

**SUBJECT:** Request adoption of emergency order WA-31-09(E) and authorization for public hearing on proposed permanent order WA-30-09, hazardous waste management rules

**FOR:** FEBRUARY, 2010 BOARD MEETING

**TO BE PRESENTED BY:**

Ann Coakley, Waste and Materials Management Bureau Director

**SUMMARY:**

Revisions to the statutes in the 2009-2011 biennial budget (2009 Wisconsin Act 28) increased the annual base fees for large quantity and small quantity generators and instructed the Department to create a rule that specifically defines large and small quantity generators, so it is clear to whom the fees apply. The proposed definitions are consistent with federal and state standards applicable to large and small quantity hazardous waste generators.

Businesses, government agencies and public and private institutions that are considered to be large quantity or small quantity generators of hazardous waste will be affected. These entities are currently required to pay an annual base fee and a fee per ton of hazardous waste generated, unless the hazardous waste is recycled. The statutory revision will require all large quantity and small quantity generators to pay the base fee at a minimum. The increased fees cannot be charged until the rule is in effect. The fee increases are very important; they will provide a more stable funding source which allows the Department to operate an effective hazardous waste management program in the state.

**RECOMMENDATION:** Adopt WA-31-09(E) and authorize public hearing on proposed Board Order WA-30-09.

**LIST OF ATTACHED MATERIALS:**

- |    |                                     |   |     |                                     |          |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/>            | Fiscal Estimate Required                              | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/>            | Attached |
| No | <input type="checkbox"/>            | Background Memo                                       | Yes | <input checked="" type="checkbox"/> | Attached |

**APPROVED:**

Ann Coakley  
Bureau Director, Ann Coakley

01/11/10  
Date

Al Shea  
Administrator, Al Shea

1/12/10  
Date

Matt Frank  
Secretary, Matt Frank

2-5-10  
Date

cc: Laurie J. Ross - AD/8  
Pete Flaherty, LS/8  
Pat Chabot, WA/5 - 3 copies

DATE: February 5, 2009

TO: Natural Resources Board

FROM: Matthew J. Frank, Secretary 

SUBJECT: Recommendation to Adopt an Emergency Rule and Authorize a Public Hearing on an Identical Permanent Rule Regarding Revisions to the NR 600 Series Hazardous Waste rules – Board Orders No. WA-31-09(E) and WA-30-09.

1. Why is the Rule Being Proposed?

The 2009-2011 biennial budget (2009 Wisconsin Act 28, s. 2659) amended s. 289.67 (2) (b) 1., Stats., to increase the annual base fee for large quantity and small quantity generators of hazardous waste. Section 2662 of Act 28 also created s. 289.67 (2) (de), Stats., which requires the DNR to promulgate a rule that defines “large quantity generator” and “small quantity generator” for purposes of the fee. Under current NR 600 series hazardous waste rules, generator status is functionally described in text but there are no specific, comprehensive definitions. The rule definitions have to be in effect before the Department can charge the new fees. We would like to have the new rule definitions in effect in early 2010, so the new base fees can be charged with the 2009 annual report billing that will be sent in May of 2010.

Section 9137 (2), a non-statutory provision in Act 28, allows the DNR to promulgate the required definitions through the emergency rule making procedures. It also allows us to use these procedures without having to provide a finding of emergency. The emergency rule may remain in effect until July 1, 2011, or until a corresponding permanent rule takes effect if it is adopted sooner.

2. Background and Summary of the Proposed Rule Revisions.

This proposed rule adds a definition of “large quantity generator” and revises the definition of “small quantity generator” in ch. NR 660. Under current hazardous waste rules, standards are set for large quantity and small quantity hazardous waste generators, so their status is functionally described, but there are no specific, comprehensive definitions of these terms. The proposed definitions are consistent with and based upon the functional descriptions or standards that currently identify large quantity and small quantity generators.

The majority of the funding for the hazardous waste management program has historically come from federal grant funding from EPA (which has been stagnant or decreasing for the last ten or more years) and revenue from plan review and license fees for hazardous waste treatment, storage and disposal facilities (TSDs). Within the last three years all fees going into the Solid and Hazardous Waste Program Revenue account have been increased through rule revisions, but the account is still facing long-term stability problems, primarily due to the lack of fee revenue. In order to bring in adequate fee revenue to cover expenses based on the current available universe of TSD facilities, the fees would need to be raised to a level that would not be tolerable to the regulated community. At the time of the last hazardous waste plan review and license fee increases, TSD facilities asked the Department to explore ways to bring in more revenue from hazardous waste generators.

The universe of facilities that manage hazardous wastes is changing. Due to economic and environmental factors, industry is looking for ways to reduce the amount of hazardous waste they produce, and find more ways to reuse or recycle the hazardous wastes they do produce. While good for the environment and public health, this results in fewer hazardous waste TSD facilities operating in Wisconsin. The smaller amounts of hazardous wastes produced or managed at facilities allow them to operate as hazardous waste generators, rather than as licensed facilities (generators are not required to obtain hazardous waste facility operating licenses or pay fees). Fewer licensed TSDs means there is less hazardous waste licensing and plan review revenue. Staff oversight is still needed for thousands of hazardous waste generators and recyclers as an important part of preventing adverse human health and environmental impacts. The new fees will help to support the work staff do with generators, such as conducting inspections to ensure compliance with the hazardous waste rules and statutes, providing technical assistance and developing new guidance and publications to assist them.

As hazardous waste funding levels decreased, staffing levels available to implement the hazardous waste program also decreased. Hazardous waste staffing levels dropped from a high of over 40 FTEs in the 1990s to just slightly over 20 FTEs today. However, the work involved in administering the hazardous waste program has been steadily increasing. EPA continues to promulgate new hazardous waste regulations to be implemented at the state level. The Waste and Materials Management Program has been holding vacancies in both the program revenue appropriation and the federal hazardous waste grant appropriation for many years because of the decreased funding levels. Reduced staff in the program has affected our ability to provide technical assistance and advice on waste minimization to generators. Conducting fewer inspections increases the potential for illegal disposal or mismanagement of hazardous waste and could result in harm to human health and the environment.

An additional source of revenue for hazardous waste work is the “Environmental Repair Fee for Generators of Hazardous Waste”, which is a statutorily required base fee and per ton of hazardous waste generated fee charged to hazardous waste generators. The revenue from this fee goes into the Environmental Management Account. Under the previous statutory language, all large quantity generators and small quantity waste generators who were required to submit an annual hazardous waste report were required to pay a base fee of \$210, and \$20 per ton of hazardous waste generated during the reporting year. The per ton fee did not apply to any wastes that were recycling or reused, and if a facility recycled or reused all of their wastes, they were not required to pay the base fee either. As a means of generating additional revenue for use in implementing Wisconsin’s hazardous waste management program, the 2009-2011 biennial budget bill contained a revision to the Environmental Repair Fee for Generators of Hazardous Waste. The budget bill amended the statutory language as follows: increase the base fee from \$210 to \$350 for small quantity generators and \$470 for large quantity generators; and increase the maximum fee from \$17,000 to \$17,500 per year. In addition, the base fee now applies to all generators who are required to report, regardless of whether they recycled or reused any or all of their wastes. The per ton fee remains at \$20, which continues to provide an incentive to reduce or recycle wastes.

Projected revenue from the fee increases is estimated at \$326,200 annually. As noted earlier, the Solid and Hazardous Waste Program Revenue account is facing long-term stability issues, and bringing in additional program revenue based on the current TSD facility universe is problematic. As a partial solution to the funding stability problem, the 2009-2011 biennial budget also contained language which transfers 3.5 FTE from the Program Revenue account to the Environmental Management account. The

additional revenue from the hazardous waste generator fee increases will be used to fund the existing 3.5 FTE. At a minimum, the increased generator fee revenue will prevent the loss of 3.5 hazardous waste staff which otherwise would have occurred because of lack of sufficient revenues. As indicated above, the new fees will help to support the work staff do with generators, such conducting inspections to ensure compliance with the hazardous waste rules and statutes, providing technical assistance and developing new guidance and publications to assist them.

3. How this Proposal Affects Existing Policy.

The proposed rule does not change existing policy. Under the current rules, hazardous waste generator status is functionally described in text in chapter NR 662, Wis. Adm. Code. The proposed rule will provide concise definitions of large quantity and small quantity generators.

4. Has the Board Dealt with These Issues Before?

Yes. The Natural Resources Board first adopted rules for the management of “toxic and hazardous waste” in the late 1960s as part of the Solid Waste rules. In 1981, a separate chapter for hazardous waste rules (NR 181) was established. In 1996, these rules were revised and renumbered into the current NR 600 series. Throughout the history of the hazardous waste program, the Board has revised the hazardous waste management rules on numerous occasions to keep pace with state statutory changes and new federal regulations. The most recent major revisions to the NR 600 rule series were approved by the Board in December 2005, and a minor revision in March of 2006.

5. Who will be Affected by the Proposed Rule? How will they be Affected?

Businesses and individuals that are large quantity or small quantity generators of hazardous waste will be affected by the proposed rules. These individuals and businesses are already regulated by state hazardous waste rules and federal regulations, including the requirement to submit annual reports and pay fees, unless exempted.

Previously, all large quantity generators and small quantity waste generators were required to pay a base fee of \$210, and \$20 per ton of hazardous waste generated during the reporting year. The per ton fee did not apply to any wastes that were recycling or reused, and if a facility recycled or reused all of their wastes, they were not required to pay the base fee either.

The budget amended the statutory language to increase the base fee from \$210 to \$350 for small quantity generators and to \$470 for large quantity generators; and increased the total maximum fee from \$17,000 to \$17,500 per year. In addition, the base fee now applies to all generators who are required to report, regardless of whether they recycled or reused any or all of their wastes. The per ton fee remains at \$20.

6. Information on Environmental Analysis, if needed.

Under the provisions of s. NR 150.03 (6) (b) 3. b., Environmental Analysis and Review Procedures for Department Actions, this is a Type III action, since the implementation will not have material adverse impacts on the human environment and the department has limited discretion in formulating important

provisions of its rules. A Type III action does not require an EA or EIS, as stated in s. NR 150.20 (1) (b) 3., Wis. Adm. Code.

7. Small Business Analysis. If Small Business is Affected, Include Initial Regulatory Flexibility Analysis.

The proposed rules affect small businesses that are large quantity or small quantity generators of hazardous waste. There is no direct correlation between the definitions of “small business” and “large quantity generator” or “small quantity generator,” so a precise assessment of the definitions’ effect on small business is not possible. Small businesses may be either large quantity or small quantity generators of hazardous waste, or neither. In any case, under the revised hazardous waste generator base fee statute, the maximum additional amount that a large quantity generator would have to pay is \$470. A small quantity generator would pay a maximum of \$350 more than in past years.

Under the statutory language in effect before the 2009-2011 biennial budget (2009 Wisconsin Act 28), all large quantity generators and small quantity generators who were required to submit a hazardous waste annual report were required to pay a base fee of \$210 and \$20 per ton for hazardous waste generated during the reporting year. The tonnage fee did not apply to any wastes that were recycled or reused, and if a generator recycled or reused all of its hazardous waste, it was not required to pay the base fee either.

Act 28 amended the statutes to increase the base fee from \$210 to \$350 for small quantity generators, and to \$470 for large quantity generators. It also increased the maximum fee any generator would have to pay from \$17,000 to \$17,500 per year. In addition, the base fee was applied to all generators who are required to report, regardless of whether they recycled or reused any or all of their wastes. The per ton fee remains at \$20 per ton.

No new recordkeeping or reporting requirements are created and no new skills are required to comply with the proposed rules.

**Fiscal Estimate — 2009 Session**

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number NR 660

**Subject**  
 Rules Related to Hazardous Waste Generator Fees and the Definition of Large Quantity Generators and Small Quantity Generators

**Fiscal Effect**

State:  No State Fiscal Effect  
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation     Increase Existing Revenues  
 Decrease Existing Appropriation     Decrease Existing Revenues  
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.  
 Yes     No

Decrease Costs

Local:  No Local Government Costs  
 Indeterminate

1.  Increase Costs  
 Permissive     Mandatory  
 2.  Decrease Costs  
 Permissive     Mandatory

3.  Increase Revenues  
 Permissive     Mandatory  
 4.  Decrease Revenues  
 Permissive     Mandatory

5. Types of Local Governmental Units Affected:  
 Towns     Villages     Cities  
 Counties     Others  
 School Districts     WTCS Districts

**Fund Sources Affected**

GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Chapter 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

**Rule Summary:**

The changes to Chapter NR 660 create definitions for large quantity generators (LQGs) of hazardous waste and small quantity generators (SQGs) of hazardous waste. The 2009 Wisconsin Act 28 (2009-11 Budget) created new statutory fees for the two types of generators, and required that the Department define these generators in administrative rules.

**Background:**

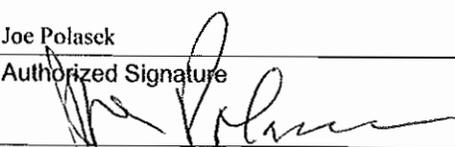
The Environmental Repair Fee for Generators of Hazardous Waste is a statutorily required base fee/tonnage fee; the revenue from this fee goes into the Environmental Management Account. Previous statutory language stated all LQGs and SQGs of hazardous waste who were required to submit an annual hazardous waste report were required to pay a base fee of \$210, and \$20/ton for hazardous waste generated during the reporting year. The per ton fee did not apply to any wastes that were recycled or reused, and if a facility recycled or reused all of their wastes, they were not required to pay the base fee. As a way to generate more revenue for use in implementing Wisconsin's hazardous waste management program, the 2009 Wisconsin Act 28 amended the statutory language by increasing the base fee from \$210 to \$350 for SQGs and from \$210 to \$470 for LQGs, and by increasing the maximum fee paid from \$17,000 to \$17,500 per year. In addition, the base fee now applies to all generators who are required to report, regardless of whether they recycled or reused any or all of their wastes. The per ton fee remains at \$20/ton.

**Fiscal Estimate:**

The most recent data for number of Hazardous Waste Generators is from 2008: 733 SQGs and 448 LQGs. Of the total SQGs, 390 SQGs reported fees, leaving 343 SQGs new to paying the revised fees. Of the total LQGs, 288 reported fees, leaving 160 LQGs new to paying the revised fees.

**Long-Range Fiscal Implications**

None

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 8/11/10

**Fiscal Estimate — 2009 Session**

**Page 2 Assumptions Narrative  
 Continued**

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 5XX

Assumptions Used in Arriving at Fiscal Estimate – Continued

Revenue Increase to Previous Payers:

Number of Previous Payers	Base Fee Increase	Revenue Increase
SQG = 390	SQG = \$140	SQG = \$54,600
LQG = 288	LQG = \$260	LQG = \$74,800
		Total = \$129,480

Revenue Increase to New Payers:

Number of New Payers	New Fee	Revenue from New Payers
SQG = 343	SQG = \$350	SQG = \$120,500
LQG = 160	LQG = \$470	LQG = \$ 75,200
		Total = \$195,250

It is estimated that based on the number of 2008 HW generators paying the previous fee at the \$17,000 previous maximum, the new revenue with the shift to the new \$17,500 maximum will be \$2,731.

Total estimate new state revenue: \$327,461.

Local Fiscal Estimate:

Over the last 3 years, on average 17 Local Units of Government (13 SQGs & 4 LQGs) generated hazardous waste at a level which required them to submit an annual report. Of those 17, on average 3 (2 SQGs & 1LQG) recycled or reused all of their wastes, so they were not required to pay the base fee (based on the previous statutory language).

Number of Previous Payers	Base Fee Increase	Cost Increase
SQG = 11	SQG = \$140	SQG = \$1,540
LQG = 3	LQG = \$260	LQG = \$780
		Total = \$2,320

Number of New Payers	New Fee	Costs to New Payers
SQG = 2	SQG = \$350	SQG = \$700
LQG = 1	LQG = \$470	LQG = \$470
		Total = \$1,170

Total Additional Costs for Local Governments = \$3,490

**Fiscal Estimate Worksheet — 2009 Session**  
 Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 660

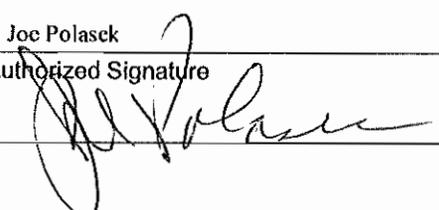
**Subject**  
 Rules Related to Hazardous Waste Generator Fees and the Definition of Large Quantity Generators and Small Quantity Generators

**One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**  
 None

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations — Salaries and Fringes	\$	\$ -	
(FTE Position Changes)	( FTE )	( - FTE )	
State Operations — Other Costs		-	
Local Assistance		-	
Aids to Individuals or Organizations		-	
<b>Total State Costs by Category</b>	\$	\$ -	
<b>B. State Costs by Source of Funds</b>		Increased Costs	Decreased Costs
GPR	\$	\$ -	
FED		-	
PRO/PRS		-	
SEG/SEG-S		-	
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S		327,500	-
<b>Total State Revenues</b>		\$ 327,500	\$ -

**Net Annualized Fiscal Impact**

	State	Local
Net Change in Costs	\$	\$ 3,500
Net Change in Revenues	\$ 327,500	\$

Prepared By: Joe Polasck	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 01-11-10

**ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
AMENDING AND CREATING RULES**

The Wisconsin Natural Resources Board proposes an order to amend NR 660.10 (107) and create NR 660.10 (70m), relating to hazardous waste management.

WA-30-09

**Analysis Prepared by the Department of Natural Resources**

- 1. Statutes interpreted:** Sections 227.11 (2) (a) and 289.67 (2) (b) 1., Stats.
- 2. Statutory Authority:** Sections 227.11 (2) (a), 289.67 (2) (de) and 291.07 (2) Stats.
- 3. Explanation of agency authority to promulgate the rules under the statutory authority:** Section 227.11(2) (a), Stats., expressly confers rulemaking authority upon the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.  
  
Section 289.67 (2) (de), Stats., as created by 2009 Wisconsin Act 28 (the 2009-2011 biennial budget bill), requires the department to promulgate by rule definitions of “large quantity generator” and “small quantity generator” for purposes of the hazardous waste generator fees established by s. 289.67 (2) (b) 1., Stats., as amended by 2009 Wisconsin Act 28.  
  
Under s. 291.07 (2), Stats., discretionary rulemaking authority is granted to the department to exempt by rule certain persons who generate hazardous wastes from requirements that would otherwise apply if such action does not present a significant hazard to public health and safety or the environment.
- 4. Related statute or rule:** Chapters 160, 287, 289, 292, 293 and 299, Stats., and chs. NR 660 to 679, Wis. Adm. Code.
- 5. Plain language analysis of the proposed rule:** This proposed rule adds a definition of “large quantity generator” and revises the definition of “small quantity generator” in ch. NR 660. Under current hazardous waste rules, standards are set for large quantity and small quantity hazardous waste generators, so their status is functionally described, but there are no specific, comprehensive definitions of these terms.
- 6. Summary of and preliminary comparison with any existing or proposed federal regulation:** There is no specific definition of “large quantity generator” in the U.S. Environmental Protection Agency’s hazardous waste regulations in 40 CFR § 260.10, upon which s. NR 660.10 is based. Large quantity generator status is functionally described in text in 40 CFR Part 262, *Standards Applicable to Generators of Hazardous Waste*. 40 CFR § 260.10, includes a definition of “small quantity generator” but the definition is incomplete. Small quantity generator status is functionally described in text in 40 CFR Part 262. The department proposes to add explicit, complete definitions of large and small quantity generators to s. NR 660.10 based on the state and federal functional definitions.

**7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan):**

Minnesota's hazardous waste rules in s. 7045.026 define large and small quantity generators. These definitions are similar to the definitions in the proposed rule. All hazardous waste generators in Minnesota are assessed hazardous waste fees. For 2008, businesses and institutions that were very small quantity generators paid an annual base fee of \$453. Small quantity and large quantity generators paid the \$453 base fee and \$.0817 per pound (\$163.40 per ton) of hazardous waste generated. These fees are revised annually by a formula in the state's administrative rules to generate revenues to meet a budget amount set by the state legislature. Minnesota's base fee is comparable to the new base fee established by 2009 Wisconsin Act 28 for Wisconsin large quantity generators; however, Minnesota's per ton fee is much higher. Minnesota's fees for small quantity generators are much higher than Wisconsin's new base fee of \$350 base, and current fee of \$20 per ton. Very small quantity generators are not charged fees in Wisconsin.

Iowa does not have a federally authorized hazardous waste program. The program is administered by the U.S. Environmental Protection Agency Region 7 office in Kansas City, Mo., and the federal regulations are in effect in the state.

Illinois' hazardous waste rules have a definition for small quantity generator that is equivalent to the definition in the federal regulations. There is no definition of large quantity generator; however, a note after 35 Ill. Adm. Code 7220.127 states that the "[Illinois Pollution Control] Board interprets the term large quantity generator to mean a hazardous waste generator that is not a small quantity generator." All large quantity generators are assessed an annual fee of \$500. This fee is comparable to Wisconsin's new base fee of \$470. Large quantity generators in Wisconsin are also assessed a fee of \$20 per ton of hazardous waste generated per calendar year, unless exempted.

Under Michigan's rules in R 299.9107 (v), the definition of small quantity generator is equivalent to the federal definition. Large quantity generator is not defined in rule. Michigan charges an annual fee of \$100 per year to small quantity generators, \$400 to large generators (businesses or institutions that generate more than 1,000 kg. per month and up to 9,000 kg. per year) and \$1,000 to very large generators (generate more than 9,000 kg. per year). The base fee of \$100 for small quantity generators in Michigan is less than the Wisconsin base fee of \$350, in addition to tonnage fee, unless exempted. Michigan's fee of \$400 for large generators is less than Wisconsin's base fee of \$470, plus the per ton fee. Under Michigan's fee schedule the largest generators are assessed \$1,000, which is more than twice the Wisconsin base fee amount.

**8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:** The proposed rule is required by statute and reflects current state and federal functional definitions of "large quantity generator" and "small quantity generator" used in the hazardous waste management program.

**9. Any analysis and supporting documentation that the agency used in support of the agency's determination of the rule's effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report:** See No. 8, above.

**10. Effect on small business, including how the rule will be enforced:** There is no direct correlation between the definitions of "small business" and "large quantity generator" or "small quantity generator", so a precise assessment of the definitions' effect on small business is not possible. Small businesses may be either large quantity or small quantity generators of hazardous waste, or neither. In any case, under the revised hazardous waste generator base fee statute, the

maximum additional amount that a large quantity generator would have to pay is \$470. A small quantity generator would pay a maximum of \$350 more than in past years.

Under the statutory language in effect before the 2009-2011 biennial budget bill (2009 Wisconsin Act 28), all large quantity generators and small quantity generators who were required to submit a hazardous waste annual report were required to pay a base fee of \$210 and \$20 per ton for hazardous waste generated during the reporting year. The tonnage fee did not apply to any wastes that were recycled or reused, and if a generator recycled or reused all of its hazardous waste, it was not required to pay the base fee either.

Act 28 amended the statutes to increase the base fee from \$210 to \$350 for small quantity generators, and to \$470 for large quantity generators. It also increased the maximum fee any generator would have to pay from \$17,000 to \$17,500 per year. In addition, the base fee was applied to all generators who are required to report, regardless of whether they recycled or reused any or all of their wastes. The per ton fee remains at \$20 per ton.

No new recordkeeping or reporting requirements are created and no new skills are required to comply with the proposed rules.

The proposed rules are definitions only, but are a key component of the hazardous waste generator annual fee requirements set out in recently-revised s. 289.67, Stats. The fee requirements (statutes and rules) will be enforced by department staff through compliance assistance, complaint follow-up and inspections. If a violation is found, the department normally uses a stepped enforcement process similar to the process it uses for other environmental programs.

This stepped process includes the following:

- Notice of non-compliance, this is typically the first step in dealing with a problem and is usually done by a program specialist through a letter to the generator. It's expected that the generator, once notified of the problem will, correct the problem quickly.
- Notice of Violation, this is typically the second step in dealing with a problem and is a higher level of enforcement. Typically, the Notice of non-compliance hasn't resulted in the problem being resolved and this next step includes an opportunity for a face-to-face meeting with program and enforcement staff. At this meeting, it's expected that the generator will make commitments to resolve the problem and will follow through.
- Referral to the Attorney General for prosecution and injunctive relief, when appropriate. In addition to being liable for unpaid fees, a person who fails to pay fees in a timely manner may be subject to statutory enforcement mechanisms and penalties for hazardous waste violations as established in subchapter V. of ch. 291, Stats.

#### **11. Agency contact person:**

Ms. Patricia Chabot, WA/5  
Wisconsin Department of Natural Resources  
P.O. Box 7921  
Madison, Wisconsin 53707-7921  
Telephone: (608) 264-6015  
E-mail: [patricia.chabot@wisconsin.gov](mailto:patricia.chabot@wisconsin.gov)

**12. Place where comments are to be submitted and deadline for submission:** To be determined.

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SECTION 1. NR 660.10 (70m) is created to read:

**NR 660.10 (70m)** "Large quantity generator" means a generator who does one or more of the following:

(a) Generates more than 1,000 kilograms (2,205 pounds) of hazardous waste in a calendar month,

(b) Generates in a calendar month more than 1 kilograms (2.2 pounds) of acute hazardous waste or more than 100 kilograms (220 pounds) of any residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in s. NR 661.31, 661.32 or 661.33 (5).

(c) Accumulates at any time more than 1 kilograms (2.2 pounds) of acute hazardous waste or more than 100 kilograms (220 pounds) of any residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in s. NR 661.31, 661.32 or 661.33 (5).

SECTION 2. NR 660.10 (107) is amended to read:

**NR 660.10 (107)** "Small quantity generator" means a generator who ~~generates~~ does all of the following:

(a) Generates more than 100 kilograms (220 pounds) but less than 1,000 kg kilograms (2,205 pounds) of non-acute hazardous waste in a calendar month.

(b) Accumulates no more than 6,000 kilograms (13,320 pounds) of non-acute hazardous waste at any time.

(c) Generates in a calendar month no more than 1 kilogram (2.2 pounds) of acute hazardous waste and no more than 100 kilograms (220 pounds) of residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in s. NR 661.31, 661.32 or 661.33 (5).

(d) Accumulates at any time no more than 1 kilogram (2.2 pounds) of acute hazardous waste and no more than 100 kilograms (220 pounds) of residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in s. NR 661.31, 661.32 or 661.33 (5).

SECTION 3. **EFFECTIVE DATE.** This rule shall take effect upon publication, as provided in s. 227.24 (1) (d), Stats.

**SECTION 4. BOARD ADOPTION.** The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Matthew J. Frank, Secretary

(SEAL)

**ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
AMENDING AND CREATING RULES**

The Wisconsin Natural Resources Board proposes an emergency order to amend NR 660.10 (107) and create NR 660.10 (70m), relating to hazardous waste management.

WA-31-09(E)

**Analysis Prepared by the Department of Natural Resources**

**1. Statutes interpreted:** Sections 227.11 (2) (a) and 289.67 (2) (b) 1., Stats.

**2. Statutory Authority:** Sections 227.11 (2) (a), 227.24 (1) (a), 289.67 (2) (de) and 291.07 (2) Stats., and section 9137 (2) of 2009 Wisconsin Act 28

**3. Explanation of agency authority to promulgate the rules under the statutory authority:** Section 227.11(2) (a), Stats., expressly confers rulemaking authority upon the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, and s. 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

Section 289.67 (2) (de), Stats., as created by 2009 Wisconsin Act 28 (the 2009-2011 biennial budget bill), requires the department to promulgate by rule definitions of “large quantity generator” and “small quantity generator” for purposes of the hazardous waste generator fees established by s. 289.67 (2) (b) 1., Stats., as amended by 2009 Wisconsin Act 28.

Section 9137 (2), a non-statutory provision in 2009 Wisconsin Act 28, authorizes the department to promulgate the required definitions using emergency rule making procedures, but is not required to provide evidence that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency. In addition, such emergency rules may remain in effect until July 1, 2011, or until a corresponding permanent rule takes effect, whichever occurs first.

Under s. 291.07 (2), Stats., discretionary rulemaking authority is granted to the department to exempt by rule certain persons who generate hazardous wastes from requirements that would otherwise apply if such action does not present a significant hazard to public health and safety or the environment.

**4. Related statute or rule:** Chapters 160, 287, 289, 292, 293 and 299, Stats., and chs. NR 660 to 679, Wis. Adm. Code.

**5. Plain language analysis of the proposed rule:** This proposed emergency rule adds a definition of “large quantity generator” and revises the definition of “small quantity generator” in ch. NR 660. Under current hazardous waste rules, standards are set for large quantity and small quantity hazardous waste generators, so their status is functionally described, but there are no specific, comprehensive definitions of these terms.

**6. Summary of and preliminary comparison with any existing or proposed federal regulation:**

There is no specific definition of “large quantity generator” in the U.S. Environmental Protection Agency’s hazardous waste regulations in 40 CFR § 260.10, upon which s. NR 660.10 is based. Large quantity generator status is functionally described in text in 40 CFR Part 262, *Standards Applicable to Generators of Hazardous Waste*. 40 CFR § 260.10, includes a definition of “small quantity generator” but the definition is incomplete. Small quantity generator status is functionally described in text in 40 CFR Part 262. The department proposes to add explicit, complete definitions of large and small quantity generators to s. NR 660.10 based on the state and federal functional definitions.

**7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan):**

Minnesota’s hazardous waste rules in s. 7045.026 define large and small quantity generators. These definitions are similar to the definitions in the proposed rule. All hazardous waste generators in Minnesota are assessed hazardous waste fees. For 2008, businesses and institutions that were very small quantity generators paid an annual base fee of \$453. Small quantity and large quantity generators paid the \$453 base fee and \$.0817 per pound (\$163.40 per ton) of hazardous waste generated. These fees are revised annually by a formula in the state’s administrative rules to generate revenues to meet a budget amount set by the state legislature. Minnesota’s base fee is comparable to the new base fee established by 2009 Wisconsin Act 28 for Wisconsin large quantity generators; however, Minnesota’s per ton fee is much higher. Minnesota’s fees for small quantity generators are much higher than Wisconsin’s new base fee of \$350 base, and current fee of \$20 per ton. Very small quantity generators are not charged fees in Wisconsin.

Iowa does not have a federally authorized hazardous waste program. The program is administered by the U.S. Environmental Protection Agency Region 7 office in Kansas City, Mo., and the federal regulations are in effect in the state.

Illinois’ hazardous waste rules have a definition for small quantity generator that is equivalent to the definition in the federal regulations. There is no definition of large quantity generator; however, a note after 35 Ill. Adm. Code 7220.127 states that the “[Illinois Pollution Control] Board interprets the term large quantity generator to mean a hazardous waste generator that is not a small quantity generator.” All large quantity generators are assessed an annual fee of \$500. This fee is comparable to Wisconsin’s new base fee of \$470. Large quantity generators in Wisconsin are also assessed a fee of \$20 per ton of hazardous waste generated per calendar year, unless exempted.

Under Michigan’s rules in R 299.9107 (v), the definition of small quantity generator is equivalent to the federal definition. Large quantity generator is not defined in rule. Michigan charges an annual fee of \$100 per year to small quantity generators, \$400 to large generators (businesses or institutions that generate more than 1,000 kg. per month and up to 9,000 kg. per year) and \$1,000 to very large generators (generate more than 9,000 kg. per year). The base fee of \$100 for small quantity generators in Michigan is less than the Wisconsin base fee of \$350, in addition to tonnage fee, unless exempted. Michigan’s fee of \$400 for large generators is less than Wisconsin’s base fee of \$470, plus the per ton fee. Under Michigan’s fee schedule the largest generators are assessed \$1,000, which is more than twice the Wisconsin base fee amount.

**8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:**

The proposed rule is required by statute and reflects current state

and federal functional definitions of “large quantity generator” and “small quantity generator” used in the hazardous waste management program.

**9. Any analysis and supporting documentation that the agency used in support of the agency’s determination of the rule’s effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report:** See No. 8, above.

**10. Effect on small business, including how the rule will be enforced:** There is no direct correlation between the definitions of “small business” and “large quantity generator” or “small quantity generator”, so a precise assessment of the definitions’ effect on small business is not possible. Small businesses may be either large quantity or small quantity generators of hazardous waste, or neither. In any case, under the revised hazardous waste generator base fee statute, the maximum additional amount that a large quantity generator would have to pay is \$470. A small quantity generator would pay a maximum of \$350 more than in past years.

Under the statutory language in effect before the 2009-2011 biennial budget bill (2009 Wisconsin Act 28), all large quantity generators and small quantity generators who were required to submit a hazardous waste annual report were required to pay a base fee of \$210 and \$20 per ton for hazardous waste generated during the reporting year. The tonnage fee did not apply to any wastes that were recycled or reused, and if a generator recycled or reused all of its hazardous waste, it was not required to pay the base fee either.

Act 28 amended the statutes to increase the base fee from \$210 to \$350 for small quantity generators, and to \$470 for large quantity generators. It also increased the maximum fee any generator would have to pay from \$17,000 to \$17,500 per year. In addition, the base fee was applied to all generators who are required to report, regardless of whether they recycled or reused any or all of their wastes. The per ton fee remains at \$20 per ton.

No new recordkeeping or reporting requirements are created and no new skills are required to comply with the proposed rules.

The proposed rules are definitions only, but are a key component of the hazardous waste generator annual fee requirements set out in recently-revised s. 289.67, Stats. The fee requirements (statutes and rules) will be enforced by department staff through compliance assistance, complaint follow-up and inspections. If a violation is found, the department normally uses a stepped enforcement process similar to the process it uses for other environmental programs.

This stepped process includes the following:

- Notice of non-compliance, this is typically the first step in dealing with a problem and is usually done by a program specialist through a letter to the generator. It's expected that the generator, once notified of the problem will, correct the problem quickly.
- Notice of Violation, this is typically the second step in dealing with a problem and is a higher level of enforcement. Typically, the Notice of non-compliance hasn't resulted in the problem being resolved and this next step includes an opportunity for a face-to-face meeting with program and enforcement staff. At this meeting, it's expected that the generator will make commitments to resolve the problem and will follow through.
- Referral to the Attorney General for prosecution and injunctive relief, when appropriate. In addition to being liable for unpaid fees, a person who fails to pay fees in a timely manner may be subject to statutory enforcement mechanisms and penalties for hazardous waste violations as established in subchapter V. of ch. 291, Stats.

**11. Agency contact person:**

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SECTION 1. NR 660.10 (70m) is created to read:

**NR 660.10 (70m)** "Large quantity generator" means a generator who does one or more of the following:

(a) Generates more than 1,000 kilograms (2,205 pounds) of hazardous waste in a calendar month,

(b) Generates in a calendar month more than 1 kilograms (2.2 pounds) of acute hazardous waste or more than 100 kilograms (220 pounds) of any residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in s. NR 661.31, 661.32 or 661.33 (5).

(c) Accumulates at any time more than 1 kilograms (2.2 pounds) of acute hazardous waste or more than 100 kilograms (220 pounds) of any residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in s. NR 661.31, 661.32 or 661.33 (5).

SECTION 2. NR 660.10 (107) is amended to read:

**NR 660.10 (107)** "Small quantity generator" means a generator who generates does all of the following:

(a) Generates more than 100 kilograms (220 pounds) but less than 1,000 kg kilograms (2,205 pounds) of non-acute hazardous waste in a calendar month.

(b) Accumulates no more than 6,000 kilograms (13,320 pounds) of non-acute hazardous waste at any time.

(c) Generates in a calendar month no more than 1 kilogram (2.2 pounds) of acute hazardous waste and no more than 100 kilograms (220 pounds) of residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in s. NR 661.31, 661.32 or 661.33 (5).

(d) Accumulates at any time no more than 1 kilogram (2.2 pounds) of acute hazardous waste and no more than 100 kilograms (220 pounds) of residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in s. NR 661.31, 661.32 or 661.33 (5).

**SECTION 3. EFFECTIVE DATE.** This rule shall take effect upon publication, as provided in s. 227.24 (1) (d), Stats.

**SECTION 4. BOARD ADOPTION.** The foregoing emergency rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Matthew J. Frank, Secretary

(SEAL)