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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

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:

Board Order Number: WA-30-09
Clearinghouse Number: 10-036
Subject of Rules: Hazardous waste management
Date of Transmittal: June 28, 2010

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

**Peter D. Flaherty, Staff Attorney
DNR Bureau of Legal Services
LS/8, 101 South Webster**

**Telephone: 266-8254
e-mail: Peter.Flaherty@Wisconsin.gov**

An electronic copy of the proposed rule submittal may be obtained by contacting Peter Flaherty at Peter.Flaherty@Wisconsin.gov

REPORT TO LEGISLATURE

Chapter NR 660, Wis. Adm. Code
Hazardous waste management: general

Board Order No. WA-30-09
Clearinghouse Rule No. 10-036

Basis and Purpose of the Proposed Rule

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. The proposed rule creates a definition of “large quantity generator” and revises the existing definition of “small quantity generator” in ch. NR 660.

Rule Summary

Under current federal hazardous waste regulations and state 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.

The proposed rule establishes explicit, complete definitions of “large quantity generator” and “small quantity generator” in s. NR 660.10. The definitions are based on – and consistent with – the state and federal functional descriptions.

Summary of Public Comments

On April 26, 2010, the Department held a public hearing on the emergency rule and proposed permanent rule at the DNR central office in Madison, and at the same time, by “live meeting” held concurrent public hearings at the DNR regional headquarters in Milwaukee, Green Bay and Eau Claire. No members of the public attended the hearings, and the Department did not receive any written comments on the proposed rule during the public comment period.

Modifications Made

The only modification made was a punctuation correction made in the proposed rule in response to a comment by the Legislative Council Rules Clearinghouse.

Appearances at the Public Hearing

None.

Changes to Rule Analysis and Fiscal Estimate

None.

Response to Legislative Council Rules Clearinghouse Report

The Department received one comment (on punctuation) from the Legislative Council Rules Clearinghouse. The Department accepted the comment and has revised the rule accordingly.

Final Regulatory Flexibility Analysis

1. Describe the type of small business that will be affected by the rule.

The proposed rules affect small businesses that are large quantity or small quantity generators of hazardous waste. 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 (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.

2009 Wisconsin 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.

2. Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rule. No new recordkeeping or reporting requirements are created and no new skills are required to comply with the proposed rules.

3. Describe the type of professional skills necessary for compliance with the rule. No new professional skills are needed to comply with the proposed rule.

- End -

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

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

WA-30-09

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), 289.67 (2) (de) and 291.07 (2) Stats.

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.

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.

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 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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Telephone: (608) 264-6015
E-mail: patricia.chabot@wisconsin.gov

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 rule was approved and adopted by the State

of Wisconsin Natural Resources Board on June 23, 2010.

Dated at Madison, Wisconsin _____.

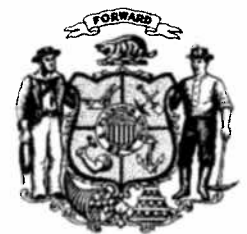
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 **10-036**

AN ORDER to amend NR 660.10 (107); and to create NR 660.10 (70m), relating to hazardous waste management.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

03-22-2010 RECEIVED BY LEGISLATIVE COUNCIL.

04-16-2010 REPORT SENT TO AGENCY.

RNS:LAK

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



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-036

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

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

The comma at the end of s. NR 660.10 (70m) (a) should be replaced by a period.