

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

SUBJECT:

Request that the Board authorize a preliminary public hearing and comment period for the Statement of Scope for Board Order WA-13-21, for proposed rules affecting chapters NR 500, 502, 542, and 544, related to statewide materials recycling and effective recycling programs

FOR: May 2022 Board meeting

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

SUMMARY:

The Joint Committee for Review of Administrative Rules (JCRAR) has requested a preliminary public hearing and comment period on the scope statement for Board Order WA-13-21. If the preliminary hearing notice for WA-13-21 is approved by the board, the department will hold a preliminary public hearing and comment period on the scope statement. After the hearing is held and the public comment period closes, the department will bring the scope statement before the Board for approval. As required by statute, the department may not begin work on the content of the proposed rule until the scope statement is approved. The 30-month time frame for submission of a final rule to the legislature for approval expires on September 28, 2024.

The 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.

RECOMMENDATION: That the Board authorize a preliminary public hearing and comment period for the Statement of Scope for Board Order WA-13-21.

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

- Statement of Scope
Governor's Approval of Statement of Scope
Public Comments Summary
JCRAR Request
Hearing Notice
(insert document name)

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

for

by Sarah Barry

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

DS
WR

Program attorney - LS/8

Department rule officer - LS/8

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Notice of Preliminary Hearing on Statement of Scope

The Department of Natural Resources announces that it will hold a preliminary public hearing on Statement of Scope SS 022-22 (Board Order WA-13-21) at the virtual time and place shown below. The scope statement for WA-13-21 affects chs. NR 500, 502, 520, 542, and 544, Wis. Adm. Code, relating to statewide materials recycling and effective recycling programs.

Hearing Information

Date: June 6, 2022

Time: 1:30 p.m.

Virtual Location:

- Online via Zoom: <https://us02web.zoom.us/j/85957147815>
- Meeting ID: 859 5714 7815
- Join by Telephone: 1-312-626-6799, 85957147815#

Rule Information

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 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.

Accessibility

For the hearing or visually impaired, non-English speakers, or those with other personal circumstances which might make communication at the meeting/hearing difficult, DNR will, to the maximum extent possible and with reasonable advance notice, provide aids including an interpreter, or a non-English, large-print, or recorded version of hearing documents. To access these resources, please contact the email address or phone number listed below as soon as possible.

Appearances at the Hearing and Submittal of Written Comments

The public has the opportunity to testify at the hearing. Pre-registration is strongly encouraged if you plan to provide spoken comments during the hearing. To pre-register, either use the Zoom link above prior to the day of the hearing or download and complete the fillable [hearing appearance form](#) and send it to KathrynM.StromHiorns@wisconsin.gov

Comments on the proposed scope statement must be received on or before June 6, 2022. Written comments may be submitted by U.S. mail, E-mail, or through the internet and will have the same weight and effect as oral statements presented at the public hearing.

Written comments and any questions on the proposed scope statement should be submitted to:

Department of Natural Resources
Attn: Kate Strom Hiorns – WA/5
P.O. Box 7921
101 S. Webster Street,
Madison, WI 53707-7921
KathrynM.StromHiorns@wisconsin.gov

The scope statement may be viewed at: <https://dnr.wi.gov/news/input/ProposedPermanent.html>

Comments can be made at: DNRAAdministrativeRulesComments@wisconsin.gov

The scope statement may be reviewed, and comments made at:
https://docs.legis.wisconsin.gov/code/scope_statements/comment.

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.

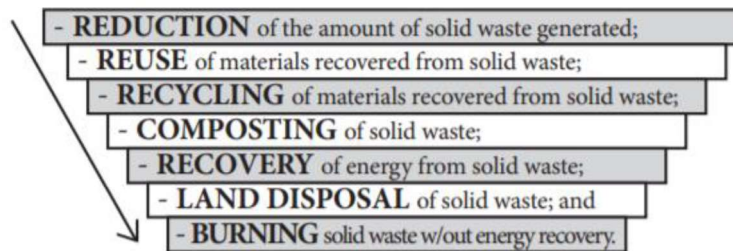
- g. Update the basis of collection standards to reflect changes in recyclable material content and volume.
- h. Codify material recovery facility guidance and procedures for beneficial reuse and disposal of broken container glass and residual disposal fee exemptions.
- i. Update policy on variances 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 (≈ 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

DocuSigned by:

Sarah Barry

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For Preston D. Cole, Secretary

2/28/2022 | 3:22 PM CST

Date Submitted

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From: Sen.Nass - LEGIS <Sen.Nass@legis.wisconsin.gov>
Sent: Wednesday, March 30, 2022 9:33 AM
To: Cole, Preston D - DNR <preston.cole@wisconsin.gov>
Cc: Kennedy, Sean P - DNR <seanp.kennedy@wisconsin.gov>; Sen.Nass - LEGIS <Sen.Nass@legis.wisconsin.gov>; Rep.Neylon - LEGIS <Rep.Neylon@legis.wisconsin.gov>; Grosz, Scott A - LEGIS <scott.grosz@legis.wisconsin.gov>; Kauffman, Jill - LEGIS <jill.kauffman@legis.wisconsin.gov>; Duchek, Mike - LEGIS <michael.duchek@legis.wisconsin.gov>
Subject: JCRAR Directive to Hold Preliminary Hearing on Scope Statement SS 022-22

March 30, 2022

Preston Cole, Secretary
Department of Natural Resources
101 S. Webster St. (GEF 2)
P.O. Box 7921
Madison, WI 53707-7921

RE: SS 022-22 – Statewide Materials Recycling and Effective Recycling Programs

Dear Secretary Cole:

As co-chairperson of the Joint Committee for Review of Administrative Rules (JCRAR) and pursuant to s. 227.136 (1), Stats., I write to direct the Department of Natural Resources (DNR) to hold a preliminary public hearing and comment period on Scope Statement SS 022-22, which was published in the Wisconsin Administrative Register on March 28, 2022.

Additionally, pursuant to s. 227.135 (2), Stats., please note that a scope statement may not be approved by the Secretary of the Department of Natural Resources (DNR) or other boards and individuals within the department until after the preliminary public hearing and comment period are held by the agency, and accordingly, no activity may be conducted in connection with the drafting of a proposed rule until after such hearing and approval have occurred.

Please confirm receipt of this letter directing a preliminary hearing and comment period on the above scope statement.

Sincerely,

Steve Nass

Senator Steve Nass
Co-Chair, JCRAR

– Sent via e-mail –



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)
Katie Domina, deputy policy director (katherine.domina1@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spmail.wi.gov)
Bradford Steine, DATCP (bradford.steine1@wisconsin.gov)
Emma Esch, DNR (emma.esch@wisconsin.gov)