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Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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STATE OF WISCONSIN)
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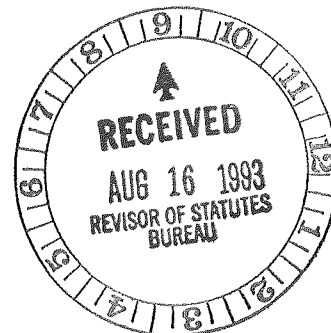
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. SW-49-92 was duly approved and adopted by this Department on May 27, 1993. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building in
the City of Madison, this 5th
day of August, 1993.

George E. Meyer
George E. Meyer, Secretary

(SEAL)



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

IN THE MATTER of creating ch.
NR 546 of the Wisconsin
Administrative code pertaining
to newspaper recycling fee

SW-49-92

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 159.03(1)(a), 159.31(4)(c), 227.11(2)(a), Stats.
Statutes interpreted: s. 159.31, Stats.

The rule establishes the newspaper recycling fee. Publishers of newspapers and "shoppers guides" are required to meet specified postconsumer fiber recycled content levels. A fee is imposed if a publisher does not meet the specified levels for the year. This rule establishes the target levels and establishes a system for calculating and collecting fees. The rule also establishes conditions of exception to the fee requirements. The newspaper recycling fees collected shall be deposited in the recycling fund.

SECTION 1. Chapter NR 546 is created to read:

Chapter NR 546

Newspaper Recycling Fee

NR 546.01 PURPOSE. The purpose of this chapter is to establish rules under s. 159.31, Stats., for the implementation and administration of the newspaper recycling fee.

NR 546.02 APPLICABILITY. This chapter applies to all newspaper publishers.

NR 546.03 DEFINITIONS. In this chapter:

- (1) "Actual recycled content" means the average of the recycled content of all newsprint used by a newspaper publisher to print newspapers during the year, expressed as a decimal.
- (2) "Central printer" means a facility that prints publications for one or more publishers.
- (3) "Circulation" means the number of paid subscribers plus street sales or the number distributed at no cost.
- (4) "Department" means the department of natural resources.
- (5) "Newspaper" has the meaning specified in s. 159.31 (1) (a), Stats.
- (6) "Overissues" means newspapers, magazines and other printed publications that are printed for distribution or sale, but which are returned undistributed or unsold or which otherwise fail to reach consumers.

(7) "Postconsumer waste" has the meaning specified in s. 159.01(7), Stats. This term includes overissues unless the department determines under s. NR 546.12 that existing markets for recyclable magazines, newspapers or both are not sufficient to absorb the supply of materials collected by responsible units under s. 159.09 or 159.11, Stats.

(8) "Publisher" means a person involved in and financially responsible for the commercial production and issuance of printed information.

(9) "Recycled content" has the meaning specified in s. 159.31 (1) (b), Stats.

(10) "Recycling status" means the target recycled content for the year minus the actual recycled content for the year.

(11) "Target recycled content" means the recycled content for the specified year as set forth in s. 159.31 (3) (c), Stats., expressed as a decimal.

NR 546.04 TARGET RECYCLED CONTENT. Each newspaper publisher shall meet or exceed the target postconsumer recycled content or pay a fee for not meeting the target. The minimum target recycled contents are: 10% in 1992 and 1993, 25% in 1994 and 1995, 35% in 1996 and 1997, 40% in 1998 and 1999, 45% in 2000 and thereafter.

NR 546.05 REPORTING REQUIREMENTS. (1) Except as provided in subs. (2) to (6) each newspaper publisher shall report annually to the department the total amount of newsprint purchased during the preceding calendar year and total amount of recycled content newsprint purchased during the preceding calendar year. The annual report shall be submitted on forms supplied by the department. The annual report for 1992 shall be submitted to the department within 30 days after the effective date of this rule...[revisor insert date]. In subsequent years, annual reports shall be submitted to the department on or before March 31 of each year.

Note: This form may be obtained from the Department of Natural Resources, Bureau of Solid and Hazardous Waste Management at 101 S. Webster St., P.O. Box 7921, Madison, WI 53707.

(2) Central printers which provide printing services for publishers may report on behalf of publishers for which they provide services, if both of the following apply:

(a) The average recycled content level for all newspapers printed at the central printing facility and for which this chapter applies, meets specified target recycled content levels.

(b) The report is signed by each publisher.

(3) Central printers may report the average recycled content level for all newspapers printed at the central printing facility and for which this

chapter applies, instead of calculating recycled content levels for individual newspapers.

(4) Newspaper publishers shall report for all newspapers published in Wisconsin which are distributed out of state. Newspaper publishers located outside of Wisconsin but which print in state, are not required to report.

(5) The annual report shall consist of the following information:

(a) The total amount in tons of all newsprint purchased for the newspaper.

(b) The amount in tons of each type of recycled content newsprint purchased as listed on the invoice from the supplier.

(c) The percent recycled content contained in each type of paper purchased.

(d) The average percent recycled content in the total newsprint purchased.

(e) The amount of newspaper recycling fee imposed, if any, calculated in accordance with s. NR 546.06.

(6) Each newspaper publisher or central printer shall obtain invoices indicating the recycled content and amounts purchased in tons from each newsprint manufacturer, printer and supplier providing newsprint to the newspaper publisher or central printer.

NR 546.06 CALCULATION OF FEES. (1) The amount of the newspaper recycling fee to be paid by each newspaper publisher under this chapter is 1% of the total cost of newsprint purchased to print the newspaper during the year multiplied by the recycling status.

(2) The amount of the newspaper recycling fee to be paid by each newspaper publisher under this chapter shall be calculated using the following formula:

Fee =
 $0.01 \times \text{total newsprint cost} \times [\text{target recycled content} - \text{actual recycled content}]$

Note: Sample Calculation: In 1994, a newspaper publisher purchases 5,000 tons of newsprint at \$500 per ton. The target recycled content for 1994 is 25% (.25). The average recycled content of all the newsprint purchased was 15% (.15).

$\text{FEE} = 0.01 \times \$2,500,000 \times [0.25 - 0.15]$

$\text{FEE} = \$2500$

NR 546.07 EXCEPTIONS. The newspaper recycling fee under this chapter does not apply to the following:

- (1) A newspaper publisher which meets or exceeds the target recycled content.
- (2) A newspaper publisher that meets all of the following criteria:
 - (a) The publisher is unable to obtain recycled newsprint in sufficient quantity.
 - (b) The publisher has attempted to obtain recycled newsprint from every producer of recycled newsprint that offered to sell recycled newsprint to the publisher within the preceding 12 months.
 - (c) The publisher submits to the department with the annual report documentation of its attempts to purchase recycled content newsprint. Documentation shall include the name and address of each supplier of recycled newsprint that the publisher contacted and the name and telephone number of the contact person at each of the suppliers.
- (3) A publisher of a newspaper that has a circulation of less than 20,000 and which meets all of the following criteria:
 - (a) The publisher submits a written request to the department with the annual report for an exemption from the newspaper recycling fee.
 - (b) The publisher provides documentation from its suppliers or central printer that the quoted price of recycled content newsprint needed to meet the average target recycled content level for the year exceeded the purchase price of 100% virgin newsprint by 10% or more for each purchase.
 - (c) The publisher provides an explanation and documentation of the financial hardship created by compliance with the target recycled content requirements specified in s. 159.31 (3) (c), Stats., and s. NR 546.04.

NR 546.08 REDUCTION OF FEES. (1) The department shall reduce the newspaper recycling fee imposed on a newspaper publisher if it determines that the newspaper publisher purchased newsprint under a contract signed on or before July 1, 1989 and all of the following apply:

- (a) The contract requires the newspaper publisher to accept and pay for newsprint having a recycled content less than the target content specified in s. 159.31 (3)(c), Stats., and s. NR 546.04.
 - (b) The contract does not contain language releasing the newspaper publisher from the obligation to purchase and pay for the newsprint upon enactment of laws by this state relating to taxation or recycling of newsprint.
 - (c) The publisher submits a written request for a reduction of fees with the annual report and provides a copy of the contract signed on or before July 1, 1989.
- (2) The reduced fee under this section shall be calculated as follows:

(a) Subtract the amount of newsprint subject to a contract described in sub. (1) (a) and (b) purchased by the newspaper publisher during the year from the total amount of newsprint purchased by the newspaper publisher during the year.

(b) Divide the amount of newsprint determined under par. (a) by the total amount of newsprint purchased by the newspaper publisher during the year.

(c) Multiply the number determined under par. (b) by the amount of the newspaper recycling fee calculated under s. NR 546.06.

(3) The publisher shall submit the reduced fee at the time the request for reduction of fees and the annual report are submitted.

NR 546.09 COLLECTION OF FEES. (1) Each year, each newspaper publisher shall submit the calculated fee to the department with the annual report. The fee shall be paid in the form of check or money order payable to the department.

(2) If a newspaper publisher requests an exemption from or reduction of the fee, the department shall review and either approve, deny or deem incomplete the request for exemption within 45 business days after receiving the request. If the department does not review and either approve, deny or deem incomplete the request for exemption within 45 business days after receiving the request, the 45 day period is extended for 30 business days. The department's failure to act on the exemption within the additional 30 business days constitutes approval of the exemption. If an exemption from or reduction of the fee is not approved, the department shall send an explanation of why the request was not approved, and a statement for the difference in the amount paid by the newspaper publisher from the actual fee required within 45 business days after receiving the request. Fees payable in accordance with this subsection shall be paid to the department within 45 business days of the statement date.

NR 546.10 RECORDKEEPING. Each newspaper publisher shall maintain records under this chapter for at least 3 years, regardless of whether annual reports are submitted by a central printer. Records shall be made available to the department upon request.

NR 546.11 USE OF REVENUES. The newspaper recycling fees collected under this chapter shall be deposited in the recycling fund under s. 25.49, Stats.

NR 546.12 CRITERIA AND PROCEDURES FOR DETERMINING STATUS OF OVERISSUES.

(1) Criteria for exclusion of overissues. Overissues of newspapers, magazines or both shall be excluded from the definition of postconsumer waste under this chapter if the department determines that any of the following conditions exist:

(a) Based on annual reports submitted by responsible units, the amount of newspapers or magazines from residential sources collected and marketed by responsible units statewide falls below the minimum recovery levels (recovery as a percentage of Wisconsin generation) in Table 1 for 1995 or any subsequent year.

(b) Newspapers or magazines from residential sources collected and marketed by responsible units statewide fall below the minimum tonnages in Table 1 for 1995 or any subsequent year.

(c) The department receives in the calendar year variance requests for newspaper or magazine collection or both from 5% or more of responsible units or from responsible units with approved, effective recycling programs representing a total of 5% or more of the state's population.

(d) The department grants a statewide variance from collection of either newspaper or magazines or both under s. 159.11(2m), Stats.

TABLE 1

PAPER GRADE	1995-1996 CALENDAR YEAR		1997-1999 CALENDAR YEAR		2000-AND BEYOND CALENDAR YEAR	
	Minimum Recovery as % of Generation	Minimum Tons Recovered and Marketed (thousands of tons)	Minimum Recovery as % of Generation	Minimum Tons Recovered and Marketed (thousands of tons)	Minimum Recovery as % of Generation	Minimum Tons Recovered and Marketed (thousands of tons)
Newspaper (ONP)	50	114	50	114	65	148.7
Magazine (OMG)	20	14.7	30	22.1	55	45

(2) For the calendar years 1993 and 1994, if the total statewide recovery rate for newspaper falls below 40% of generation or 91,000 tons, or if the total statewide recovery rate for magazines falls below 15% of generation or 11,000 tons, the department shall issue an advisory of potential insufficient markets in 1995 and beyond.

(3) The department shall take into account economic fluctuations in the paper and publishing industries in determining the status of overissues under this section.

(4) Procedures. The following procedures shall apply to all determinations under sub. (1):

(a) If circumstances warrant a determination of insufficient market demand for newspapers, magazines or both under sub. (1), the department shall make the determination on or before July 1, beginning in 1996 and subsequent years.

(b) The definition of postconsumer waste shall exclude overissues of magazines, newspapers and other printed publications for the calendar year following the determination of insufficient market demand.

(c) The department shall consult with paper and printing industry representatives, trade groups, municipal recycling officials and environmental advocates prior to making a determination under sub. (1).

(d) The department may hold a public hearing prior to making a determination under sub. (1).

(e) The department shall issue all decisions under sub. (1) in writing accompanied by the determinations of fact and conclusions of law upon which the decision is based.

(f) The department shall notify newspaper publishers of the decision under sub. (1) within 30 days and shall provide other notice to interested persons as the department considers necessary.

(5) Actions following determinations of insufficient markets. The following actions shall be taken after a determination of insufficient markets has been made under sub. (1):

(a) Convening of task force. If the department determines under sub. (1) that existing markets for newspaper, magazine paper or both are insufficient, the department shall convene an emergency task force. The task force shall be made up of an equal number of representatives from affected industries, trade groups, municipal recycling officials, and environmental groups. The department, based on the task force's input, shall develop an action plan to resolve the condition of insufficient markets.

(b) Task force action plan. The action plan shall give top priority to maintaining the success of responsible unit collection programs. The action plan shall include the following:

(1) A detailed assessment of the market problem.

(2) Actions that industry, local governments and the state should take to resolve the market problem.

(3) A method for evaluating the results of the plan.

(4) Action plan evaluation. The department shall monitor implementation of the action plan under sub. (3) and evaluate its effectiveness. Based on that evaluation, if the action plan has successfully eliminated the condition of insufficient markets, the department may rescind the determination under sub. (1) and the definition of postconsumer waste shall include overissues of magazines, newspapers, and other printed publications beginning on January 1 following the department's determination. If the action plan has not eliminated the condition of insufficient markets, the definition of postconsumer waste shall continue to exclude overissues.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on May 27, 1993

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro.), Stats.

Dated at Madison, Wisconsin August 5th, 1993

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary

(SEAL)

