

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

SUBJECT:

Request that the Board approve the Statement of Scope for Board Order WA-13-21 and conditionally approve the public hearing notice and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse, for proposed rules affecting chapters NR 500, 502, 542, and 544 related to statewide materials recycling and effective recycling programs

FOR: June 2022 Board meeting

PRESENTER'S NAME AND TITLE: Kate Strom Hiorns, Recycling and Solid Waste Section Chief

SUMMARY:

The department is directed by s. 287.03, Wis. Stats., to promulgate rules necessary to implement ch. 287, Wis. Stats., including the designation of effective recycling program criteria. In 2020, a legislative audit of statewide recycling programs prompted the department to review relevant administrative code and engage with stakeholders in an effort to determine if improvements of recycling regulations are needed.

A preliminary public hearing on this scope statement was held on June 6, 2022. A recording of the hearing is available at: https://widnr.widen.net/view/video/cuenlzb99g/WA-13-21-RecyclingScopeRecording.mp4.

If the scope statement for Board Order WA-13-21 is approved, the department may begin drafting the rule language. As required by statute, the department may not begin work on the content of the proposed rule until the scope statement is approved. Once the rule is drafted, the department will seek public comment on the economic impact of the rule and on the proposed rule language. The 30-month time frame for submission of a final rule to the legislature for approval expires on September 28, 2024.

RECOMMENDATION: That the Board approve the statement of scope for Board Order WA-13-21 and conditionally approve the public hearing notice and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- Statement of Scope
Governor's Approval of Statement of Scope
Public Comments Summary
Background Memo
(insert document name)
(insert document name)

Table with 3 columns: Approved by, Signature, Date. Rows include George B. Wolbert, Gail E. Good, and Preston D. Cole, Secretary.

for

by Sarah Barry

cc: Board Liaison - AD/8
Department Tribal Liaison - AD/8

Handwritten initials and 'DS' stamp

Program attorney - LS/8

Department rule officer - LS/8

This page intentionally left blank.

**CORRESPONDENCE/MEMORANDUM**

DATE: June 7, 2022

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on preliminary public hearing and public comments received on the scope statement for Board Order WA-13-21, relating to statewide materials recycling and effective recycling programs

On March 30, 2022, the co-chair of the Joint Committee for the Review of Administrative Rules (JCRAR) requested that the Department hold a preliminary public hearing and comment period on the scope statement for Board Order WA-13-21, pursuant to s. 227.136(1), Wis. Stats. The statement of scope contemplates rulemaking to revise chs. 500, 502, 520, 542, and 544 for the purpose of correcting, clarifying, and updating effective recycling program criteria. This memo summarizes the comments received at the public hearing and during the period for written public comments.

**Public Hearing**

The Department held a virtual preliminary public hearing on the statement of scope on June 6, 2022 at 1:30 p.m. Nineteen members of the public attended the hearing (eighteen attending for information only, one in support).

One member of the public provided testimony on behalf of the Associated Recyclers of Wisconsin (AROW) in support of the scope statement, noting that administrative code should be updated to adapt to changing markets, products, and staffing that has occurred in the recycling industry over time. The full testimony is below:

“AROW is Wisconsin’s premiere recycling and waste reduction organization, representing members from across Wisconsin, including municipalities, non-profit organizations, private sector business and the public. AROW’s members have been implementing the provisions of NR544 for decades. As well, we provide support to our members to ensure their compliance with NR544. The recycling industry has evolved since NR544 was first created and AROW members have learned much on how to improve not only the industry, but also we have adapted as best we could to the volatility of markets, uncertainties of economic downturns, staffing shortage, the creation of complex chemical characteristics of recyclable materials and how best to effectively reach busy households with educational/outreach materials. Unfortunately, NR544 has remained unchanged to respond to these evolutions. AROW and its members are thrilled to see this scope statement and look forward to helping to make NR544 a 21<sup>st</sup> Century regulation.”

**Written Public Comment**

The public comment period ended on June 6, 2022. The Department did not receive any written comments on the proposed statement of scope.

**Drafter:** Kate Strom Hiorns

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** WA-13-21

**Relating to:** Revisions to chs. NR 500, 502, 520, 542, and 544, Wis. Adm. Code, relating to statewide materials recycling and effective recycling programs

**Rule Type:** Permanent

### 1. Finding/nature of emergency (Emergency Rule only):

The rule will be proposed as a permanent rule.

### 2. Detailed description of the objective of the proposed rule:

The department is directed by s. 287.03, Wis. Stats., to promulgate rules necessary to implement ch. 287, Wis. Stats., including the designation of effective recycling program criteria. In 2020, a legislative audit of statewide recycling programs prompted the department to review relevant administrative code and engage with stakeholders in an effort to determine if improvements of recycling regulations are needed. Applicable recommendations from the audit will be addressed through this rulemaking.

The general objectives of this rulemaking are to correct, clarify, and update effective recycling program criteria throughout ch. NR 544, Wis. Adm. Code, as well as amend sections of other code chapters related to waste reduction, recovery, and recycling efforts. Specific objectives include:

- a. Update annual reporting and submittal requirements for recycling responsible units.
- b. Update annual reporting and submittal requirements for material recovery facilities that self-certify and manage responsible unit materials in accordance with s. 287.27(2), Wis. Stats., and create annual reporting and submittal requirements for material recovery facilities that are currently not required to self-certify.
- c. Clarify and modify reporting requirements for data that material recovery facilities and transportation services send to responsible units.
- d. Clarify and update procedures in ch. NR 542, Wis. Adm. Code, for recycling grants to responsible units.
- e. Clarify responsible unit enforcement requirements via ordinance and compliance assurance plans.
- f. Clarify, codify, and add specificity to operational requirements of responsible units, including required components of effective recycling programs, collection and processing systems, components of recycling ordinances, record keeping requirements, participation in department trainings and evaluations, and requirements for material recovery facilities used as part of an effective recycling program.

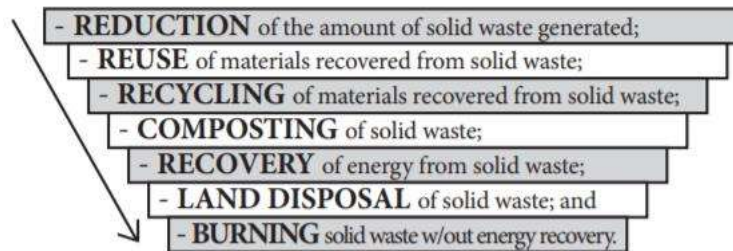
- g. Update the basis of collection standards to reflect changes in recyclable material content and volume.
- h. Codify material recovery facility guidance and procedures for beneficial reuse and disposal of broken container glass and residual disposal fee exemptions.
- i. Update policy on variances and exemptions allowed to meet requirements of an effective recycling program.
- j. Evaluate and codify potential food waste reduction strategies and education requirements for an effective recycling program.
- k. Modify the department's ability to require owner financial responsibility for material recovery facilities.
- l. Remove code requirements that may be conflicting or are no longer applicable.

The rule would also review chs. NR 500, 502, 520, 542 and 544, Wis. Adm. Code, for any updates to definitions; changes to storage, collection and transportation, or processing requirements for recyclable materials; minor modifications or corrections to code based on previous statutory changes; and updates to recycling grants authorized under statutes.

Additional rule changes or clarifications may be pursued which are reasonably related to those discussed here.

### **3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

The solid waste reduction, recovery and recycling law, ch. 287, Wis. Stats., was enacted in 1990 to promote development of waste management structures and encourage reduction, reuse and recycling of Wisconsin's solid waste. The law instituted bans on landfilling and incineration of certain materials and established a hierarchy of preferences for solid waste management options:



The department oversees the disposal bans and program requirements and shares responsibility with local units of government for enforcing those provisions. "Responsible Units" implement municipal recycling programs. A responsible unit can be a municipality, county, tribe, solid waste management system, or other unit of local government that is responsible for planning, operating and funding a recycling program. Every municipality and tribe in the state must be either a responsible unit itself, or part of a multi-municipality or county responsible unit.

In addition to ensuring recycling services are provided to occupants of one- to four-unit residences, responsible units must ensure that nonresidential locations—including businesses, institutions, multi-family residences with five or more units, special events and construction sites—recycle materials banned from landfills. The law does not require responsible units to provide these services themselves.

Responsible units often contract with transportation services to deliver material to a material recovery facility (MRFs) where materials are processed for reuse or recycling. The department administers state-funded grant programs to assist responsible units in operating and improving their recycling programs.

Proposed rule revisions are intended to clarify existing code requirements and modify standards in the following chapters of the solid waste code:

- Chapter NR 500, Wis. Adm. Code, contains definitions and general solid waste facility requirements.
- Chapter NR 502, Wis. Adm. Code, provides the specifications for the collection and transportation of solid waste, including recyclable material.
- Chapter NR 520, Wis. Adm. Code, contains owner financial responsibility requirements and specific fee information for the program.
- Chapter NR 542, Wis. Adm. Code, contains the criteria responsible units must meet to obtain recycling grants.
- Chapter NR 544, Wis. Adm. Code, contains the criteria for developing and maintaining an effective recycling program by a responsible unit, as well as the criteria for operating a self-certified material recovery facility.

Alternatives to rulemaking include continuing to rely on program guidance to clarify application of existing rules or statutes. Failure to update code language maintains out-of-date standards and creates inefficiencies. Program guidance has been issued to provide clarity on the effective recycling program criteria but does not have the force of law. In its 2020 audit of the department's recycling program, the Legislative Audit Bureau identified rule provisions that need to be revised.

#### **4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

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

Section 287.03, Wis. Stats., directs the department to promulgate rules necessary to implement ch. 287, Wis. Stats., related to solid waste reduction, recovery, and recycling.

Section 289.06(1), Wis. Stats., directs the department to promulgate rules implementing and consistent with ch. 289, Wis. Stats., related to solid waste facilities.

#### **5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The department estimates that approximately 500 hours of staff time will be required to complete the proposed rule.

#### **6. List with description of all entities that may be affected by the proposed rule:**



- Responsible units, under the meaning specified in s. 287.01(9), Wis. Stats., which includes every Wisconsin municipality or tribe either individually or as a consolidated responsible unit ( $\approx 1,100$ ).
- Material recovery facilities ( $\approx 55$ ), under the meaning specified in s. 287.27(1), Wis. Stats.
- Individuals or businesses/facilities that store, transport, or process recyclable materials.
- Nonresidential facilities and property owners of multi-family residences with five or more units ( $\approx 17,000$ ).

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

Federal law does not regulate state responsible units in regard to the effectiveness of their recycling programs, nor does it require any level of government to provide a recycling service.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):**

The department's preliminary determination is that the proposed rule change will have a moderate economic impact between \$50,000 and \$5,000,000 annually. Most rule changes would clarify and update existing code or policy requirements as well as add requirements that ensure universal recycling access and related documentation.

Economic benefits include:

- Improving the efficiency of Wisconsin recycling markets and supporting growth in the market for recyclables.
- Supporting Wisconsin recycling industry jobs.
- Increasing landfill longevity.
- Increasing equitable access to recycling in Wisconsin.
- Creating a better understanding of Wisconsin recycling performance.
- Increasing efficiency of various report submittals for stakeholders and the department.

Rule changes that would clarify or codify existing practices and are expected to have an insignificant or minimal economic impact include:

- Annual reporting for responsible units and material recovery facilities.
- Enforcement actions taken by responsible units.
- Codification of guidance policies related to beneficial reuse of glass and for residual fee exemptions.

The department would actively seek additional cost information from stakeholders during the comment period for economic impacts that may include:

- Costs incurred by MRFs that currently do not provide data to the department for new reporting requirements (approximately \$500/year). This would involve staff time to compile the existing data.
- Costs incurred by responsible units to implement new food waste reduction education (approximately \$100,000 total statewide). The department is able to provide examples of educational materials at no cost to responsible units.

- Costs incurred by self-certified material recovery facilities to provide owner financial responsibility (OFR) to cover unanticipated closure. Closure costs vary based on the volume and type of material remaining on site, as well as transport distance. Neighboring material recovery facilities may have a financial incentive to recover sorted recyclable materials from closed facilities, as those sorted materials historically have been marketable at a net profit. However, glass typically represents a net cost. Therefore, OFR would mainly cover costs of remaining glass and unsorted material left behind at the facility.
- Costs incurred by some multi-family dwellings and non-residential facilities to meet specifications for “adequate” recycling collection systems, such as costs for upgraded bins or dumpsters. The potential costs are unknown due to the lack of data regarding the service level at all multi-family dwellings and non-residential facilities in Wisconsin. However, the cost to add service for one additional dumpster is approximately \$300/year.
- Costs incurred by approximately 5-7% of responsible units to meet the intent of providing a recycling system for single family and 2-4 unit residences. These would be responsible units that currently only provide monthly curbside collection or individual household subscription service.

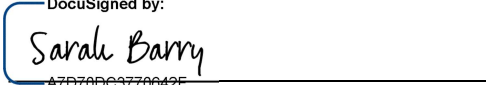
The rule will likely affect small businesses, but overall impact is unknown at this time.

#### **9. Anticipated number, month and locations of public hearings:**

The department anticipates holding one public hearing in the month of January 2024. An online format will provide convenient access to the public hearing for interested parties around the state.

#### **Contact Person:**

Kate Strom Hiorns, Recycling and Solid Waste Section Chief  
101 S. Webster St., PO Box 7921, Madison, WI 53703  
Phone: (608) 294-8663  
[kathrynm.stromhiorns@wisconsin.gov](mailto:kathrynm.stromhiorns@wisconsin.gov)

DocuSigned by:  
  
A7B70DC9770042F...  
For Preston D. Cole, Secretary  
2/28/2022 | 3:22 PM CST  
Date Submitted





# Tony Evers

Office of the Governor | State of Wisconsin

March 17, 2022

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Department of Agriculture, Trade and Consumer Protection, submitted March 14, 2022, relating to administrative orders and contested cases (Wis. Admin. Code ch. ATCP 1); and
- A statement of scope by the Department of Natural Resources, submitted February 28, 2022, relating to statewide materials recycling and effective recycling programs (Wis. Admin. Code chs. NR 500, 502, 520, 542 and 544).

Please direct any questions about this letter to my deputy policy director, Katie Domina.

Sincerely,

A handwritten signature in black ink that reads "Tony Evers".

Tony Evers  
Governor

cc: Ryan Nilsestuen, chief legal counsel ([ryan.nilsestuen1@wisconsin.gov](mailto:ryan.nilsestuen1@wisconsin.gov))  
Katie Domina, deputy policy director ([katherine.domina1@wisconsin.gov](mailto:katherine.domina1@wisconsin.gov))  
DOA State Budget Office ([SBOAdminRules@spmail.wi.gov](mailto:SBOAdminRules@spmail.wi.gov))  
Bradford Steine, DATCP ([bradford.steine1@wisconsin.gov](mailto:bradford.steine1@wisconsin.gov))  
Emma Esch, DNR ([emma.esch@wisconsin.gov](mailto:emma.esch@wisconsin.gov))

This page intentionally left blank.