

Assembly Bill 30

Date published:
July 25, 1967

CHAPTER 83, LAWS OF 1967

AN ACT to amend 59.07 (85), 70.11 (21) (a) and 144.537; and to create 20.706 (5) and (6) and 144.30 to 144.46 of the statutes, assigning air pollution control and solid waste disposal responsibilities to the department of resource development, creating an air pollution advisory council, granting rule-making power, providing penalties and making an appropriation.

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

SECTION 1. STATEMENT OF POLICY AND PURPOSES. (1) The high level of production required to meet the varied needs of an expanding population and high standard of living has resulted in a sharp rise in the amount of waste materials discarded annually.

(2) Inefficient and improper methods of waste disposal have caused an ever increasing pollution of our vital air, land and water resources threatening the utility of our resources and the quality of the environment in which we live. The problems of waste disposal endanger the public health, safety and welfare, create public nuisances, result in scenic blight and adversely affect land values.

(3) The close interrelationship of air, land and water pollution requires concerted action to prevent the worsening of these problems. A problem in solid waste disposal will not be solved by creating air pollution, nor will a problem in air pollution be solved by intensifying the problems of water pollution. Immediate remedial action is needed to protect our valuable resources.

(4) It is the purpose of this act to grant the necessary powers to organize a comprehensive program to enhance the quality, management and protection of the state's air and land resources. Recognizing the need for a co-ordinated effort to prevent and abate all kinds of environmental pollution, it is the intention of this act to vest authority for the state-wide control of air pollution and solid waste disposal in the same state agency which has general supervision and control over the waters of the state.

(5) In order to achieve the policy objectives of this act, it is the express policy of the state to mobilize governmental effort and resources at all levels, allocating such effort and resources to attain the maximum benefit for the people of the state as a whole.

SECTION 2. At the appropriate place in the schedule in section 20.005 of the statutes, insert the following amounts for the purposes indicated:

| | | | | 1967-68 | 1968-69 |
|--------|-----------------------------|-----|---|---------|---------|
| 20.706 | <i>Resource development</i> | | | | |
| (5) | Air resources | | | | |
| (a) | Gen. program opns. | GPR | A | 39,700 | 36,300 |
| (b) | County aid | GPR | B | 20,000 | 30,000 |
| (6) | Solid waste disposal | | | | |
| (a) | Gen. program opns. | | A | 50,000 | 53,700 |

SECTION 3. 20.706 (5) and (6) of the statutes are created to read:

20.706 (5) AIR RESOURCES. (a) *General program operations.* The amounts in the schedule to perform the functions of air pollution control.

(b) *County aid.* Biennially, the amounts in the schedule for the payment of grants-in-aid under s. 144.415.

(h) *Gifts and grants.* All moneys received from gifts and grants for the purposes for which made.

(m) *Federal aid.* All moneys received as federal aid as authorized by the governor under s. 16.54.

(6) SOLID WASTE DISPOSAL. (a) *General program operations.* The amounts in the schedule to perform the functions of the solid waste disposal program.

(g) *Licensing of sites and facilities.* All moneys received under s. 144.44, for the administration of that section.

(h) *Gifts and grants.* All moneys received from gifts and grants for the purposes for which made.

(m) *Federal aid.* All moneys received as federal aid as authorized by the governor under s. 16.54.

SECTION 4. 59.07 (85) of the statutes is amended to read:

59.07 (85) In any county, regulate by ordinance within the territorial limits of such county the ejection, discharge or emission into the open air of smoke and solids, liquids, gases, fumes, acids, burning embers, sparks, particulate wastes or dusts, including their radioactive fractions or counterparts, from any chimney, smokestack, vent, fuel-burning equipment, open fire, apparatus, device, mechanism, substance, material or premises. In aid of such regulations, prescribe rules, regulations and standards governing processes, control equipment, and devices, application of fuels and raw materials to equipment and processes; prescribe fees for the examination of plans, inspections, tests, issuance of permits for equipment and certificates of operation; provide in such ordinance for an appeal board and an advisory board and prescribe the powers of each; prescribe penalties for violating such ordinance; provide for commencing actions to enjoin acts, threats of acts and the procuring or suffering of acts to be done in violation of such ordinance; and provide for a county department of air pollution control with necessary officers and assistants to perform any and all functions relating to enforcing such ordinance. ~~Such ordinance shall not supersede any town, village or city ordinance which has been or may be enacted and which is at least equally restrictive.~~

SECTION 5. 70.11 (21) (a) of the statutes is amended to read:

70.11 (21) (a) All property purchased, constructed, installed and operated with the approval of the committee on water pollution, state board of health, a city council, a village board or county board pursuant to s. 59.07 (53) or (85) for the purpose of abating or eliminating pollution of the air, and all property purchased, constructed, installed and operated with the approval of the department of resource development for the purposes of abating or eliminating pollution of the *air or* waters of the state.

SECTION 6. 144.30 to 144.46 of the statutes are created to read:

144.30 DEFINITIONS. As used in this chapter:

(1) "Air contaminant" means dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

(2) "Air pollution" means the presence in the atmosphere of one or more air contaminants in such quantities and of such duration as is or tends to be injurious to human health or welfare, animal or plant life, or

property, or would unreasonably interfere with the enjoyment of life or property.

(3) "Emission" means a release of air contaminants into the atmosphere.

(4) "Solid waste" means garbage, refuse and other discarded or salvageable solid materials, including solid-waste materials resulting from industrial, commercial and agricultural operations, and from domestic use and public service activities, but does not include solids or dissolved material in waste water effluents or other common water pollutants.

(5) "Garbage" means discarded materials resulting from the handling, processing, storage and consumption of food.

(6) "Refuse" means combustible and noncombustible rubbish, including, but not limited to, paper, wood, metal, glass, cloth and products thereof; litter and street rubbish, ashes; and lumber, concrete and other debris resulting from the construction or demolition of structures.

(7) "Solid waste disposal" means the collection, storage treatment, utilization, processing or final disposal of solid waste.

(8) "Solid waste disposal sites and facilities" include commercial and municipal establishments such as, without limitation because of enumeration, dumps, incinerator sites, auto junkyards and scrap metal salvage yards.

(9) "Environmental pollution" means the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

144.31 GENERAL POWERS AND DUTIES. (1) The department shall:

(a) Promulgate rules implementing and consistent with ss. 144.30 to 144.46.

(b) Encourage voluntary co-operation by persons and affected groups to achieve the purposes of ss. 144.30 to 144.46.

(c) Encourage local units of government to handle air pollution and solid waste disposal problems within their respective jurisdictions and on a regional basis, and provide technical and consultative assistance therefor.

(d) Collect and disseminate information and conduct educational and training programs relating to the purposes of ss. 144.30 to 144.46.

(e) Organize a comprehensive and integrated program to enhance the quality, management and protection of the state's air, land and water resources.

(2) The department may:

(a) Hold hearings relating to any aspect of the administration of ss. 144.30 to 144.46 and, in connection therewith, compel the attendance of witnesses and the production of evidence.

(b) Issue orders to effectuate the purposes of ss. 144.30 to 144.46 and enforce the same by all appropriate administrative and judicial proceedings.

(c) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(d) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere and make recommendations to appropriate public and private bodies with respect thereto.

(e) Advise, consult, contract and co-operate with other agencies of the state, local governments, industries, other states, interstate or inter-local agencies, and the federal government, and with interested persons or groups.

144.32 FEDERAL AID. Subdivisions of this state and interlocal agencies may make application for, receive, administer and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control and solid waste disposal sites and facilities if first submitted to and approved by the department. The department shall approve any such application if it is consistent with the purposes of ss. 144.30 to 144.46 and any other applicable requirements of law.

144.33 CONFIDENTIALITY OF RECORDS. Any records or other information furnished to or obtained by the department in the administration of ss. 144.30 to 144.46, which records or information, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the department in the administration of ss. 144.30 to 144.46, unless such owner or operator expressly agrees to their publication or availability to the general public. Nothing herein shall prevent the use of such records or information by the department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, if such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this section.

144.34 INSPECTIONS. Any duly authorized officer, employe or representative of the department may enter and inspect any property, premise or place on or at which an air contaminant source or solid waste disposal site or facility is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with ss. 144.30 to 144.46 and rules in force pursuant thereto. No person shall refuse entry or access to any such authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. The department, if requested, shall furnish to the owner or operator of the premises a report setting forth all facts found which relate to compliance status.

144.35 VIOLATIONS: ENFORCEMENT. (1) (a) Whenever the department has reason to believe that a violation of ss. 144.30 to 144.46 or any rule pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator. The notice shall specify the law or rule alleged to be violated, and contain the finding of fact on which the charge of violation is based, and may include an order that necessary corrective action be taken within a reasonable time. Any such order shall become effective unless, no later than 10 days after the date the notice and order are served, the person named therein requests in writing a hearing before the department. Upon such request, the department shall after due notice hold a hearing. In lieu of an order, the department may require that the alleged violator appear before the department for a hearing at a time and place specified in the notice and answer the charges complained of, or the department may initiate action under s. 144.57.

(b) If after such hearing the department finds that a violation has occurred, it shall affirm or modify its order previously issued, or issue an appropriate order for the prevention, abatement or control of the problems involved or for the taking of such other corrective action as may be appropriate. If the department finds that no violation has occurred, it shall rescind its order. Any order issued as part of a notice or after hearing may prescribe one or more dates by which necessary action shall be taken in preventing, abating or controlling the violation.

144.36 AIR POLLUTION CONTROL POWERS AND DUTIES. (1)
The department shall:

(a) Prepare and develop one or more comprehensive plans for the prevention, abatement and control of air pollution in this state. The department thereafter shall be responsible for the revision and implementation of such plans.

(b) Conduct or direct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control and, by means of field studies and sampling, determine the degree of air contamination and air pollution throughout the state.

(c) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source, device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall relieve any person from compliance with ss. 144.30 to 144.46 or rules pursuant thereto, or any other provision of law.

(2) The department may examine any records relating to emissions which cause or contribute to air contamination.

144.37 AIR POLLUTION CONTROL ADVISORY COUNCIL. (1)

(a) There is created an air pollution control advisory council appointed by the governor composed of 7 members each of whom shall be familiar with air pollution problems and control.

(b) Of the persons first appointed to the council, 2 each shall be appointed for terms of 2 and 3 years, and 3 shall be appointed for 1-year terms. Successive appointees shall serve for a term of 3 years, except that vacancies shall be filled for the unexpired term.

(c) Members shall receive no compensation for their services, but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

(d) The members of the council shall elect a chairman at the first meeting of the council, and thereafter annually and may elect such other officers as they deem appropriate.

(e) The council shall meet at least semi-annually or at the call of the director or of the chairman or a majority of the council.

(2) The council shall advise the resource development board on proposed and existing rules and any matters pertaining to air pollution.

144.38 CLASSIFICATION AND REPORTING. (1) (a) The department, by rule, shall classify air contaminant sources which may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class. Classifications made pursuant to this section may be for application to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(b) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the department require reporting shall make reports containing such information as the department requires concerning location, size and heights of contaminant outlets, processes employed, fuels used and the nature and time periods of duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

144.39 NOTICE REQUIRED FOR CONSTRUCTION. (1) The department shall require that notice be given to it prior to the construction, installation or establishment of particular types or classes of air contami-

nant sources specified in its rules. Within 15 days after receipt of such notice, the department shall require, as a condition precedent to the construction, installation or establishment of the air contaminant source covered thereby, the submission of plans, specifications and such other information as it deems necessary in order to determine whether the proposed construction, installation or establishment will be in accordance with applicable rules in force pursuant to ss. 144.30 to 144.46. If within 30 days after the receipt of such plans, specifications or other information the department determines that the proposed construction, installation or establishment will not be in accordance with the requirements of ss. 144.30 to 144.46 or applicable rules, it shall issue an order prohibiting the construction, installation or establishment of the air contaminant source. If the department does not issue such order within such 30-day period the construction, installation or establishment may proceed in accordance with the plans, specifications or other information, if any, required to be submitted.

(2) In lieu of state view of plans and specifications, the department may authorize counties which are administering approved air pollution control programs to review and approve plans and specifications of air contaminant sources being constructed within the jurisdiction of said counties.

(3) In addition to any other remedies available on account of the issuance of an order prohibiting construction, installation or establishment of such source, and prior to invoking any such remedies, any person aggrieved thereby shall, upon request in accordance with rules of the department, be entitled to a hearing on the order. Following such hearing, the order may be affirmed, modified or withdrawn.

(4) Any addition to or enlargement or replacement of an air contaminant source, or any major alteration therein, shall be construed as construction, installation or establishment of a new air contaminant source.

(5) Any features, machines and devices constituting parts of or called for by plans, specifications or other information submitted pursuant to sub. (1) shall be maintained in good working order.

(6) Nothing in this section authorizes the department to require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices or equipment otherwise available.

(7) The absence of or failure to issue a rule, or order pursuant to this section does not relieve any person from compliance with any emission control requirements or with any other provision of law.

(8) The department may by rule prescribe and provide for the payment and collection of reasonable fees for the review of plans and specifications required to be submitted pursuant to this section.

144.40 EMERGENCY PROCEDURE. (1) If the director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the director shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants, and such order shall fix a place and time, not later than 24 hours thereafter, for a hearing to be held before the department. Not more than 24 hours after the commencement of such hearing, and without adjournment thereof, the resource development board shall affirm, modify or set aside the order of the director.

(2) In the absence of a generalized condition of air pollution of the type referred to in sub. (1), if the director finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the persons responsible

for the operations in question to reduce or discontinue emissions immediately, without regard to s. 144.35. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in sub. (1) shall apply.

144.41 LOCAL AIR POLLUTION CONTROL PROGRAMS. (1) After consultation with incorporated units of local government, any county may establish and thereafter administer within its jurisdiction, including incorporated areas, an air pollution control program which:

(a) Provides by ordinance for requirements compatible with, or stricter or more extensive than those imposed by ss. 144.30 to 144.46 and rules issued thereunder. Such ordinances shall supersede any existing local ordinances;

(b) Provides for the county-wide enforcement of such requirements by appropriate administrative and judicial process;

(c) Provides for administrative organization, staff and financial and other resources necessary to effectively and efficiently carry out its program;

(d) May authorize municipalities to participate in the administration and enforcement of air pollution programs; and

(e) Is approved by the department as adequate to meet the requirements of ss. 144.30 to 144.46 and any applicable rules pursuant thereto.

(2) Any county may consult with regional planning commissions and may administer all or part of its air pollution control program in co-operation with one or more other counties or municipalities. Performance by or on behalf of a county pursuant to such co-operative undertaking shall be considered to be performance by the county for purposes of this section.

(3) If the department finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the resource development board may determine the boundaries within which such program is necessary and require it.

(4) (a) If the department has reason to believe that the absence of an air pollution control program or a program in force pursuant to this section is inadequate to prevent and control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of ss. 144.30 to 144.46, the department shall, on due notice, conduct a hearing on the matter.

(b) If, after such hearing, the department determines that a program is required or is inadequate to prevent and control air pollution in the county to which such program relates, or that such program is not accomplishing the purposes of ss. 144.30 to 144.46, it shall require that necessary corrective measures be taken within a reasonable period of time, not to exceed 60 days.

(c) If the county fails to take such necessary corrective action within the time required, the department shall administer within such county all of the regulatory provisions of ss. 144.30 to 144.46. Such air pollution control program shall supersede all county air pollution regulations, ordinances and requirements in the affected jurisdiction. The cost of such administration shall be a charge on the county.

(5) Any county in which the department administers its air pollution control program under sub. (4) may, with the approval of the department, establish or resume a county air pollution control program which meets the requirements of sub. (1).

(6) Nothing in ss. 144.30 to 144.46 supersedes the jurisdiction of any county air pollution control program in operation on the effective date of this section (1967), but any such program shall meet all requirements of ss. 144.30 to 144.46 for a county air pollution control program. Any approval required from the department shall be deemed granted unless the department takes specific action to the contrary.

144.415 STATE AID. (1) The department may develop a program for the training of technical personnel to facilitate the administration of county air pollution control programs. Annual grants-in-aid may be made by the department to any county or group of counties for the training of employes or potential employes in air pollution detection and control. The qualifications and criteria for participation in this program shall be established by the department.

(2) The department may enter into agreements with any county to provide in-service training programs and facilities for the purpose described in subs. (1). In accordance with criteria established by the department, annual grants-in-aid may be made by the department to any county establishing an approved in-service training program for the costs of developing and maintaining such program.

144.42 MOTOR VEHICLE POLLUTION. (1) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of ss. 144.30 to 144.46, the department may provide by rule for the control of emissions from motor vehicles. Such rules may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and vehicles. Any rules pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The department shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

(2) Except as permitted or authorized by law, no person shall fail to maintain in good working order or remove, dismantle or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle and required by rules of the department to be maintained in or on the vehicle. Any such failure to maintain in good working order or removal, dismantling or causing of inoperability shall subject the owner or operator to suspension or cancellation of the registration for the vehicle. The vehicle shall not thereafter be eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(3) The department shall consult with the motor vehicle department and furnish it with technical information, including testing techniques, standards and instructions for emission control features and equipment.

(4) In this section "motor vehicle" has the meaning designated in s. 340.01 (35).

144.43 SOLID WASTE DISPOSAL STANDARDS. The department shall, no later than January 1, 1969, prepare and adopt minimum standards for the location, design, construction, sanitation, operation and maintenance of solid waste disposal sites and facilities and shall, following a public hearing, adopt such rules relating to the operation and maintenance of solid waste disposal sites and facilities as it deems necessary.

144.44 LICENSE. (1) After the department has promulgated minimum standards for the location, design, construction, operation and maintenance of solid waste disposal sites and facilities, no person shall establish, maintain, conduct or operate a solid waste disposal site or facility which does not adhere to such minimum standards. Such sites or facilities shall be licensed annually by the department providing they comply with said standards. The department may charge a reasonable fee for the costs of administering this section.

(2) Nothing in ss. 144.30 to 144.46 shall limit the authority of any local governing body to issue licenses and permits for any state-licensed sites or facilities or to adopt, subject to department approval, standards for the location, design, construction, operation and maintenance of solid waste disposal sites and facilities more restrictive than those adopted by the state under this section.

144.45 RESEARCH. The department may conduct or direct scientific experiments, investigations, demonstration grants and research on any matter relating to solid waste disposal, including, but not limited to, land fill, disposal and utilization of junked vehicles, and production of compost.

144.46 SHORELAND AND FLOOD PLAIN ZONING. Solid waste disposal sites and facilities are prohibited within areas under the jurisdiction of shoreland and flood plain zoning regulations adopted pursuant to ss. 59.971 and 87.30, except that the department may issue permits authorizing sites and facilities in such areas.

SECTION 7. 144.537 of the statutes is amended to read:

144.537 The department shall hold a public hearing relating to alleged or potential ~~water~~ *environmental* pollution upon the verified complaint of 6 or more citizens filed with the department. The complaint shall state the name and address of a person within the state authorized to receive service of answer and other papers in behalf of complainants. *The department may order the complainants to file security for costs in a sum deemed to be adequate but not to exceed \$100 with 20 days after the service upon them of a copy of such order and all proceedings on the part of such complainants shall be stayed until security is filed.* The department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to his last known post-office address at least 20 days prior to the time set for the hearing which shall be held not later than 90 days from the filing of the complaint. The respondent shall file his verified answer to the complaint with the department and serve a copy on the person so designated by the complainants ~~by~~ not later than 5 days prior to the date set for the hearing, unless the time for answering is extended by the department for cause shown. For purposes of any hearing under this chapter, the director may issue subpoenas and administer oaths. Within 90 days after the closing of the hearing, the department shall make and file its findings of fact, conclusions of law and order, which shall be subject to review under ch. 227. If the department determines that any complaint has been filed maliciously or in bad faith it shall so find, and the person complained against shall be entitled to recover his expenses on the hearings in a civil action. Any situation, project or activity which upon continuance or implementation would cause, beyond reasonable doubt, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential ~~water~~ *environmental* pollution.

Approved July 18, 1967.