

Report From Agency

REPORT TO LEGISLATURE

NR 500, 502, 520 and 530, Wis. Adm. Code

Board Order No. WA-11-19
Clearinghouse Rule No. 21-041

Basis and Purpose of the Proposed Rule

Wisconsin's electronics recycling law established a statewide product stewardship program to collect and recycle certain electronics from Wisconsin households and schools (s. 287.17, Wis. Stats.). This recycling program, funded by manufacturers of TVs, computers, monitors and printers, is called E-Cycle Wisconsin. The law also banned landfill and incinerator disposal of many electronics beginning in September 2010 under s. 287.07 (5), Wis. Stats.

To date, the department has not promulgated any rules related to s. 287.07 (5) or 287.17, Wis. Stats. Section 287.17, Wis. Stats., was intended to be detailed enough for the department to complete initial implementation without rulemaking (it prohibited the department from promulgating rules during the first two years of the program).

Since the law took effect in 2010, the state's electronics recycling industry has grown and matured, and relationships among electronics collection points, consolidation points, recycling facilities and electronics manufacturers have become more complex. The department has worked extensively with program participants over the years to develop and improve streamlined, online registration and report forms. These allow the department to verify the accuracy of information that collectors, recyclers and manufacturers submit, and also provide data to update a public list of electronics recycling options in real time, which the department identified as a high priority based on statewide surveys of Wisconsin households. In addition, the department has worked with stakeholders to put in place a flexible and efficient marketplace for the buying and selling of credit for recycled eligible electronic devices, making it easier for manufacturers to meet their recycling targets and for recyclers to recover costs. The proposed new ch. NR 530, Wis. Adm. Code, codifies many of these improved and streamlined registration and reporting practices.

Prior to the electronics recycling law's enactment in 2009, and anticipating increasing volumes of electronic devices reaching the end of their service life, the department simplified requirements for electronics recycling to encourage development of e-cycling infrastructure. The department exempted electronics recyclers from solid waste processing license requirements under s. NR 502.08 (2) (f), Wis. Adm. Code, as "Facilities for the processing of scrap iron, steel or nonferrous metal using large machines to produce a principal product of scrap metal for scrap or use for remelting purposes." Transporters were also exempted from solid waste transporting requirements under s. NR 502.06 (2) (a), Wis. Adm. Code, as "Services for the collection and transportation of only gravel pit spoils, quarry materials, earth materials or salvageable materials other than those listed in s. 287.07 (3) or (4), Stats."

Since these decisions were made, there have been several significant changes in the electronics recycling landscape that have led the department to re-examine this interpretation with this rulemaking and seek to define requirements for electronics collection, transportation and recycling activities. These included:

- Significant growth in Wisconsin's electronics recycling infrastructure, due largely to E-Cycle Wisconsin, including the rapid growth among a handful of high-tech recycling facilities in the state.
- An increase in enforcement cases resulting from irresponsible recyclers or "scrappers" removing high value metals from electronics while illegally leaving hazardous materials behind. Since 2015, the

department estimates these cases have led to more than \$2 million in completed or projected cleanups. The majority of these costs are covered either by taxpayers or by landlords who own the properties on which the material has been mismanaged.

- A large change in the market for glass from cathode ray tubes (CRTs), which has made recycling older TVs and monitors much more expensive and led to stockpiles of CRTs and lead-containing CRT glass which is a hazardous waste.
- Greater public awareness of the need to recycle electronics, and more demand for legitimate recyclers providing these services.
- The rapid and continued evolution of electronics, which has changed both the commodity value of electronic waste and the methods and tools needed to properly recycle it. Newer electronics have a lower metal content (more valuable as commodities) with a commensurate increase in plastic components with a lower commodity value. They contain fewer toxic materials, but more flammable, difficult-to-remove lithium-ion batteries, which add labor and fire prevention costs.

Many elements in this rule come directly from discussions with E-Cycle Wisconsin program stakeholders over the years. At the most recent E-Cycle Wisconsin stakeholder meeting in 2018, participants were positive about the electronics recycling law, but noted several areas of concern, including a need for more actions to deter bad actors; the lack of affordable, convenient recycling for some state residents; a lack of consumer awareness about the need to responsibly recycle electronics; and economic and safety issues the changing electronic waste stream has brought to collectors and recyclers. The department has addressed these concerns in the proposed rule.

Summary of Public Comments

See attached Electronics Recycling Rule Public Comments and Department Responses, Natural Resources Board Order No. WA-11-19.

Modifications Made

In response to verbal and written comments provided by the Consumer Technology Association regarding clarification of which electronics meet the definition of a “consumer computer,” department program staff obtained a legal opinion from the department’s attorney responsible for solid waste and recycling concerning the applicability of the “consumer computer” definition to smartphones and video game systems.

Based on this opinion and CTA’s comments, the department made the following changes:

- Removed from the rule “smartphone” in the list of device categories that meet the definition of a “consumer computer.”
- Updated the rule’s wording of the video game system device category to “A component of a video game system that meets the definition under s. 287.17 (1) (e), Stats., of a consumer computer” to clarify which video game-related devices would meet the definition of a consumer computer and thus be a covered electronic device.
- Added the following to the list of eligible electronic devices in the rule:
 - telephones with a video display;
 - telephone accessories operated by a battery; and
 - video game system components operated by a battery that do not otherwise meet the definition of a covered electronic device.

While expressing general support for the rule provisions and for changes the department had previously made to the proposed rule, Waste Management submitted several comments and questions on specific language in ch. NR 502, Wis. Adm. Code. The department made several minor changes to the rule language in response, including:

- Updated the language in the proposed rule (s. NR 502.08 (6) (p), Wis. Adm. Code) so that electronics processing facilities are only required to provide notification of requirements to collection and transportation services they contract with, so that the facilities have a clear mechanism (a written contract) for providing the notification.
- Clarified wording in the proposed s. NR 530.05 (2), Wis. Adm. Code, related to eligible electronics recovered from waste loads or illegal dumping.
- Added a statement in s. NR 530.08 (1) (c), Wis. Adm. Code, that collectors need to notify the department of changes to some of their registration information in a timely manner.

Appearances at the Public Hearing

Walter Alcorn, Consumer Technology Association, in opposition

Lynn Morgan, Waste Management (no position registered)

Changes to Rule Analysis and Fiscal Estimate

As mentioned above, in response to comments, the department removed from the rule “smartphone” in the list of device categories that meet the definition of a “consumer computer.” This means that smartphone manufacturers would no longer be required to register with the department and meet annual recycling targets. Because of this, the department updated the fiscal estimate to remove the costs to smartphone manufacturers, resulting in an overall cost reduction of \$132,000.

In addition to noting this change, the department updated the rule analysis to reflect the addition of the following as eligible electronic devices under s. 287.17 (1) (gs), Wis. Stats.: a telephone with a video display, a telephone accessory operated by a battery, and a component of a video game system or a portable hand-held video game device operated by a battery that does not meet the definition of a computer monitor or consumer computer.

Response to Legislative Council Rules Clearinghouse Report

Comments received from the Wisconsin Legislative Council Rules Clearinghouse (LCRC) were related to form, style and placement in administrative code; adequacy of references to related statutes, rules and forms; and clarity, grammar, punctuation and use of plain language. The department made all requested changes except as follows:

Comment 2d. In SECTION 1 of the proposed rule, in s. NR 500.03 (71m) (a) (intro.), should “means processing” be changed to “means preparing” in order to achieve consistency with the definition of “recycling” in s. 287.17 (1) (m), Stats.?

Department Response: The department’s intent is for this definition to be distinct from the definition in s. 287.17 (1) (m), Wis. Stats., because of the need to be consistent with how other terms and activities are defined and applied in ch. NR 502, Wis. Adm. Code. To reduce confusion, the department changed the proposed definitions from “electronics recycling” to “electronics processing” and “electronics recycling facility” to “electronics processing facility.”

Comment 2e(1): The definition of “collection” in sub. (2) could be removed because that term is already incorporated by the reference to s. 287.17, Wis. Stats., in s. NR 530.03 (intro.).

Department Response: There is a different and somewhat conflicting definition of “collection” in s. NR 500.03 (38), Wis. Adm. Code, since the chapter applies broadly to several waste types so we are including this definition to be clear it is the one in s. 287.17, Wis. Stats., that applies.

Comment 2e(2): The department should consider whether it is necessary to create the definition “covered school” in sub. (3).

Department Response: 2021 Wisconsin Act 79 changed the definition in s. 287.17, Stats., from “school” to “covered school,” so the department has removed the definition from the rule but retained the term “covered school.”

Comment 2e(4): Will the term “smart home device”, as used in s. NR 530.04 (1) (b), be understood by relevant stakeholders without a definition?

Department Response: This appears to be a common term, used as a device category by many retailers, and the department did not receive any comments from the public asking for clarification of this term, so the department did not add a definition.

Comment 5c: In s. NR 530.09 (2) (a) 4., what is “long-term” storage?

Department Response: The phrase “long-term” has been removed.

Final Regulatory Flexibility Analysis

The department estimates that approximately 75% of Wisconsin electronics processing facilities affected by the rule, or approximately 20 facilities, would be small businesses. The department estimates these businesses would have aggregate one-time costs of \$15,000-\$24,000 (or an average of \$750 to \$1,200 per facility). They would not be required to pay annual licensing fees to the department.

The proposed rule includes exemptions from solid waste processing license requirements for facilities that process fewer than 25 electronic devices per year. The department will also waive annual solid waste processing license fees for all facilities because they have a primary purpose of converting solid waste into usable materials or products.

Response to Small Business Regulatory Review Board Report

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