

Report to
Legislative Council Rules Clearinghouse
NR 500, 502, 520 and 530, Wis. Adm. Code
Natural Resources Board Order No. WA-11-19

Wisconsin Statutory Authority

Section 287.03, s. 287.17, and s. 289.06 (1), Wis. Stats.

Federal Authority

N/A

Comparison of Adjacent States

Four other Midwest states (Illinois, Indiana, Michigan and Minnesota) have electronics take-back laws. Iowa does not have a similar law. In all four, all collectors and recyclers receiving and processing residential e-waste are required to register with the take-back programs (the programs equivalent to E-Cycle Wisconsin). In contrast, Wisconsin's statute only requires collectors and recyclers participating in the manufacturer-funded E-Cycle Wisconsin program to register with the department.

Two of these states require recyclers to separately obtain a license or permit.

- Minnesota electronics recyclers are required to obtain a "permit by rule" as solid waste facilities, which requires a simple application and a sign-off by local governments that they have met zoning requirements. OFR is not required.
- Indiana issues permits to electronics recyclers that have 23 tons or more of material on-site for more than 5 days. The permits must be renewed every 5 years and require owner financial responsibility (\$200/ton for material on-site, with the state as the beneficiary).

Court Decisions Directly Relevant

None.

Analysis of the Rule - Rule Effect - Reason for the Rule

Wisconsin's electronics recycling law, enacted in 2009, established a statewide program, called E-Cycle Wisconsin, to collect and recycle certain electronics. Under this product stewardship-based law, manufacturers of TVs, computers, monitors and desktop printers must register with the department the brands they sell to Wisconsin households and schools. Those manufacturers also must recycle a target weight of electronics each year based on their sales. Manufacturers contract with state-registered recyclers and collectors to meet their targets. The law also banned landfill and incinerator disposal of many electronics.

The statute (s. 287.17, Stats.) establishing this program was intended to be detailed enough for the department to complete initial implementation without rulemaking. The department has worked extensively with program participants over the years to develop and improve streamlined, online registration and report forms. In addition, the department has worked with stakeholders to put in place a flexible and efficient marketplace for the buying and selling of credit for recycled eligible electronic devices, making it easier for manufacturers to meet their recycling targets and for recyclers to recover costs. The proposed new ch. NR 530 codifies many of these improved and streamlined registration and reporting practices.

The 2009 law did not include requirements for electronics collection and recycling activities

outside of E-Cycle Wisconsin. These activities are regulated by solid and hazardous waste requirements in chs. 289 and 291, Stats., and the ch. NR 500 and 600 series of the Wisconsin Administrative Code. Prior to the electronics recycling law's enactment, and anticipating increasing volumes of electronic waste, the department simplified requirements for electronics recycling to encourage development of e-cycling infrastructure. The department exempted electronics recyclers from solid waste processing license requirements under s. NR 502.08 (2) (f), Wis. Adm. Code, as "Facilities for the processing of scrap iron, steel or nonferrous metal using large machines to produce a principal product of scrap metal for scrap or use for remelting purposes." Transporters were also exempted from solid waste transporting requirements under s. NR 502.06 (2) (a), Wis. Adm. Code, as "Services for the collection and transportation of only gravel pit spoils, quarry materials, earth materials or salvageable materials other than those listed in s. 287.07 (3) or (4), Stats."

Since the decision, there have been several changes in the electronics recycling landscape that have led the department to re-examine this interpretation with this rulemaking and seek to define requirements for electronics collection, transportation and recycling activities. These included:

- Significant growth in Wisconsin's electronics recycling infrastructure, including the rapid growth among a handful of high-tech recycling facilities in the state.
- An increase in enforcement cases resulting from irresponsible recyclers or "scrapppers" removing high value metals from electronics while leaving hazardous materials behind. Since 2015, the department estimates these cases have led to more than \$2 million in completed and needed cleanups for which there are cost estimates but the cleanups have yet to occur. The majority of these costs are covered either by taxpayers or by landlords who own the properties on which the material has been mismanaged.
- A large change in the market for glass from cathode ray tubes (CRTs), which has made recycling older TVs and monitors much more expensive and led to stockpiles of CRTs and lead-containing CRT glass.
- Greater public awareness of the need to recycle electronics, and more demand for legitimate recyclers providing these services.
- The evolution of electronics, resulting in a lower percentage of electronic components that are metal (more valuable as commodities) with a commensurate increase in plastic components with a lower commodity value.

Many elements in the rule come directly from discussions with E-Cycle Wisconsin program participants and other stakeholders. At the most recent E-Cycle Wisconsin stakeholder meeting in May 2018, participants were positive about the electronics recycling law, but noted several areas of concern, including a need for more actions to deter bad actors; the lack of affordable, convenient recycling for some state residents; a lack of consumer awareness about the need to responsibly recycle electronics;; and economic and safety issues the changing electronic waste stream has brought to collectors and recyclers.

Elements of the proposed rule that address these stakeholder concerns, along with the problems the department has seen with electronic waste mismanagement, include the following:

- Strengthening owner financial responsibility requirements for recyclers registered with E-Cycle Wisconsin, including ensuring a more level playing field between in-state and out-of-state recyclers by making requirements for out-of-state recyclers commensurate with requirements for in-state recyclers.
- Ensuring consistency and a level playing field among registered recyclers by establishing criteria for when a material derived from electronics is not "recyclable" and thus can be sent for disposal while remaining eligible to count toward manufacturer recycling targets.

- Codifying department procedures for suspension or revocation of registered collectors, recyclers and manufacturers, to ensure the department remains consistent and transparent with these actions.
- Clarifying which types of electronics meet definitions in s. 287.17 (1), Stats., so that all manufacturers of covered electronic devices are contributing the funding of recycling electronics from Wisconsin households and schools. This includes clarifying that smartphones and most video game systems meet the definition of “consumer computer” in s. 287.17 (1) (e), Stats. These clarifications should ensure manufacturers cover a larger share of electronics recycling costs, potentially reducing fees Wisconsin residents are currently paying to recycle their electronics.
- Codifying requirements for information included in E-Cycle Wisconsin registrations that allows the department to continue maintaining a user-friendly website where Wisconsin residents can find convenient electronics recycling options.
- Providing more specificity about electronics retailers’ customer education requirements under s. 287.17 (9), Stats. Stakeholders have identified retailers where consumers are purchasing new electronics as a significant opportunity to improve awareness of the electronics disposal bans and electronics recycling opportunities.
- Requiring all in-state facilities that recycle electronics to obtain a solid waste processing license from the department, and ensuring other facilities managing electronic waste (including storage and transfer facilities and transporters) meet basic operational and locational standards. This includes requiring that all in-state electronics recycling facilities have owner financial responsibility in place.

Regulating the management of electronic waste under chs. 500-520, Wis. Adm. Code, will also increase protection of the environment and human health by reducing the potential for mismanagement of discarded electronics. Specifically, these changes will:

- Allow the department to provide direct, concrete compliance assistance before sites become large problems.
- Deter small-scale operators from taking on processing they cannot do responsibly.
- Give electronics generators, such as businesses, a clear signal as to which recyclers to use, cutting off supply from irresponsible scrappers and reducing generators’ liability.
- Provide money for future electronic waste cleanups through a requirement that all in-state electronics recyclers maintain owner financial responsibility.

Agency Procedures for Promulgation

The department will hold a virtual hearing on June 28, 2021 at 1:00 p.m. The hearing will be followed by Natural Resources Board adoption, expected in September 2021, followed by a request for the governor’s approval and legislative review.

Description of any Forms (attach copies if available)

The department will develop an electronics recycling facility application for plan of operation approval form, similar to plan of operation approval forms for other solid waste facilities, available here: <https://dnr.wisconsin.gov/topic/Waste/SWForms.html>

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