5m | <i>In SECTION 34, under subch. K NR 662.202, "Alternative Requirements" should be changed to "Alternative requirements". In addition, the section titles listed under subch. K should all end in periods.</i> | SECTION 34 | YES | Format | NR 662.202 Alternative requirements |

| Clearinghouse Comments | WA-40-10 Section | Revised | Discussion | WA-40-10 revised language | |
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| 5n | <i>Ins. NR 662.200 (2), "Department of Education" should be changed to "department of education".</i> | SECTION 41 | YES | Format | (2) "College or university" means a private or public, post-secondary, degree-granting academic institution that is accredited by an accrediting agency listed annually by the U.S. department of education. |
| | <i>In sub. (12), it is unclear what sources "section 261.2" or "section 261.3" are referring to.</i> | SECTION 41 | YES | error in citation | This also includes unwanted materials including reactive acutely hazardous unwanted materials and materials that may eventually be determined not to be solid waste pursuant to s. NR 661.02, or a hazardous waste pursuant to s. NR 661.03. |
| 5o | <i>Ins. NR 662.202 (2), it appears that "subpart" should be changed to "subchapter".</i> | SECTION 41 | YES | formatting error | (2) VERY SMALL QUANTITY GENERATORS. Eligible academic entities have the option of complying with this subchapter with respect to its laboratories, as an alternative to complying with the requirements of s. NR 662.220 (1). |
| 5p | <i>Ins. NR 662.213 (2) (intra.), "in sub. (1)" should be added after "the same 12-month period".</i> | SECTION 41 | YES | Clarity | (2) For all other laboratory clean-outs conducted during the same 12-month period in sub. (1), an eligible academic entity is subject to all the applicable requirements of this subchapter, including: |
| 5q | <i>Ins. NR 662.214 (1) (a) 1., "using that term, the eligible academic entity shall" should be inserted between "If not," and "identify".</i> | SECTION 41 | YES | Clarity | 1. Identifying whether the eligible academic entity will use the term "unwanted material" on the containers in the laboratory. If not using that term, the eligible academic entity shall identify an equally effective term that will be consistently used in lieu of "unwanted material." |
| | <i>In subs. (2) (a) to (g), is it possible to remove the phrase "intended best practices" and replace it with "best practices"?</i> | SECTION 41 | NO | | Retaining federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. |
| 5r | <i>Ins. NR 662.216 (1), the term "satellite accumulation area" should be defined in the rule.</i> | SECTION 41 | YES | Clarity | (1) Remains subject to the generator requirements of ss. NR 662.011 and NR 662.034 (3) for large quantity generators and s. NR 662.192 (4) for small quantity generators (if the hazardous waste is managed as satellite accumulation), and all other applicable generator |

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| | | | | requirements of ch. NR 662, with respect to that hazardous waste. |
| 5s | <i>In s. NR 664.0073 (2) (f), "This information shall be" should be added before "Maintained". In addition, "ground-water" should be changed to "groundwater".</i> | SECTION 52 | YES | Clarity, WI formatting preference (f) <u>Maintain in the operating record for 3 years the monitoring</u> Monitoring, testing or analytical data, and corrective actions where required by subch. F and ss. NR 664.0019, 664.0191, 664.0193, 664.0195, 664.0222, 664.0223, 664.0226, 664.0252 to 664.0254, 664.0302 to 664.0304, 664.0309, 664.0347, 664.0602, 664.1034 (3) to (6), 664.1035, 664.1063 (4) to (9), 664.1064 and 664.1082 to 664.1090. <u>Records and results pertaining to groundwater monitoring and cleanup shall be maintained in the operating record until closure of the facility.</u> |
| 5s | <i>These issues also occur in s. NR 665.0073 (2) (±).</i> | SECTION 98 | YES | Clarity, WI formatting preference (f) <u>Maintain in the operating record for 3 years the monitoring</u> Monitoring, testing or analytical data, and corrective actions where required by subch. F and ss. NR 664.0019, 664.0191, 664.0193, 664.0195, 664.0222, 664.0223, 664.0226, 664.0252 to 664.0254, 664.0302 to 664.0304, 664.0309, 664.0347, 664.0602, 664.1034 (3) to (6), 664.1035, 664.1063 (4) to (9), 664.1064 and 664.1082 to 664.1090. <u>Records and results pertaining to groundwater monitoring and cleanup shall be maintained in the operating record until closure of the facility.</u> |
| 5t | <i>The treatment clause of SECTION 54 states that s. NR 664.0098 (7) (c) is amended, however, there are no strike-throughs or underscores in that subsection in the rule.</i> | SECTION 54 | YES | This issue was resolved in current version (online) of NR 664 W.A.C. (c) For any <u>ch. NR 664</u> Appendix IX compounds found in the analysis pursuant to par. (b), the owner or operator may resample within one month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds |

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| | | | | found pursuant to par. (b), the hazardous constituents found during this initial <u>ch. NR 664 Appendix IX</u> analysis will form the basis for compliance monitoring. |
| 5t | <i>The same issue occurs in SECTION 55.</i> | SECTION 55 | YES | This issue was resolved in current version (online) of NR 664 W.A.C (7) The owner or operator shall analyze samples from all monitoring wells at the point of standards application for all constituents contained in <u>ch. NR 664 Appendix IX</u> at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in s. NR 664.0098 (6). If the owner or operator finds <u>ch. NR 664 Appendix IX</u> constituents in the groundwater that are not already identified in the license as monitoring constituents, the owner or operator may resample within one month and repeat the <u>ch. NR 664 Appendix IX</u> analysis |
| 5u | <i>Ins. NR 664.0195 (3)(a), "Above ground" should be changed to "Aboveground".</i> | SECTION 70 | NO | Retaining federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. |
| | <i>In sub. (4), "The facility shall" should be added before "Include".</i> | SECTION 70 | YES | WI format preference Use of the alternate inspection schedule shall be documented in the facility's operating record. This documentation shall include a description of the established workplace practices at the facility. |
| 5v | <i>In s. NR 664.0347 (4), it appears that "and maintained" should be changed to "and maintain it".</i> | SECTION 78 | YES | clarity The owner or operator shall record this monitoring and inspection data and place the records in the operating log required by s. NR 664.0073 <u>and maintain it in the operating record for a minimum of 5 years.</u> |
| 5w | <i>The treatment clause of SECTION 90 states that the note is being repealed and recreated; however, it appears that the text in the note is identical to the text of the note in the current rule.</i> | SECTION 90 | YES | Existing W.A.C. language was identical to proposed language. SECTION 90 was removed, the treatments were not renumbered. |

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| 5x | <i>In s. NR 664, Appendix IX, footnote "4" next to "Chemical abstracts service index name" should be stricken-through.</i> | SECTION 91 | YES | Microsoft Word issue, resolved. | Chemical abstracts service index name ⁴ ₃ |
| | <i>The same change should be made for the text "CAS index names are those used in the 9th Cumulative Index.", at the end of the Appendix.</i> | SECTION 91 | YES | Microsoft Word issue, resolved. | ⁴ ₃ CAS index names are those used in the 9th Cumulative Index |
| 5y | <i>In s. NR 665.0016 (1) (d), it appears that the term "facility employees" should be changed to "facility personnel", the term that is used in the current rule, in order to ensure consistency.</i> | SECTION 93 | YES | Language usage | NR 665.0016 (1) (d) For facility personnel that receive emergency response training ... |
| 5z | <i>In s. NR 666.080 (2) (intro.), in order to be consistent with the format ins. NR 666.080(1) of the current rule, the first sentence should be replaced with "Which requirements apply if spent lead-acid batteries are stored before they are reclaimed, but not through regeneration?".</i> | SECTION 146 | NO | Retaining federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. | |
| 5aa | <i>Ins. NR 666.100 (2)(c) (intro.), it appears that the beginning of this sentence should be reworded to say "If an owner or operator of a boiler or hydrochloric acid production furnace that is an area source under 40 CFR 63.2 elects not to comply..."</i> | SECTION 148 | YES | clarity, grammar | If an owner or operator of a boiler or hydrochloric acid production furnace that is an area source under 40 CFR 63.2 and the owner or operator elects not to comply with the emission standards under 40 CFR 63.1216, 63.1217 and 63.1218 for particulate matter, semi-volatile and low volatile metals and total chlorine, the owner or operator remains subject to: |
| 5bb | <i>In s. NR 666.905, can the department clarify the meaning of a "legitimate recycling facility"?</i> | SECTION 158 | NO | Retaining federal code language. Current rule package has preliminary approval from EPA. Note: Newly promulgated federal code addressed "legitimate recycling." This issue will be addressed in the next state rule package. | |
| 5cc | <i>In s. NR 666.905 (2) (Note), "that self transport" should be changed to "who self-transport".</i> | SECTION 158t | YES | Grammar | NR 666.905 (2) Note: Under 49 CFR 171.1 (d) (5), governmental employees who self-transport hazardous materials or hazardous waste... |
| | <i>The same issue occurs ins. NR 666.90 (3) (c) (Note).</i> | SECTION 158v | YES | grammar | Note: Under 49 CFR 171.1 (d) (5), governmental employees who self-transport hazardous materials or waste... |

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| 5dd | <i>Ins. NR 667.0001 (1), is the reference to national standards accurate?</i> | SECTION 162 | YES | Citation issue | NR 667.0001 Purpose, scope and applicability (1) The purpose of this chapter is to establish minimum standards which define the acceptable management of hazardous waste under a ch. NR 670 subchapter J standardized license. |
| 5ee | <i>The subdivision of s. NR 667.0147 (7) appears incomplete or inaccurately subdivided.</i> | SECTION 162 | YES | Citation error | (7) GUARANTEE FOR LIABILITY COVERAGE. (a) Subject to par. (b) of this section,... of the guarantee. If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation guarantee or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage. (b) 1. In the case of corporations incorporated |
| 5ff | <i>Ins. NR 668.07 (1)(a), consider replacing the words "has to be" with "must."</i> | SECTION 165 | YES | Grammar | NR 668.07 (1) (a) A generator of hazardous waste shall determine if the hazardous waste must be treated before it can be land disposed. |
| 5gg | <i>In s. NR 668.07 (1)(a), consider revising the sentence that begins "This is done by determining if the hazardous waste...". This provision should be phrased to more clearly indicate that the action is required by the rule. For example, the following sentence says "This determination shall be made by...".</i> | SECTION 165 | YES | Clarity | NR 668.07 (1) (a) A generator of hazardous waste shall determine if the hazardous waste must be treated before it can be land disposed. This determination shall be done by determining if the hazardous waste meets... |
| 5hh | <i>Ins. NR 668.07 (1)(a), consider revising the new sentences that begin "Alternatively, the generator shall send the waste...". It is unclear from these sentences under what circumstances the described actions may be taken, and it is unclear which administrative rule provisions apply.</i> | SECTION 165 | YES | Clarity | As an alternative to the generator determining if the hazardous waste must be treated before it can be land disposed, the generator shall send the waste to a RCRA licensed or permitted hazardous waste treatment facility, where the waste treatment facility shall comply ... |

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| 5ii | <i>Ins. NR 668.07 (1)(a), consider replacing the word "can" with the word "may" in the new sentence that begins "In addition, some hazardous wastes shall be treated by particular treatment methods before they can be land disposed..."</i> | SECTION 165 | NO | Retaining federal Code language, for clarity and consistency. |
| 5jj | <i>In s. NR 668.07 (2) (f), replace the word "must" with the word "shall" in the new sentence that begins "The certification and notification must. ..."</i> | SECTION 167 | YES | WI format The certification and notification shall be placed in the facility's on-site files. The recycling facility shall also keep records of the name and location of each entity receiving the hazardous waste-derived product. |
| 5kk | <i>In SECTION 169, consider revising s. NR 668.20 (2)(e) to clarify which persons are referred to by this provision.</i> | SECTION 169 | YES | clarify (b) The facility has been granted an exemption from a prohibition pursuant to a petition under NR 668.06, with respect to those wastes and units covered by the petition. (e) The facility has been granted an extension to the effective date of a prohibition pursuant to NR 668.05, with respect to these wastes covered by the extension. |
| 5ll | <i>In SECTION 169, consider revising s. NR 668.20 (3) to clarify what is required by the statement "the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract of the waste, or the generator may use knowledge of the waste."</i> | SECTION 169 | NO | Retaining federal code language. Current rule package has preliminary approval from EPA. Significant changes to federal code language could impact final approval. |
| 5mm | <i>In SECTION 194, consider revising s. NR 670.010 (8) to clarify to whom the following sentence applies "The department may not allow you to submit applications or Notices of Intent later than the expiration date of the operating license, except as allowed by s. NR 670.051 (5)(b).</i> | SECTION 194 | YES | clarify The department may not allow a facility to submit applications or Notices of Intent later than the expiration date of the operating license, except as allowed by s. NR 670.051 (5) (b). |