

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Department of Natural Resources proposes an order to create NR 544.20 to 544.27 relating to a pilot program for alternative method of compliance with solid waste recycling requirements.

WA-27-02

Analysis Prepared by the Department of Natural Resources

Statutory authority: s. 287.11 (4) (a), Stats.

Statute interpreted: s. 287.11 (4), Stats.

The Solid Waste Reduction, Recovery and Recycling Law was enacted in 1990 to manage solid waste and to encourage reduction, reuse and recycling of solid waste in Wisconsin. The law also instituted a graduated series of bans on landfilling and incineration of certain materials, and by statute, delegated responsibility for recycling to local units of government called responsible units. Each responsible unit must develop and implement an effective recycling program to manage the banned materials generated within its region in compliance with the law and with Wisconsin's solid waste management priorities. The requirements for an effective recycling program are specified in ch. NR 544.

The 2001-03 Biennial Budget Bill created s. 287.11 (4), Stats., which directs the department to draft and administer rules for a pilot program that provides for an alternative method of compliance with the requirements of an effective recycling program. These are proposed amendments to ch. NR 544 establishing the criteria for a pilot program for an alternative method by which responsible units can comply with s. 287.11 (2) (b), Stats. The pilot program specifically addresses the materials required to be recycled in lieu of or in addition to materials subject to the 1995 landfill and incineration bans. In addition, the pilot program establishes recycling goals, specifies procedures to identify which materials shall be recycled and specifies procedures to determine whether goals have been achieved.

SECTION 1. NR 544.20 to 544.27 is created to read:

NR 544.20 Pilot program for alternative method of compliance. (1) PURPOSE. (a) The purpose of ss. NR 544.20 through 544.27 is to establish the criteria for a pilot program under s. 287.11 (4), Stats., for an alternative method of complying with s. 287.11 (2) (b), Stats., which requires separation of specified recyclable materials from post-consumer waste. The flexibility allowed by the pilot program in defining materials to be recycled shall apply only to materials listed in s. 287.07 (3) and (4), Stats. Separation of materials listed in s. 287.07 (1m) and (2), Stats., are not affected by the provisions of the pilot program.

(b) The goal of the responsible unit's pilot program each year shall be that its annual recycling rate meets or exceeds its baseline recycling rate.

(c) A responsible unit participating in the pilot program shall be considered to comply with s. 287.11 (2) (b), Stats., as provided in s. 287.11 (4) (c), Stats.

(d) The pilot program ends on December 31, 2005, as provided in s. 287.11 (4) (e), Stats.

Note: The department intends to work with stakeholders to determine whether authorization to continue the pilot program past December 31, 2005 should be requested in the FY 03-05 budget.

(2) APPLICABILITY. The provisions of ss. NR 544.20 to 544.27 apply to a responsible unit selected pursuant to s. NR 544.24 (3) and (4).

NR 544.21 Pilot program definitions. In ss. NR 544.20 to 544.27:

(1) "Annual recycling rate" means the percent of materials collected for recycling pursuant to the requirements of s. 287.11 (2) (b), Stats., and defined by the following formula:

$$\text{Annual recycling rate in percentage} = \frac{a}{a + b} \times 100$$

where:

a = tonnage of materials collected for recycling; and

b = tonnage of solid waste collected in the pilot program participant's geographic area.

(2) "Applicant" means a responsible unit that applies for pilot program eligibility pursuant to ss. NR 544.22 to 544.27.

(3) "Baseline recycling rate" means the percent of materials collected for recycling in a base period before implementation of the pilot program and defined by the following formula:

$$\text{Baseline recycling rate in percentage} = \frac{a}{a + b} \times 100$$

where:

a = average annual tonnage of recyclable materials collected over the 3 years preceding participation in the pilot program; and

b = average annual tonnage of solid waste collected in the pilot program participant's geographic area over the 3 years preceding participation in the pilot program.

(4) "Pilot program" means an effective recycling program that the department selects pursuant to s. 287.11 (4), Stats., and ss. NR 544.20 to 544.27.

NR 544.22 Pilot program eligibility of applicant. (1) ELIGIBLE APPLICANTS. Any responsible unit which maintains an effective recycling program as required under s. NR 544.04 may apply to participate in the pilot program.

(2) INELIGIBLE APPLICANTS. A responsible unit which has not maintained an effective recycling program as required under s. NR 544.04 is not be eligible to participate in the pilot program. Eligibility of a responsible unit on probation under s. NR 544.11 (2) (b) in the past year will be determined on a case-by-case basis.

NR 544.23 Pilot program application. (1) APPLICATION. An applicant shall submit a one-time application to participate in the pilot program to the department on a form provided by the department, postmarked no later than March 1, 2003. If there are an insufficient number of qualified applicants to fulfill requirements in s. 287.11 (4) (b), Stats., the department shall extend the application deadline for 90 days.

Note: This form 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.

(2) CONTENTS OF APPLICATION. An applicant shall provide the following information in its application to participate in the pilot program:

(a) Identification of materials selected for recycling or reuse from the materials listed in Table 2.

1. The applicant shall select materials from at least 4 of the 7 categories listed in Table 2.

2. The applicant shall select at least 9 materials from the list of materials listed in Table 2.

(b) A description of the market plan for materials the responsible unit proposes to recycle under the pilot program that it does not currently require to be recycled.

(c) The baseline recycling rate.

(d) Identification of parties that may be affected through participation in the pilot program and documentation of agreement of cooperation from these parties. Specifically, the applicant shall provide:

1. The identities of the providers of services for collection, sorting, processing, marketing services and educational services.

2. The identity and location of the solid waste disposal facilities, the solid waste treatment facilities or the material recovery facilities where solid waste will be processed or disposed.

(e) A description of how parties identified in par. (d) will prevent the recycling of materials subject to pilot program exemptions from being disposed in solid waste generated in other responsible units serviced by these parties.

(f) If the pilot program requires changes to the local recycling ordinance, a demonstration of how that responsible unit will make any necessary changes to its ordinance after selection as a pilot program and the anticipated schedule of any changes.

TABLE 2.
MATERIALS WHICH CAN BE COLLECTED FOR RECYCLING
FOR THE PILOT PROGRAM

| Category | Material |
|----------------|--|
| Paper | Corrugated paper ¹ |
| | Newspaper ¹ |
| | Magazines ¹ |
| | Office paper ¹ |
| | Residential mixed paper |
| Organics | Food waste |
| | Wood pallets |
| Metal | Aluminum containers ¹ |
| | Steel and bi-metal containers ¹ |
| | Scrap metals |
| Glass | Glass containers ¹ |
| Plastic | Plastic containers (# 1 and 2 resins) ¹ |
| | Plastic containers (# 3-7 resins) ² |
| | Plastic film (LDPE) |
| | Polystyrene ² |
| Special Wastes | Nickel-cadmium batteries ³ |
| | Mercury thermostats ³ |
| | Dental amalgam ⁴ |
| | Televisions ⁵ |
| | Computers ⁵ |
| | Other electronic appliances ⁵ |
| | Fluorescent/HID lamps ⁵ |
| | Mercury thermometers ⁵ |
| | Antifreeze (automobile and other liquids) ⁶ |
| Other | Waste tires ¹ |
| | Latex paint |
| | Carpet |
| | Textiles |
| | Clean C&D waste |

¹ Material is subject to 1995 landfill and incineration bans, as specified in s. 287.07 (3) and (4), Stats.

² Material is subject to 1995 landfill and incineration bans but the requirement to recycle was waived by the department on October 4, 1996 until it has been determined that their collection and processing is practical.

³ Management of these materials when recycled is addressed under the Wisconsin universal waste standards, ch. NR 690.

⁴ When recycled, these materials are conditionally exempt from hazardous waste regulations under s. NR 605.05 (2) (a) or (f).

⁵ Management of these materials or components of these materials when recycled is addressed through administrative discretion in a memorandum dated January 11, 2000, "Management of Wisconsin-Specific Universal Wastes". Additional guidance for the management of used computers by business is provided in DNR publication PUB WA-420 00.

⁶ Guidance for management of antifreeze that is recycled is provided in DNR Publication PUBL_WA_356_98.

(3) AUTHORIZING RESOLUTION. A responsible unit shall submit to the department an authorizing resolution by the governing body designating a representative to submit this application and handle all pilot program actions. Resolutions on file with the department for other recycling grant programs in prior years do not satisfy this requirement. The department may not review an application submitted without an authorizing resolution.

NR 544.24 Pilot program approval process. (1) PARTICIPANT SELECTION. The department shall evaluate all eligible applications for the pilot program. The department shall select participants for the pilot program based upon the factors listed in subs. (2) and (3).

(2) NUMBER TO BE SELECTED. The department shall select 3 responsible units with a population of less than 5,000, 3 responsible units with a population of at least 5,000 but less than 25,000, and 3 responsible units with a population of at least 25,000 to participate in the pilot program, as specified by s. 287.11 (4) (b), Stats.

(3) PILOT PROGRAM SELECTION CRITERIA. The department shall select proposals that best meet program selection criteria as follows:

(a) Ability to measure or report the amount of each material collected for reuse or recycling pursuant to the requirements in s. 287.11 (2) (b), Stats.

(b) Ability to market recycled materials as described in the market plan for materials not currently required to be recycled.

(c) Ability to measure or report the amount of solid waste collected in the responsible unit's geographic area for disposal in a solid waste disposal or a solid waste treatment facility.

(4) PILOT PROGRAM NOTIFICATION PROCEDURES. The department shall notify applicants selected as pilot program participants in writing, and provide a pilot program agreement under which the applicant can officially become a qualified pilot program participant. The agreement shall require that changes in local ordinances identified under s. NR 544.23 (2) (f) and any other requirements set out in ss. NR 544.20 to 544.27 be implemented. The applicant shall respond to the notification within 45 calendar days of receipt of the notification. To qualify as an approved pilot program participant, selected applicants shall return the signed pilot program agreement within 45 days and implement the pilot program according to the terms of the pilot program agreement.

NR 544.25 Pilot program annual reporting procedures. (1) REPORT REQUIREMENTS. A pilot program participant shall report annually, on forms provided by the department, the tonnage of materials collected for recycling or reuse pursuant to the requirements in s. 287.11 (2) (b), Stats., through the pilot program and the tonnage of solid waste collected in the geographic area of the responsible unit.

(2) CONTENTS OF REPORT. The annual report required under this section shall include all of the following:

(a) The tonnage of each material collected for recycling or reuse pursuant to the requirements of s. 287.11(2)(b), Stats.

(b) The tonnage of solid waste collected in the responsible unit's geographic area.

(c) The annual recycling rate.

(d) A comparison of the annual recycling rate to the baseline rate. If the goal of meeting or exceeding the baseline rate has not been made, the responsible unit shall provide an explanation of efforts to improve upon the annual recycling rate and meet or exceed the baseline rate in the future.

NR 544.26 Pilot program agreement amendments. A pilot program participant may request to substantially amend the objective or scope of its pilot program by submitting a request in writing to the department. The department shall notify the pilot program participant of its decision within 30 days upon receipt of the amendment request.

NR 544.27 Pilot program termination. (1) A pilot program participant may request in writing to terminate its participation in the pilot program at any time. The department shall grant the request if the program can be operated as an effective recycling program under its original approval. In that case, the originally approved effective recycling program shall be reinstated by the responsible unit.

(2) The department may terminate the participation of a responsible unit in the pilot program if it determines that the pilot program participant does not meet the requirements of s. 287.11 (4), Stats.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on August 14, 2002.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin _____ .

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)