

Guidance for Safe Management of Household Pharmaceuticals

The Wisconsin Department of Natural Resources (DNR) has issued an enforcement discretion memorandum that conditionally exempts household pharmaceutical waste collected at household pharmaceutical waste collection facilities or events – including those collected, confiscated or otherwise taken into possession by law enforcement officials – from the state's hazardous waste and solid waste rules. The memorandum was first issued in June 2006, and it was revised and reissued in 2011.

Under the hazardous waste rules, NR 600 series, Wis. Adm. Code, the department regulates collected household waste if the hazardous waste in this waste stream is separated from other household solid waste and managed at a household hazardous waste collection facility. The United States Environmental Protection Agency (EPA), however, excludes all household waste from hazardous waste regulation. As such, exercising the enforcement discretion does not render Wisconsin's hazardous waste program less stringent than the counterpart federal program. Furthermore, the memorandum sets out management standards that must be met; collected household pharmaceuticals not managed in accordance with the standards are subject to all applicable requirements under Wisconsin solid and hazardous waste rules.

CORRESPONDENCE/MEMORANDUM

DATE: May 26, 2011 FILE REF: [Click here and type file ref.]

TO: Ed Lynch, Hazardous Waste Management Section Chief

FROM: Pat Chabot, Hazardous Waste Program Coordinator

SUBJECT: Enforcement Discretion (Extended)–Hazardous Waste and Solid Waste Requirements
Pertaining to Collected Household Pharmaceutical Waste

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The Wisconsin Department of Natural Resources (DNR) has issued an enforcement discretion memorandum that conditionally exempts household pharmaceutical waste collected at household pharmaceutical waste collection facilities or events, including those collected, confiscated or otherwise taken into possession by law enforcement officials, from the state's hazardous waste and solid waste rules.

Under the hazardous waste rules, NR 600 series, Wis. Adm. Code, the department regulates collected household waste if the hazardous waste in this waste stream is separated from other household solid waste and managed at a household hazardous waste collection facility. The United States Environmental Protection Agency (EPA), however, excludes all household waste from hazardous waste regulation. As such, exercising the enforcement discretion does not render Wisconsin's hazardous waste program less stringent than the counterpart federal program. Furthermore, the memorandum sets out management standards that must be met. Collected household pharmaceuticals not managed in accordance with the management standards are subject to all applicable requirements under Wisconsin solid and hazardous waste rules. This memorandum will remain in effect until DNR modifies, rescinds or codifies it.

Background

The traditional methods for managing household pharmaceutical waste (i.e., flushing them down the toilet or throwing them in the trash) have raised concerns about the potential for these substances to accumulate in surface and ground water and to otherwise harm human health and the environment. The risk of harm can be reduced by encouraging the collection of household pharmaceutical waste for better management.

Some pharmaceuticals are controlled substances and are strictly regulated by the U.S. Drug Enforcement Administration (DEA). After controlled substances are dispensed by a pharmacy, only law enforcement officials are allowed to accept them for management, including when they are brought to household collection events. Law enforcement officials must maintain custody of the controlled substances at all times, ending with witnessed destruction. As a result, law enforcement officers participating in household pharmaceutical waste collections will likely want to take the collected household controlled substances back to their offices to securely store them along with other, confiscated controlled substances prior to the witnessed destruction.

Under the hazardous waste rules, NR 600 series, the Department regulates collected household waste if the hazardous waste in this waste stream is separated from other household solid waste and managed at a household hazardous waste collection facility. This is more stringent than the counterpart federal regulations, which completely exempt household waste from hazardous waste regulation. Many other states follow the federal regulations and completely exempt household waste from hazardous waste regulation.

Only a relatively small proportion of discarded household pharmaceuticals would actually be subject to regulation as a hazardous waste in Wisconsin. However, because household pharmaceutical waste is very diverse, and because of the time and resources required to determine which of it is hazardous waste, collectors or collection events may be inclined to classify all of the pharmaceuticals they take in as hazardous waste. This creates other potential problems that could discourage collection altogether, including increasing costs and limiting treatment or disposal options (there are no commercial hazardous waste landfills or incinerators in Wisconsin).

Requirements under the solid waste rules, NR 500 series, might also discourage the collection of household pharmaceutical waste, including the following for solid waste storage facilities: initial site inspection requirements, location criteria, obtaining an operating license, and certifying compliance or paying compliance inspection fees.

Under the Wisconsin hazardous waste rules, unless the collected household controlled substances are screened to exclude those that are also hazardous waste, the law enforcement offices to which these are taken would be regulated as permanent household hazardous waste collection facilities. As a result, household pharmaceutical waste collections may be discouraged by the inability or reluctance of law enforcement agencies to comply with hazardous waste requirements.

Action

The Waste and Materials Management Program would like to encourage the safe collection and management of all household pharmaceutical waste. Accordingly, the Department should exercise discretion and refrain from enforcing hazardous waste requirements pertaining to pharmaceuticals that are collected at household pharmaceutical waste collection facilities or events, including those collected, confiscated or otherwise taken into possession by law enforcement officials.

Any household pharmaceutical waste that is excluded from hazardous waste regulation under this memo would still be subject to solid waste regulation. As such, the Department should also exercise discretion in enforcing solid waste requirements pertaining to pharmaceuticals that are collected at household pharmaceutical waste collection facilities or events, including those collected, confiscated or otherwise taken into possession by law enforcement officials.

Enforcement discretion for the requirements of the NR 500 and NR 600 series may be exercised if the following management practices will met:

1. Controlled substances will be managed according to DEA requirements.
2. Reasonable precautions will be taken to prevent theft of or accidental exposure to collected household pharmaceuticals.
3. Sharps are presumed to be infectious waste in Wisconsin and are regulated under ch. NR 526. Therefore all sharps, including those associated with household pharmaceuticals, will be managed in accordance with ch. NR 526.
4. Collected household pharmaceuticals will be collected, stored, transported and managed in a safe and nuisance free manner and to prevent releases to the environment.

Practices necessary to ensure this include, but are not limited to, the following:

- a. Collected household pharmaceuticals will not be disposed in a publicly owned treatment works or other wastewater treatment facility.

b. To the extent possible, and with due consideration to the compatibility of the waste stream to a particular management method, pharmaceuticals will be destroyed so as to render them unrecoverable in the future, and in order to minimize their potential impact upon the environment. Incineration will be done in accordance with state air management requirements and any associated permits regulating the facility. Open burning of pharmaceuticals or plastic containers will not be conducted under any circumstances.

c. Operators of household pharmaceutical collection facilities and events will verify that the facilities or entities employed to manage collected pharmaceuticals are permitted or otherwise authorized to accept and manage this waste, and will ensure that the final disposition/destruction of all collected household pharmaceuticals can be ascertained.

The exercise of enforcement discretion described in this memo will provide relief from the solid and hazardous waste requirements in order to encourage the safe and controlled management of household pharmaceuticals. Collected household pharmaceuticals not managed in accordance with the above conditions will be subject to all applicable regulatory requirements, including the Wisconsin solid and hazardous waste rules.

Exercising this enforcement discretion will not jeopardize Wisconsin's RCRA hazardous waste program authorization. The US EPA excludes all household waste from hazardous waste regulation; therefore, Wisconsin's hazardous waste program will not become less stringent than the counterpart federal program.

The Department will continue to evaluate state policy on an ongoing basis and may modify or withdraw this memo, in whole or in part, at any time.

DISCLAIMER

This document is intended solely as guidance, and does not contain any mandatory requirements except where reference is made to requirements found in statute or administrative rule. 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.

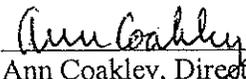
Approved:

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05/31/11