

The attached guidance, "Guidance for Landfill Tonnage Fee Exemptions Under 2013 Wisconsin Act 301," was developed to assist landfill owners/operators and materials recovery facility owners/operators affected by the landfill tonnage fee exemptions which went into effect January 1, 2015 as a result of 2013 Wisconsin Act 301.

Act 301 provides for exemptions from the statutory tonnage fees for disposal of residues from recycling processing facilities and construction and demolition waste processing facilities. It also provides for landfill owners and operators, and waste haulers, to recover tonnage fees paid to the DNR if a customer fails to pay these fees to the landfill owner/operator or waste hauler within 120 days after the date of disposal. The law did not provide details on implementation of the fee exemptions and the reimbursement procedures.

This guidance was developed by staff of the DNR's Waste and Materials Management Program. The draft guidance represents an expanded version of a letter outlining interim procedures that was sent to owners and operators of Wisconsin landfills, self-certified materials recovery facilities and licensed construction and demolition waste processing facilities in December 2014. The Department is now soliciting comments on this draft guidance from external stakeholders. Once the 21 day notice period is complete, all comments will be considered, revisions will be made to the guidance as needed, and final guidance will be made available to the appropriate internal and external stakeholders. Comments related to this draft guidance document should be sent to Brad Wolbert, brad.wolbert@wisconsin.gov, 608-264-6286.

DRAFT

Guidance for Landfill Tonnage Fee Exemptions Under 2013 Wisconsin Act 301

**PUB-WA 1755
2015**



**Waste & Materials Management
P.O. Box 7921
Madison, WI 53707-7921**

A. Background: 2013 Wisconsin Act 301 established new landfill tonnage fee exemptions for residues derived from the processing of recyclables and construction and demolition (C&D) waste. It also set forth a reimbursement system for statutory fees paid to the DNR by a landfill operator or intermediate waste hauler associated with customer accounts that are more than 120 days past due. The new law went into effect January 1, 2015.

The DNR has established two new waste categories to classify statutory-fee-exempt residues for reporting purposes:

- **Category 30** includes qualifying residues from qualified self-certified MRFs, and
- **Category 31** includes qualifying residues from qualified licensed C&D processing facilities.

This guidance outlines the procedures through which the DNR will administer these new fee provisions.

B. Fee Exemptions for Residues from Qualified Materials Recovery Facilities:

Under the law, residues from “qualified materials recovery facilities” are no longer subject to the statutory groundwater and well compensation fees, the solid waste facility siting board fee, the recycling fee and the environmental repair fee. The law limits this exemption from statutory fees to no more than 10 percent of the total weight of material accepted by qualified materials recovery facilities that are self-certified MRFs, and no more than 30 percent of the total weight of material accepted by qualified materials recovery facilities that are licensed C&D processing facilities.

MRFs must meet the following criteria to be considered a “Qualified Materials Recovery Facility”:

- **If the facility is a MRF as defined in s. 287.27(1), Wis. Stats.,**
 - The facility must be self-certified under s. NR 544.16(2), Wis. Adm. Code, and
 - If the facility has an approved plan of operation, the facility must be in compliance with its plan of operation.
- **If the facility processes C&D waste,**
 - The facility must be a licensed solid waste processing facility,
 - The facility must have an approved plan of operation,
 - The approved plan of operation must require the reporting of the volume or weight of materials processed, recycled, and discarded as residue, and

- o The facility must be in compliance with its approved plan of operation.

Note that, as generators of waste delivered for landfill disposal, qualified MRF operators continue to be obligated under the law to pay the landfill operator or intermediate waste hauler the required fees for disposal of waste that is not exempt from fees. The DNR collects the fees from the landfill operator.

For the purposes of administering these new statutory provisions, the DNR is defining “*residues*” as non-recyclable materials originating as part of a source-separated recycling stream that have been separated from recyclable materials by being run through the MRF’s processing line.

(1) Certifying that a materials recovery facility qualifies for the exemption: Qualified Materials Recovery Facility operators intending to claim the exemption from statutory fees for residuals should provide a written certification to the operator of the landfill to which they will send their residuals. The certification can be in the form of a letter or a form developed by the landfill operator, and should verify that the MRF or C&D processing facility meets the criteria to be a “qualified materials recovery facility” for purposes of the statutory fee exemption during the reporting period in which they are delivering residuals to the landfill for which tonnage fees are not paid. Because the reporting period is quarterly, the certification should be made quarterly as well.

Materials recovery facility operators who certify to a landfill operator that their facility qualifies for the fee exemptions in Act 301 should notify the landfill operator immediately if their status changes and they no longer qualify for the exemptions. For example, periods of uncorrected non-compliance with plan of operation conditions (as documented by a DNR notice of non-compliance) would disqualify residuals from the fee exemptions until the DNR has documented a return to compliance.

(2) Determining the residual rate: Act 301 caps the fee waivers based on the ratio of the weight of the residuals produced by the facility to the total weight of material accepted by the facility, expressed as a percentage. The cap for qualified MRFs is 10 percent, and for C&D processing facilities the cap is 30 percent.

For the purposes of ensuring proper fee collection and remittance under Act 301, qualified materials recovery facility operators should calculate a **quarterly residual rate** as of the end of each calendar quarter (March 31, June 30, September 30 and December 31). They should report this calculated rate to the operator of the landfill where their facility’s residuals are disposed of. The MRF operator should not attempt to carry residue weight over to the next quarter in order to artificially lower the reported residual rate in the current quarter. The DNR expects that residuals will be shipped for disposal in a timely fashion, and not accumulate on the operator’s property in order to avoid exceeding the residual rate cap and having to pay fees. The DNR will audit for compliance with the requirements of these fee exemptions through periodic inspections of licensed landfills and MRFs.

(3) Quarterly Residual Rate Calculation for Waste Categories 30 and 31:

- a. Total weight of residuals¹ generated by the Qualified Materials Recovery Facility or C&D processing facility during the reporting quarter

¹ Residue weights are typically measured at the landfill. A facility operating as a combined MRF and transfer station that mixes its MRF residuals with other waste prior to transport to a disposal facility may use a calculated residue weight obtained
WA1755 Guidance for Landfill Tonnage Fee Exemptions Under 2013 Wisconsin Act 301 Page 2

- b. Total weight of material accepted by the Qualified Materials Recovery Facility or C&D processing facility during the reporting quarter
- c. Quarterly Residual Rate (= a divided by b, expressed as a percentage)

(4) Payment of statutory fees by the qualified materials recovery facility operator: If the qualifying materials recovery facility has exceeded its applicable residue rate cap (10 percent or 30 percent) for the quarter, the MRF operator should pay the landfill operator all statutory landfill fees due on the tons that exceeded the cap that quarter. Waste residues that exceed the 10% cap should be reported as Category 1 wastes. Waste residues that exceed the 30% cap should be reported as Category 25 wastes.

Note that under Act 301, a MRF operator who claims the exemption for residue that exceeds the applicable cap of 10 percent or 30 percent is ineligible for the exemption for any additional residue until he or she pays the balance of the fees owed.

(5) Payment of quarterly recycling fees by the landfill owner or operator: Landfill owners or operators will continue to pay the statutory recycling fee to the DNR after the end of each calendar quarter. The landfill should remit the recycling fees to the DNR as part of its quarterly submittal of DNR Form 4400-123A. This form will include spaces for reporting tonnages of the new Waste Categories 30 and 31.

Note that the landfill license fee surcharge of \$0.15/ton is not affected by Act 301. Landfill operators should continue to collect this surcharge from customers and pay the surcharge quarterly using DNR Form 4400-123A.

(6) Payment of other statutory landfill environmental fees by the landfill operator: Landfill owners or operators will continue to pay all other statutory environmental fees to the DNR annually. The DNR will continue to invoice landfill operators for these fees based on calendar-year tonnage reports the landfill operators submit to the DNR. As noted above, waste residues that exceed the 10 percent and 30 percent cap should be reported as Category 1 and Category 25 wastes, respectively, and should be included in the annual tonnage reports.

C. Repayment/Waiver of Uncollectable Statutory Fees: Act 301 allows a landfill owner or operator, under certain conditions, to submit an affidavit to the DNR on his or her own behalf or on behalf of an intermediate hauler, requesting reimbursement or a waiver of statutory landfill fees, if a customer fails to pay its bill from the landfill or hauler within 120 days after the date of disposal. The affidavit must include the following information:

- a. Identifying information for the person that failed to pay fees.
- b. A description of the efforts made to collect the overdue fees.
- c. A commitment that the owner or operator will not accept any solid waste or hazardous waste from the person that failed to pay the fees until the overdue fees are paid.

by subtracting the weight of waste accepted at the transfer station from the combined weight of waste plus MRF residue delivered to the disposal facility.

The DNR will develop an affidavit form to be used for the fee reimbursement/waiver requests. In order to implement this portion of Act 301 in an efficient manner, the DNR will provide reimbursement once per year, after the end of the calendar year in which the affidavit was submitted to the DNR. The reimbursement will be calculated as part of the annual consolidated billing process. The new reimbursement/waiver system will apply to unpaid-for disposal events that occur on or after the effective date of the law, January 1, 2015.

Questions about the administration of the fee waivers in Act 301 should be directed to Brad Wolbert (Brad.Wolbert@wisconsin.gov) or Colleen Storck (Colleen.Storck@wisconsin.gov).

Contact 608/266-2111 or DNRWasteMaterials@wisconsin.gov for further information.

Disclaimers: This document is intended solely as guidance and does not include any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any manner addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of the Interior, Washington, D.C. 20240. This publication is available in alternative format (large print, Braille, audio tape, etc.) upon request. Please call 608/266-2111 for more information.