

Clearinghouse Rule 18-058

DRAFT #1

May 1, 2018

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to **amend** NR 514.02 (1), 514.04 (3), 514.10 (1) (f), and 514.10 (2) (c) relating to research, development and demonstration plans at municipal solid waste landfills and other minor corrections.

WA-06-18

Analysis Prepared by the Department of Natural Resources

- 1. Statute Interpreted:** Sections 289.05(1), 289.06(1), 289.30(4), and 227.11(2)(a), Wis. Stats.
- 2. Statutory Authority:** Sections 289.05(1), 289.06(1), 289.30(4), and 227.11(2)(a), Wis. Stats.
- 3. Explanation of Agency Authority:** Section 289.05(1), Wis. Stats., requires the department to promulgate rules establishing minimum standards for solid waste facilities. Section 289.30(4), Wis. Stats., requires the department to establish the contents for plans of operation for solid waste facilities. Sections 289.06(1) and 227.11(2)(a), Wis. Stats. also confer rule making authority to the department to promulgate rules implementing ch. 289, Wis. Stats.
- 4. Related Statutes or Rules:** There are no other statutes directly related to the amendments relating to research, development and demonstration plans at municipal solid waste landfills and other minor corrections to NR 514. Chapter NR 514, Wis. Adm. Code currently specifies requirements for plan of operation and closure plans for landfills. Section NR 514.10 contains requirements for the plan of operation for any landfill which proposes a research, development and demonstration program.
- 5. Plain Language Analysis:** The proposed amendments would increase the maximum term for research, development and demonstration (RDD) projects at municipal solid waste landfills to 21 years to be consistent with federal rule revisions. The current RDD project limit is 12 years. This change will allow landfill owners or operators who voluntarily chose to conduct RDD projects to continue their current approved projects at landfills for an extended period. RDD projects are intended to allow for research and development at licensed landfills on activities such as addition of liquids for accelerated decomposition of the waste mass, allowing run-on water to flow into the landfill waste mass, and allowing testing of the construction and infiltration performance of alternative final cover systems. The research, development and demonstration plans may be proposed for other measures to be taken to enhance stabilization of the waste mass.

The proposed rule amendments specifically extend the maximum number of renewals from 3 to 6 for RDD plans, which would extend the length of time for research, development and demonstration projects to up to 21 years. The proposed rule would improve flexibility for annual and final RDD reporting, allowing the reports to be submitted within 3 months of the anniversary date of the written approval to facilitate timely renewals. Other proposed rule modifications include correcting references in s. NR 514.04(3) from “feasibility” to “plan of operation” and in s. NR 514.02 from “small” to “small size and intermediate size.” These minor changes provide clarity to landfill owners and operators.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

On May 10, 2016, the U.S. Environmental Protection Agency (EPA) published final revisions to 40 CFR 258.4(e)(1) to revise the maximum permit term for research, development and demonstration permits for municipal solid waste landfills. See 81 Fed. Reg. 28,720 (May 10, 2016). The proposed amendments will allow for the same maximum term for research, development and demonstration projects that is allowed by the federal rule revision.

7. Comparison with Similar Rules in Adjacent States: Michigan, Minnesota and Illinois have research, development and demonstration rules that have been updated and are consistent with the federal rule revisions. Iowa has a research, development and demonstration rule, which currently limits projects to 12 years.

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: The ch. NR 514 research, development and demonstration rules have been in place since 2005. Currently, 15 municipal solid waste landfills have approval for research, development and demonstration projects. Monitoring and performance information for the projects is reported to the department through annual and three-year reports. Additionally, a Retrospective Analysis of Wisconsin's Landfill Organic Stability Rule completed in May 2014 through the University of Wisconsin – Madison on behalf of the department, identified liquid waste addition through research development and demonstration projects as one of the predominant actions implemented to enhance in situ organic waste decomposition in municipal solid waste landfills.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: Only 15 municipal solid waste landfills have approvals for research, development and demonstration projects that would be directly affected by this rule. None of the four entities that own the 15 landfills would be considered small businesses under the definition in s. 227.114 (1), Stats. No economic impact comments were received during the open comment period held June 4-18, 2018.

10. Effect on Small Business (initial regulatory flexibility analysis): The department believes the proposed amendment would have no or minimal economic impact on small businesses. This rule does not change or impose new regulatory burdens. It is important to note that applying for a research, development and demonstration plan remains voluntary.

11. Agency Contact Person: Kate Strom Hiorns, Department of Natural Resources, Waste and Materials Management, PO Box 7921, Madison, WI 53707-7921; (608) 261-8449; KathrynM.StromHiorns@wisconsin.gov.

12. Place where comments are to be submitted and deadline for submission:
Written comments may be submitted at the public hearings, by regular mail, fax or email to:
Kate Strom Hiorns
Department of Natural Resources
Waste and Materials Management
PO Box 7921
Madison, WI 53707
Fax: 608-267-2768
Email: KathrynM.StromHiorns@wisconsin.gov

Written comments may also be submitted to the Department at DNRAdministrativeRulesComments@wisconsin.gov.

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 514.02 (1) is amended to read:

NR 514.02 (1) Except as otherwise provided, this chapter governs all landfills as defined in s. 289.01 (20), Stats., except small size and intermediate size construction and demolition waste landfills regulated under ch. NR 503, hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679; metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31), Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 2. NR 514.04 (3) is amended to read:

NR 514.04 (3) NONCOMPLIANCE WITH PLANS OR ORDERS. The plan of operation shall identify all persons owning a 10% or greater legal or equitable interest in the applicant or in the assets of the applicant, including shareholders of a corporation which is an applicant and partners of a partnership which is an applicant. The plan of operation shall also identify all other Wisconsin solid or hazardous waste facilities for which the applicant or any identified person is named in, or subject to an order or plan approval issued by the department. In addition, the ~~feasibility report~~ plan of operation shall identify all other Wisconsin solid or hazardous waste facilities which are owned by persons, including corporations and partnerships, in which the applicant or any identified person owns or previously owned a 10% or greater legal or equitable interest or a 10% or greater interest in the assets and include a statement indicating whether or not all plan approvals and orders relating to all identified facilities are being complied with.

Note: If noncompliance with an order or plan approval occurs while the applicant has or had a 10% or greater legal or equitable interest in the facility and is continuing, the department is prohibited from licensing the new or expanded solid waste disposal facility, unless the applicant provides proof of financial responsibility under s. 289.34 (3), Stats., to assure that compliance is achieved.

SECTION 3. NR 514.10 (1) (f) is amended to read:

NR 514.10 (1) (f) An annual report shall be prepared for each year of the testing period and a final report shall be prepared for the end of the testing period. These reports shall assess the attainment of goals proposed for the process selected for testing, recommend changes, recommend further work, and summarize problems and their resolution. Reports shall include a summary of all monitoring data, testing data and observations of process or effects and shall include recommendations for continuance or termination of the process selected for testing. Annual reports and final reports shall be submitted to the department within 3 months ~~after~~ of the anniversary date of the written approval by the department.

SECTION 4. NR 514.10 (2) (c) is amended to read:

NR 514.10 (2) (c) Renewals of testing periods shall be limited to a maximum of 3 years each. The maximum number of renewals shall be limited to ~~3~~6.

SECTION 5. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 6. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

Daniel L. Meyer, Secretary

(SEAL)