

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date DRAFT - 09/12/2024
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 520 Solid Waste Management Fees And Financial Responsibility Requirements	
4. Subject Revisions to provide an alternative method for a municipality to establish proof of financial responsibility required for a solid waste disposal facility. WA-08-24	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected N/A
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0. This rule provides an optional method of providing owner financial responsibility (OFR) at municipally owned solid waste disposal facilities and could provide net economic benefits for some facilities. Whether a municipality chooses to use the new Alternative Method or must maintain their current Standard Method, the cost of OFR will remain the same for the facility, but the facility may save costs previously expended on third-party fees.	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule 2023 Wisconsin Act 107 (Act 107), effective March 14, 2024, established requirements relating to an alternative method of establishing owner financial responsibility (OFR) at municipally owned solid waste disposal facilities and directed the department to promulgate rules. Act 107 establishes in statute a new "Alternative method of establishing financial responsibility for solid waste disposal facilities" (Alternative Method) [s. 289.41 (3m), Stats.]. This Alternative Method is the municipal equivalent to the Net Worth Method that currently may only be used by private facilities. Under Act 107 and this rule, municipalities may meet their financial responsibility requirements for a solid waste disposal facility by applying to the department and satisfying the minimum financial requirements established by statute and rule. In addition to any requirements established by this rule, Act 107 outlines the following as necessary for establishing alternative municipal financial responsibility: <ul style="list-style-type: none">• If the municipality has any outstanding, rated, general obligation bonds, none have been rated lower than "Baa" as issued by Moody's Investors Service or "BBB" as issued by Standard & Poor's Corporation.• The municipality's most recent audited annual financial statement shows a ratio of cash plus marketable securities to total expenditures of not less than 0.05, and a ratio of annual debt service to total expenditures of not greater than 0.20. If the department determines that a municipality does not meet the financial responsibility requirements established by statute and this rule, the municipality shall apply to establish proof of financial responsibility through one of the standard methods outlined in ch. NR 520, Wis. Adm. Code. The municipality must establish proof of financial responsibility within 45 days of the department's determination.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The department will contact the following entities to solicit comments on the economic impact of the proposed rule: <ul style="list-style-type: none">• All active municipal landfill owners and operators.	

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- Trade groups including the Solid Waste Association of North America–Badger Chapter, National Waste and Recycling Association–Badger Chapter, Wisconsin Counties Solid Waste Management Association, and the department’s Waste and Materials Management Study Group.
 - Email notification of the proposed rule and this economic impact analysis will be sent to all people registered to receive information through the department’s email lists associated with solid waste news.
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13. Identify the Local Governmental Units that Participated in the Development of this EIA.

The department will solicit comments and local governmental unit participation on the economic impact of the rule by notifying the Wisconsin Counties Association and the Wisconsin Counties Solid Waste Management Association, League of Wisconsin Municipalities, and Wisconsin Towns Association.

14. Summary of Rule’s Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State’s Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule is not expected to have a direct effect on specific businesses, business sectors, public utility rate payers or the state’s economy. The rule would only impact local government units.

The option for municipalities to utilize the Alternative Method will likely have a minimal positive effect on the municipalities that could be eligible for and choose to provide OFR via the Alternative Method.

There are 74 OFR mechanisms held by 33 municipalities that could potentially be impacted by the implementation of this rule. It is important to note that regardless of whether a municipality chooses to use the new Alternative Method or must maintain their current Standard Method, the cost of OFR will remain the same for the facility. The major difference will be that the new method does not require money to be set aside in a separate mechanism. The municipality will have the choice of which OFR mechanism to use for a facility it owns. Either way it is the municipality’s responsibility to fund the appropriate amount of OFR for the duration required in statute and administrative code.

The immediate impacts will come from the release of current OFR mechanisms after municipalities meet the criteria and pass the financial test to use the Alternative Method. The release of the Standard Method mechanisms will have two impacts.

- Release of funding from escrows, trust accounts or deposits with the department will result in a one-time distribution of those funds directly to the municipality for which the funds are held. The total estimated release of these funds if all municipalities were to pass is approximately \$139 million. While these funds will no longer be held in third-party accounts, the municipalities will still be responsible for bearing the costs of their OFR requirements; therefore, it is estimated that this will be a net zero gain or loss over the duration of the OFR period.
- Release of funding from escrows, trusts, letters of credit, bonds and insurance will no longer require municipalities to pay fees to a third party. No fees are charged on deposits with the department. While the department is not directly involved in establishing these mechanisms or determining what fees are charged, it is estimated that fees range from 1% to 3% of the total amount of the mechanism per year. Using these figures, it is estimated that somewhere between \$1,550,000 and \$4,640,000 total might be saved annually if all the potentially affected municipalities were to pass the financial test under the new Alternative Method. This can be viewed as a direct cost saving to the municipalities.

If a municipality were to choose to utilize and pass the financial test under the Alternative Method option, annual fees to secure an independent certified accountant’s opinion would be required. While the department is not engaged in this portion of the analysis, it is estimated that the cost will be about \$5,000 per year per municipality. This will be a direct expense to each of the municipalities, but compared to the cost savings from paying fees, it is viewed as a minimal impact. It is further estimated that many municipalities already receive independent audits by certified accountants and that these are often bid out by the municipality in multi-year contracts.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

As noted above, municipalities that are able to use the Alternative Method for OFR would remain responsible for bearing the costs of their OFR requirements, but they could set aside or invest those funds as they see fit rather than using a Standard Method OFR mechanism. Elimination of third-party fees is expected to provide a net economic benefit for these facilities.

There are limited alternatives to this rule that is required by Act 107, which also includes the directive to use existing statute and federal code to develop rule elements.

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16. Long Range Implications of Implementing the Rule

Any solid waste facility, private or municipally owned, using the Net Worth Method or Alternative Method, presents an environmental and financial risk to Wisconsin taxpayers and the department when funds that need to be accessed by the department are not set aside by the facility for OFR. The department cannot use OFR set aside for one facility to fund another facility's closure or long-term care costs. Entities that no longer meet criteria for an Alternative Method financial test may also not have the resources to establish OFR via another mechanism, which could result in a facility that does not have adequate funds set aside, as required by law, to pay for closure and long-term care costs.

The lack of authority for municipalities to currently use a Net Worth Method that is afforded to private companies is inequitable. However, Act 107 introduced a potential inequity among municipalities, where some are able to pass an Alternative Method financial test and others are not.

Municipalities that are able to use the Alternative Method for OFR would remain responsible for bearing the costs of their OFR requirements, but they could set aside or invest those funds as they see fit rather than using a Standard Method OFR mechanism. Earnings from invested funds could be used to pay for other community needs.

17. Compare With Approaches Being Used by Federal Government

Act 107 directly refers to the inclusion of the federal "local government financial test" as presented in title 40 of the Code of Federal Regulations [40 CFR 258.74(f)]. It specifies that this federal regulation shall act as the framework for this proposed rule. This proposed rule will, at a minimum, meet the federal requirements of a local government financial test, including the processes of financial requirement, public notice, and recordkeeping, among others.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Owner Financial Responsibility or Financial Assurance is required in all neighboring states. Illinois, Iowa, Minnesota, and Michigan allow very similar standard methods to Wisconsin, and also have rules allowing a local government financial test like the one proposed in this rule package.

- Illinois and Iowa have specific state rules that are based on the language in 40 CFR 258.74, analogous to Wisconsin's proposed approach.
 - Michigan directs municipalities to follow 40 CFR 258.74 without additional state rule language.
 - Minnesota does allow a local government financial test, but refers to it as a self-insurance policy, which also requires collateral using one of three approved securities: unsubordinated debentures, municipal bonds, or warrants drawn on the owner's or operator's municipal treasury.
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