

Report From Agency

REPORT TO LEGISLATURE

NR 660 and 661, Wis. Adm. Code

Board Order No. WA-11-21
Clearinghouse Rule No. CR 24-035

Basis and Purpose of the Proposed Rule

The rule incorporates into state law, in part, changes made to federal hazardous waste regulations by EPA in the following Federal Register, to the extent allowed by state law:

Modernizing Ignitable Liquids Determinations, July 7, 2020 (85 FR 40594)

This rule updates the flash point test methods from 1978, 1979, and 1980 (required for determining if a liquid waste is an ignitable hazardous waste) to include current ASTM International (ASTM) standards. The rule will also define the term “aqueous” as “50% water by weight.” Included in the rule are updates to correct cross references to U.S. Department of Transportation (DOT) regulations and to remove obsolete information in the ignitability regulation. (EPA Checklist 243).

Summary of Public Comments

The department held a public comment period on the draft rule from April 15, 2024, to May 15, 2024, with a virtual public hearing on May 8, 2024. Thirty-one people attended the public hearing with no one testifying. One question was asked at the hearing, which was a request for a copy of the presentation slides. Two registered attendees expressed support for the rule and no registered attendees expressed opposition to the rule. The remaining 42 registered attendees registered as attending for informational purposes only. One organization, Wisconsin Manufacturers and Commerce (WMC), commented during the public comment period and indicated that they were “generally supportive” of the rule. The following is a summary of comments received and the department’s response.

Comment 1. DNR should have considered advancing one rule instead of three separate rulemakings. WMC ascertains that the three rule packages could have been combined into one rule package for businesses and the public to weigh in on the rulemakings more easily.

Department response: The department has drafted each scope statement for the three rulemaking efforts to focus on a specific, individualized topic. The department chose this approach for a couple reasons:

- Each scope statement, and its respective rulemaking effort, relates to a single, clear topic, making it easier to communicate and discuss proposed rule changes with affected stakeholders (especially given the complexity that may occur in hazardous waste program topics).
- Each scope statement, and its respective rulemaking effort, relates to a single topic, allowing members of the public to identify public input opportunities and participate in topics of interest (for example, the hazardous waste program targeted separate audiences for each scope statement so that stakeholders could attend for their area of interest and offer feedback relevant to their interest).

Comment 2. DNR should ensure each rulemaking is no more restrictive than federal code. DNR cannot impose new standards without statutory authority.

Department response: The department acknowledges this comment and is following the agency's prescribed rulemaking process, pursuant to relevant statutory authority.

Comment 3. WMC believes businesses should not have to follow two sets of hazardous waste regulations, between federal and state codes. WMC feels any "new" Wisconsin requirements would put businesses at a disadvantage and that DNR should consider directly incorporating the federal code and allow businesses to follow one set of regulations instead of two.

Department response: The department acknowledges this comment. The rule, as proposed, is intended to align the state with the federal regulations.

Comment 4. WMC is generally supportive of updating the ignitable testing methods. The DNR should consider removing state specific code language and adopt federal code language in its entirety. For example, DNR should consider removing the proposed NR 660.11 and instead reference 40 CFR 260.11 in its entirety.

Department response: The department appreciates the comment. In reference to any code language in s. NR 660.11 and 40 CFR 260.11, the federal code maintains standards that delist certain wastes applicable to certain states, which Wisconsin does not need to adopt. Additionally, the standards listed in NR 660.11 are more thorough in capturing technical standards referenced throughout NR 660-679, and the department believes this is a more user-friendly and comprehensive approach.

Modifications Made

No changes were made to the rule as a result of public comments received.

Appearances at the Public Hearing

Forty-four people registered for the public hearing held on May 8, 2024, and thirty-one attended. No verbal appearances were made for or against the rule at the public hearing. Two attendees registered in support for the rule and no attendees expressed opposition to the rule when registering for the hearing. All remaining attendees registered as attending for informational purposes only.

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the rule analysis or fiscal estimate as a result of the public hearing.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on

- Form, style and placement in administrative code
- Adequacy of references to related statutes, rules and forms
- Clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

Comment 4.b.

In SECTION 2 of the proposed rulemaking order, proposed s. NR 660.11 (2) (t), (u), and (v) indicate that the respective standards are incorporated by reference for ch. NR 664, and specified subchapters of ch. NR 665. Given that chs. NR 664 and NR 665 are largely parallel in their organization, should proposed s. NR 660.11 (2)

(t), (u), and (v) each refer to the relevant subchapter of ch. NR 664, rather than referring to the entirety of the chapter?

Department response: The standards in s. NR 660.11 (2) (t), (u), and (v) refer to ch. NR 664 which regulates hazardous waste treatment, storage and disposal facilities and ch. NR 665 which regulates *interim* hazardous waste treatment, storage, and disposal facilities. Even though much of the code language in chs. NR 664 and NR 665 is parallel in content, the impacted facilities are not similar. The language in s. NR 660.11 (2) (t), (u), and (v) has not been changed since 2006 and the only change to these references are in numbering in the code. To ensure that the standards are being adequately identified, the department prefers to retain the reference to the entire chapters of NR 664 and NR 665.

Comment 4.d.

The existing list (s. NR 660.11) could be maintained to more closely mirror the analogous federal regulation.

Department response: The department's intent with changing numbering on the list in s. NR 660.11 is to become more consistent and analogous to federal numbering to extent possible.

Final Regulatory Flexibility Analysis

The proposed rule will have little to no impact and will most likely create a cost savings for small businesses. Laboratories performing flash point and ignitability tests will be able to use updated testing methods. The cost of replacing and repairing outdated instrumentation and equipment will be reduced. There are 16 certified and 2 registered laboratories with the state that are accredited for flashpoint testing, and 10 treatment, storage, and disposal facilities in Wisconsin that may potentially test ignitable waste streams to ensure proper waste determinations, which would be impacted by the rule.

There would be no fiscal impact of cross-referencing hazardous waste regulation language with DOT language. Changing the definition of an aqueous waste will likely reduce the cost of disposing of certain alcohols and paints as hazardous waste.

Response to Small Business Regulatory Review Board Report

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