nr660_EmR1007.pdf **Natural Resources – Revises Ch. NR 660 – EmR1007**

Publication Date: **March 17, 2010**
Effective Dates: **March 17, 2010 through July 1, 2011**

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an emergency order to amend NR 660.10 (107) and create NR 660.10 (70m), relating to hazardous waste management.

WA-31-09(E)

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted: Sections 227.11 (2) (a) and 289.67 (2) (b) 1., Stats.

2. Statutory Authority: Sections 227.11 (2) (a), 227.24 (1) (a), 289.67 (2) (de) and 291.07 (2) Stats., and section 9137 (2) of 2009 Wisconsin Act 28

3. Explanation of agency authority to promulgate the rules under the statutory authority: Section 227.11(2) (a), Stats., expressly confers rulemaking authority upon the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, and s. 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

Section 289.67 (2) (de), Stats., as created by 2009 Wisconsin Act 28 (the 2009-2011 biennial budget bill), requires the department to promulgate by rule definitions of "large quantity generator" and "small quantity generator" for purposes of the hazardous waste generator fees established by s. 289.67 (2) (b) 1., Stats., as amended by 2009 Wisconsin Act 28.

Section 9137 (2), a non-statutory provision in 2009 Wisconsin Act 28, authorizes the department to promulgate the required definitions using emergency rule making procedures, but is not required to provide evidence that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to
provide a finding of emergency. In addition, such emergency rules may remain in effect until July 1, 2011, or until a corresponding permanent rule takes effect, whichever occurs first.

Under s. 291.07 (2), Stats., discretionary rulemaking authority is granted to the department to exempt by rule certain persons who generate hazardous wastes from requirements that would otherwise apply if such action does not present a significant hazard to public health and safety or the environment.

4. Related statute or rule: Chapters 160, 287, 289, 292, 293 and 299, Stats., and chs. NR 660 to 679, Wis. Adm. Code.

5. Plain language analysis of the proposed rule: This proposed emergency rule adds a definition of "large quantity generator" and revises the definition of "small quantity generator" in ch. NR 660. Under current hazardous waste rules, standards are set for large quantity and small quantity hazardous waste generators, so their status is functionally described, but there are no specific, comprehensive definitions of these terms.

6. Summary of and preliminary comparison with any existing or proposed federal regulation: There is no specific definition of "large quantity generator" in the U.S. Environmental Protection Agency's hazardous waste regulations in 40 CFR § 260.10, upon which s. NR 660.10 is based. Large quantity generator status is functionally described in text in 40 CFR Part 262, *Standards Applicable to Generators of Hazardous Waste*. 40 CFR § 260.10, includes a definition of "small quantity generator" but the definition is incomplete. Small quantity generator status is functionally described in text in 40 CFR Part 262. The department proposes to add explicit, complete definitions of large and small quantity generators to s. NR 660.10 based on the state and federal functional definitions.

7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan): Minnesota's hazardous waste rules in s. 7045.026 define large and small quantity generators. These definitions are similar to the definitions in the proposed rule. All hazardous waste generators in Minnesota are assessed hazardous waste fees. For 2008, businesses and institutions that were very small quantity generators paid an annual base fee of $453. Small quantity and large quantity generators paid the $453 base fee and $.0817 per pound ($163.40 per ton) of hazardous waste generated. These fees are revised annually by a formula in the state's administrative rules to generate revenues to meet a budget amount set by the state legislature. Minnesota's base fee is comparable to the new base fee established by 2009 Wisconsin Act 28 for Wisconsin large quantity generators; however, Minnesota's per ton fee is much higher. Minnesota's fees for small quantity generators are much higher than Wisconsin's new base fee of $350 base, and current fee of $20 per ton. Very small quantity generators are not charged fees in Wisconsin.

Iowa does not have a federally authorized hazardous waste program. The program is administered by the U.S. Environmental Protection Agency Region 7 office in Kansas City, Mo., and the federal regulations are in effect in the state.

Illinois' hazardous waste rules have a definition for small quantity generator that is equivalent to the definition in the federal regulations. There is no definition of large quantity generator; however, a note after 35 Ill. Adm. Code 7220.127 states that the "[Illinois Pollution Control] Board interprets the term large quantity generator to mean a hazardous waste generator that is not a small quantity generator." All large quantity generators are assessed an annual fee of $500. This fee is comparable to Wisconsin's new base fee of $470. Large quantity generators in Wisconsin are also assessed a fee of $20 per ton of hazardous waste generated per calendar year, unless exempted.

Under Michigan's rules in R 299.9107 (v), the definition of small quantity generator is equivalent to the federal definition. Large quantity generator is not defined in rule. Michigan charges an annual fee of $100 per year to small quantity generators, $400 to large generators (businesses or institutions that generate more than 1,000 kg. per month and up to 9,000 kg. per year) and $1,000 to very large generators (generate more than 9,000 kg. per year). The base fee of $100 for small quantity generators in Michigan is less than the Wisconsin base fee of $350, in addition to tonnage fee, unless exempted. Michigan's fee of $400 for large generators is less than Wisconsin's base fee of $470, plus the per ton fee. Under Michigan's fee schedule the largest generators are assessed $1,000, which is more than twice the Wisconsin base fee amount.

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule: The proposed rule is required by statute and reflects current state and federal functional definitions of "large quantity generator" and "small quantity generator" used in the hazardous waste management program.

9. Any analysis and supporting documentation that the agency used in support of the agency's determination of the rule's effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report: See No. 8, above.

10. Effect on small business, including how the rule will be enforced: There is no direct correlation between the definitions of "small business" and "large quantity generator" or "small quantity generator", so a precise assessment of the definitions' effect on small business is not possible. Small businesses may be either large quantity or small quantity generators of hazardous waste, or neither. In any case, under the revised hazardous waste generator base fee statute, the maximum additional amount that a large quantity generator would have to pay is $470. A small quantity generator would pay a maximum of $350 more than in past years.

Under the statutory language in effect before the 2009-2011 biennial budget bill (2009 Wisconsin Act 28), all large quantity generators and small quantity generators who were required to submit a hazardous waste annual report were required to pay a base fee of $210 and $20 per ton for hazardous waste generated during the reporting year. The tonnage fee did not apply to any wastes that were recycled or reused, and if a generator recycled or reused all of its hazardous waste, it was not required to pay the base fee either.

Act 28 amended the statutes to increase the base fee from $210 to $350 for small quantity generators, and to $470 for large quantity generators. It also increased the maximum fee any generator would have to pay from $17,000 to $17,500 per year. In addition, the base fee was applied to all generators who are required to report, regardless of whether they recycled or reused any or all of their wastes. The per ton fee remains at $20 per ton.

No new recordkeeping or reporting requirements are created and no new skills are required to comply with the proposed rules.

The proposed rules are definitions only, but are a key component of the hazardous waste generator annual fee requirements set out in recently-revised s. 289.67, Stats. The fee requirements (statutes and rules) will be enforced by department staff through compliance assistance, complaint follow-up and inspections. If a violation is found, the department normally uses a stepped enforcement process similar to the process it uses for other environmental programs.

This stepped process includes the following:

- Notice of non-compliance, this is typically the first step in dealing with a problem and is usually done by a program specialist through a letter to the generator. It's expected that the generator, once notified of the problem will, correct the problem quickly.
- Notice of Violation, this is typically the second step in dealing with a problem and is a higher level of enforcement. Typically, the Notice of non-compliance hasn't resulted in the problem being resolved and this next step includes an opportunity for a face-to-face meeting with program and enforcement staff. At this meeting, it's expected that the generator will make commitments to resolve the problem and will follow through.
- Referral to the Attorney General for prosecution and injunctive relief, when appropriate. In addition to being liable for unpaid fees, a person who fails to pay fees in a timely manner may be subject to statutory enforcement mechanisms and penalties for hazardous waste violations as established in subchapter V. of ch. 291, Stats.

11. Agency contact person:

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SECTION 1. NR 660.10 (70m) is created to read:

NR 660.10 (70m) "Large quantity generator" means a generator who does one or more of the following:

(a) Generates more than 1,000 kilograms (2,205 pounds) of hazardous waste in a calendar month,

(b) Generates in a calendar month more than 1 kilograms (2.2 pounds) of acute hazardous waste or more than 100 kilograms (220 pounds) of any residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in s. NR 661.31, 661.32 or 661.33 (5).

(c) Accumulates at any time more than 1 kilograms (2.2 pounds) of acute hazardous waste or more than 100 kilograms (220 pounds) of any residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in s. NR 661.31, 661.32 or 661.33 (5).

SECTION 2. NR 660.10 (107) is amended to read:

NR 660.10 (107) "Small quantity generator" means a generator who ~~generates~~ does all of the following:

(a) Generates more than 100 kilograms (220 pounds) but less than 1,000 ~~kg~~ kilograms (2,205 pounds) of non-acute hazardous waste in a calendar month.

(b) Accumulates no more than 6,000 kilograms (13,320 pounds) of non-acute hazardous waste at any time.

(c) Generates in a calendar month no more than 1 kilogram (2.2 pounds) of acute hazardous waste and no more than 100 kilograms (220 pounds) of residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in s. NR 661.31, 661.32 or 661.33 (5).

(d) Accumulates at any time no more than 1 kilogram (2.2 pounds) of acute hazardous waste and no more than 100 kilograms (220 pounds) of residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in s. NR 661.31, 661.32 or 661.33 (5).

SECTION 3. **EFFECTIVE DATE**. This rule shall take effect upon publication, as provided in s. 227.24 (1) (d), Stats.

SECTION 4. **BOARD ADOPTION.** The foregoing emergency rule was approved and adopted by the State of Wisconsin Natural Resources Board on ____February 24, 2010____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)