

1987 Senate Bill 124

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1987 Wisconsin Act 384

AN ACT to repeal 144.545; to amend 20.370 (2) (dq), 20.370 (2) (ds), 25.45, 144.43 (2) and (4g), 144.433 (2) (d), 144.434, 144.44 (2) (f) (intro.), 144.44 (3) (b), 144.44 (4) (a), 144.441 (2) (b), 144.441 (6) (b), 144.441 (6) (e), 144.441 (6) (g), 144.442 (4) (b) 2, 144.442 (6) (e), 144.443 (3) (a) (intro.) and 5, 144.443 (4) (a), 144.443 (5) (d), 144.443 (6) (b), 144.443 (7) (b) (title), 144.443 (9) (b) and (c), 144.443 (11) (title) and (a) (intro.) and 4, 144.443 (11) (b), 144.443 (11) (c), 144.48 (2) (c), (3) (b) and (4) (b), 144.61 (3), (5m) and (9m), 144.62 (5), 144.62 (8) (e), 144.62 (10) (a), 144.62 (10) (b) 1 to 3, 144.63 (2) (b), 144.64 (2) (c), 144.64 (2) (e), 144.64 (3) and (4) (a) 1 and 2, 144.645 (1), 144.645 (3), 144.68 (2), 144.69, 144.70 (2) (d), 144.73 (1) and (2), 144.76 (7) (a) and (8) and 144.77 (4) and (5); to repeal and recreate 144.72 and 144.74; and to create 20.370 (2) (dy), 20.370 (2) (dz), 144.44 (1) (bm), (d) and (e), 144.44 (2) (fm), 144.441 (2) (e), 144.441 (6) (h), 144.442 (4) (d), 144.443 (2) (c) and (d), 144.443 (3) (a) 6, 144.443 (11) (am), 144.443 (11) (bm), 144.443 (11) (cm), 144.50, 144.52, 144.62 (2) (c), 144.62 (8) (f), 144.64 (2) (e) 4 to 6, 144.64 (2) (g), 144.64 (2m) and 144.735 of the statutes, relating to making various changes in the laws governing waste, granting rule-making authority, providing penalties and making appropriations.

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

SECTION 1. 20.370 (2) (dq) of the statutes is amended to read:

20.370 (2) (dq) *Solid waste management — waste management fund.* From the waste management fund, all moneys received in the waste management fund, except moneys appropriated under pars. (ds) ~~and~~ (dt), (dy) and (dz), for the purpose of administering a program of corrective action, closure and long-term care of and environmental repairs to solid and hazardous waste disposal facilities under s. 144.441.

SECTION 2. 20.370 (2) (ds) of the statutes is amended to read:

20.370 (2) (ds) *Solid waste management — closure, long-term care and corrective action; imminent hazard.* As a continuing appropriation, from the waste management fund, the amounts in the schedule to provide funds for compliance with closure and long-term care requirements which are necessary to prevent an imminent or substantial danger to health or the environment under s. 144.443 (11) (c) and to provide funds necessary to prevent an imminent or substantial danger to health or the environment under s. 144.443 (11) (cm).

SECTION 3. 20.370 (2) (dy) of the statutes is created to read:

20.370 (2) (dy) *Solid waste management — corrective action; proofs of financial responsibility.* From the waste management fund, all moneys received under s. 144.443 (11) (am) 1 for compliance with corrective action requirements under s. 144.443 (11) (bm) at facilities which forfeit or convert proof of financial responsibility under s. 144.443 (11) (am) 1.

SECTION 4. 20.370 (2) (dz) of the statutes is created to read:

20.370 (2) (dz) *Solid waste management — corrective action; moneys recovered from assessments and legal action.* From the waste management fund, all moneys received under s. 144.443 (11) (am) 3 and 4 for compliance with corrective action requirements under s. 144.443 (11) (bm).

SECTION 5. 25.45 of the statutes is amended to read:

25.45 Waste management fund. There is established a separate nonlapsible trust fund designated as the waste management fund, to consist of all tonnage fees imposed under s. 144.441 (3), waste management base fees imposed under s. 144.441 (5) and all moneys received or recovered under s. 144.443 (11) (a) 1, 3 or 4

and (am) 1, 3 and 4. Moneys in the waste management fund shall be used for the purposes specified under s. 144.441 (6) (d) to ~~(g)~~ (h).

SECTION 6. 144.43 (2) and (4g) of the statutes are amended to read:

144.43 (2) “Hazardous waste” means any solid waste identified by the department as hazardous under s. 144.62 (2) (b).

(4g) “Resource conservation and recovery act” means the federal resource conservation and recovery act, 42 USC 6901 to ~~6987~~ 6991, as amended on ~~May 7, 1982~~ November 8, 1984.

SECTION 7. 144.433 (2) (d) of the statutes is amended to read:

144.433 (2) (d) *Use of confidential records.* Except as provided under par. (c) and this paragraph, the department or the department of justice may use records and other information granted confidential status under this subsection only in the administration and enforcement of ss. 144.43 to 144.47 and 144.96. The department or the department of justice may release for general distribution records and other information granted confidential status under this subsection if the owner or operator expressly agrees to the release. The department or the department of justice may release on a limited basis records and other information granted confidential status under this subsection if the department or the department of justice is directed to take this action by a judge or hearing examiner under an order which protects the confidentiality of the records or other information. The department or the department of justice may release to the U.S. environmental protection agency, or its authorized representative, records and other information granted confidential status under this subsection if the department or the department of justice includes in each release of records or other information a request to the U.S. environmental protection agency, or its authorized representative, to protect the confidentiality of the records or other information.

SECTION 7m. 144.434 of the statutes is amended to read:

144.434 Inspections. Any ~~duly authorized~~ officer, employe or authorized representative of the department may enter and inspect any property, premise or place on or at which a solid waste facility is located or is being constructed or installed, or inspect any record relating to solid waste management of any person who generates, transports, treats, stores or disposes of solid waste, at any reasonable time for the purpose of ascertaining the state of compliance with ss. 144.43 to 144.47 and rules promulgated under those sections. No person may refuse entry or access to any officer, employe or authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials. No person may 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.

SECTION 8. 144.44 (1) (bm), (d) and (e) of the statutes are created to read:

144.44 (1) (bm) “Hazardous constituent” means any constituent designated by the department under s. 144.62 (2) (c).

(d) “Release” has the meaning given under s. 144.735 (1) (b).

(e) “Surface impoundment” has the meaning given under s. 144.735 (1) (d).

SECTION 9. 144.44 (2) (f) (intro.) of the statutes is amended to read:

144.44 (2) (f) (intro.) The department shall specify by rule the minimum contents of a feasibility report and no report is complete unless the specified information is provided by the applicant. ~~The~~ In addition to the requirements specified under par. (fm), the rules may specify special requirements for a feasibility report relating to a any hazardous waste facility. The department may require a feasibility report to be prepared by a registered professional engineer. A feasibility report shall include:

SECTION 10. 144.44 (2) (fm) of the statutes is created to read:

144.44 (2) (fm) *Certain hazardous waste facilities; additional requirements.* A feasibility report for a hazardous waste disposal facility or surface impoundment shall include a list of all persons living within 0.5 mile of the facility and information reasonably ascertainable by the applicant on the potential for public exposure to hazardous waste or hazardous constituents through releases from the facility including, but not limited to, the following:

1. A description of any releases that may be expected to result from normal operations or accidents at the facility, including releases associated with transportation to or from the facility.

2. A description of the possible ways that humans may be exposed to hazardous waste or hazardous constituents as a result of a release from the facility, including the potential for groundwater or surface water contamination, air emissions or food chain contamination.

3. The potential extent and nature of human exposure to hazardous waste or hazardous constituents that may result from a release.

SECTION 11. 144.44 (3) (b) of the statutes is amended to read:

144.44 (3) (b) *Preparation; contents.* The proposed plan of operation shall be prepared by a registered professional engineer and shall include at a minimum a description of the manner of solid waste disposal or hazardous waste treatment, storage or disposal and a statement setting forth the proposed development, daily operation, closing and long-term care of the facility. ~~For a hazardous waste disposal facility, the~~

~~report shall include a register of residents within one-half mile of the facility.~~ The proposed plan of operation shall specify whether the owner's responsibility for long-term care of the facility will terminate 30 years after closing as provided in s. 144.441 (2) (b) or 20 years after closing as provided in s. 144.441 (2) (c). The department shall specify by rule the minimum contents of a plan of operation submitted for approval under this subsection and no plan is complete unless the information is supplied. The rules may specify special standards for plans of operation relating to hazardous waste facilities. Within 30 days after a plan of operation is submitted or, if the plan of operation is submitted with the feasibility report under par. (ag), within 30 days after the department issues notice that the feasibility report is complete, the department shall notify the applicant in writing if the plan is not complete, specifying the information which is required to be submitted before the report is complete. If no notice is given, the report is deemed complete on the date of its submission.

SECTION 12. 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 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) any reason specified under s. 144.64 (2) (e).~~ 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 13. 144.441 (2) (b) of the statutes is amended to read:

144.441 (2) (b) *Long-term care responsibility; 30-year.* The owner of an approved mining 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 an approved facility 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). The owner of 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) or extended under par. (e).

SECTION 14. 144.441 (2) (e) of the statutes is created to read:

144.441 (2) (e) *Extension of long-term care responsibility.* If the department determines that it is necessary to protect human health or the environment, the department may require the owner of a hazardous waste disposal facility to remain responsible for the long-term care of the facility for a period of more than 30 years. The department shall notify the owner of the extended long-term care requirement before the expiration of the original 30-year period.

SECTION 15. 144.441 (6) (b) of the statutes is amended to read:

144.441 (6) (b) *Payments from the waste management fund.* The department may expend moneys in the waste management fund only for the purposes specified under pars. (d) to ~~(g)~~ (h). The department may expend moneys appropriated under s. 20.370 (2) (dq) for the purposes specified under pars. (d) and (e). The department may expend moneys appropriated under s. 20.370 (2) (dt) for the purposes specified under par. (f). The department may expend moneys appropriated under s. 20.370 (2) (ds) for the purposes specified under par. (g). The department may expend moneys appropriated under s. 20.370 (2) (dy) and (dz) for the purposes specified under par. (h).

SECTION 16. 144.441 (6) (e) of the statutes is amended to read:

144.441 (6) (e) *Payment of closure and long-term care costs; responsibility based on net worth.* The department may make payments for the cost of compliance with closure and long-term care requirements in the plan of operation, or approved plan under s. 144.64 (2m), of a waste facility or for the cost of corrective action for which the owner or operator establishes proof of financial responsibility under s. 144.443 (4) and complies with minimum security requirements under s. 144.443 (8) if the owner or operator fails to comply with these requirements and if the department or the department of justice is unable to obtain compliance with these requirements after appropriate legal action because of bankruptcy, insolvency or financial inability of the owner or operator or the company, as defined under s. 144.443 (1) (b), to comply with these requirements.

SECTION 17. 144.441 (6) (g) of the statutes is amended to read:

144.441 (6) (g) *Prevention of imminent hazard.* The department may utilize moneys appropriated under s. 20.370 (2) (ds) for the payment of costs associated with imminent hazards as authorized under s. 144.443 (11) (c) and (cm).

SECTION 18. 144.441 (6) (h) of the statutes is created to read:

144.441 (6) (h) *Payment of corrective action, forfeited bonds and recovered moneys.* The department may utilize moneys appropriated under s. 20.370 (2) (dy) and (dz) for the payment of costs of corrective action under s. 144.443 (11) (bm).

SECTION 18d. 144.442 (4) (b) 2 of the statutes is amended to read:

144.442 (4) (b) 2. The department may conduct an investigation, analysis and monitoring of a site or facility and areas surrounding the site or facility to determine the existence and extent of actual or potential environmental pollution from the site or facility including, but not limited to, monitoring by means of installing test wells or by testing water supplies. The department may conduct an investigation to identify persons who are potentially responsible for actual or potential environmental pollution from a site or facility. If the department conducts an investigation to identify persons who are potentially responsible for actual or potential environmental pollution from a site or facility, the department shall make a reasonable effort to identify as many persons as possible responsible for the environmental pollution.

SECTION 18f. 144.442 (4) (d) of the statutes is created to read:

144.442 (4) (d) *Access to information.* Upon the request of any officer, employe or authorized representative of the department, any person who generated, transported, treated, stored or disposed of solid or hazardous waste which may have been disposed of at a site or facility under investigation by the department shall provide the officer, employe or authorized representative access to any records or documents in that person's custody, possession or control which relate to:

1. The type and quantity of waste generated, transported, treated or stored which was disposed of at the site or facility and the dates of these activities.

2. The identity of persons who generated, transported, treated or stored waste which was disposed of at the site or facility.

3. The identity of subsidiary or parent corporations, as defined in sub. (9) (a) 3, of persons who generated, transported, treated or stored waste which was disposed of at the site or facility.

SECTION 18m. 144.442 (6) (e) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

144.442 (6) (e) *Access to property.* ~~The department, any authorized~~ Any officer, employe or authorized representative agent of the department ~~or any person under contract with the department~~ may enter onto any site or facility and areas surrounding the site or facility at reasonable times and upon notice to the owner or occupant to take action under this ~~subsection~~ section. Notice to the owner or occupant is not required if the delay required to provide this notice is likely to result in an imminent risk to public health or welfare or the environment.

SECTION 19. 144.443 (2) (c) and (d) of the statutes are created to read:

144.443 (2) (c) *Hazardous waste disposal, storage and treatment facilities.* If corrective action is required under s. 144.735, the owner or operator of the hazardous waste facility to which the requirement applies shall maintain proof of financial responsibility ensuring the availability of funds for compliance with the corrective action requirement.

(d) *Unlicensed hazardous waste facilities.* The owner or operator of an unlicensed hazardous waste facility subject to s. 144.64 (2m) shall maintain proof of financial responsibility ensuring the availability of funds for compliance with the approved closure plan and, if applicable, the long-term care plan.

SECTION 20. 144.443 (3) (a) (intro.) and 5 of the statutes are amended to read:

144.443 (3) (a) *Standard methods.* (intro.) The owner or operator of a facility may establish proof of financial responsibility required under sub. (2) (a) ~~or (b) to (d)~~ by obtaining any of the following made payable to or established for the benefit of the department and approved by the department:

5. A financial commitment satisfactory to the department to ensure that the owner or operator will comply with the closure and any long-term care requirements specified in the plan of operation or the approved plan under s. 144.64 (2m). The department shall consider the request of any owner or operator to establish proof of financial responsibility under this subdivision.

SECTION 21. 144.443 (3) (a) 6 of the statutes is created to read:

144.443 (3) (a) 6. If corrective action is required under s. 144.735, a financial commitment satisfactory to the department to ensure that the owner or operator will comply with the requirement. The department shall consider the request of any owner or operator to establish proof of financial responsibility under this subdivision.

SECTION 22. 144.443 (4) (a) of the statutes is amended to read:

144.443 (4) (a) *Net worth method.* A company may establish proof of financial responsibility required under sub. (2) (a), (c) or (d) by applying to the department and meeting the net worth requirements.

SECTION 23. 144.443 (5) (d) of the statutes is amended to read:

144.443 (5) (d) *Annual review.* In order to continue to meet the net worth requirements each year, a company shall reapply under sub. (4) (b) submitting material required under sub. (4) (c). Subsequent determinations by the department shall take into consideration any changes in the plan of operation and adjustments to the estimated total cost of compliance with closure and any long-term care or corrective action requirements because of inflation or other changes.

SECTION 24. 144.443 (6) (b) of the statutes is amended to read:

144.443 (6) (b) (title) *Net worth to closure, long-term care and corrective action cost ratio.* The net worth of the company at the end of its most recently completed fiscal year equals or exceeds 6 times the estimated total cost of compliance with the closure and any long-term care requirements specified in the plan of operation or the approved plan under s. 144.64 (2m) plus the costs of any corrective action required under s. 144.735.

SECTION 25. 144.443 (7) (b) (title) of the statutes is amended to read:

144.443 (7) (b) (title) *Net worth to closure, long-term care and corrective action costs ratio; minimum net worth; and absence of qualifiers in certified public accountant's opinion.*

SECTION 26. 144.443 (9) (b) and (c) of the statutes are amended to read:

144.443 (9) (b) (title) *Inability to meet closure and long-term care or corrective action costs.* If a public utility which utilizes the risk pool arrangement does not comply with the closure and long-term care requirements specified in any plan of operation or approved plan under s. 144.64 (2m) or with any corrective action required under s. 144.735 and if the department or the department of justice is unable to obtain compliance with these requirements after appropriate legal action because of bankruptcy, insolvency or the financial inability of the utility to comply with these requirements, then the department is authorized to enter an assessment order.

(c) *Assessment order.* If the department is authorized to enter an assessment order, the order shall direct each public utility which utilized the risk pool arrangement in the previous year, except the utility which failed to comply with the closure and long-term care or corrective action requirements, to pay a share of the estimated total cost of compliance with these requirements proportional to the amount of electricity generated by each of these public utilities during the previous year.

SECTION 27. 144.443 (11) (title) and (a) (intro.) and 4 of the statutes are amended to read:

144.443 (11) (title) **CLOSURE, LONG-TERM CARE AND CORRECTIVE ACTION.** (a) *Failure to comply with closure and long-term care requirements.* (intro.) If the owner or operator of the facility fails to comply with the clo-

sure and any long-term care requirements in any plan of operation or approved plan under s. 144.64 (2m):

4. The department may request the department of justice to initiate court action against the owner or operator to recover moneys sufficient to pay the cost of complying with the closure and long-term care requirements of the plan of operation or approved plan under s. 144.64 (2m). Any moneys recovered in this type of action or as a settlement in anticipation of this type of action shall be credited to the waste management fund.

SECTION 28. 144.443 (11) (am) of the statutes is created to read:

144.443 (11) (am) *Failure to comply with corrective action requirements.* If the owner or operator of the facility fails to comply with any corrective action requirements under s. 144.735:

1. The department may require the forfeiture or convert any standard method of establishing proof of financial responsibility if the owner or operator established proof of financial responsibility under sub. (3). All moneys received from the forfeiture or conversion of any standard method of establishing proof of financial responsibility shall be credited to the waste management fund.

2. The department may utilize funds appropriated under s. 20.370 (2) (dq) if the owner or operator established proof of financial responsibility under sub. (4) by complying with minimum financial standards under sub. (6) and minimum security requirements under sub. (8).

3. The department may issue an assessment order under sub. (9) (c) if the owner or operator established proof of financial responsibility by complying with minimum financial standards under sub. (7) and minimum security requirements under sub. (9). All moneys received from the assessment order shall be credited to the waste management fund.

4. The department may request the department of justice to initiate court action against the owner or operator to recover moneys sufficient to pay the cost of complying with a corrective action required under s. 144.735. Any moneys recovered in this type of action or as a settlement in anticipation of this type of action shall be credited to the waste management fund.

SECTION 29. 144.443 (11) (b) of the statutes is amended to read:

144.443 (11) (b) *Compliance with closure and long-term care requirements.* If the owner or operator of a waste facility fails to comply with the closure and any long-term care requirements in any plan of operation or approved plan under s. 144.64 (2m), the department may take action or contract with a person to take action to comply with these requirements from moneys obtained for that purpose under par. (a).

SECTION 30. 144.443 (11) (bm) of the statutes is created to read:

144.443 (11) (bm) *Compliance with corrective action requirements.* If the owner or operator of a waste facility fails to comply with any corrective action required under s. 144.735, the department may take action or contract with a person to take action to comply with a corrective action required under s. 144.735 from moneys obtained for that purpose under par. (am).

SECTION 31. 144.443 (11) (c) of the statutes is amended to read:

144.443 (11) (c) (title) *Prevention of imminent hazard; closure and long-term care.* If the owner or operator of a waste facility fails to comply with the closure and any long-term care requirements in any plan of operation or approved plan under s. 144.64 (2m), if the department determines that the failure to comply with these requirements presents an imminent or substantial danger to the health or environment and if the department takes reasonable administrative and legal action to require compliance or to obtain moneys under par. (a), then the department may take action or contract with a person to take action to comply with these requirements even though no moneys have been obtained under par. (a).

SECTION 32. 144.443 (11) (cm) of the statutes is created to read:

144.443 (11) (cm) *Prevention of imminent hazard; corrective action.* If the owner or operator of a waste facility fails to comply with any corrective action required under s. 144.735, if the department determines that the failure to comply with a corrective action requirement presents an imminent or substantial danger to the health or environment and if the department takes reasonable administrative and legal action to require compliance or to obtain moneys under par. (am), then the department may take action or contract with a person to take action to comply with a corrective action required under s. 144.735 even though no moneys have been obtained under par. (am).

SECTION 33. 144.48 (2) (c), (3) (b) and (4) (b) of the statutes are amended to read:

144.48 (2) (c) *Exemption.* ~~A retail sales establishment which maintains an~~ An engine waste oil collection facility maintained by a retail sales establishment which is of a type approved by the department is exempt from the requirements of ss. 144.44, 144.46, 144.63 and 144.64 and rules promulgated under those sections with respect to that facility s. 144.435 and need not be licensed as a solid waste disposal facility under s. 144.44.

(3) (b) *Exemption.* ~~A~~ If a municipality which submits and obtains approval from the department for an informal plan of operation for an engine waste oil storage facility and ~~which~~ constructs, maintains or provides for an engine waste oil storage facility of a type approved by the department, that facility is exempt from the requirements of ss. 144.44, 144.46, 144.63 and 144.64 and rules promulgated under those sections with respect to that facility s. 144.435 and

need not be licensed as a solid waste disposal facility under s. 144.44. The informal plan of operation shall contain the information and be in a form approved by the department but is not required to be prepared by a registered professional engineer.

(4) (b) *Compliance with solid and hazardous waste regulations.* Except as provided under par. (a), no person may transport waste engine waste oil unless the person obtains a license and complies with the requirements of ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under those sections with respect to the transportation of the waste engine waste oil.

SECTION 34. 144.50 of the statutes is created to read:

144.50 Used oil fuel. (1) **DEFINITIONS.** In this section:

(a) "Used oil" means any petroleum-derived or synthetic oil which, as a result of use or management, is contaminated. "Used oil" includes, but is not limited to, the following:

1. Engine, turbine and gear lubricants.
2. Hydraulic fluid, including transmission fluid.
3. Metalworking fluid, including cutting, grinding, machining, rolling, stamping, quenching and coating oils.
4. Insulating fluid or coolant.

(b) "Used oil fuel" means any fuel designated by the department by rule that contains used oil or is produced from used oil or from a combination of used oil and other material.

(2) **NOTIFICATION.** (a) A person who does any of the following shall notify the department of the location and description of each facility used and the description of the used oil fuel:

1. Owns or operates a facility that produces used oil fuel or a facility that recovers energy by burning used oil fuel.
2. Distributes or markets used oil fuel.

(b) The department may by rule exempt specific persons or facilities from the requirements of par. (a).

(3) **INSPECTIONS AND RIGHT OF ENTRY.** Upon the request of any officer or employe of the department and with notice provided no later than upon the officer's or employe's arrival, any person subject to sub. (2) (a) shall permit the officer or employe access to vehicles, premises and records relating to used oil fuel at any reasonable time. An officer or employe of the department may take samples of any used oil fuel. The officer or employe shall commence and complete inspections with reasonable promptness. The officer or employe shall give the person a receipt for each sample taken and, upon request, half of the sample. The department shall promptly furnish the person with a copy of the results of the analysis of each sample and a copy of the inspection report.

(4) **ENFORCEMENT; PENALTIES.** (a) *Compliance orders.* If the department determines that any person is in violation of sub. (2) (a) or (3) or any rule promul-

gated under this section, the department may do one or more of the following:

1. Give the person written notice of the violation.
2. Issue a special order requiring compliance within a specified time period.
3. Refer the matter to the department of justice for enforcement under s. 144.98.

(b) *Department of justice action; disposition.* The department of justice may initiate the legal action requested by the department under par. (a) 3 after receipt of the written request. In any action commenced by it under this paragraph, 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 may not enter into a final disposition different than that previously discussed without first informing the department.

(c) *Penalties.* 1. Any person who violates sub. (2) (a) or (3) or any rule promulgated or special order issued under this section shall forfeit not more than \$25,000 for each violation.

2. Any person who intentionally makes any false statement or representation in complying with sub. (2) (a) shall be fined not more than \$25,000 or imprisoned for not more than one year in the county jail or both. For a 2nd or subsequent violation, the person shall be fined not more than \$50,000 or imprisoned for not more than 2 years or both.

(d) *Venue.* Any action on a violation shall be commenced in the circuit court for the county in which the violation occurred. If all parties stipulate and the circuit court for Dane county agrees, the proceedings may be transferred to the circuit court for Dane county.

SECTION 35. 144.52 of the statutes is created to read:

144.52 Confidentiality of records; used oil collection facilities and used oil fuel facilities. (1) **RECORDS.** Except as provided under sub. (2), records and other information furnished to or obtained by the department in the administration of ss. 144.48 and 144.50 are public records subject to s. 19.21.

(2) **CONFIDENTIAL RECORDS.** (a) *Application.* Any person subject to s. 144.48 or 144.50 may seek confidential treatment of any records or other information furnished to or obtained by the department in the administration of s. 144.48 or 144.50.

(b) *Standards for granting confidential status.* Except as provided under par. (c), the department shall grant confidential status for any records or information received by the department and certified by the applicant as relating to production or sales figures or to processes or production unique to the applicant or which would tend to adversely affect the competitive position of the applicant if made public.

(c) *Emission data; analyses and summaries.* The department may not grant confidential status for

emission data. Nothing in this subsection prevents the department from using records and other information in compiling or publishing analyses or summaries relating to the general condition of the environment if the analyses or summaries do not identify a specific applicant or facility or reveal records or other information granted confidential status.

(d) *Use of confidential records.* Except as provided under par. (c) and this paragraph, the department or the department of justice may use records and other information granted confidential status under this subsection only in the administration and enforcement of s. 144.48 or 144.50. The department or the department of justice may release for general distribution records and other information granted confidential status under this subsection if the applicant expressly agrees to the release. The department or the department of justice may release on a limited basis records and other information granted confidential status under this subsection if the department or the department of justice is directed to take this action by a judge or hearing examiner under an order which protects the confidentiality of the records or other information. The department or the department of justice may release to the U.S. environmental protection agency or its authorized representative records and other information granted confidential status under this subsection if the department or the department of justice includes in each release of records or other information a request to the U.S. environmental protection agency or its authorized representative to protect the confidentiality of the records or other information.

SECTION 36. 144.545 of the statutes is repealed.

SECTION 37. 144.61 (3), (5m) and (9m) of the statutes are 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 hazardous 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.~~ "Disposal" does not include the generation, transportation, storage or treatment of hazardous waste.

(5m) "Hazardous waste facility" means a facility site or structure for the treatment, storage or disposal of hazardous waste and includes the land where the facility is located all of the contiguous property under common ownership or control surrounding the site or structure.

(9m) "Resource conservation and recovery act" means the federal resource conservation and recovery act, 42 USC 6901 to ~~6987~~ 6991i, as amended on ~~May 7, 1982~~ November 8, 1984.

SECTION 38. 144.62 (2) (c) of the statutes is created to read:

144.62 (2) (c) The department shall promulgate by rule a list of hazardous constituents which shall include, but need not be limited to, the hazardous constituents specified in 40 CFR 261, appendix VIII. The department may not list a hazardous constituent which is not specified in 40 CFR 261, appendix VIII unless it determines that the listing of the constituent is necessary to protect public health, safety or welfare. The department shall issue specific findings and conclusions on which such a determination to list a hazardous constituent is based.

SECTION 39. 144.62 (5) of the statutes is amended to read:

144.62 (5) The department may exempt by rule any person who generates, transports, treats, stores or disposes of hazardous wastes from any provision under ss. 144.60 to 144.74 or from any rule promulgated under those sections if the generation, transportation, treatment, storage or disposal does not present a significant hazard to public health and safety or the environment.

SECTION 40. 144.62 (8) (e) of the statutes is amended to read:

144.62 (8) (e) The design, construction, operation ~~and~~, closing and long-term care of hazardous waste facilities.

SECTION 41. 144.62 (8) (f) of the statutes is created to read:

144.62 (8) (f) Corrective action under s. 144.735.

SECTION 42. 144.62 (10) (a) of the statutes is amended to read:

144.62 (10) (a) The department shall promulgate rules under sub. (2) (a) and (b) which establish not less than 2 nor more than 4 classes of hazardous waste and shall assign wastes to a particular class. The classes shall be based upon the relative degrees of hazard posed by the waste. Standards established under ss. 144.60 to 144.74 for hazardous waste facilities or for equipment which transports hazardous waste shall recognize and differentiate between the classes of waste which the facility or equipment is intended to transport, treat, store or dispose.

SECTION 43. 144.62 (10) (b) 1 to 3 of the statutes are amended to read:

144.62 (10) (b) 1. The amounts of wastes and the concentrations of the harmful or potentially harmful ~~constituents~~ components of the wastes;

2. The likelihood of exposure to humans or the environment of the harmful or potentially harmful ~~constituents~~ components of the wastes based upon the mobility and stability of harmful ~~constituents~~ components, and the biological or chemical conversion of the ~~constituents~~ components to other harmful chemicals; and

3. The harm to humans or the environment resulting from the exposure identified under subd. 2 from the harmful ~~constituents~~ components.

SECTION 44. 144.63 (2) (b) of the statutes is amended to read:

144.63 (2) (b) The hazardous constituents of hazardous wastes which are significant because of quantity or potential harmfulness to human health or the environment; and

SECTION 45. 144.64 (2) (c) of the statutes is amended to read:

144.64 (2) (c) The department may issue an interim license to a person who operates a hazardous waste facility ~~in existence on November 19, 1980~~, if the person applies for a license under this subsection and complies with conditions and restrictions prescribed by rule or special order by the department pending the decision on the issuance of an operating license under this subsection. This paragraph applies only if the facility was in existence on November 19, 1980, or on a subsequent date which is the effective date of the statute or rule requiring the facility to obtain an operating license under this subsection. An interim license issued under this paragraph constitutes an operating license under this subsection.

SECTION 46. 144.64 (2) (e) of the statutes is amended to read:

144.64 (2) (e) ~~Licenses~~ A license issued under this subsection may be denied, suspended or revoked ~~for failure to~~ if the applicant or licensee does any of the following:

1. ~~Pay fees~~ Fails to pay any fee required under ~~ss. 144.43 to 144.47; sub. (4).~~

2. ~~Comply~~ Fails to comply with the rules ~~adopted under~~ ss. 144.60 to 144.74; or any rule promulgated under those sections.

3. ~~Comply~~ Fails to comply with the approved plan of operation under s. 144.44 (3).

SECTION 47. 144.64 (2) (e) 4 to 6 of the statutes are created to read:

144.64 (2) (e) 4. Fails to disclose fully all relevant facts in a feasibility report, plan of operation or license application or in a review of a feasibility report, plan of operation or license.

5. Misrepresents any relevant fact at any time.

6. Operates the facility in a way that endangers human health or the environment to the extent that denial, suspension or revocation of the license is the only way to provide an acceptable level of protection.

SECTION 48. 144.64 (2) (g) of the statutes is created to read:

144.64 (2) (g) Notwithstanding pars. (am) 1, (b) and (d), the owner or operator of a hazardous waste facility who holds a permit for the treatment, storage or disposal of hazardous waste issued before January 31, 1986, by the U.S. environmental protection agency under 42 USC 6925 (c) and who is in compliance with the permit may obtain an operating license under par. (am) 2 for the federally permitted activities by doing all of the following:

1. Submitting to the department, on a form provided by the department, an application showing that the facility meets the standards established under ss. 144.44 and 144.60 to 144.74 and rules promulgated under those sections.

2. Complying with any condition that the department prescribes as necessary to meet any standard or requirement established under ss. 144.44 and 144.60 to 144.74.

3. Paying any fee required under sub. (4).

SECTION 49. 144.64 (2m) of the statutes is created to read:

144.64 (2m) CLOSURE AND LONG-TERM CARE PLAN FOR UNLICENSED FACILITIES. Any person required to be licensed or eligible to obtain a license under sub. (2) (c) who does not obtain a license under that subsection shall submit to the department a closure plan and, if the facility is a disposal facility, a long-term care plan for the facility which complies with the requirements promulgated by the department by rule under s. 144.62 (8) (e) and shall comply with the plan as approved by the department. There is no statutory right to a hearing before the department concerning a plan submitted under this subsection but the department may grant a hearing on a plan.

SECTION 50. 144.64 (3) and (4) (a) 1 and 2 of the statutes are amended to read:

144.64 (3) VARIANCE. If the department determines that the application for or compliance with any license required under ~~this section~~ sub. (1) or (2) would cause undue or unreasonable hardship to any person, the department may issue a variance from the requirements of this section but the variance may not result in undue harm to public health or the environment and the duration of the variance may not exceed 5 years. The department may renew or extend a variance only after opportunity for a public hearing.

(4) (a) 1. The department shall ~~adopt~~ promulgate by rule a graduated schedule of reasonable license, plan approval and review fees to be charged for hazardous waste ~~license and review~~ activities under this section.

2. Hazardous waste ~~license and review~~ activities under this section consist of reviewing feasibility reports, plans of operation, closure plans and license applications, issuing determinations of feasibility, plan of operation approvals, operating licenses, interim licenses and variances, approving closure plans and taking other actions in administering this section.

SECTION 51. 144.645 (1) of the statutes is amended to read:

144.645 (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~~ to 6, the department shall comply with the procedures specified under this section.

SECTION 52. 144.645 (3) of the statutes is amended to read:

144.645 (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. 227.42 (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~~ to 6 except as provided under this subsection.

SECTION 53. 144.68 (2) of the statutes is amended to read:

144.68 (2) This section does not apply to hazardous waste disposal facilities granted an interim license under s. 144.64 (2) (c) or a variance under s. 144.64 (3) or a facility subject to s. 144.64 (2m).

SECTION 54. 144.69 of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

144.69 Inspections and right of entry. Upon the request of any officer, employe or ~~agent~~ authorized representative of the department and with notice provided no later than upon the officer's, employe's or ~~agent's~~ authorized representative's arrival, any person who generates, stores, treats, transports or disposes of hazardous wastes shall permit the officer, employe or ~~agent~~ authorized representative access to vehicles, premises and records relating to hazardous wastes at reasonable times. An officer, employe or ~~agent~~ authorized representative of the department may take samples of any hazardous waste. The officer, employe or ~~agent~~ authorized representative shall commence and complete inspections with reasonable promptness. If samples are taken, the officer, employe or ~~agent~~ authorized representative shall give a receipt for each sample to the person in charge of the facility and, upon request, half of the sample taken. The department shall furnish promptly a copy of the results of any analysis of any sample which is taken and a copy of the inspection report to the person in charge of the facility.

SECTION 55. 144.70 (2) (d) of the statutes is amended to read:

144.70 (2) (d) *Use of confidential records.* Except as provided under par. (c) and this paragraph the department ~~or the department of justice~~ may use records and other information granted confidential status under this subsection only in the administration and enforcement of ss. 144.60 to 144.74. The department ~~or the department of justice~~ may release for general distribution records and other information granted confidential status under this subsection if the owner or operator expressly agrees to the release. The depart-

ment ~~or the department of justice~~ may release on a limited basis records and other information granted confidential status under this subsection if the department ~~or the department of justice~~ is directed to take this action by a judge or hearing examiner under an order which protects the confidentiality of the records or other information. The department ~~or the department of justice~~ may release to the U.S. environmental protection agency or its authorized representative records and other information granted confidential status under this subsection if the department ~~or the department of justice~~ includes in each release of records or other information a request to the U.S. environmental protection agency or its authorized representative to protect the confidentiality of the records or other information.

SECTION 56. 144.72 of the statutes is repealed and recreated to read:

144.72 Imminent danger. (1) NOTICE REQUIRED. If the department receives evidence that the past or present handling, storage, treatment, transportation or disposal of any solid or hazardous waste may present an imminent and substantial danger to health or the environment, the department shall do all of the following:

- (a) Provide immediate notice of the danger to each affected municipality.
- (b) Promptly post notice of the danger at the site at which the danger exists, or order a person responsible for the danger to post such notice.

(2) OTHER ACTIONS. In addition to the action under sub. (1), the department may do one or more of the following:

- (a) Issue any special order necessary to protect public health or the environment.
- (b) Take any other action necessary to protect public health or the environment.
- (c) Request the department of justice to commence legal proceedings to restrain or enjoin any person from handling, storage, treatment, transportation or disposal which presents or may present an imminent and substantial danger to health or the environment or take any other action as may be necessary to protect public health and the environment.

SECTION 57. 144.73 (1) and (2) of the statutes are amended to read:

144.73 (1) (title) DEPARTMENT ACTION. If the department determines that any person is in violation of any requirement of ss. 144.60 to 144.74 ~~or any rule promulgated or special order, plan approval or term or condition of a license or variance issued under those sections~~, the department ~~shall give~~ may do one or more of the following:

- (a) ~~Give written notice to the violator of his or her failure to comply with the requirement and if compliance is not obtained within 30 days after notice or within such reasonable time in which compliance may be accomplished, may issue and~~

(b) Issue a special order requiring compliance within a specified time period ~~or may refer~~.

(c) Refer the matter to the department of justice for enforcement under s. 144.98.

(2) (title) DEPARTMENT OF JUSTICE ACTION; DISPOSITION. The department of justice may initiate the legal action requested by the department under sub. (1) ~~within 30 days of (c) after~~ 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~~ may not enter into a final disposition different than that previously discussed without first informing the department.

SECTION 58. 144.735 of the statutes is created to read:

144.735 Corrective action. (1) DEFINITIONS. In this section:

(a) "Corrective action" means any method for protecting human health or the environment from a release.

(b) "Release" means any spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, dumping or disposal of a hazardous waste or hazardous constituent.

(c) "Solid waste management unit" means any unit designed or used for the storage, treatment or disposal of solid waste or hazardous waste or both, which is located in a hazardous waste facility required to have a license under s. 144.64 (2) or a permit under 42 USC 6925 or required to comply with s. 144.64 (2m). "Solid waste management unit" includes but is not limited to a container, tank, surface impoundment, disposal facility, incinerator, wastepile, landfill, underground injection well, land treatment unit or wastewater treatment facility.

(d) "Surface impoundment" means all or any part of a hazardous waste facility that is a natural topographic depression, constructed excavation or diked area, that is formed primarily of earthen materials and that holds or is designed to hold liquid waste or waste containing liquids that are readily separable from the solid waste portion of the waste. "Surface impoundment" includes a pond, lagoon or holding, storage, settling or aeration pit, but does not include an underground injection well or a topographic depression containing surface water, such as a drainage ditch containing runoff from a parking lot or a storm water retention basin, unless the surface water is contaminated by a hazardous waste.

(2) CORRECTIVE ACTION. (a) If the department determines that a release from a solid waste management unit has occurred the department may, except as provided under par. (b), require the owner or operator of the facility containing the solid waste management

unit to take corrective action, including corrective action beyond the facility, if necessary. The department may require an owner or operator to take corrective action regardless of when the hazardous waste or hazardous constituent released was placed in the solid waste management unit. The department may require corrective action by means of an order under s. 144.73 or as a condition of licensing or plan approval under s. 144.64. An order or condition under this paragraph shall state, with reasonable specificity, the nature of the corrective action required, shall include a description of the property on which the corrective action is to be taken and shall specify a time period for achieving compliance and a time period for the owner or operator to establish proof of financial responsibility for the cost of corrective action.

(b) If an owner or operator who is required under par. (a) to take corrective action on property that is beyond a facility shows that despite making a good faith effort the owner or operator was unable to obtain permission from the owner or occupant to enter that property, the owner or operator need not comply with the requirement with respect to that property.

SECTION 59. 144.74 of the statutes is repealed and recreated to read:

144.74 Violations and penalties. (1) CIVIL PENALTIES. Any person who violates any provision of ss. 144.60 to 144.70 or any rule promulgated or special order, plan approval or term or condition of a license or variance issued under those sections shall forfeit not less than \$100 nor more than \$25,000 for each violation. Each day of a continuing violation is a separate offense.

(2) CRIMINAL PENALTIES. (a) Any person who wilfully does any of the following shall be fined not less than \$100 nor more than \$25,000 or imprisoned for not more than one year in the county jail or both:

1. In connection with an application, label, manifest, record, report, license or other document relating to ss. 144.60 to 144.70, makes an untrue statement of a material fact or fails to state a material fact with the result that the statements made in the document are misleading.

2. Destroys, alters, conceals or fails to submit a record required to be maintained or submitted under ss. 144.60 to 144.70 or a rule promulgated or special order, plan approval or term or condition of a license or variance issued under any of those sections.

(b) Any person who wilfully does any of the following shall be fined not less than \$1,000 nor more than \$100,000 or imprisoned for not more than 5 years or both:

1. Transports any hazardous waste to a facility or site that does not have a license as required under s. 144.64.

2. Stores, treats, transports or disposes of any hazardous waste without a license required under s. 144.64 or in violation of a rule promulgated or special

order, plan approval or term or condition of a license or variance issued under that section.

(c) 1. For a 2nd or subsequent violation under par. (a), a person shall be fined not less than \$1,000 nor more than \$50,000 or imprisoned for not more than one year in the Wisconsin state prisons or both.

2. For a 2nd or subsequent violation under par. (b), a person shall be fined not less than \$5,000 nor more than \$150,000 or imprisoned for not more than 10 years or both.

(d) Each day of a continuing violation constitutes a separate offense.

(e) If a person commits a violation in connection with an enterprise, as defined under s. 946.82 (2), the maximum penalties specified in pars. (a), (b) and (c) shall be doubled.

SECTION 59d. 144.76 (7) (a) and (8) of the statutes are amended to read:

144.76 (7) (a) In any case where action required under sub. (3) is not being adequately taken or the identity of the person responsible for the discharge is unknown, the department or its ~~agent~~ authorized representative may identify, locate, monitor, contain, remove or dispose of the hazardous substance or take any other emergency action which it deems appropriate under the circumstances.

(8) (title) ACCESS TO PROPERTY AND RECORDS. Any ~~duly authorized~~ officer, employe or ~~agent~~ authorized representative of the department, upon notice to the owner or occupant, may enter any property, premises or place at any time for the purposes of sub. (7) if the entry is necessary to prevent increased damage to the air, land or waters of the state, or may inspect any record relating to a hazardous substance for the purpose of ascertaining the state of compliance with this section and the management rules promulgated under this section. Notice to the owner or occupant is not required if the delay attendant upon providing it will result in imminent risk to public health or safety or the environment.

SECTION 59m. 144.77 (4) and (5) of the statutes are amended to read:

144.77 (4) REMOVAL OR OTHER EMERGENCY ACTION. The department or its ~~agent~~ authorized representative may contain, remove or dispose of abandoned containers or take any other emergency action which it deems appropriate under the circumstances.

(5) (title) ACCESS TO PROPERTY AND RECORDS. Any ~~duly authorized~~ officer, employe or ~~agent~~ authorized representative of the department, upon notice to the owner or occupant, may enter onto any property, premises or place at any time for the purposes of sub. (3) if the entry is necessary to prevent increased damage to the air, land or waters of the state, or may inspect any record relating to abandoned container management for the purpose of ascertaining the state of compliance with this section and the rules promulgated under this section. Notice to the owner or occupant is not required if the delay in providing the notice

is likely to result in imminent risk to public health or welfare or the environment.

SECTION 60. Nonstatutory provisions. (1) **CORRECTIVE ACTION.** The department of natural resources may require corrective action under section 144.735 of the statutes, as created by this act, before the promulgation of the rules required under section 144.62 (8) (f) of the statutes, as created by this act.

(2) **FEASIBILITY REPORTS.** (a) If the department of natural resources has not made a determination under section 144.44 (2) (g) of the statutes as to whether a feasibility report submitted in connection with an application for an operating license for a hazardous waste disposal facility or surface impoundment is complete, that department shall, as soon as possible after the effective date of this paragraph, notify the

applicant that the feasibility report must be amended to include the additional information specified under section 144.44 (2) (fm) of the statutes, as created by this act, before the feasibility report is determined to be complete.

(b) If the department of natural resources has determined under section 144.44 (2) (g) of the statutes that a feasibility report submitted in connection with an application for an operating license for a hazardous waste disposal facility or surface impoundment is complete, that department shall, as soon as possible after the effective date of this paragraph, require the applicant to provide the department of natural resources with the additional information specified under section 144.44 (2) (fm) of the statutes, as created by this act.

SECTION 61. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
15.251 (intro.)	144.74	144.50 (4)(b)

SECTION 62. Initial applicability. The penalties specified in section 144.74 (1) and (2) (a), (b), (c) and (e) of the statutes, as affected by this act, first apply to

violations committed on the effective date of this SECTION.

