

Report to the Small Business Regulatory Review Board

Phase 2: Review of Rules

Department of Natural Resources
December 2012



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Table of Contents

| | |
|--|-----------|
| Introduction..... | 3 |
| Process..... | 4 |
| Recommendations..... | 5 |
| Next Steps..... | 16 |
| Appendix A – Responses to Public Input..... | 17 |
| Water | 17 |
| Land | 19 |
| Air, Waste, Remediaton & Redevelopment..... | 21 |
| Appendix B – Phase 1 Recommendations..... | 25 |

Introduction

In April 2012, the Department of Natural Resources (Department) launched a retrospective review of rules impacting small business.

This review is prompted by Governor Walker's "Executive Order #61 Relating to Job Creation and Small Business Expansion", issued on February 22, 2012. Items 3 and 4 of the Order require:

- All state agencies to cooperate with the Small Business Regulatory Review Board to identify existing rules hindering job creation and small business growth.
- All state agencies to work with the Small Business Regulatory Review Board to recommend changes to these rules that will both reduce their burden on job creators while continuing to comply with the intent of the statutes that created them.

This review is designed to:

- Examine all existing Department rules to identify those that impact Wisconsin small business.
- Evaluate those that impact Wisconsin small business to determine which are suitable for repeal, modification, or exemption, in order to lessen the burden on Wisconsin small business without creating a negative impact on public health or the environment.
- Consider public input. An opportunity for public input via a web survey was conducted from April through May 2012. The draft of this report was made available for public review and comment in November/December 2012.
- Inform the Natural Resources Board of recommendations: Phase 1 in June 2012, Phase 2 in December 2012.
- Report recommendations to the Small Business Regulatory Review Board: Phase 1 by July 2012, Phase 2 by January 2013.

For the purposes of this review, "small business" means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000, [s. 227.114 \(1\), Wis. Stats.](#)

Process

The process for this rules review, as approved by the Department Leadership Team on March 26, 2012, includes two sets of criteria to guide the review; criteria to identify rules for further evaluation, and criteria for development of recommendations.

The criteria to identify rules for further evaluation are as follows:

- The rule impacts small businesses in Wisconsin, as defined in [s. 227.114\(1\), Wis. Stats.](#); and
- The rule places a significant burden on small businesses in Wisconsin, or
- Due to changes over time, the rule is either no longer needed, obsolete, or duplicative, or
- The rule was not really intended to apply to small businesses, and therefore is not currently enforced at small businesses.

Any recommendations developed as a result of this review will meet the following criteria:

- The proposed change (repeal, modify, exempt) will not contravene the intent of the underlying state statute, state constitution, federal regulation or federal mandate, and
- The proposed change will not result in a negative impact on public health or the environment, and
- The proposed change will simplify, reduce, or eliminate the burden for small businesses in Wisconsin.

The review is split into two phases. Phase 1 was designed to identify obsolete rules for repeal, the result are presented in Appendix B. Phase 2 was a deeper look, encompassing all 3700+ pages of administrative code and incorporating public input. This Phase 2 report includes not only recommendations to repeal rules, but also to modify rules or create exemptions.

Phase 2 Recommendations

The Department recommends repealing or modifying **twenty-six** rules and **one** statute.

These recommendations meet the criteria noted above. None of these recommendations contravenes the intent of the underlying state statute, state constitution, federal regulation or federal mandate. None of these recommendations will result in a negative impact on public health or the environment.

1. Captive Wildlife Management, s. NR 16, Wis. Adm. Code
2. Dog trials and training, ch. NR 17, Wis. Adm. Code
3. Miscellaneous fur, fish, game, and outdoor recreation, ch. NR 19, Wis. Adm. Code
4. Use of pesticides on land and water areas of the state of Wisconsin, ch. NR 80, Wis. Adm. Code
5. Uses and designated standards and secondary values, ch. NR 104, Wis. Adm. Code.
6. Servicing septic or holding tanks, pumping chambers, grease interceptors, seepage beds, seepage pits, seepage trenches, privies, or portable restrooms, ch. NR 113, Wis. Adm. Code.
7. Certification requirements for waterworks and wastewater treatment plant and septage servicing operators, ch. NR 114, Wis. Adm. Code.
8. Nitrate removal, ch. NR 122, Wis. Adm. Code
9. State grants for water pollution control facilities, ch. NR 125, Wis. Adm. Code
10. State grants for water pollution control facilities, ch. NR 126, Wis. Adm. Code
11. Point source pollution abatement grant program, ch. NR 128, Wis. Adm. Code
12. Brownfield green space and public facilities grant program, ch. NR 173, Wis. Adm. Code
13. Solid waste management planning criteria, ch. NR 185, Wis. Adm. Code.
14. Solid waste management grant program, ch. NR 186, Wis. Adm. Code.
15. Household hazardous waste grant program, ch. NR 187, Wis. Adm. Code
16. Time limits for water regulation decisions, ch. NR 305, Wis. Adm. Code
17. Exemptions from water quality certification in nonfederal wetlands, ch. NR 351, Wis. Adm. Code
18. Delineation of nonfederal wetlands, ch. NR 352, Wis. Adm. Code
19. Compliance schedules, delays, exceptions and internal offsets for organic compound emission sources, ch. NR 425, Wis. Adm. Code.
20. Clean fuel fleet program, ch. NR 487, Wis. Adm. Code.
21. Landfill operational criteria, ch. NR 506, Wis. Adm. Code.
22. Pre-feasibility reports for landfills, ch. NR 510, Wis. Adm. Code.
23. Solid waste management fees and financial responsibility requirements, ch. NR 520, Wis. Adm. Code.
24. Medical waste management, ch. NR 526, Wis. Adm. Code.
25. Effective recycling programs, ch. NR 544, Wis. Adm. Code.
26. Requirements for the operation and maintenance of public water systems, ch. NR 810, Wis. Adm. Code.
27. Acid rain provisions, ss. 285.11(12) and 285.41, Wis. Stats.

Additional information is provided below.

1. Captive Wildlife Management, s. NR 16, Wis. Adm. Code

The Department recommends reducing the frequency that owners must report the status of captive wild animals to the Department. This modification will require a change to the underlying statute, ch. 169, Wis. Stats.

This chapter regulates bird shooting preserves, white-tailed deer farms, wild fur farms and bird and game-breeders who may be hobbyists or small businesses. These rules require reporting and record-keeping which are likely not a significant burden for small business because the information gathered would not be viewed as more detailed than a farm manager would maintain in the absence of these requirements. However, even regulations that may not be burdensome by themselves require additional attention to detail that can be a challenge considering all of the other activities that an individual or business needs to be attentive to. Even a minor simplification could be viewed as beneficial.

Owners of harmful wild animals such as bear, cougars and mute swans are subject to additional standards to protect animal and human safety and the environment. Owners of harmful wild animals may view these requirements as a burden.

One change, which requires statutory authorization, is to simplify the requirement that farm owners make certain quarterly reports of the numbers of captive animals bought, sold, or which have died. Additional review may reveal other simplifications for reporting. Many Captive Wild Animal Farm license holders are individual hobbyists but some would meet the definition of a small business.

The Department does not recommend any other significant changes at this time. Note that the Department does not recommend any changes that would impact deer farms. Both the Departments of Natural Resources and Agriculture, Trade & Consumer Protection have regulatory authority over deer farms. The Departments have not consulted as part of this regulatory review process and deer farm-related rule or statute changes would not be appropriate. This chapter was established in October 2003, and is still current and applicable to activities in the trade of native and harmful wild animals today. The initial requirements of this chapter are established in ch. 169, Wis. Stats., and implemented by this chapter.

The intent of the underlying statute is to establish accountability among people who possess captive wild animals which are, in most situations, also native species in Wisconsin. The current rules allow commerce in captive animals where it will not impact free roaming wild animals that are held in the public trust. These rules help assure that free-roaming wild animals are not used illegally and to the detriment of wild populations, and people interested in wild animals. However, the amount of accountability created by the quarterly reporting requirement is limited. In most cases, it would still be necessary for a conservation officer or an informant to observe the illegal possession of wild animals in order for a citation to be issued. The time invested by the Department in processing reports and time invested by owners in the reporting process may not justify the benefits to enforcing the protections.

During the time these rules have been in effect, the Department has made limited use of the requirement to report captive animal transactions. In most cases, it is and will continue to be necessary for a conservation officer or informant to observe the illegal activity in order for a citation to be issued. Owners of certain captive wild animals would continue to be license under Ch. 169 Stats. and other regulations related to animal health.

Reducing the frequency that owners must report the status of captive wild animals to the Department will simplify, reduce, and eliminate a minor burden to hobbyists and other farm owners.

2. Dog trials and training, ch. NR 17, Wis. Adm. Code

The Department recommends modifying this rule to eliminate the requirement that dog trainers annually report the numbers of captive game birds used in training activities. This modification would require a change to the underlying statute, ch. 169, Wis. Stats.

These rules establish regulations for the use of captive and free roaming wild animals for dog training and in dog trials and the training of dogs on Department managed lands and some private lands. In many cases, this chapter is an exemption from the protections of wild animals established in other chapters if the wild animals are used for dog training.

While these rules primarily regulate individual hobbyists, some professional dog trainers and hound dog training enclosure operators are also impacted.

These rules require reporting and record-keeping which are likely not a significant burden. However, even regulations that may not be burdensome by themselves require additional attention to detail that can be a challenge considering all of the other activities that an individual or business needs to be attentive to. Even a minor simplification could be viewed as beneficial. In many cases, such as the requirement that hound dog training enclosures be licensed and related regulations, this chapter is exempting businesses from wild animal protections established in other chapters. This chapter is necessary for these businesses to operate. No fees are established for hound dog training enclosures.

These rules continue to be needed, with one exception described below, so that activities which utilize captive wild animals can continue to operate. These rules also assure that the use of captive wildlife is not detrimental to free-ranging wild animal populations. These rules also assure that dog training that occurs on Department managed lands can be done in areas and in ways that minimize impacts to wildlife on the property.

One change that may be helpful, but which requires statutory authorization, is to eliminate the requirement that dog trainers annually report the numbers of captive game birds used in training activities. Most dog trainers are individual hobbyists but some would meet the definition of a small business.

The intent of the underlying statute is to establish accountability among people who use captive game birds for dog training. Captive game birds are usually used outside of the hunting season and in other ways that are contrary to established regulations for hunting wild birds in this state. These rules help assure that wild birds are not used illegally and to the detriment of wild bird populations, other hunters, and others interested in wild game birds. However, the amount of accountability created by this requirement is limited. In most cases, it would still be necessary for a conservation officer or an informant to observe the illegal harvest of wild birds in order for a citation to be issued. The time invested by the Department in processing reports and time invested by dog trainers in the reporting process may not justify the benefits to enforcing the protections established for wild game birds.

During the time these rules have been in effect, the Department has not used the requirement of dog trainers to report captive bird use to prosecute a person who was illegally using wild birds. In most cases, it is and will continue to be necessary for a conservation officer or informant to observe the illegal harvest of wild birds in order for a citation to be issued. Dog trainers would continue to be license under ch. 169, Wis. Stats., and other regulations, such as requirements that stocked birds come from disease-free sources and leg band requirements to differentiate them from wild birds, would still be in place.

Eliminating the requirement that dog trainers report their use of captive birds to the Department will simplify, reduce, and eliminate a minor burden to hobbyists and professional dog trainers.

3. Miscellaneous fur, fish, game, and outdoor recreation, ch. NR 19, Wis. Adm. Code.

The Department recommends several modifications to this rule to simplify the rule language as follows.

Under s. NR 19.02, Wis. Adm. Code, concerning handling fees, delete s. NR 19.02(3)(a) so that there is only one definition of “approval” in ch. NR 19. Section NR 19.001(3) defines “approval” for the chapter. This deletion may reduce confusion among small businesses applying for approvals required in ch. NR 19.

Modify s. 19.057, Wis. Adm. Code, to align the wild bait harvest permit term with the permit term for nonstandard minnow harvesting gear. Wild bait harvest permits are used for tracking who is harvesting from which waters so that the Department can keep track of where minnows are going if VHS or other diseases are detected. Currently these permits are valid for 30 day periods. Some permit applicants simply make photocopies of applications and change the date and signature each month. The Fisheries wild bait program manager suggests that changes be made to code that make the permit valid for the same time period as permits for the use of nonstandard minnow harvesting gear. Under s. NR 20.39, a nonstandard gear permit is valid until December 31 of the year in which it was issued. New findings of VHS waters have not been prevalent in recent years and the Department can close areas or seasons if there is a new inland water finding. This change would benefit both small business customers and Department staff. The specific language changes recommended are provided below.

NR 19.057 Bait dealer's wild harvest permit required; criteria; records required.

(1) No bait dealer may take minnows for use as bait from any inland or outlying water unless the bait dealer possesses a wild harvest permit issued by the Department under this section and the bait dealer complies with all terms and conditions of the wild harvest permit. A bait dealer shall apply for a permit on forms available from the Department. Applications may be submitted no earlier than 30 days prior to the proposed starting date of harvesting. The Department shall act on a complete permit application within 10 business days after receipt, based on the criteria in sub. (2). ~~Except as provided in sub. (5), permits~~ Permits shall be valid for the dates specified on the permit, not to exceed ~~30 days~~ December 31 of the calendar year in which the permit is issued, and shall require compliance with all minnow collecting requirements. A complete application shall include the applicant's name, street address, bait dealer's license number if any, the specific water body where bait will be harvested, the town, range and section where bait will be

harvested, the species of bait that will be harvested, the maximum quantity of bait expected to be harvested, and any other information required on the application form.

...

(5) ~~Notwithstanding the 30-day limit in sub. (1), the~~ The Department may issue a wild harvest permit that is valid for the dates specified on the permit, which may exceed ~~30 days duration~~ December 31 of the calendar year in which the permit is issued, if the permit is for the harvest of minnows from a water of the state stocked with minnows by the applicant pursuant to a stocking permit under s. 29.736, Stats., or for the harvest of minnows from a lake stocked with minnows by the applicant pursuant to a permit for private management under s. 29.737, Stats. The Department may issue a wild harvest permit under this section in conjunction with a stocking permit or a permit for private management.

4. Use of pesticides on land and water areas of the state of Wisconsin, ch. NR 80, Wis. Adm. Code

The Department recommends repeal of this entire rule chapter.

This rule is no longer needed because the fifteen chemicals addressed by this rule are either regulated by DATCP under ATCP 30, are banned by US EPA, or are no longer used as pesticides, but are used for other purposes subject to different regulations. The Pesticide Review Board referenced in this rule no longer exists.

5. Uses and designated standards and secondary values, ch. NR 104, Wis. Adm. Code.

The Department recommends revising s. NR 104.06(2)(b), Wis. Adm. Code, as follows:

~~“ ... as a monthly geometric mean based on not less than 5 samples per month not exceed 89°F at any time at the edge of the mixing zones established by the department under s. NR 102.05(3).”~~

The requirement to not exceed 89°F at the edge of an authorized mixing zone in s. NR 104.06(2)(b), Wis. Adm. Code, is no longer valid as it is superseded by the provisions in s. NR 106.51, Wis. Adm. Code. This section of ch. NR 104, Wis. Adm. Code, is unnecessary and confusing and can be deleted entirely without any risk to public health or the environment.

6. Servicing septic or holding tanks, pumping chambers, grease interceptors, seepage beds, seepage pits, seepage trenches, privies, or portable restrooms, ch. NR 113, Wis. Adm. Code.

The Department recommends modifying this rule.

This chapter applies to all small businesses servicing septage containing holding tanks and treatment systems. The purpose of this chapter is to provide requirements for disposal of larger volumes of septage. Many small businesses perform incidental services that require limited septage disposal and/or storage. By rule these incidental service companies are regulated in the same manner as businesses that provide septage disposal as a mainstream activity.

By modifying the rule to insert thresholds/exemptions, a burden can be reduced upon these incidental service businesses while promoting more consistent regulations to the mainstream business sector.

7. Certification requirements for waterworks and wastewater treatment plant and septage servicing operators, ch. NR 114, Wis. Adm. Code.

The Department recommends modifying this rule.

Section II of this chapter applies to certified operators of small businesses servicing septage containing holding tanks and treatment systems. The purpose of this section/chapter is to provide minimum operating and training requirements for disposing of larger volumes of septage. Many small businesses perform incidental services that required limited septage disposal and/or storage. This necessitates minimum training and operator certification of their employees to conduct these incidental services. This can be a significant burden for these incidental services.

On occasion small business owners find themselves or an employee unfit to perform all of the services necessary for the daily operation of the business. As a result, a burden exists because of age, physical limitations and/or temporary setbacks. An example may be simply lifting a concrete manhole cover from a buried tank.

By modifying the rule to insert thresholds/exemptions, burdens can be reduced upon these incidental service businesses while promoting more consistent enforcement of regulations to the mainstream business sector. Further, by creating exemptions for a “helper” or similar role, burdens can be reduced on small businesses.

8. Nitrate removal, ch. NR 122

The Department recommends repeal of this entire rule chapter. The grant program established in this rule has been replaced by the Safe Drinking Water Loan Program of ch. NR 166, Wis. Adm. Code, which provides subsidized loans to municipalities for improvements to their public water supply systems.

9. State grants for water pollution control facilities, ch. NR 125, Wis. Adm. Code

The Department recommends repeal of this entire rule chapter. The grant program established in this rule has been replaced by the Clean Water Fund Program of ch. NR 162, Wis. Adm. Code, which provides subsidized loans to municipalities for these activities.

10. State grants for water pollution control facilities, ch. NR 126, Wis. Adm. Code

The Department recommends repeal of this entire rule chapter. The grant program established in this rule has been replaced by the Clean Water Fund Program of ch. NR 162, Wis. Adm. Code, which provides subsidized loans to municipalities for these activities.

11. Point source pollution abatement grant program, ch. NR 128, Wis. Adm. Code

The Department recommends repeal of this entire rule chapter. The grant program established in this rule has been replaced by the Clean Water Fund Program of ch. NR 162, Wis. Adm. Code, which provides subsidized loans to municipalities for these activities.

12. Brownfield green space and public facilities grant program, ch. NR 173, Wis. Adm. Code

The Department recommends repeal of this entire rule chapter. This program was eliminated in the FY11-13 budget, and the underlying statute, s. 292.79, Wis. Stats, was repealed. This grant program no longer exists.

13. Solid waste management planning criteria, ch. NR 185, Wis. Adm. Code.

The Department recommends repeal of this entire rule chapter.

This rule sets out planning criteria for the development of area-wide solid waste management plans by local units of government. This rule is obsolete, the statute requiring area-wide solid waste management plans and associated grant funding no longer exists. Area-wide solid waste management planning in accordance with this rule has not occurred for decades with no discernible impact on public health or the environment.

14. Solid waste management grant program, ch. NR 186, Wis. Adm. Code.

The Department recommends repeal of this entire rule chapter.

This rule establishes grant procedures for financial assistance to local units of government for implementation of area-wide solid waste management plans. This rule is obsolete, the statute requiring area-wide solid waste management plans and associated grant funding no longer exists.

15. Household hazardous waste grant program, ch. NR 187, Wis. Adm. Code

The Department recommends repeal of this entire rule chapter.

The urban “clean sweep” program established in ch. NR 187, Wis. Adm. Code, was transferred from Department to DATCP by the biennial budget act (2003 Wis. Act 33). DATCP was required to operate the clean sweep program under Department rules until DATCP adopted its own rules for the program. DATCP repealed and recreated their own “clean sweep” rule (ch. ATCP 34) to consolidate the urban and agricultural “clean sweep” programs, which became effective on January 1, 2005. Therefore, ch. NR 187, Wis. Adm. Code, is obsolete and no longer needed. DATCP supports repeal of this rule.

16. Time limits for water regulation decisions, ch. NR 305, Wis. Adm. Code

The Department recommends repeal of this entire rule chapter.

This rule establishes time limits for water regulation permits or approvals required as a condition of operating a business in Wisconsin. This rule impacts small business.

Time limits for all waterway and wetland permits are now established in ch. NR 300, Wis. Adm. Code, so ch. NR 305, Wis. Adm. Code, is no longer needed. Furthermore, this rule is obsolete as it imposes time limits that are more restrictive than those required by current statute for permits. Wisconsin Act 67 sets time limits and fees for any waterway or wetland permit applicant. This rule is not necessary and may be repealed without weakening environmental standards.

17. Exemptions from water quality certification in nonfederal wetlands, ch. NR 351, Wis. Adm. Code

The Department recommends modifying this rule chapter.

This rule applies to nonfederal wetlands. 2011 Act 118 repealed s. 281.36(1)(c), Wis. Stats. which defined nonfederal wetlands. This eliminated the concept of nonfederal wetlands, and established a permit program with authority over all wetlands. However, certain implementation elements included in this rule are not included in the statute. The Department recommends modifying this rule consistent with 2011 Act 118, yet retaining the necessary implementation elements.

18. Delineation of nonfederal wetlands, ch. NR 352, Wis. Adm. Code

The Department recommends modifying this rule chapter.

This rule applies to nonfederal wetlands. 2011 Act 118 repealed s. 281.36(1)(c), Wis. Stats. which defined nonfederal wetlands. This eliminated the concept of nonfederal wetlands, and established a permit program with authority over all wetlands. However, certain implementation elements included in this rule are not included in the statute. The Department recommends modifying this rule consistent with 2011 Act 118, yet retaining the necessary implementation elements.

19. Compliance schedules, delays, exceptions and internal offsets for organic compound emission sources, ch. NR 425, Wis. Adm. Code.

The Department recommends repeal of certain sections of this rule which are no longer needed.

This rule sets deadlines for compliance with organic compound air emission rules. The time schedules and final compliance deadlines established in s. NR 425.03, 425.035(2) and (3)(b), (c), and (d); and 425.04(3) have all passed and are therefore obsolete and no longer needed.

20. Clean fuel fleet program, ch. NR 487, Wis. Adm. Code.

The Department recommends repeal of this entire rule chapter.

This chapter applies to all vehicle fleet operators with 10 or more covered fleet vehicles under 26,000 pounds gross vehicle weight rating which operate primarily in the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha. The purpose is to establish requirements for a clean fuel fleet program to reduce the air emissions of volatile organic compounds and oxides of nitrogen from fleet vehicles.

New federal vehicle emission standards are cleaner than those required under this rule, making this program obsolete. Tier 2 standards for gasoline vehicles have been in effect since 2009 and diesel standards since 2010. Both are more stringent than this rule requires.

21. Landfill operational criteria, ch. NR 506, Wis. Adm. Code.

The Department recommends eliminating the annual solid waste landfill compliance certification reporting requirement of s. NR 506.19(1), Wis. Adm. Code.

This rule specifies operational criteria for solid waste landfills. Recommend eliminating the annual reporting requirement specified in s. NR 506.19(1) Compliance Certifications. This will eliminate a burden on many landfill owners. Since its promulgation in the mid-1990s, this provision has not had a demonstrable positive impact on public health or the environment. Therefore we believe it can be eliminated without consequence. Eliminating the annual compliance certification will reduce the paperwork burden on landfill owners.

22. Pre-feasibility reports for landfills, ch. NR 510, Wis. Adm. Code.

The Department recommends repeal of this entire rule chapter.

The purpose of submitting a pre-feasibility report is to obtain a revised opinion from the Department on the potential a proposed property has for development as a landfill and the advisability of spending additional time and funds to prepare a feasibility report. Pre-feasibility reports are not addressed or required in state or federal law. This is an optional report that has not been utilized since its codification in the mid-1990s. Repealing this code will simplify Wisconsin solid waste management regulations and reduce confusion that has sometimes surrounded this optional report.

23. Solid waste management fees and financial responsibility requirements, ch. NR 520, Wis. Adm. Code.

The Department recommends modifying this rule to enable greater use of cash or certificates of deposit as proof of financial responsibility, consistent with current FDIC insurance limits.

This code establishes solid waste license and review fees, environmental fees and financial responsibility requirements. Portions of this rule impact small businesses. The Department proposes one change that would safely allow small businesses to more extensively use cash and certificates of deposit at local banks to establish proof of financial responsibility for their facilities.

The Department recommends a change in the maximum amount of cash and certificates of deposit that can be used in an account at a single bank or financial institution establishing proof of financial responsibility from \$100,000 to \$250,000. This change is in line with revisions to FDIC insurance limits and would be made in s. NR 520.06(3) and (4). Existing and future financial assurance established for solid waste facilities would not be compromised in any way. The change would allow small businesses to use lower-cost financial assurance mechanisms and to utilize local banks to a greater extent.

24. Medical waste management, ch. NR 526, Wis. Adm. Code.

The Department recommends modifying this rule to bring manifest form requirements in line with current practice.

The purpose of this chapter is to provide definitions, submittal requirements, exemptions and other general requirements relating to infectious waste management and medical waste reduction.

Recommend elimination of references in NR 526.14(1)(b) to a Wisconsin infectious waste manifest form, since nearly all waste haulers use their own form or electronic manifests. Allow businesses to use their own form or electronic manifests, consistent with current practice.

25. Effective recycling programs, ch. NR 544, Wis. Adm. Code.

The Department recommends changes to ch. NR 544, Wis. Adm. Code, to reflect current statutory language and expand opportunities for small business.

In numerous locations within ch. NR 544, Wis. Adm. Code, changes are needed to clarify that Responsible Units are not required to provide for the recycling of waste tires. These changes could provide additional business opportunities for small business. A change is also recommended to s. NR 544.05(1)(c), Wis. Adm. Code, so that rural communities may contract out for drop off collection service and private contractors are allowed to provide individual household collection service both of which are the case for urban areas. Finally, s. NR 544.20, Wis. Adm. Code, should be repealed in its entirety since the pilot program described in this section ended in 2005. See Table A below for the details of these recommendations.

| | Code Reference | Change | Comment |
|----|---------------------|--|--|
| 1 | NR 544.03 (12) | Delete (3) from the reference to 287.07 (3) and (4), Stats | The text of s. 287.07(3) and (4), Wis. Stats., was changed as part of 2011 Act 39. Prior to the amendments, section 287.07(3) contained general disposal restrictions on a number of materials, including waste tires. 2011 Act 39 created a separate section for waste tires (s. 287.07(3)). 2011 Act 39 also revised the general disposal restrictions to remove the reference to waste tires (s. 287.07(4)). The language of NR 544, Wis Adm Code, needs to be revised to reflect these legislative changes to s. 287.07 (3) and (4). |
| 2 | NR 544.03(39) | Delete (3) from the reference to 287.07 (3) and (4), Stats | See comment #1 |
| 3 | NR 544.04(3) | Delete (3) from the reference to 287.07 (3) and (4), Stats | See comment #1 |
| 4 | NR 544.04(4) | Delete (3) from the reference to 287.07 (3) and (4), Stats | See comment #1 |
| 5 | NR 544.04(7) | Delete (3) from the reference to 287.07 (3) and (4), Stats | See comment #1 |
| 6 | NR 544.05(1) | Delete (3) from the reference to 287.07 (3) and (4), Stats | See comment #1 |
| 7 | NR 544.05(1)(a)(4)b | Delete (3) from the reference to 287.07 (3) and (4), Stats | See comment #1 |
| 8 | NR 544.05(1)(b) | Delete (3) from the reference to 287.07 (3) and (4), Stats | See comment #1 |
| 9 | NR 544.05(1)(c) | Delete (3) from the reference to 287.07 (3) and (4), Stats | See comment #1 |
| 10 | NR 544.08(2)(j) | Delete (3) from the reference to 287.07 (3) and (4), Stats | See comment #1 |
| 11 | NR 544.08(3)(e) | Delete (3) from the reference to 287.07 (3) and (4), Stats | See comment #1 |
| 12 | NR 544.14(2) | Delete (3) from the reference to 287.07 (3) and (4), Stats | See comment #1 |
| 13 | NR 544.14(3)(a) | Delete (3) from the reference to | See comment #1 |

| | and (b) | 287.07 (3) and (4), Stats | |
|----|-----------------|--|--|
| 14 | NR 544.05(1)(c) | Edit text on line 3 to read "shall provide, contract for provision of, or otherwise provide for" | This change allows rural communities to contract out for drop off collection service and allow private contractors to provide individual household collection service, as the method selected to provide access to recycling services for its residences. This wording is the same as that used to describe options for providing collection service in urban municipalities. This would provide small business with expanded opportunities in rural recycling collection. We believe the difference in wording for rural and urban municipalities was an oversight and that the intent was always to allow both categories of municipalities options in provision of recycling collection services. |
| 15 | NR 544.08(2)(j) | Reword statutory reference to include 287.07 (3): | RU needs to inform citizens how to reuse, reduce and recycling waste tires along with major appliances and waste oil. It is not included here because, previous to changes made under 2011 Act 39, waste tires were included in the list of banned materials under 287.07 (4). |
| 16 | NR 544.10(2)(h) | Reword statutory reference to include 287.07 (3): | RU needs to inform citizens how to reuse, reduce and recycling waste tires along with major appliances and waste oil. It is not included here because, previous to changes made under 2011 Act 39, waste tires were included in the list of banned materials under 287.07 (4). |
| 17 | NR 544.20 | Delete this section in entirety | The pilot program described in this section ended Dec 31, 2005. Keeping it in the code could be confusing to small businesses thinking there may be a business opportunity under the pilot program, which allowed RUs to substitute recycling of a banned item for another recyclable item. |

26. Requirements for the operation and maintenance of public water systems, ch. NR 810, Wis. Adm. Code.

In order to bring this rule into agreement with underlying statutes, the Department recommends modifying s. NR 810.09(1)(a), Wis. Adm. Code. This subparagraph pertains to disinfection of the water supplied by community water systems.

27. Acid rain provisions, ss. 285.11(12) and 285.41, Wis. Stats.

The Department recommends repeal of the annual plan submittal and result reporting requirements of the state acid rain law, ss. 285.11(12) and s. 285.41, Wis. Stats.

State acid rain limitations have largely been superseded by federal acid rain and other requirements. The recommendation is to eliminate annual plan submittal and result reporting related to the state acid rain limitations but to retain the state emission rate goals and emission rate limitations.

Emissions from Wisconsin utilities do not approach state acid rain limits; related annual compliance plans and emission reports are not accomplishing anything useful, and result in an unnecessary administrative burden for sources and the Department.

Next Steps

Implementation of these recommendations may occur through the ordinary rule making process as established in ch. 227, Wis. Stats., or through action by the state legislature.

Appendix A – Responses to Public Input

An opportunity for public input on this project was conducted via web survey in April and May 2012. The comments received and Department responses are presented below, organized by Department Division: Water, Land, Air Waste Remediation & Redevelopment.

Note, the Department received several general comments favoring retention of rules as currently written. These comments are not included below.

Water Division

Comment: Check valves on private mains expensive (NR 811.68(3)). Does not meet backflow prevention requirements.

Department Response: The requirement is intended to prevent water from flowing from a municipal water system that is subject to routine water quality monitoring and provided routine maintenance through a private water system that is not subject to similar monitoring and upkeep and back into the municipal water system with water of a quality that may have been degraded because of the poor condition of the private water system. It is not intended to replace the plumbing code backflow protection requirements. There are options allowed that do not involve installation of check valves such as only having a single point of connection to the municipal water system or dedicating the private water system to the municipal water system.

Comment: Exempt small businesses from expensive water testing.

Department Response: Certain small businesses are already exempt from water testing requirements or subject to reduced monitoring because of the number of people they serve or the number of employees they have. Small businesses that have their own water system and are frequented by 25 or more people at least 60 days of the year are subject to federal Safe Drinking Water Act requirements. The Department rules for monitoring are no more stringent than and include the flexibility allowed by the federal law.

Comment: Allow trolling in Vilas County; currently only row trolling. I'm too old to row or throw the big baits for Muskies. Give an old guy a break.

Department Response: Fisheries is currently working on administrative code changes that would allow motor trolling statewide with 3 hooks, baits, or lures and plans to present the proposal at the April 2013 spring hearings.

Comment: Allow citizens to harvest spawning salmon using hands or limited nets! I am concerned about the waste of the Salmon

Department Response: There was an intense public debate back in the 1980's concerning the appropriate ways that salmon should be harvested. At the time salmon could be harvested by snagging along with hook and line angling but there were many complaints from the public about crowding, illegal overharvesting, and incidental killing of other species that do not die after they spawn, such as brown and rainbow trout.

Following this extensive debate, the Natural Resources Board and Legislature concluded that salmon fishing should be regulated just like all other gamefish species and be limited to hook and line. Since that time, the issues that plagued the earlier fishery have been significantly reduced. At this time, we have no reason to believe that reopening the salmon fishery to other methods would not just result in a repeat of those earlier problems. Salmon that are not caught and die are not wasted in the sense that they decompose and contribute nutrients to the food web of the tributary river systems.

Comment: I went out for dinner last night with Lake Michigan as the back ground. I think we need to get local commercial fisherman so I can order Fresh Fish

Department Response: Commercial fishing in Lake Michigan is authorized under state statutes and the Legislature has directed the Wisconsin Department of Natural Resources to manage for “an economically viable and stable commercial fishery.” There are 57 Wisconsin-licensed commercial fishers. The Department uses a zone system to set and allocate commercial harvest quotas. Whitefish are now the mainstay of the commercial fishery in Lake Michigan, as the harvests of yellow perch, rainbow smelt, and chubs have declined since 1990.

Comment: NR 812.14(1)(f)1. It requires installation of centering guides that impede setting well casing and impede proper grouting. Remove centering guide requirements from the private well code.

Department Response: Recommend this section of code remain in place. The code offers drillers two options for keeping well casing centered in the hole, centering guides or drive shoes. Almost all drillers use drive shoes because they protect the end of the well casing, they are easy to install and they don't interfere with placing a tremie. However, there are certain situations where centering guides are used. Also, field staff have not received any complaints or concerns about this section from actual drillers.

Because there is an alternative to using centering guides, and because that alternative is used the majority of the time, this section of the code does not represent an impediment or obstacle to small businesses.

Comment: High Capacity Well Pumpage Report (Form 3300-204) and Water Withdrawal Report (Interim Form - 2011). LOOK AT THEM !!!!!!! THEY ARE THE SAME FORM Burden to copy same info to 2nd report. Eliminate Water Withdrawal Report

Department Response: Sections 281.34 and 281.346, Wis. Stats., and Chapters NR 820 and NR 856 of the Wisconsin Administrative Code each impose water withdrawal reporting on persons with water supply systems (e.g. high capacity wells), that can withdraw 100,000 gallons of water per day. The Department has merged these reporting requirements into one form and one process, which may be accomplished on-line or on written forms that are mailed to property owners.

Comments:

My Husband and I own a trout farm in the Great Lakes watershed. We have recently been assessed a fee of \$1,125.00 per year for use of water for our trout farm, this rule has become a hardship on our business. If we are to stay in business for the next ten years this will result in \$11,250.00 expense. Our operation doesn't take the water away, we raise fish in it and then it's

sent on to be used again. In the past few years the cost of operating our farm have escalated from every direction (new FDA HACCP rules, all operating licenses, health certification costs, feed ect...)We feel our farm and others like it provides a local nutritional product for consumers, however we can't continue to pass on expenses to our customers. We would like it if these rules could be reviewed. One suggestion would be to have another small business cap for very small "ma and pa" operations with less than five full time employees or grossing less than \$500,000 per year. Any other suggestions would be appreciated.

Any aquaculture operation grossing Less than \$250,000 per year be exempt from fee.

I own a trout farm in the Great Lakes watershed in northern Wisconsin. A year or so ago I was accessed fees totaling almost \$10,000.00. WAA, my Senator Holperin, and I had the fee reduced to \$1125.00 per year. One would think that this reduced fee is fair, but it is not. We do not take this water from the water shed; it just passes past our fish and continues downstream, on most farms raising fish the water going down stream is cleaner than when it came in. Fish farms in Wisconsin truly do raise a good product, and do not take from the interment. This fee will hurt our business, and all of Aquaculture. I would like it if these rules could be reviewed.

Department Response: The comments refer to the annual water use fee imposed pursuant to section 281.346 (12), Wis. Stats., and Ch. NR 850, Wis. Adm. Code. Revenue from the water use fee supports Great Lakes Compact implementation in Wisconsin. The Great Lakes Basin-specific fee to which the commenters refer is a graduated fee imposed on persons located in the Great Lakes Basin who withdraw in excess of 50 million gallons per year. The fee is capped at \$1,000 for small businesses and at \$9,500 for others. To hit the \$9,500 cap, a person must withdraw at least 1.8 billion gallons of water per year. A \$1,000 fee applies to withdrawals in excess of 300 million gallons. As noted, the fee has already been capped at \$1,000 for small businesses. The only small businesses known to withdraw water in annual volumes exceeding 300 million gallons are aquaculture operations.

Land Division

Comments: I just read that Mr. Walker is backing the early T zone. I just want to say that he now as lost my support in the Election.

Early hunt and youth hunt get rid of both of them... it ruins bow hunting for the rest of the year. Less bows sold etc.

Department Response: On August 24, 2012 Governor Scott Walker suspended the October 4-day deer gun hunt in Wisconsin's south central Chronic Wasting Disease zone. Wisconsin held its first 4-day October hunt in 1996. Legislation signed by Governor Walker in 2011 eliminated the 4-day October gun hunt outside the CWD management zone, along with the unpopular Earn-a-Buck regulation. Under this legislation the 4-day October gun deer hunt could only occur if an emergency rule was ultimately approved by the Governor.

Comment: All hunting affected businesses from sporting goods stores to taverns and restaurants. Allow for baiting of coyotes. You can bait deer and bear. It just doesn't make sense.

Department Response: The department is concerned about the potential of large, highly visible meat or carcass baits causing negative images of hunting and in direct conflict with carcass disposal regulations administered by other agencies. Baiting in general also brings with it concerns of animal to animal contact, disease spread, and on public lands, territorial issues between hunters. However, in order to improve opportunities for coyote hunting, the department recently enacted rules related to the coyote hunting season in Wolf Management Zone 1. The coyote hunting season had been closed at times when firearm deer seasons are open in Wolf Management Zone 1 since 1987. This rule opens the coyote season.

Comment: Sales of crossbows and accessories, also variety and appeal make hunting more fun, i.e. felons can deer gun hunt with a crossbow? Sell more tags? Crossbows should be allowed to be used by all hunters during the 10 day deer gun season. Safer, more skill required aka harder, why not allow them?

Department Response: On April 6, 2012, the governor signed Act 252 which allows the use of crossbows for hunting during seasons where firearm hunting is allowed.

Comment: Out of state landowners (even those that were born and raised in WI) get no break on hunting/fishing licenses. Hundreds of dollars per landowner per year spent on inflated hunting and fishing licenses could be better used to stimulate struggling... small businesses in the vicinity of where the property is. The bottom line is less spending on licenses = more spending at local businesses.

Department Response: Hunting and fishing license fee increases are not being requested during the next budget cycle which will hold-the-line on non-resident costs. Besides generating tourism activity that benefits the economy, hunting and fishing are a homecoming for many residents' families. Wisconsin's non-resident fees are comparable to or lower than surrounding states. Wisconsin's \$160 non-resident gun deer license compares to \$426 in Iowa, \$141 in Minnesota, \$138 in Michigan, and \$300 in Illinois.

Comment: Threat to sell DNR land, parks and/or services reduce benefits from tourist and recreational activities, less open/green spaces for children and healthy outdoors. Keep Department land off privatization and corporate business

Department Response: Department's land acquisition program and properties are fundamental to the quality of life in this state. They are the foundation of our \$13 billion tourism and a significant part of our \$20 billion forestry industries. They provide the lands which make our treasured outdoor traditions – like hunting – possible. And Wisconsin's bipartisan Stewardship program, which enjoys widespread public support, is the key to assuring we have the outdoor places Wisconsin needs. That's why is it important to protect the support Stewardship enjoys. So what about ideas to sell Department land to fund management and access costs? Selling specific parcels of Department land is nothing new. Acquisitions come as a package and sometimes include land that lies outside project boundaries. Department has traditionally looked at these parcels as a great tool to trade for something more needed for conservation. Sometimes they've been

sold. There are protections. Any land sold by Department has to be declared as no longer needed for conservation purposes and has to be approved by the Board. And statute dictates where the money from the sale goes – either to pay off Stewardship debt or into a fund to pay for future acquisitions, so we can't use the proceeds for management costs.

Comment: Turkey Registration over phone. Being a registration station, the decrease in foot traffic has been significant. In turn, sales are down dramatically. I highly doubt you would go back to registering Turkeys at stations, but please keep this in mind for deer registration.

Department Response: Thank you for sharing this with us. Electronic registration of deer is something that has also been suggested. We will make sure that the benefits of the current registration requirements are considered when future decisions are made. For now, in-person registration of deer continues to be important to gather accurate harvest information as well as deer-age information that is collected at a certain registration stations.

Air, Waste, and Remediation & Redevelopment Division

Comment: Regarding the Mining Project in Northwest WI---The Department permitting process is too long. Reduce the time for Department approval.

Department Response: Legislation was and may again be introduced to reduce Department review times on mining proposals. The time the Department needs for review is heavily influenced by the quality of the information provided by the applicant and the environmental sensitivity of the proposed mine location.

Comment: YOU seem to think that clerks in local government have nothing else to do except do your recycling paperwork. Show at least a little bit of consideration for us and do your own paperwork, do NOT expect us to do it for you.

Department Response: Annual reporting of amounts of material recycled, costs incurred, and services offered by each RU is required in code. Department has taken a number of steps to reduce the burden on local government. However, the information we request is needed to determine the effectiveness of individual RUs and of the Wisconsin Recycling Program as a whole.

Comment: e-Cycle Wisconsin has allowed our business to create jobs by encouraging recycling and resource use of electronic waste within Wisconsin. Greater enforcement of this law is necessary.

Department Response: Now that this new program is up and running, the Department intends to devote more time to enforcement aimed at ensuring a level playing field.

Comment: NR 407.04 - Those facilities who have an operation permit and add a unit that is exempt from construction permitting, are required to submit their operation permit revision forms before beginning construction. That can be a tight timeline in some cases, and may delay construction unnecessarily. If the submittal date was "prior to beginning any operation, including initial testing/shakeout operations" or similar language, that would give these

companies a little more time to react to the application requirements. To make it more directed at small business, this could be limited to minor source facilities (SMs and Minors only).

Department Response: The Department is currently developing a scoping statement for a permit streamlining rule package, and this suggestion will be considered for inclusion in that package.

Comment: NR 445 - Makes permitting and compliance difficult with little environmental benefit. Require compliance with Federal hazardous air pollutant regulations and remove NR 445 completely.

Department Response: The Department has considered changes to ch. NR 445, Wis. Adm. Code, to address the interface between this rule and the federal National Emission Standards for Hazardous Air Pollutant (NESHAP) rules before. Most recently, the Department exempted hazardous air contaminants emitted by emission units, operations, or activities that are regulated by an emission standard under a NESHAP from regulation by ch. NR 445, Wis. Adm. Code. While it may seem sensible to delete this regulation, ch. NR 445, Wis. Adm. Code, is a health based standard, while the federal NESHAPs are technology-based standards. Chapter NR 445, Wis. Adm. Code, allows for the fact that not all hazardous air pollutants have the same acute or chronic health effects at the same concentrations. The federal NESHAPs do not discriminate directly on the toxicity of the pollutants. The Department has opted to retain ch. NR 445, Wis. Adm. Code, for those situations where a federal NESHAP does not directly limit a hazardous air contaminant, in order to protect public health and the environment.

Comment: NR 422.04 is not meaningful and is a huge burden on printing operations using mostly water-based technology. Establish proper variances for applicable gravure printing.

Department Response: Section NR 422.04, Wis. Adm. Code, establishes methods of compliance for facilities subject to any of the volatile organic compound (VOC) control requirements in ch. NR 422. These VOC control requirements are referred to as reasonably available control technology (RACT). Use of water-based ink technology (or low solvent content technology) is specifically mentioned as an acceptable method of compliance. The Department would need additional clarification from the commenter to understand and address their concern adequately.

Variances from RACT VOC requirements (including those for rotogravure printing operations) are available under procedures established under s. NR 436.05. The Department is willing to consider any input on these procedures the commenter would choose to provide.

Comment: Burning of tires – Wastes warden’s time, tax payer’s money when they can do little except refer to DOJ for enforcement. Allow wardens to enforce with citation rather than have DOJ enforce.

Department Response: This comment supports the provision of an additional enforcement mechanism for DNR. This is outside the scope of the Retrospective Rule Review effort, and will not be addressed further here.

Comment: Smoke testing gravel pit equipment – Extra expense and time. Most of the fugitive dust settles back onto the surface of the gravel pit and never leaves the site. Should only be necessary if equipment is set up on property line.

Department Response: This comment seems to address both fugitive dust and emission testing regulations. These state code provisions in NR 419 and NR 439 incorporate federal regulations and cannot be eliminated by Wisconsin.

Comment: NR 422.142 and 422.143 - A number of commenters cited these rules affecting lithographic printing and associated exemptions as a concern to small business. Comments included:

- NR 422.142 and 422.143 conflict with each other, and is causing stack testing issues with the registration operation permit (ROP-C) requirements for lithographic printers. Rewrite or combine as one rule.
- This testing requirement (s. NR 422.142(5)(b)(2), Wis. Adm. Code) is not required by EPA's control technology guidance (CTG) for offset lithography and has no lower cutoff for small sources. Delete this requirement.
- This testing requirement (s. NR 422.143(7)(b)(2), Wis. Adm. Code) has no cutoff for small sources and is not required by EPA in the CTG. Delete it.
- Several important parts of each of the rules (ss. 422.142 and 422.143, Wis. Adm. Code) conflict with each other and there are differing requirements. Combine the rules so that only one rule applies and revise it so that it is consistent with EPA's CTG.

Department Response: These comments seek revisions to the rules rather than their elimination. The Department is aware that the current rule structure in ss. NR 422.142 and 422.143 has caused some confusion and concern, and has therefore already initiated the preparation of a scoping statement to streamline these rules. The Department will evaluate each of these comments in the context of this effort. These are RACT (reasonably available control technology) rules, and changes to the rules will need to include an anti-backsliding demonstration and will require SIP approval by EPA.

Comment: NR 424.03 - It imposes a significant burden on small business due to the extremely low threshold that is below the air permit threshold. Delete the requirement or revise the threshold so it is consistent with air permit thresholds.

Department Response: The commenter included reference to ss. NR 424.031 and 424.032, which the Department assumes are intended to be references to s. NR 424.03 (1) and (2). Currently, the Department is preparing a scoping statement to develop a rule cleanup package. The Department will evaluate this comment for inclusion in this package. These are RACT (reasonably available control technology) rules, and changes to the rules will need to include an anti-backsliding demonstration and will require SIP approval by EPA.

Comment: NR 419.02(11) - It [the definition of maximum theoretical emissions] is a RACT applicability threshold that is not consistent with EPA's PTE definition and is not necessary. Delete the MTE definition and need to use it for applicability determination.

Department Response: The commenter is correct in that the definition of maximum theoretical emissions in s. NR 419.02 (11) is used for establishing applicability of certain RACT requirements. However, it was developed in direct response to deficiency

comments from EPA and is currently approved by EPA as part of the ozone state implementation plan (SIP). In developing and amending state RACT requirements, the Department must be consistent with EPA guidance to ensure EPA's approval. If the commenter is aware of and can provide specific instances where EPA guidance provides for alternative applicability criteria, the Department will take such comments under advisement.

Comment: NR 422.07 - There is not an easy way to demonstrate compliance (with s. NR 422.07, Wis. Adm. Code) if a source does not have a stack or a stack that meets requirements.

Department Response: NR 422.07 establishes VOC emission control requirements for paper coating operations. Most facilities comply with these requirements by using coatings with a VOC content less than the applicable emission limitation of 2.9 pounds per gallon, excluding water. If the facility chooses to use coatings containing more than 2.9 pounds per gallon of VOCs, excluding water, other compliance options are available including the installation of control equipment such as an incinerator. Use of such control devices requires testing of the control device exhaust to ensure adequate VOC destruction is achieved to demonstrate compliance. Since no contact information was provided, the commenter may want to contact the Department Air Management program directly to discuss options available.

Appendix B – Phase 1 Recommendations

In the May 2012 Phase 1 report, the Department recommended repeal of **eleven** obsolete rules and modification of **two** rules as follows.

These recommendations meet the project criteria. None of these recommendations contravenes the intent of the underlying state statute, state constitution, federal regulation or federal mandate. None of these recommendations will result in a negative impact on public health or the environment. Repealing obsolete rules does not have a direct impact on small business, however indirectly it may serve to reduce the burden for small business simply by reducing the number of rules on the books.

1. Zones of Infestation of Forest Pests, ch. NR 35, Wis. Adm. Code.
2. Small Business Administration Tree Planting Program, s. NR 47.30, Wis. Adm. Code.
3. Forestry Research and Development Grants, s. NR 47.93, Wis. Adm. Code.
4. Establishment of Coniferous Plantations, s. NR 1.22, Wis. Adm. Code.
5. Horicon Intensive Management Zone, s. NR 10.12(4)(a), (b), and (c), Wis. Adm. Code.
6. Lake Protection Grants, ch. NR 60, Wis. Adm. Code.
7. Discharges of Organic and Inorganic Mercury, ch. NR 100, Wis. Adm. Code.
8. Indirect Source Air Permit Fee, s. NR 410.03(3), Wis. Adm. Code.
9. State Market Development Priorities for Recycled and Recyclable Materials, ch. NR 543, Wis. Adm. Code.
10. Waste Tire Removal and Recovery, ch. NR 555, Wis. Adm. Code.
11. Contaminated Site Discovery, Screening, and Ranking, ch. NR 710, Wis. Adm. Code (except ss. NR 710.03(1), 710.05, and 710.09).

In addition, the Department recommended modifying **two** rules, s. NR 19.001(2), Wis. Adm. Code, pertaining to miscellaneous fur, fish, game and outdoor recreation; and s. NR 546.04, pertaining to the target recycled content of newspaper.

Additional information about these recommendations is provided below.

1. Zones of Infestation of Forest Pests, ch. NR 35, Wis. Adm. Code.
This rule identified designated areas as established zones of infestation of the jack pine budworm. This rule is obsolete and no longer needed. Instead, the Department issues an order under the authority and procedures established in s. 26.30(7), Wis. Adm. Code.
2. Small Business Administration Tree Planting Program, ss. NR 47.30 through 47.40, Wis. Adm. Code.
This rule established the framework for implementation of a federal grant program that ended in 1995. There have been attempts to renew the authorizing federal legislation, but they have failed. Since the federal grant no longer exists, this administrative rule is no longer needed.
3. Forestry Research and Development Grants, s. NR 47.93, Wis. Adm. Code.
This rule established the framework for implementation of a grant program that was authorized for only one year and is now expired. The authorizing statute has since been repealed.

4. Establishment of Coniferous Plantations, s. NR 1.22, Wis. Adm. Code.
This rule directs the Department to encourage the establishment of coniferous plantations. It is now obsolete. This rule does not have a direct impact on small business.
5. Horicon Intensive Management Zone, s. NR 10.12(4)(a), (b), and (c), Wis. Adm. Code
In the past, this rule served to ease crowding by distributing hunters in a heavily hunted area adjacent to the Horicon wildlife refuge. This rule is no longer needed and has become obsolete with the elimination of the Horicon Intensive Management Zone (HIMZ) in 2006. The hunting restrictions in the HIMZ were initiated in 1961 during an era when the Horicon Marsh was the primary location for migrating Canada geese in Wisconsin. The high concentrations of geese in the refuge and hunter interest created a firing line of hunters on private lands adjacent to the refuge. It was believed that this hunter behavior compromised safety and the hunting experience. The restrictions included limiting the number of goose hunting blinds, hunters per blind, the spacing of blinds and the minimum distance from the refuge boundary where hunting could occur. These restrictions provided a quality, controlled hunt that was enjoyed by many hunters. However, as the Canada goose fall populations have increased, good goose hunting opportunities have developed across the state. Because of the expanded opportunities for goose hunting today, the HIMZ was no longer needed.
6. Lake Protection Grants, ch. NR 60, Wis. Adm. Code.
This rule establishes procedures for projects undertaken by lake protection and rehabilitation districts applying for state technical and financial aid. This rule is obsolete, the grants have not been implemented under this chapter in over twenty years. This rule has been superseded by chs. NR 190 and 191 Lake Protection and Classification Grants.
7. Discharges of Organic and Inorganic Mercury, ch. NR 100, Wis. Adm. Code.
This rule establishes limits on the discharge of organic and inorganic mercury compounds to waters of the state. These limits are obsolete. Current water quality based limits for mercury required by other rules are in all cases more restrictive than those contained in this rule.
8. Indirect Source Air Permit Fee, s. NR 410.03(3), Wis. Adm. Code.
This rule establishes a fee for a certain type of air permit, an indirect source permit. These permits were intended to help assure attainment of carbon monoxide ambient air quality standards. Wisconsin is in attainment with those standards and carbon monoxide levels are well below the standard. This indirect source permit program was recently ended when ch. NR 411, Wis. Adm. Code was repealed. However, these rules are approved as part of the Wisconsin State Implementation Plan (SIP), so they remain enforceable by the US EPA until removed from the SIP. So in addition to repeal, we will need to take steps to remove these rules from the Wisconsin SIP.
9. State Market Development Priorities for Recycled and Recyclable Materials, ch. NR 543, Wis. Adm. Code.
This rule establishes a priority system for certain specified grants, rebates, and loans for the development of markets for recycled materials. The programs referenced in this rule have all been repealed, so this rule is obsolete.
10. Waste Tire Removal and Recovery, ch. NR 555, Wis. Adm. Code.
This rule establishes mechanisms for using the state waste tire removal and recovery program funds. The statutory authority for this program was repealed over 15 years ago.

Program funding for waste tire removal no longer exists. This rule is obsolete. If a tire removal and recovery program is needed in the future, statutory or code language can be developed at that time to accomplish the purposes of the new program.

11. Contaminated Site Discovery, Screening, and Ranking, ch. NR 710, Wis. Adm. Code (except ss. NR 710.03(1), 710.05, and 710.09).

This rule establishes procedures that the Department can use to evaluate the overall priority for addressing investigation and clean up of contaminated sites. The statutes have been modified to eliminate the need for portions of the rule. The process set forth in this chapter is no longer used. Repeal as described above is underway, with public hearings scheduled in May 2012.

In addition, the Department recommends amending **two** rules as follows.

First, remove a reference to a repealed law in a rule pertaining to miscellaneous fur, fish, game and outdoor recreation, s. NR 19.001(2), Wis. Adm. Code. This subsection creates a definition for the word “application”, including a cross reference to a statute that has been repealed. Specifically, amend this subsection as follows, "Application" means a written request for an approval ~~required to do business in this state as defined in s. 560.41 (2), Stats.,~~ and completed in the form required by and acceptable to the department and accompanied by additional plans, information and the appropriate fee.” The cross reference is not necessary; amending the rule to remove it will have no impact other than removing a cross reference to a repealed statute.

Second, update the target newspaper recycled content levels to be consistent with statute provisions. The current targets in s. NR 546.04, Wis. Adm. Code, have been superseded by different statutory targets in s. 287.31(3)(c), Wis. Stats. Specifically, amend this section as follows, “Each newspaper publisher shall meet or exceed the target postconsumer recycled content or pay a fee for not meeting the target. The minimum target recycled contents are: 10% in 1992 and 1993, 25% in 1994 and 1995, 35% in 1996 and 1997, ~~40%~~ 33% in 1998 and ~~1999,~~ ~~45% in 2000 and thereafter.~~” This makes the rule language consistent with statute.