

## **Report From Agency**

### REPORT TO LEGISLATURE

NR 538, Wis. Adm. Code

Board Order No. WA-11-15  
Clearinghouse Rule No. 19-080

#### Basis and Purpose of the Proposed Rule

The Beneficial Use Program originated in 1997, when chapter NR 538, Wis. Adm. Code, was first adopted as authorized under s. 289.05(4), Stats. This code laid out a streamlined process whereby certain industrial byproduct such as coal combustion byproducts, foundry sand, lime-kiln dust, paper mill sludge and other high-volume industrial wastes with similar characteristics could be beneficially used in a variety of approved applications. The process was designed to be mostly self-implementing, with byproduct generators responsible for characterization of their material and annual reporting of materials used. For some projects, the rule provided for department review to evaluate the potential for impacts to human health or the environment.

The program has been generally successful, but the code needs updating to address new environmental standards, laws and changes in manufacturing and air pollution control processes, while continuing to encourage the beneficial use of waste materials that might otherwise be landfilled.

#### Summary of Public Comments

See attached "NR 538 Revision Public Comments and DNR Responses Natural Resources Board Order No. WA-11-15."

#### Modifications Made

Modifications were made in response to comments as noted in numbers 1 through 11, in the attached "NR 538 Revision Public Comments and DNR Responses Natural Resources Board Order No. WA-11-15."

#### Appearances at the Public Hearing

Scott Huguet, representing Beneficial Reuse Management, LLC  
David Opitz, representing Industrial Reuse Brokers, LLC  
Bryant Esch, representing Wisconsin Cast Metals Association and Waupaca Foundry  
Paul Koziar, representing Beneficial Reuse Management, LLC  
Barry Paye, representing Wisconsin Department of Transportation  
Bob Pearson, representing Wisconsin Department of Transportation  
Joseph Hoch, representing Alliant Energy  
Anthony Biddle, representing the Kohler Company  
Brian Kalvelage, representing Dairyland Power Cooperative  
David E. Lesky, representing Dairyland Power Cooperative

#### Changes to Rule Analysis and Fiscal Estimate

Changes to the rule analysis and fiscal estimate were made in response to comments as noted in letters A through G, in the attached "NR 538 Revision Public Comments and DNR Responses Natural Resources Board Order No. WA-11-15."

Economic Impact Analysis (EIA) – A 15-day public comment period on the Draft EIA occurred from April 1- April 15, 2019. DNR received written comments from 4 commenters on the EIA during this period. 2 commenters addressed economic factors, while the other comments were on the draft rule language.

#### Response to Legislative Council Rules Clearinghouse Report

Comments received from the Wisconsin Legislative Council Rules Clearinghouse (19-080) were related to form, style and placement in administrative code, and clarity, grammar, punctuation and use of plain language. DNR made all requested changes except as follows:

- Comment 5. e. asks if the department can clarify the meaning of the reference. The language cited was inadvertently left in the version of the rule sent to the LCRC and has been removed.

#### Final Regulatory Flexibility Analysis

The Department does not anticipate an impact to small businesses as a result of this rule. Participation in this program is voluntary.

#### Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.