The statement of scope for this rule, SS 061-22 was approved by the Governor on June 30, 2022, published in Register No. 799A3 on July 18, 2022, and approved by the Natural Resources Board on October 26, 2022. This rule was approved by the Governor on insert date.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING AND AMENDING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 673.05 (2) (c); to **renumber and amend** NR 673.60 (1); to **amend** NR 660.10 (133) (c) and (134) (b) 1., 661.0009 (intro.) and (4), 664.0001 (7) (k) 3., 665.0001 (3) (n) 3., 673.01 (1) (c), 673.03 (2) (b), 673.09 (6), (9) and (12) (b) 1., 673.13 (3) (b) 3. and 4., 673.14 (4) (b), 673.32 (2) (d), 673.33 (3) (b) 3. and 4., 673.34 (4) (b), and 673.60 (2); to **create** NR 660.10 (3o) and (133) (e), 661.0009 (4) (a), (b), (c), (Note 2) and (5), 664.0001 (7) (k) 5., 665.0001 (3) (n) 5., 668.01 (6) (e), 670.001 (3) (b) 8. e., 673.01 (1) (e) and (3), 673.06, 673.09 (1d) and (11) (e), 673.13 (5), 673.14 (6), 673.33 (5), 673.34 (6), and 673.60 (1) (a), (1) (b), (1) (c), and (3) relating to modifying and expanding universal waste management regulations and affecting small business.

WA-12-21

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Sections 227.14 (1m), 289.06, 289.24, 289.30, 289.41, 289.46 and 289.67, Stats., ch. 291, Stats., and s. 299.53, Stats.

2. Statutory Authority: Sections 227.11 (2) (a), 227.14 (1m), 287.03 (1) (a), 289.05, 289.06, 289.21, 289.24, 289.30, 289.31, 289.33, 289.41, 289.43, 289.61, 289.63, 291.001, 291.05 and 291.07, Stats.

3. Explanation of Agency Authority: The proposed rules and revisions would replace and update current state rules that comprehensively regulate the generation, transportation, recycling, treatment, storage and disposal of hazardous and universal wastes. As authorized by s. 227.14 (1m), Stats., the format of the proposed rules is similar to the federal regulations published in the code of federal regulations by the EPA under the federal Resource Conservation and Recovery Act (RCRA).

When the Wisconsin legislature passed the Hazardous Waste Management Act in 1977 it set out a declaration of policy in what is now s. 291.001, Stats., regarding hazardous waste management. It found that hazardous wastes, when mismanaged, pose a substantial danger to the environment and public health and safety. To provide for proper management of hazardous waste within the state, the legislature called upon the department to develop and administer a regulatory program that met nine specific objectives.

Section 227.11 (2) (a), Stats., provides that a state agency "may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute," subject to certain restrictions.

Section 287.03 (1) (a), Stats., directs the department to promulgate rules to implement the Solid Waste Reduction, Recovery and Recycling program pursuant to ch. 287, Stats.

Sections 289.05 and 289.06, Stats., direct the department to promulgate rules establishing solid waste management standards. Pursuant to ss. 291.05 and 291.07, Stats., the department is required to promulgate rules for the implementation of the resource conservation and recovery act and the methods of treatment or disposal of particular hazardous wastes.

Section 291.001, Stats., calls for a program that: (1) Relies upon private industry or local units of government to provide hazardous waste management services, (2) Requires the transportation, storage, treatment and disposal of hazardous wastes to be performed only by licensed operators, (3) Requires generators of hazardous waste to use operators licensed to transport, treat, store or dispose of hazardous wastes, (4) Does not interfere with, control or regulate the manufacturing processes that generate hazardous wastes, (5) Ensures the maintenance of adequate records on, and the reporting of, the disposition of all hazardous wastes either generated in or entering this state, (6) Encourages to the extent feasible, the reuse, recycling or reduction of hazardous wastes, (7) Provides adequate care and protection of disposal facilities after the facilities cease to accept hazardous wastes, (8) Provides members of the public and units of local government an opportunity to review and comment upon the construction, operation and long-term care of hazardous waste management facilities, and (9) Meets the minimum requirements of RCRA.

In furtherance of these stated objectives, the legislature adopted a number of statutes setting out general and specific hazardous waste rulemaking authority. Section 291.05, Stats., for instance, requires the department to adopt by rule EPA's criteria for identifying the characteristics of hazardous waste, and to adopt EPA's lists of hazardous wastes and hazardous constituents, with limited exceptions. Rules governing hazardous waste transportation are also mandated, as are rules governing specific aspects of hazardous waste generation, treatment, storage and disposal, corrective action, licensing, closure, long term care, and license and plan review and approval fees.

Since hazardous wastes are a subset of solid wastes, rulemaking authority in various sections of ch. 289, Stats., is also relied upon by the department, in particular authority relating to hazardous waste facility location, design, construction, operation, maintenance, closure, long-term care, negotiation and arbitration, financial responsibility and licensing and recycling.

4. Related Statutes or Rules: Chapters 287, 291, 292, and 299, Stats., and chs. NR 2, 140, 141, 500 to 538, 662, 673, 700 to 754 and 812, Wis. Adm. Code.

5. Plain Language Analysis: The rule incorporates into state law changes made to federal hazardous waste regulations by the U.S. Environmental Protection Agency in the following Federal Register, to the extent allowed by state law:

Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, December 9, 2019 (84 FR 67202)

Summary: This rule adds hazardous waste aerosol cans to the universal waste program under the federal RCRA regulations. Aerosol cans are used for dispensing a wide array of products including paints, solvents, pesticides, and personal care products and frequently contain flammable propellants such as propane or butane which can cause the aerosol can to demonstrate the hazardous characteristic for ignitability (s. NR 661.0021, Wis. Adm. Code), may contain materials that exhibit hazardous characteristics (subch. C of NR 661), or may, when discarded, constitute a P- or U-listed hazardous waste if it contains a commercial chemical product found at ss. NR 661.0033 (5) and (6).

In 1995, EPA promulgated the Universal Waste Rule (60 FR 25492, May 11, 1995) to establish a streamlined hazardous waste management system for widely generated hazardous wastes as a way to encourage environmentally sound collection and proper management of those wastes. The universal waste regulations in ch. NR 673 are a set of alternative hazardous waste management standards that operate in lieu of regulation under NR 660 through 670.

Under the Universal Waste Rule, destination facilities are those facilities that treat, store, dispose of, or

recycle universal wastes. Universal waste destination facilities are subject to all currently applicable requirements for hazardous waste treatment, storage, and disposal facilities (TSDFs) and must receive a RCRA license for such activities. Destination facilities that recycle universal waste and that do not store that universal waste prior to recycling in accordance with s. NR 661.0006 (3) (b) may be exempt from licensing under the s. NR 673.60 (2), Wis. Adm. Code.

There are eight factors to consider in evaluating whether a waste is appropriate for designation as a universal waste. These factors, found under s. NR 673.81, Wis. Adm. Code, are to be used to determine whether regulating a particular hazardous waste under the streamlined standards would improve overall management of the waste. As the EPA noted in the preamble to the final Universal Waste Rule (60 FR 25513), not every factor must be met for a waste to be appropriately regulated as a universal waste. However, consideration should result in a conclusion that regulating a particular hazardous waste under ch. NR 673 will improve waste management. The EPA added aerosol cans as a universal waste because this waste meets the factors that describe hazardous waste appropriate for management under the streamlined universal waste requirements.

The eight factors and an explanation on how aerosol cans meet the universal waste requirements are summarized below:

1. The waste or category of waste, as generated by a wide variety of generators, is listed in subch. D of ch. NR 661 or, if not listed, a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in subch. C of ch. NR 661. Aerosol cans frequently demonstrate the hazardous characteristic for ignitability due to the nature of the propellant used. In addition, the contents (propellant or product) may also exhibit another hazardous characteristic and may also be a P- or U- commercial chemical product listed waste.

2. The waste or category of waste is not exclusive to a specific industry or group of industries and is commonly generated by a wide variety of types of establishments. EPA has documented in the Federal Register (84 FR 67202) that large and small quantity generators managing hazardous waste aerosol cans can be found in 20 different industries including over 25,000 industrial facilities. Thus, aerosol cans are commonly generated by a wide variety of types of establishments, including retail and commercial businesses, office complexes, very small quantity generators, small businesses, government organizations, as well as large industrial facilities.

3. The waste or category of waste is generated by a large number of generators (e.g., more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator. As documented in the EPA Federal Register, more than 25,000 large and small quantity generators manage hazardous waste aerosol cans. Quantities generated vary depending on the type of generator and the situations associated with generation. The amount of waste remaining in a full aerosol can differs from the amount remaining in a can that is nearly empty. Data from the EPA show that in 2017, LQGs generated an average of 1.6 tons per year each of aerosol cans (approximately 3,600 cans).

4. Systems to be used for collecting the waste or category of waste (including packaging, marking and labeling practices) would ensure close stewardship of the waste. The baseline universal waste requirements of notification, labeling, training, and response to releases found in ch. NR 673 and the final specific requirements for management of aerosol cans in ss. NR 673.13 and 673.33, are designed to ensure close stewardship of the hazardous waste aerosol cans.

5. The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to ss. NR 673.13, 673.33 and

673.52 or applicable U.S. department of transportation requirements) would be protective of human health and the environment during accumulation and transport. Aerosol cans are designed to contain the products they hold during periods of storage and transportation as they move from the manufacturer to the retailer, and ultimately to the final customer. Because of their design, hazardous waste aerosol cans present a relatively low risk compared to other types of hazardous waste that are not contained under normal management conditions and the risk posed by intact waste aerosol cans during storage and transport is similar to the risk posed by intact product aerosol cans. In addition, the ignitability risk posed during accumulation and transport is addressed by standards set by local fire codes, the Office of Safety and Health Administration, and the Department of Transportation. These standards include requirements for outer packaging, can design, and general pressure conditions. The EPA has determined that the requirements of the universal waste program are effective in mitigating risks posed by hazardous waste aerosol cans. Specifically, the requirements for handlers to accumulate aerosol cans in a container that is structurally sound and compatible with the contents of the aerosol cans will ensure safe management and transport. In addition, the universal waste program requires proper training for employees when handling universal waste, responding to releases, and shipment in accordance with DOT regulations. These requirements will make the risks posed during accumulation and transport low. Additionally, the final specific requirements for management of aerosol cans that are punctured and drained at the handler address the ignitability risk and are designed to help prevent releases. According to the EPA, the specific aerosol can universal waste management standards address the risks posed by hazardous waste aerosol cans.

6. Regulation of the waste or category of waste will increase the likelihood that the waste will be diverted from non-hazardous waste management systems (e.g., the municipal waste stream, non-hazardous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment or disposal in compliance with ch. 291, Stats., and chs. NR 660 to 670, Wis. Adm. Code. Managing hazardous waste aerosol cans under the universal waste program is expected to increase the number of these items collected and to increase the number of aerosol cans being diverted from the non-hazardous waste stream into the hazardous waste stream because it would allow generators, especially those that generate this waste sporadically, to send it to a central consolidation point. Under the Universal Waste Rule, a handler of universal waste can send the universal waste to another handler, where it can be consolidated into a larger shipment for transport to a destination facility. Therefore, it will be more economical to send hazardous waste aerosol cans for recovery and recycling of metal. This rule will increase proper disposal of hazardous waste, making it less likely that aerosol cans will be sent for improper disposal in municipal landfills or municipal incinerators. In addition, because the universal waste regulations make aerosol can collection programs more economical, hazardous waste aerosol cans that might otherwise be sent to a municipal landfill under a VSQG or household hazardous waste exemption will be more easily collected and consolidated for hazardous waste disposal.

7. Regulation of the waste or category of waste under this chapter will improve implementation of and compliance with the hazardous waste regulatory program. The addition of aerosol cans as universal waste will improve compliance with the hazardous waste regulations. In particular, handlers of hazardous waste aerosol cans who are infrequent generators of hazardous waste and who might otherwise be unfamiliar with the more complex hazardous waste requirements but who generate hazardous waste aerosol cans, will be able to easily send this waste for proper management.

8. Other factors as may be appropriate. The 8 factors are designed to determine whether regulating a particular hazardous waste under the streamlined requirements for universal waste would improve the overall management of the waste. EPA considered states' experience of already managing aerosol cans under state universal waste programs. Five states had adopted aerosol cans into their universal waste programs when EPA was determining if aerosol cans should be added as a federal universal waste. Those states' experiences with management of aerosol cans under their universal waste programs provided a

useful source of information to inform EPA's judgment on whether to add aerosol cans to the national universal waste program. Information supplied to EPA from officials in those five states indicated that their addition of aerosol cans as universal waste improved the implementation of the hazardous waste program. According to the EPA, State officials from both California and Colorado stated that their aerosol can universal waste programs had been in effect since 2002 and they had not identified any problems with enforcing compliance with the standards. This information weighed in favor of concluding that management of aerosol cans under the Federal universal waste regulations would likely be successful.

Adding aerosol cans to the Universal Waste program in Wisconsin will benefit the wide variety of establishments generating and managing hazardous waste aerosol cans, including the retail sector, by providing a clear, protective system for managing discarded aerosol cans, easing regulatory burdens, promoting the collection and recycling of these cans, and encouraging the development of municipal and commercial programs to reduce the quantity of these wastes going to municipal solid waste landfills or combustors. Additionally, this rule includes clarifications to the requirements for universal waste destination facilities. (EPA Checklist 242).

In addition to adding aerosol cans to Wisconsin's Universal Waste program, the proposed rule includes clarifying language on the management of intentionally broken or crushed lamps, including the management of hazardous waste residues. This language is aligned with federal requirements and is anticipated to be little to no impact on affected entities.

This rule will also clarify and provide consistency in requirements for universal waste receiving and recycling facilities.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: The rule revisions incorporate new RCRA universal waste regulations as promulgated on December 9, 2019, and adopted by EPA effective February 7, 2020, and clarify language to the current rule regarding the intentional crushing of universal waste lamps and the requirements for destination facilities.

The new rules will include the addition of aerosol cans as a universal waste in Wisconsin, which will be equivalent to federal regulations. This federal rule is optional for states to adopt but provides alternate methods for managing a hazardous waste stream by recycling instead of disposal. The streamlined universal waste regulations are expected to ease regulatory burdens on facilities that generate hazardous waste aerosol cans. To the extent possible, the department intends to adopt the content and format of the federal regulations, to ensure equivalency.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope: The department held an online preliminary public hearing on the statement of scope on October 6, 2022, at 2:00 p.m. Ninety-six people registered for the hearing and 73 members of the public attended the hearing.

There were no comments in support or opposition.

8. Comparison with Similar Rules in Adjacent States: Minnesota, Illinois, and Michigan have state-managed hazardous waste programs. In that capacity, these states are working to promulgate these rules and include these regulations as part of their EPA-authorized program. The status of this process in each state is found below.

Summary of neighboring states

USEPA Universal Waste Regulations: Addition of Aerosol Cans Promulgated December 9, 2019. Checklist 242								
State:	**Iowa**		**Illinois**		**Michigan**		**Minnesota**	
Status of equivalent rules	**Adopted[1]**	**Authorized[2]**	**Adopted**	**Authorized**	**Adopted**	**Authorized**	**Adopted**	**Authorized**
	N/A	N/A	**Y**	**N**	**Y**	**N**	**Y**	**N**
	Iowa does not have a state program. USEPA Region 7 administers and enforces RCRA hazardous waste regulations.		Aerosol can regulations are equivalent to federal regulations; established under 35 Ill. Adm. Code 733.106, September 3, 2020.		Aerosol can regulations are both more stringent and broader in scope than the federal rule; established under R. 299.9228, Michigan Code, August 3, 2020.		Aerosol can regulations are identical to federal regulations; established prospectively under Minn. R. 7045.1400, Subp. 1, 2005.	

[1]Adopted = promulgated and effective at the state level

[2]Authorized = rules adopted by the state have been authorized by USEPA

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: The proposed rules will maintain consistency with federal rules and help ensure continued authorization of the state RCRA program by the EPA. Currently 33 states have adopted aerosol cans as a universal waste. If Wisconsin adds aerosol cans as a universal waste, this will ease regulatory requirements and provide consistency for businesses that send these waste streams to other states for recycling, management, or disposal. The department received comments from businesses interested in adding aerosol cans as a universal waste stream as part of the development of this rule.

Clarifications to destination facility requirements and universal waste lamp language will align with language in the Federal Register (84 FR 67202), making it easier for facilities to understand and comply with the requirements. There will be no substantive change to the existing regulations.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: The determination that these rules will have little or no impact on small businesses was reached through analysis of the reports created by EPA during the promulgation process at the federal level, and the evaluation of impacted state entities and business sectors. Each federal revision contains an economic impact assessment, fiscal estimate, and language discussing which sectors, businesses, and entities will be affected by the change. This information was published in the Federal Register (84 FR 67202). While small businesses in Wisconsin will be subject to the universal waste requirements, when they elect to manage their eligible hazardous waste under the universal waste regulations, this rule is considered a relaxation and clarification, and as such will have little to no adverse economic impacts on such businesses.

Since this rule is a flexibility in the regulations, small businesses will have the option to follow the universal waste requirements instead of the more stringent hazardous waste regulations. As universal waste is recycled, the cost of the disposal of hazardous waste will be eliminated or reduced.

11. Effect on Small Business (initial regulatory flexibility analysis): Promulgation of these rules will result in little to no costs to small business. Federal rules require an economic impact analysis for

promulgation, and without exception these changes were deemed by federal analysis as not expected to "result in an adverse impact to a significant number of small entities since the rule is expected to result in net cost savings for all entities affected by the rule." Furthermore, the addition of aerosol cans as a universal waste is a relaxation of existing rules and as such will result in either direct (decreased regulatory costs) or indirect (administrative time savings) cost savings for businesses and entities in affected business sectors.

The proposed rule will provide flexibilities to requirements for the management and disposal of waste aerosol cans that are used in a variety of small businesses, including retailers, auto body and repair shops, gas stations, printers, and grocery stores. The proposed revision is intended to provide entities with the option to decrease the level of management, documentation, evaluation, transport, recycling, and disposal costs associated with management of this waste stream.

The effect of these proposed rules will be minimal and may be advantageous to small business, as they are primarily paperwork reductions, clarifications, and relaxations of existing rules. Additionally, the proposed regulations do not alter fee schedules in such a way that there would be any negative effect on the small business community of Wisconsin.

12. Agency Contact Person: Cathy Baerwald, Department of Natural Resources, Southeastern Region Headquarters, 1027 W. St. Paul Ave., Milwaukee, WI 53233-2641; Catherine.Baerwald@wisconsin.gov; (414) 333-6805

13. Place where comments are to be submitted and deadline for submission:
Written comments may be submitted at the public hearings, by regular mail, or email to:

Cathy Baerwald
Department of Natural Resources
Southeastern Region Headquarters
1027 W. St. Paul Ave.
Milwaukee, WI 53233-2641
Catherine.Baerwald@wisconsin.gov
(414) 333-6805

Comments may be submitted to the department contact person listed above or to DNRAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at https://dnr.wi.gov/calendar/hearings/. Comments may also be submitted through the Wisconsin Administrative Rules Website at https://docs.legis.wisconsin.gov/code/chr/active.

RULE TEXT

SECTION 1. NR 660.10 (3o) is created to read:

NR 660.10 (3o) "Aerosol can" means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

SECTION 2. NR 660.10 (133) (c) is amended to read:

NR 660.10 (133) (c) ~~Thermostats and mercury-containing~~ Mercury-containing equipment as described in s. NR 673.04.

SECTION 3. NR 660.10 (133) (e) is created to read:

NR 660.10 (133) (e) Aerosol cans as described in s. NR 673.06.

SECTION 4. NR 660.10 (134) (b) 1. is amended to read:

NR 660.10 (134) (b) 1. A person who treats ~~(~~universal waste, except under the provisions of s. NR 673.13 (1) or (3) or 673.33 (1) or (3)~~)~~, or disposes of or recycles universal waste, except under s. NR 673.13 (5) or s. 673.33 (5).

SECTION 5. NR 661.0009 (intro.) and (4) are amended to read:

NR 661.0009 Requirements for universal waste, universal waste handlers, and universal waste transporters. Except as specified in ch. NR 673, ~~the wastes listed in this section are exempt from regulation under chs. NR 662 to 667 and 670 and ss. NR 668.07 and 668.50 and, therefore, are not fully regulated as hazardous waste. The~~ if a person chooses to manage the hazardous wastes listed in this section as universal wastes, all of the following wastes are subject to regulation under ch. NR 673 and are exempt from regulation under chs. NR 662 to 667 and 670 and ss. 668.07 and 668.50:

(4) Lamps as described in s. NR 673.05, except lamps that are intentionally broken or crushed. A facility at which universal waste lamps are intentionally broken or crushed by a person who did not generate the universal waste lamp is a destination facility subject to subch E. A universal waste generator that intentionally breaks or crushes its own universal waste lamps shall do all of the following:

SECTION 6. NR 661.0009 (4) (a), (b), (c), (Note 2) and (5) are created to read:

NR 661.0009 (4) (a) Conduct the breaking and crushing activities using a device that effectively contains the treatment residual contents and any emissions thereof.

(b) Prevent releases to the environment from the residual contents and any emissions thereof.

(c) Conduct a hazardous waste determination on the contents of the broken and crushed universal waste lamps, the filter from the device, and any other residues generated from the breaking and crushing

of universal waste lamps as provided under s. NR 662.011. Any hazardous waste generated from the breaking and crushing of the universal waste lamps is subject to all applicable requirements of chs. NR 660 to 670.

Note: While the breaking and crushing of the universal waste lamps is permissible when done in compliance with chs. NR 660 to 670, the department strongly discourages those activities, as the inhalation of mercury vapor is a significant health risk.

(5) Aerosol cans as described in s. NR 673.06.

SECTION 7. NR 664.0001 (7) (k) 3. is amended to read:

NR 664.0001 (7) (k) 3. ~~Thermostats and mercury-containing~~ Mercury-containing equipment as described in s. NR 673.04.

SECTION 8. NR 664.0001 (7) (k) 5. is created to read:

NR 664.0001 (7) (k) 5. Aerosol cans as described in s. NR 673.06.

SECTION 9. NR 665.0001 (3) (n) 3. is amended to read:

NR 665.0001 (3) (n) 3. ~~Thermostats and mercury-containing~~ Mercury-containing equipment as described in s. NR 673.04.

SECTION 10. NR 665.0001 (3) (n) 5. is created to read:

NR 665.0001 (3) (n) 5. Aerosol cans as described in s. NR 673.06.

SECTION 11. NR 668.01 (6) (e) is created to read:

NR 668.01 (6) (e) Aerosol cans as described in s. NR 673.06.

SECTION 12. NR 670.001 (3) (b) 8. e. is created to read:

NR 670.001 (3) (b) 8. e. Aerosol cans as described in s. NR 673.06.

SECTION 13. NR 673.01 (1) (c) is amended to read:

NR 673.01 (1) (c) ~~Thermostats and mercury-containing~~ Mercury-containing equipment as described in s. NR 673.04.

SECTION 14. NR 673.01 (1) (e) and (3) are created to read:

NR 673.01(1) (e) Aerosol cans as described in s. NR 673.06.

(3) This chapter is not applicable to universal wastes that are abandoned or illegally or improperly disposed.

SECTION 15. NR 673.03 (2) (b) is amended to read:

NR 673.03 (2) (b) Pesticides not meeting the conditions set forth in sub. (1). These pesticides shall be managed in compliance with the hazardous waste rules in chs. NR 660 to 670, except that aerosol cans as defined in s. NR 673.09 that contain pesticides may be managed as aerosol can universal waste under s. NR 673.13 (5) or 673.33 (5).

SECTION 16. NR 673.05 (2) (c) is repealed.

SECTION 17. NR 673.06 is created to read:

NR 673.06 Applicability—Aerosol cans. (1) AEROSOL CANS COVERED UNDER THIS CHAPTER. The requirements of this chapter apply to any person managing aerosol cans as described under s. NR 673.09, except those listed under sub. (2).

(2) AEROSOL CANS NOT COVERED UNDER THIS CHAPTER. The requirements of this chapter do not apply to a person managing any of the following types of aerosol cans:

(a) Aerosol cans that are not yet wastes under ch. NR 661. Sub. (3) describes when an aerosol can becomes a waste.

(b) Aerosol cans that are not hazardous waste. An aerosol can is a hazardous waste if the aerosol can exhibits one or more of the characteristics identified under subch. C of ch. NR 661 or is listed under subch. D of ch. NR 661.

(c) Aerosol cans that meet the standard for empty containers under s. NR 661.0007.

(3) GENERATION OF WASTE AEROSOL CANS.

(a) A used aerosol can becomes a waste on the date it is discarded.

(b) An unused aerosol can becomes a waste on the date the handler decides to discard it.

SECTION 18. NR 673.09 (1d) is created to read:

NR 673.09 (1d) "Aerosol can" means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

SECTION 19. NR 673.09 (6) and (9) are amended to read:

NR 673.09 (6) "Large quantity handler of universal waste" means a universal waste handler ~~(~~, as defined in this section~~)~~, who accumulates 5,000 kilograms (11,025 pounds) or more total of universal waste ~~(~~,batteries, pesticides, mercury-containing equipment, ~~or~~ lamps, or aerosol cans, calculated collectively~~)~~, at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms (11,025 pounds) or more total of universal waste is accumulated.

(9) "Small quantity handler of universal waste" means a universal waste handler ~~(~~, as defined in this section~~)~~, who does not accumulate 5,000 kilograms (11,025 pounds) or more total of universal waste ~~(~~,batteries, pesticides, mercury-containing equipment, ~~or~~ lamps, or aerosol cans, calculated collectively~~)~~, at any time.

SECTION 20. NR 673.09 (11) (e) is created to read:

NR 673.09 (11) (e) Aerosol cans as described in s. NR 673.06.

SECTION 21. NR 673.09 (12) (b) 1. is amended to read:

NR 673.09 (12) (b) 1. A person who treats ~~(~~universal waste, except under s. NR 673.13 (1) or (3), or 673.33 (1) or (3)~~)~~, or disposes of or recycles universal waste, except under s. NR 673.13 (5) or 673.33 (5).

SECTION 22. NR 673.13 (3) (b) 3. and 4. are amended to read:

NR 673.13 (3) (b) 3. Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets ~~the~~ all applicable requirements under ~~ss. NR 662.015 and 662.016~~chs. NR 660 to 670.

4. Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets ~~the~~ all applicable requirements under ~~ss. NR 662.015 and 662.016~~ chs. NR 660 to 670.

SECTION 23. NR 673.13 (5) is created to read:

NR 673.13 (5) AEROSOL CANS. A small quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents releases, according to all of the following:

(a) Universal waste aerosol cans shall be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(b) Universal waste aerosol cans that show evidence of leakage shall be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements under par. (d).

(c) A small quantity handler of universal waste may conduct any of the following activities as long as each individual aerosol can is not breached and remains intact:

1. Sorting aerosol cans by type.

2. Mixing intact cans in one container.

3. Removing actuators to reduce the risk of accidental release.

(d) A small quantity handler of universal waste who punctures and drains aerosol cans shall recycle the empty punctured aerosol cans and meet all of the following requirements while puncturing and draining universal waste aerosol cans:

1. Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions.

2. Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can, including proper assembly, operation and maintenance of the device described in subd. 1., segregation of incompatible wastes, and proper waste management practices to prevent fires or releases; maintain a copy of the device's specification and instruction on site; and ensure employees operating the device are trained in the proper procedures.

3. Ensure that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment including locating the device described in subd. 1. on a solid, flat surface in a well-ventilated area.

4. Immediately transfer the contents from the waste aerosol can or puncturing device, if applicable, to a container or tank that meets the applicable requirements under s. NR 662.014, 662.015, 662.016, or 662.017.

5. Conduct a hazardous waste determination on the contents of the emptied aerosol can under s. NR 662.011. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements under chs. NR 660 to 670. The handler is considered the generator of the hazardous waste and is subject to ch. NR 662.

6. If the contents are determined to be nonhazardous, manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.

7. Establish or adopt a written procedure to be followed in the event of a spill or leak and provide a spill clean-up kit, and promptly clean up all spills or leaks of the contents of the aerosol cans.

SECTION 24. NR 673.14 (4) (b) is amended to read:

NR 673.14 (4) (b) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste — Mercury Thermostats," ~~" Waste~~ "Waste Mercury Thermostats," or "Used Mercury Thermostats."

SECTION 25. NR 673.14 (6) is created to read:

NR 673.14 (6) Each universal waste aerosol can, or a container in which the aerosol cans are contained, shall be labeled or marked clearly with any of the following phrases: "Universal Waste— Aerosol Cans," "Waste Aerosol Cans," or "Used Aerosol Cans."

SECTION 26. NR 673.32 (2) (d) is amended to read:

NR 673.32 (2) (d) A list of all the types of universal waste managed by the handler, ~~(~~for example, batteries, pesticides, mercury-containing equipment, lamps, and aerosol cans~~)~~.

SECTION 27. NR 673.33 (3) (b) 3. and 4. are amended to read:

NR 673.33 (3) (b) 3. Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets that meets ~~the~~ all applicable requirements ~~of s. NR 662.016 or 662.017~~ under chs. NR 660 to 670.

4. Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets ~~the~~ all applicable requirements ~~of ss. NR 662.015 and 662.017~~ under chs. NR 660 to 670.

SECTION 28. NR 673.33 (5) is created to read:

NR 673.33 (5) AEROSOL CANS. A large quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, according to all of the following:

(a) Universal waste aerosol cans shall be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(b) Universal waste aerosol cans that show evidence of leakage shall be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements under par. (d).

(c) A large quantity handler of universal waste may conduct any of the following activities as long as each individual aerosol can is not breached and remains intact:

1. Sorting aerosol cans by type.

2. Mixing intact cans in one container.

3. Removing actuators to reduce the risk of accidental release.

(d) A large quantity handler of universal waste who punctures and drains aerosol cans shall recycle the empty punctured aerosol cans and meet all of the following requirements while puncturing and draining universal waste aerosol cans:

1. Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions.

2. Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can. The written procedure shall include proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases; maintain a copy of the manufacturer's specification and instruction on site; and ensure employees operating the device are trained in the proper procedures.

3. Ensure that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes locating the equipment on a solid, flat surface in a well-ventilated area.

4. Immediately transfer the contents from the waste aerosol can or puncturing device, if applicable, to a container or tank that meets the applicable requirements under s.NR 662.014, 662.015, 662.016, or 662.017.

5. Conduct a hazardous waste determination on the contents of the emptied aerosol can under s. NR 662.011. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements under chs. NR 660 to 670. The handler is considered the generator of the hazardous waste and is subject to ch. NR 662.

6. If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.

7. A written procedure shall be in place in the event of a spill or leak and a spill clean-up kit must be provided. All spills or leaks of the contents of the aerosol cans shall be cleaned up promptly.

SECTION 29. NR 673.34 (4) (b) is amended to read:

NR 673.34 (4) (b) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste — Mercury Thermostats," ~~" Waste~~ "Waste Mercury Thermostats," or "Used Mercury Thermostats."

SECTION 30. NR 673.34 (6) is created to read:

NR 673.34 (6) Each universal waste aerosol can, or a container in which the aerosol cans are contained, shall be labeled or marked clearly with any of the following phrases: "Universal Waste— Aerosol Cans," "Waste Aerosol Cans," or "Used Aerosol Cans."

SECTION 31. NR 673.60 (1) is renumbered (1) (intro.) and amended to read:

(1) The owner or operator of a destination facility is subject to all applicable requirements ~~of~~ under chs. NR 664 to 670. For the purposes of this section, a universal waste is considered stored if the owner or operator of a destination facility does not begin treatment as defined under s. 291.01 (21), Stats., including legitimate recycling, within 24 hours after the universal waste arrives at the destination facility and the owner or operator is subject to all of the following as applicable:

SECTION 32. NR 673.60 (1) (a), (b), and (c) are created to read:

NR 673.60 (1) (a) The owner or operator of a destination facility that is engaged in legitimate recycling under s. NR 660.43, and does not store or dispose of universal waste, shall comply with the applicable requirements under chs. NR 666 and 668.

(b) The owner or operator of a destination facility that is engaged in legitimate recycling under s. NR 660.43, and stores or disposes of universal waste, shall comply with the applicable requirements under chs. NR 664, 665, 666, 668, and 670, and the requirement to have a hazardous waste license under s. 291.25, Stats.

(c) The owner or operator of a destination facility that is not engaged in legitimate recycling of universal waste shall comply with the applicable requirements under chs. NR 664, 665, 666, 668, and 670, and the requirement to have a hazardous waste license under s. 291.25, Stats.

SECTION 33. NR 673.60 (2) is amended to read:

NR 673.60 (2) The owner or operator of a destination facility that ~~recycles a particular universal waste without storing that universal waste before it is recycled shall comply with~~ is engaged in legitimate recycling under s. NR 660.43 and does not store or dispose of universal waste shall comply with the requirements under s. NR 661.0006 (3) (b).

SECTION 34. NR 673.60 (3) is created to read:

NR 673.60 (3) Residues generated from the treatment of universal waste are subject to the requirements under ch. NR 662 and any other applicable regulations.

SECTION 35. 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 36. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].