

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** WA-11-19

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**Relating to:** Revisions to chs. NR 502 and 520 and creation of ch. NR 530 for the purpose of implementing electronics recycling program requirements

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**Rule Type:** Permanent

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### 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:

Wisconsin's electronics recycling law (2009 Wisconsin Act 50) established a statewide product stewardship program to collect and recycle certain electronics from Wisconsin households and schools (now in s. 287.17, Wis. Stats.). This recycling program, funded by manufacturers of TVs, computers, monitors and printers, is called E-Cycle Wisconsin. The law also banned landfill and incinerator disposal of many electronics beginning in September 2010 under s. 287.07(5), Wis. Stats. To date, the department has not promulgated any rules related to s. 287.07(5) or s. 287.17, Wis. Stats.

The purpose of the proposed rule is to create a new administrative code chapter under the authority of s. 287.17, Wis. Stats., and to amend chs. NR 502 and 520, Wis. Adm. Code, as they relate to electronics recyclers.

The goals of this rulemaking are to:

- Ensure the electronics recycling program created by s. 287.17, Wis. Stats., continues to function well, including maintaining streamlined registration and reporting practices and preserving a level playing field among program participants.
- Protect human health and the environment by providing more consistent oversight of electronics recycling operations in Wisconsin.

Specifically, the proposed rule would:

1. Codify existing registration and reporting practices for electronics collectors, manufacturers and recyclers that register with the department under s. 287.17, Wis. Stats.
2. Codify the department's guidance clarifying whether specific electronic devices meet definitions under s. 287.17 (1), Wis. Stats.
3. Add criteria for whether materials derived from eligible electronic devices are "recyclable" under s. 287.17 (1) (m).
4. Modify manufacturer registration fees to reduce or eliminate fees some small electronics manufacturers pay to the department under s. 287.17 (4) (b), Wis. Stats.

5. Clarify and modify some operational requirements for recyclers registered under s. 287.17 (8), Wis. Stats.
6. Codify existing practice of allowing recyclers registered under s. 287.17(8), Wis. Stats., to sell credits for recycled pounds (sometimes called “paper” pounds) to other registered recyclers within a program year.
7. Clarify and strengthen owner financial responsibility requirements for recyclers registered with the department under s. 287.17 (8), Wis. Stats., to ensure that adequate funds are set aside for full cleanup of electronics recycling facilities, and that the department or relevant authorities in other states can access and use the funds when needed.
8. Clarify retailer outreach requirements under s. 287.17 (9), Wis. Stats.
9. Codify department practice implementing the suspension and revocation authority in s. 287.17 (10) (h), Wis. Stats.
10. Require a solid waste processing license under s. 289.31, Wis. Stats., for most electronics recycling operations.

Additional rule changes or clarifications may be pursued which are reasonably related to those discussed here.

### **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:**

Under the electronics recycling 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.

E-Cycle Wisconsin has each year produced a statutorily required annual report that includes proposed changes to the program. Some of those proposed changes can be implemented through this rule making.

Additionally, the department tested a policy interpretation that many electronics recyclers fall outside of the definition of the term “solid waste facility” as defined by s. 289.01(35), Wis. Stats., and therefore that they did not require a license as a solid waste facility under s. 289.31, Wis. Stats. However, the department’s experience with several large and expensive cases of electronics mismanagement and its deeper knowledge of the hazardous materials found in many electronics show that the processing activities engaged in by electronics recyclers involve materials not normally found on sites of other recyclers exempted from the definition of “solid waste facility.” Therefore, the department believes that a potential rule change to make clear the distinction between electronics recycling and exempt activities is warranted.

Policy alternatives include continuing to rely on guidance or asking for additional and more detailed legislative changes.

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

Section 287.03, Wis. Stats., directs the department to promulgate rules necessary to implement ch. 287, Wis. Stats.

In addition, s. 287.17, Wis. Stats., gives the department specific authority for promulgating rules related to certain aspects of the electronics recycling law. Section 287.17(10)(k) gives the department authority to modify manufacturer registration fees. Section 287.17(10)(i) gives the department authority to modify the list of eligible electronic devices in s. 287.17(1)(gs) or the list of electronics banned from landfill or incinerator disposal in s. 287.07(5)(a), Wis. Stats. Section 287.17(8)(e) gives the department authority to modify or add to operational requirements for registered recyclers.

Section 289.06(1), Wis. Stats., directs the department to promulgate rules implementing and consistent with chapter 289 and ss. 292.31 and 292.35.

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

The department estimates that approximately 460 hours of staff time will be required to complete the proposed rule.

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

The new rule will primarily affect entities covered by Wisconsin's electronics recycling program, created by s. 287.17, Wis. Stats., and referred to as E-Cycle Wisconsin. Affected types of entities include:

- Electronics collectors as defined in s. 287.17 (1) (mg), Wis. Stats.;
- Electronics manufacturers as defined in s. 287.17 (1) (i), Wis. Stats.;
- Electronics recyclers as defined in s. 287.17 (1) (mr), Wis. Stats.; and
- Electronics retailers as defined in s. 287.17 (1) (n), Wis. Stats.

Changes to chs. NR 502 and NR 520, Wis. Adm. Code, will affect individuals or facilities that store, sort, dismantle, shred or otherwise process electronics and components derived from electronics. Some of these may also be E-Cycle Wisconsin participants.

By requiring a solid waste processing license for electronics recyclers, the revised rules will allow the department to provide a list of licensed recyclers to individuals, businesses, institutions and organizations wishing to recycle electronics.

The rule would not directly affect electronics consumers (individuals, and K-12 public schools and Parental Choice Program schools) that are already responsible for recycling their used electronics under E-Cycle Wisconsin. It also would not directly affect businesses that must recycle, reuse or manage their electronics as hazardous waste, but are not covered by E-Cycle Wisconsin.

**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 :**

There is no existing or proposed federal regulation for electronics recycling.

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

We anticipate the total economic cost of this proposed rule to be minimal (less than \$50,000).

Much of the proposed rule would codify current practices. Depending on the exact nature of changes made to operational standards for registered recyclers under s. 287.17(8), Wis. Stats., these facilities might incur small, one-time costs associated with staff time to understand and implement the changes. The department will conduct outreach to affected facilities through workshops, webinars and/or one-on-one technical assistance.

The rule would reduce annual registration fees paid to the department by some electronics manufacturers. This loss of revenue can be absorbed by the department without changes to program service.

Requiring a solid waste processing license for electronics dismantling and processing activities would have a one-time cost for some facilities, including small businesses. Electronics dismantling/processing locations not registered with E-Cycle Wisconsin would incur a one-time \$550 Initial Site Inspection fee (paid to the department) and one-time costs to set aside money (owner financial assurance funds) for closure and cleanup costs and, in some cases, to hire a consultant to help prepare these documents. Some facilities registered as collectors, but not recyclers, under E-Cycle Wisconsin could incur similar one-time costs. Recyclers registered with E-Cycle Wisconsin would see little, if any, additional costs, as they would already meet most license requirements. A small amount of department staff time would be required for the licensing process.

Some of these costs could be offset by the benefit of being on a department list of licensed facilities, which could make it easier for some to attract customers. Requiring solid waste processing licenses for facilities dismantling or processing electronics could also reduce or avoid costs to landlords and governments caused by the cleanup of illegally stored or dumped mismanaged electronics, which can run into the tens or hundreds of thousands of dollars.

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

The department anticipates holding one public hearing in the month of April 2021. The hearing city will be: Madison with webcast.

The department will hold the hearing in this location to allow stakeholders to attend in person but also accommodate stakeholders located throughout the state and outside of Wisconsin via online streaming.

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