

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 520.04(5)(1)(d)5. relating to balances in the Waste Management Program Revenue Account.

WA-18-06

Analysis Prepared by the Department of Natural Resources

Statutes Interpreted: ss. 289.61, Stats.

Statutory Authority: ss. 289.61 and 227.11(2)(a), Stats.

Explanation of Agency Authority to Promulgate the Proposed Rules Under the Statutory Authority:

This order amends solid waste management rules in ch. NR 520. The proposed revisions revise the Waste Management Program Revenue account balance that would require rule revisions to adjust the landfill license fee surcharge.

Related Statute or Rule: None.

Plain Language Analysis of the Proposed Rule:

These rule revisions are being proposed to modify language in Chapter NR 520, Wis. Adm. Code, in order to make the requirements in s. 520.04(1)(d)5. more manageable from a budget perspective. A rule revision package was approved in 2003 which revised Ch. NR 520 to increase SW facility plan review and license fees, including the landfill license fee surcharge assessed on tons of landfilled waste. As part of the rule revision package, language was added to the chapter which required that, beginning in FY05, if the account balance at the end of the previous fiscal year is greater than 8% of the expenditure level of the program revenue account authorized in s. 20.370(2)(dg), Stats., the DNR must submit to the Natural Resources Board proposed rule revisions to modify the surcharge fee to more closely align revenues with expenditures. This language was added as a result of stakeholder concerns regarding balances that had previously accumulated in the account as a result of higher than expected landfilled tonnages and conservative Waste Management Program expenditures.

Eight percent of the expenditure level in the account is about \$250,000. In FY04 through FY06, the account balance averaged \$420,000 or approximately 13% of the expenditure level. However, projections for the account show the balance at or below the \$250,000 level in less than 4 years. The largest revenue stream going into this account is from the landfill license fee surcharge. Annual landfill tonnage rates in Wisconsin vary considerably and historically have been hard to predict. As a result, trying to maintain a balance of around \$250,000 in the Program Revenue Account is difficult. A year with higher than average tonnage rates would result in exceeding the 8% cap, which would require the Waste Management Program to submit a rule package reducing the landfill license fee surcharge. However, if after reducing the fee the tonnage rates dropped, it could quickly result in a deficit in the account. The Waste Management Program has been fiscally responsible in how they manage this account and hold annual public meetings to report on the status of the account. The Department is recommending rule revisions that will allow better fiscal management of the Program Revenue Account and avoid multiple rule revisions related to increasing and decreasing fees.

Summary of and Preliminary Comparison to Existing or Proposed Federal Regulations Intended to Address the Activity to be Regulated by the Proposed Rule:

Federal regulations do not address solid waste management funding.

Comparison of Similar Rules in Adjacent States (MN, Iowa, IL, and MI):

No relevant comparisons exist.

Summary of the Factual Data and Analysis Methodologies that the Agency Used in Support of the Proposed Rules and How any Related Findings Support the Regulatory Approach Chosen for the Proposed Rules:

The Department reviewed past balances for the Waste Management Program Revenue Account and made projections based on anticipated revenue and expenditures. A key determining factor in our past balances and a critical variable in our projections is the annual landfill tonnage rate.

Any Analysis and Supporting Documentation That the Agency Used in Support of the Agency's Determination of the Proposed Rule's Effect on Small Business Under s. 227.114, Stats., or That Was used When the Agency Prepared an Economic Impact Report:

Because the proposed rule will have no fiscal effect and the changes made relate only to balances in the Waste Program Revenue Account, it will have no effect on small businesses.

Anticipated Cost Incurred by the Private Sector: None.

Effect on Small Businesses: None.

Agency Contact Person:

Dennis Mack, Section Chief
608/267-9386
Dennis.Mack@dnr.state.wi.us

SECTION 1. NR 520.04(1)(d)5. is amended to read:

NR 520.04(1)(d)5. ~~Beginning in calendar year 2004, the~~ The department shall hold a public meeting annually in September to review the status of and projections for the waste management program revenue account. ~~In addition, beginning in fiscal year 2005, if~~ If, for 3 consecutive fiscal years, the end of year account balance ~~at the end of the previous fiscal year~~ is greater than 8% ~~20%~~ of the expenditure level of the program revenue account authorized in s. 20.370(2)(dg), Stats., the department shall submit to the natural resources board proposed rule revisions with appropriate justification for the modification of the surcharge payable under this paragraph to more closely align revenues with expenditures in accordance with s. 289.61(3) Stats. The proposed rule revisions shall be submitted within 180 days after the date of the public meeting.

SECTION 2. EFFECTIVE DATE: The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.) Stats.

SECTION 3. BOARD ADOPTION: This rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 27, 2006.

Dated in Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)