

Report From Agency

REPORT TO LEGISLATURE

NR 500-524, Wis. Adm. Code

Board Order No. WA-11-22
Clearinghouse Rule No. CR 24-063

Basis and Purpose of the Proposed Rule

Wisconsin's solid waste management rules were substantially revised in the 1990s to comply with federal municipal solid waste landfill requirements, with limited updates since that time. Wisconsin's rules were developed to be as protective as the standards in the federal Resource Conservation and Recovery Act, commonly referred to as RCRA Subtitle D. This proposed rule amends portions of chs. NR 500 to 524, Wis. Adm. Code, to incorporate changes to solid waste landfill requirements, solid waste management fees, financial responsibility, and reporting requirements. This proposed rule reflects current industry standards and experience gained over the last 30 years related to the design, construction and operation of solid waste landfills while continuing to protect public health and the environment.

This rule proposes changes to regulations affecting municipal solid waste (MSW) landfills and industrial landfills. Many of these changes are designed to create consistency or provide additional clarity. As of May 2024, there were 58 active licensed municipal solid waste and industrial landfills and thousands of closed landfills in Wisconsin.

MSW landfills receive general household waste and receive other types of nonhazardous wastes, including commercial solid waste. Industrial landfills are designed to collect various commercial and institutional waste and often collect a majority of one type of waste, such as combustion ash, papermill sludge, or foundry sand. Both MSW and industrial landfills must be designed and operated to meet certain criteria, including:

- Location restrictions that ensure landfills are built in suitable geological and geographical areas away from geological faults, wetlands, flood plains or other environmentally sensitive areas.
- Collection and removal systems for leachate, which is a liquid generated in landfills from the waste itself and when rainfall and snow melt come in contact with waste in landfills.
- Composite liner requirements along the bottom and sides of a landfill that protect groundwater and the underlying soil by preventing releases of leachate.
- Operating practices that include compacting waste and covering it daily with several inches of soil to help reduce odor, control litter, insects, and rodents, and protect public health.
- Groundwater monitoring requirements that require testing groundwater wells to determine whether waste materials have escaped from the landfill.
- Closure and post-closure care requirements that include covering landfills and providing long-term care of closed landfills.
- Financial responsibility requirements to ensure funding is available for environmental protection during and after landfill closure.

Summary of Public Comments and Modifications Made

Please refer to the attached Response to Comments document.

Appearances at the Public Hearing

A virtual public hearing on WA-11-22 was held on Monday September 30, 2024, at 2:30 p.m. Eighteen members of the public attended the hearing with two choosing to make an oral statement. The oral statements were as follows:

- A Vernon County resident testified that she appreciated the work to amend the code. She indicated she was interested in code application because there is an open landfill expansion in Vernon County. She wondered if these rule changes apply to the expansion.
- A solid waste engineer who has worked in Wisconsin for 30 years testified that he appreciated the work of DNR staff and he was in support of the rule changes.

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the rule analysis through the public comment process. The fiscal estimate and economic impact analysis was updated to reflect a change in the proposed rule in response to public comments: the department removed the change in code related to establishing baseline groundwater quality using groundwater monitoring wells inside the proposed limits of landfill filling. The associated cost of that requirement was removed from the overall economic impact analysis.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on September 17, 2024.

Changes to the proposed rule were made to address all but one of the comments recommended by the Legislative Council Rules Clearinghouse. The department chose to keep the treatment of s. NR 514.07 (6m) (intro.) in one SECTION to provide clarity and consistency for our stakeholders between the public hearing draft and final rule.

Final Regulatory Flexibility Analysis

Proposed changes to landfill design or operation requirements and fees may result in both economic savings and costs for landfill owners and operators, none of which are small businesses. There are currently 58 active licensed municipal solid waste and industrial landfills and thousands of closed landfills in Wisconsin. State residents and businesses, including small businesses, are indirectly affected by state solid waste management policies and standards because they rely on the existence of an efficient system for disposing of solid waste and the protection from risks to public health and the environment that state solid waste codes provide. Regulations ensure modern landfills are well-engineered and managed for the disposal of solid waste. Landfills are located, designed, operated and monitored to ensure compliance with regulations and to protect the environment from contaminants that may be present in the waste stream.

Proposed rule changes that would likely have an economic impact were assessed for impacts to privately owned landfills, publicly owned landfills, and to generators of waste, households and businesses in Wisconsin. Some information on costs of materials (leachate pipes, geotextile liners), costs for consultants to conduct plans, and estimates of savings were provided by members of the Technical Advisory Committee. To assess the average impact of proposed fee changes on individual households, information on Wisconsin households was collected from the U.S. Census Bureau. The average impact of proposed fee changes on businesses and small businesses was determined using U.S. Census Statistics of U.S. Businesses provided by the Wisconsin Economic Development Corporation.

In general, there may be minimal economic impact to small businesses in the State because of changes to fees applied to solid waste disposed of in landfills. The definition of “small business” in s. 227.114 (1), Stats., does not match how small businesses are defined by the U.S. Census Statistics of U.S. Businesses, but the data are used here to show the limited impact an increase in landfill license surcharge fees would have on each individual business.

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Year after proposed code change	License surcharge fee per ton of waste disposed (a)	Average annual fee collection ¹ (b = a * 6,993,185 tons)	Additional fee increase in comparison to current rule (c = b - \$1,048,978)	Private Business Impact Per Year		
				Total fees borne by business (d = c/2)	Average fee borne per business unit (e = d/ 108,122) ²	Average fee borne per small business unit (f = e * 86%) ³
Current rule	\$0.15	\$1,048,978	-	-	-	-
First year (2026)	\$0.25	\$1,748,296	\$699,318	\$349,659	\$3	\$2.80
Second year (2027)	\$0.25	\$1,748,296	\$699,318	\$349,659	\$3	\$2.80
Sixth year (2031)	\$0.27	\$1,888,160	\$839,182	\$419,591	\$4	\$3
Eleventh year (2036)	\$0.30	\$2,097,956	\$1,048,978	\$524,489	\$5	\$4

¹ Based on 5-year average tonnage in each category of waste to which the surcharge fee is applied (6,993,185 tons). A majority of waste is reported as “municipal solid waste” that is a mix of household and business waste.

² 108,122 firms in Wisconsin in 2020 (U.S. Census Statistics of U.S. Businesses)

³ 86% of all businesses/86% of fees impact; 93,112 firms in Wisconsin with 24 or fewer employees in 2020 (U.S. Census Statistics of U.S. Businesses)

Response to Small Business Regulatory Review Board Report

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