



WISCONSIN DEPARTMENT OF NATURAL RESOURCES NOTICE OF FINAL GUIDANCE & CERTIFICATION

Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.

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WA-19-1755-C

DOCUMENT TITLE

Guidance for Landfill Tonnage Fee Exemptions Under 2013 Wisconsin Act 301

PROGRAM/BUREAU

Waste and Materials Management

STATUTORY AUTHORITY OR LEGAL CITATION

Chs. 287, 289 Wis. Stats.

DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS)

September 9, 2019

DATE FINALIZED

October 4, 2019

DNR CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

October 4, 2019

Signature

Date

Guidance for Landfill Tonnage Fee Exemptions Under 2013 Wisconsin Act 301

PUB-WA-1755 2017



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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 Department of Natural Resources (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 Jan. 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 Exemption 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 actual residue generated, but 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 for recycling,
 - 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
- 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.

When determining what materials count towards your 10 percent or 30 percent residue, include the following: contaminated recyclables that were not intentionally or neglectfully contaminated, non-recyclable materials that arrive in recycling loads, residuals generated by operations and other materials that cannot be recycled that have been separated from recyclable materials by being run through a MRF's processing line or that have been otherwise separated from materials which will be recycled or reused.

(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 residues should provide a written certification to the operator of each landfill to which they will claim fee exemptions for their residues. 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 residues to the landfill for which fee exemptions will be claimed. Because the reporting period is quarterly, the certification should be made quarterly as well.

MRF 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 residues from the fee exemptions until the DNR has documented a return to compliance.

(2) Determining eligible waste: Eligible waste is determined by the amount of residue generated by a qualified MRF in a quarter with a cap based on the ratio of the weight of the residues produced by the facility to the total weight of material accepted by the facility, expressed as a percentage. The cap for self-certified 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 their eligible Category 30 or 31 waste as of the end of each calendar quarter (March 31, June 30, September 30 and December 31). They should report the eligible Category 30 or 31 waste to the operator of each landfill where their facility's residues are disposed of as Category 30 or 31 material. 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 residues 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 residues¹ generated by the Qualified Materials Recovery Facility during the reporting quarter

¹ Residue weights are typically measured at the landfill. A facility that mixes its qualified MRF residues with other waste prior to transport to a disposal facility may use a calculated residue weight obtained by subtracting the non-residue weight in the load.

- b. Total weight of material accepted by the Qualified Materials Recovery 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 exceed the cap that quarter. Waste residues that exceed the 10 percent cap should be reported as Category 1 wastes. Waste residues that exceed the 30 percent cap should be reported as Category 25 wastes.

Note that under Act 301, a MRF operator who claims the exemption for residue that exceeds their eligible category 30 or 31 waste by exceeding the residue generated that quarter or the applicable quarterly residual rate 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

Chapter 289, Wis. Stats., 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.

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, Jan. 1, 2015.

Contact DNRWasteMaterials@wisconsin.gov for further information.

Disclaimer: This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

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