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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

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**Terry C. Anderson**  
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### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE 02-062

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.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-02-2002 RECEIVED BY LEGISLATIVE COUNCIL.  
05-29-2002 REPORT SENT TO AGENCY.

RNS:JES

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES  NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES  NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES  NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES  NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES  NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES  NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES  NO



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### CLEARINGHOUSE RULE 02-062

#### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### I. Statutory Authority

Section 287.11 (4) (a) 1., Stats., directs the department to set goals for the amounts of materials to be recycled under the pilot program for alternate methods of compliance as a percentage of solid waste generated in the geographic area served by a responsible unit. The reference in subd. 1. to the "materials to be recycled" appears to refer to the materials referenced in the first sentence in s. 287.11 (4) (a) (intro.), Stats. This provision directs the department to administer a pilot program that provides an alternate method of compliance with s. 287.11 (2) (b), Stats. Paragraph (b) is a required component of an effective recycling program which directs occupants of single-family residences, buildings containing two or more dwelling units and commercial, retail, industrial, and governmental facilities in the responsible unit's region, to separate materials subject to the 1995 landfill and incineration bans from post-consumer waste generated in the region.

Thus, under this reading of the statutes, the goals for the pilot program should be based upon all of the materials to be recycled under s. 287.11 (2) (b), Stats. In establishing these goals, the rule focuses on materials collected for recycling from single-family and two- to four-unit residences and is silent on the recycling of materials by commercial, retail, industrial, and governmental facilities. See s. NR 544.20 (1) (b) and the definition of "baseline recycling rate" in s. NR 544.21 (3). The authority for the department to base the goals for the pilot program upon materials recycled only from single-family and two-unit to four-unit residences is not apparent.

## **2. Form, Style and Placement in Administrative Code**

a. Since the sections in the administrative code being created by the rule, ss. NR 544.20 to 544.27, focus upon a single subject, the pilot program for alternate method of compliance, the department should consider reorganizing ch. NR 544 into subchapters and placing the pilot program provisions in a new subchapter.

b. In s. NR 544.22 (2), "will not" should not be used to express a prohibition. [See s. 1.01 (2), Manual.] Similarly, see the use of "will not" in the prohibition in the last sentence in s. NR 544.23 (3).

c. The preferred drafting style is to draft in the singular. This style was not followed in a number of provisions in the rule, including ss. NR 544.22 (2), 544.23 (1), and 544.25 (1).

d. The titles for s. NR 544.24 (3) and (4) should be the same size as the titles for subs. (1) and (2). The entire rule should be reviewed for occurrences of this problem.

e. The rule should specify where the department wishes to place Table 2 in the administrative code. For example, the table could be placed following the reference to the table in s. NR 544.23 (2) (a) 1. and 2., or after s. NR 544.27.

f. In s. NR 544.25 (2) (intro.), "all of the following" should be inserted before the colon.

## **4. Adequacy of References to Related Statutes, Rules and Forms**

In the analysis accompanying the rule, the reference to the statute providing the authority for this rule-making should be to s. 287.11 (4) (a).

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The phrase "as defined in s. NR 544.21 (3)" in s. NR 544.20 (1) (b) is redundant and should be deleted.

b. The specification of a goal for a responsible unit's pilot program in s. NR 544.20 (1) (b) would be clearer if it specified the relation of the annual recycling rate to the baseline recycling rate. For example, does the department intend that the goal be that each year the annual recycling rate exceed the responsible unit's baseline recycling rate?

c. In the definition of "baseline recycling rate" in s. NR 544.21 (3), the "a" term is an annual tonnage averaged over the past three years before participation in the pilot program whereas the "b" term is the tonnage in the immediate past year before participation in the pilot program. To ensure the specification of a meaningful formula for the baseline recycling rate, both of these terms should be based on the same period of time, either data averaged over the specified three years or data from the immediate past year.

d. In s. NR 544.21 (4), the phrase "gains approval by the department" is awkward. A simpler and more direct phrase would be "the department selects."

e. The use of the phrase "as stated in s. NR 544.04" in s. NR 544.22 (1) and (2) is potentially ambiguous. An example of a clearer phrase would be "required under s. NR 544.04."

f. Section NR 544.22 (1) indicates that a responsible unit that maintains an effective recycling program shall be eligible to apply but does not state what a qualified responsible unit is applying for since the titles to ss. NR 544.22 and 544.22 (1) are not part of the substance of the rule. [See s. 1.05 (3) (a), Manual.] A clearer alternative would be to state that an eligible responsible unit "may apply to participate in the pilot program."

g. The text of s. NR 544.23 (1) refers to multiple forms whereas the note following sub. (1) refers to a single form. The department should make these references consistent. Also, will the form be available on the Internet? If so, the note should indicate this.

h. Section NR 544.23 (1) should explain what the department will do if there are still an insufficient number of qualified applicants after the department has already extended the application deadline for 90 days under this subsection.

i. The difference between an operator and a service provider in s. NR 544.23 (2) (d) 1. is not clear. If this difference is substantive, then the department should clarify those differences. Otherwise, one term would suffice.

j. In s. NR 544.23 (2) (f), the reason that changes to local ordinances are "necessary" is unclear. Can the department be more specific?

k. Section NR 544.24 (4) specifies that the department will provide a pilot program agreement to an applicant selected to participate in the pilot program. If an agreement will establish substantive requirements that the department will impose on a participant, the rules should identify the elements of an agreement to ensure consistent contents for different agreements. For example, will an agreement require that changes in local ordinances identified under s. NR 544.23 (2) (f) be implemented?

l. The independent clause in s. NR 544.27 (2) is wordy and incorrect word usage. An example of clearer text would be "The department may terminate the participation of a responsible unit in the pilot program . . ."

m. Section NR 544.27 (2) specifies the department may terminate a pilot program participant if the department determines that the participant does not meet the requirements of s. 287.11 (4), Stats. Does the department intend to be able to terminate participation in the pilot program based upon a participant not complying with either ss. NR 544.20 to 544.27 or with the participant's pilot program agreement entered into under s. NR 544.24 (4)? If so, though these requirements legally flow from s. 287.11 (4), Stats., the rule would be clearer if the department explicitly identified these other grounds for terminating a responsible unit's participation in the pilot program in s. NR 544.27 (2).

n. The department should review the entire rule to ensure that the uses of articles in the rule are grammatically correct. See, for example, the use of "the," rather than "a" or "an," before "applicant," "responsible unit," or "pilot program participant" in ss. NR 544.23 (2) (intro.) and (3) and 544.27 (1).

Report to  
Legislative Council Rules Clearinghouse  
NR 544.20 to 544.27, Wis. Adm. Code  
Natural Resources Board Order No. WA-27-02

Wisconsin Statutory Authority

s. 287.11(4), Stats., interpreting s. 287.11(4), Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

2001 Wis. Act 16 directs the DNR to establish and administer a new pilot program for an alternative method of complying with recycling requirements. The pilot will provide flexibility in complying with the effective program recycling requirements specified in ch. NR 544 to recycle materials subject to the 1995 landfill and incineration bans. The proposed rule establishes criteria and guidelines for the development of pilot programs for alternative compliance, and include the following elements:

1. Establish criteria to determine the eligibility of applicants. The Department will 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. In addition to meeting these requirements, applicants shall demonstrate the ability to report tonnage of materials recycled and landfilled in a base period and annually throughout the life of the pilot. Applicants additionally shall demonstrate the cooperation of or consent from all entities that would be impacted by the change from current program status to a pilot program.

2. Establish a procedure for program application. The procedure includes identification of materials to be recycled, application submittal deadlines and the materials from which the applicant may select to recycle.

3. Establish an evaluation and selection process and criteria. Criteria used in the selection and notification of successful applicants are identified.

4. Establish annual reporting procedures for program evaluation. The procedure identifies the elements comprising a pilot annual report, and establishes the methodology to determine a baseline recycling rate, an annual recycling rate and the recycling goal of the responsible unit.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Liaisons

John Melby, Bureau of Waste Management - 264-8884

Dan Graff, Bureau of Legal Services - 264-8527

Carol Turner, Bureau of Legal Services - 266-1959

Submitted on May 2, 2002

### Fiscal Estimate — 2001 Session

- Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 544

**Subject**

Proposed Amendments to Chapter NR 544, Wis. Adm Code to implement the department's Pilot Program for Alternative Compliance

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.  
 Yes       No  
 Decrease Costs

Local:  No Local Government Costs

1.  Increase Costs  
 Permissive       Mandatory  
2.  Decrease Costs  
 Permissive       Mandatory  
3.  Increase Revenues  
 Permissive       Mandatory  
4.  Decrease Revenues  
 Permissive       Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties       Others      Responsible Units  
 School Districts       WTCS Districts

**Fund Sources Affected**

- GPR       FED       PRO       PRS       SEG       SEG-S

**Affected Chapter 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

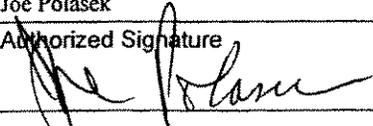
These amendments to Ch. NR 544, Wis. Adm. Code establish the criteria for a Pilot Program for Alternative Compliance within the Effective Recycling Program. The pilot will offer nine participating Responsible Units an alternative method of complying with the effective recycling program requirements to recycle materials subject to the 1995 landfill and incineration bans. Participation in the pilot program is voluntary, and does not entitle the participant to additional grant funds. The underlying assumption of the pilot is that by allowing Responsible Units the flexibility to select the materials they choose to recycle, they will increase their efficiency by electing not to recycle materials which are difficult or costly to market.

Local costs: Administrative costs incurred by the Responsible Units in setting up the pilot program and in educating the public will be absorbed by the participating Responsible Units and are expected to be offset by gains achieved through the elimination of unprofitable materials in their recycling program and increases in revenue from the marketing of profitable materials.

State costs: There will be a minimal increase in staff costs to administer the pilot program. These costs will be absorbed within the Department's budget. The increase in work load to administer the program will be achieved by reallocation of existing staff. For example, if we receive 10 applications and spend an average of 5 hours reviewing per application, the total added work load will be 50 hours.

**Long-Range Fiscal Implications**

No net increase in state costs. Net increase in the efficiency and effectiveness of local recycling programs; the department will evaluate the impact of the Pilot program on local program costs through analyses of cost information submitted on the Recycling Annual Report Form.

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency DNR
Authorized Signature 	Telephone No. 3	Date (mm/dd/ccyy) 03/19/02

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), 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 recycling, 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 this section 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 shall be to meet or exceed its baseline recycling rate *has its original recycling rate* (as defined in s. NR 544.21 (3)).

(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 flexibility provided through the pilot program only applies to requirements for an effective recycling program listed in this chapter related to the definition of materials to be recycled. Pilot program participants are not allowed to modify their programs in such a way that there are different recycling requirements for residential units of 1 to 4 units and businesses. 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 responsible units selected pursuant to s. NR 544.24(3) and (4).

*def. →*

**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 from single family and 2 to 4 unit residences and defined by the following formula:

a = tonnage of materials collected for recycling from single family and 2 to 4 unit residences

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

$$\% \text{ recycled annually} = \frac{a}{a+b} \times 100$$

(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 from single family and 2 to 4 unit residences in a base period before implementation of the pilot program and defined by the following formula:

a = average annual tonnage of recyclable materials collected from single family and 2 to 4 unit residences over the past 3 years before participation in the pilot program

b = tonnage of solid waste generated in the pilot program participant's geographic area in the immediate past year before participation in the pilot program

$$\% \text{ recycled, baseline} = \frac{a}{a+b} \times 100$$

(4) "Pilot program" means an effective recycling program that gains approval by the department 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 stated in s. NR 544.04 shall be eligible to apply.

(2) INELIGIBLE APPLICANTS. Responsible units which have not maintained an effective recycling program as stated in s. NR 544.04 will not be eligible to participate in the pilot program. Eligibility of responsible units 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. Applicants shall submit a one-time application to participate in the pilot program to the department on forms 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.

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*dk*

(2) CONTENTS OF APPLICATION. The 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 units proposes to recycle under the pilot program that it does not currently recycle.

(c) The baseline recycling rate.

(d) Identification of parties 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 operators or service providers 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) Demonstration of how the responsible unit will make the necessary changes to local ordinances before implementation of the pilot program starts.

(3) AUTHORIZING RESOLUTION. The 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. Applications submitted without an authorizing resolution will not be reviewed.

**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 from single family or 2 to 4 unit residences.

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

5 units will happen  
if selected  
to participate  
5- Δ?

2- will/should  
2- cost of  
Table D

7  
ck on table

regulation - 2002  
before 1/1/03

(c) Ability to measure or report the amount of solid waste disposed in a solid waste disposal or a solid waste treatment facility.

*what's in agreement to achieve*  
**(4) PILOT PROGRAM NOTIFICATION PROCEDURES.** The department shall notify applicants selected as pilot program participants under sub. (3) in writing, and provide a pilot program agreement under which the applicant can officially become a qualified pilot program participant. 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.** Pilot program participants shall report annually, on forms provided by the department, the tonnage of materials collected for recycling or reuse from single family and 2 to 4 unit residences through the pilot program and the tonnage of solid waste generated in the geographic area of the responsible unit.

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

*why I need to this / understand waste?*  
(a) The tonnage of each material collected for recycling or reuse from single family and 2 to 4 unit residences.

(b) The tonnage of solid waste generated 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)** The 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.

*we terminate*  
**(2)** The department may on its own initiate the termination of a pilot program participant from the pilot program if it determines that the pilot program participant does not meet the requirements of s. 287.11(4), Stats. *rules go on... under sub (4)*

*S. 287.11(4) word*  
*S. is this ch. - who's participant violates agreement*

*- where get commitment/obligation to do things - ok agreement.*

2  
 Placement of table 2  
 in code

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

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

Note:  
<sup>1</sup> Material is subject to 1995 landfill and incineration bans, as specified in s. 287.07 (3) and (4), Stats.  
<sup>2</sup> Material is subject to 1995 landfill and incineration bans but the requirement to recycle was waived by the department on 10/4/96 until it has been determined that their collection and processing is practical.  
<sup>3</sup> Management of materials that are being recycled is regulated under the Wisconsin universal waste standards, ch. NR 690.  
<sup>4</sup> Management of materials that are being recycled is conditionally exempt from hazardous waste regulations under s. NR 605.05(2)(a) or (f).  
<sup>5</sup> Management of materials or components of materials that are being recycled is regulated under Administrative Discretion, 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.  
<sup>6</sup> Guidance for management of antifreeze that is recycled is provided in DNR Publication PUBL\_WA\_356\_98.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

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)

**NOTICE TO PRESIDING OFFICERS  
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. WA-27-02

Legislative Council Rules Clearinghouse Number 02-062

Subject of Rules A pilot program for alternative method of compliance with solid waste recycling requirements.

Date of Transmittal to Presiding Officers August 28, 2002.

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator  
DNR Bureau of Legal Services  
LS/5, 101 South Webster

Telephone: 266-1959  
e-mail: [turnec@dnr.state.wi.us](mailto:turnec@dnr.state.wi.us)

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

## REPORT TO LEGISLATURE

### NR 544.20 to 544.27, Wis. Adm. Code Pilot program for alternative method of compliance with solid waste recycling requirements

Board Order No. WA-27-02  
Clearinghouse Rule No. 02-062

#### Statement of Need

The Solid Waste Reduction, Recovery and Recycling Law was enacted in 1990 to manage solid waste and to encourage recycling and reuse in the state. 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 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. 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. The legislation further directs the department to promulgate rules for the program to set recycling goals, list recyclable materials, specify procedures to identify which materials shall be recycled and specify procedures to determine whether goals have been achieved.

The proposed amendments to ch. NR 544 establish criteria and guidelines for the development of pilot programs for alternative compliance and include the following elements:

1. Establish criteria to determine the eligibility of applicants. The department will select three responsible units with a population of less than 5,000, three responsible units with a population of at least 5,000 but less than 25,000 and three responsible units with a population of at least 25,000. In addition to meeting these requirements, applicants shall demonstrate the ability to report tonnage of materials recycled and landfilled in a base period and annually throughout the life of the pilot. Applicants additionally shall demonstrate the cooperation of or consent from all entities that would be impacted by the change from current program status to a pilot program.
2. Establish a procedure for program application. The procedure includes identification of materials to be recycled, application submittal deadlines, and the materials from which the applicant may select to recycle.
3. Establish an evaluation and selection process and criteria. Criteria used in the selection and notification of successful applicants are identified.
4. Establish annual reporting procedures for program evaluation. The procedure identifies the elements comprising a pilot annual report and establishes the methodology to determine a baseline recycling rate, an annual recycling rate and the recycling goal of the responsible unit.

## Modifications as a Result of Public Hearings

The statement that a pilot program participant is not allowed to change its program to have different requirements for residences of one to 4 units than for businesses has been deleted. This will allow a pilot program recipient to change the list of materials that must be recycled at residences within its jurisdiction. Regarding non-residential entities, the pilot program may either require them to collect for recycling the same materials as residences or allow the non-residential sector to continue collecting the materials as directed by the recycling ordinance.

The rule has been revised to read "solid waste collected" to make it more feasible for responsible units to compute the "solid waste generated" by adding the amount of materials collected for recycling plus the amount collected for disposal. The sum of these numbers will be reported to the department.

Section NR 544.23(2)(d) has been revised to require identification of parties "that may be" affected. The intent of this language change is to make more flexible the requirement that facilities where waste will be managed or disposed of are identified.

The Wisconsin Counties' Association expressed concern that responsible units would be hesitant to participate in the pilot program because of the sunset date of December 31, 2005. The Association recognized that this provision is included consistent with directives given by the Legislature in s. 287.11(4)(e), Stats., but requested that the department relay their concern to the Legislature and request clarification that a responsible unit may continue its pilot program if it has demonstrated efficiency.

Board member Catherine Stepp expressed concern that a responsible unit is able, under the pilot program, to choose not to separate for recycling materials subject to the 1995 landfill and incineration bans. The department explained that this provision is allowed consistent with directives given by the Legislature in s. 287.11(4)(a)2., Stats., but that it would relay this concern to the Legislature.

## Appearances at the Public Hearings and Their Position

June 13, 2002 – noon

### In support:

Jennifer Sunstrom, WI Counties Association, 100 River Place, Suite 101, Monona, WI 53716

### In opposition:

Ron Hermes, National Solid Wastes Management Association, 16 N. Carroll Street, Suite 305,  
Madison, WI 53703

Bart Sexton, Oneida County Solid Waste, 7450 County Highway K, Rhinelander, WI 54501

### As interest may appear:

Sherri Radke, Env. Coordinator, City of West Allis, 6300 W. McGeoch Ave., West Allis, WI 53219

Mike Engelbart, City of Milwaukee, 841 N. Broadway, Room 620, Milwaukee, WI 53202

David Fodroczi, St. Croix County Planning, 1101 Carmichael Road, Hudson, WI 54016

Carl Oman, MA Recycling, P.O. Box 437, Richland Center, WI 53581

C. W. Malick, St. Croix County, Hudson, WI 54016  
Mary Barney, St. Croix County Recycling, 1413 200<sup>th</sup> Avenue, New Richmond, WI 54017  
John Reindl, Dane County, 1919 Alliant Energy Center Way, Madison, WI 53713  
Debbie Krogwold, Waupaca Co. Solid Waste, 811 Harding St., Waupaca, WI 54981  
Todd Schmidt, Village of Brown Deer, 4800 W. Green Brook Drive, Milwaukee, WI 53223  
Kate Mawdsley, DOA-SBO, 101 E. Wilson, Madison, WI  
Angela Rowley, Foth and Van Dyke, 2737 South Ridge Road, Green Bay, WI  
Lee Ebert, Village of Gresham, P.O. Box 50, Gresham, WI 54128  
Thomas C. Meier, Village of Allouez, 1649 S. Webster Avenue, Green Bay, WI 54301  
Joe Van Rossum, Brown County Port & Solid Waste, 2561 S. Broadway, Green Bay, WI 54304

June 13, 2002 – 6:30 p.m.

In support – none  
In opposition – none

As interest may appear:

Dean Boehne, Village of Strum, 512 5<sup>th</sup> Avenue North, Strum, WI 54770  
Michael Voltz, Polk County Recycling, 1302 208<sup>th</sup> Street, St. Croix Falls, WI 54024

#### Response to Legislative Council Rules Clearinghouse Report

The comments have been accepted, but the Department responds to the following comments:

1. The statutes direct the department to develop "alternative methods of complying" with s. 287.11(2)(b), Stats. That section does request that occupants of all residences, commercial, retail, industrial and governmental facilities in the region separate for recycling the materials identified in s. 287.07(3) and (4), Stats. The rule language was revised as suggested. The department's objective is to make the pilot program as workable as possible for responsible units in order to attract applicants. In order to accomplish that goal, applicants will be required to report the information that is available to them on the amounts of materials recycled. If the responsible unit has information only on the amounts collected for recycling from residents of single-family and two to four unit dwellings, it is sufficient to report that information to the department. However, if the responsible unit has information on the amounts of materials recycled at multi-family residences (five units and above) and non-residential facilities, those amounts will need to be reported as well. The department's program guidance will clearly articulate the reporting requirement just described.

2.a. The rule was not changed to reflect this concern. The department will not create a subchapter at this time because the department is considering a complete update and revision of ch. NR 544.

2.e. Table 2 will be placed after s. NR 544.23(2)(f).

5.g. The rule was not changed to reflect this concern. The form will be available on the Internet, but the note will not include information to that effect. Information of this sort may well change in the future, which would render that section of the code inaccurate and obsolete. However, the public will be informed about the availability of the form on the Internet through written materials about the pilot program as well as through oral communications.

5.h. The rule was not changed to reflect this concern. If one or more applications are received, the program will continue. If there are no applicants after the 90-day extension has elapsed, the program will be terminated. The current language seems appropriate.

5.m. Termination of a responsible unit's participation will be based on non-compliance with the pilot program agreement.

### Final Regulatory Flexibility Analysis

The department has determined that, pursuant to s. 227.11(8)(b), Stats., an analysis of the effect on small business is not required because the proposed rule is not likely to affect small businesses and is a voluntary option for counties or municipalities to administer.

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**

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

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

<sup>2</sup> 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.

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

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

<sup>5</sup> 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.

<sup>6</sup> 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.

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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)