



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on Natural Resources and
Transportation...**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (ab = Assembly Bill) (ar = Assembly Resolution) (ajr = Assembly Joint Resolution)
 - (sb = Senate Bill) (sr = Senate Resolution) (sjr = Senate Joint Resolution)
- Miscellaneous ... **Misc**

REPORT TO LEGISLATURE

NR 600s, Wis. Adm. Code
Hazardous waste management

Board Order No. WA-10-05
Clearinghouse Rule No. 05-032

Basis and Purpose of the Proposed Rule

The proposed rules will replace and update current rules that regulate the generation, transportation, recycling, treatment, storage and disposal of hazardous waste and used oil. The proposed rule includes new state rules based on federal hazardous waste regulations already in effect, and revises current rules to more closely parallel the format and content of the federal regulations. The Department is required to adopt rules that are at least equivalent to U.S. EPA's regulations under the Resource Conservation and Recovery Act, as amended, (RCRA) to comply with state law and to maintain Wisconsin's authorization to administer the federal hazardous waste program. The hazardous waste rule revisions are intended to:

- Provide an easier to understand set of requirements
- Eliminate out-dated provisions and replace them with updated U.S. EPA regulation language
- Provide consistency with other states in our region that have adopted U.S. EPA regulations
- Reduce the regulatory burden through paperwork reductions for businesses, facilitate legitimate recycling and provide increased flexibility in design and operation of hazardous waste facilities
- Generate sufficient revenue to administer the program
- Simplify future rule revisions
- Reduce potential confusion by the regulated community, thereby increasing compliance with the rules

The revisions add a number of federal provisions that Wisconsin is not currently authorized by U.S. EPA to administer, such as air emission standards for containers and tanks, the recovery of precious metals and standards for boilers and industrial furnaces. The Order incorporates updates to these U.S. EPA regulations, including revisions that reduce the paperwork burden on generators, and allow alternate standards for contaminated soils from clean-up sites, emergency response actions and activities at military installations.

The revised rules continue to require Wisconsin small quantity hazardous waste generators to submit annual reports and pay an annual, environmental repair fee for hazardous waste generated, and submit copies of designated facility-signed manifests for out-of-state hazardous waste shipments. The annual reports summarize the amounts and types of waste generated and how the waste was managed. These reports are significantly reduced in scope as compared to the reporting requirements for large quantity generators.

Under both the current and proposed rules, companies that generate very small quantities of hazardous waste (less than 220 pounds per month) are exempt from most of the hazardous waste requirements. They must comply with the management standards for the safe storage of wastes in containers and tanks. For recordkeeping requirements, very small generators are only required to submit copies of final, signed manifests for hazardous waste shipped to out-of-state treatment, storage or disposal facilities, and keep final copies of the manifests for three years if the generator uses a manifest (the use of a manifest is not required).

The rules continue to require hazardous waste transporters operating in Wisconsin to be licensed by the Department, as required by s. 291.23, Stats. Under the federal regulations, hazardous waste transporters are not required to be licensed by U.S. EPA.

The rules continue to prohibit land treatment of hazardous waste. Under the federal regulations, land treatment of hazardous waste is allowed if it meets the applicable requirements of Subpart M – Land Treatment of 40 CFR Part 264 or 265. The rules also continue to prohibit underground injection of hazardous waste through a well, except for certain underground injection of contaminated groundwater as part of a Department-approved remedial action necessary for the cleanup of soil or groundwater contamination. Under the federal regulations, underground injection of hazardous waste for disposal is allowed if it meets applicable federal requirements.

The rules continue to regulate, as hazardous waste household hazardous waste which has been separated from household solid waste and managed at a regulated collection facility, to ensure the safe management and legitimate recycling or disposal of the wastes. The revised rules codify the Department's 1995 Interim Guidance for Household and Very Small Quantity Generator Hazardous Waste Collection Facilities. This is more stringent than federal requirements, but less stringent than fully regulating household and conditionally exempt small quantity generator hazardous waste collection facilities as hazardous waste management facilities.

The process to obtain an operating license for new or expanding treatment, storage or disposal facilities in Wisconsin is comparable to the federal facility permitting process, but also includes additional unique state statutory requirements. The revised rules continue to require interim licenses for the operation of existing facilities that become subject to hazardous waste regulation due to changes in the law, while federal regulations simply confer interim status on these operations.

Fees

The Order includes an increase in the hazardous waste plan review, license and manifest fees. The current hazardous waste fee schedule has been in place since 1994. The Order increases all hazardous waste plan review and license fees effective October 1, 2006. The majority of the fee increases represent about a 3% increase per year since 1994 to account for inflation. A few of the fees represent a higher percentage increase and there are some fees that are decreasing or being eliminated. In addition, a per-vehicle fee is added to the Transportation Service License fee. This will make the hazardous waste transportation license similar in structure to the solid waste transportation license. The Order also proposes an increase in the Manifest Fee from \$2 to \$6 per manifest effective January 1, 2006. Wisconsin's manifest revenue at the \$2/manifest level has never generated sufficient funds to cover the costs of managing the manifest data. The current fees are roughly half of the revenue projected when the fee was implemented in 1994. Wisconsin's current manifest fee is also significantly below that of neighboring states. See Attachment A for details on the current and proposed fees, along with explanations for the various levels of fee adjustments. Attachment B shows hazardous waste program revenue projections with the proposed fee increases in place.

Fee increases are proposed because inflationary costs have affected salaries, fringe benefits, and supplies and services, and because revenue from the hazardous waste fees approved in 1994 has never met expectations. Two new hazardous waste positions approved in the 2001-03 Biennial Budget were never filled because of lack of sufficient revenue. Based on current revenue and expenditure levels, we are projecting a deficit in the hazardous waste program revenue account at the end of FY2005.

The Waste Management Program uses General Program Revenue (GPR), Program Revenue and federal grant funding to cover the costs of operating the hazardous waste program in Wisconsin. Through the last several biennial budget cycles, the amount of GPR available to the Waste Management Program has decreased. In addition, the amount of hazardous waste federal funding the Department receives from U.S. EPA has remained at the same level since FY1995, and was actually decreased in FY2005. As a result, we are no longer able to cover the costs necessary to operate the hazardous waste program.

If the Department is not able to bring in additional revenue, the Waste Management Program will need to reduce staffing levels. This will affect its ability to continue the current level of hazardous waste licensing and plan review, inspections, complaint response, and technical assistance. These activities ensure that hazardous waste facilities are managed in ways that protect human health and the environment. Mishandling of the generation, transport and disposal of hazardous waste can cause serious threats to

human health and the environment through soil and groundwater contamination. Preventing pollution through proper management of hazardous wastes is a good investment.

Reducing staff available to work on hazardous waste management activities will also jeopardize Wisconsin's hazardous waste program authorization from U.S. EPA. Being an authorized state allows hazardous waste facility owners and operators to work directly with Department staff that are familiar with and located near their facilities. If Wisconsin loses its program authorization, the hazardous waste management activities in Wisconsin would be carried out by U.S. EPA staff. Reduced staffing levels would also result in Wisconsin not being able to earn the federal grant money it currently receives from U.S. EPA, which would cause a further reduction in federal funding available to the Department.

Summary of Public Comments

See attachment summary.

Modifications Made

See Attachment C

Appearances at the Public Hearing

In support – none

In opposition:

Steven P. Stokke, WRR Environmental Services Company, 5200 State Road 93, Eau Claire, WI 54701

As interest may appear:

Tom Howells, President, Wis. Motor Carriers Assoc., P.O. Box 44849, Madison, WI 53744
Tom Daly, Onyx Environmental Services, W124 N9451 Boundary Road, Menomonee Falls, WI 53051
Kelly Taylor, Safety-Kleen Systems, Inc., 2325 Daniels Street, Madison, WI 53718

Changes to Rule Analysis and Fiscal Estimate

The plain language analysis was updated to reflect that the rule is proposed for final adoption and not for public hearing. The fiscal analysis was modified to show a decrease in the net change in revenues from \$175,700 to \$160,000.

Response to Legislative Council Rules Clearinghouse Report

See Attachment D.

Final Regulatory Flexibility Analysis

The Department evaluated the impacts of the revised rules and the proposed fee increases on small businesses, as required by ch. 227, Stats. We considered the methods listed in s. 227.114(2), Stats., to reduce the impact of the rules on small businesses and incorporated the methods that were feasible, as required by s. 227.114(3), Stats. Department staff also testified before the Small Business Regulatory Review Board (SBRRB) and answered questions from the board during the meeting and in follow-up correspondence about the possible direct and indirect impacts of the fee increases on small businesses.

Based on our evaluation, the Department determined that the revised rules and fee increases will not have a significant economic impact on a substantial number of small businesses. Therefore, a Final Regulatory Flexibility Analysis is not required.

Summary of Public Comments

Four public hearings were held on the proposed rules. One hearing was held in Madison on May 11, 2005. Hearings in Eau Claire and Wisconsin Rapids were held via teleconference on May 12, and the final hearing was held in Waukesha on May 13, 2005. Three persons submitted appearance slips at the May 11 hearing. One person submitted an appearance slip at the May 12 hearing, and provided comments in opposition to the proposed transportation license fee increases.

The Department received 23 written and electronic comments during the public comment period. A summary of the comments and the Department's responses are set out below. The majority of the public comments were related to the proposed fee increases and the Household Hazardous Waste and Very Small Quantity Generator Collection Facility rule. The collection facility rule was revised in response to the comments received.

The public comments and responses are summarized and sorted into the following topics:

- A. Proposed Fee Increases
- B. Household Hazardous Waste/Very Small Quantity Generator Collection Facilities, subch. HH of ch. NR 666,
- C. Listing of Hazardous Wastes, s. NR 661.33,
- D. Waste Derived Fertilizer Conditional Exemption, s. NR 661.04
- E. Hazardous Waste Generator Standards, s. NR 662.041
- F. Land Disposal Restrictions, ch. NR 668
- G. Universal Wastes, ch. NR 673
- H. Miscellaneous comments

A. Proposed Fee Increases

The Department received a number of comments relating to the proposed Manifest Fee increase. The comments have been grouped and summarized and responses provided for each general area of comments.

1. Comment –The Department received several comments from hazardous waste facilities saying they felt the proposed manifest fee increase would place an unfair burden on licensed hazardous waste treatment, storage and disposal facilities in Wisconsin and would place them at a competitive disadvantage when compared to states that do not have manifest fees in place. They stated the proposed fee increases would have a significant impact on their operations, and on their customers, many of whom are small businesses. The commenters also stated that it had been their experience that when a State increases user fees or taxes on hazardous waste treatment and storage, the State and the regulated businesses begin to lose revenue as the generators of the waste will seek facilities in non-taxing States for which to conduct business.

Response –The Department does not believe at this time, that the proposed manifest fee increase will result in the state and regulated businesses losing revenue because generators of the waste will take their wastes to other states. When the manifest fee was originally implemented in 1994, we did not see a decrease in the amount of hazardous waste that was treated or stored in Wisconsin. The Department does not believe the manifest fee increase will have a severe adverse impact on small businesses, since on average, small businesses ship around 6-8 manifested shipments per year. Even if the entire amount of the fee increase was passed on to them from the TSD, it would still only equate to an additional \$32 per year for manifest fees. In addition, the proposed rules also include a new conditional manifest exemption, which exempts small quantity generators from having to use a manifest if the waste is reclaimed under a contractual agreement where the regenerated material is shipped back to the generator for re-use.

According to information available to us, about 40% of the manifests received by one of the large hazardous waste companies in Wisconsin could be eligible for this new exemption. This would likely

result in a reduction in the number of manifests that would be subject to the manifest fee. This decrease would potentially offset the proposed increase in the manifest fee for hazardous waste facilities whose customers qualify for this exemption.

2. Comment –The Department received several comments from hazardous waste facilities stating that they felt the proposed manifest fee increase was too high, and that if the hazardous waste staffing level in the Waste Management Program has been decreasing, then there should be a corresponding decrease in level of expenses. Also, these same facilities stated that the proposed requirement for electronic submittal of manifests should result in reduced costs for processing manifest forms.

Response –The Department currently charges \$2 per manifest submitted to the Department. We do not charge for copies of the manifest form – they are provided free to anyone who requests them. The manifest fee covers the clerical costs associated with processing the manifests, data entry costs by an outside contractor, electronic data storage and retrieval costs, storage costs for paper manifests, personnel costs for staff who manage the database and process the data, and personnel costs for compliance work related to manifest issues. We are proposing an increase to the manifest fee to \$6/manifest. In addition, because we are aware that EPA is proposing new electronic manifest rules, and to increase the efficiency of processing manifest data, our proposed rules also require submittal of the manifests to the Department in an electronic format. With electronic submittal of manifests, we will eliminate the costs associated with processing and data entry of paper manifests. However, there will continue to be costs associated with managing the manifest data, such as programming costs to allow for electronic submittal of the data, personnel costs for staff who process the electronic submittals, data storage and retrieval costs, database maintenance costs, and staff costs for compliance work related to manifest issues.

Although the number of staff working in the hazardous waste program has decreased over the years, the cost per person has increased. Salary and fringe costs have increased, as have supplies and services costs such as travel, phones, postage, computer maintenance, sampling and analysis costs, etc. In addition, because of budget cuts being imposed on all state agencies, individual programs are being asked to cover many more expenses out of their operating budgets, such as rent, which had previously been covered by other administrative programs in the Department. In addition, cuts to the federal hazardous waste grant and reduction in General Purpose Revenue means the Waste Management Program must rely more heavily on program revenue (which comes from revenue such as the manifest fees) to cover the costs of implementing our hazardous waste program.

3. Comment – A commercial hazardous waste facility commented that the Department should charge any potential manifest fee increases directly to the generators of hazardous waste, instead of indirectly through the commercial TSDF's.

Response – In Wisconsin, hazardous waste generators are not required to hold a license, permit, plan approval or other approval, unlike commercial TSDFs. Consequently, the Department's authority under s. 291.05(7)(a) to (c), Stats., to charge fees for "hazardous waste activities" does not appear to be broad enough to allow fees to be charged to generators. The Hazardous Waste Program has recommended legislation that would allow it to collect fees from generators.

4. Comment –The proposed rules include increases to the hazardous waste plan review, license and manifest fees. These are fees that are typically assessed to commercial hazardous waste treatment, storage or disposal facilities. What is the department's statutory authority for the assessment of the manifest review fee since the manifest review fee is not associated with the licensing of facilities?

Response –The manifest fee is not a review fee in the same sense as a license application fee or a plan review fee, but it is associated with the initial and continued licensing of hazardous waste facilities. The manifest system is intended to provide "cradle to grave" traceability of hazardous wastes as they move from generation sites to treatment, storage or disposal facilities (TSDFs). Staff use manifest data to prepare for compliance evaluation inspections. The manifest records generated from the data provide a summary of the types and quantities of hazardous waste generated and shipped to TSDFs for treatment,

storage or disposal. This information can be used to determine whether TSDFs are complying with hazardous waste rules and the terms and conditions of their licenses and approved plans of operation. Noncompliance can result in license or plan approval modifications, or in license suspension, revocation or denial.

The manifest fee covers the clerical costs associated with processing the manifests, data entry costs by an outside contractor, electronic data storage and retrieval costs, storage costs for paper manifests, personnel costs for staff who manage the database and process the data, and personnel costs for compliance work related to manifest issues.

Section 291.05(7)(a), Stats., requires the Department to set fees by rule "to be charged for hazardous waste activities under ss. 291.23, 291.25, 291.29, 291.31 and 291.87". Under s. 291.05(7)(b), Stats., these hazardous waste activities expressly include such things as reviewing plans of operation and license applications, issuing operating licenses, interim licenses and variances, inspecting construction projects, approving closure plans, and "taking other actions" in administering ss. 291.23, 291.25, 291.29, 291.31 and 291.87, Stats. In particular, ss. 291.25 and 291.87, Stats., deal with the licensing of TSDFs and with license actions (i.e., suspension, revocation and denial of TSDF licenses).

Section 291.25, Stats., mandates that each TSDF license require compliance with the Department's hazardous waste rules. Under s. 291.87, Stats., the Department may deny, suspend or revoke a TSDF's license if licensee fails to comply with hazardous waste statutes or rules, fails to comply with the approved plan of operation under s. 289.30, Stats., misrepresents any relevant fact at any time, or operates the facility in a way that endangers human health or the environment to the extent that denial, suspension or revocation of the license is the only way to provide an acceptable level of protection.

Determining TSDF compliance is "taking other action" in administering ss. 291.25 and 291.87, Stats. Because manifest data is used to determine TSDFs compliance with hazardous waste rules and license and plan approval requirements, the Department has the authority under s. 291.05(7), Stats., to charge manifest fees.

5. Comment – A hazardous waste facility requested that the WDNR make available the information they had collected on neighboring states' manifest fees.

Response – To compile information on other state's manifest fees, the Department researched other state environmental agencies' websites. Following is the information we compiled from the websites:

Indiana - \$8 per manifest form. Since compiling this information, we discovered that this fee was eliminated in January 2001 because as of that date Indiana no longer required submission of copies of the manifest to the Indiana Department of Environmental Management. However, we felt the data was still valid for our purposes, since it showed the fee Indiana had been charging to cover their costs when they were collecting and processing manifests forms.

Michigan – Manifest Processing User Charge - \$8.00 per manifest, charged to large quantity and small quantity generators. This is combined with a user fee charge that is collected annually from LQGs, SQGs, TSDs and Used Oil Processors.

Illinois – \$3 per manifest form

Minnesota – Minnesota has a completely different fee system from Wisconsin which includes an annual generator license fee. They do not have a manifest fee.

Ohio – Does not require submittal of manifest copies to Ohio Environmental Protection Agency, so there is no state manifest fee.

6. Comment – A commenter was concerned whether the increased manifest fees will actually be used for the purpose of reviewing manifests.

Response – Revenue from the manifest fee is placed into the Waste Management Program's program revenue account. This account receives revenue from both solid waste and hazardous waste regulated activities, such as licensing, plan review, and the manifest process. The funds are used for costs associated with managing the solid waste and hazardous waste programs, including activities associated with the hazardous waste manifest system. As far as we are aware, no funds have been diverted from this account through the budget process to be used for non-solid waste or hazardous waste related activities, and we do not anticipate that occurring in the future.

7. Comment – A commenter questioned why the manifest review program is needed if generators are also subject to the annual reporting requirements.

Response – As was stated in an earlier response, the manifest system is intended to provide "cradle to grave" traceability of hazardous wastes as they move from generation sites to treatment, storage or disposal facilities (TSDFs). Staff use manifest data to prepare for compliance evaluation inspections. The manifest records generated from the data provide a summary of the types and quantities of hazardous waste generated and shipped to TSDFs for treatment, storage or disposal. This information can be used to determine whether TSDFs are complying with hazardous waste rules and the terms and conditions of their licenses and approved plans of operation. Noncompliance can result in license or plan approval modifications, or in license suspension, revocation or denial.

8. Comment – A hazardous waste facility requested that the Department use a similar format for submittal of manifests as detailed by US EPA in their Final Rule (70 FR 10775-10825) published on March 4, 2005, and that the Department address the EPA rule that details the use of a uniform hazardous waste manifest prior to the effective date of September 5, 2006.

Response – The Department is aware of EPA's March 4, 2005 Final Rule which discusses the manifest requirements. Department staff will be reviewing the federal rule to determine if any changes are needed to our proposed rule language to incorporate the new federal manifest requirements. The Department has not yet worked out all the details on the format that will be used for electronic submittal of the manifest. We are planning on working closely with the hazardous waste TSDs to get their input on the process, so the transition can go as smoothly as possible for everyone.

B. Household Hazardous Waste/Very Small Quantity Generator Collection Facilities, subch. HH of ch. NR 666

1. Comment – Subchapter 666 HH was supposed to be a codification of the Department's 1995 Collection Facility Interim Guidance. The interim guidance was created to reduce the large quantity generator and treatment and storage facility requirements to allow municipalities to collect household hazardous waste. The new rules seem to have eliminated most of the reduced requirements which will make it difficult for new collection facilities to begin and may jeopardize existing operations.

Response – The proposed rule is based on, and codifies the guidance. In drafting the proposed rule we reviewed the requirements in the guidance and eliminated or reduced requirements in several areas. Overall there are fewer requirements in the proposed rule than are in the interim guidance. The only new requirements in the proposed rule are for permanent collection facilities that store more than 80,000 pounds of hazardous waste to provide proof of financial assurance for closure of the facilities. The interim guidance did not allow storage of more than 80,000 pounds of hazardous waste, and the proposed rule allows facilities to collect and store up to 240,000 pounds. We believe that requiring financial responsibility to properly close a facility storing more than 80,000 pounds is reasonable and is necessary to protect human health and the environment.

2. Comment – Including the Household Hazardous Waste Collection Facility rule with the general hazardous waste management rules is confusing and is a disincentive for municipalities wanting to explore this type of program. There should be more clarity and less complexity for these programs as was to the intent of the interim guidance.

Response – The collection facility rule is part of the state's hazardous waste management program and belongs in the NR 600 series rules, which apply to all aspects of hazardous waste management – generation, transportation, storage, treatment and disposal. The collection facility rule was added to Chapter NR 666 because this chapter describes standards for specific types of hazardous wastes and specific types of hazardous waste management facilities. The facilities in Chapter NR 666 are conditionally exempt from the more stringent requirements of licensing for hazardous waste treatment, storage and disposal facilities. Similarly, collection facilities are conditionally exempt from the standards and other requirements of hazardous waste treatment, storage and disposal facilities if they comply with the applicable requirements in subchapter HH.

3. Comment – The Department should fully consider the financial impacts on municipal permanent facilities as part of the fiscal analysis. Municipal programs are not considered small businesses under the statutory definition.

Response – The Department prepared a Fiscal Estimate for the proposed rule. As part of the estimate we did consider the financial impacts of the proposed fee increases on municipalities, and determined there was no additional impact from proposed fee increases. We also determined there would be no additional financial impacts from the codification of the interim guidance into the rule either, with one exception – if a municipally owned permanent collection facility chooses to accumulate or store more than 80,000 pounds of hazardous waste, the municipality is required to provide proof of financial responsibility for closure.

4. Comment – The products in the chemical exchange areas at collection facilities are considered a resource, and a strong case can be made that these chemicals should not be counted toward provisions of this chapter [presumably the quantity of hazardous waste accumulated or stored]. Can the Department provide guidance or a legal opinion on this subject?

Response – Products that can be used or re-used through a chemical exchange program are not considered to be “solid waste” or hazardous waste, and are not subject to regulation by the proposed rule, NR 666 subch. HH.

5. Comments on s. NR 666.900, Applicability Section:

a. This section states the rules in subchapter HH apply to owners or operators of collection facilities who collect or accumulate household hazardous waste or small quantity generator waste, or both. However, throughout the rule the term ‘waste’ is used instead of ‘hazardous waste’. We recommend changing ‘waste’ to ‘hazardous waste’ in the following locations: s. NR 666.903(13) and (14), s. NR 666.904(7) and (8), s. NR 666.909.(1)(a), s. NR 910.(1) and (2).

Response – The NR 600 rules only regulate hazardous waste. However, we will add the word “hazardous” waste in all of the referenced locations, so there is no confusion.

b. This section says the owner or operator of a collection facility is exempt from the facility standards and licensing requirements if they comply with subchapter HH of NR 666. However, there are 18 references to requirements in chs. NR 664, 665 and 670. To clarify, we recommend this section be modified to read: “An owner or operator of a collection facility is exempt from the hazardous waste storage facility standards and licensing requirements in chapters NR 664, 665 and 670, except where specifically noted, if the owner/operator complies with this subchapter.”

Response – We believe the Applicability Section is clearly stated. It conditionally exempts collection facilities from hazardous waste treatment or storage license requirements if they comply with the requirements in subchapter HH of ch. NR 666. However, to make it easier for owners and operators of collection facilities to understand the requirements in subchapter HH, we revised the format of the proposed rule to eliminate some of the cross reference to other parts of the NR 600 rules, and instead spell out the specific requirements in the rule.

6. Comments on s. NR 666.901, Definitions:

a. The definitions of permanent and temporary collection facilities do not reflect the true nature of these facilities. Definitions in the 1995 Interim Guidance should be used in place of those in the proposed rules (see definitions below). The term 'permanent facility' should be changed to 'continuous collection facility'.

"Collection facility" means a facility established for the purpose of collecting, accumulating and managing household wastes or VSQG hazardous waste and operated in accordance with this interim guidance. A collection facility may be permanently or temporarily established.

"Permanent collection facility" means a facility that provides collection services to households and very small quantity generators is established to collect hazardous wastes for a continuous period of greater than three days, and is properly closed at the end of its useful life.

"Temporary collection facility" means a collection facility that is established for three days or fewer for the purpose of providing collection services to households or very small quantity generators and then transports the hazardous wastes to a collection facility regulated under this interim guidance or using a licensed hazardous waste transporter to a licensed, permitted or approved TSD or regulated hazardous waste recycling facility.

b. There are no temporary collection facilities; they are either temporary sites or permanent collection facilities. Change 'temporary facility' to 'temporary site'. Recommend changing the definition to read: "Temporary collection site" means a site where household hazardous wastes or very small quantity generator wastes, or both, are collected and wastes left on-site for a period of four days or longer.

Responses – The definitions in the proposed rule were taken from the interim guidance, but were revised slightly to conform to the standard rule drafting conventions. The term "facility" is defined in the general definitions section, s. NR 660.10, and is used throughout the NR 600 rule series. "Site" is not defined or commonly used. For consistency with the rest of the NR 600 rule series, the term "facility" will be used rather than "site. The definition of "temporary facility" accurately defines their operations.

7. Comments on s. NR 666.902, Standards for design of permanent collection facilities:

a. Section NR 666.902(3) requires permanent collection facilities to store waste in a building completely enclosed with a floor, walls and roof. This eliminates the possibility to operate seasonal, open-air facilities such as ours. This section would prohibit accumulating non-hazardous materials such as latex paint or solid wastes in roll-offs or other dumpsters outside of the building where they are normally placed. To comply with this section our facility would have to be re-built from the ground up. My recommendation is to change s. NR 666.902(3) to read "all hazardous waste shall be accumulated in containers that are sheltered from the elements."

b. Continuous collection facilities exist that are open-air, outdoor facilities. We recommend this be changed to state "All hazardous waste shall be accumulated and stored in a sheltered and secure area to prevent exposure to the elements and releases to the environment."

c. Will the existing facilities that are not completely enclosed be forced to upgrade or will there existing sites be "grandfathered" in?

Responses – The facility design standards in the proposed rule, s. NR 666.902(3) are not new requirements, they are based on the guidelines in the 1995 Interim Guidance which has been in effect for ten years. The interim guidance allowed permanent collection facilities to store hazardous wastes only in enclosed, roofed structures with limited access and on floors with impervious surfaces. Staff have carefully reviewed the standards for permanent collection facilities, and believe that storage of up to 240,000 pounds of hazardous waste for a period of up to one year requires such protective measures.

8. Comment – Section NR 666.903(1) requires a permanent collection facility to notify the Department at least 30 days before first accepting waste. Does this notification have to be done each year, or only

once? My recommendation is to change this section to read "At least 30 days prior to the first time a permanent facility proposes to accept hazardous waste from off-site..."

Response – The notification is a one-time requirement for new collection facilities, however, we have revised the language as suggested.

9. Comment – Section NR 666.903 (9), (10) and (11) require more detailed contingency and health and safety planning than the 1995 Interim Guidance. The interim guidance explains in detail how to prepare the appropriate written plans. The new rules simply refer to other sections throughout the NR 600 rules for these requirements. The rules would require additional training and expertise for facility operators and may prohibit municipalities from operating permanent facilities. Municipalities may be required to hire emergency response contractors and may not be allowed to use volunteers due to additional training requirements.

Response – The interim guidance has more stringent requirements for contingency planning and preparedness and prevention activities than the proposed rule does, so the proposed rule would not require the facility operators to have additional training or expertise in these areas. We agree with the commenter that there are more details about the requirements in the interim guidance that are not in the proposed rule due to the differences in drafting administrative rules and guidance. We intend to eliminate some of the cross references in the proposed rules, and spell out the specific requirements in the text of the rule.

10. Comment – Section NR 666.903(14) states that if testing is performed, records must be retained for at least three years. Many facilities perform a significant amount of on-site testing and to retain these records for three years would be burdensome. Therefore we recommend changing this sentence to read: "If testing is performed by a certified laboratory, retain records of the test results for a minimum of three years..."

Response – We agree to revise the language in this section to say "If testing is performed by an analytical laboratory..."

11. Comments on s. NR 666.904, Standards for operation of temporary collection facilities:

a. This section requires temporary collection facilities to notify the Department at least 30 days prior to first accepting waste. Does this section apply to satellite collection events conducted by permanent facilities? If so, a form must be filed with the Department for each off-site event. My recommendation is adding a sentence at the beginning of the section: "The following does not apply to permanent facilities conducting off-site events."

b. The hazardous waste vendor hired by the municipality is normally fully responsible for all field components of this section.

Responses – This section does apply to satellite collection events conducted by permanent facilities. These satellite sites are considered temporary collection facilities if they operate for less than 5 days. The notification form allows one form to be submitted for multiple temporary sites operated by the same owner. Regarding the comment about the vendor hired by a municipality to conduct a temporary collection being fully responsible for all "field components", we would like to point out that the municipality, as the facility owner, is fully responsible for complying with all aspects of the proposed rule.

12. Comment – Section NR 666.905(1)(d) requires permanent facilities that send waste offsite for disposal to comply with the land disposal restriction requirements in s. NR 668.07(1)(d). It is unclear if this refers only to the collection facility or also to the very small quantity generators who bring wastes to the collection facilities. My recommendation is this section should have a clarifying sentence: "Land ban statements are not required from very small quantity generators who bring wastes to the collection facilities."

Response – Section NR 666.905(1) states, “An owner or operator of a collection facility who offers hazardous waste for transport for off-site treatment, storage or disposal shall comply with all of the following.” It clearly states that the requirements in s. NR 666.905(1)(a) to (d) apply to the owner or operator of a collection facility regardless of whether the hazardous waste is from households or very small quantity generators.

13. Comment – Section NR 666.905(2) and (3) relate to transportation of hazardous waste to and from the facility. This is unclear. Paragraph (3) seems to conflict with (2). My recommendation is that paragraph (2) should read “An owner or operator of a collection facility who transports hazardous waste off-site for treatment, storage or disposal shall comply with sub. (1) and ch. NR 663, with the exception of (3) below.”

Response – The confusion appears to be with the phrase, “off-site for treatment, storage or disposal” in sub.(2), and the ability to send waste to a permanent collection facility for bulking and consolidation in sub.(3). We agree it may be confusing, and have revised the language.

14. Comment – Section NR 666.910(1) refers to site closure requirements for facilities that store more than 80,000 pounds of waste on-site at any time. We are exempt from this requirement. However, it is unclear if the 80,000 pounds is for hazardous waste only or if it includes other wastes such as solid waste and latex paint. My recommendation is to change the first sentence to read “The owner or operator of a permanent collection facility that stores more than 80,000 pounds of hazardous waste at any time...”

Response – We agree with the commenter’s recommendations, and have added the term “hazardous waste”, to be clear.

15. Comment – Provide an opportunity for collection of unwanted consumer pharmaceuticals at pharmacies and other non-household hazardous waste sites. Add an additional definition of the “Temporary collection facility” to include sites which only accept unwanted consumer prescription drugs and do not place a limit on the number of days during which they may hold such events. Exempt any such drugs which may be hazardous waste from adding to the facility’s generator status calculations but require those drugs to be managed and disposed as hazardous waste or to be sorted into the appropriate hazardous or non-hazardous category. This will provide options for consumers other than sewerage and landfilling unwanted drugs.

Response – We believe that allowing different standards for temporary collection facilities that collect unwanted pharmaceuticals would be confusing. A better approach may be for pharmacies to become permanent collection facilities. They should already meet the design criteria, such as an enclosed building. The collection containers could be put into a spill tray or lab pack, and serve as secondary containment (another design standard). And under the permanent facility standards, pharmacies would have up to one year to accumulate and store wastes, which would allow for economical shipment of wastes for treatment or disposal.

C. Listing of Hazardous Wastes, s. NR 661.33

1. Comment – Add chemotherapy drugs and other pharmaceutical drugs defined as hazardous by the NIOSH Hazardous Drug Alert to the Department’s hazardous waste lists as Wisconsin-only hazardous wastes.

Response – Adding wastes to the hazardous waste listings in s. NR 661.11(1) would require the Department to conduct a comprehensive risk analysis of each waste type to determine if it should be listed. The Waste Program does not have the resources to accomplish this task in a timely manner, and we believe there are other means of regulating chemotherapy wastes that are as protective of human health and the environment as the complex hazardous waste management rules.

D. Waste Derived Fertilizer Conditional Exemption, s. NR 661.04

1. Comment – Recommend the Department not adopt the exclusion for hazardous secondary materials used to make zinc micronutrient fertilizers due to health and safety concerns, especially for children.

Response – The conditional exemption in s. NR 661.04(1)(t) is for hazardous secondary materials used to make zinc micronutrient fertilizers. To qualify for this exemption, generators and intermediate handlers of zinc-bearing hazardous secondary materials intended to be made into zinc fertilizers, and manufacturers that use these secondary materials, are subject to a number of requirements such as properly storing and handling the materials, not speculatively accumulating them, submitting information to the department and keeping records of the amounts of waste accepted and fertilizer produced. The fertilizer manufacturers are also required to sample and analyze the fertilizers produced using hazardous secondary materials at regular intervals and the fertilizer products must not exceed specified contaminant levels. We believe the conditions set out in the federal rule, and proposed to be adopted in s. NR 661.04, for the reuse of secondary materials to make zinc fertilizer are sufficiently protective of human health and the environment.

E. Hazardous Waste Generator Standards, s. NR 662.041

1. Comment – There is a discrepancy between s. NR 662.041(2)(d) and s. 289.67(2)(c) 4. and 5., Stats. Because the rule and statute conflict, there should be a specific exemption for household hazardous waste and agricultural chemicals collected by municipalities for clean sweeps.

Response – There is no discrepancy or conflict between the proposed rule and the cited statute, which is only a fee exemption. Section NR 662.041 requires hazardous waste generators to submit annual reports. The annual reports summarize the types and quantities of hazardous waste generated and describe how the wastes were managed. The report includes a fee worksheet that is used to determine the amount of the environmental repair fee owed to the department. Section NR 666.903(12) requires permanent collection facilities to submit annual reports, and under s. 289.67(2)(c)4. and 5., Stats., they are exempt from paying fees associated with annual reporting.

F. Land Disposal Restrictions, ch. NR 668

1. Comment – The proposed rule requires all land disposal restriction certification statements to include the appropriate state citation instead of the equivalent federal 40 CFR Part 268 citation. This would require generators transporting hazardous waste to or from a state other than Wisconsin to include multiple citations to satisfy the individual state requirements. Recommend a note in this chapter indicating the federal citation may be used in place of the chapter NR 668 citation.

Response – We agree with the commenter. Sections NR 668.07(1)(b), (c), (i) and NR 668.07(2)(d), (d)3., 4., and 5. have been changed to add the equivalent federal 40 CFR citation. Either the state or federal rule citation may be used to comply with this provision.

G. Universal Wastes, ch. NR 673

1. Comments – What happened to the Wisconsin-specific Universal Wastes? Why weren't they codified?

Response – The Wisconsin-Specific Universal Wastes will continue to be conditionally exempt from regulation as hazardous waste under the existing guidance. Incorporating these wastes into the universal waste rules requires us to follow the procedures specified in Chapter NR 673, subch. G, Petitions to Include Other Wastes under this Chapter. We did not want to delay this rule package to evaluate each Wisconsin specific waste type and develop management standards for adding them to the rule. However, we intend to add the Wisconsin-specific wastes to the hazardous waste rules at a later date.

H. Miscellaneous Comments

1. Comment – A comment was received on the Research, Development and Demonstration Licenses. The commenter felt the new options restrict or inhibit the business climate and practices for two commercial businesses located in Wisconsin, and that they unfairly target innovation and competitiveness by requiring special licenses for boilers and industrial furnaces as well as requiring a Research Development and Demonstration License.

Response –The requirement for licenses for hazardous waste burned in boilers and industrial furnaces [NR 666 subchapter H] is based on existing federal rules. The rule was added to parallel the federal rule language. Regarding Research, Development and Demonstration licenses, they are designed to allow a hazardous waste treatment facility to use an innovative or experimental treatment technology or process, without having to modify its existing hazardous waste treatment license.

2. Comment – A comment was received regarding the proposal to exempt the recycling of hazardous waste. The commenter felt the proposal needed to be broadened to include regulatory relief and tax exemptions for the legitimate recycling of hazardous waste to include solvent recycling and fuel blending for energy recovery.

Response –The proposed rules are based on federal rules, and they conditionally exempt more hazardous wastes from regulation than the current rules do. Companies that recycle hazardous waste are conditionally exempt from most of the facility licensing requirements, to encourage the recycling and reuse of hazardous waste that would otherwise be sent for disposal.

Attachment A

Comparison of Current and Proposed Hazardous Waste Fees

The current hazardous waste fee schedule has been in place since 1994. Fee increases are proposed for two reasons. First, inflationary costs have affected salaries, fringe benefits, and supplies and services. Second, revenues from hazardous waste fees approved in 1994 have never met expectations. As a result, the department was unable to fill new hazardous waste positions approved in the 2001-03 Biennial Budget due to lack of revenue. Fee revenues support hazardous waste plan review, inspections, complaint response, and technical assistance. These activities ensure that hazardous waste facilities are managed in ways that protect human health and the environment. Mishandling of the generation, transport and disposal of hazardous waste can lead to serious environmental threats, including both human health issues and contaminated sites which are expensive to restore. Preventing pollution through proper management of hazardous waste is a good investment. Without additional revenue coming into the program, the Waste Management Program will be unable to provide the same level of products and services we currently deliver to our customers and stakeholders, and it could lead to a detrimental impact on the environment.

Type of Fee	Current Fee	Proposed Fee	Dollar Change	Notes
Tanks				
Review of Interim License Application (Part A)	\$600	\$800	\$200	
Review of Operating License Application (Part A and Feasibility and Plan of Operation Report	\$4,800	\$6,400	\$1,600	
Review of Closure Plan for Unlicense Facilities	\$1,800	\$2,400	\$600	
Review of Class 1 Modification	\$300	\$400	\$100	
Review of Class 2 Modification	\$1,200	\$1,600	\$400	
Review of Class 3 Modification	\$4,800	\$6,400	\$1,600	
Review of Corrective Action Plan	\$1,200	\$1,600	\$400	
Review of Remediation Variance Request	\$1,200	\$1,600	\$400	
Review of Site Construction Reports	\$600	\$0	-\$600	Under the proposed rules, Site Construction Documentation Reports are no longer required for Tanks, Incinerators, Containers and Miscellaneous Units, so the fee for review of this report has been eliminated.

Type of Fee	Current Fee	Proposed Fee	Dollar Change	Notes
Review of Research Development and Demonstration License Application		\$4,000		This is a new option available only to treatment facilities. It will require a similar review time as variances.
Interim License	\$4,800	\$6,400	\$1,600	
Annual Renewal of Operating License	\$2,400	\$3,200	\$800	
Construction Inspection	\$600	\$0	-\$600	Under the proposed rules, Construction Inspections are no longer required at Tanks, Incinerators, Containers and Miscellaneous Units, so the fee for this inspection has been eliminated.
Waste Piles				
Review of Interim License Application (Part A)	\$600	\$800	\$200	
Review of Operating License Application (Part A and Feasibility and Plan of Operation Report	\$4,800	\$6,400	\$1,600	
Review of Closure Plan for Unlicense Facilities	\$2,400	\$3,200	\$800	
Review of Class 1 Modification	\$300	\$400	\$100	
Review of Class 2 Modification	\$1,800	\$2,400	\$600	
Review of Class 3 Modification	\$4,800	\$6,400	\$1,600	
Review of Corrective Action Plan	\$1,200	\$1,600	\$400	
Review of Remediation Variance Request	\$1,200	\$1,600	\$400	
Review of Construction Quality Assurance (CQA) Documentation	\$600	\$1,200	\$600	The proposed rules require submittal of CQA Documentation for Waste Piles, Landfills and Surface Impoundments. This submittal replaces the Site Construction Documentation Report which is required under the current rules.
Interim License	\$7,200	\$9,600	\$2,400	
Annual Renewal of Operating License	\$3,600	\$4,800	\$1,200	

Current Fee Proposed Fee Dollar Change Notes

Construction Quality Assurance (CQA)	\$600	\$65/hour		The proposed rules require a Construction Quality Assurance (CQA) Inspection at Waste Piles, Landfills and Surface Impoundments. This inspection replaces the Construction Inspection which is required under the current rules. The hourly rate for the proposed fee is based on current salary and fringe rates of staff conducting these inspections and will reflect more accurate costs than the former flat fee.
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Incinerators & Boilers and Industrial Furnaces

Review of Interim License Application (Part A)	\$600	\$800	\$200	
Review of Operating License Application (Part A and Feasibility and Plan of Operation Report	\$15,000	\$19,500	\$4,500	
Review of Closure Plan for Unlicense Facilities	\$2,400	\$3,200	\$800	
Review of Class 1 Modification	\$300	\$400	\$100	
Review of Class 2 Modification	\$2,400	\$3,200	\$800	
Review of Class 3 Modification	\$15,000	\$19,500	\$4,500	
Review of Corrective Action Plan	\$1,200	\$1,600	\$400	
Review of Remediation Variance Request	\$3,000	\$4,000	\$1,000	
Review of Site Construction Reports	\$1,200	\$0	-\$1,200	Under the proposed rules, Site Construction Documentation Reports are no longer required for Tanks, Incinerators, Containers and Miscellaneous Units, so the fee for review of this report has been eliminated.
Review of Special License for Boilers and Industrial Furnaces		\$4,000		This is a new option available to Boilers and Industrial Furnaces. It will require a similar review time as variances.
Review of Research Development and Demonstration License Application		\$4,000		This is a new option available only to treatment facilities. It will require a similar review time as variances.

Type of Fee	Current Fee	Proposed Fee	Dollar Change	Notes
Interim License	\$9,600	\$12,500	\$2,900	
Annual Renewal of Operating License	\$4,800	\$6,400	\$1,600	
Construction Inspection	\$600	\$0	-\$600	Under the proposed rules, Construction Inspections are no longer required at Tanks, Incinerators, Containers and Miscellaneous Units, so the fee for this inspection has been eliminated.
Containers and Miscellaneous Units				
Review of Interim License Application (Part A)	\$600	\$800	\$200	
Review of Operating License Application (Part A and Feasibility and Plan of Operation Report	\$3,000	\$4,000	\$1,000	
Review of Closure Plan for Unlicense Facilities	\$1,200	\$1,600	\$400	
Review of Class 1 Modification	\$300	\$400	\$100	
Review of Class 2 Modification	\$1,200	\$1,600	\$400	
Review of Class 3 Modification	\$3,000	\$4,000	\$1,000	
Review of Corrective Action Plan	\$1,200	\$1,600	\$400	
Review of Remediation Variance Request	\$1,200	\$1,600	\$400	
Review of Site Construction Reports	\$300	\$0	-\$300	Under the proposed rules, Site Construction Documentation Reports are no longer required for Tanks, Incinerators, Containers and Miscellaneous Units, so the fee for review of this report has been eliminated.
Review of Research Development and Demonstration License Application		\$4,000		This is a new option available only to treatment facilities. It will require a similar review time as variances.
Interim License	\$4,800	\$6,400	\$1,600	

Type of Fee	Current Fee	Proposed Fee	Dollar Change	Notes
Annual Renewal of Operating License	\$2,400	\$3,200	\$800	
Construction Inspection	\$600	\$0	-\$600	Under the proposed rules, Construction Inspections are no longer required at Tanks, Incinerators, Containers and Miscellaneous Units, so the fee for this inspection has been eliminated.
Landfills and Surface Impoundments				
Review of Interim License Application (Part A)	\$1,200	\$1,600	\$400	
Review of Initial Site Report	\$12,000	\$16,000	\$4,000	
Review of Operating License Application (Part A and Feasibility and Plan of Operation Report	\$90,000 for Feasibility Study	\$100,000	-\$20,000	The current fee schedule requires a separate fee to review the Feasibility Report and the Plan of Operation Report. In the proposed rule package, these two reports are combined into one submittal, with only one plan review charged. The proposed fee is based on an estimate of the hours needed to complete a review of the report. Based on historic data, the hourly estimates used for the current fees are significantly too high, so the proposed fees have been adjusted to reflect more realistic hourly estimates.
	\$30,000 for Plan of Operation Report			
Review of Closure Plan for Unlicense Facilities	\$18,000	\$23,400	\$5,400	
Review of Class 1 Modification	\$600	\$800	\$200	
Review of Class 2 Modification	\$3,000	\$4,000	\$1,000	
Review of Class 3 Modification	\$120,000	\$100,000	-\$20,000	Class 3 Plan Modifications are not reflected as a separate fee category in the current fee structure. They are handled as feasibility and plan of operation reviews. Thus proposed fees are a reduction from previous levels.
Review of Corrective Action Plan	\$6,000	\$7,800	\$1,800	

Type of Fee	Current Fee	Proposed Fee	Dollar Change	Notes
Review of Remediation Variance Request	\$1,000	\$4,000	\$3,000	The current fee is based on an estimate of the hours needed to conduct the variance review. Historic data has shown that the estimate used for the current fee is too low, so the proposed fee has been adjusted to reflect more realistic hourly estimates. It is now the same as the incinerator fee.
Review of Construction Quality Assurance (CQA) Documentation	\$3,000	\$4,000	\$1,000	The proposed rules require submittal of CQA Documentation for Waste Piles, Landfills and Surface Impoundments. This submittal replaces the Site Construction Documentation Report which is required under the current rules.
Review of Research Development and Demonstration License Application		\$4,000		This is a new option available only to treatment facilities (not landfills). It will require a similar review time as variances.
Interim License	\$60,000	\$80,000	\$20,000	
Annual Renewal of Operating License	\$30,000	\$40,000	\$10,000	
Long Term Care License	\$60,000	\$80,000	\$20,000	The long-term care license covers department inspection costs over a forty-year period. The former fee only covered a thirty-year period.
Construction Quality Assurance (CQA) Inspection	\$50/hour	\$65/hour		The proposed rules require a Construction Quality Assurance (CQA) Inspection at Waste Piles, Landfills and Surface Impoundments. This inspection replaces the Construction Inspection which is required under the current rules. The hourly rate for the proposed fee is based on current salary and fringe rates of staff conducting these inspections.

Type of Fee	Current Fee	Proposed Fee	Dollar Change	Notes
Manifest Fees				
Fee per manifest	\$2.00	\$6.00	\$4.00	Wisconsin's manifest fee revenue at \$2/manifest has never generated sufficient funds to cover the Waste Management's Program costs associated with managing the manifest data. The current fees are generating roughly half of the revenue projected to be brought in when the fee was implemented in 1994. Wisconsin's current manifest fee is significantly below that of neighboring states.
Hazardous Waste Transportation License Fees				
Annual Hazardous Waste Transportation License	\$300	\$400	\$100	This fee includes one vehicle.
Additional per vehicle charge		\$35		In addition increasing the annual license fee, a charge of \$35 per additional vehicle is proposed. This will make the hazardous waste transportation license similar in structure to the solid waste transportation license. In addition, it will provide a graduated fee to reduce the impact on smaller businesses.

Attachment B: Hazardous Waste Program Revenue Projections with Proposed Fee Increases

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008
Beginning Balance	\$437,650	\$501,474	\$344,877	\$112,292	(\$23,208)	(\$206,498)	(\$321,953)	(\$345,668)
Revenue from Current Plan Review and License Fees	\$193,280	\$159,515	\$126,225	\$185,640	\$147,000	\$156,300 *	\$156,300 *	\$156,300
Proposed Add'l Plan Review and License Fee Revenue						\$64,400	\$64,400	\$64,400
Revenue from Current Manifest Fees	\$68,298	\$67,962	\$56,928	\$55,334	\$51,844	\$49,800 **	\$49,800 ***	\$48,400
Proposed Add'l Manifest Fees							\$95,600 ***	\$95,600
Total Revenue from Plan Review, License and Manifest Fees	\$261,578	\$227,477	\$183,153	\$240,974	\$198,844	\$270,500	\$366,100	\$364,700
Expenditures	(\$197,754)	(\$384,074)	(\$415,738)	(\$376,474)	(\$382,134)	(\$385,955)	(\$389,815)	(\$393,713)
Total	\$501,474	\$344,877	\$112,292	(\$23,208)	(\$206,498)	(\$321,953)	(\$345,668)	(\$374,681)

Assumptions

Revenue and On-going Expenses for FY2001, FY2002, FY2003, FY2004 and FY2005 are based on Actuals. Expenditures for FY2006 and FY2007 based on prior year estimates plus 1% inflationary adjustment.

Footnotes

* The estimate for plan review and transportation license fees are based on the averages of the past four years since FY04 revenues were unusually high in these categories.

** Revenue reduced to reflect decrease in number of manifested shipments due to the Tolling Agreement Exemption in place for 6 months.

*** Revenue reduced to reflect decrease in number of manifested shipments due to the Tolling Agreement Exemption in place for a full year.

Attachment C
 Summary of the Major
 Differences between the Draft and Current Rules

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
No Equivalent		NR 660.30 Variances from classification as a solid waste (Standards and Criteria stated in NR 660.31)	Allows the department on a case-by-case basis to determine that certain recycled materials are not solid wastes	New rule language due to adoption of RCRA rules
No Equivalent		NR 660.32 Variances to be classified as a boiler	Allows the department to determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers	New rule language due to adoption of RCRA rules
No Equivalent		NR 660.33 Procedures for variances from classification as a solid waste or to be classified as a boiler.	Requires the applicant to submit information to the department that meets the specified criteria; the department to issue a draft decision for public comment and issue a final decision.	New rule language due to adoption of RCRA rules
No Equivalent		NR 660.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis. NR 660.41 states the procedures the department will use.	The department may decide on a case-by-case basis that persons accumulating or storing spent batteries should be regulated as generators or licensed storage facilities.	New rule language due to adoption of RCRA rules.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
NR 600.03(206) Definitions	"Solid waste" has the meaning specified under 289.01(35), states	NR 660.10 Definitions	"Solid waste" means a solid waste as defined in 661.02 of this chapter NR 661.02(1)(a) states that a solid waste is any discarded material that is not excluded by 661.04(1) or that is not excluded by variance granted under NR 660.30 and NR 660.31	The definition of solid waste in the current rule includes materials such as salvageable materials. As such, certain solid wastes are exempted from hazardous waste regulation in the current rule. In the draft rule, materials are excluded from the definition of solid waste and so are not hazardous wastes.
NR 605.05 Exemptions	States the wastes that are excluded from regulation as a hazardous waste	NR 661.02 Definition of solid waste	Indicates what type of materials are or are not solid wastes. If the material is not a solid waste, it cannot be a hazardous waste.	Draft rule NR 661.01(2)(a) states that the definition of SW applies only to wastes that also are hazardous for purposes of NR 600 to 673 and doesn't apply to materials that are not hazardous waste and are recycled. The draft rule excludes materials from the definition of solid waste, for the purposes of NR 660-673 while the current rule excludes solid wastes from hazardous waste regulation. There are some differences in the materials that are excluded from regulation. For example, in the draft rule, commercial chemical products will not always be a solid waste depending on how they are handled.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
NR 605.04 Definition of a hazardous waste	Defines the wastes that are subject to regulation as hazardous waste	NR 661.03 Definition of hazardous waste	Defines the wastes that are subject to regulation as hazardous waste.	Includes new wastes due to updated RCRA rules. Some of the listed wastes defined in the current rule have been: revised so they are more comparable to the RCRA listed wastes (such as F027 definition changed so it does not include discarded used formulations); eliminated (such as F500, a state specific listing of chlorinated solvents, and some waste types that have been removed from the listing by EPA); expanded (such as K listed wastes that are new listings in the RCRA rules)
NR 605.05 Exemptions from regulation as a hazardous waste	NR 605.05(1)(a) 1 states that household waste is excluded from regulation except if the hazardous waste in the stream is separated and accumulated for later treatment, storage, or disposal by a person other than a member of the household where the waste is generated. NR 605.05(1)(a)2 states that household waste accumulated by a municipality for 5 days or less in a clean sweep program is excluded from regulation	661.04 (2) Solid wastes which are not hazardous waste.	Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered or reused, except if the hazardous waste in this waste stream is separated and managed at a collection facility regulated under ch. NR 666 subch. HH.	Current rule excludes household waste from regulation unless someone other than a member of the household manages the waste separately. Draft rule excludes household waste except when it is separated for management at a household hazardous waste collection facility. RCRA rule exempts all household waste from household waste regulation. This exemption has been modified to state that household hazardous waste separated and managed at household hazardous waste collection facilities is hazardous waste.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
No Equivalent		NR 666 HH Household and Very Small Quantity Generator Hazardous Waste Collection Facilities	Newly created WI specific code that sets standards for facilities that transport and collect household hazardous waste.	The new rule is based on Department guidance that has been in effect since May 1995. Allows for temporary (≤ 5 days) or permanent collection facilities of hazardous wastes from household and very small generators.
NR 605.08 Characteristics of hazardous waste	NR 605.08(5)(a) states that a solid waste exhibiting the characteristic of toxicity are hazardous waste if concentrations of contaminants in Table 2 are exceeded.	NR 661.24 Toxicity characteristic	NR 661.24(1) A solid waste (except manufactured gas plant waste) exhibiting the toxicity characteristic is a hazardous waste if concentrations of contaminants in Table 2 are exceeded	New language is based on RCRA rules and includes exception for manufactured gas plant waste. Wisconsin is currently using enforcement discretion to recognize this exception.
NR 605.05 Exemptions	Materials excluded from regulation as hazardous waste	NR 661.04 Exclusions	Materials which are not solid wastes	Includes new waste types that are not solid wastes due to changes in RCRA rules. Wastes such as syngas fuels, hazardous secondary materials used to make zinc fertilizers, the zinc fertilizers themselves and other specific manufacturing wastes would be excluded from regulation as hazardous waste.
Chapter NR 625 Recycling Standards	States requirements for facilities that recycle wastes by legitimate recovery, beneficial use or reuse and burning waste for energy recovery.	NR 661.06 Requirements for recyclable materials NR 666 subch. H Hazardous Waste Burned in Boilers and Industrial Furnaces	NR 661.06(3) states requirements that apply to owners or operators of facilities that recycle hazardous waste. NR 666H regulates facilities that burn hazardous waste for energy recovery or destruction or processing for material recovery.	New language is based on RCRA rules. Draft rule NR 661.06(3) has reduced requirements for facilities that recycle wastes on-site. The draft rule also includes chapter NR 666 H, BIF, a RCRA rule that is not part of the current rule.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
NR 615.08 Manifest system	Requires manifest to consist of at least 6 copies which will provide two copies for the generator, one copy for initial transporter, one copy for the TSD and two copies for DNR.	NR 662.022 Number of manifest copies.	The manifest consists of at least 5 copies which will provide the generator, initial transporter, owner or operator of the TSD, and the department with one copy each for their records and another copy to be returned to the generator.	Routing of manifest copies to the regulatory agency is not a RCRA requirement. Copy of manifest will no longer be mailed to DNR within 5 business days of the shipment leaving the generator site.
NR 615.08 Manifest system	NR 615.08(6) After the transporter signs and dates the manifest, the generator shall send one copy to the DNR within 5 business days. NR 615.08(10) A generator using a consignment state's manifest shall send a photocopy of the copy received from the receiving facility to the department within 5 business days of receiving the copy from that facility	NR 662.23 Use of the manifest	NR 662.23(3) For shipments of hazardous waste outside of Wisconsin, the generator shall submit a copy of each manifest to the department within 30 days of receiving the signed copy from the designated facility.	Proposed language requires one copy of manifest to be submitted to WDNR. Generator will submit the copy to DNR if they are sending waste to an out of state TSD. In state TSDs will submit copy of manifest instead of the generator.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
NR 615.10 Pre-transport requirements.	NR 615.10(2)(b) Before transporting, a generator shall mark each container used to transport hazardous waste the information: HW – State and Federal Law prohibit improper disposal. If found, contact emergency authorities. Include generators name and address and manifest document number.	NR 662.032 Pre-transport marking	NR 662.032(2) Before transporting hazardous waste off-site, a generator shall mark each container of 110 gallons or less used in transportation with the same information	New rule language is due to the adoption of RCRA regulations and does not require marking on containers < 110 gallons in size
NR 615.05 General requirements	NR 615.05(4)(a)5 The date upon which each period of accumulation begins shall be clearly marked and visible for inspection on each container or tank NR 615.05(4)(b) A LQG may only accumulate HW for more than 90 days without a license if the department grants a 30 day extension. 1. The extension shall be applied for in writing 2. Shall be issued in written form 3. May be revoked by the department at any time if it is determined that revocation is appropriate to protect human health and the environment	NR 662.034 Pre-transport Accumulation	NR 662.034(1)(b) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container NR 662.034(2) A LQG may only accumulate HW for more than 90 days without a license if the department grants a 30 day extension	New rule language is due to the adoption of RCRA regulations and does not require date of accumulation marked on tanks New rule language is due to the adoption of RCRA regulations and does not require the generator to request an extension in writing Same changes for SQG if they are accumulating waste for more than 180 days.
NR 615.05 General requirements		NR 662.034 Pre-transport Accumulation		

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
No equivalent		NR 662.034 Pre-transport Accumulation	NR 662.034(7) A LQG who generates F006 wastewater treatment sludge from electroplating operations may accumulate the sludge on site for up to 180 days (or 270 days) if certain conditions are met.	New rule language due to the adoption of RCRA regulations. Presently using enforcement discretion.
No equivalent		NR 662.191 Small Quantity Generator Conditional Manifest Exemption.	NR 662.191 Manifest requirements do not apply to HW from small generators if the waste is reclaimed under contractual agreement and certain conditions are met	New rule language due to the adoption of RCRA regulations
NR 610.07 Very small quantity generators	NR 610.07(7) A VSQG shall use a licensed HW transporter	No equivalent		Requiring licensed transporters is a state specific requirement, not a RCRA requirement. This is an exemption by rule under s. 291.07, stat, from the transportation licensing requirement in s. 291.23
NR 610.08 Small quantity generators NR 615.05 Large generator general requirements.	NR 610.08(1)(o)2 and NR 615.05(4)(a)2c Record inspections on containers in an inspection log and keep the logs for at least three years.	No equivalent		New rule language due to the adoption of RCRA regulations
NR 610.08 Small quantity generators	NR 610.08(1)(p)3 The SQG shall record the tank inspections in an inspection log and keep the records for at least 3 years from the date of inspection.	No equivalent		New rule language due to the adoption of RCRA regulations

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
NR 610.08 Small quantity generators	NR 610.08(1)(v) If more than 1,000 kg but less than 6,000 kgs, of waste is accumulated, the SQG shall have a written training program and provide annual training	No rule equivalent		New rule language due to the adoption of RCRA regulations
No rule equivalent		NR 663.10 Scope of the hazardous waste transportation standards	NR 663.10 (5) states that the regulations do not apply to transportation during an explosives or munitions emergency response.	New rule language due to the adoption of RCRA regulations
NR 663.12 Transfer facility requirements	In addition to RCRA requirements, requires the 10-day transfer facility to comply with state specific requirements, such as inspect the containers, and date the containers when they are received in the facility, have record keeping and operating records, and prohibits bulking of waste.	NR 663.12 Transfer facility requirements	Requires a 10-day transfer facility to comply with DOT packaging requirements; allows bulking.	Draft rule does not include state specific requirements for 10-day transfer facilities.
NR 620.07 Manifest System	Waste must be accompanied by a manifest except when transporting very small generator waste.	NR 663.20 The manifest system	Small quantity generator waste transported under a waste reclamation agreement does not need to be manifested if certain requirements are met.	New rule language due to the adoption of RCRA regulations
NR 620.07 The manifest system.	NR 620.07(5) requires the transporter shall give the generator the original and one signed copy of the manifest before leaving the generator's premises.	NR 663.20 The manifest system	NR 663.20(2) requires the transporter shall give the generator a signed copy of the manifest before leaving the generator's property	The second copy of the manifest currently given to the generator is the copy that is mailed to WDNR. This DNR copy of the manifest is being eliminated.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
NR 630.22 Contingency plan and emergency procedures.	630.22 (1) (b) requires a copy of the contingency plan & all revisions of the plan to be filed with the department and sent to local police departments, fire departments, hospitals and emergency response teams that may provide service.	NR 664.0053 Copies of contingency plan	NR 664.0053(2) requires a copy of the contingency plan to be sent to local police departments, fire departments, hospitals and emergency response teams that may provide service.	Draft rule does not include state specific requirement for large generators and TSDs to send copies of the contingency plan to the WDNR. (Same requirement is in 665 for interim licensed facilities)
NR 630.30 Manifest requirements	630.30 (4) (f) & (5) (f) requires a TSD to send a copy of the manifest to the department within 5 working days of receiving the waste.	NR 664.0071 Use of manifest system	NR 664.0071(1)(d) requires a TSD to send a copy of the manifests to the department electronically within 30 days of receiving the waste.	Sending copies of the manifest to the regulatory agency (WDNR) is not a RCRA requirement. The draft rule changes the submittal of manifests to an electronic format within 30 days of receiving the waste rather than mailing paper copies within 5 days of receiving the waste. (Same requirement is in 665 for interim licensed facilities)

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
NR 630.30 Manifest requirements	630.30 (4) (f) requires the department will charge a fee of \$2.00 for each manifest submitted.	NR 664.0071 Use of manifest system	NR 664.0071(1)(f) requires the TSD to pay a manifest fee for each manifest submitted as designated in Appendix II of ch. NR 670.	Except for environmental fees, Appendix II of draft rule NR 670 includes all hazardous waste activities subject to fees, including manifest fees, license fees for transporters and license and review fees for TSDs. Appendix II reflects a fee increase of 30% or more. The hazardous waste program fees were last increased in 1998.
NR 680.45 License periods and fees.	NR 680.45(1)(a) requires the plan review fee or license fee specified in Table XII or XIII to accompany all license applications and plan submittals.	NR 670 Hazardous waste licensing and decision making procedures	NR 670.010 The plan review or license fee specified in Appendix II shall accompany all license applications and plan submittals.	
NR 620.15 Hazardous Waste Transportation License	NR 620.15(1) requires an application for a transportation service license to be accompanied by the fee specified in NR 680.45	NR 663.13 License requirements	NR 670.427(1)(b) requires the submittal of the fee specified in Appendix II with the TSD license renewal form NR 663.13(1)(b) requires an application form and fee for each transportation service to be submitted to the regional office of the department in the region where the transportation service is located.	
NR 630.18 Location Standards for TSDs	630.18 (1) states that a facility may not be located in a floodplain, unless it is a facility operating under an interim license, variance or waiver that meets certain requirements.	NR 670.014 Contents of feasibility and plan of operation-general requirements	NR 670.014(2)(k)4 requires a facility located in a floodplain to provide information regarding certain procedures and requirements	New rule language due to the adoption of RCRA regulations. Draft rule would allow final licensed facilities to be located in a floodplain while current rule only allows an interim licensed facility or a facility with a waiver or variance to be located in a floodplain.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
<p>NR 630.04 Exemptions from general requirements of TSDs</p>	<p>NR 630.04(1) states that an owner or operator of a wastewater treatment unit treating waste on site is exempt from TSD requirements. If the wastewater treatment unit accepts waste from off-site, notification, annual manifesting, annual reporting and an operating record are required.</p>	<p>NR 664.0001 Purpose, Scope and Applicability section establishing minimum operating standards.</p>	<p>NR 664.0001(7)(f) states that wastewater treatment units are exempt from TSD standards.</p>	<p>New rule language due to the adoption of RCRA regulations. Draft rule does not include state specific requirements if the wastewater treatment unit treats waste from off-site. (Same requirement is in 665 for interim licensed facilities)</p>
<p>NR 630.04 Exemptions from general requirements of TSDs</p>	<p>NR 630.04(7) states that an owner or operator of an elementary neutralization unit is exempt from the TSD requirements if they comply with certain requirements, such as notification, security, inspection and recordkeeping requirements.</p>	<p>NR 664.0001 Purpose, Scope and Applicability section establishing minimum operating standards.</p>	<p>NR 664.0001(7)(f) states that elementary neutralization units are exempt from TSD standards.</p>	<p>New rule language due to the adoption of RCRA regulations. Draft rule does not include state specific requirements (Same requirement is in 665 for interim licensed facilities)</p>
<p>No equivalent language</p>		<p>NR 664.0001 Purpose, Scope and Applicability section establishing minimum operating standards.</p>	<p>NR 664.0001(7)(h) states that persons engaged in treatment or containment activities during immediate response to certain situations are not subject to the requirements in NR 664</p>	<p>New rule language due to the adoption of RCRA regulations. Allows persons to take response action in situations such as a discharge of hazardous waste or an immediate threat caused by munitions or explosives. (Same language is in 665 for interim licensed facilities)</p>

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
No equivalent language in NR 630 or NR 680		NR 664.0001 Purpose, Scope and Applicability section establishing minimum operating standards.	664.0001 (10) (a) to (L) sets alternate standards to the general facility and preparedness and prevention, contingency plan and emergency requirements stated in NR 664 for remediation waste management sites.	New rule language due to the adoption of RCRA regulations.
640.07 Small storage facility requirements for containers NR 645.16 Small storage facility requirements for tanks	Establishes alternate feasibility and plan of operation submittal requirements for small storage facilities such as an enclosed and roofed facility with a floor area of 1500 sq. feet or less and capacity of less than 10,000 gallons where waste is stored in containers or tanks for economical treatment or storage.	No equivalent in draft rule NR 664/665/670		This is a state specific standard that is not in the draft rule.
No equivalent in NR 640, Container Standards		NR 664.0175 Container standards for TSDs	664.0175(2)(c) Containers that do not contain free liquids need not be considered in 10% volume capacity for secondary containment	Current rule requires all containers to be considered when determining volume capacity of the container containment capacity.
NR 685.07 Financial Responsibility	685.07(3)(a) - Cost Estimate for closure. Closure costs shall include the cost of closing the facility and include a 10% contingency	664.0142 (1) Cost estimate for closure	664.0142 (1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility	10% contingency will not be required for closure in draft rule.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
685.07 Financial Responsibility	685.07(4)(a) - Long term costs shall include the costs to provide long term care and a 10% contingency	664.0144 Cost estimate for long-term care	664.0144 (1) The owner or operator of a disposal surface impoundment, miscellaneous unit or landfill unit shall have a detailed written estimate, in current dollars, of the annual cost of long-term care monitoring and maintenance of the facility according to the applicable long-term care rules	10% contingency will not be required for long term care in draft rule.
Chapter NR 660 Landfill and surface impoundment standards	Specifies the requirements and standards that apply to hazardous waste landfill, surface impoundments, and waste piles	Chapter NR 664/665 K Surface Impoundments	NR 664.0221/665.0221 Design and operating requirements for surface impoundments	The current rule states specific technical criteria for landfills, waste piles and surface impoundments. The proposed draft rule for interim and final licensed landfills, waste piles and surface impoundments state the standards that must be met, but not the specific technology that must be used to meet the standards.
Chapter NR 655 Waste pile standards		Chapter NR 664/665 N Landfills Chapter NR 664/665 L Waste piles	NR 664.0301/665.0301 Design and operating requirements for landfills. NR 664.0251/665.0254 Design and operating requirements for waste piles	

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
NR 660.06 Location Standards	660.06(1) Landfills and surface impoundments are not allowed within: 1,000 ft of any navigable lake, pond, or flowage; 300 ft of a navigable river or stream; 1,000 ft of the nearest right-of-way; areas where there is reasonable probability that disposal shall have a detrimental effect on surface or groundwater and cause a violation under NR 140; 10,000 ft of airport runways; 1,200 ft from any public or private water supply; areas where clay soils extend less than 30 ft beneath surface, contain no coarse grain soils or have an infield permeability of 10^{-6} cm/sec; active portion must be 200 ft from property line	NR 664 Chapter A General location standards for TSDs	664.0018(2) A facility located in a 100 year floodplain shall be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100 year floods (exceptions follow) No interim standards stated in NR 665	The draft rules do not include the specific prohibitions for siting hazardous waste landfills listed in the current rule s. NR 660.06(1), however, other statutes and department rules provide for protection of surface and groundwater quality. Anyone proposing to construct a hazardous waste disposal facility is required to be in compliance with these rules and statutes. In addition, under the draft rules any hazardous waste landfill or surface impoundment proposed to be constructed has to comply with all of the local approval, and pre-application and meeting requirements and the environmental review process. They are also required to prepare and submit an initial site report to obtain a preliminary opinion from the department on the feasibility of the site for development as a disposal facility. The feasibility plan and plan of operation report requires submittal of detailed information to insure the protection of surface and groundwater.
NR 660.18 Minimum design and operating requirements	660.18(3)(b) and 660.18(3)(d) prohibit certain K, F, U and P wastes from being disposed in a land disposal unit.	NR 668 Land disposal restrictions	NR 668.40 Treatment standards for hazardous waste	Updates current rule. Land disposal restrictions require treatment standards to be met before waste can be placed in a land disposal unit.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
No equivalent		NR 664.0340 Incinerators - Applicability	NR 664.0340(3) The Department shall exempt the applicant from the requirements of this subch., except waste analysis & closure, by plan approval conditions if the waste is ignitable, corrosive or both or is reactive waste if certain conditions are met. NR 665.0340(3) for interim facilities is similar language	New rule language due to adoption of RCRA rules
No equivalent		NR 664.0340 Incinerators - Applicability	NR 664.0340(2)(a) The incinerator requirements do not apply when compliance with the MACT requirements of 40 CFR 63, subpart EEE is demonstrated. NR 665.0340(2)(a) Essentially the same	New rule language due to adoption of current RCRA rules
NR 600.04 Prohibited activities	NR 600.04 (1) Underground injection of any hazardous waste through a well is prohibited. Section NR 812.05 prohibits the use of any well for the disposal of solid wastes, sewage, surface water or wastewater.	NR 665 Subchapter R – Underground Injection	Underground injection of hazardous waste is prohibited except for contaminated groundwater resulting from a remedial action if certain conditions are met	NR 815 was revised to allow underground injection of contaminated groundwater in remediation cases. Language in NR 665 subch. R has been created to reflect the revisions to NR 815

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
No Equivalent		664 Subch S Special provisions for clean up	Corrective action management units - Updates to CAMU rule.	New rule language due to adoption of RCRA rules
No Equivalent		NR 664/665 AA/BB/CC Air emission standards for process vents, equipment leaks and tanks, surface impoundments and containers for final and interim licensed facilities.	Updates to air emission standards for interim and final licensed facilities. Includes new, deleted and modified requirements.	Changes in rule language due to adoption of RCRA rules. Note that WDNR is not currently authorized for CC rules.
NR 655 Waste pile and containment building standards	655.05(2)(b) prohibits placement of hazardous wastes containing free liquids in waste piles and containment buildings	NR 664/665 Subch. DD; Design and operating standards for containment buildings for final and interim licensed facilities.	664.1101/665.1101 Allows free liquids to be stored in containment building if certain standards are met.	New rule language due to adoption of RCRA rules.
No equivalent		Ch 664/665 Subch. EE Standards for Hazardous Waste Munitions and Explosives Storage	Establishes design and operation standards for alternative HW storage units for military and non-military munitions and explosives. Allows HW munitions and explosives to be stored in earth covered magazines, above ground magazines and outdoor or open storage areas.	New rule language due to adoption of RCRA rules.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
No equivalent		Draft Rule NR 666 Subchapter C – Recycled Materials Used in a Manner Constituting Disposal	NR 666.020(2) and (4) exempts certain recycled materials when they are used in a manner that constitutes disposal (applied to or placed on the land): Products produced for the general public use containing recyclable materials that have undergone a chemical reaction so as to become inseparable by physical means and meet applicable LDR treatment standards and zinc fertilizers excluded from the definition of solid waste that meet applicable LDR treatment standards.	New rule language due to adoption of current RCRA rules.
No equivalent		666 subchapter F Recyclable materials utilized for precious metal recovery	Requirements for persons who generate, transport or store recyclable materials with significant amounts of precious metals, such as gold, silver, and platinum	New rule language due to adoption of RCRA rules.
No equivalent		666, subchapter M – Standards for the transport, storage, treatment and disposal of military munitions classified as solid waste	Standards applicable to the treatment, storage, disposal and transportation of military munitions that are solid waste and emergency response.	New rule language due to adoption of RCRA rules.
No equivalent		NR 666 Subchapter N Conditional exemption for the low-level mixed waste transportation, storage, treatment and disposal	Allows the operator an extended storage period for the isotopes to decay prior to final disposal. Once the isotopes have decayed sufficiently, the exemption no longer applies and the waste is considered hazardous waste subject to NR 600 rules.	New rule language due to adoption of RCRA rules.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
NR 675 Land Disposal Restrictions	Requirements for wastes restricted from land disposal, including paperwork requirements, treatment standards and exemptions.	NR 668 Land disposal restrictions	Updates to the requirements for wastes restricted from land disposal, including paperwork requirements, treatment standards and exemptions.	New rule language due to adoption of RCRA rules. Updates include Phase IV of LDR - one time notification; keeping records for 3 years instead of 5 yrs (currently allowed by enforcement discretion); updated language for some specific waste types; revision of California wastes; and alternate treatment standards for contaminated soils.
NR 680 Plan review and licensing	NR 680.07(5)(a) No person may implement a class 1, 2 or 3 modification without prior written approval from the department.	NR 670 License modifications at the request of the licensee.	670.042(1)(b) Some class 1 license modifications may be made without the prior written approval of the department, as identified in Appendix I.	New rule language due to adoption of RCRA rules.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
NR 680.21 Application for an interim license.	NR 680.21 Interim license application shall include part A forms, closure plan and cost estimate, long term care plan and cost estimate, contingency plan, and the required fee. The department may require the o/o to submit copies of all available drawings, specifications, other existing information necessary to complete the interim license application, including a description of how the facility meets the interim license requirements for specific hazardous waste management units.	NR 670.013 Application for an interim license	Interim license application shall include part A forms, topographic maps, scale drawing, description of process	New rule language due to adoption of RCRA rules. Rather than submitting reports with the Part A, the draft rule will require them to be submitted as part of FPOR.
NR 660 Landfill and Surface Impoundment Standards	NR 660.11 For landfills and surface impoundments: Make a feasibility determination within 60 days after the 45 day notice period has expired....	NR 670.403 License application procedures.	NR 670.403(3) Each license application submitted by the owner or operator of a HWM facility consisting of both the Part A and the feasibility and plan of operation report, shall be reviewed for completeness within 60 days of receipt.	Draft rule proposes the feasibility report and plan of operation are submitted together for all treatment, storage and disposal facilities rather than the feasibility report and the plan of operation report being submitted separately for land disposal facilities Necessary if NR 666 H, BIF, is adopted as proposed.
No equivalent		NR 670.022 Specific FPOR information requirements for boilers and industrial furnaces burning hazardous waste	States information specific to boilers and industrial furnaces that should be included in FPOR	

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
No equivalent		<p>NR 670.024 Specific FPOR information for process vents.</p> <p>NR 670.025 Specific FPOR information requirements for equipment.</p> <p>NR 670.027 Specific FPOR information requirements for air emission controls for tanks, surface impoundments and containers.</p>	Information that is to be included in the FPOR to demonstrate compliance with AA/BB/CC air emission standards.	New rule language due to adoption of RCRA rules.
NR 680.42 Conditions applicable to all licenses	NR 680.42(5) the department may waive the construction inspection in writing	NR 670.030 Conditions applicable to all licenses	NR 670.030(12) (b) If the licensee has not received notice from the department of the department's intent to inspect within 15 days, prior inspection is waived.	New rule language due to adoption of RCRA rules.
NR 689.50 Variances	Department may issue a variance from NR 600 to 679 requirements if the application or compliance with a license would cause undue and unreasonable hardship	NR 670.068 Remediation Variances	For purposes of hazardous waste remediation, issuance of a treatment or storage license under this chapter would constitute an undue or unreasonable hardship	Although variances are allowed by s. 291.31, Stats., the only variance language in the draft rule is the remediation variance. (Language that has been added to the land treatment section, 664/665 subch. M, stating that variances may not be issued for land treatment.)
No equivalent		NR 670.072 Changes during an interim license	States modifications that can be made to the interim license, such as the addition of newly listed waste types.	New rule language due to adoption of RCRA rules.

Current Rule	Current Rule Description	Draft Rule	Draft Rule Description	Comment
No equivalent		NR 673 Universal waste	NR 673.05 Applicability - Lamps The requirements of this chapter apply to persons managing lamps	New rule language due to adoption of RCRA rules. Currently using enforcement discretion to regulate lamps as a universal waste.
NR 590.10 Mixtures of used oil and waste	NR 590.10(4) Mixtures of used oil and waste which is hazardous solely because it exhibits the characteristic of ignitability from very small quantity generators are subject to regulation as used oil.	NR 679.10 Applicability of used oil rules to mixtures of used oil and hazardous waste	NR 679.10(2)(c) Mixtures of used oil and very small quantity generator hazardous waste are regulated as used oil under this chapter.	New rule language due to adoption of RCRA rules.

Attachment D

Responses to Administrative Rules Clearinghouse Comments

This Appendix sets out the department's responses to those comments made by the Administrative Rules Clearinghouse which were not accepted by the department or which were accepted only in part. All other Clearinghouse comments were accepted and the proposed rule was revised accordingly. Responses are numbered to correspond with the comments.

1. Statutory Authority

- b.
 - 2. Knowledgeable readers understand that a reference in a rule to a federal regulation is to the version of the regulation in effect at the time the rule is promulgated, unless an earlier date is expressly noted, and not to any future version of the federal regulation.
 - 4. As worded, the rule does not include an unconditional delegation of DNR authority to EPA. Although it seems at first to be an attempt by DNR to mandate EPA action, it is written in past tense, making it a factual criterion, rather than words of command (i.e., it does not say that EPA shall do anything).

2. Form, Style and Placement in Administrative Code

- a. Agree in part. The analysis has been revised to provide some more detail on the purpose and content of the current and proposed rules.
 - 1. Disagree that such extensive detail as recommended by the Clearinghouse should be included in the Analysis. The requested information already exists in other public documents prepared for this rulemaking and is readily available from the Department.
 - 2. Agree in part. A renumbering guide showing the old vs. new numbering will be prepared later, but prior to the effective date of the proposed rules.
- g. The proposed rule is based on and follows the numbering found in its counterpart federal regulation, which is not alphabetical.
- h. The purpose and scope section, NR 661.01(1), defines the applicability of the terms "hazardous waste" and "solid waste".
- i. The wording of the proposed rule is based on its counterpart federal regulation. The Clearinghouse recommendation may result in an unintentional change in the meaning of the rule.
- j. The wording of the proposed rule is based on its counterpart federal regulation, and some readers may be confused by the Clearinghouse recommendation to replace "however" with the word "notwithstanding".
- k. Disagree at present. We asked EPA to clarify which list is referred to in this section [NR 661.02(4)(c)] but do not yet have a response. We'll add the specific cross reference in a subsequent rule revision.
- m. The wording style of the proposed rule is based on its counterpart federal regulation. The Clearinghouse recommendation may result in an unintentional change in the meaning of the rule.
- p. The numbering of the proposed rule is based on its counterpart federal regulation. The Clearinghouse recommendation may result in an unintentional change in the meaning of the rule.

because it would result in cross reference errors within the same rule, and would make future federally-based rule changes more difficult to integrate.

q. Although the Clearinghouse change would make the rule more readable, the department's intent is to follow the federal language as much as possible.

r. The change recommended by the Clearinghouse is not needed because the term "TCLP" is already spelled out in the title to Appendix II to ch. NR 661.

s. The cross-references in this section should remain as cross references to the Code of Federal Regulations, since the importation and export of hazardous waste is administered by EPA, not the States.

t. The Clearinghouse comment is probably correct, but the proposed rule's wording tracks its federal counterpart.

w. The proposed rule's wording tracks its federal counterpart.

bb. Revision is unnecessary. We believe that anyone regulated by this subchapter would know where to find financial circulars.

cc. The inconsistent use of metric and English units in the proposed rule is based on its counterpart federal regulation, which the department prefers to follow.

dd. The language parallels the federal rule language. The definitions for the licensed TSD air emission rules reference the definitions in the interim TSD air emission rules.

ff. The inappropriate use of imperative voice instead of active voice in certain provisions of the proposed rule is based on its counterpart federal regulation, the style of which the department prefers to follow as closely as possible.

hh. The proposed rule follows federal rule format, and is clear.

kk. Although the Clearinghouse change probably would improve the rule's clarity, the rule is clear enough as written and is consistent with the department's intent is to follow the federal language as much as possible.

pp. The department intends to follow the federal rule format as much as possible.

qq. Although we agree that notes should not contain substantive provisions, the notes in ss. NR 670.014(2)(k)3. and 670.079(4) only repeat in part, or expand upon the information provided in the rule's text, and thus are not substantive.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The proposed rule's wording tracks its federal counterpart. The Clearinghouse recommendation may result in an unintentional change in the meaning of the rule.

c. The proposed rule's wording tracks its federal counterpart. The Clearinghouse recommendation may result in an unintentional change in the meaning of the rule.

d. The proposed rule's wording tracks its federal counterpart. The Clearinghouse recommendation may result in an unintentional change in the meaning of the rule.

f. The use of "and" instead of "or" in the proposed rule is based on its counterpart federal regulation, which the department prefers to follow.

- i. The proposed rule's wording tracks its federal counterpart. The Clearinghouse recommendation may result in an unintentional change in the meaning of the rule.
- k. The department believes that the term "monofill", when used in this context, is reasonably clear and does not need to be defined in rule.
- p. Disagree with second comment. The Clearinghouse apparently did not understand the rule, which follows its counterpart federal regulation.
- q. The proposed rule's wording tracks its federal counterpart.
- s. The language parallels the federal counterpart.
- v. Disagree in part. Disagree with adding the phrase "under sub. (1)" after 'determination' in s. NR 665.1084(2) (intro.). The determination does not refer to the determination in sub. (1), but rather to the hazardous waste determination that must be made by any person who generates a solid waste. See s. 291.21, Stats.
- w. The proposed rule's wording tracks its federal counterpart.
- aa. The proposed rule's wording tracks its federal counterpart, in which "presently regulated" is understood to mean "currently regulated as a *hazardous waste under RCRA*".
- bb. The addition is unnecessary, since the suggested wording is already contained in s. NR 666.070(2)(intro.).
- cc. Disagree in part. Applicability language already is set out in sub. (1), and the plain language style used in this and other rules simply tracks its federal counterpart. The Clearinghouse recommendation may result in an unintentional change in the meaning of the rule.
- ee. Disagree in part. A note is not needed because the rule applied only to actions taken prior to Aug. 1, 1991. Further clarification is not necessary.
- ff. Although the rule may seem obsolete, adoption appears to be required by EPA for the state's hazardous waste program to be equivalent.
- jj. The rule applies to military munitions and the military, which has more expertise than the department in handling munitions and any dangers they present.
- kk. The rule cross-referenced in this rule was misconstrued by the Clearinghouse. It didn't realize that ch. NR 661 deals with both listed hazardous wastes and characteristic hazardous wastes.
- qq. The term "zero dischargers" is readily understood by the regulated community affected by the rule and does not need a separate definition. However, a definition for a related acronym: "CWA" (for Clean Water Act), has been added.
- tt. Disagree in part – Although a number of acronyms used in the rules are not formally defined in a definition, they are usually defined adequately in a following parenthetical or by context. A definition of CWA (for Clean Water Act) has been added to the rule.
- uu. The rule is intended to contain only a partial list of persons who are exempt from licensing, since other rules or statutes may also provide an exemption.