

1973 Assembly Bill 128

Date published:
July 21, 1973

CHAPTER 74 , Laws of 1973

AN ACT to repeal 144.555; to amend 15.34 and 165.07; and to create chapter 147 of the statutes, relating to the creation of a pollutant discharge elimination system, granting rule-making authority and providing penalties.

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

SECTION 1. 15.34 of the statutes is amended to read:

15.34 Department of natural resources; creation. There is created a department of natural resources under the direction and supervision of the natural resources board. The board shall consist of 7 members appointed for staggered 6-year terms. At least 3 members of the board shall be from the territory north, and at least 3 members of the board shall be from the territory south, of a line running east and west through the south limits of the city of Stevens Point. No person may be appointed to the natural resources board, or remain a member thereof, who is a permit holder or who receives, or has during the previous 2 years received, a significant portion of his income directly or indirectly from permit holders or applicants for permits issued by the department. For purposes of this section, "permit holders" or "applicants for permits" shall not include agencies, departments or subdivisions of this state.

SECTION 2. 144.555 of the statutes is repealed.

SECTION 3. Chapter 147 of the statutes is created to read:

CHAPTER 147 POLLUTION DISCHARGE ELIMINATION

147.01 Statement of policy and purpose. (1) Although in recent years intensive efforts have been made toward the abatement of pollution of the waters of this state, pollution of these waters continues. Unabated pollution of the waters of this state continues to arouse widespread public concern. It continues to endanger public health; to threaten fish and aquatic life, scenic and ecological values; and to limit the domestic, municipal, recreational, industrial, agricultural and other uses of water. It is the policy of this state to restore and maintain the chemical, physical, and biological integrity of its waters to protect public health, safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial, agricultural, and other uses of water. In order to achieve this policy, the legislature declares that:

(a) It is the goal of the state of Wisconsin to eliminate the discharge of pollutants into the waters of the state by 1985;

(b) It is also the goal of the state of Wisconsin that, wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish,

shellfish, and wildlife and provides for recreation in and on the water be achieved by 1983;

(c) It is also the policy of the state of Wisconsin that the discharge of toxic pollutants in toxic amounts be prohibited.

(2) The purpose of this chapter is to grant to the department of natural resources all authority necessary to establish, administer and maintain a state pollutant discharge elimination system to effectuate the policy set forth under sub. (1) and consistent with all the requirements of the federal water pollution control act amendments of 1972, P.L. 92-500; 86 Stat. 816.

147.015 Definitions. In this chapter:

(1) "Person" for purposes of this chapter and ch. 144 means an individual, owner or operator, corporation, partnership, association, municipality, interstate agency or state agency.

(2) "Municipality" means any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect, treat or dispose of sewage, industrial wastes or other wastes.

(3) "Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

(4) "Effluent limitation" means any restriction established by the department, including schedules of compliance, on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of this state.

(5) "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or other limitation, prohibition or standard.

(6) "Discharge of pollutant" or "discharge of pollutants" means any addition of any pollutant to the waters of this state from any point source.

(7) "Toxic pollutants" means those pollutants or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction or physical deformations, in such organisms or their offspring.

(8) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants may be discharged either into the waters of this state or into a publicly owned treatment works. "Point source" shall not include diffused surface drainage or any ditch or channel which serves only to intermittently drain excess surface water from rain or melting snow and is not used as a means of conveying pollutants into waters of the state. "Point Source" shall not include uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular storm

runoff discharge has been identified by the department as a significant contributor of pollution.

(9) "Biological monitoring" means the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical and biological characteristic of the effluent and at appropriate frequencies and locations.

(10) "Discharge" when used without qualification includes a discharge of any pollutant.

(11) "Construction" means any placement, assembly or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises.

(12) "Treatment work" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial waste of a liquid nature or necessary to recycle or reuse water at the most economical cost over the estimated life of the work, including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment. Additionally, "treatment work" means any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

(13) "Waters of the state" means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface or ground water, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.

(14) "Department" means the department of natural resources.

(15) "Permit" means a permit for the discharge of pollutants issued by the department under this chapter.

(16) "Secretary" means the secretary of the department of natural resources or his designee.

(17) "Owner or operator" means any person owning or operating a point source of pollution.

(18) "Vessel" means any watercraft or other artificial contrivance used or capable of being used as a means of transportation on water.

(19) "Pollution" means man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

(20) "New source" means any point source the construction of which commenced after the effective date of applicable effluent limitations or standards of performance.

147.02 Water pollutant discharge elimination system; permits, terms and conditions. (1) The discharge of any pollutant into any waters of the state or the disposal of sludge from a treatment work by any person shall be unlawful unless such discharge or disposal is done under a permit issued by the department. The department may by rule exempt certain classes or categories of vessels from this section. The department shall require only one permit for a publicly owned treatment or collection facility or system, regardless of the number of point sources from such facility or system.

(2) No permit shall be issued by the department for the discharge into the waters of the state of any of the following:

(a) Any radiological, chemical or biological warfare agent or high-level radioactive waste.

(b) Any discharge which the secretary of the army acting through the chief of the army corps of engineers has objected to in writing on the ground that anchorage and navigation would be substantially impaired.

(c) Any discharge to which the U.S. environmental protection agency has objected to in writing pursuant to s. 147.11.

(d) Any discharge from a point source which is in conflict with any existing area-wide waste treatment management plan approved by the department. No area-wide waste treatment management plan may require the abandonment of existing waste treatment facilities which meet the requirements of this chapter unless the abandonment of such facilities clearly represents the most efficient and cost-effective method of providing waste treatment for the entire planning area.

(3) The department may issue a permit for the discharge of any pollutant, or combination of pollutants, other than those prohibited under sub. (2), upon condition that such discharges will meet all the following, whenever applicable:

(a) Effluent limitations;

(b) Standards of performance for new sources;

(c) Effluent standards, effluents prohibitions and pretreatment standards;

(d) Any more stringent limitations, including those:

1. Necessary to meet federal or state water quality standards, or schedules of compliance established by the department; or

2. Necessary to comply with any applicable federal law or regulation; or

3. Necessary to avoid exceeding total maximum daily loads established pursuant to a continuing planning process developed under s. 147.25.

(e) Any more stringent legally applicable requirements necessary to comply with an approved areawide waste treatment management plan.

(4) The department shall prescribe conditions for such permits to assure compliance with the requirements of sub. (3). Such additional conditions shall include at least the following:

(a) That the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit;

(b) That facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants at frequencies or levels in excess of the maximum discharges described in the permit shall be reported to the department under s. 147.14 (1);

(c) That the permittee shall permit authorized representatives of the department upon the presentation of their credentials to enter upon any premises in which an effluent source is located or in which any records are required to be kept for the purpose of administering s. 147.08;

(d) That the permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit;

(e) That if a toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is established under s. 147.07 (1) for a toxic pollutant present in the permittee's discharge and, if such standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the department shall revise or modify the permit in accordance with the toxic effluent standard or prohibition;

(f) That, if the permit is for a discharge from a publicly owned treatment work, the permittee shall:

1. Inform the department of any new introduction of pollutants into the treatment works under s. 147.14 (2);

2. Require that any industrial user of such treatment work comply with the requirements of ss. 147.07 (2), 147.08 and 147.15.

(5) Each permit issued by the department shall, in addition to those criteria provided in subs. (3) and (4), specify maximum levels of discharges. Maximum levels of discharges shall be developed from the permittee's reasonably foreseeable projection of maximum frequency or maximum level of discharge resulting from production increases or process modifications during the term of the permit.

(6) Any permit issued by the department under this chapter which by its terms limits the discharge of one or more pollutants into the waters of the state shall require that the location, design, construction and capacity of water intake structures reflect the best technology available for minimizing adverse environmental impact.

147.021 Compliance with federal standards. All rules adopted by the department pursuant to this chapter as they relate to point source discharges, effluent limitations, water quality related limitations, municipal monitoring requirements, standards of performance and toxic and pretreatment effluent standards shall comply with and not exceed the requirements of the federal water pollution control act amendments of 1972, P.L. 92-500, and regulations adopted pursuant thereto.

147.025 Applications for permits. (1) The department shall promulgate rules relating to applications for permits under this chapter which shall require at a minimum that not later than 180 days after the effective date of this chapter (1973) every owner or operator of a point source discharging pollutants into the waters of the state shall have on file either a completed permit application on forms provided by the department or a completed permit application under section 13 of the rivers and harbors act of 1899, 33 U.S.C. 407 or under the federal water pollution control act amendment of 1972, P.L. 92-500; 86 Stat. 816.

(2) Any owner or operator of a point source for which a permit is required by s. 147.02 (1) wishing to commence discharging pollutants into state waters from a new source, the construction of which commenced after the effective date of this chapter (1973), shall submit a completed application not later than 180 days prior to the date on which it is desired to commence discharges.

(3) The application form shall be signed as follows:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice president or by his authorized representative responsible for the overall operation of the point source for which a permit is sought.

(b) In the case of a partnership, by a general partner.

(c) In the case of a sole proprietorship, by the proprietor.

(d) In the case of publicly owned treatment works by a principal executive officer, ranking elected official, or other duly authorized employe.

(4) Prior to the submittal of a permit application for a publicly owned treatment works, each person discharging into such works who is subject to s. 144.54 and rules promulgated thereunder shall submit a discharge report to the owner or operator of such works upon request. The report shall state the person's current discharges, and maximum discharges based on reasonably foreseeable projections of production increases, process modification or facility expansions during the next 5 years. The owner or operator of such publicly owned treatment works shall submit the discharge reports to the department as part of the permit application. The form of the discharge report shall be prescribed by department rule.

(5) The department may require the applicant to submit information in addition to that supplied on the permit application.

147.03 Permit duration, modification, revocation and reissuance. (1) No permit issued by the department under s. 147.02 shall have a term for more than 5 years.

(2) (a) Any permit issued by the department under s. 147.025, may, after an opportunity for hearing, be modified, suspended or revoked, in whole or in part, for cause, including but not limited to:

1. Violation of any terms or conditions of the permit;

2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

3. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

4. For point sources for which a permit application is filed after July 1, 1977, a demonstration by the owner or operator that the modification will represent the maximum use of technology within the economic capacity of the owner or operator.

(b) Whenever, on the basis of any information available to it, the department finds that there is cause for modifying, suspending or revoking a permit, in whole or in part, the department shall notify the permittee by certified mail or personal service of its intention to modify, suspend, or revoke the permit, in whole or in part. Such notice shall specify the information upon which the department relies, and if the department intends to modify the permit, shall explain the modifications which the department intends to make in the permit.

(c) The department shall also notify the U.S. environmental protection agency, the U.S. army corps of engineers, any affected state, any interested agency of this state, and any interested members of the public of its intention to modify, suspend or revoke a permit. Such notice shall incorporate the terms of the notice sent to the permittee and shall be circulated to members of the public in accordance with s. 147.09 (1).

(d) The department may hold a public hearing on a proposed permit modification, suspension or revocation if the department determines that there is a significant public interest in holding such a hearing or upon the petition of 5 or more persons. The petition shall indicate the interest of the petitioners and the reasons why a hearing is warranted.

(e) Public notice of any hearing held under this section shall be circulated in accordance with the requirements of pars. (b) and (c).

(f) Hearings held under this section are not contested cases under s. 227.01 (2).

(2m) The department may, upon request of the permittee, revise or modify a schedule of compliance in an issued permit if it determines that the revision or modification is necessary because of the happening of an event over which the permittee has little or no control. The first revision made under this subsection during the term of a permit need comply only with sub. (2) (c). Subsequent requests shall be subject to sub. (2) (b) to (f).

(3) (a) Any permittee who wishes to continue to discharge after the expiration date of his permit shall file an application for reissuance of his permit at least 180 days prior to its expiration.

(b) The department shall review each application for reissuance of a permit to ensure that:

1. The permittee is in substantial compliance with all the terms, conditions, requirements and schedules of compliance of the expired permit;

2. The department has current information on the permittee's production levels, waste treatment practices, and the nature, volume, content and frequency of the permittee's discharge;

3. The discharge is consistent with applicable effluent limitations and standards, water quality standards and any other legally applicable requirements, including any addit and standards, water quality standards, or other legally applicable requirements made during the term of the permit.

(c) If, after such review, the department finds that the requirements of par. (b) have not been met, the department shall not reissue such a permit.

(d) The department shall adhere to the notice and public participation procedures specified in ss. 147.09 to 147.13 in connection with each request for reissuance of a permit.

(e) Notwithstanding any other provisions of this section, any new source the construction of which is commenced after October 18, 1972, and which is so constructed to meet all standards of performance adopted under s. 147.06 shall not be subject to any more stringent standard of performance during either the 10-year period beginning on the date of completion of such construction or the period of depreciation or amortization of such facility for the purposes of sections 167 or 169 of the internal revenue code of 1954 as amended, whichever period ends first.

(f) For the purposes of s. 147.20, denial of any application for the reissuance of a permit shall be treated as a denial of an application for a permit.

147.04 Effluent limitations. (1) The department shall promulgate a list of categories and classes of point sources which is at least as comprehensive as the list published by the U.S. environmental protection agency under section 306 (b) (1) (A) of the federal water pollution control act amendments of 1972, 86 Stat. 816.

(2) The department shall establish by rule effluent limitations for each such category or class of point sources, other than publicly owned treatment works, which shall require:

(a) By not later than July 1, 1977, the application of the best practicable control technology currently available or in the case of a discharge into a publicly owned treatment works which meets the requirements of sub. (3) (a), the application of any applicable pretreatment requirements and any other requirements under s. 147.07.

(b) By not later than July 1, 1983:

1. The application of the best available technology economically achievable for such category or class which will result in the elimination of the discharge of all pollutants, if the department finds that such elimination is technologically and economically achievable for a category or class of point sources, or in the case total elimination is not technologically and economically achievable, which will result in reasonable further progress toward the goal of eliminating the discharge of all pollutants; or

2. The application of any applicable pretreatment requirements or any other requirements under s. 147.07 to any point source or sources discharging pollutants into a publicly owned treatment works which meets the requirements of sub. (3) (a).

(c) The department may modify the requirements of par. (b) in accordance with s. 147.20 for any point source for which a permit application is filed after July 1, 1977, provided that the owner or operator of each such point source satisfactorily demonstrates to the department that such modified requirements will represent the maximum use of technology within the economic capability of the owner or operator and will result in reasonable further progress toward the elimination of the discharge of pollutants.

(3) The department shall by rule promulgate effluent limitations for publicly owned treatment works which shall require:

(a) By July 1, 1977, secondary treatment for all publicly owned treatment works in existence on that date or approved prior to June 30, 1974, for which construction shall be completed within 4 years of approval;

(b) Not later than July 1, 1983, the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of this chapter.

(4) The department shall establish more stringent limitations if such limitations are necessary to meet applicable water quality standards, treatment standards or schedules of compliance or any other federal law or regulation, and shall require compliance with such limitations not later than July 1, 1977.

(5) Until such time as the department shall promulgate an effluent limitation for a particular category or class of point sources, the department may adopt interim effluent limitations to carry out the purposes of this chapter. Interim effluent limitations shall be adopted as rules by the department as prescribed under s. 227.027.

for a period not to exceed one year. This authority shall expire within 2 years after the effective date of this chapter (1973).

147.05 Water quality related limitations. (1) Whenever, after public hearing, the department finds that discharges of pollutants from a point source or group of point sources, with the application of all applicable effluent limitations under s. 147.04 (2) (b) or (3) (b), would interfere with the attainment or maintenance in specific portions of waters of the state of that water quality which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, the department shall establish effluent limitations for each such point source which can reasonably be expected to contribute to the attainment or maintenance of such water quality on such portions of the waters of the state and shall require compliance with any such limitations in any permit issued.

(2) Prior to establishment of any effluent limitation under sub. (1), the department shall issue notice of intent to establish such limitation and shall hold a public hearing under s. 147.20 to determine the relationship of the economic and social costs of achieving such limitation, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained, including the attainment of the objectives of this chapter, and to determine whether such effluent limitations can be implemented with available technology or with other alternative control strategies.

(3) If a person affected by such limitation demonstrates at the hearing that there is no reasonable relationship between the economic and social costs and the benefits to be obtained, the department shall modify such limitation as it applies to that person.

(4) (a) Any thermal effluent limitation proposed by the department may be modified by it in accordance with s. 147.20, if the owner or operator of the point source which is the subject of the proposed limitation demonstrates to the satisfaction of the department that the proposed limitation is more stringent than necessary to assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(b) Any point source of a discharge having a thermal component, the modification of which is commenced after October 18, 1972, and which, as modified, meets the most stringent effluent limitation established under s. 147.04 or subs. (1) and (2), where the limitation assures protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component during either the 10-year period beginning on the date of completion of the modification or the period of depreciation or amortization of the facility for the purpose of section 167 or 169 of the internal revenue code of 1954, whichever ends first.

147.06 Standards of performance. (1) The department shall, by rule, promulgate standards of performance for each class or category of sources referred to under s. 147.04 (1) which shall reflect the greatest degree of effluent reduction achievable through the application of the best available demonstrated control technology, processes, operating methods, or other alternatives. Where practicable, a standard of performance permitting no discharge of pollutants shall be adopted.

(2) (a) Standards of performance adopted under this section shall apply to all new sources within each class or category of sources for which a standard of performance has been adopted under this section.

(b) The term "new source" means any source, the construction of which commenced after the adoption of the standard of performance applicable to the category of sources of which it is a member.

(3) The department shall revise such standards to reflect changes in control technology, processes, operating methods or other alternatives. When establishing or revising standards of performance under this section, the department shall consider the cost of achieving such effluent reductions and the nonwater quality environmental impact and energy requirements of such reductions.

(4) The department may distinguish among classes, types and sizes within categories of sources for the purpose of establishing or revising standards of performance under this section.

(5) After the effective date of any standard of performance promulgated by the department under this section, no owner or operator of any new source may operate such source in violation of any standard of performance applicable to such a source.

147.07 Toxic and pretreatment effluent standards. (1) TOXIC EFFLUENT STANDARDS. (a) The department shall by rule promulgate a list of toxic pollutants or combinations of such pollutants for which an effluent standard, which may include the prohibition of the discharge of such pollutants or combination of pollutants, shall be established. In preparing this list the department shall consider the toxicity of the pollutant, its persistence, degradability, the usual or potential presence in any waters of any organisms affected by the discharge of the toxic pollutant or combination of pollutants, the importance of the affected organism and the nature and effect of the toxic pollutant or combination of pollutants on such organisms.

(b) The department shall by rule promulgate an effluent standard or a prohibition for each such pollutant or combination of pollutants listed under par. (a) and shall prescribe the classes or categories of sources to which the effluent standard or prohibition shall apply. The effluent standards and prohibitions adopted by the department under this section, shall take into account the toxicity of the pollutant, the persistence, degradability, the usual or potential presence in any waters of any organisms affected by the discharge of the toxic pollutant or combination of pollutants, the importance of the affected organism and the nature and extent of the effect of the toxic pollutant or combination of pollutants on such organisms.

(c) Any effluent standard or prohibition adopted by the department under this section shall be reviewed and, if appropriate, revised every 3 years.

(2) PRETREATMENT STANDARDS. (a) The department shall by rule promulgate pretreatment standards to regulate the introduction into publicly owned treatment works of pollutants which are not susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works.

(b) Pretreatment standards promulgated under this section shall specify a time for compliance, not to exceed 3 years from the date of promulgation, and shall be established to prevent the discharge through any publicly owned treatment work of any pollutant which interferes with, passes through, or otherwise is incompatible with such works.

(c) The department shall by rule promulgate the classes or categories of sources to which the pretreatment standards adopted under this section shall apply.

(d) The department shall revise the pretreatment standards adopted under this section to reflect changes in control technology, processes, operating methods or other alternatives.

147.08 Monitoring and reporting access to premises. (1) MONITORING AND REPORTING REQUIREMENTS. Every owner or operator of a point source shall:

(a) Establish and maintain records of the volume of effluent discharged and the amount of each pollutant discharged from each point source under his ownership or control;

(b) Make regular reports to the department on the volume of effluent discharged and the amount of each pollutant discharged from each such point source;

(c) Install, use and maintain such monitoring equipment or methods, including where appropriate, biological monitoring methods, as are necessary to determine the volume of effluent discharged and to identify and determine the amount of each pollutant discharged from each such point source;

(d) Sample the effluents discharged from each such point source in accordance with such methods, at such locations and in such manner as the department shall by rule prescribe;

(e) Provide such other information as the department finds is necessary to identify the type and quantity of any pollutants discharged from the point source.

(2) ACCESS TO MONITORING EQUIPMENT AND RECORDS. (a) Any duly authorized officer, employe or representative of the department shall have right to enter upon or through any premises in which an effluent source is located or in which any records required to be maintained by this section are located, and may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required by this section, and sample any effluents which the owner and operator of such source is required to sample under this section.

(b) No person shall refuse entry or access to any authorized representative of the department who requests entry under this subsection, and who presents appropriate credentials nor shall any person obstruct, hamper or interfere with any such inspection.

(c) Any records or other information furnished to or obtained by the department in the administration of this chapter, including effluent data, shall be a public record as provided in s. 19.21. Any records or other information, except effluent data, provided to the department may be treated as confidential upon a showing to the secretary that said records or information is entitled to protection as a trade secret. Nothing herein shall prevent the use of any confidential records or information obtained by the department in the administration of this section in compiling or publishing general analyses or summaries, if such analyses or summaries do not identify a specific owner or operator.

(3) Subsection (1) shall be construed so as not to require actions unnecessarily redundant with s. 144.54. When a publicly owned treatment facility is required under state or federal law to monitor discharges into its system, records of such monitoring provided to the department, if substantially in compliance with the requirements of this section, shall serve in the place of the monitoring which would ordinarily be required of a person discharging into such system. Nothing in this section shall be construed to affect the validity of s. 144.54, nor shall that section be construed to limit the application of this section.

147.09 Public notice. (1) The department shall promulgate by rule procedures for circulating to the greatest number of interested and potentially interested members of the public notices of each complete application for a permit. Procedures for the circulation of public notices shall include at least the following:

- (a) Publication of the notice as a class 1 notice under ch. 985;
- (b) Posting of the notice under s. 985.02 (2);
- (c) Mailing of the notice to any person or group upon request.

(2) The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the permit application. All written comments submitted during the period for comment shall be retained by the department and considered in the formulation of the final determinations for the permit application.

(3) The department shall by rule prescribe the form and content of public notices issued under sub. (1). Every such notice issued by the department shall include at least the following information:

- (a) The name and address of each applicant;
- (b) A brief description of each applicant's activities or operations which result in the discharge described in the application;
- (c) The name of the waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or existing discharge;
- (d) A statement of the tentative determination to issue or deny a permit for the discharge described in the application;
- (e) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required under sub. (2).

147.10 Fact sheets. (1) For every discharge which has a total volume of more than 500,000 gallons on any day of the year, the department shall, following public notice, prepare and send to any person who so requests, a fact sheet concerning the application described in the public notice.

(2) The contents of such fact sheets shall be established by the department by rule and shall include at least the following information:

- (a) A sketch or detailed description of the location of the discharge described in the application;
- (b) A quantitative description of the discharges described in the application;
- (c) A statement of the tentative determination to issue or deny the permit application;
- (d) If a determination to issue a permit is made, then the following information shall also be included:
 - 1. The proposed effluent limitation for those pollutants proposed to be limited;
 - 2. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations;
 - 3. A brief description of any other proposed special conditions which will have a significant impact upon the discharge described in the application;
- (e) A brief description of the uses for which the receiving waters have been classified, of the applicable water quality standards and effluent standards;

(f) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice.

147.11 Notice to other government agencies. The department shall promulgate by rule procedures for notifying the U.S. environmental protection agency, the U.S. army corps of engineers, other states potentially affected by the proposed discharge, and any other agency or unit of government interested in the proposed discharge of any complete application for a permit and shall provide such agencies a period of time of not less than 90 days to submit their written views and recommendations to the department.

147.12 Public access to information. (1) (a) The department shall make available to and provide facilities for the public to inspect and copy completed permit application forms, fact sheets, draft permits, or any public document thereon.

(b) The department shall make available to the U.S. environmental protection agency any completed permit application forms, fact sheets, draft permits, or any public comments thereon, and shall also make available any other records, reports, plans or other information obtained by the department under this chapter.

(2) The department shall protect as confidential any information, other than effluent data, contained in permit application forms, or in other records, reports or plans, that is found to be confidential under s. 147.08 (2) (c).

(3) Any information afforded confidential status may be disclosed by the department to the U.S. environmental protection agency or its authorized representative.

147.13 Public hearing. (1) (a) The department shall provide an opportunity for the applicant, any affected state, the U.S. environmental protection agency, any interested state or federal agency, person or group of persons to request a public hearing with respect to a permit application. Such request for a public hearing shall be filed with the department within 30 days after the circulation of the public notice of the complete permit application and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted.

(b) The department shall hold a public hearing on a permit application or a group of applications if requested by the U.S. environmental protection agency, any affected state, on the petition of 5 or more persons or if the department deems that there is a significant public interest in holding such a hearing.

(c) The department shall promulgate by rule procedures for the conduct of public hearings held under this section. Hearings held under this section are not contested cases under s. 227.01 (2).

(2) (a) Public notice of any hearing held under this section shall be circulated in accordance with the requirements of s. 147.09 (1).

(b) The form and content of such public notice shall be established by departmental rule.

147.14 Reporting of new discharges. (1) Any permittee discharging pollutants into the waters of the state shall report to the department any facility expansion, production increases, or process modifications which result in new or increased discharges of pollutants exceeding the terms of the permit. Such report shall be by submission of a new permit application or, if the new or increased discharge does not violate the effluent limitations specified in the permit, by submission of notice to the

department of the nature of such new or increased discharge. The form and content of such notice shall be prescribed by departmental rule.

(2) Any person discharging, or intending to begin discharging, into a publicly owned treatment works who is or will become subject to the discharge reporting requirements of s. 147.025 (4), shall give notice to the department and the owner or operator of such works the following:

(a) Any introduction of pollutants into such treatment works from any new source; or

(b) Any types or volumes of pollutants being introduced into such treatment works which were not described in the report submitted under s. 147.025 (4).

(3) The owner or operator of a publicly owned treatment works receiving a notice under sub. (2) is subject to sub. (1), and shall also include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such pollutants on the quantity or quality of effluent to be discharged from such works.

(4) Notice of a new or increased discharge submitted to the department under this section shall be given at least 180 days prior to the date such new or increased discharge shall commence. The department, through the department of justice as provided under s. 147.29, may enforce violations of this section directly against persons subject to s. 147.025 (4).

147.15 Waste treatment service charges. No permit shall be issued to any publicly owned treatment works any part of which was constructed with the aid of federal grants made after March 1, 1973, unless it has adopted or will adopt a system of charges to assure that:

(1) Each recipient of waste treatment services shall pay its proportionate share of the cost of operation and maintenance, including replacement, of any waste treatment services provided by such treatment works;

(2) Each industrial user of the treatment works shall pay that portion of the cost of construction of the treatment works paid by the federal government allocable to the treatment of its industrial waste.

147.20 Review of permits, decisions, terms and conditions. (1) Any permit applicant, permittee, affected state or 5 or more persons may secure a review by the department of any permit denial, modification, suspension or revocation, the reasonableness of or necessity for any term or condition of any issued or modified permit, any proposed thermal effluent limitation established under s. 147.05 (4) or any proposed water quality related limitation established under s. 147.05 (1). Such review shall be accomplished in the following manner:

(a) A verified petition shall be filed with the secretary setting forth specifically the issue sought to be reviewed by the department. Such petition must be filed within 60 days after notice of any action which is reviewable under this section is issued by the department. The petition shall indicate the interest of the petitioners and the reasons why a hearing is warranted. Upon receipt of such petitions, the department shall circulate a notice of public hearing in accordance with the requirements of s. 147.09 (1) at least 10 days prior to holding a public hearing thereon.

(b) The department shall hold a public hearing at the time and place designated in the notice of hearing. At the beginning of each such hearing the petitioner shall present evidence to the department which is in support of the allegation made in the

petition. All interested persons or their representative shall be afforded an opportunity to present facts, views or arguments relevant to the issues raised by the petitioners, and cross-examination shall be allowed. All matters concerning the permit denial, modification, suspension or revocation shall be considered de novo. No person shall be required to appear by attorney at any hearing under this section.

(c) Any duly authorized representative of the department may administer oaths or affirmations, compel the attendance of witnesses and the production of information by subpoena and continue or postpone the hearing to such time and place as the department determines.

(d) The department shall issue its decision on the issues raised by the petitioner within 90 days after the close of the hearing.

(2) The decisions of the department issued under this section shall be subject to judicial review as provided in ss. 227.15 to 227.21.

147.21 Civil and criminal remedies. (1) The department of justice, upon a referral pursuant to s. 147.29, may initiate a civil action for a temporary or permanent injunction for any violation of this chapter or any rule promulgated thereunder or of a term or condition of any permit issued under this chapter.

(2) Any person who violates this chapter, or any rule promulgated thereunder, or any term or condition of a permit issued under this chapter, shall be subject to a forfeiture of not more than \$10,000 for each day of violation.

(3) Any person who wilfully or negligently violates this chapter, any rule promulgated thereunder, or any term or condition of a permit issued thereunder shall be punished after conviction by a fine of not more than \$25,000 per day of violation, or by imprisonment for not more than 6 months or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by fine of not more than \$50,000 per day of violation, or by imprisonment for not more than one year in the county jail or both. In determining the amount of the fine under this subsection, the court shall assess an amount which represents an actual and substantial economic deterrent to the action which was the basis of the conviction.

(4) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than 6 months or both.

(5) In addition to all other civil and criminal penalties prescribed under this chapter, the court may assess as an additional penalty a portion or all of the total costs of the investigation, including monitoring, which led to the establishment of the violation.

(6) For t to the definition under s. 147.015 (1), any responsible corporate officer.

147.23 Compensation for loss. The department may sue to recover the expense incurred in removing, terminating, or remedying the adverse effects upon the water environment resulting from the discharge or deposit of pollutants into the waters of the state and may sue for the costs of replacing fish or other wildlife destroyed by such unlawful discharge.

147.25 Continuing planning process. The department shall establish a continuing water pollution control planning process which is consistent with applicable state requirements. The continuing planning process shall result in plans for all waters of the state, which plans shall include:

- (1) Adequate effluent limitations and schedules of compliance;
- (2) The incorporation of all elements of any applicable areawide waste management plans, basin plans and statewide land use plans;
- (3) Total maximum daily load for pollutants;
- (4) Procedures for revision;
- (5) Procedures for intergovernmental cooperation;
- (6) Implementation procedures, including schedules of compliance, for revised or new water quality standards;
- (7) Controls over the disposition of all residual waste from any water treatment processing;
- (8) An inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet applicable requirements.

147.26 Design of publicly owned treatment facilities. (1) The department shall encourage the design of publicly owned treatment works which provide for:

- (a) The recycling of sewage pollutants by using them in agriculture, silviculture or aquaculture;
- (b) The confined and contained disposal of those pollutants not recycled;
- (c) The reclamation of wastewater;
- (d) The ultimate disposal of sludge in a manner not resulting in environmental hazards; and
- (e) The integration of facilities for sewage disposal with other facilities designed to dispose of solid waste and thermal pollution, for the purpose of producing revenues in excess of cost in the operation of the integrated facility.

(2) All plans submitted under s. 144.04 after the effective date of this section (1973) for new treatment works, or modifications of treatment works, which will be eligible for construction grants under s. 144.21, shall contain:

- (a) Adequate analysis and data establishing that the works or modification is the most cost efficient method of meeting limitations and standards required of the facility; and
- (b) A feasibility plan on using ultimate disposal of pollutants to land rather than to air or the waters of the state.

147.27 Savings clause. Except as provided in this chapter, nothing in this chapter shall be deemed to supersede any other statute or session law.

147.29 Enforcement. (1) Whenever on the basis of any information available to it the department finds that any person is violating this chapter, any rule adopted thereunder or any term or condition of any permit issued pursuant to this chapter, the department shall refer the matter to the department of justice for enforcement under s. 147.21.

(2) The department of justice shall initiate the legal action requested by the department under sub. (1) within 30 days of receipt of the written request. In any action commenced by it under this subsection, the department of justice shall, prior to stipulation, consent order, judgment or other final disposition of the case, consult with the department for the purpose of determining the department's views on final disposition. The department of justice shall not enter into a final disposition different than that previously discussed without first informing the department.

(3) In any criminal action commenced under s. 147.21, the department of justice may request the assistance of the district attorney of any county in which the violation occurred, and the district attorney shall provide the requested assistance.

(4) Any civil action on a violation may be commenced in the circuit court of Dane county or the circuit court for the county in which the violation occurred in whole or in part. Any criminal action on a violation shall be commenced in the circuit court for the county in which the violation occurred.

147.30 Environmental pollution. Regulatory actions taken by the department to eliminate or control environmental pollution shall be exempt from the provisions of s. 1.11, other than:

(1) Involvement in federal financial assistance grants for the construction of publicly owned treatment works;

(2) Financial assistance under s. 144.21; and

(3) Issuance of permits or approvals for new sources of environmental pollution.

SECTION 4. 165.07 of the statutes is amended to read:

165.07 Assistant attorney general--public intervenor. The attorney general shall designate an assistant attorney general on his staff as public intervenor. Written notices of all proceedings under chs. 30, 31 and 144 and 147 shall be given to the public intervenor and to the administrators of divisions primarily assigned the departmental functions under chs. 29 and 144 by the agency head responsible for such proceedings. A copy of such notice shall also be given to the scientific areas preservation council. The public intervenor shall formally intervene in such proceedings when requested to do so by an administrator of a division primarily assigned the departmental functions under chs. 29 or 144. The public intervenor may, on his own initiative or upon request of any committee of the legislature, formally intervene in all such proceedings where such intervention is needed for the protection of "public rights" in water and other natural resources, as provided in chs. 30 and 31 and defined by the supreme court. Personnel of the department of natural resources shall upon the request of the public intervenor make such investigations, studies and reports as he may request in connection with such proceedings, either before or after formal intervention.

Personnel of state agencies shall at his request provide information, serve as witnesses in such proceedings and otherwise cooperate in the carrying out of his intervention functions. Formal intervention shall be by filing a statement to that effect with the examiner or other person immediately in charge of the proceeding. Thereupon the public intervenor shall be deemed a party in interest with full power to present evidence, subpoena and cross examine witnesses, submit proof, file briefs or do any other acts appropriate for a party to the proceedings. He may appeal from administrative rulings to the courts and in all administrative proceedings and judicial review proceedings he shall be identified as "public intervenor". This section does not preclude or prevent any division of the department of natural resources, or any other

department or independent agency from appearing by its staff as a party in such proceedings.

SECTION 5. No later than January 1, 1974, the department of natural resources shall report to the joint committee on finance with recommendations on integrating the monitoring fees required by section 144.54 of the statutes with a fee system for permits issued under chapter 147 of the statutes.

SECTION 6. On the effective date of this act, the department of natural resources shall commence the administration of any permit already issued by the U.S. environmental protection agency under the federal water pollution control act amendments of 1972, 86 Stat. 816. The department shall not require any holder of a previously issued federal permit to resubmit an application for a state permit under chapter 147 of the statutes until expiration of the federal permit. This SECTION shall not be construed to prevent the department from modifying the terms and conditions of such permits under chapter 147 of the statutes during the remaining period prior to expiration.
