

Report From Agency

REPORT TO LEGISLATURE

NR 600 series, Wis. Adm. Code

Board Order No. WA-06-17
Clearinghouse Rule No. 19-082

Basis and Purpose of the Proposed Rule

The rule incorporates into state law changes made to federal hazardous waste regulations by the U.S. Environmental Protection Agency in the following Federal Registers, to the extent allowed by state law:

A. NESHAP Final Standards for HW Combustors Amendments, April 8, 2008.

Summary: The federal amendments to the October 2005 final rule clarify several compliance and monitoring provisions and correct several omissions and typographical errors in the final rule. The amendments contain no unfunded mandates, no information collection burdens, affect only hazardous waste combustion facilities with specific North American Industry Classification System (NAICs) codes, and at present there are no known affected entities operating in Wisconsin. (Corrections and clarifications; minimal to no impact; EPA checklist 217)

Addressed in NR 664.0340, Wis. Adm. Code.

B. F019 Exemption for Waste Water Treatment Sludges from Auto Manufacturing Zinc Phosphating Process, June 4, 2008.

Summary: The F019 listing is amended to exempt wastewater treatment sludges generated from zinc phosphating, when such phosphating is used in the motor vehicle manufacturing process, provided that the wastes are not placed outside on the land prior to shipment to a landfill for disposal, and the wastes are placed in landfill units that are subject to or meet the specified landfill design criteria. This F019 listing does not affect any other wastewater treatment sludges. (Relaxation/exemption; EPA checklist 218)

Addressed in NR 661.0031, Wis. Adm. Code.

C. OECD Requirements; Export Shipments of Spent Lead – Acid Batteries, January 8, 2010.

Summary: The amendments implement changes to the agreements concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD), including notice and consent requirements, exception reports, import consent documentation and manifest requirements. (Required to maintain equivalency; not administered by the state; EPA Checklist 222)

Addressed in NR 662.010, 662.055, 662.080 to 662.089, 664.0071, 665.0012 and 665.0071, Wis. Adm. Code.

D. HW Technical Corrections and Clarifications, March 18, 2010.

Summary: These amendments include technical changes to correct existing errors, clarify existing parts of the hazardous waste regulatory program, and update references to Department of Transportation (DOT) regulations that have changed since the publication of various RCRA final rules. (Revisions to manifest regulations required to maintain equivalency; EPA Checklist 223)

Addressed in NR 660.10, 661.0001 to 661.0007, 661.0023, 661.0030 to 661.0033, 662.010 662.011, 662.23, 662.034, 662.041, 662.042, 662.060, 663.12, 664.0052, 664.056, 664.072, 664.314, 664.316,

664.552, 665.056, 665.072, 665.314, 665.316, 666.020, 666.022, 666.070, 666.080, 666.101, 668.40, 668.48, and 670.004, Wis. Adm. Code.

E. Removal of Saccharin and its Salts from the List of HW, December 17, 2010.

Summary: The rule removes saccharin and its salts from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded. (Relaxation; EPA Checklist 225).

Addressed in NR 668.40, Wis. Adm. Code.

F. Revisions of the Treatment Standards for Carbamate Wastes, June 13, 2011.

Summary: The rule provides for, as an alternative standard, the use of the best demonstrated available technologies (BDAT) for treating hazardous wastes from the production of carbamates and carbamate commercial chemical products, off-specification or manufacturing chemical intermediates, and container residues that become hazardous wastes when they are discarded or intended to be discarded. In addition, this action removes carbamate Regulated Constituents from the table of Universal Treatment Standards. (Relaxation; EPA Checklist 227)

Addressed in NR 668.40 and 668.48, Wis. Adm. Code.

G. HW Technical Corrections and Clarifications, May 14, 2012.

Summary: The rule corrects a typographical error in the entry "K107" in the table listing hazardous wastes from specific sources in NR 661.0032 [40 CFR 261.32]; and makes a conforming change at NR 666.020 (2) [40 CFR 266.20(b)] to clarify that a recycling facility must keep a one-time certification and notification related to recyclable materials being used in a manner constituting disposal. (Technical correction; neither more or less stringent; EPA Checklist 228)

Addressed in NR 661.0032, Wis. Adm. Code.

H. HW Manifest Rule, February 7, 2014.

Summary: New requirements will authorize the use of electronic manifests (or e-manifests) as a means to track off-site shipments of hazardous waste from a generator's site to the site of the receipt and disposition of the hazardous waste. (Required to maintain equivalency; paperwork reduction; EPA Special Consolidated Checklist for the Hazardous Waste Electronic Manifest Rules)

Addressed in NR 660.02, 660.10, 662.020, 662.024, 662.025, 663.20, 663.25, 664.0071 and 665.0071, Wis. Adm. Code.

I. Revisions to the Export Provisions of the CRT Rule, June 26, 2014.

Summary: The amendment revises certain export provisions of the cathode ray tube (CRT) final rule published on July 28, 2006. The revisions will allow EPA to better track exports of CRTs for reuse and recycling in order to ensure safe management of these materials. (Mandatory to retain equivalency; not administered by the state; EPA Checklist 232)

Addressed in NR 660.10, 661.0039 and 661.0041, Wis. Adm. Code.

J. Revisions to the Definition of Solid Waste, January 13, 2015.

Summary: The rule revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The purpose of these revisions is to ensure that the hazardous secondary material recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material.

(Relaxation; partially mandatory to retain equivalency; EPA Checklists 233A, 233B, 233C, 233D2, and 233E)

Addressed in NR 660.10, 660.30, 660.31, 660.34, 660.33, 660.42, 660.43, 661.0001, 661.0002, 661.0004, 661.0400, 661.0410, 661.0411 and 661.0420, Wis. Adm. Code.

K. Vacatur of the Comparable Fuels Rules and the Gasification Rule, April 8, 2015.

Summary: This is a revision of regulations associated with the comparable fuels exclusion and the gasification exclusion, originally issued by EPA under RCRA. (Mandatory to retain equivalency; Relaxation; no known entities in Wisconsin; EPA Checklist 234)

Addressed in NR 660.10, 661.004 and 661.0038, Wis. Adm. Code.

L. Disposal of Coal Combustion Residuals from Electric Utilities, April 17, 2015.

Summary: This rule provides exemption from the definition of hazardous waste, wastes generated primarily from processes that support the combustion of coal or other fossil fuels that when co-disposed with coal combustion residuals are not subject to hazardous waste regulations. (Relaxation; EPA Checklist 235)

Addressed in NR 661.0004, Wis. Adm. Code.

M. Imports and Exports of Hazardous Waste, November 28, 2016.

Summary: The rule amends existing regulations regarding the export and import of hazardous wastes from and into the United States. These changes provide greater protection to human health and the environment by making existing export and import related requirements more consistent with the current import-export requirements for shipments between members of OECD. (Mandatory to retain equivalency; not administered by the state, EPA Checklist 236)

Addressed in NR 660.10, 660.11, 661.0004, 661.0006, 661.0039, 662.010, 662.018 662.041, 662.080 to 662.084, 663.10, 663.20, 664.0012, 664.0071, 665.0012, 665.0071, 666.070, 666.080, 667.0071, 673.20, 673.39, 673.40, 673.56, 673.6 and 673.70, Wis. Adm. Code.

N. Hazardous Waste Generator Rule Improvements, November 28, 2016.

Summary: The rule amends the existing hazardous waste generator regulatory program by reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. (Most provisions are equivalent or less stringent; clarifications; EPA Checklist 237)

Addressed in NR 660.03, 660.10, 660.11, 661.0001, 661.0004 to 661.0006, 661.0033, 661.0042, 662.001, 662.010 to 662.018, 662.032, 662.034, 662.035, 662.040, 662.041, 662.043, 662.044, 662.200 to 662.204, 662.206 to 662.214, 662.216, 662.230 to 662.233, 662.250 to 662.256, 662.260 to 662.265, 663.12, 664.0001, 664.0015, 664.0071, 664.0075, 664.0170, 664.0174, 664.0191, 664.1030, 664.1050, 664.1101, 665.0001, 665.0015, 665.0071, 665.0075, 665.0174, 665.0195, 665.1030, 665.1050, 665.1101, 666.080, 666.255, 667.0071, 668.01, 668.07, 668.50, 670.001, 670.042, 673.08 and 679.10, Wis. Adm. Code.

O. Confidentiality Determinations for Hazardous Waste Export and Import Documents, December 26, 2018

Summary: This rule amends existing regulations regarding the export and import of hazardous wastes from and into the United States. Specifically, this rule applies a confidentiality determination such that no person can assert confidential business information claims for documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes. EPA is making these changes to apply a consistent approach in addressing confidentiality claims for export and import documentation. (Mandatory to retain equivalency; clarifications; not administered by the state; EPA Checklist 238)

Addressed in NR 660.02, 661.0039, 662.083, 662.083 and 662.084, Wis. Adm. Code.

P. Hazardous Waste Electronic Manifest Rule, January 3, 2018

Summary: This rule establishes the methodology used to determine and revise the user fees applicable to the electronic and paper manifests to be submitted to the national electronic manifest system (e-manifest system) that EPA is developing under the Hazardous Waste Electronic Manifest Establishment Act, P.L. 112-195, which directs EPA to establish a national electronic manifest system. After the e-manifest system's implementation date, certain users of the hazardous waste manifest will be required to pay a prescribed fee for each electronic and paper manifest they use and submit to the national system so that EPA can recover the costs of developing and operating the national e-manifest system. This final rule also announces the June 30, 2018 date when EPA expected the system to be operational and when this rule and the earlier promulgated One Year Rule will go into effect. EPA began accepting manifest submissions and collecting the corresponding manifest submission fees on this date. (Mandatory to retain equivalency; not administered by the state; EPA Special Consolidated Checklist for the Hazardous Waste Electronic Manifest Rules)

Addressed in NR 660.04, 660.05, 662.020, 662.021, 662.024, 663.20, 663.21, 664.0071, 664.1086, 665.0071, 665.1087 665.1300, 665.1310 to 665.1310, Wis. Adm. Code.

Q. Safe Management of Recalled Airbags, November 30, 2018

Summary: This rule provides a conditional exemption from hazardous waste requirements for entities that remove airbag modules and inflators (i.e. airbag waste) from automobiles. Under this new rule, the entities that generate the airbag waste are "airbag waste handlers" and include automobile dealerships, automotive salvage and scrap yards, independent repair facilities and collision centers. The exemption applies to the generation and accumulation of airbag waste at the airbag waste handler location and during transport to an airbag waste collection facility or designated facility, as long as certain conditions are met. Once collected at the airbag waste collection facility, the airbag waste will be managed as RCRA hazardous waste and must be sent to RCRA disposal or recycling facilities. (Relaxation; no known entities in Wisconsin; EPA Checklist 240)

Addressed in NR 660.10, 661.0004 and 662.014, Wis. Adm. Code.

R. Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine, December 11, 2018

Summary: This rule establishes cost-saving, streamlined standards for handling hazardous waste pharmaceuticals to better fit the operations of the healthcare sector, provides regulatory certainty for healthcare facilities sending unused, unsaleable prescription hazardous waste pharmaceuticals to reverse distributors to receive manufacturer credit, and the rule incorporates flexibilities to accommodate current reverse distribution business practices. In addition, FDA-approved, over-the-counter nicotine replacement therapies (i.e., nicotine patches, gums and lozenges) will no longer be considered hazardous waste when discarded, which will result in significant cost savings and burden reduction in the management of these types of nicotine wastes. (Relaxation. EPA Checklist 241)

Addressed in NR 661.0004, 662.010, 664.0001, 665.0001, 666 Subpart P, 668.07, 668.50, 670.001 and 673.80, Wis. Adm. Code.

Many of these amendments, driven by federal-level changes implemented to improve clarity for the hazardous waste generator community, led to the restructuring and renumbering of existing code. In addition, minor updates have been made to the list of technical standards incorporated by reference into s. NR 660.11, Wis. Adm. Code.

Summary of Public Comments

Comments on the proposed revisions were received on July 29, 2019 by Quad, on August 2, 2019 by Printpack Inc and on August 5, 2019 from Hendrickson Alliance, LLC. The following is a summary of comments and the DNR's response.

1. Two commenters support the proposed revisions of Chapters NR 600 to 679, Wisconsin Administrative Code.

DNR Response: No response or change required.

2. One commenter expressed concern regarding the potential of proposed NR 666 pharmaceutical rules to create a challenge for medication disposal at Wisconsin long term care facilities (LTCF). Commenter stated that current DHS regulations require a facility to destroy medication and that destruction shall be documented. Commenter stated implementing the ban of sewerage (flushing) medication could therefore be a challenge for the facility.

DNR Response: No change. The prohibition of sewerage hazardous waste pharmaceuticals in 40 CFR §§ 266.505 became effective August 21, 2019, in all states, territories and Indian Country. This is because this portion of the rule was promulgated pursuant to the 1984 Hazardous and Solid Waste Amendments (HSWA). The sewer prohibition is the only provision of the Hazardous Waste Pharmaceuticals Final Rule that was promulgated under HSWA authority. As a HSWA provision, the sewer prohibition goes into effect on the effective date of the rule (August 21, 2019) regardless of whether a state government has received authorization to implement RCRA or has adopted Subpart P.

Section DHS 132.65(6)(c) 2. states "Records shall be kept of all medication returned for credit. Any medication not returned for credit shall be destroyed in the facility and a record of the destruction shall be witnessed, signed and dated by 2 or more personnel licensed or registered in the health field." While the DNR agrees that regulatory conflicts should not exist between state agencies and agrees to reach out to DHS to provide guidance on interpretation of the sewerage ban there are current alternatives to sewerage for hazardous waste pharmaceutical destruction.

3. One commenter requested clarification on management standards when a hazardous waste pharmaceutical is also an infectious waste.

DNR Response: No change. Hazardous waste pharmaceuticals that are also infectious waste would be regulated under proposed NR 666 and existing NR 526. This is no change from current Wisconsin regulation. The department intends to update existing guidance on the management of pharmaceutical waste and to develop new guidance documents to address questions on implementation of the new pharmaceutical rule.

4. One commenter requested clarification on documentation of the accumulation time for non-creditable hazardous waste pharmaceuticals at healthcare facilities.

DNR Response: No change. Proposed NR 666.502(6)(b) provides three options for acceptable methods of documentation. Using the example cited by the commenter, a health care facility is required to date the container holding their non-creditable hazardous waste pharmaceuticals with the date of when the first non-creditable hazardous waste pharmaceutical is placed into the container. There is no requirement to add dates when additional non-creditable hazardous waste pharmaceuticals are added to that container. The department intends to update existing guidance on the management of pharmaceutical waste and to develop new guidance documents to address questions on the new pharmaceutical rule. Additional guidance can be found on EPA's website at <https://www.epa.gov/hwgenerators/frequent-questions-about-management-standards-hazardous-waste-pharmaceuticals-and>.

5. One commenter expressed concern regarding the potential difficulty for long-term care facilities to determine when a pharmaceutical is hazardous waste.

DNR Response: No change. When developing the new pharmaceutical rules, EPA along with stakeholders from the healthcare sector, developed management options for this scenario. If a LTCF has difficulty in determining if their potentially creditable pharmaceuticals are a hazardous waste, then the facility may manage all pharmaceuticals as hazardous waste pharmaceuticals. Another option would be to have the LTCF work with the off-site pharmacy on labeling of the unit-dose packages to indicate disposal requirements.

Modifications Made

None.

Appearances at the Public Hearing

Daniel Rocheleau representing Hospital Sisters Health System
Ronald Van Schyndel representing Hospital Sister Health System
Marisa Trapp representing UW System
Troy Stucke
Ken Yass representing Hydrite Chemical Co.
Tom Daly representing Veolia North America
Laura Mushinski representing Seneca Foods
Jacquelyn Domerville representing Georgia Pacific LLC
Sue Gau representing Covanta Environmental Solutions

Changes to Rule Analysis and Fiscal Estimate

None.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement in administrative code; adequacy of reference to related statutes, rules and forms; and clarity, grammar, punctuation, and use of plain language.....

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

1. Comments 2.a.,2.b.,2.c., 2.d., 2.h., 2.k., 2.l., 2.n., 2.o., 2.p., 2.v., 2.aa., 2.bb., 2.dd., 2.ee., 2.ii., 2.II., 2.tt., 2.uu., 2.pp., 2.qq., 2.aaa., 2.ccc., 2.ddd., 2.hhh., 2.iii., 2.nnn. relating to form, style and placement in administrative code 4.a., 4.e., 4.f., 4.g. relating to adequacy of references related to statutes, rules and forms and, 5.m., 5.aa., 5.bb., 5.dd., 5.ee., 5.hh., 5.pp., 5.qq., 5.w., 5.ww., 5.yy, 5.zz., 5.aaa., 5.bbb., 5.ddd., 5.eee., 5.fff.,5.iii., 5.kkk., 5.III., 5.qqq. relating to clarity, grammar, punctuation and use of plain language.

DNR Response: No change. The language drafted in this board order was based on 18 unique EPA final rules associated RCRA Revision Checklists prepared by EPA, with a few minor exceptions based on WI-specific statutory requirements. Each revision checklist contains prescribed language for states to adopt, and where specifically in the code they are to be adopted. The EPA will be reviewing and approving Wisconsin's rule package. This approval, and subsequent authorization, will allow Wisconsin to continue to receive funding from the EPA for the administration of the delegated hazardous waste program.

In accordance with s. 227.14 (1), Stats., the department referred to the Wisconsin Legislative Council Administrative Rules Procedures Manual (Manual) and adhered to Wisconsin formatting and language preferences to the greatest extent possible. At times EPA language did not align with the Manual. Section 227.14 (1m), Stats., allows an agency to use the format of the federal regulations if the state rules being

promulgated are environmental rules and similar or identical to the federal rules. In some circumstances, the department retained federal code language and formatting pursuant to this statutory authority.

2. Comment 2.v., The organization of s. NR 661.0004 (2) should be reviewed as pars. (p) and (q) are omitted.

DNR Response: No change. DNR did not include par. (p), the Wisconsin equivalent to 40 CFR 261.4 (b) (16) because it is reserved by EPA for future use. DNR did not include par. (q), the Wisconsin equivalent to 40 CFR 261.4 (b) (17), because it is specific to a Pennsylvania facilities' waste stream and does not apply to Wisconsin. Pursuant to s. 227.14 (1m), Stats., the department omitted these paragraphs to align with the federal code and to simplify future rulemaking if the language is added to the federal rules.

3. Comment 2.x., The organization of s. NR 661.0004 should be reviewed as subs. (7) to (9) are omitted.

DNR Response: No change. DNR did not include subs. (7) to (9), the Wisconsin equivalent to 40 CFR 261.4 (g) to (i), because Wisconsin is not adopting these waste stream specific exemptions relating to dredged material regulated under the Federal Water Pollution Control Act and carbon dioxide stream injection for geologic sequestration. Pursuant to s. 227.14 (1m), Stats., the department omitted these paragraphs to align with the federal code and to simplify future rulemaking if the language is added to the federal rules.

4. Comment 2.nnn.(1), The abbreviation "TC" appears on page 683 and then throughout the table with out explanation, should it be defined?

DNR Response: No change. DNR reviewed, and found that "TC" is defined earlier in rule. See., e.g., s. NR 661.0024, Wis. Adm. Code.

Final Regulatory Flexibility Analysis

Major parts of this rule will impact small business. Assuming all entities impacted by this rule are small businesses, we anticipate that the economic and fiscal impact of this rule will be moderate based on a department fiscal estimate and economic impact analysis.

A substantial part of these rules presents flexibility of compliance when compared to the existing rule and reduces the burden on entities affected by this rule.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.