

Waiver: 50-foot Setback for Accumulation of Ignitable or Reactive Hazardous Wastes

Guidance on Hazardous Waste Requirements



Introduction

Some generators, especially those located in densely populated areas, may have difficulty meeting the Large Quantity Generator requirement to place containers holding ignitable or reactive waste 50 feet from the site's property lines. In some cases, it may not be possible for an LQG to meet this standard when the width of the site is 100 feet (~30 meters) or less, or when the generator's operations have expanded such that site dimensions physically prevent them from complying with this condition.

Hazardous waste regulations are found in chapters [NR 600-679](#) of the Wisconsin Administrative Code.

To address this issue, the U.S. Environmental Protection Agency included a conditional allowance in the Hazardous Waste Generator Improvements Rule which lets LQGs accumulate ignitable or reactive hazardous waste within 50 feet (~15 meters) from the site's property line, provided the LQG has obtained a written approval from the authority having jurisdiction over the local fire code. Wisconsin has incorporated this provision into s. NR 662.017(1)(a)6., Wis. Adm. Code, effective Sept. 1, 2020.

This publication provides guidance on the conditions of the allowance (waiver) for LQGs and includes recommendations for the AHJ to utilize during the process.

"Authority having jurisdiction," or AHJ, is a term developed by the National Fire Protection Association and has been adopted by several state and local governments – including Wisconsin.

Authority Having Jurisdiction

If an LQG is unable to meet the 50-foot ignitable and reactive buffer requirements under s. NR 665.0176, the facility may be able to obtain a waiver in the form of a written approval from their local AHJ. The AHJ should have:

- a detailed knowledge of the relevant local fire code;
- the ability to evaluate site conditions to determine safe and practical locations for storing the ignitable and reactive wastes; and
- authorization by state or local government to enforce the fire code.

Individuals meeting these requirements typically include fire marshals, fire chiefs, building officials (i.e., inspectors) or other officials designated by the state or local government.

Conditions of the Exemption

Containers holding ignitable or reactive waste may be located within 50 feet from the generator's property if the following conditions are met:

1. Prior written approval was obtained from the AHJ over the local fire code, allowing hazardous waste accumulation to occur within this restricted area.

2. The record of the written approval must be maintained and available for review during inspections for as long as ignitable or reactive hazardous waste is accumulated in this area.
3. The LQG must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. These precautions include:
 - a. The waste must be separated and protected from sources of ignition or reaction including but not limited to the following: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat.
 - b. While ignitable or reactive waste is being handled, the LQG must confine smoking and open flames to specially designated locations.
 - c. “No Smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

Under the Emergency Planning and Community Right-to-Know Act, a facility must notify their Local Emergency Planning Committee of storage and handling of hazardous and toxic chemicals, including the quantity, location, and health and environmental risks of hazardous waste stored within 50 feet of a property line. All 72 counties in Wisconsin have LEPCs, organized in accordance with federal legislation, that are responsible for implementation of EPCRA at the county level.

EPCRA contacts: <https://dma.wi.gov/DMA/wem/preparedness/epcra/epcra-contacts>

Setback Waiver

While the hazardous waste regulations do not outline specific requirements for the setback waiver, the following are recommendations for how to evaluate a facility’s request and what the AHJ can document in the written approval:

1. The length of time hazardous waste can safely be accumulated within 50 feet of the site’s property line;
2. The amount of hazardous waste that can safely be accumulated within 50 feet of the site’s property line;
3. Physical controls such as the fire rating of walls, roof, and doors;
4. Technical controls such as overhead fire control equipment (i.e., sprinklers);
5. Off-site conditions, including:
 - Proximity to populated public areas (e.g., schools, residences, hospitals, playgrounds);
 - Off-site sources of ignition, such as high voltage electrical lines, grinding operations; cutting torches, and equipment or components that radiate heat;
 - Proximity to adjacent properties’ ignitable or reactive waste storage; and
6. The demographics of the community surrounding the area in which ignitable and reactive waste would be stored. The AHJ may choose to use tools such as the EPA’s Environmental Justice and Screening Tool to gain an understanding of the potential impacts on already vulnerable low-income and minority populations in the area. This tool can be found by searching “EJSCREEN” at EPA.gov.

Resources and Contact Information

For more information, including [publications, inspection forms, and administrative codes and statutes](#), go to dnr.wi.gov and search “hazardous waste resources.” Use the *Additional Resources* menu to navigate to specific topics. For staff contact information, go to the [staff directory](#) and enter “hazardous waste requirements” in the subject field, and choose the appropriate county contact.

Mailing address: DNR Waste & Materials Management Program, PO Box 7921, Madison, WI 53707

Email: DNRWasteMaterials@Wisconsin.gov

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***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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