

1983 Assembly Bill 922

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1983 Wisconsin Act 298

AN ACT to repeal 144.441 (4) (e); to amend 144.44 (2) (k), (L), (m) (intro.) and (p), 144.44 (2g) (a) 1 and 2 and (c), 144.44 (2r) (a), 144.44 (2r) (d) 1, 144.44 (3) (e), 144.44 (4) (a), 144.44 (6), 144.441 (2) (b) and (c) and (4) (b), 144.61 (3), 144.64 (2) (a) and 144.64 (2) (e); and to create 144.44 (3) (am), 144.44 (4) (c), 144.62 (8m), 144.645 and 227.064 (6) of the statutes, relating to various changes in the law governing hazardous waste facilities.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 144.44 (2) (k), (L), (m) (intro.) and (p) of the statutes are amended to read:

144.44 (2) (k) *Notification on feasibility report and preliminary environmental impact statement decisions.* Immediately after the department issues a preliminary determination that an environmental impact statement is not required or, if it is required, immediately after the department issues the environmental impact statement, the department shall publish a class 1 notice under ch. 985 in the official newspaper designated under s. 985.04 or 985.05 or, if none exists, in a newspaper likely to give notice in the area of the proposed facility. The notice shall include a statement that the feasibility report and the environmental impact statement process are complete. The notice shall invite the submission of written comments by any person within 30 days after the notice for a solid waste disposal facility or within 45 days after the notice for a hazardous waste facility is published. The notice shall describe the methods by which a hearing may be requested under pars. (L) and (m). The department shall distribute copies of the notice to the persons specified under sub. (4m).

(L) *Request for an informational hearing.* Within 30 days after the notice under par. (k) is published for a solid waste disposal facility, or within 45 days after the notice under par. (k) is published for a hazardous waste facility, any county, city, village or town, the applicant or any 6 or more persons may file a written request for an informational hearing on the matter with the department. The request shall indicate the interests of the municipality or persons who file the request and state the reasons why the hearing is requested.

(m) *Request for treatment as a contested case.* (intro.) Within 30 days after the notice under par. (k) is published for a solid waste disposal facility, or within 45 days after the notice under par. (k) is published for a hazardous waste facility, any county, city, village or town, the applicant or any 6 or more persons may file a written request that the hearing under par. (L) be treated as a contested case, as provided under s. 227.064. A county, city, village or town, the applicant or any 6 or more persons have a right to have the hearing treated as a contested case only if:

(p) *Issuance of final determination of feasibility.* Except as provided under par. (q), if no hearing is conducted under sub. (2g) or (2r), the department shall issue the final determination of feasibility within 60 days after the 30-day or 45-day period under par. (m) has expired.

SECTION 2. 144.44 (2g) (a) 1 and 2 and (c) of the statutes are amended to read:

144.44 (2g) (a) 1. An informational hearing is requested under sub. (2) (L) within the 30-day or 45-day period; or

2. No hearing is requested under sub. (2) (L) within the 30-day ~~time~~ or 45-day period but the department determines that there is substantial public interest in holding a hearing.

(c) *Informational hearing.* The department shall conduct the informational hearing within 60 days after the expiration of the 30-day or 45-day period under sub. (2) (L). The department shall conduct the informational hearing in an appropriate place designated by the department in a county, city, village or town which would be substantially affected by the operation of the proposed facility.

SECTION 3. 144.44 (2r) (a) of the statutes is amended to read:

144.44 (2r) (a) *Applicability.* This subsection applies only if a person requests the treatment of the hearing as a contested case under sub. (2) (m) within the 30-day or 45-day period and has a right to a hearing under that subsection. Any denial of a request for the treatment of the hearing as a contested case received within the 30-day or 45-day period under sub. (2) (m) shall be in writing, shall state the reasons for denial and is an order reviewable under ch. 227. If the department does not enter an order granting or denying the request for the treatment of the hearing as a contested case within 20 days after the written request is filed, the request is deemed denied.

SECTION 4. 144.44 (2r) (d) 1 of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

144.44 (2r) (d) 1. The division of hearings and appeals in the department of administration shall schedule the hearing to be held within 120 days after the expiration of the 30-day or 45-day period under sub. (2) (m).

SECTION 5. 144.44 (3) (am) of the statutes is created to read:

144.44 (3) (am) *Feasibility report; certain facilities.* The department may require the applicant for a hazardous waste treatment or storage facility to submit the feasibility report and the plan of operation at the same time and, notwithstanding pars. (ag), (f) and (g), both the feasibility report and the plan of operation shall be considered at a public hearing conducted under subs. (2), (2g) and (2r), and both are subject to judicial review in a single proceeding.

SECTION 6. 144.44 (3) (e) of the statutes is amended to read:

144.44 (3) (e) *Failure to comply with plan of operation.* Failure to operate in accordance with the approved plan subjects the operator to enforcement under s. 144.47, ~~or, if 144.73.~~ If the department establishes that any failure to operate in accordance with the approved plan for a solid waste disposal facility is grievous and continuous, the operator is subject to suspension, revocation or denial of the operating license under sub. (4). If the operator fails to operate a hazardous waste facility in accordance with the approved plan, the department may suspend, revoke or deny the operating license under sub. (4).

SECTION 7. 144.44 (4) (a) of the statutes is amended to read:

144.44 (4) (a) *License requirement.* No person may operate a solid waste facility or hazardous waste facility unless the person obtains an operating license from the department. The department shall issue an operating license with a duration of one year or more except that the department may issue an initial license with a duration of less than one year. The department may deny, suspend or revoke ~~an~~ the operating license of a

solid waste disposal facility for failure to pay fees required under ss. 144.43 to 144.47 or for grievous and continuous failure to comply with the approved plan of operation under sub. (3) or, if no plan of operation exists with regard to the facility, for grievous and continuous failure to comply with the standards adopted under s. 144.435. The department may deny, suspend or revoke the operating license of a hazardous waste facility for failure to pay the fees required under ss. 144.43 to 144.47 or for failure to comply with the approved plan of operation under sub. (3). If the license application is for a solid waste disposal facility for solid waste resulting from mining operations in existence on May 21, 1978, the department shall make any determination with respect to whether disposal is being undertaken in an environmentally sound manner and shall administer compliance with the licensing requirement of this subsection in a manner which, with respect to nonhazardous solid waste, does not require substantial structural modification of the existing facility, expenditure which is not appropriate for the nonhazardous nature of the waste or interruption of the mining operation.

SECTION 8. 144.44 (4) (c) of the statutes is created to read:

144.44 (4) (c) *Notice; hazardous waste facilities.* Before issuing the initial operating license for a hazardous waste facility, the department shall give notice of its intent to issue the license by all of the following means:

1. Publishing a class 1 notice, under ch. 985, in a newspaper likely to give notice in the area where the facility is located.
2. Broadcasting a notice by radio announcement in the area where the facility is located.
3. Providing written notice to each affected municipality.

SECTION 9. 144.44 (6) of the statutes is amended to read:

144.44 (6) CLOSURE. At least 120 days prior to the closing of a solid waste disposal facility or at least 180 days prior to the closing of a hazardous waste facility, the owner or operator shall notify the department in writing of the intent to close the facility.

SECTION 10. 144.441 (2) (b) and (c) and (4) (b) of the statutes are amended to read:

144.441 (2) (b) *Long-term care responsibility; 30-year.* The owner of an approved mining waste facility or an approved facility which is a hazardous waste disposal facility is responsible for the long-term care of the facility for 30 years after the closing of the facility unless the responsibility is terminated earlier under par. (d). The owner of any an approved facility except an approved mining waste which is a solid waste disposal facility is responsible for the long-term care of the facility for 30 years after the closing of the facility unless the responsibility is terminated earlier under par. (c) or (d).

(c) *Long-term care responsibility; 20-year.* If the plan of operation for an approved facility which is a solid waste disposal facility indicates or if the owner of an approved the facility requests and the department approves, the owner's responsibility for long-term care of the facility terminates 20 years after the closing of the facility unless the owner's responsibility is terminated earlier under par. (d). This paragraph does not apply to the owner's responsibility for the long-term care of either a mining waste facility or an approved facility which is a hazardous waste disposal facility.

(4) (b) *Tonnage fee; certain hazardous waste.* ~~Except as provided under pars. (d) to (h),~~ The tonnage fee imposed by sub. (3) (a) is 15 cents per ton for hazardous wastes other than waste specified under par. (c).

SECTION 11. 144.441 (4) (e) of the statutes is repealed.

SECTION 12. 144.61 (3) of the statutes is amended to read:

144.61 (3) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water in a manner which may permit the hazardous waste or any constituent of the hazardous waste to be emitted

into the air, to be discharged into any waters of the state or otherwise to enter the environment, but this term does not include the generation, transportation, storage or treatment of hazardous waste.

SECTION 12m. 144.62 (8m) of the statutes is created to read:

144.62 (8m) The department may promulgate rules which specify the duration of licenses issued under s. 144.64 (2).

SECTION 12p. 144.64 (2) (a) of the statutes is amended to read:

144.64 (2) (a) The storage of hazardous waste at the generation site by the generator of that waste for a period of less than 90 days is not subject to this subsection. The storage of hazardous waste for a period of less than 10 days is exempt from this subsection if the storage is in connection with the transporting or movement of the hazardous waste ~~between generation sites under a single ownership and accomplished in vehicles owned by the generator.~~ Notwithstanding the exemptions granted under this paragraph, no person may store or cause the storage of hazardous waste in a manner which causes environmental pollution.

SECTION 13. 144.64 (2) (e) of the statutes is amended to read:

144.64 (2) (e) Licenses issued under this subsection may be denied, suspended or revoked for failure to:

1. ~~Failure to pay~~ Pay fees required under ss. 144.43 to 144.47;
2. ~~Grievous and continuous failure to comply~~ Comply with the rules adopted under ss. 144.60 to 144.74; or
3. ~~For grievous and continuous failure to comply~~ Comply with the approved plan of operation under s. 144.44 (3).

SECTION 14. 144.645 of the statutes is created to read:

**144.645 License actions; hearing; public comment.** (1) If the department proposes to deny, suspend or revoke a license for the reasons stated under s. 144.64 (2) (e) 2 or 3, the department shall comply with the procedures specified under this section.

(2) If the department determines that a person licensed under s. 144.64 (2) failed to comply with the rules promulgated under ss. 144.60 to 144.74 or failed to comply with the approved plan of operation under s. 144.44 (3), the department shall give written notice to the person. The notice shall state that the department proposes to deny, suspend or revoke the license and shall inform the person that a hearing may be requested within 45 days after the notice is issued.

(3) If the licensee requests a hearing within 45 days after receiving the notice under sub. (2), the department shall schedule a hearing and give notice of the hearing by publishing a class 1 notice, under ch. 985, at least 45 days prior to the date scheduled for the hearing. If the licensee requests a contested case hearing and if the conditions specified under s. 227.064 (1) (a) to (d) are satisfied, the department shall conduct the hearing as a contested case; otherwise, the department shall conduct the hearing as an informational hearing. There is no statutory right to any hearing concerning the denial, suspension or revocation of a license for the reasons stated under s. 144.64 (2) (e) 2 or 3 except as provided under this subsection.

(4) After the conclusion of any hearing under sub. (3), the department shall issue a public notice containing a copy of the proposed decision and a statement describing the opportunity for public comment during the 45-day period after the notice is given.

(5) If the licensee does not request a hearing within 45 days after receiving the notice under sub. (2), the department shall issue a public notice containing a copy of the proposed decision and a statement describing the opportunity for public comment during the 45-day period after the notice is given.

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(6) The department shall give the notice required under subs. (4) and (5) by all of the following means:

(a) Publishing a class 1 notice, under ch. 985, in a newspaper likely to give notice in the area where the facility is located.

(b) Broadcasting a notice by radio announcement in the area where the facility is located.

(c) Providing written notice to each affected municipality.

(7) At the conclusion of the 45-day period after the department gives notice under sub. (4) or (5), the department shall issue its final decision denying, suspending or revoking the license. There is no statutory right to a hearing concerning the final decision issued under this subsection.

SECTION 15. 227.064 (6) of the statutes is created to read:

227.064 (6) This section does not apply to a decision issued or a hearing conducted under s. 144.645.

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