

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WA-11-21

Relating to: Revisions to chs. NR 660 to 679 to incorporate federal hazardous waste regulations promulgated since the previous authorization of the Wisconsin hazardous waste program, relating to updated test methods.

Rule Type: Permanent

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

The rule will be proposed as a permanent rule.

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

The Wisconsin Department of Natural Resources (department) is authorized by the U.S. 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, Wisconsin must have analogous regulations to the federal hazardous waste regulations found in 40 CFR 260 to 279. Wisconsin has promulgated these equivalent regulations in chs. NR 660 to 679, Wis. Adm. Code.

The purpose of this scope statement is to request authority to amend chs. NR 660 to 679, Wis. Adm. Code, due to changes made to the analogous federal regulations. The federal rule that the department requests authority to evaluate for revision, adoption, or incorporation by reference into administrative code is the U.S. EPA Rule Modernizing Ignitable Liquid Determinations, promulgated on July 7, 2020. The federal rule under evaluation:

- Updates outdated flash point test methods relating to ignitable hazardous waste determinations.
- Clarifies the definition of an aqueous solution.
- Corrects cross references to U.S. Department of Transportation (DOT) regulations.
- Removes obsolete information in the ignitability regulation.

The department seeks authorization to adopt equivalent content and format of the promulgated federal regulations. Additional rule changes may be pursued which are reasonably related to those discussed within this scope statement.

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.
- Update current state rules, driven by federal regulatory requirements, in order to allow the state to retain authorization from EPA.
- Adopt federal requirements already in effect relating to updated test methods.
- Provide flexibility in testing requirements and update and clarify regulations pertaining to ignitable liquid determinations. The clarifications and flexibilities would improve environmental compliance options, and thereby enhance protection of human health and the environment while providing economic benefit to test facilities.

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

Section 291.05, Wis. Stats., requires the department to promulgate criteria identical to those created by EPA for identifying the characteristics of hazardous waste. The federal rule at 40 CFR 261.21 has changed regarding the ignitability characteristic.

As authorized by s. 227.14 (1m), Wis. Stats., the format of the proposed rules would be similar to the federal rules published in the code of federal regulations by the EPA under RCRA.

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 800 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 proposed rules will standardize test procedures, update standards to match federal requirements, and potentially eliminate the need for outdated equipment and methodologies.

This will likely have some positive economic impact on certified labs, environmental consulting services, hazardous waste treatment, storage and disposal facilities (TSDFs) and all regulated classes of hazardous waste generators that conduct testing activities to determine the ignitability characteristics of certain wastes. The EPA projects qualitative benefits to human health and the environment through the reduced use of mercury thermometers.

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 as stringent as the EPA's RCRA regulations. The authorization sought with this scope statement would allow the department to capture newly promulgated federal hazardous waste regulations

within state administrative rules and would enable the department to retain EPA authorization to administer the federal hazardous waste program in Wisconsin.

The current ignitability test method required in state rules refers to outdated standards and utilizes instrumentation that is no longer readily commercially available. For example, the standards require the use of mercury thermometers, which are becoming more difficult to acquire and calibrate due to their use and availability being phased out for environmental, health, and safety concerns. The adoption of the Modernizing Ignitable Liquid Determinations final federal rule would expand existing allowable test methods while retaining the current allowable procedures to provide entities increased flexibility.

The exclusion for specific aqueous alcohols from regulation as ignitable hazardous waste has been in place at the federal and state levels to allow some waste streams, such as latex paints and alcoholic beverages, to fall outside of RCRA regulation. These waste streams have low flash points but are unable to sustain combustion. The proposed rule change defines “aqueous” as “50% water by weight” and narrows the types of alcohol that would qualify as a hazardous waste, thereby potentially reducing the applicability of these requirements to certain entities. This rule would have no effect on the applicability of the discharge prohibitions presented in the Clean Water Act (CWA) national pretreatment standards for existing and new sources of pollution.

The EPA updates to the ignitability regulations correct cross references to U.S. Department of Transportation (DOT) regulations and remove obsolete information. Specifically, the proposed rule change would modify the criteria for ignitable compressed gases and oxidizers to adhere more closely to the corresponding definitions in the DOT Hazardous Materials Regulations.

The rule revisions to incorporate both new and revised federal regulations as adopted by EPA will allow the department to maintain 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 an economic impact on small businesses):

The proposed rule would likely affect all regulated classes of hazardous waste generators, testing laboratories, and TSDFs. The department, however, does not anticipate adverse economic impacts from implementing the proposed rule. EPA prepared an economic analysis of the potential costs and benefits associated with the Modernizing Ignitable Liquid Determinations rule, which would be adopted as part of this proposed rule revision. The federal rule provided additional clarity and updated test methods while also retaining current procedures to provide entities increased flexibility. EPA’s economic analysis indicates that the rule will cause “minimal impact,” with little or no change in market prices or production, and projects implementation will result in annualized cost savings. EPA’s analysis also shows qualitative benefits to human health and the environment through the reduced use of mercury thermometers. The department does not expect the other parts of the rule to affect any entity because they do not create new requirements or change existing requirements.

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

The department anticipates holding a virtual public hearing in or around May 2024 to provide an opportunity for business/industry, municipalities, environmental groups and the public throughout the state to participate.

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