

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: Chapters NR 660 to NR 679, Wisconsin Administrative Code WA-06-17

Relating to: The federal hazardous waste regulations promulgated since the previous authorization of the Wisconsin hazardous waste program.

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rules will be proposed as permanent rules.

2. Detailed description of the objective of the proposed rule:

The Wisconsin DNR is authorized by the US Environmental Protection Agency (EPA) to manage a state program recognized as equivalent to the federal Resource Conservation and Recovery Act (RCRA). In Wisconsin, this is the Hazardous Waste Management Program within the Waste and Materials Management Program. To maintain program authorization, WDNR must have analogous regulations to the federal hazardous waste regulations found in 40 CFR 260-279. Wisconsin has promulgated these equivalent regulations in chs. NR 660-679, Wisconsin Administrative Code (W.A.C.).

The purpose of this scope statement is to request authority to amend chs. NR 660-679, W.A.C. due to changes made to the analogous federal regulations. In addition, as part of this rule effort, the department will evaluate whether the federal rules can be incorporated by reference into W.A.C. The federal rules that the WDNR requests authority to evaluate for revision, adoption, or incorporation by reference into the W.A.C. include:

- Definition of Solid Waste Rule (DSW);
- Generator Improvements Rule;
- Federal rules related to the management of pharmaceutical wastes;
- Hazardous Waste Manifest Rule and associated amendments;
- Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule; and
- Federal hazardous waste technical corrections and clarifications including evaluation of the final rule for conditional exclusions from solid waste and hazardous waste for solvent-contaminated wipes and certain Coal Combustion Residuals (CCR).

The department is required to promulgate rules at least equivalent to the US EPA's RCRA regulations to continue to maintain authorization to administer the federal hazardous waste program in Wisconsin. The department intends to adopt equivalent content and format of the promulgated federal regulations.

The three more significant of these are rules include the DSW rule, the generator improvements rule, and the proposed regulations for hazardous waste pharmaceuticals. The adoption of the federal DSW final rule would address the revised definition of legitimate recycling and associated regulatory gaps, and would include a targeted manufacturing exclusion for certain spent solvents in order to increase economic and environmental benefits, including energy conservation.

The adoption of the federal hazardous waste Generator Improvements Rule would address smaller and/or non-manufacturing facility issues such as: strengthening requirements on waste determinations and recordkeeping, requiring re-notification of generator status, creating allowances for episodic generators, revising regulations on labeling and marking to improve communication and decrease risks to human health, and clarifying preparedness and emergency planning requirements.

The department plans to adopt the final promulgated version of the proposed federal management standards for hazardous waste pharmaceuticals. This federal rule involves sector-specific regulations relating primarily to adopting safe and practical standards for the management of hazardous waste pharmaceuticals while protecting surface and drinking water by reducing the amount of pharmaceuticals entering waterways. Sector-specific industries potentially affected by these federal regulations would be healthcare facilities, pharmacies and reverse distributors.

Additional potential federal regulations requiring evaluation and possible adoption by the department relate to existing promulgated federal regulations. They include amendments on oil-bearing secondary materials, hazardous waste combustors, wastewater treatment sludges, comparable fuel exclusions, technical corrections and clarifications, treatment standard revisions, electronic manifest rules, and exclusions for certain coal combustion residuals. Mandatory federal rule revisions will be adopted and the remaining revisions will be evaluated. Additional rule changes may be pursued which are reasonably related to those discussed within this scope statement. Other federal RCRA regulations may be considered for adoption as well to maintain authorization to administer the federal hazardous waste program in Wisconsin.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The proposed rule revisions will:

- Maintain our existing policy of protecting public health and welfare by providing for proper management of hazardous waste and used oil constituents;
- Update current state rules, driven by federal regulatory requirements, in order to allow the state to retain authorization from EPA; and
- Adopt federal requirements already in effect, newly promulgated federal requirements nearing effective dates, and federal requirements nearing promulgation at the time of this scope statement.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 287.03(1)(a), Wis. Stats., directs the Department to promulgate rules to implement the Solid Waste Reduction, Recovery and Recycling program pursuant to Chapter 287, Wis. Stats.

Section 289.05 and 289.06, Wis. Stats., directs the Department to promulgate rules establishing solid waste management standards. Pursuant to s.291.05 and 291.07, Wis. Stats., the department is to promulgate rules for the implementation of the resource conservation and recovery act and the methods of treatment or disposal of particular hazardous wastes.

Additional statutes which may be affected by the proposed rule revisions include Sections 227.11 (2) (a), 227.14 (1m), 289.21, 289.24, 289.30, 289.31, 289.33, 289.41, 289.43, 289.61, 289.63, 291.25, 299.05, and 299.53, Stats.

The proposed rules and revisions would replace and update current state rules that comprehensively regulate the generation, transportation, recycling, treatment, storage and disposal of hazardous waste and used oil. As authorized by s. 227.14 (1m), Stats., the format of the proposed rules is similar to the federal regulations published in the code of federal regulations by the EPA under RCRA.

When the Wisconsin legislature passed the Hazardous Waste Management Act in 1977, it set out a declaration of policy in what is now s. 291.001, Stats., regarding hazardous waste management. It found that hazardous wastes, when mismanaged, pose a substantial danger to the environment and public health and safety. To provide for proper management of hazardous waste within the state, the legislature called upon the department to develop and administer a regulatory program that met nine specific objectives.

Section 291.001, Stats., calls for a department program that:

- (1) Relies upon private industry or local units of government to provide hazardous waste management services;
- (2) Requires the transportation, storage, treatment and disposal of hazardous wastes to be performed only by licensed operators;

- (3) Requires generators of hazardous waste to use operators licensed to transport, treat, store or dispose of hazardous wastes;
- (4) Does not interfere with, control or regulate the manufacturing processes which generate hazardous wastes;
- (5) Ensures the maintenance of adequate records on, and the reporting of, the disposition of all hazardous wastes either generated in or entering this state;
- (6) Encourages to the extent feasible, the reuse, recycling or reduction of hazardous wastes;
- (7) Provides adequate care and protection of disposal facilities after the facilities cease to accept hazardous wastes;
- (8) Provides members of the public and units of local government an opportunity to review and comment upon the construction, operation and long-term care of hazardous waste management facilities; and
- (9) Meets the minimum requirements of federal RCRA program.

The legislature adopted a number of statutes setting out general and specific hazardous waste rulemaking authority. Some of these rulemaking provisions are mandatory, while others are discretionary. Section 291.05, Stats., requires the department to adopt by rule EPA's criteria for identifying the characteristics of hazardous waste, and to adopt EPA's lists of hazardous wastes and hazardous constituents, with limited exceptions. Rules governing hazardous waste transportation are also mandated, as are rules governing specific aspects of hazardous waste generation, treatment, storage and disposal, corrective action, licensing, closure, long term care, license and plan review as well as approval fees. Discretionary rulemaking authority was granted to prohibit certain methods of treatment or disposal of particular wastes, and to exempt by rule certain persons who generate, transport, treat, store or dispose of hazardous wastes if such action does not present a significant hazard to public health and safety or the environment.

Since hazardous wastes are a subset of solid wastes, in addition to ch. 291, Stats., rulemaking authority in various sections of ch. 289, Stats., is also relied upon. In particular that authority relating to hazardous waste facility location, design, construction, operation, maintenance, closure, long term care, negotiation and arbitration, financial responsibility and licensing and recycling. Finally, the department also relies in part on rulemaking authority in s. 299.53, Stats., to regulate used oil.

In addition, as part of this rule revision effort, the Waste and Materials Management program will work with the Bureau of Legal Services on the feasibility of incorporating and adopting these federal rules by reference into W.A.C.

5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Approximately one-and-a-half to two years will be needed to draft the rule package.

6. List with description of all entities that may be affected by the proposed rule:

The proposed rules will likely have some impact on all regulated classes of hazardous waste generators and will specifically impact manufacturing processes which use solvents, healthcare facilities and pharmacies, and hazardous waste recyclers.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The EPA directs states to comply with federal RCRA hazardous waste regulations, and Wisconsin state statutes direct the department to adopt and administer rules that are at least equivalent to the EPA's RCRA regulations. The scope statement intends to capture federal revisions, technical corrections, and newly promulgated hazardous waste regulations to allow for the department to retain EPA authorization to administer the federal hazardous waste program in Wisconsin.

The adoption of the federal DSW final rule would modify existing state hazardous waste rules to include a revised definition of legitimate recycling, associated regulatory gaps and a targeted manufacturing exclusion for certain spent solvents in order to increase economic and environmental benefits, including energy conservation.

The adoption of the federal hazardous waste Generator Improvements Rule would address smaller and/or non-manufacturing facility issues such as: strengthening requirements on waste determinations and recordkeeping, requiring re-notification of generator status, creating allowances for episodic generators, revising regulations on labeling and marking to improve communication and decrease risks to human health, and clarifying preparedness and emergency planning requirements.

The department will evaluate for adoption the final promulgated version of the proposed federal management standards for hazardous waste pharmaceuticals if finalized. This federal rule involves sector-specific regulations relating primarily to adopting safe and practical standards for the management of hazardous waste pharmaceuticals by healthcare facilities, pharmacies, and reverse distributors.

The adoption of the federal Hazardous Waste Manifest final rule 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. The e-manifest system will be established and managed at the federal level; however, the associated state regulations must reflect the new federal standards.

The adoption of the export provisions of the federal CRT rule will allow for improved tracking of international exports of CRTs for reuse and recycling in order to ensure safe management of these hazardous materials.

In addition to the federal rules outlined above, the rule revisions and updates covered by this scope statement will incorporate into state administrative code new federal regulations which address: oil-bearing secondary materials, hazardous waste combustors, the comparable fuels exclusion and gasification exclusion, wastewater treatment sludges, technical corrections and clarifications, treatment standard revisions and exclusions for certain coal combustion residuals.

The rule revisions to incorporate new and revised federal regulations adopted by EPA, and to correct errors in current state and federal rules, will allow for department to obtain federal authorization of the hazardous waste program for these rules and to maintain program primacy. The proposed rule revisions are intended to meet the requirements of RCRA.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

Minimal impact to small businesses is anticipated. Federal rules require an economic impact analysis for promulgation and the DSW, Generator Improvements, and pharmaceutical rules were deemed by federal analysis to cause "minimal impact" with little or no change in market prices or production. These federal rules were intended to provide clarity and in some cases result in a reduction in regulation. The federal DSW rule package allows for more flexible methods of accumulation, storage and transport of hazardous wastes. The Generator Improvements rule contains a relaxation on the categorization of generator types, which will decrease administrative requirements and operational costs. The proposed pharmaceutical rules were developed to clarify regulation, definition, and interpretation of existing state and federal regulations with respect to hazardous waste pharmaceuticals and the pharmaceutical reverse distribution process.

The adoption of these regulations into W.A.C. will likely have some impact on all regulated classes of hazardous waste generators which include manufacturers, commercial and retail establishments, and healthcare facilities.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding three to four public hearings in the month of August, 2018. Potential hearing cities will be: Eau Claire, Green Bay, Milwaukee, and Madison.

The department will hold these hearings in these locations to solicit input from hazardous waste and used oil generators, transporters, management facilities and the public.

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