CHAPTER 144

WATER, SEWAGE, REFUSE, MINING AND AIR POLLUTION

144.01 Definitions. The following terms as used in this chapter mean:

(1) "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface or ground water, natural or artificial, public or private, within the state or its jurisdiction.

(2) "Sewage," the water carried wastes created in and to be conducted away from residences, industrial establishments, and public buildings as defined in s. 101.01 (2), with such surface or ground water as may be present.

(3) "Waterworks," or "water system," all structures, conduits and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings served, and service pipes from building to street main.

(4) "Water supply," the sources and their surroundings from which water is supplied for drinking or domestic purposes.

(5) "Sewerage system," all structures, conduits and pipe lines by which sewage is collected and disposed of, except plumbing inside and in

connection with buildings served, and service pipes from building to street main.

(6) "System or plant" includes water and sewerage systems and sewage and refuse disposal plants.

(7) "Refuse," all matters produced from industrial or community life, subject to decomposition, not defined as sewage.

(8) "Owner," the state, county, town, town sanitary district, city, village, metropolitan sewerage district, corporation, firm, company, institution or individual owning or operating any water supply, sewerage or water system or sewage and refuse disposal plant.

(9) "Industrial wastes" include liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.

(10) "Other wastes" include all other substances, except industrial wastes and sewage, as the latter term is defined in s. 144.01, which pollute any of the surface waters of the state. The term also includes "unnecessary siltation" resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.

(11) "Pollution" includes contaminating or rendering unclean or impure the waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

(12) "Municipality", any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district.

(13) "Nonprofit-sharing corporation", a nonstock corporation organized under ch. 181 or corresponding prior general corporation laws.

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

(15) "Secretary", the secretary of natural resources.

History: 1971 c. 185 s. 7; 1975 c. 197.

144.02 Sanitary survey. (1) The department is authorized to act with the U.S. geological survey in determining the sanitary and other conditions and nature of the natural water supplies of the state of Wisconsin, such water survey to have for its objects:

(a) To determine the nature and condition of the unpolluted natural water supplies of the state.

(b) To determine to what extent the natural waters are being contaminated by sewage from cities.

(c) To determine to what extent the natural waters are being polluted by industrial wastes, and in what way these wastes might be utilized for beneficial purposes.

(e) To assist in determining the best source of water supplies.

(2) The department is hereby empowered and instructed to make the necessary rules and regulations, in conjunction with the U.S. geological department, to carry this section into effect.

History: 1971 c. 164

144.023 Financial interest prohibited. The secretary and any other person in a position of administrative responsibility in the department may not have a financial interest in any enterprise which might profit by weak or preferential administration or enforcement of the powers and duties of the department.

144.025 Department of natural resources--water resources. (1) STATEMENT OF POLICY AND PURPOSE. The department of natural resources shall serve as the central unit of state government to protect, maintain and improve the quality and management of the waters of the state, ground and surface, public and private. Continued pollution of the waters of the state has aroused widespread public concern. It endangers public health and threatens the general welfare. A comprehensive action program directed at all present and potential sources of water pollution whether home, farm, recreational, municipal, industrial or commercial is needed to protect human life and health, fish and aquatic life, scenic and ecological values and domestic, municipal, recreational, industrial, agricultural and other uses of water. The purpose of this act is to grant necessary powers and to organize a comprehensive program under a single state agency for the enhancement of the quality management and protection of all waters of the state, ground and surface, public and private. To the end that these vital purposes may be accomplished, this act and all rules and orders promulgated pursuant thereto shall be liberally construed in favor of the policy objectives set forth in this act. In order to achieve the policy objectives of this act, it is the express policy of the state to mobilize governmental effort and resources at all levels, state, federal and local, allocating such effort and resources to accomplish the greatest result for the people of the state as a whole. Because of the importance of Lakes Superior and Michigan and Green Bay as vast water resource reservoirs,

water quality standards for those rivers emptying into Lakes Superior and Michigan and Green Bay shall be as high as is practicable.

(2) POWERS AND DUTIES. (a) The department shall have general supervision and control over the waters of the state. It shall carry out the planning, management and regulatory programs necessary for implementing the policy and purpose of this chapter. The department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

(b) The department shall adopt rules setting standards of water quality to be applicable to the waters of the state, recognizing that different standards may be required for different waters or portions thereof. Such standards of quality shall be such as to protect the public interest, which include the protection of the public health and welfare and the present and prospective future use of such waters for public and private water supplies, propagation of fish and aquatic life and wildlife, domestic and recreational purposes and agricultural, commercial, industrial and other legitimate uses. In all cases where the potential uses of water are in conflict, water quality standards shall be interpreted to protect the general public interest.

(c) The department may issue general orders, and adopt rules applicable throughout the state for the construction, installation, use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the state. Such general orders and rules shall be issued only after an opportunity to be heard thereon has been afforded to interested parties.

(d) 1. The department may issue special orders directing particular owners to secure such operating results toward the control of pollution of the waters of the state as the department prescribes, within a specified time. Pending efforts to comply with any order, the department may permit continuance of operations on such conditions as it prescribes. If any owner cannot comply with an order within the time specified, he may, before the date set in the order, petition the department to modify the order. The department may modify the order, specifying in writing the reasons therefor. If any order is not complied with within the time period specified, the department shall immediately notify the attorney general of this fact. Within 30 days thereafter, the attorney general shall forthwith commence an action under s. 144.536.

2. The department may issue temporary emergency orders without prior hearing when the department determines that the protection of the public health necessitates such immediate action. Such emergency orders shall take effect at such time as the department determines. As soon as is practicable, the department shall hold a public hearing after which it may modify or rescind the temporary emergency order or issue a special order under subd. 1.

(e) No wells shall be constructed, installed or operated to withdraw water from underground sources for any purpose where the capacity and rate of withdrawal of all wells on one property is in excess of 100,000 gallons a day without first obtaining the approval of the department. If the department finds that the proposed withdrawal will adversely affect or reduce the availability of water to any public utility in furnishing water to or for the public it shall either withhold its approval or grant a limited approval under which it imposes such conditions as to location, depth, pumping capacity, rate of flow and ultimate use so that the water supply of any public utility engaged in furnishing water to or for the public will not be impaired. The department may issue such general or special orders as it deems necessary to insure prompt and effective administration of this paragraph.

(f) The department shall make investigations and inspections to insure compliance with any general or special order or rule which it issues. In the exercise of this power the department may require the submission and approval of plans for the installation of systems and devices for handling, treating or disposing of any wastes.

(g) The department may conduct scientific experiments, investigations, waste treatment demonstrations and research on any matter under its jurisdiction. It may establish pilot plants, prototypes and facilities in connection therewith and lease or purchase land or equipment.

(h) The department, upon request, and without charge for service or expense, shall consult with and advise owners having installed or about to install systems or plants, as to the most appropriate water supply and the best method of providing for its purity, or as to the best method of disposing of sewage or refuse, with reference to the existing and future needs of all communities or persons which may be affected thereby. The department shall not be required to prepare plans.

(i) The department shall supervise chemical treatment of waters for the suppression of algae, aquatic weeds, swimmers' itch and other nuisance-producing plants and organisms. It may purchase equipment and may make a charge for the use of the same and for materials furnished, together with a per diem charge for any services performed in such work. The charge shall be sufficient to reimburse the de-

partment for the use of the equipment, the actual cost of materials furnished, and the actual cost of the services rendered.

(j) The department may enter into agreements with the responsible authorities of other states, subject to approval by the governor, relative to methods, means and measures to be employed to control pollution of any interstate streams and other waters and to carry out such agreement by appropriate general and special orders. This power shall not be deemed to extend to the modification of any agreement with any other state concluded by direct legislative act, but, unless otherwise expressly provided, the department shall be the agency for the enforcement of any such legislative agreement.

(k) The department may order or cause the abatement of any nuisance affecting the waters of the state under ss. 146.13 and 146.14.

(l) The department shall by rule establish an examining program for the certification of waterworks and sewage treatment plant operators, setting such standards as the department finds necessary to accomplish the purposes of this chapter, and may charge applicants for such certificates for the cost of examination. After January 1, 1969, no person shall operate a waterworks or sewage treatment plant unless he holds a valid certificate issued under this paragraph.

(m) Orders issued by the department shall be signed by the person designated by the board.

(n) The department may accept gifts and grants from any private or public source for any purpose under its jurisdiction and may expend or use such gifts and grants for the purposes for which received.

(p) Beginning January 1, 1967, any provision of the state plumbing code which sets specifications for septic tanks and their installation shall be void unless it has been approved by the department.

(q) The department may prohibit the installation or use of septic tanks in any area of the state where the department finds that the use of septic tanks would impair water quality. The department shall prescribe alternate methods for waste treatment and disposal in such prohibited areas.

(r) If the department finds that a system or plant tends to create a nuisance or menace to health or comfort, it shall order the owner or the person in charge to secure such operating results as the department prescribes, within a specified time. If the order is not complied with, the department may order designated changes in operation, and if necessary, alterations or extension to the system or plant, or a new system or plant. If the department finds that the absence of a municipal system or plant tends to create a nuisance or menace to health or comfort, it may order the city, village, town or town sanitary district embracing the area where such conditions exist to prepare and file complete plans of a corrective system as provided by s. 144.04, and to construct such system within a specified time.

(s) In cases of noncompliance with any order issued under par. (d) or (r), the department may take the action directed by the order, and collect the costs thereof from the owner to whom the order was directed. The department shall have all the necessary powers needed to carry out this paragraph including powers granted municipalities under ss. 66.076 and 66.20 to 66.26. It shall also be eligible for financial assistance under s. 144.21.

(t) The department may until September 30, 1979, establish, administer and maintain a safe drinking water program no less stringent that the requirements of the safe drinking water act of 1974, P.L. 93-523, 88 Stat. 1660.

(3) WATER RESOURCES COUNCIL. The water resources council shall advise the department on the setting of water quality standards and other state water problems.

(4) REGIONS. By January 1, 1967, the department shall divide the state into not more than 12 regions on the basis of criteria established by the department, taking into consideration such factors as river basins, watersheds, population density, economic factors, regional planning commissions and geographic, geologic and topographic features, and designate for each region a departmental employe as the regional director to administer the local work of the department in that region.

(5) REGIONAL BOARDS. (a) There shall be a regional water resources board for each region composed of the regional director, who shall serve as executive secretary; an employe of the department of health and social services serving in the region, appointed by and serving at the pleasure of the secretary of health and social services; an employe of the department of natural resources serving in the region, appointed by and serving at the pleasure of the secretary of natural resources; and 5 citizen members appointed by and serving at the pleasure of the governor. The executive director of the Minnesota-Wisconsin boundary area commission shall serve as a member for regions contiguous to the Minnesota boundary. The officers of the regional boards shall be selected from the citizen members.

(b) Each regional advisory board shall advise the department on regional water quality standards and other water problems of the region, act as liaison to the public, foster educational

programs and aid in fostering the development of sanitary districts.

(c) Each regional advisory board shall meet at least semiannually and at the call of the chairman or a majority of its members.

(d) Regional advisory board members shall be reimbursed for their actual and necessary expenses by the department, but such reimbursement in the case of members who are not citizen members shall be by the employing agency.

(6) Personnel of all state agencies shall report any evidence of water pollution found by them to the department.

History: 1971 c. 307; 1973 c. 243; 1975 c. 349; 1977 c. 29, 418.

The supreme court overrules its decision in Huber (117 W (2d) 355) and adopts the so-called American rule for liability on use of underground waters. State v. Michels Pipeline Construction, Inc. 63 W (2d) 278, 217 NW (2d) 339, 219 NW (2d) 308.

Supplying of water to its inhabitants by a municipality is not a proprietary function immune from the provisions of ch. 144, because the protection of public health is a matter of state-wide concern over which the legislature may exercise its police powers to insure a healthful water supply. See note to 66.065. Village of Sussex v. Dept. of Natural Resources, 68 W (2d) 187, 228 NW (2d) 173.

Department is authorized, not required, to set standards for sewer extension approvals and may process sewer extension applications on a case by case basis under (2) (c). Wis. Environmental Decade v. DNR, 82 W (2d) 97, 260 NW (2d) 674.

The department of natural resources has the authority to order a municipality to construct a public water supply under (2) (r), upon a finding that the absence of a public water supply constitutes a nuisance or menace to health or comfort, even though the electors of the municipality voted against construction in a referendum. 60 Atty. Gen. 523.

A municipality has no jurisdiction over chemical treatment of waters to suppress aquatic nuisances. The department is granted statewide supervision over aquatic nuisance control under (2) (i). Applications for permits to chemically treat aquatic nuisances under (2) (i) may be denied even though statutory and regulatory requirements have been met if such chemical treatment would be counter-productive in achieving the goals set out in (1). 63 Atty. Gen. 260.

The public trust doctrine. 59 MLR 787.

Theories of water pollution litigation. Davis, 1971 WLR 738.

Carrying capacity controls for recreation water uses. Kusler, 1973 WLR 1.

144.03 Septic tank permits. (1) Before any septic tank may be purchased or installed, the owner of the property on which the septic tank is to be installed shall obtain a permit for the installation from the county clerk, the county zoning administrator or other persons designated by the county board. The permit application shall state the owner's name and address, the location of the property on which the septic tank is to be installed, the name of the installer and any state license held by the installer, the specifications of the septic tank and any other information required by the department of health and social services. Upon receipt of an application together with a fee of $10, the county clerk or such other person shall issue a permit and shall forward the application and fee to the department of health and social services. If the department of health and social services receives the application within 10 days after the application is filed, it shall reimburse the county clerk or such other person $1 for issuing the permit. The department of health and social services shall prescribe and furnish application and permit forms, and may designate any person to issue permits, including sellers of septic tanks.

(2) No retailer may sell a septic tank for installation in this state unless the purchaser first displays a permit obtained under this section for that installation.

History: 1971 c. 164 s. 86; 1977 c. 29.

144.04 Approval of plans. Every owner within the time prescribed by the department, shall file with the department a certified copy of complete plans of a proposed system or plant or extension thereof, in scope and detail satisfactory to the department, and, if required, of existing systems or plants, and such other information concerning maintenance, operation and other details as the department requires. Material changes with a statement of the reasons shall be likewise submitted. Before plans are drawn a statement concerning the improvement may be made to the department and the department shall, if requested, outline generally what it will require. Upon receipt of such plans for approval, the department or its duly authorized representative shall by return mail notify the owner of their acceptance. The notice shall include the date of receipt. Within 90 days from the time of their acceptance the department or its authorized representative shall examine and take action to approve, approve conditionally or reject the plans and shall state in writing any conditions of approval or reasons for rejection. Approval or disapproval of such plans and specifications shall not be contingent upon eligibility of such project for federal aid. The 90-day time period may be extended by agreement with the owner if the plans and specifications cannot be reviewed within the 90-day time limitation due to circumstances beyond the control of the department or in the case of extensive installation involving expenditures of $350,000 or more. The extension shall not exceed 6 months. Failure of the department or its authorized representative to act within 90 days or during an extension of such time period shall constitute an approval of the plans, and upon demand a written certificate of approval shall be issued. Approval may be subject to modification by the department upon due notice. Construction or material change shall be according to approved plans only. The department may disapprove plans which are not in conformance with any existing approved areawide waste treatment

management plan prepared pursuant to the federal water pollution control act, P.L. 92-500, as amended.

History: 1977 c. 418.

144.045 Garbage and refuse disposal. No person shall dispose of garbage or refuse in any area that is subject to inundation by periodic flooding and from which such garbage or refuse is likely to be washed by flood waters into any surface waters of the state. The department shall order immediate discontinuance of disposal of refuse in a manner or at a site not in compliance with this section.

144.05 Sewage drains; sewage discharge into certain lakes. (1) (a) When any city or village or owner has constructed or constructs a sewage system complying with s. 144.04, the outflow or effluent from such system may be discharged into any stream or drain constructed pursuant to law, but no such outflow of untreated sewage or effluent from a primary or secondary treatment plant from a city, village, town, town sanitary district or metropolitan sewage district in a county having a population of 240,000 or more, according to the latest U.S. bureau of census figures available including any special census of municipalities within the county, any part of which is located within a drainage basin which drains into a lake of more than 2 square miles and less than 16 square miles in area, shall be discharged directly into, or through any stream, or through any drain, into such a lake located within 18 miles of the system or plant of such city, village, town, town sanitary district or metropolitan sewage district. All necessary construction of plant, system or drains for full compliance with this subsection in the discharge of untreated sewage or sewage effluent from all existing primary or secondary plants shall be completed by September 1, 1970, and the plans for any new system or plant shall include provisions for compliance with this subsection. The department may at any time order and require any owner of an existing plant to prepare and file with it, within a prescribed time, preliminary or final plans or both, for proposed construction to comply with this subsection.

(b) Any municipality, which, on April 30, 1972, has an operating sewerage collection and treatment system and has an application for attachment to a metropolitan sewerage district pending in the county court, in such a county, any part of which is located within such a drainage basin and which is located within 10 miles of a metropolitan sewerage district on September 1, 1967, shall be added to the metropolitan sewerage district upon application of the governing body of the municipality as provided in s. 66.205 (1), 1969 stats., if such petitioning municipality pays its fair share of the cost of attachment as determined by mutual agreement or a court of competent jurisdiction.

(c) In lieu of the construction in compliance with the foregoing provision for diversion from such lakes, any owner of an existing plant, on or before September 1, 1967, or any owner of a new system or plant prior to construction of such new system or plant, may file with the department such plans for advanced treatment of effluent from primary or secondary treatment as in the judgment of the department will accomplish substantially the same results in eliminating nuisance conditions on such lake as would be accomplished by diversion of secondary sewage effluent from said lake (without at the same time creating other objectionable or damaging results), and such owner shall be exempt from the foregoing provisions of this subsection for diversion from such lakes upon approval of such plans and installation of advanced treatment facilities and procedures in compliance therewith, but nothing shall impair the authority of the department to require at any time preliminary or final plans, or both, for diversion construction.

(d) Any person violating this subsection or any order issued in furtherance of compliance therewith shall forfeit to the state not less than $100 nor more than $500 for each violation, failure or refusal. Each day of continued violation is deemed a separate offense. No such penalty shall be invoked during the time that any petition for review of an order is pending under s. 144.56 until final disposition thereof by the courts, if judicial review is sought under ch. 227.

(2) The city or village or the owner of land through which the drain is constructed may apply to the circuit court of the county in which the land is located to determine the damages, if any. No injunction against the use shall be granted until the damages are finally determined and payment refused. Unless within six months after the system is completed the owner of the land shall institute such proceedings he shall be barred. The proceedings shall be according to chapter 32 of the statutes, so far as applicable.

History: 1971 c. 164, 276.

The original opinion of the supreme court in 63 W (2d) 175, finding (1), Stats. 1969, an unconstitutional delegation of legislative power to county courts is withdrawn. Madison Metropolitan Sewerage Dist. v. DNR, 66 W (2d) 634, 226 NW (2d) 184.

144.06 House connections. To assure preservation of public health, comfort and safety,

any city or village or any town having a population of more than 7,500 having a system of waterworks or sewerage, or both, may by ordinance require buildings used for human habitation and located adjacent to a sewer or water main, or in a block through which one or both of such systems extend, to be connected with either or both in the manner prescribed. If any person fails to comply for more than 10 days after notice in writing the municipality may impose a penalty or may cause connection to be made, and the expense thereof shall be assessed as a special tax against the property. Except in cities of the 1st class, the owner may, within 30 days after the completion of the work, file a written option with the city or village clerk stating that he cannot pay such amount in one sum and asking that it be levied in not to exceed 5 equal annual instalments, and the amount shall be so collected with interest at the rate of 6% per annum from the completion of the work, the unpaid balance to be a special tax lien.

Population limitation applies only to towns. Vandervelde v. Green Lake, 72 W (2d) 210, 240 NW (2d) 399.

144.07 Joint sewerage systems. (1) The department of natural resources may require the sewerage system, or sewage or refuse disposal plant of any governmental unit including any town, village or city, to be so planned and constructed that it may be connected with that of any other town, village or city, and may, after hearing, upon due notice to the governmental units order the proper connections to be made or a group of governmental units including cities, villages, town sanitary districts or town utility districts may construct and operate a joint sewerage system under this statute without being so required by order of the department of natural resources but following hearing and approval of the department.

(1m) An order by the department for the connection of unincorporated territory to a city or village system or plant under this section shall not become effective for 30 days following issuance. Within 30 days following issuance of the order, the governing body of a city or village subject to an order under this section may commence an annexation proceeding under s. 66.024 to annex the unincorporated territory subject to the order. If the result of the referendum under s. 66.024 (4) is in favor of annexation, the territory shall be annexed to the city or village for all purposes, and sewerage service shall be extended to the territory subject to the order. If an application for an annexation referendum is denied under s. 66.024 (2) or the referendum under s. 66.024 (4) is against the annexation, the order shall be void. If an annexation proceeding is not commenced within the 30-day period, the order shall become effective.

(2) When one governmental unit renders service to another under this section, reasonable compensation shall be paid. The officials in charge of the system, of the governmental unit furnishing the service shall determine the reasonable compensation and report to its clerk who shall, on or before August 1 of each year, certify a statement thereof to the clerk of the governmental unit receiving the service. This clerk shall extend the amount shown in such statement as a charge on the tax roll, in the manner following: a) where the service rendered is available to substantially all improved real estate in the member governmental unit receiving the same, the charges shall be placed upon the tax roll of such member governmental unit as a general tax; b) where the service rendered is for the benefit of public highways in, or real estate owned or operated by, the member governmental unit receiving the same, the charges therefor shall be placed upon the tax roll of such member governmental unit as a general tax; c) where the service rendered does not come under the provisions of a) or b), the charges therefor shall be placed upon the tax roll of such member governmental unit as a special tax upon each parcel of real estate benefited; and when collected it shall be paid to the treasurer of the member governmental unit rendering the service. Where the charges are to be extended on such tax roll under the provisions of c), the clerk of the member governmental unit furnishing such service shall itemize his statement showing separately the amount charged to each parcel of real estate benefited; if, due to delay in determination, such charge cannot be extended on the tax roll of any particular year, it shall be extended as soon as possible.

(3) If the governing body of any governmental unit deems the charge unreasonable, it may by resolution within 20 days after the filing of the report with its clerk:

(a) Submit to arbitration by 3 reputable and experienced engineers, one chosen by each governmental unit, and the 3rd by the other 2. If the engineers are unable to agree, the vote of 2 shall be the decision. They may affirm or modify the report, and shall submit their decision in writing to each governmental unit within 30 days of their appointment unless the time be extended by agreement of the governmental units. The decision shall be binding. Election to so arbitrate shall be a waiver of right to proceed by action. Two-thirds of the expense of arbitration shall be paid by the governmental unit requesting it, and the balance by the other.

(b) Institute a proceeding for judicial review under ch. 227.

(4) (a) Any 2 or more governmental units, including cities, villages, town sanitary districts or town utility districts not wishing to proceed under sub. (2) may jointly construct, operate and maintain a joint sewerage system, inclusive of the necessary intercepting sewers and sewerage treatment works. Such joint action by 2 governmental units shall be carried out by a sewerage commission consisting of one member appointed by each of the governing bodies of such governmental units and a 3rd member to be selected by the 2 members so appointed, or in lieu thereof said sewerage commission may consist of 2 members appointed by the governing body of each governmental unit and a 5th member to be selected by the 4 members so appointed or where more than 2 governmental units act to form the commission, the representation on the commission shall be in accordance with a resolution approved by the member governmental units.

(b) 1. Where such sewerage commission shall consist of 3 members, the members chosen by the 2 members first appointed shall serve for 2 years, while the members appointed by the governing bodies of the 2 governmental units shall serve for terms of 4 and 6 years, respectively, the length of term of each to be determined by lot. All subsequent appointments, except for unexpired terms, shall be for 6 years. All such members shall serve until their successors shall have been appointed and shall have qualified.

2. Where such sewerage commission shall consist of 5 members, the member chosen by the 4 members first appointed shall serve for one year, while the members appointed by the governing bodies of the 2 governmental units shall serve for terms of 2, 3, 4 and 5 years respectively, the length of terms of each to be determined by lot. All subsequent appointments, except for unexpired terms, shall be for 6 years. All such members shall serve until their successors shall have been appointed and shall have qualified.

3. Where such sewerage commission representation shall be formed by approval of a resolution, the resolution shall state the method of appointing commissioners and the term of office of each commissioner.

(c) The sewerage commissioners shall project, plan, construct and maintain in the district comprising the member governmental units intercepting and other main sewers for the collection and transmission of house, industrial and other sewage to a site or sites for disposal selected by them, such sewers to be sufficient, in the judgment of the sewerage commissioners, to care for such sewage of the territory included in such district. The sewerage commissioners shall project, plan, construct and operate sewage disposal works at a site or sites selected by them which may be located within or outside of the territory included in the district. The sewerage commissioners may also project, plan, construct and maintain intercepting and other main sewers for the collection and disposal of storm water which shall be separate from the sanitary sewerage system. The sewerage commissioners may also project, plan, construct and operate solid waste disposal works at a site or sites selected by them which may be located within or outside of the territory included in the district or by contract with counties or municipalities which have solid waste disposal facilities. The sewerage commissioners may employ and fix compensation for engineers, assistants, clerks, employes and laborers, or do such other things as may be necessary for the due and proper execution of their duties. Such sewage disposal works may be used by the sewerage commissioners and by such governmental units for the disposal of garbage, refuse and rubbish.

(d) Such sewerage commission shall constitute a body corporate by the name of "(Insert name of governmental units or area) Sewerage Commission," by which in all proceedings it shall thereafter be known. It may purchase, take and hold real and personal property for its use and convey and dispose of the same. This grant of power shall be retroactive to September 13, 1935 for commissions formed prior to January 1, 1972. Except as provided in this subsection the sewerage commissioners shall have the power and proceed as a common council and board of public works in cities in carrying out the provisions of par. (c). All bond issues and appropriations made by said sewerage commission shall be subject to the approval of the governing bodies of the respective governmental units.

(e) Each such governmental unit shall pay for its proportionate share of such sewerage system, including additions thereto, and also its proportionate share of all operation and maintenance costs as may be determined by the sewerage commission. Each governmental unit may borrow money and issue revenue or general obligation bonds therefor, for the acquisition, construction, erection, enlargement and extension of a joint sewage disposal plant or refuse or rubbish or solid waste disposal plant or system or any combination of plants provided under this section, and to purchase a site or sites for the same. Each governmental unit may, if it so desires, proceed under s. 66.076 in financing its portion of the cost of the construction, operation and maintenance of the joint sewage disposal plant or plants provided for in this section, or system.

(f) Any such governmental unit being aggrieved by the determination of the sewerage commission on matters within its jurisdiction may appeal to the circuit court as provided in sub. (3) (b).

History: 1971 c. 89, 276; 1977 c. 187.

Sub. (1m) does not violate Art. IV, sec. 1. See note to Art. IV, sec. 1, citing City of Beloit v. Kallas, 76 W (2d) 61, 250 NW (2d) 342.

144.09 Enforcement. Records required by the department shall be kept by the owners and the department supplied with certified copies and such other information as it may require. Agents of the department may enter buildings, structures and premises of owners supplying the public or industrial plants with water, ice, sewerage systems, sewage or refuse disposal service and private properties to collect samples, records and information, and to ascertain if the rules and orders of the department are complied with. The department of justice shall assist in the enforcement of this chapter.

144.10 Review of orders. Any owner or other person in interest may secure a review by the department of natural resources of the necessity for and reasonableness of any order of the department in the manner provided by s. 144.56 and the determination of the department shall be subject to judicial review as provided by ch. 227.

144.12 Limitation. Nothing in this chapter shall be construed to affect the provisions of sections 196.01 to 196.79 or of chapter 31 of the statutes.

144.14 Nondegradable detergents, sale prohibited. On and after December 31, 1965, the sale and use of nondegradable detergents containing alkyl benzene sulfonate is prohibited in this state.

History: 1971 c. 40.

144.21 Financial assistance program. (1) The legislature finds that state financial assistance for the construction and financing of pollution prevention and abatement facilities is a public purpose and a proper state government function in that the state is trustee of the waters of the state and that such financial assistance is necessary to protect the purity of state waters.

(2) In order that the construction of pollution prevention and abatement facilities necessary to the protection of state waters be encouraged, a state program of assistance to municipalities and school districts for the financing of such facilities is established and a program of state advances in anticipation of federal aid reimbursement is established to meet the state's water quality standards. These state programs shall be administered by the department of natural resources and the department shall make such rules as are necessary for the proper execution of the state program.

(2m) In this section "estimated reasonable costs" include the costs of preliminary planning to determine the economic and engineering feasibility of pollution prevention and abatement facilities, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary to the construction of pollution prevention and abatement facilities and the erection, building, acquisition, alteration, remodeling, improvement or extension of pollution prevention and abatement facilities and the inspection and supervision of the construction of pollution prevention and abatement facilities.

(3) (a) The department shall establish criteria to determine those municipalities and school districts and projects which are eligible for the state program and to determine appropriate priorities among the projects.

(c) All municipalities and school districts are eligible for agreements under sub. (6) (a) and (b) based on the criteria in this paragraph. The criteria shall consider the health hazards of existing conditions, the extent and nature of pollution, per capita costs of the project, property valuation of the municipalities or school districts as equalized by the state, income of the residents in the municipalities or school districts, the availability of federal funds for the project, soil conditions, the feasibility and practicality of the project, the borrowing capacity of the municipality or school district and any other factors which the department considers important. Municipalities or school districts commencing projects but not completed prior to January 18, 1970, shall be deemed eligible for agreements under sub. (6) (a) and (b). School district projects are not eligible if the project is located within the corporate limits of a city or of a village with an operating municipal sewage system.

(4) Municipalities or school districts which desire to participate in the state program shall submit application for participation to the department. The application shall be in such form and include such information as the department prescribes.

(5) The department shall review applications for participation in the state program. It shall determine those applications which meet the criteria it established under sub. (3), and shall arrange the applications in appropriate priority order.

(6) The department may enter into agreement with municipalities and school districts to provide state assistance for the financing of those pollution prevention and abatement facilities projects it approves under sub. (5).

(a) The department may enter into agreements with municipalities and school districts to make payments to them from the appropriation made by s. 20.370 (2) (c) to pay not less than 25% and not more than 30% of the estimated reasonable costs of the approved project. These payments shall be in even annual amounts and shall extend for a period of not less than 5 years and not more than 30 years. The department shall not enter into such additional agreements after July 1, 1969, but shall continue to make payments on existing agreements until the terms of the agreement are fully satisfied.

(b) The department may enter into agreements with municipalities and school districts to make payments to them from the appropriations made by ss. 20.370 (2) (f) and 20.866 (2) (tm).

1. These payments shall not exceed 50% of the approved project in conjunction with the state program of advancement in anticipation of federal reimbursement under sub. (2). To provide for the financing of pollution prevention and abatement facilities, the natural resources board, with the approval of the governor, subject to the limits of s. 20.866 (2) (tm) may direct that state debt be contracted as set forth in subd. 2 and subject to the limits set therein. Said debts shall be contracted for in the manner and form as the legislature hereafter prescribes.

2. It is the intent of the legislature that state debt not to exceed $150,850,000 in the 10-year period from 1969 to 1979 may be incurred for state water pollution and abatement assistance.

(c) In addition to any agreements entered into under pars. (a) and (b), the department may enter into agreements with municipalities and school districts to make payments to them from the appropriation made by s. 20.370 (2) (fm) to provide direct financial assistance for smaller facilities, including but not limited to chlorination treatment and phosphate removal.

(e) The department shall review and approve the plans and specifications of all facilities designed and constructed by agreement under this section.

(11) This section shall be construed liberally in aid of the purposes declared in sub. (1).

History: 1971 c. 95; 1975 c. 39 s. 734; 1977 c. 29.

144.23 Financial assistance program; sewerage systems. (1) The financial assistance program established under this section is to be used only if the applicant is unable to receive assistance in a timely manner from the federal government and supplementary funding program established under s. 144.21. Receipt of aid under this section makes the applicant ineligible for aid under s. 144.21.

(2) There is established a state program of assistance to municipalities and unincorporated areas for the purpose of financing the construction of water pollution abatement and sewage collection systems. The program shall be administered by the department which shall make such rules as are necessary for the proper execution of the program.

(3) (a) The department shall establish criteria to determine those municipalities and projects which are eligible for the state program and to determine appropriate priorities by rule among the projects.

(b) All municipalities having a population of less than 10,000 are eligible for agreements under sub. (6) based on the criteria in this paragraph. The criteria shall consider the health hazards of existing conditions, the adequacy of the existing water pollution abatement system, per capita costs of the project, property valuation of the municipalities as equalized by the state, income of the residents in the municipalities, the availability of federal funds for the project and the borrowing capacity of the municipality. Highest priority shall initially be given to projects which have completed all necessary planning and engineering and any other factors which the department considers important. Municipalities commencing projects not completed prior to June 29, 1974 are eligible for agreements under sub. (6).

(4) Municipalities which desire to participate in the state program shall submit application for participation to the department. The application shall be in such form and include such information as the department prescribes.

(5) The department shall review applications for participation in the state program. It shall determine those applications which meet the criteria it established under sub. (3) and shall arrange the applications in appropriate priority order.

(6) (a) Upon approval of an application, the department may enter into an agreement with the municipality to pay from the appropriation under s. 20.866 (2) (tm) an amount not to exceed 50% of the estimated reasonable costs of the approved project. The agreement shall be for such duration and subject to such terms as the department may prescribe. The department shall not grant any municipality more than 10% of the funds available under s. 20.866 (2) (tm) for a given year.

(b) In this subsection "estimated reasonable costs" include the costs of preliminary planning

to determine the economic and engineering feasibility of a proposed sewerage system, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary to the construction of the project and the erection, building, acquisition, alteration, remodeling, improvement or extension of system facilities and the inspection and supervision of the construction of such facilities.

(7) The department shall review and approve the plans and specifications of all facilities designed and constructed by agreement under this section.

(8) After June 30, 1978, the department may not enter into any agreements or contracts under this section, but the department shall continue to make payments on existing agreements and contracts until the terms of the agreements and contracts are fully satisfied.

History: 1973 c. 333; 1977 c. 418.

144.24 Financial assistance program; point source pollution abatement. (1) LEGISLATIVE INTENT. The legislature finds that state financial assistance for the planning, design, engineering and construction of point source pollution abatement facilities is a public purpose and a proper state government function in that the state is the trustee of the waters of the state and that such financial assistance is necessary to protect the purity of state waters. In order that the planning, design, engineering and construction of point source pollution abatement facilities necessary to the protection of state waters be encouraged, a state program of assistance to municipalities for the financing of such facilities is established.

(2) ADMINISTRATION; RULES. The state's point source pollution abatement program shall be administered by the department. The department shall make such rules as are necessary for the proper execution of the program.

(3) DEFINITIONS. In this section:

(a) "Federal act" means the federal water pollution control act P.L. 92-500, as amended.

(b) "Point source pollution abatement facilities" means those facilities eligible for financial assistance under title II of the federal act.

(c) "State program" means the program of financial assistance for point source pollution abatement established under this section.

(4) ELIGIBILITY. (a) The department shall, by rule, specify criteria for determining eligible municipalities and projects for funding by grants under this section. Where a municipality is serviced by more than one sewerage district for wastewater pollution abatement, each service area of the municipality shall be considered as a separate municipality for purposes of obtaining financial assistance under the state program. Except as provided in this subsection, the department shall promulgate rules which specify criteria for determining eligible participants and projects which comply with the federal act and rules promulgated under the federal act.

(b) Eligible projects relating to collection systems shall include only collection systems in unsewered communities which are constructing a new wastewater treatment plant and collection system rehabilitation which is necessary to maintain the total integrity of a sewerage system. Funding shall not be provided for that portion of any project related to industrial capacity that is defined under the federal act as subject to industrial cost recovery. The amount of reserve capacity for treatment works eligible for grant assistance shall be limited to that future capacity required to serve the users of such treatment works expected to exist within the service area of the project 10 years from the time such treatment works are estimated to become operational or June 30, 1985, in the case of interceptor sewers and associated appurtenances. The department, in consultation with the demographic services center in the department of administration under s. 16.96 shall promulgate rules defining procedures for projecting population used in determining the amount of reserve capacity. Notwithstanding the federal act and the rules promulgated thereunder, the state program shall not require an industrial cost recovery system.

(c) Every applicant seeking grants for construction purposes under this section shall complete a staged planning, design and environmental analysis sequence developed by the department. The department shall model the required sequence after the staged planning, design and environmental analysis sequence under title II of the federal act. In cases where sources of funding for the planning and design prescribed under this paragraph are not available for such activities, grants provided under this section may pay 75% of the cost of such planning and design.

(5) APPLICATION. Municipalities which desire to participate in the financial assistance program under this section shall submit an application for participation to the department. The application shall be in such form and include such information as the department prescribes. The department shall review applications for participation in the state program. It shall determine those applications which meet the criteria it established under sub. (4).

(6) PRIORITIES. (a) Each municipality shall notify the department of its intent to apply for a grant under this section by January 1 of each year. For those municipalities that notify the department by January 1, the department shall annually compile a funding list which ranks these municipalities in the same order as they appear on the federal priority list, prepared under the federal act, as of January 1 of each year. If there is not sufficient funding available under this section to fund all grant applications in one year, the department shall allocate available funding to projects in the order in which they appear on the funding list. The department shall not allocate funds to a municipality that is on the funding list in a particular year if the municipality is not ready to begin construction within 3 months of the time when the department is ready to allocate the funds, and the municipality can reasonably expect to receive funds under the federal program within 12 months of the time when the department is ready to allocate the funds.

(b) For those municipalities that notify the department after January 1 but before April 1 of each year of their intent to apply for a grant under this section, the department shall compile a funding list as of April 1 of each year. If funding remains from the allocation under par. (a), the department shall allocate available funding to projects in the order in which they appear on the funding list compiled under this paragraph. The department shall not allocate funds to a municipality under this paragraph that is on the funding list in a particular year if the municipality is not ready to begin construction within 3 months after the department is ready to allocate the funds and the municipality can reasonably expect to receive funds under the federal program within 12 months after the department is ready to allocate the funds.

(7) PAYMENT. Upon the completion by an applicant of all application requirements, the department may enter into an agreement with a municipality for a grant of up to 60% of the eligible costs of a project, except as provided in sub. (4) (c). No project funded under this section may receive state assistance that, combined with other nonlocal government assistance, exceeds 75% of the eligible cost of the project. Metropolitan sewerage districts that serve cities of the first class shall be limited annually to receiving 33% of the state funding appropriated annually under this section.

(8) CONDITIONS OF PAYMENT. (a) Each municipality receiving state assistance under this section for the construction of a point source pollution abatement facility shall develop and adopt:

1. A program of water conservation no less stringent than the federal requirements.

2. A program of systemwide operation and maintenance of the wastewater treatment plant, including the training of personnel, no less stringent than the federal requirements.

3. A system of equitable user charges to ensure that each recipient of waste treatment services pays its proportionate share of the costs of the operation and maintenance of the point source pollution abatement facility. The user fee system shall be in compliance with title II of the federal act and the rules promulgated under the federal act.

(b) Payment in excess of two-thirds of the state assistance provided for the eligible costs of construction shall not be made until the department has approved the programs required under par. (a) 1 and 2 and the system specified under par. (a) 3.

(c) The department shall promulgate rules consistent with this subsection.

(9) REIMBURSEMENT. (a) The department shall, by rule, implement and administer reimbursement funding to municipalities as part of the financial assistance program under this section to encourage the participation of all municipalities.

(b) The department shall promulgate rules specifying reimbursement eligibility and procedures for commitments of financial assistance made in fiscal year 1978-79. The rules shall specify that reimbursement shall be made or committed:

1. To communities willing to apply for state assistance conditioned upon legislative appropriation of the amounts needed to reimburse municipalities in fiscal years after fiscal year 1978-79.

2. To communities successfully completing all planning and design requirements.

3. For all eligible costs consistent with sub. (4).

4. Prior to the start of construction of any reimbursable project if all required procedures have been complied with.

5. Subject to a priority determination system consistent with sub. (6) for reimbursable projects.

6. Subject to the same provisions of payment under sub. (7).

7. Subject to the same conditions of payment under sub. (8).

(c) The maximum amount of state assistance the department may commit for future reimbursement in fiscal year 1978-79 is $60,000,000.

(10) INDIVIDUAL SEPTIC TANK REPLACEMENT OR REHABILITATION. (a) *Definitions.* In this subsection:

1. "Principal residence" means a residence which is occupied 51% of the year by an individual, a family or household.

2. "Private system" means a privately owned domestic sewage treatment and disposal system.

3. "Public body" means a sanitary district, town, village, city or county.

4. "Small commercial establishment" means a commercial establishment or business place which has wastewater flows which total less than 300 gallons per day.

(b) *Eligibility.* 1. Private systems serving one or more principal residences or small commercial establishments constructed prior to and inhabited on July 1, 1978, are eligible for grants under this subsection.

2. Eligible costs under this subsection include the replacement and rehabilitation of septic and other onsite systems such as mound systems and small systems serving clusters of principal residences.

3. An enforcement order under s. 144.025 (2) (d) or 145.02 (3) (f) against a failing private system must have been issued in order for the system to be eligible for a grant under this subsection.

4. A particular principal residence or small commercial establishment may receive only one grant under this subsection.

5. A public body shall make an application under this subsection for replacement or rehabilitation of private systems of principal residences or small commercial establishments.

(c) *Conditions; public body.* As a condition for obtaining a grant under this subsection, a public body making an application must:

1. Certify that grants applied for will be used for principal residences or small commercial establishments;

2. Certify that public ownership is not feasible;

3. Certify that such grants will be used for private systems which will be properly installed, operated and maintained;

4. Certify that grants provided to public bodies will be disbursed to principal residences or small commercial establishments for the replacement or rehabilitation of private systems serving one or more principal residences or small commercial establishments constructed prior to and inhabited on July 1, 1978, to abate an existing water pollution problem or public health problem;

5. Establish a process for regulation and inspection of individual private systems consistent with rules developed by the department; and

6. Establish a system of user charges and cost recovery, if appropriate.

(d) *Assistance.* The department shall make its staff available to provide technical assistance to public bodies or their local designees.

(e) *Priority.* The department shall establish a funding priority list separate from the funding priority list established under sub. (6) for public bodies which apply for grants for the purposes of distributing grant funds under this subsection. The criteria to be used in establishing the funding priority list shall include, but are not limited to, public health and water quality factors and whether the private system in need of replacement or rehabilitation serves clusters of principal residences or small commercial establishments.

(f) *Funding.* 1. Public bodies which desire to participate in the financial assistance program under this subsection shall submit an application for participation to the department. The application shall be in such form and include such information as the department prescribes. The department shall review applications for participation in the state program. It shall determine those applications which meet the criteria it established under par. (c). Applications must be received by the department no later than January 1 of any year for consideration in that fiscal year.

2. Funds available for grants under this subsection are limited to 3% of the point source appropriation under s. 20.370 (4) (b) in any year. Such funds, if not applied for by January 1 of any year, or approved for funding by April 1, shall be available for the point source grants to be disbursed under sub. (6) (b).

3. The state grant share under this subsection for any private system and the cost of its installation shall be limited to $3,000 or 60% of the total project cost, whichever is less. The total public body or principal owner or small commercial establishment owner share shall not be less than 25% of the total costs of the project.

4. The department shall promulgate rules which shall define payment mechanisms to be used to disburse grants to public bodies.

(g) *Enforcement.* 1. Enforcement of this subsection shall follow the procedures identified under ss. 144.35 and 144.536.

2. Additional grants under this subsection to a public body previously awarded a grant under this subsection may be suspended or terminated if the department finds that a private system previously funded in the public body is not being or has not been properly installed, maintained and operated under inspections authorized under s. 144.09.

(11) This section shall be liberally construed in aid of the purposes declared in sub. (1).

History: 1977 c. 418

144.25 Financial assistance; nonpoint source water pollution abatement. (1) The purposes of the nonpoint source pollution abatement grant program under this section are to:

(a) Provide the necessary administrative framework and financial assistance for the implementation of measures to meet nonpoint source water pollution abatement needs identified in areawide water quality management plans.

(b) Provide coordination with all elements of the state's water quality program in order to ensure that all activities and limited resources are optimally allocated in the achievement of this state's water quality goals.

(c) Provide technical and financial assistance to individuals and municipalities in the application of necessary nonpoint source water pollution abatement measures.

(d) Focus limited technical and financial resources in critical geographic locations through the selection of priority watersheds where nonpoint source related water quality problems are the most severe and control is most feasible.

(e) Provide for program evaluation, subsequent modifications and recommendations.

(2) In this section:

(a) "Best management practices" means practices, techniques or measures, identified in areawide water quality management plans, which are determined to be the most effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(b) "Nonpoint source" means a land management activity which contributes to run-off, seepage or percolation; and are sources which are not defined as point sources of pollutants under s. 147.015 (8).

(3) (a) The department shall administer the nonpoint source water pollution program under this section and shall promulgate rules in consultation with the board of soil and water conservation districts as are necessary for the proper execution and administration of the state program.

(b) The following requirements apply to rules promulgated under this section:

1. Rules which relate to animal waste treatment and which are strictly administrative in character shall not require prior approval under s. 13.565 (1).

2. Only those persons involved in the administration of the program established under this section, or persons who are grant recipients or applicants shall be subject to rules promulgated under this section.

3. All rules which relate or pertain to agricultural practices relating to animal waste handling and treatment shall be subject to s. 13.565 (1).

(4) The department shall:

(a) Be responsible for the integration of the nonpoint source water pollution abatement program into the state's overall water quality management program.

(b) Identify through the areawide water quality management plans provided for under section 208 of the federal water pollution control act, P.L. 92-500, as amended:

1. Those local management agencies which will be responsible for coordination and implementation of the activities necessary to achieve water quality objectives including the development of a detailed program for implementation.

2. Those best management practices which are effective and practicable for controlling the nonpoint sources of water pollution and are eligible for cost-sharing grants under this section.

(c) Identify through the continuing planning process under s. 147.25 those priority watersheds where the need for nonpoint source water pollution abatement is most critical and identify for those watersheds the best management practices necessary to meet water quality objectives.

(d) Review and approve the detailed program for implementation prepared by the designated management agencies.

(5) The board of soil and water conservation districts shall:

(a) Be responsible for assisting each local designated management agency in the preparation of a detailed program for implementation.

(b) Assist the local designated management agencies in local coordination, technical assistance and public education for the nonpoint source water pollution abatement program.

(c) Assist in the local administration of cost-sharing grants under this section.

(d) Assist the local designated management agencies within the selected priority watersheds in conducting one or more informational meetings for the purpose of presenting the implementation program under this section to the general public, landowners and affected individuals and groups.

(6) Eligibility for cost-sharing grants under this section shall be determined based on the following:

(a) Municipalities and individual landowners or operators shall be eligible for cost-sharing grants.

(b) Grants may be provided to applicants in priority watershed areas for projects in conformance with approved areawide water quality management plans.

(c) Grants may be provided to applicants in nonpriority watersheds for projects which are in conformance with areawide water quality management plans and which conform to the purposes specified under sub. (1).

(d) Each cost-sharing grant shall be approved by the designated management agency.

(e) Grants may only be used for implementing best management practices.

(f) Grant payments shall not exceed 50% of the cost of implementing the best management practice and the total local matching share of funds shall be at least 30% of the total cost of the project. The department, in consultation with the board of soil and water conservation districts, may increase the amount of the grant payment if it determines that:

1. The main benefits to be derived from the best management practices are related to improving offsite water quality; and

2. The matching share requirement under this paragraph would place an unreasonable cost burden on the applicant.

(g) A minimum of 70% of the total amount of cost-sharing grants available annually under this section shall be utilized for implementing best management practices in priority watersheds.

History: 1977 c 418

144.26 Navigable waters protection law. **(1)** To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans and authorize municipal shoreland zoning regulations for the efficient use, conservation, development and protection of this state's water resources. The regulations shall relate to lands under, abutting or lying close to navigable waters. The purposes of the regulations shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.

(2) In this section, unless the context clearly requires otherwise:

(c) "Municipality" or "municipal" means a county, village or city.

(d) "Navigable water" or "navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Notwithstanding any other provision of law or administrative rule promulgated thereunder, a shoreland zoning ordinance required under s. 59.971 and this section does not apply to lands adjacent to farm drainage ditches if:

1. Such lands are not adjacent to a natural navigable stream or river;

2. Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

3. Such lands are maintained in nonstructural agricultural use.

(e) "Regulation" refers to ordinances enacted under ss. 59.971 and 62.23 (7) and means shoreland subdivision and zoning regulations which include control of uses of lands under, abutting or lying close to navigable waters for the purposes specified in sub. (1), pursuant to any of the zoning and subdivision control powers delegated by law to cities, villages and counties.

(f) "Water resources," where the term is used in reference to studies, plans, collection of publications on water and inquiries about water, means all water whether in the air, on the earth's surface or under the earth's surface. "Water resources" as used in connection with the regulatory functions under this section means navigable waters.

(g) "Shorelands" means the lands specified under par. (e) and s. 59.971 (1).

(3) (a) The department shall coordinate the activities of the several state agencies in managing and regulating water resources.

(b) The department shall make studies, establish policies and make plans for the efficient use, conservation, development and protection of the state's water resources and:

1. On the basis of these studies and plans make recommendations to existing state agencies relative to their water resource activities.

2. Locate and maintain information relating to the state's water resources. The department shall collect pertinent data available from state, regional and federal agencies, the university of Wisconsin, local units of government and other sources.

3. Serve as a clearinghouse for information relating to water resources including referring citizens and local units of government to the appropriate sources for advice and assistance in connection with particular water use problems.

(5) (a) The department shall prepare a comprehensive plan as a guide for the application of municipal ordinances regulating navigable waters and their shorelands as defined in this section for the preventive control of pollution. The plan shall be based on a use classification of navigable waters and their shorelands throughout the state or within counties and shall be governed by the following general standards:

1. Domestic uses shall be generally preferred.

2. Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source.

3. Areas in which the existing or potential economic value of public, recreational or similar uses exceeds the existing or potential economic value of any other use shall be classified primarily on the basis of the higher economic use value.

4. Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility.

5. Use dispersions within an area shall be preferred over concentrations of uses or their undue proximity to each other.

(b) The department shall apply to the plan the standards and criteria set forth in sub. (6).

(6) Within the purposes of sub. (1) the department shall prepare and provide to municipalities general recommended standards and criteria for navigable water protection studies and planning and for navigable water protection regulations and their administration. Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations.

(7) The department, the municipalities and all state agencies shall mutually co-operate to accomplish the objective of this section. To that end, the department shall consult with the governing bodies of municipalities to secure voluntary uniformity of regulations, so far as practicable, and shall extend all possible assistance therefor.

(8) This section and s. 59.971 shall be construed together to accomplish the purposes and objective of this section.

(9) Sections 30.50 to 30.80 are not affected or superseded by this section.

(10) A person aggrieved by an order or decision of the department under this section may cause its review under ch. 227.

History: 1975 c. 232; 1977 c. 29.

See note to art. I, sec. 13, citing Just v. Marinette County, 56 W (2d) 7, 201 NW (2d) 761.

The concept that an owner of real property can, in all cases, do as he pleases with his property is no longer in harmony with the realities of society. The supreme court herein adopts the "reasonable use" rule codified in the second Restatement of the Law of Torts. State v. Deetz, 66 W (2d) 1, 224 NW (2d) 407.

See note to 88.21, citing 63 Atty. Gen. 355.

The necessity of zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. Whipple, 57 MLR 25.

The public trust doctrine. 59 MLR 787.

Water quality protection for inland lakes in Wisconsin; a comprehensive approach to water pollution. Kusler, 1970 WLR 35.

Land as property; changing concepts. Large, 1973 WLR 1039.

144.30 Definitions. As used in this chapter:

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

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

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

(4) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 147, or source, special nuclear or by-product material as defined under s. 140.52.

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

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

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

(8) "Solid waste disposal sites and facilities" include commercial and municipal establishments or operations such as, without limitation because of enumeration, sanitary landfills, dumps, land disposal sites, incinerators, auto junk yards, scrap metal salvage yards, transfer stations, storage facilities, collection and transportation services and other establishments or

operations for the storage, collection, transportation, transfer, processing, treatment, recovery or disposal of solid waste. "Solid waste disposal sites and facilities" does not include a site or facility for the processing of scrap iron, steel or nonferrous metal using large machines to produce a principal product of scrap metal for sale or use for remelting purposes; nor does the term include a site or facility which uses large machines to sort, grade, compact or bale clean wastepaper, fibers or plastics, not mixed with other solid waste, for sale or use for recycling purposes.

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

(10) "Hazardous substance" means any substance or combination of substances, including wastes, of a solid, liquid, gaseous or semisolid form which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment. Such substances may include, but are not limited to, those which are, to the degree determined by the department, toxic, corrosive, flammable, irritants, strong sensitizers or explosive.

(11) "Solid waste management" means planning, organizing, financing, and implementing programs to effect the storage, collection, transporting, processing, recycling or final disposal of solid wastes in a sanitary, nuisance-free manner.

(12) "Solid waste management plan" means a plan prepared to provide for solid waste management.

(13) "Closing" means the time at which a solid waste or hazardous waste treatment, storage or disposal facility ceases to accept wastes, and includes those actions taken by the owner or operator of the facility to prepare the site for long-term care and to make it suitable for other uses.

(14) "Long-term care" means the routine care, maintenance and monitoring of a solid waste or hazardous waste treatment, storage or disposal facility following closing of the facility.

(15) "Termination" means the final actions taken by an owner or operator of a solid waste or hazardous waste treatment, storage or disposal facility when formal responsibilities for long-term care cease.

History: 1971 c. 125, 130, 211; 1977 c. 377

The social and economic roots of judge-made air pollution policy in Wisconsin Laitos, 58 MLR 465.

144.31 General powers and duties. (1) The department shall:

(a) Promulgate rules implementing and consistent with ss. 144.30 to 144.46 and 144.54.

(b) Encourage voluntary co-operation by persons and affected groups to achieve the purposes of ss. 144.30 to 144.46 and 144.54.

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

(d) Collect and disseminate information and conduct educational and training programs relating to the purposes of ss. 144.30 to 144.46 and 144.54.

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

(2) The department may:

(a) Hold hearings relating to any aspect of the administration of ss. 144.30 to 144.46 and 144.54 and, in connection therewith, compel the attendance of witnesses and the production of evidence.

(b) Issue orders to effectuate the purposes of ss. 144.30 to 144.46 and 144.54 and enforce the same by all appropriate administrative and judicial proceedings.

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

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

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

History: 1971 c. 125 s. 522 (2).

144.32 Federal aid. Subdivisions of this state and interlocal agencies may make application for, receive, administer and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control and solid waste disposal sites and facilities if first submitted to and approved by the department. The department

shall approve any such application if it is consistent with the purposes of ss. 144.30 to 144.46 and any other applicable requirements of law.

144.33 Confidentiality of records. Any records or other information furnished to or obtained by the department in the administration of ss. 144.30 to 144.46 and 144.54, which records or information, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the department in the administration of ss. 144.30 to 144.46 and 144.54, unless such owner or operator expressly agrees to their publication or availability to the general public. Nothing herein shall prevent the use of such records or information by the department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, if such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this section.

History: 1971 c. 125 s. 522 (2).

144.34 Inspections. Any duly authorized officer, employe or representative of the department may enter and inspect any property, premise or place on or at which an air contaminant source or solid waste disposal site or facility is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with ss. 144.30 to 144.46 and 144.54 and rules in force pursuant thereto. No person shall refuse entry or access to any such authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. The department, if requested, shall furnish to the owner or operator of the premises a report setting forth all facts found which relate to compliance status.

History: 1971 c. 125 s. 522 (2).

144.35 Violations: enforcement. (1) (a) Whenever the department has reason to believe that a violation of ss. 144.30 to 144.46 and 144.54 or any rule promulgated under ss. 144.30 to 144.46 and 144.54 has occurred, it may cause written notice to be served upon the alleged violator. The notice shall specify the law or rule alleged to be violated, and contain the findings of fact on which the charge of violation is based, and, except as provided in s. 144.44 (8), may include an order that necessary corrective action be taken within a reasonable time. Any such order shall become effective unless, no later than 30 days after the date the notice and order are served, the person named in the notice and order requests in writing a hearing before the department. Upon such request, the department shall after due notice hold a hearing. In lieu of an order, and except as provided in s. 144.44 (8), the department may require that the alleged violator appear before the department for a hearing at a time and place specified in the notice and answer the charges complained of, or the department may initiate action under s. 144.57.

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

History: 1971 c. 125 s. 522 (2); 1977 c. 377.

144.36 Air pollution control powers and duties. (1) The department shall:

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

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

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

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

144.37 Air pollution control council. The air pollution control council shall advise the natural resources board on proposed and existing rules and any matters pertaining to air pollution.

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

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

144.39 Notice required for construction. (1) The department shall require that notice be given to it prior to the construction, installation or establishment of particular types or classes of air contaminant sources specified in its rules. Within 15 days after receipt of such notice, the department shall require, as a condition precedent to the construction, installation or establishment of the air contaminant source covered thereby, the submission of plans, specifications and such other information as it deems necessary in order to determine whether the proposed construction, installation or establishment will be in accordance with applicable rules in force pursuant to ss. 144.30 to 144.46, 144.54 and 144.57. Within 30 days after the receipt of such plans, specifications or other information the department shall issue an analysis to the effect of the proposal on ambient air quality, and for 30 days thereafter shall receive written comments on the proposal and analysis from interested persons, which shall be retained and considered in its determination. Within 90 days after the receipt of such plans, specifications or other information, the department shall either determine that the proposed construction, installation or establishment will not be in accordance with the requirements of ss. 144.30 to 144.46, 144.54 and 144.57 or applicable rules, in which case it shall issue either an order prohibiting the construction, installation or establishment of the air contaminant source or an order approving such construction, installation or establishment upon such conditions as are necessary to assure compliance with such requirements; or it shall determine that the proposed construction, installation or establishment will be in accordance with such requirements, in which case it shall issue an order approving such construction, installation or establishment. Construction, installation or establishment may proceed in accordance with an order of approval only after it is received from the department.

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

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

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

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

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

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

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

History: 1975 c. 217.

Property owners incidentally affected by a department decision under this section are not guaranteed a hearing before the department by statute or by constitutional provisions of due process. Thus, proceedings under this section do not constitute a contested case within meaning of 227.01 (2). 64 Atty. Gen. 115.

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

(2) In the absence of a generalized condition of air pollution of the type referred to in sub. (1), if the secretary finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the persons responsible for the operations in question to reduce or discontinue emissions immediately, without regard to s. 144.35. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in sub. (1) shall apply.

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

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

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

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

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

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

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

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

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

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

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

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

(6) Nothing in ss. 144.30 to 144.46 supersedes the jurisdiction of any county air pollution control program in operation on July 26, 1967, but any such program shall meet all requirements of ss. 144.30 to 144.46 for a county air pollution control program. Any approval required from the department shall be deemed granted unless the department takes specific action to the contrary.

History: 1973 c. 90.

144.42 Motor vehicle pollution. (1) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of ss. 144.30 to 144.46, the

department may provide by rule for the control of emissions from motor vehicles. Such rules may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and vehicles. Any rules pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The department shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

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

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

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

History: 1971 c. 164 s. 81; 1977 c. 29 s. 1654 (7) (b).

144.421 Mercury users. Every owner of an establishment using 50 pounds or more of mercury compounds or metallic mercury in any one year shall furnish the department with a materials balance statement for the mercury compound or metallic mercury. Such statement shall itemize the type and amount of mercury compound or metallic mercury used, the processes used in and the means by and the place where it is disposed. The statement shall be on a form prescribed by the department and shall be filed on or before January 31 with respect to the use of mercury during the preceding calendar year.

History: 1971 c. 272; 1975 c. 349.

144.422 Air standards for mercury. The department shall, no later than 6 months after April 29, 1972, prepare and adopt minimum standards for the emission of mercury compounds or metallic mercury into the air.

History: 1971 c. 272.

144.423 Mercury discharge into water. Discharge of mercury compounds and metallic mercury into the waters of this state by any person shall be limited to fifteen-hundredths of a pound of mercury per day averaged over a 30-day period, and not more than one-half pound in any one day. The department may establish lower maximum discharge limits by rule.

History: 1971 c. 272.

144.43 Solid waste disposal standards. **(1)** The department shall prepare and adopt minimum standards for the location, design, construction, sanitation, operation and maintenance of solid waste disposal sites and facilities and shall, following a public hearing, adopt such rules relating to the operation and maintenance of solid waste disposal sites and facilities as it deems necessary to ensure compliance and consistency with the purposes of and standards established under the resource conservation and recovery act of 1976, P.L. 94-580, except that such rules relating to open burning shall be consistent with s. 144.431. The standards and rules adopted under this subsection shall conform to the rules adopted under sub. (1m).

(1m) No later than 24 months after May 21, 1978, the department shall adopt, with the advice and comment of the metallic mining council, rules for the identification and regulation of metallic mining wastes. The rules adopted to identify metallic mining wastes and to regulate the location, design, construction and operation and maintenance of the sites and facilities for the disposal of metallic mining wastes shall be adopted in accordance with any or all of the following: chs. 30, 144 and 147 and s. 107.05. The rules shall take into consideration the special requirements of metallic mining operations in the location, design, construction and operation and maintenance of sites and facilities for the disposal of metallic mining wastes as well as any special environmental concerns that will arise as a result of the disposal of metallic mining wastes. In adopting the rules, consideration shall also be given to research, studies, data and recommendations of the U.S. environmental protection agency on the subject of metallic mining wastes arising from the agency's efforts to implement the resource conservation and recovery act of 1976, P.L. 94-580.

(2) Nothing in ss. 144.30 to 144.46 shall limit the authority of any local governing body

to issue licenses and permits for any state-licensed sites or facilities or to adopt, subject to department approval, standards for the location, design, construction, operation and maintenance of solid waste disposal sites and facilities more restrictive than those adopted by the state under this section.

History: 1975 c. 83; 1977 c. 377.

144.431 Solid waste open burning standards. (1) As used in this section:

(a) "Air curtain destructor" means a solid waste disposal operation that combines a fixed wall open pit and a mechanical air supply which uses an excess of oxygen and turbulence to accomplish the smokeless combustion of clean wood wastes and similar combustible materials.

(b) "Open burning" means combustion in which the by-products thereof are emitted directly into the ambient air without passing through a stack or chimney. Open burning does not include the combustion occurring at a properly operated air curtain destructor.

(c) "Population equivalent" means the population equal to the sum of the population of the geographical area based on the most recent census data, or department of administration census data used for tax sharing purposes, plus the seasonal population not included in the census data, plus one person per 1,000 pounds per year of industrial, commercial and agricultural waste.

(2) The department shall grant licenses for the open burning of solid waste at the licensee's solid waste disposal sites if:

(a) The open burning operation serves a population equivalent of less than 2,500 or, if the operation is controlled by more than one municipality, a population equivalent of less than 2,500 for each such municipality. The department shall give consideration to seasonal variations in population in granting partial yearly burning exemptions.

(b) All portions of the licensed operation are greater than one-fourth mile from any residence or place of public gathering, or written consent is obtained from all residents and proprietors within one-fourth mile thereof.

(c) The open burning does not include the burning of wet combustible rubbish, garbage, oily substances, asphalt, plastic or rubber products.

(d) The open burning operation is supervised by an attendant.

(e) The open burning operation is accomplished in a nuisance-free manner and does not create hazards for adjacent properties.

(f) Adequate firebreaks are provided and provision is made to obtain the services of the local fire protection agency if needed.

(g) The open burning operation is not in violation of any federal air pollution control rules, or any state air pollution control rules required to be adopted under applicable federal laws or regulations.

History: 1975 c. 83.

144.435 Solid waste management. (1) Each county board individually or jointly with another county board may prepare and adopt a county solid waste management plan consistent with state criteria. No such plan containing the proposed construction, alteration or reconstruction of a recycling or processing plant in a recycling region established by the Wisconsin solid waste recycling authority shall be submitted under sub. (2) without prior consultation with the authority.

(2) All county plans shall be submitted to the department for review. Within 90 days after submittal, the department shall approve or disapprove the plans. During its review, the department shall consult with the appropriate regional planning commission or other planning agency to determine whether any site use and operation is in conflict with any plans adopted by such agency.

(3) The department shall by rule adopt county solid waste management criteria for the development of the plans permitted under this section.

History: 1971 c. 130; 1973 c. 305; 1975 c. 20; 1977 c. 377.

144.44 Site approval process; annual operating license. (1) No person may establish or construct a site for the land disposal of solid waste unless the person has complied with subs. (2) and (3). No person may operate any solid waste disposal site or facility without having obtained an operating license as provided in sub. (4).

(2) (a) Prior to constructing or establishing a site for the land disposal of solid waste or a site for the treatment, storage or disposal of hazardous waste, the applicant shall submit to the department a feasibility report describing the physical conditions of the proposed site. The purpose of the report and review of the report under this subsection is to determine whether the site has potential for use in solid waste disposal or hazardous waste treatment, storage or disposal and to establish any conditions which the applicant must include in the plan of operation submitted under sub. (3). Favorable feasibility determination under this subsection does not guarantee plan approval under sub. (3) or licensure under sub. (4).

(b) The feasibility report shall be submitted by a registered professional engineer, when deemed necessary by the department, and shall

include a general summary of the site characteristics as well as any specific data the department by rule requires regarding the site's topography, soils, geology, ground and surface waters area and other features of the site and surrounding area. The report shall also include preliminary engineering design concepts including the proposed design capacity of the site and an indication of the quantities and characteristics of the wastes to be disposed of. The department shall, by rule, specify the minimum contents of feasibility reports and no report shall be deemed complete unless the specified information is provided by the applicant. The rules may specify special requirements for feasibility reports relating to sites for the treatment, storage or disposal of hazardous waste. Within 30 days after a feasibility report is submitted, the department shall either publish notice under par. (d) or notify the applicant in writing that the report is not complete, specifying the information which must be submitted before the report is deemed complete.

(c) In the event that a local ordinance or resolution precludes or inhibits the ability of the applicant to obtain data required to be submitted in a feasibility report, the applicant may petition the department to waive application of the ordinance or resolution to the applicant. The department shall promptly schedule a hearing on the matter of waiver and notify the local government of the scheduled hearing. If, after hearing, the department finds the ordinance or resolution to be unreasonable, the department shall waive application of the ordinance or resolution to the applicant.

(d) Within 30 days after a complete feasibility report is filed, the department shall publish a class 1 notice under ch. 985, in the official newspaper designated under s. 985.04 or 985.05, or, if none exists, in a newspaper likely to give notice in the area of the proposed site or facility. The notice shall invite the submission of written comments by any person within 30 days from the time the notice is published, and shall describe the method by which a hearing may be demanded under par. (e). The department shall also send a copy of the notice and of the general summary of the report to the clerk of any county, city, village or town with zoning jurisdiction over the proposed site, to the clerk of any county, city, village or town within whose boundaries any portion of the proposed site will be located, or which could be substantially affected by the operation of the proposed site, and to the main public library of each county or municipality with zoning jurisdiction over the proposed site, within whose boundaries any portion of the proposed site will be located, or which could be substantially affected by the operation of the proposed site.

(e) Within 30 days after the notice required under par. (d) is published, a written demand for a hearing on the matter may be filed by any county, city, village or town, or by any 6 persons. The demand shall indicate the interests of the municipality or persons who file it and state the reasons why the hearing is demanded. A hearing demanded under this paragraph shall be held within 60 days after the deadline for demanding a hearing and shall be conducted as provided in s. 227.022. The hearing shall be held in an appropriate place designated by the department in one of the counties, cities, villages or towns which could be substantially affected by the operation of the proposed site.

(f) Within 120 days after the submission of a complete feasibility report under par. (a), or within 60 days after any hearing demanded under par. (e) is adjourned, whichever is later, the department shall issue a written determination of site feasibility, stating the findings of fact and conclusions of law upon which the determination is based. If the feasibility report indicates the probability that plan approval for the site under sub. (3) cannot be given until an environmental impact statement has been prepared, or if the department intends to require submission of an environmental impact report under s. 23.11 (5), the department shall notify the applicant of that fact and commence the process required under s. 1.11. Any determination made under this subsection may be conditioned upon the design, operational or other requirements deemed necessary to be included in the plan submitted under sub. (3). A favorable determination issued under this subsection shall specify the design capacity of the proposed site and entitle the applicant to submit a plan of operation under sub. (3). A determination under this subsection does not constitute a major state action under s. 1.11 (2).

(3) (a) Any person who has obtained a favorable determination of site feasibility may submit to the department a proposed plan of operation for the site. The owner or operator of a licensed facility for the land disposal of solid waste in existence on May 21, 1978 may, but shall not be required to, seek approval of the site's plan of operation under this subsection. Any operator engaged in mining as defined under s. 144.81 (5) on May 21, 1978 may, but shall not be required to, seek approval of any feasibility report or plan of operation for any site for the disposal of solid waste resulting from such mining operations in existence on May 21, 1978.

(b) The proposed plan of operation shall be submitted 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 site. The proposed plan of operation shall specify whether the owner's responsibility for long-term care of the site 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, by rule, specify the minimum contents of a plan of operation submitted for approval under this subsection and no plan may be deemed complete unless the information is supplied. The rules may specify special standards for plans of operation relating to sites or facilities for the treatment, storage or disposal of hazardous waste. Within 30 days after a plan is submitted, the department shall notify the applicant in writing if the plan is not complete, specifying the information which must be submitted before the report is deemed complete. If no notice is given, the report shall be deemed complete on the date of its submission.

(c) Within 90 days after a complete plan of operation is submitted or within 90 days after the department has issued any environmental impact statement required under s. 1.11, whichever is later, the department shall either approve or disapprove the plan in writing. The determination of the department shall be based upon compliance with the standards established under s. 144.43 or, in the case of hazardous waste treatment, storage or disposal sites, with the rules and standards established under s. 144.62. No plan for a site or facility for the disposal of solid or hazardous waste may be approved unless the applicant submits a bond, deposit, proof of an established escrow account or other proof of financial responsibility satisfactory to the department ensuring that the applicant and any successor in interest will comply with the closure and long-term care requirements of the plan. An approval may be conditioned upon any requirements necessary to comply with the standards. Any approval may be modified by the department upon application of the licensee if newly discovered information indicates that the modification would not inhibit compliance with the standards adopted under s. 144.43 or, if applicable, s. 144.62. If the plan approval has been listed as required for the construction of an electric generating facility under s. 196.491 (2m), the time limits provided in s. 196.491 (3) (f) and (ff) shall take precedence over those provided in this paragraph.

(d) Approval under par. (c) shall entitle the applicant to construct and operate the site in accordance with the approved plan for not less than the design capacity specified in the determination of site feasibility, unless the department establishes by a clear preponderance of the credible evidence that:

1. The site is not constructed in accordance with the approved plan;

2. The site poses a substantial hazard to public health or welfare; or

3. In-field conditions, not disclosed in the feasibility report or plan of operation, necessitate modifications of the plan to comply with standards in effect at the time of plan approval under s. 144.43 or, if applicable, s. 144.62.

(e) Failure to operate in accordance with the approved plan shall subject the operator to enforcement under s. 144.35, or, if the department establishes that any failure to operate in accordance with the approved plan is grievous and continuous, to suspension, revocation or denial of the annual operating license under sub. (4).

(4) (a) No person may maintain or operate a site or facility for the disposal of solid waste or the treatment, storage or disposal of hazardous waste, unless the person has obtained an operating license from the department. The license shall be issued no more frequently than annually and may be denied, suspended or revoked for failure to pay the fees required under s. 144.441 (2) (c) or (3) 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 site or facility, for grievous and continuous failure to comply with the standards adopted under s. 144.43. If the license application is for a site for the disposal of 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 site, expenditure which is not appropriate for the nonhazardous nature of the waste or interruption of the mining operation.

(b) The initial operating license for a site for the land disposal of solid waste or the treatment, storage or disposal of hazardous waste shall not be issued unless the site has been constructed in substantial compliance with the operating plan approved under sub. (3). The department may require that compliance be certified in writing by a registered professional engineer. The department may by rule require, as a condition precedent to the issuance of the operating license for a solid waste land disposal site, that the applicant submit evidence that a notation of the existence of the site has been recorded in the

office of the register of deeds in each county in which a portion of the site is located.

(5) The department shall, by rule, adopt a graduated schedule of reasonable fees to be charged for administering this section.

(6) At least 120 days prior to the closing of a site for the land disposal of solid waste, or the treatment, storage or disposal of hazardous waste, the owner or operator shall notify the department in writing of the intent to close the site.

(7) The department may waive compliance with any requirement of this section or shorten the time periods under this section provided to the extent necessary to prevent an emergency condition threatening public health, safety or welfare. The department may, by rule, exempt specified solid wastes or specified facilities and sites from licensing as solid waste disposal sites or facilities if it finds that regulation under this section would discourage the development of improved methods of solid waste disposal, including the landspreading of sludges, or would not be warranted, in light of the potential hazard to public health or the environment. The department shall not regulate under this chapter any solid waste from a single family or household disposed on the property where it is generated. No license pursuant to s. 144.44 shall be required for agricultural land on which nonhazardous sludges from a treatment work, as defined under s. 147.015 (12), are land spread for purpose of a soil conditioner or nutrient.

(8) Notwithstanding s. 144.35, for solid waste disposal sites or facilities licensed on or before January 1, 1977, which the department believes do not meet minimum standards promulgated under s. 144.43, the following enforcement procedure shall apply:

(a) The department may issue an order relating to the site or facility or may refuse to relicense the site or facility.

(b) The department shall notify the licensee of its intended action under par. (a), and the licensee, within 30 days of receipt of such notice, shall notify the department whether it desires a hearing under par. (c).

(c) If the licensee desires a hearing, the department may not issue the order or decision under par. (a) until a hearing, conducted as a class 2 proceeding under ch. 227, is held. The hearing shall be held in the county where the site or facility is located. At the hearing the department must establish by a preponderance of all the available evidence that the site or facility does not adhere to the minimum standards promulgated under s. 144.43. If the hearing examiner's decision is in favor of the department, the order or decision may be issued. The order or decision shall be subject to judicial review under ch. 227.

(d) If the licensee does not request a hearing under par. (b), the department shall issue the order or decision under par. (a). The licensee may challenge the order or decision by commencing an action in the circuit court for the county in which the site or facility is located within 60 days after issuance of the order or decision. The complaint shall allege that the site or facility adheres to the minimum standards promulgated under s. 144.43. The trial shall be conducted by the court without a jury, and shall be conducted as a de novo proceeding.

History: 1977 c. 377.

144.441 Long-term care. (1) STANDARDS. The department shall prescribe by rule minimal standards for closing, long-term care and termination of sites for the disposal of hazardous waste or the land disposal of solid waste. The standards, and any additional site-specific requirements designated by the department, shall be incorporated into the plan of operation prepared under s. 144.44 (3). The long-term care provisions in an approved plan of operation may be modified under s. 144.44 (3) (d) 3.

(2) OWNER RESPONSIBILITY; TERMINATION. (a) In this subsection, "site" refers only to a site for the disposal of hazardous waste or the land disposal of solid waste with an approved plan of operation under s. 144.44 (3), or a site for the land disposal of solid waste initially licensed within 3 years prior to May 21, 1978 whose owner successfully applies, within 2 years after May 21, 1978, for a determination by the department that the site's design and plan of operation comply substantially with the requirements necessary for plan approval under s. 144.44 (3).

(b) The owner of a site shall be responsible for the long-term care of the site for 30 years after closing of the site unless the responsibility is terminated earlier under par. (c) or (d).

(c) If the approved plan of operation for a site so indicates, or if the owner of a site so requests and the department approves the owner's responsibility for long-term care of the site shall terminate 20 years after closing of the site unless the owner's responsibility is terminated sooner under par. (d). With respect to such sites, the fees imposed under sub. (3) (b) shall be 3.5 cents per ton and the fees imposed under sub. (3) (c) shall be 35 cents per ton.

(d) The owner of a site may apply to the department for termination of the owner's responsibility for long-term care at any time after the site has been closed for at least 10 years. Upon receipt of such application the department

shall, using the procedure applicable to feasibility reports under s. 144.44 (2) (d), provide notice to the public and to the owner or operator and an opportunity for a hearing on the termination of the site. In this proceeding the burden shall be on the applicant to prove by a preponderance of the evidence that additional long-term care is not necessary for adequate protection of public health or the environment. Within 120 days after posting notice of the pending termination or within 60 days after any hearing is adjourned, whichever is later, the department shall determine either that long-term care of the site is no longer required, in which case the applicant shall be relieved of such responsibility; or that additional long-term care of the site as specified in the plan of operation is still required, in which case further application under this subsection shall not be permitted until at least 5 years have elapsed since the previous application.

(3) WASTE MANAGEMENT FUND. (a) Each owner or operator of a licensed site for the land disposal of solid waste or the disposal of hazardous waste shall periodically pay to the department a fee for each ton, or equivalent volume as determined by rule of the department, of solid waste received and disposed of at the site during the preceding reporting period. Solid waste materials approved by the department for lining or capping a dike, berm or road construction within a site for the land disposal of solid waste shall not be subject to the fee imposed under this paragraph. The department shall reduce or waive such fees for solid waste resulting from mining if it determines that the reclamation bonding and other requirements of ss. 144.81 to 144.94 are sufficient to accomplish the purposes of this subsection. Such fees shall be paid into the waste management fund to be used for the purposes specified in par. (d). Whenever the investment board certifies to the department that the balance in the waste management fund exceeds $15,000,000, this paragraph shall not apply to any site which is operating under its 6th or subsequent annual license until the investment board certifies to the department that the balance in the waste management fund is less than $12,000,000.

(b) Except as provided in sub. (2) (c), the fee imposed by par. (a) shall be 1.5 cents per ton for solid waste and for any hazardous wastes which are excepted from the fee specified in par. (c).

(c) Except as provided in sub. (2) (c), the fee imposed by par. (a) shall be 15 cents per ton for hazardous wastes other than ashes and sludges from electric and process steam generating facilities, sludges produced by waste treatment or manufacturing processes at pulp or paper mills, manufacturing process solid wastes from foundries, or sludges produced by municipal wastewater treatment facilities.

(d) In this paragraph, "site" has the meaning given in sub. (2) (a). The moneys in the waste management fund shall be expended by the department exclusively for the following purposes:

1. Payment for all costs of long-term care of a site accruing after the responsibility of the owner has been terminated under sub. (2). The department shall by rule provide for the method of payment.

2. Payment of the costs of repairing a site, and the costs of repairing environmental damage caused by a site, as a result of occurrence not anticipated in the plan of operation which poses a substantial hazard to public health or welfare. Prior to making any expenditure under this subdivision, the department shall publish a class I notice, under ch. 985, of its intent to do so, specifying the amount and purpose of the proposed expenditure and shall afford a hearing to any person who so demands within 30 days for the purpose of determining whether the proposed expenditure meets the requirements of this subdivision. If an expenditure made under this subdivision would not have been necessary had the person responsible for the operation or long-term care of the site substantially complied with the requirements of the plan of operation, a right of action in favor of the fund shall accrue to the state against such person, and the attorney general shall take such action as is appropriate to enforce this right of action by recovering any amounts so expended. The net proceeds of any such recovery shall be paid into the waste management fund.

History: 1977 c. 377

144.442 Transference of responsibility. Any person acquiring rights of ownership, possession or operation in a licensed site or facility for the disposal of solid waste or the treatment, storage or disposal of hazardous waste at any time after the site or facility has begun to accept waste shall be subject to all requirements of the license approved for the site or the facility, including the requirements relating to long-term care of the site or facility. Upon acquisition of the rights, the department shall issue a new operating license if the previous licensee is no longer connected with the operation of the site or facility, if the new licensee meets all requirements specified in the previous license, the approved plan of operation, if any, and the rules promulgated under s. 144.62, if applicable.

History: 1977 c. 377.

144.445 Local permits not required; departmental license. (1) Any solid waste site or facility which meets all state standards and is to be operated in accordance with an approved county plan under s. 144.435 (2) shall not be required to obtain any local permits or authorization.

(2) (a) Notwithstanding s. 144.43 (2), if a solid waste disposal site or facility is otherwise eligible for construction and licensing except for failure to obtain a local permit, the department may, if it finds after notice and hearing that the requirements of public health, safety and welfare so require, waive such local approvals.

(b) Any license issued under this section shall supersede all local requirements. However, operations licensed under this section may be required to render payments in lieu of local license or permit fees to the municipality in whose jurisdiction they lie not to exceed $100 per site per year.

History: 1971 c. 130; 1977 c. 377.

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

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

144.50 Manufacture and purchase of polychlorinated biphenyls. (1) In this section:

(a) "PCBs" mean the class of organic compounds generally known as polychlorinated biphenyls and includes any of several compounds or mixtures of compounds produced by replacing 2 or more hydrogen atoms on the biphenyl molecule with chlorine atoms.

(b) "Ppm" means parts per million by weight.

(c) "Product containing PCBs" means any item, device or material to which PCBs are intentionally added during or after manufacture as plasticizers, heat transfer media, hydraulic fluids, dielectric fluids, solvents, surfactants, insulators or coating, adhesive, printing or encapsulating materials or for other uses related to the function of such item, device or material.

(2) No person may manufacture, or purchase for use within this state, PCBs or a product containing PCBs after July 1, 1977.

(3) Subsection (2) shall not apply to any product containing PCBs if:

(a) The product contains PCBs in a closed system as a dielectric fluid for an electric transformer, electromagnet or capacitor, unless the department by rule prohibits such manufacture or purchase of specific products for which the department has determined that adequate alternatives are available at the time of manufacture or purchase.

(b) The product is an electrical component containing less than 2 pounds of PCBs, unless the department by rule prohibits the manufacture or purchase of any such product manufactured after the effective date of such rule for which the department has determined that an adequate alternative is available.

(c) The product is wastepaper, pulp or other paper products or materials, in which case such product may be purchased for use within this state in the manufacture of recycled paper products.

(4) Subsection (2) shall not be construed to prohibit the manufacture or purchase of PCBs or products containing PCBs for use within this state in scientific research, analytical testing or experimentation.

(5) The department by rule may exempt other uses of PCBs from the provisions of sub. (2) for specific products when adequate alternatives are not available.

(6) (a) In determining whether adequate alternatives are available under sub. (3) (a) and (b) or (5), the department shall take into account and make specific findings as to the following criteria:

1. The commercial availability and cost of alternative products;

2. The safety of alternative products to both human life and property;

3. The acceptance of alternative products by insurance underwriters;

4. The extent to which use of such alternative products is otherwise restricted by law;

5. The degree to which such alternative products satisfy the performance standards required for the particular use; and

6. Any adverse environmental effects associated with such alternative products.

(b) Such findings shall be submitted to the PCB advisory council under s. 15.347 (10) for review and comment and shall be transmitted with the summary of any proposed rule under s. 227.018 (2).

(7) On or before July 1, 1977, the department shall adopt rules prescribing the methods

and providing or designating sites and facilities for the disposal of PCBs and products containing PCBs. Such rules may require reporting by persons disposing of PCBs and products containing PCBs. Persons disposing of PCBs or products containing PCBs shall comply with such rules unless such products are exempted under sub. (3) (b) or (c). In this section, disposal does not include the disposal of PCBs in sludge produced by wastewater treatment systems under s. 144.43 (1) and NR 151, Wis. Adm. Code, the discharge of effluents containing PCBs or the manufacture or sale of recycled paper products to which PCBs have not been intentionally added during or after manufacture for any of the uses set forth in sub. (1) (c). Nothing in this section shall exempt any person from applicable disposal or discharge limitations required or authorized under other sections of the statutes.

(8) On or before July 1, 1977, the department shall adopt rules setting forth the method and manner of sampling, preparing samples and analyzing PCBs which shall be used by the department in implementing this section.

(9) The department shall enforce this section as provided in ss. 147.21 and 147.29.

(10) A rule adopted under this section shall not take effect until approved by majority votes of a senate and an assembly committee dealing with environmental protection.

History: 1975 c. 412; 1977 c. 325; 1977 c. 377 s. 30.

144.536 Enforcement of orders; duty of department of justice; expenses. All orders of the department shall be enforced by the attorney general. The circuit court of Dane county or any other county where violation of such an order has occurred in whole or in part shall have jurisdiction to enforce the order by injunctional and other relief appropriate to the enforcement of the order. For purposes of such proceeding where the order prohibits in whole or in part any pollution, a violation thereof shall be deemed a public nuisance. The expenses incurred by the department of justice in assisting with the administration of ch. 144 shall be charged to the appropriation made by s. 20.370 (2).

History: 1975 c. 39 s. 734.

The provision that the violation of an order prohibiting pollution constitutes a public nuisance does not mean that there is no nuisance until an order is issued. State v. Dairyland Power Coop. 52 W (2d) 45, 187 NW (2d) 878.

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

144.54 Reports on substances used; environmental fee. (1) The department shall require by rule that all persons, except municipalities, discharging industrial wastes, hazardous substances or air contaminants in this state report the manner used, amount used and amount discharged for each such waste, substance or contaminant. The required report shall include industrial wastes and hazardous substances discharged into any sewerage system operated by a municipality. The department may verify reports received by field monitoring of industrial waste and other waste outfalls and air contaminant sources.

(2) (a) The department by rule shall prescribe method of analysis and form of the reports required by this section and shall establish parameters for the pollutants on which reports are required by this section. The pollutants for

which parameters are to be established shall include, but are not limited to:

1. Hazardous substances;

2. Air contaminants; and

3. Elemental discharges such as mercury or cadmium which may be toxic or hazardous when released to the environment.

(b) The department may, by rule, establish minimum reporting levels for pollutants and minimum effluent volumes for which reports are required under this section.

(3) (a) In order to provide for adequate departmental planning, standards development, permit administration, surveillance, investigation, monitoring, enforcement and related activities, there is established an annual operating plant discharge environmental fee to be paid by each person required to report under sub. (1). Such fee shall be based on an administrative fee of $100 plus an additional operating plant discharge fee, to be set by the department by rule and to be based on the concentration or quantity or both of pollutants discharged at that plant in relation to the parameters established under sub. (2) (a).

(b) In establishing an annual discharge fee schedule, the department shall distinguish between substances discharged directly to surface waters and those discharged into land disposal systems or publicly owned treatment works based on their relative impacts on the quality of ground and surface waters.

(c) The annual fee shall be designed to generate revenues equal to 30% of the state cost of departmental activities for the administration of air pollution control under this section and ss. 144.30 to 144.42 and water resources under this section and ss. 144.025, 144.04 and 144.55 and ch. 147, except that the costs of departmental inland lake renewal activities under ch. 33, water supply activities under ss. 144.025 (2) (L) and (r) and 144.04, high capacity well activities under s. 144.025 (2) (e) and solid waste activities under ss. 144.44 and 144.445 shall not be included in determining such costs.

(d) The annual operating plant discharge environmental fee under this section shall be paid for each plant at which pollutants are discharged.

(e) In this subsection, "state cost" means the actual expenditure under s. 20.370 (2) (a) for the fiscal year immediately preceding the fiscal year of assessment.

(4) Violators of the reporting requirements established under sub. (1) shall forfeit not less than $200 nor more than $10,000 or an amount double the applicable environmental fee under sub. (3), whichever is greater, for each offense.

(5) The department may hold hearings relating to any aspect of the administration of the system established under this section, including, but not limited to, the assessment of environmental fees against specific plants and, in connection therewith, may compel the attendance of witnesses and the production of evidence.

History: 1971 c. 125; 1973 c. 90; 1977 c. 29, 203, 377.

144.55 Visitorial powers of department. **(1)** Every owner of an industrial establishment shall furnish to the department all information required by it in the discharge of its duties under s. 144.025 (2). Any member of the natural resources board or any employe of the department may enter any industrial establishment for the purpose of collecting such information, and no owner of an industrial establishment shall refuse to admit such member or employe. The department shall make such inspections at frequent intervals. The secretary and all members of the board shall have power for all purposes falling within the department's jurisdiction to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of necessary or essential data.

(2) Any duly authorized officer, employe or representative of the department may enter and inspect any property, premises or place on or at which any prospecting or metallic mining operation or facility is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules adopted pursuant thereto. No person may refuse entry or access to any such authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials, nor may any person obstruct, hamper or interfere with any such inspection. The department shall furnish to the prospector or operator, as indicated in the prospecting or mining permit, a written report setting forth all observations, relevant information and data which relate to compliance status.

History: 1973 c. 318.

144.56 Review of orders. Any owner or other person in interest may secure a review of the necessity for and reasonableness of any order of the department of natural resources in the following manner:

(1) They shall first file with the department a verified petition setting forth specifically the modification or change desired in such order. Such petition must be filed within 60 days of the issuance of the orders sought to be reviewed. Upon receipt of such a petition the department shall order a public hearing thereon and make

such further investigations as it shall deem advisable. Pending such review and hearing, the department may suspend such orders under terms and conditions to be fixed by the department on application of any such petitioner. The department shall affirm, repeal or change the order in question within 60 days after the close of the hearing on the petition.

(2) The determination of the department shall be subject to review as provided in ch. 227.

144.57 Penalties. Any person who violates this chapter, or who fails, neglects or refuses to obey any general or special order of the department, shall forfeit not less than $10 nor more than $5,000, for each violation, failure or refusal. Each day of continued violation is a separate offense. While the order is suspended, stayed or enjoined, such penalty shall not accrue.

144.58 Citizens environmental council. **(1)** The citizens environmental council, as created under s. 15.107 (5), shall employ under the classified service an executive director and such clerical staff as is necessary to perform its duties.

(2) The overall objectives of the council shall be to facilitate effective public awareness of environmental activities. To this end the council shall educate and advise the general public and citizens groups on environmental activities.

History: 1975 c. 224; 1977 c. 29; 1977 c. 377 s. 22.

144.60 Hazardous waste management act. **(1)** TITLE. Sections 144.60 to 144.74 shall be known and may be cited as the "Hazardous Waste Management Act".

(2) DECLARATION OF POLICY. The legislature finds that hazardous wastes, when mismanaged, pose a substantial danger to the environment and public health and safety. To ensure that hazardous wastes are properly managed within this state, the legislature declares that a state-administered regulatory program is needed which:

(a) Relies upon private industry or local units of government to provide hazardous waste management services.

(b) Requires the transportation, storage, treatment and disposal of hazardous wastes to be performed only by licensed operators.

(c) Requires generators of hazardous waste to utilize operators licensed to transport, treat, store or dispose of hazardous wastes.

(d) Does not interfere with, control or regulate the manufacturing processes which generate hazardous wastes.

(e) Ensures the maintenance of adequate records on, and the reporting of, the disposition of all hazardous wastes either generated in or entering this state.

(f) Encourages to the extent feasible, the reuse, recycling or reduction of hazardous wastes.

(g) Provides adequate care and protection of disposal sites after the sites cease to accept hazardous wastes.

(h) Provides members of the public and units of local government an opportunity to review and comment upon the construction, operation and long-term care of hazardous waste management facilities.

(i) Meets the minimum requirements of the resource conservation and recovery act of 1976, P.L. 94-580.

(3) RULES ON METALLIC MINING WASTES. The requirements of ss. 144.60 to 144.74 shall be subject to s. 144.43 (1m).

History: 1977 c. 377.

144.61 Definitions. In ss. 144.60 to 144.74:

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

(2) "Disposal" means the discharge, deposit, injection, dumping or placing of any hazardous waste into or on any land or water so that the hazardous waste or any constituent of the hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground waters, or the storage of any hazardous waste for a period longer than 18 months.

(3) "Generation" means the act or process of producing hazardous waste but does not include any manufacturing process.

(4) "Hazardous waste" or "waste" means any solid waste identified by the department as hazardous under s. 144.62 (2) (a).

(5) "Hazardous waste management" means the systematic source reduction, collection, source separation, storage, transportation, exchange, processing, treatment, recovery and disposal of hazardous wastes.

(6) "Manifest" means a form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transport.

(7) "Person" means an individual, owner or operator, corporation, partnership, association, municipality, interstate agency or state agency.

(8) "Storage" means the containment of hazardous waste, for that period of time established by rule by the department not exceeding 18 months, in such a manner as not to constitute disposal of the hazardous waste. Containment

of less than 10,000 gallons for less than one month shall not constitute storage.

(9) "Transport" means the movement of wastes between sites which are subject to or require a license under this subchapter or under the resource conservation and recovery act of 1976, P.L. 94-580.

(10) "Treatment" means any method, technique or process, including neutralization, which follows generation and is designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize the hazardous waste or so as to render the waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume.

(11) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated. Such facilities shall not include waste water treatment facilities regulated under ch. 147.

History: 1977 c 377

144.62 Powers and duties of the department. (1) Within one year after May 21, 1978, the department shall conduct and publish a study, using existing data to the extent possible, of hazardous waste management in this state. The study shall include, but is not limited to:

(a) A description of the sources of hazardous waste generation within the state, including the types and quantities of hazardous wastes.

(b) A description of current hazardous wastes management practices, including treatment and disposal, within the state.

(c) Establishment of physical criteria for acceptable hazardous waste treatment, storage and disposal sites.

(2) Within 12 months after publication of final regulations required under s. 3001 (b) of the resource conservation and recovery act of 1976, P.L. 94-580, or by July 1, 1979, whichever is earlier, the department shall:

(a) Promulgate, by rule, criteria identical to those promulgated by the U.S. environmental protection agency under s. 3001 (b) of the resource conservation and recovery act of 1976, P.L. 94-580, for identifying the characteristics of hazardous waste and based on use of these criteria, maintain and update a list of wastes identified as hazardous wastes which shall be subject to ss. 144.60 to 144.74. The rules shall require that any person generating or transporting, or owning or operating a facility for treatment, storage or disposal, of any substance which either meets the criteria or is identified as a hazardous waste shall, within 90 days of promulgation of the rule, so notify the department.

(b) Publish a report identifying general areas of the state, based on criteria reported under sub. (1) (c), which may, or may not, be suitable for the establishment of hazardous waste treatment, storage or disposal facilities. This designation shall not operate to preclude specific sites from receiving a license.

(3) The department may, by rule, prohibit particular methods of treatment or disposal of particular hazardous wastes, upon a finding that restrictions on treatment or disposal methods are necessary to protect public health and safety or the environment.

(4) The department may enter into a compact with agencies in other states for the purposes of mutual assistance in the management and regulation of hazardous wastes.

(5) The department may, by rule, exempt from any of the provisions of ss. 144.60 to 144.74 any person who generates wastes which do not present a significant hazard to public health and safety or the environment.

(6) Commencing 5 years after May 21, 1978, the department shall study whether existing hazardous waste management facilities and operations are adequately handling all hazardous wastes within the state, and shall report its findings to the legislature within one year.

(7) In developing requirements for licenses to transport hazardous waste under s. 144.64 (2), the department shall maintain consistency with rules promulgated by the department of transportation.

(8) The department shall adopt rules which prescribe requirements for:

(a) The establishment and maintenance of records.

(b) The making of reports, including the manifest to be used during the transport of hazardous waste.

(c) Sampling and analysis.

(d) Installation, calibration, use and maintenance of monitoring equipment.

(e) The design, construction, operation and closing of sites and facilities for the treatment, storage and disposal of hazardous wastes.

(9) The department, in cooperation with the university of Wisconsin extension and other interested parties, shall develop educational programs and offer technical assistance to persons interested in hazardous waste management.

(10) (a) Rules under sub. (2) (a) shall also 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. Storage periods defined under s. 144.61 (8) and standards established under ss. 144.60 to 144.74 for facilities which treat, store or

dispose of hazardous waste, or equipment which transports hazardous waste, shall recognize and differentiate between the classes of waste the facility or equipment is intended to transport, treat, store or dispose.

(b) In determining the relative degrees of hazard of classes of wastes under par. (a), the department shall consider the following:

1. The amounts of wastes and the concentrations of the harmful or potentially harmful constituents of the wastes;

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

(11) The department, in cooperation with the solid waste recycling authority, shall report by January 1, 1980, to the legislature on the feasibility of establishing a waste exchange in this state, for the purpose of encouraging the utilization of hazardous wastes for useful purposes. The report shall include at least the following:

(a) A determination of whether there is a need for a waste exchange in this state, including the types of wastes that could be so exchanged;

(b) A discussion of which organizations, if any, should be involved in establishing or operating such an exchange; and

(c) An estimate of the costs of establishing and operating such an exchange.

(12) If facilities or equipment subject to ss. 144.60 to 144.74 are also subject to regulation by the department under other statutes or rules, the department shall integrate its regulatory processes to avoid duplicative or contradictory actions or requirements.

History: 1977 c. 377.

144.63 Generation. Any person generating hazardous waste shall:

(1) Be responsible for testing programs needed to determine whether any material generated by them is a hazardous waste for purposes of ss. 144.60 to 144.74.

(2) Keep records that accurately identify:

(a) The quantities of hazardous waste generated;

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

(c) The disposition of hazardous wastes.

(3) Label any container used for the storage, transport or disposal of hazardous waste to accurately identify its contents and associated hazards.

(4) Use appropriate containers for hazardous waste.

(5) Furnish information on the general chemical composition of hazardous waste to persons transporting, treating, storing or disposing of hazardous wastes, and on any precautions recommended to ensure safe handling of hazardous waste.

(6) Comply with rules relating to use of a manifest system.

(7) Submit all required reports.

(8) Comply with rules relating to notification under s. 144.62 (2) (a).

(9) Arrange that all wastes generated by them are transported, treated, stored or disposed of at facilities, or by operations, holding a license issued under ss. 144.60 to 144.74 or issued under the resource conservation and recovery act of 1976, P.L. 94-580.

History: 1977 c. 377.

144.64 Licenses. (1) LICENSE REQUIRED. (a) Commencing 18 months after May 21, 1978, or 6 months after publication of applicable final regulations required under ss. 3003 to 3005 of the resource conservation and recovery act of 1976, P.L. 94-580, whichever is earlier, no person may store, transport, treat or dispose of any hazardous waste without a license from the department.

(b) Where the application for or compliance with any license required under this section would, in the judgment of the department, cause undue or unreasonable hardship to any person, the department may issue a variance from the requirements of this section, if the variance does not result in undue harm to public health or the environment. In no case may the duration of any variance exceed one year. Renewals or extensions of variances may be given only after opportunity for a public hearing on each variance renewal or extension.

(c) The department may waive compliance with any requirement of this section or shorten the time periods provided under this section to the extent necessary to prevent an emergency condition threatening public health, safety or welfare.

(2) TRANSPORTATION. (a) Licenses issued under this section to transport hazardous waste shall require compliance with rules of the department. The rules shall establish standards for the following:

1. Recordkeeping concerning hazardous waste transported, and their source and delivery points.

2. Labeling procedures.

3. Use of a manifest system.

4. Containers used to transport waste.

5. Equipment operator qualifications.

(b) Licenses issued under this section may be denied, suspended or revoked for grievous and continuous failure to comply with the standards adopted under par. (a).

(3) FACILITIES. No person may establish or construct a facility to treat, store or dispose of hazardous waste unless the person has complied with s. 144.44. No person may operate any hazardous waste treatment, storage or disposal facility without having first obtained an operating license as provided in s. 144.44 (4). Any person who operates a hazardous waste disposal site shall pay the fees specified under s. 144.441 (2) (b) or (3) (c).

(4) LOCAL PERMITS NOT REQUIRED. No hazardous waste treatment, storage or disposal facility which has been issued a license under this section may be required to obtain local permits or authorizations to operate the facility.

(5) FEES. The department shall, by rule, adopt a graduated schedule of reasonable fees to be charged for the direct administration of this section.

History: 1977 c. 377.

144.67 Rules reviewed. Every rule promulgated by the department relating to the hazardous waste management program under this chapter shall be reviewed in accordance with s. 13.565 (3).

History: 1977 c. 377.

144.69 Inspections and right of entry. Any person who generates, stores, treats, transports or disposes of hazardous wastes shall, upon request of any officer or employe of the department, permit the person, at reasonable times and with notice no later than upon arrival, access to premises and records relating to hazardous wastes. Departmental personnel may take samples of hazardous wastes as they deem necessary. Inspections shall be commenced and completed with reasonable promptness. If samples are taken, a receipt for each sample shall be given to the person in charge of the facility, and upon request, half of the sample taken. A copy of the results of any departmental analysis of the sample, if taken, and a copy of the inspection report, shall be promptly furnished to the person in charge of the facility.

History: 1977 c. 377.

144.70 Confidentiality. The department shall prescribe by rule which records, reports or information, if any, obtained from any person under ss. 144.60 to 144.64 and 144.69 to 144.74 shall be confidential. The department shall not divulge any information entitled to protection as a trade secret. This section shall not prevent the department from using records, reports or information in the compilation of summaries and reports, provided that the summaries and reports do not identify any person or reveal any information otherwise confidential under this section.

History: 1977 c. 377.

144.72 Imminent hazard. Upon notice that the handling, treatment, storage, transportation or disposal of any hazardous waste is presenting an imminent and substantial danger to health or the environment, the department may request the department of justice to commence legal proceedings to restrain or enjoin any person from handling, treatment, storage, transportation or disposal presenting an imminent and substantial danger to health or the environment or to take any other action as may be necessary.

History: 1977 c. 377.

144.73 Enforcement. (1) COMPLIANCE ORDERS. If the department determines that any person is in violation of any requirement of ss. 144.60 to 144.74, the department shall 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 an order requiring compliance within a specified time period or may refer the matter to the department of justice for enforcement.

(2) ACTION; DISPOSITION. The department of justice may 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) ASSISTANCE OF DISTRICT ATTORNEY. In any criminal action commenced under s. 144.74, 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) VENUE. Any action on a violation shall be commenced in the circuit court for the county in which the violation occurred.

History: 1977 c 377

144.74 Penalties. (1) The department of justice, upon a referral under s. 144.73, may initiate a civil action for a temporary or permanent injunction for any violation of ss. 144.60 to 144.74, or any rule promulgated under ss. 144.60 to 144.74, or of a term or condition of any license issued under ss. 144.60 to 144.74.

(2) Any person who violates ss. 144.60 to 144.74, or any rule promulgated under ss. 144.60 to 144.74, or any term or condition of a license issued under ss. 144.60 to 144.74, shall be subject to a forfeiture of not more than $25,000 for each day of violation. The time elapsed prior to the expiration of a compliance order shall not constitute a violation.

(3) Any person who transports any hazardous waste subject to ss. 144.60 to 144.74 to a facility which the transporter knows does not have a license, intentionally disposes of any hazardous waste subject to ss. 144.60 to 144.74 without having obtained a license for disposal of hazardous wastes or intentionally makes any false statement or representation in any application, label, manifest, record, report, license or other document shall, upon conviction, be fined not more than $25,000 for each day of violation or imprisoned not more than one year in the county jail or both. If the conviction is for a violation committed after a first conviction of the person, the person shall be fined not more than $50,000 per day of violation or imprisoned not more than 2 years or both.

History: 1977 c 377

144.76 Hazardous substance spills. (1) DEFINITIONS. As used in this section:

(a) "Discharge" means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(b) "Hazardous substance" has the meaning given under s. 144.30 (10).

(c) "Preventive measures" mean the installation or testing of equipment or devices, a designated way of performing a specified operation or the preparation of an emergency response plan.

(2) NOTICE OF DISCHARGE. (a) Persons possessing or controlling a hazardous substance shall immediately notify the department of any discharge not exempted under sub. (9).

(b) Notification received under this section or information obtained in a notification received under this section may not be used against the person making such a notification in any criminal proceedings.

(c) The department shall designate a 24-hour statewide toll-free or collect telephone number whereby notice of any hazardous discharge may be made.

(3) RESPONSIBILITY. Persons having possession of or control over a hazardous substance being discharged, or who cause a hazardous discharge, shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from any discharge to the air, lands or waters of this state.

(4) PREVENTION OF DISCHARGE. (a) The department may require that preventive measures be taken by any person possessing or having control over hazardous substances when it finds:

1. Preventive action would result in a significant reduction in discharge potential; and

2. Past discharges by this person indicate that the existing control measures are inadequate in preventing discharges.

(b) The department shall specify necessary preventive measures by order. The order shall be effective 10 days after issuance, unless the person named requests a hearing, in which case no order may become effective until the conclusion of the hearing.

(5) CONTINGENCY PLAN. (a) The department shall, after consultation with other affected federal, state and local agencies and private organizations, establish by rule a contingency plan for the undertaking of emergency actions in response to the discharge of hazardous substances.

(b) The contingency plan shall:

1. Provide for efficient, coordinated and effective action to minimize damage to the air, land and waters of the state caused by the discharge of hazardous substances;

2. Include containment, clean-up and disposal procedures;

3. Provide for restoration of the lands or waters affected to the satisfaction of the department;

4. Assign duties and responsibilities among state departments and agencies, in coordination with federal and local agencies;

5. Provide for the identification, procurement, maintenance and storage of necessary equipment and supplies;

6. Provide for designation of persons trained, prepared and available to provide the necessary services to carry out the plan; and

7. Establish procedures and techniques for identifying, containing, removing and disposing of discharged hazardous substances.

(6) HAZARDOUS SUBSTANCES SPILL FUND. (a) The appropriation under s. 20.370 (2) (fz) shall be used in implementing and carrying out

the contingency plan developed under sub. (5). This fund shall provide for the procurement, maintenance and storage of necessary equipment and supplies, personnel training and expenses incurred during containment, clean-up and disposal of discharged substances.

(b) No more than 25% of the fund may be used annually for the procurement and maintenance of necessary equipment.

(c) Reimbursements to the department under sub. (7) shall be credited to the hazardous substances spill fund.

(d) Reimbursements to the department under s. 311, federal water pollution control act amendments of 1972, P.L. 92-500, shall be credited to the hazardous substances spill fund.

(7) REMOVAL OR OTHER EMERGENCY ACTION. (a) In every 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 may contain, remove or dispose of the hazardous substance or take any other emergency action which it deems appropriate under the circumstances.

(b) The person causing the discharge shall reimburse the department for actual and necessary expenses incurred in carrying out its duties under this subsection.

(c) The department may, for the protection of public health, safety or welfare, issue an emergency order to the person possessing, controlling or responsible for the discharge of hazardous substances to fulfill the duty imposed by sub. (3).

(8) ACCESS TO PROPERTY. Any duly authorized officer, employe or agent of the department may, upon notice to the owner or occupant, enter any property, premises or place at any time for the purposes of sub. (7) if such entry is necessary to prevent increased damage to the air, land or waters of the state. Notice to the owner or occupant shall not be required if the delay attendant upon providing it will result in imminent risk to public health or safety.

(9) EXEMPTIONS. (a) Any person holding a valid permit under ch. 147 is exempted from the reporting and penalty requirements of this section with respect to substances discharged within the limits authorized by the permit.

(b) Law enforcement officers or members of a fire department using hazardous substances in carrying out their responsibility to protect public health, safety and welfare are exempted from the penalty requirements of this section, but shall be encouraged to report to the department any discharges of a hazardous substance occurring within the performance of their duties.

(c) Any person discharging under a program approved under ch. 144 is exempted from the reporting and penalty requirements of this section.

(d) Any person applying a registered pesticide according to the label instructions is exempted with respect to the application from the reporting and penalty requirements of this section.

(10) ENFORCEMENT EXCLUSIONS. (a) Any person proceeded against for a violation of this section shall not be subject to penalties under s. 144.74 for the same act or omission.

(b) Any person who discharges a hazardous substance, where the responsibilities for such a discharge are prescribed by statute other than ss. 144.60 to 144.74, shall be subject to the penalty under either this section or the other section but not both.

History: 1977 c. 377

144.781 Solid waste management grant program. (1) Sections 144.781 to 144.784 shall be known and may be cited as the "Solid Waste Management Grant Program".

(2) The purpose of ss. 144.781 to 144.784 is to provide state financial assistance to regional planning commissions or to county areawide planning agencies for the development of areawide solid waste management plans and to counties and other local units of government to conduct specific solid waste disposal site feasibility studies consistent with previously adopted and approved areawide solid waste management plans.

(3) In ss. 144.781 to 144.784:

(a) "Applicant for a specific solid waste disposal site feasibility grant" means a town, village, city or county, or more than one town, village, city or county acting jointly, which presents an application for funding a proposal to conduct a specific solid waste disposal site feasibility study which is consistent with a previously developed, department-approved areawide solid waste management plan.

(b) "Applicant for an areawide solid waste management planning grant" means a regional planning commission or a county, or more than one regional planning commission or county acting jointly, which presents an application for funding a proposal to develop an areawide solid waste management plan.

(c) "Areawide solid waste management plan" means a solid waste management plan developed by a regional planning commission or a county or more than one regional planning commission or county acting jointly.

(d) "Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment

plant, water supply treatment plant or air pollution control facility, or any other such waste having similar characteristics and effects.

(e) "Specific solid waste disposal site feasibility study" means the study which describes the physical conditions of the proposed site including a description of the site's topography, soils, geology, ground and surface waters and other features of the site and surrounding area. The study shall also include preliminary engineering design concepts including the proposed design capacity of the site and an indication of the quantities and characteristics of the wastes to be disposed of.

History: 1977 c. 418; 1977 c. 447 ss. 130, 210

144.782 Department powers and duties. **(1)** The department shall:

(a) Adopt rules within 9 months after May 19, 1978, implementing and consistent with ss. 144.781 to 144.784.

(b) Develop evaluation criteria for reporting on and evaluating the solid waste management grant program including the number of grants awarded for areawide solid waste management plans and specific site feasibility studies, the extent to which the grant money is used as required by the solid waste management grant program, and the costs necessary to meet remaining needs of implementing the purposes of ss. 144.781 to 144.784.

(c) Develop criteria, by rule, for approving areawide solid waste management plans. The criteria shall include, but are not limited to:

1. Consideration of the existing and anticipated disposal needs of all units of government within the planning area.

2. Promotion, wherever possible, of resource conservation and recovery practices.

3. Indicating probable disposal site locations to satisfy existing and anticipated solid waste disposal needs.

(d) Develop criteria, by rule, for approving specified solid waste disposal site feasibility studies. The criteria shall include, but are not limited to, identification of one or more disposal sites that are feasible for development as a sanitary landfill, and the provision that no grant moneys may be expended for any acquisition of land or interest in land, or any site preparation, operation or abandonment, or for any subsidies for the price of recovered resources.

History: 1977 c. 418; 1977 c. 447 ss. 130, 210

144.783 Financial assistance. Under ss. 144.781 to 144.784:

(1) The department may enter into agreements with applicants, as defined under s. 144.781 (3) (a) and (b), to make grant payments to the applicants from the appropriation made by s. 20.370 (4) (d). An applicant for an areawide solid waste management planning grant may receive a grant which provides up to 50% of the estimated total cost of the applicant's areawide solid waste management plan, but the grant may not exceed $50,000. An applicant for a specific solid waste disposal site feasibility study may receive a grant which provides up to 25% of the total estimated cost of the applicant's specific site feasibility study if the study is consistent with the applicable department-approved areawide solid waste management plan, but the grant for each feasibility study may not exceed $50,000.

(2) Any grant application recipient of an areawide solid waste management planning grant is not eligible to receive additional areawide solid waste management planning grants under this section.

(3) All available federal funding from the federal resource conservation and recovery act of 1976, P.L. 94-580, for areawide solid waste management planning and specific solid waste disposal site feasibility studies shall be utilized to supplement and increase the levels of funding under this program. The local or municipal share of either an areawide solid waste management plan or specific solid waste disposal site feasibility study shall not be less than 25% of the total eligible costs of the project.

(4) To the greatest extent possible, each year applications for areawide solid waste management planning grants shall receive first consideration for approval and funding by the department. Each year applications for specific solid waste disposal site feasibility studies shall be considered for funding by the department after the department has completed the grant application process for the areawide solid waste management plans.

(5) (a) The department, by rule, shall develop a separate funding priority list for both areawide solid waste management plans and specific solid waste disposal site feasibility studies. Factors to be considered by the department in developing funding priorities for individual plans and studies include, but are not limited to:

1. Waste generation volumes and types of waste in the area.

2. Existing areawide planning activites.

3. Current disposal practices and their suitability for environmentally sound disposal.

4. Extent and availability of alternative funding sources.

5. Extent of existing or previously developed plans.

6. Size of the area to be served.

(b) The funding priority lists shall be made available to all potential applicants. The priority lists may be modified by the department, as needed, to reflect changes in solid waste management practices and technology.

History: 1977 c. 418; 1977 c. 447 ss. 130, 210

144.784 Grant applications. (1) Grant applications for either an areawide solid waste management plan or a specific solid waste disposal site feasibility study shall be submitted to the department by January 1 of each year.

(2) The department shall review and approve or disapprove for funding each grant application.

(3) For an applicant for an areawide solid waste management planning grant, the application shall show, at a minimum:

(a) Designation by the governor that the applicant may act as an areawide solid waste planning agency.

(b) A statement of the overall areawide solid waste management plan objective.

(c) The methods proposed to develop the areawide solid waste management plan and the estimated costs of developing the plan.

(4) For an applicant for a specific solid waste disposal site feasibility study grant, the application shall show, at a minimum:

(a) That an areawide solid waste management plan for the area has been approved by the department and adopted by a county or regional planning commission or a group of counties or regional planning commissions.

(b) The applicant's intent to implement portions of the department-approved areawide solid waste management plan.

(c) The overall specific solid waste disposal site feasibility objectives.

(d) The methods proposed to conduct the specific solid waste disposal site feasibility study and the estimated costs of conducting the study.

(5) The department shall decide the eligibility and the priority of each individual areawide solid waste management plan or specific solid waste disposal site feasibility study grant application by April 1 of each year. Funding for all grants submitted by January 1 of each year shall be committed by May 1 of the same year based on the acceptance of each grant by each successful applicant.

(6) The application and award time schedule specified in this section may be modified by the department if the department determines that such modification would be beneficial for the applicant. Prior to such modification the department shall consider such factors as the acquisition of funding for the project from sources other than the state and the coordination with local budgetary planning processes.

(7) Each grant shall be valid for one year after the date of acceptance. The department may extend to 2 years the amount of time within which the grant recipient may spend the grant if the department determines, on a case-by-case basis, that a time extension is warranted.

(8) After an applicant has accepted the grant offered by the department based on the application, the department shall make available to the applicant 75% of the total amount of the grant. The remaining 25% of the total amount of the grant shall be paid to the applicant only if final project plans are approved, in writing, by the department. The content of final project plans and the criteria for approval of the final project plans shall be specified by the department by rule.

(9) An applicant for a grant for a specific solid waste disposal site feasibility study shall submit one copy of its application to the areawide solid waste planning agency with jurisdiction over the applicant's area for comment on the proposed study's applicability to the department-approved areawide solid waste management plan. The areawide planning agency shall comment to the department within 30 days on the application. If the applicant for a specific solid waste disposal site feasibility study grant is the same agency that is responsible for the areawide solid waste plan, the department shall determine whether the study is consistent with the areawide solid waste plan.

(10) No grants may be distributed for areawide solid waste management plans or specific solid waste disposal site feasibility studies which have, as their primary goals, disposition of toxic and hazardous substances as defined under s. 144.30 (10), hazardous wastes, sludge, or source material as defined under s. 140.52 (10), or by-product material or special nuclear material as defined under s. 140.52 (3) and (11).

History: 1977 c. 418, 447

NOTE: Sub. (10), as created by ch. 418, laws of 1977, sec. 637, had a reference to s. 144.52 (10), which does not exist. It has here been changed to "s. 140.52 (10)".

144.80 Metallic mining reclamation act. (1) Sections 144.80 to 144.94 shall be known and may be cited as the "Metallic Mining Reclamation Act".

History: 1973 c. 318; 1977 c. 421

144.81 Definitions. In ss. 144.80 to 144.94:

(1) "Abandonment of mining" means the cessation of mining, not set forth in an operator's mining or reclamation plans or by any other sufficient written or constructive notice, extending for more than 6 consecutive months. Abandonment of mining does not include the cessation of mining due either to labor strikes or

the cessation of mining due to such unforeseen developments as adverse market conditions for a period not to exceed 5 years as determined by the department after consulting with the metallic mining council.

(1m) "Applicant" means a person who has applied for a prospecting permit or a mining permit.

(2) "Exploration" means the onsite geologic examination from the surface of an area by core, rotary, percussion or other drilling, where the diameter of the hole does not exceed 18 inches, for the purpose of searching for metallic minerals or establishing the nature of a known metallic mineral deposit, and includes associated activities such as clearing and preparing sites or constructing roads for drilling.

(2m) "Exploration license" means the license required under s. 144.832 (2) as a condition of engaging in exploration.

(3) "Merchantable by-product" means all waste soil, rock, mineral, liquid, vegetation and other material directly resulting from or displaced by the mining, cleaning or preparation of minerals during mining operations which are determined by the department to be marketable upon a showing of marketability made by the operator, accompanied by a verified statement by the operator of his or her intent to sell such material within 3 years from the time it results from or is displaced by mining. If after 3 years from the time merchantable by-product results from or is displaced by mining such material has not been transported off the mining site, it shall be considered and regulated as refuse unless removal is continuing at a rate of more than 12,000 cubic yards per year.

(4) "Minerals" mean unbeneficiated metallic ore but does not include mineral aggregates such as stone, sand and gravel.

(5) "Mining" or "mining operation" means all or part of the process involved in the mining of metallic minerals, other than for exploration or prospecting, including commercial extraction, agglomeration, beneficiation, construction of roads, removal of overburden and the production of refuse.

(6) "Mining plan" means the proposal for the mining of the mining site which shall be approved by the department under s. 144.85 prior to the issuance of the mining permit.

(7) "Mining permit" means the permit which is required of all operators as a condition precedent to commencing mining at a mining site.

(8) "Mining site" means the surface area disturbed by a mining operation, including the surface area from which the minerals or refuse or both have been removed, the surface area covered by refuse, all lands disturbed by the construction or improvement of haulageways, and any surface areas in which structures, equipment, materials and any other things used in the mining operation are situated.

(9) "Operator" means any person who is engaged in, or who has applied for or holds a permit to engage in, prospecting or mining, whether individually, jointly or through subsidiaries, agents, employes or contractors.

(10) "Principal shareholder" means any person who owns at least 10% of the beneficial ownership of an operator.

(12) "Prospecting" means engaging in the examination of an area for the purpose of determining the quality and quantity of minerals, other than for exploration but including the obtaining of an ore sample, by such physical means as excavating, trenching, construction of shafts, ramps and tunnels and other means, other than for exploration, which the department, by rule, identifies, and the production of prospecting refuse and other associated activities. "Prospecting" shall not include such activities when the activities are, by themselves, intended for and capable of commercial exploitation of the underlying ore body. However, the fact that prospecting activities and construction may have use ultimately in mining, if approved, shall not mean that prospecting activities and construction constitute mining within the meaning of sub. (5), provided such activities and construction are reasonably related to prospecting requirements.

(13) "Prospecting permit" means the permit which is required of all persons as a condition precedent to commencing prospecting at a location.

(13m) "Prospecting plan" means the proposal for prospecting of the prospecting site, which shall be approved by the department under s. 144.84 prior to the issuance of the prospecting permit.

(13n) "Prospecting site" means the lands on which prospecting is actually conducted as well as those lands on which physical disturbance will occur as a result of such activity.

(14) "Prospector" means any person engaged in prospecting.

(15) "Reclamation" means the process by which an area physically or environmentally affected by prospecting or mining is rehabilitated to either its original state or, if this is shown to be physically or economically impracticable or environmentally or socially undesirable, to a state that provides long-term environmental stability. Reclamation shall provide the greatest feasible protection to the environment and shall include, but is not limited to, the

criteria for reclamation set forth in s. 144.83 (2) (c).

(16) "Reclamation plan" means the proposal for the reclamation of the prospecting or mining site which must be approved by the department under s. 144.84 or 144.85 prior to the issuance of the prospecting or mining permit.

(17) "Refuse" means all waste soil, rock, mineral, liquid, vegetation and other material, except merchantable by-products, directly resulting from or displaced by the prospecting or mining and from the cleaning or preparation of minerals during prospecting or mining operations, and shall include all waste materials deposited on or in the prospecting or mining site from other sources.

(18) "Unsuitability" means that the land proposed for prospecting or surface mining is not suitable for such activity because the prospecting or surface mining activity itself may reasonably be expected to destroy or irreparably damage either of the following:

(a) Habitat required for survival of species of vegetation or wildlife designated as endangered through prior inclusion in rules adopted by the department, if such endangered species cannot be firmly reestablished elsewhere.

(b) Unique features of the land, as determined by state or federal designation and incorporated in rules adopted by the department, as any of the following, which cannot have their unique characteristic preserved by relocation or replacement elsewhere:

1. Wilderness areas.
2. Wild and scenic rivers.
3. National or state parks.
4. Wildlife refuges and areas.
5. Historical landmarks, sites or archaeological areas.
6. Other lands of a type designated as unique or unsuitable for prospecting or surface mining.

History: 1973 c. 318; 1977 c. 377 s. 29m; 1977 c. 421, 447.

144.82 Mine effect responsibility. The department shall serve as the central unit of state government to ensure that the air, lands, waters, plants, fish and wildlife affected by prospecting or mining in this state will receive the greatest practicable degree of protection and reclamation. The administration of occupational health and safety laws and rules that apply to mining shall remain exclusively the responsibility of the department of industry, labor and human relations. The powers and duties of the geological and natural history survey under s. 36.25 (6) shall remain exclusively the responsibility of the geological and natural history survey. Nothing in this section prevents the department of industry, labor and human relations and the geological and natural history survey from cooperating with the department in the exercise of their respective powers and duties.

History: 1973 c. 318; 1975 c. 41 s. 52.

144.83 Department powers and duties. **(1)** The department shall:

(a) Adopt rules, including rules for prehearing discovery, implementing and consistent with ss. 144.80 to 144.94.

(b) Establish by rule after consulting with the metallic mining council minimum qualifications for applicants for prospecting and mining permits. Such minimum qualifications shall ensure that each operator in the state is competent to conduct mining and reclamation and each prospector in the state is competent to conduct prospecting in a fashion consistent with the purposes of ss. 144.80 to 144.94. The department shall also consider such other relevant factors bearing upon minimum qualifications, including but not limited to, any past forfeitures of bonds posted pursuant to mining activities in any state.

(2) (a) The department by rule after consulting with the metallic mining council shall adopt minimum standards for exploration, prospecting, mining and reclamation to ensure that such activities in this state will be conducted in a manner consistent with the purposes and intent of ss. 144.80 to 144.94. The minimum standards may classify exploration, prospecting and mining activities according to type of minerals involved and stage of progression in the operation.

(b) Minimum standards for exploration, prospecting and mining shall include the following:

1. Grading and stabilization of excavation, sides and benches.
2. Grading and stabilization of deposits of refuse.
3. Stabilization of merchantable by-products.
4. Adequate diversion and drainage of water from the exploration, prospecting or mining site.
5. Backfilling.
6. Adequate covering of all pollutant-bearing minerals or materials.
7. Removal and stockpiling, or other measures to protect topsoils prior to exploration, prospecting, or mining.
8. Adequate vegetative cover.
9. Water impoundment.
10. Adequate screening of the prospecting or mining site.
11. Identification and prevention of pollution as defined in s. 144.01 (11) resulting from leaching of waste materials.

12. Identification and prevention of significant environmental pollution as defined in s. 144.30 (9).

(c) Minimum standards for reclamation of exploration sites, where appropriate, and for prospecting and mining sites shall conform to s. 144.81 (15) and include provision for the following:

1. Disposal of all toxic and hazardous wastes, refuse, tailings and other solid waste in solid or hazardous waste land disposal facilities licensed under this chapter or otherwise in an environmentally sound manner.

2. Sealing off tunnels, shafts or other underground openings, and prevention of seepage in amounts which may be expected to create a safety, health or environmental hazard, unless the applicant can demonstrate alternative uses of tunnels, shafts or other openings which do not endanger public health and safety and which conform to applicable environmental protection laws and rules.

3. Management, impoundment or treatment of all underground or surface runoff waters from open pits or underground prospecting or mining sites so as to prevent soil erosion, flooding, damage to agricultural lands or livestock, wild animals, pollution of surface or subsurface waters or damage to public health or safety.

4. Removal of all surface structures, unless they are converted to an alternate use.

5. Prevention or reclamation of substantial surface subsidence.

6. Preservation of topsoil for purposes of future use in reclamation.

7. Revegetation to stabilize disturbed soils and prevent air and water pollution, with the objective of reestablishing a variety of populations of plants and animals indigenous to the area immediately prior to exploration, prospecting or mining.

8. Minimization of disturbance to wetlands.

(d) The minimum standards adopted under this subsection shall also provide that if any of the following situations may reasonably be expected to occur during or subsequent to prospecting or mining, the prospecting or mining permit shall be denied:

1. Landslides or substantial deposition from the proposed operation in stream or lake beds which cannot be feasibly prevented.

2. Significant surface subsidence which cannot be reclaimed because of the geologic characteristics present at the proposed site.

3. Hazards resulting in irreparable damage to any of the following, which cannot be prevented under the requirements of ss. 144.80 to 144.94, avoided to the extent applicable by removal from the area of hazard or mitigated by purchase or by obtaining the consent of the owner:

a. Dwelling houses.

b. Public buildings.

c. Schools.

d. Churches.

e. Cemeteries.

f. Commercial or institutional buildings.

g. Public roads.

h. Other public property designated by the department by rule.

4. Irreparable environmental damage to lake or stream bodies despite adherence to the requirements of ss. 144.80 to 144.94. This subdivision does not apply to an activity which the department has authorized pursuant to statute, except that the destruction or filling in of a lake bed shall not be authorized notwithstanding any other provision of law.

(4) The department may:

(a) Hold hearings relating to any aspect of the administration of ss. 144.80 to 144.94 and, in connection therewith, compel the attendance of witnesses and production of evidence.

(b) Cooperate or contract with the geological and natural history survey to secure necessary scientific, technical, administrative and operations services, including research, projects and laboratory facilities.

(c) Issue orders directing particular prospectors or operators to comply with the provisions and purposes of ss. 144.80 to 144.94.

(d) Supervise and provide for such educational programs as appear necessary to carry out the purposes of ss. 144.80 to 144.94.

(e) Accept, receive and expend gifts and donations on behalf of the state.

(f) At its own expense, with the staff, equipment and material under its control, or by contract with others, take such actions as are necessary for the reclamation of abandoned project sites.

(g) Issue prospecting and mining permits.

(h) Issue exploration licenses.

(5) The department may require all persons under its jurisdiction to submit such informational reports as the department deems necessary for performing its duties under ss. 144.80 to 144.94.

(6) The department may, after hearing, cancel:

(a) The prospecting permit for a prospecting site that is the site of a violation of ss. 144.80 to 144.94.

(b) The mining permit for a mining site that is the site of a violation of ss. 144.80 to 144.94.

(c) A mining or prospecting permit, if the permitholder intentionally made a false statement in the permit application or intentionally

omitted information from the permit application which was material to permit issuance.

History: 1973 c. 318; 1977 c. 377 s. 29m; 1977 c. 421, 447

144.831 Data collection; monitoring. (1) Any person intending to submit an application for a prospecting or mining permit shall notify the department prior to the collection of data or information intended to be used to support the permit application. Specific environmental data which would be pertinent to a specific prospecting or mining application, but which was obtained or collected or generated prior to the notice of intent to apply for a prospecting or mining permit, shall be submitted in writing to the department together with any substantiating background information which would assist the department in establishing the validity of the data. The department shall review the data and, if it concludes that the benefits of permitting the admission of the data outweigh the policy reasons for excluding it, and if the data is otherwise admissible, inform the person giving the notice of intent to prospect or mine that the data will be accepted by the department. Such exclusion shall not relate to general environmental information such as soil characteristics, hydrologic conditions and air and water data contained in publications, maps, documents, studies, reports and similar sources, whether public or private, not prepared by or for the applicant. Such exclusion shall likewise not relate to data which is otherwise admissible that is collected prior to notification under this subsection for purposes of evaluating another site or sites and which is not collected with intent to evade the provisions of this section.

(2) Upon receipt of notification under sub. (1), the department shall give public notice of the notification in the same manner as provided under s. 144.836 (3) (b).

(3) The department shall also receive and consider any comments from interested persons received within 45 days after public notice is given under sub. (2) as to the information which they believe should be requested from the person giving notice of intent to apply for a prospecting or mining permit and the information which they believe the department should seek through independent studies.

(4) After the receipt and consideration of comments from interested persons, the department shall inform the person giving notice of intent to apply for a prospecting or mining permit of the type and quantity of information that it then believes to be needed to support an application, and where applicable, the methodology to be used in gathering information. The department shall specifically inform the person giving notice of intent to apply for a prospecting or mining permit of the type and quantity of information on the characteristics of ground water resources in the area in which prospecting or mining is anticipated to occur which the department believes is needed to support an application. The department shall also begin informing the person giving notice of intent to apply for a prospecting or mining permit as to the timely application date for approvals, licenses and permits, so as to facilitate the consideration of all other matters at the hearing on the prospecting or mining permit.

(5) The department may conduct studies necessary to verify information which may be submitted at the time of a permit application.

(6) All information gathered by a person giving notice under sub. (1) shall be submitted to the department as soon as it is in final form. The department may at any time after consultation with the person giving notice of intent to apply for a prospecting or mining permit revise or modify its requirements regarding information which must be gathered and submitted.

(7) The department, in granting any application for a permit under s. 144.84 or 144.85, shall require the permitholder to perform adequate monitoring of environmental changes during the course of the permitted activity and for such additional period of time as is necessary to satisfactorily complete reclamation and completely release the permitholder from any bonds required.

(8) The department may monitor environmental changes concurrently with the permitholder under sub. (7), and for such additional period of time after the full bond is released under s. 144.90 (3) as is necessary for the site to return to a state of environmental stability. The department may conduct independent studies to monitor environmental changes.

History: 1977 c. 421

144.832 Exploration. (1) DEFINITIONS. In this section:

(a) "Driller" means a person who performs core, rotary, percussion or other drilling involved in exploration for metallic minerals.

(b) "Parcel" means an identified section, fractional section or government lot.

(c) "Termination" means filling of drillholes and reclamation and revegetation of drilling sites.

(2) LICENSE. All persons intending to engage in exploration, or who contract for the services of drillers for purposes of exploration, shall be licensed by the department. Exploration licenses shall be issued annually by the department, and shall be applied for on forms provided by the department. The department

shall provide copies of the application form for an exploration license to the state geologist upon issuance of the license. The department shall, by rule, establish an annual license fee plus a schedule of additional fees based on the number of holes drilled. The level of fees shall reflect the department's actual cost in administering this section. The fees set under this subsection may be adjusted for persons to reflect the payment of fees for the same services to meet other requirements.

(3) BOND. (a) Applications for licenses shall be accompanied by a bond in the amount of $5,000 conditioned on faithful performance of the requirements of the department relating to termination.

(b) The department may require that the amount of the bond be increased at any time, if the department determines that a licensee's current level of activity makes it likely that the bond would be inadequate to fund the termination of all holes drilled for which the licensee is responsible.

(c) The department shall, by rule, establish a procedure for release of exploration sites from bond coverage.

(4) NOTICE PROCEDURE. (a) Commencement of drilling on a parcel shall be preceded by notice from the licensee to the department of intent to drill, given at least 10 days in advance of the commencement of drilling, and identifying the particular parcel. The department shall transmit a copy of the notice of intent to drill to the state geologist.

(b) The department shall, by rule, establish notification and inspection procedures applicable to the various stages of drilling and termination and procedures for the proper termination of drillholes.

(5) LICENSE REVOCATION. The department may revoke or suspend an exploration license issued under this section if it determines, after hearing, that:

(a) Statutes or rules of the department have not been complied with; or

(b) There has been a failure to increase bond amounts to adequate levels as specified by the department.

(6) EXEMPTION. This section does not apply to operators engaged in exploration activities on lands included in a mining and reclamation plan, if the plan contains provisions relating to termination of the exploration activities.

History: 1977 c. 421.

144.834 Reclamation plans. (1) A reclamation plan shall accompany all applications for prospecting or mining permits. If it is physically or economically impracticable or environmentally or socially undesirable for the reclamation process to return the affected area to its original state, the plan shall set forth the reasons therefor and shall discuss alternative conditions and uses to which the affected area can be put.

(2) The plan shall specify how the applicant intends to accomplish, to the fullest extent possible, compliance with the minimum standards under s. 144.83 (2) (c).

History: 1977 c. 421.

144.836 Hearings on permit applications. This section, and ch. 227 where it is not inconsistent, shall govern all hearings on applications for prospecting or mining permits.

(1) SCOPE. The hearing on the prospecting or mining permit shall cover the application and any statements prepared under s. 1.11 and, to the fullest extent possible, all other applications for approvals, licenses and permits issued by the department. The department shall inform the applicant as to the timely application date for all approvals, licenses and permits issued by the department, so as to facilitate the consideration of all other matters at the hearing on the prospecting or mining permits.

(2) LOCATION. The hearing shall be held in the county where the prospecting or mining site, or the largest portion of the prospecting or mining site, is located, but may subsequently be adjourned to other locations.

(3) TIMING OF NOTICE AND OF HEARING; GIVING OF NOTICE. (a) If it is determined that a statement under s. 1.11 is not required, the hearing shall be scheduled for a date not more than 90 days after the announcement of such determination, and the scheduling shall be completed not later than 10 days following the announcement. Notice of the hearing shall be given within 15 days following the date of announcement by mailing a copy of the notice to any known state agency required to issue a permit for the proposed operation, to the regional planning commission for the affected area, to the county, city, village and town within which any part of the affected area lies and to all persons who have requested such notification. Written comments may be submitted to the department within 30 days of the date of notice.

(b) If it is determined that a statement under s. 1.11 is required, the department shall hold at least one informational hearing regarding the preliminary environmental report within 60 days of its issuance. The scheduling shall be completed not later than 10 days following the issuance of the preliminary environmental report. A hearing shall be scheduled for a date not less than 120 days nor more than 180 days after the issuance of the environmental impact statement. Notice of the hearing shall be given within

30 days from the date of issuance of the environmental impact statement by:

1. Mailing a copy of the notice to all known departments and agencies required to grant any permit necessary for the proposed operation, to any regional planning commission within which the affected area lies, to the governing bodies of all towns, villages, cities and counties within which any part of the proposed prospecting or mining site lies, to the governing bodies of any towns, villages or cities contiguous to any town, village or city within which any part of the proposed prospecting or mining site lies and to any interested persons who have requested such notification.

2. Publication of a class 2 notice, under ch. 985, utilizing a display advertising format, in the weekly newspaper published in the closest geographic proximity to the proposed prospecting or mining site, in the newspaper having the largest circulation in the county within which the proposed site lies and in those newspapers published in counties contiguous to the county within which the proposed site lies which have a substantial circulation in the area of, or adjacent to, the proposed prospecting or mining site.

(c) Written comments may be submitted by any governmental agency within 80 days of the date of issuance of the statement under par. (b). Individual persons may submit written comments within 120 days of the date of issuance of the statement. The last day for receipt of comments shall be specified by the department in all notices.

(4) HEARING PROCEDURE. (a) At the opening of the hearing, the hearing examiner shall advise all persons present of their right to express their views either orally or in writing, under oath or otherwise, and of the legal effect of each such form of testimony. All interested persons, at the hearing or at a time set prior to the hearing, shall be given an opportunity, subject to reasonable limitations on the presentation of repetitious or irrelevant material, to express their views on any aspect of the matters under consideration. The presentation of such views need not be under oath nor subject to cross-examination. Persons presenting their views may not be parties. A written record of unsworn testimony shall be made.

(b) Persons qualifying as parties to the hearing and who wish to participate as parties shall file written notice setting forth their interest and shall participate in the contested case portion of the hearing.

(c) The record shall consist of the contested case portion of the proceeding. Views given under par. (a) and all written comments submitted from any source shall be placed in the file of the proceeding and shall be given appropriate probative value by the hearing examiner or decisionmaker.

(d) Hearings conducted under this section may be continued for just cause.

(e) If evidence of conformance with applicable zoning ordinances as required by s. 144.85 (5) (a) 1. f is not presented by the time testimony is completed, the department shall close the record and continue the hearing. The duration of the continuance of the hearing shall be specified by the department at the time the continuance begins, after first requesting the applicant to state the anticipated time at which the evidence will be provided. The continuance may be extended by the department prior to its expiration upon notice to all parties if good cause is shown.

History: 1977 c. 421

144.838 Local impact committee. (1) A county, town, village, city or tribal government likely to be substantially affected by potential or proposed mining may designate an existing committee, or establish a committee, for purposes of:

(a) Facilitating communications between operators and itself.

(b) Analyzing implications of mining.

(c) Reviewing and commenting on reclamation plans.

(d) Developing solutions to mining-induced growth problems.

(e) Recommending priorities for local action.

(f) Formulating recommendations to the investment and local impact fund board regarding distribution of funds under s. 70.395 (2) (g).

(2) A county, town, village, city or tribal government affected in common with another county, town, village, city or tribal government by a proposed or existing mine may cooperatively designate or establish a joint committee, but may also maintain a separate committee under sub. (1). Committees under this section may include representatives of affected units of government, business and industry, manpower, health, protective or service agencies, school districts, or environmental and other interest groups or other interested parties.

(3) Persons giving notice under s. 144.831 (1) shall thereafter appoint a liaison person to any committee established under sub. (1) or (2), and shall provide such reasonable information as is requested by the committee. Operators and persons giving notice under s. 144.831 shall thereafter make reasonable efforts to design and operate mining operations in harmony with community development objectives.

(4) Committees established under sub. (1) or (2) may be funded by their appointing authority, and may, through their appointing authority, submit a request for operating funds to the investment and local impact fund board under s. 70.395. Committees established under sub. (1) shall be eligible for funds only if the county, town, village or city is also a participant in a joint committee, if any, established under sub. (2). The investment and local impact fund board may not grant funds for the use of more than one committee established under sub. (1) in relation to a particular mining proposal unless a joint committee has been established under sub. (2). Committees may hire staff, enter into contracts with private firms or consultants or contract with a regional planning commission or other agency for staff services.

(5) Any county, town, village or city receiving notice of the filing of an application in the manner provided under s. 144.836 (3) (a) or (b) shall refer the application and reclamation plan to a committee established under sub. (1) or (2), if any, for review and comment. Such counties, towns, villages or cities may participate as a party in the hearing on the application and may make recommendations on the reclamation plan and future use of the project site.

History: 1977 c 421.

144.84 Prospecting permits. (1) No person may engage in prospecting without securing a prospecting permit issued under this section. Application for prospecting permits shall be made in writing to the department upon forms prepared and furnished by the department. An application must be made, and a prospecting permit obtained for each separate prospecting site. Applications shall be submitted in reproducible form in such multiples as required by rules of the department. As a part of each application for a prospecting permit, the applicant shall furnish a description of the proposed prospecting site, the number of acres in the proposed prospecting site, a prospecting plan, a reclamation plan meeting the requirements of s. 144.834 and a timetable for reclamation, information relating to whether the area may be unsuitable for prospecting or surface mining, unless the applicant conclusively certifies that he or she will not subsequently make application for a permit to conduct surface mining at the site and such other relevant information as the department may require, including information as to whether the applicant, its parent corporation, any of its principal shareholders, or any of the applicant's subsidiaries or affiliates in which the applicant owns more than a 40% interest, has forfeited any mining bonds in other states within the last 20 years, and the dates and locations, if any. An application shall be accompanied by such fee as is required by the department by rule which shall cover the estimated cost of evaluating the prospecting permit application. After completing its evaluation, the department shall revise the fee to reflect the actual cost of evaluation. The fee may be revised for persons to reflect the payment of fees for the same services to meet other requirements.

(2) The department shall issue a prospecting permit under this section to an applicant within 60 days following the date of the completion of the hearing record if, on the basis of the application, the department's investigation and hearing and any written comments, it finds that the site is not unsuitable for prospecting or, absent a certification under sub. (1), surface mining, and the reclamation plan complies with ss. 144.83 (2) and 144.834 and rules promulgated under ss. 144.83 (2) and 144.834. The department may modify any part of the application or reclamation plan and approve it as modified. Except as otherwise provided in ss. 144.80 to 144.94, prospecting permits shall be valid for the life of the project, unless canceled under s. 144.83 (6) or 144.91 (1) or (3) or revoked under s. 144.93 (2) or (3).

(3) The department shall deny a prospecting permit within 60 days following the date of the completion of the hearing record if it finds that the site is unsuitable for prospecting or, absent certification under sub. (1), surface mining, or the reclamation plan, including the bond, does not comply with ss. 144.83 (2) and 144.834 and rules promulgated under ss. 144.83 (2) and 144.834 or that the applicant is in violation of ss. 144.80 to 144.94 or any rules adopted under ss. 144.80 to 144.94. If the applicant has previously failed and continues to fail to comply with ss. 144.80 to 144.94, or if the applicant has within the previous 20 years forfeited any bond posted in accordance with prospecting or mining activities in this state, unless by mutual agreement with the state, the department may not issue a prospecting permit. The department may not issue a prospecting permit if it finds that any officer or director of the applicant has, while employed by the applicant, the applicant's parent corporation, any of the applicant's principal shareholders, or any of the applicant's subsidiaries or affiliates, in which the applicant owns more than a 40% interest, within the previous 20 years forfeited any bond posted in accordance with prospecting or mining activities in this state unless by mutual agreement with the state. In this paragraph, "forfeited any bond" means the forfeiture of any performance security occasioned by noncompliance with any prospecting or mining laws or implementing rules. If an application for a prospecting permit is denied,

the department, within 30 days from the date of application denial, shall furnish to the applicant in writing the reasons for the denial.

(4) (a) Eighteen months after the issuance of a prospecting permit, and annually thereafter until prospecting ceases, the department shall review the permit, reclamation plan and bond to ascertain adequacy, compliance with state or federal laws enacted after the issuance of the permit and technological currency. If the department after review determines that the plan should be modified or the bond amount changed, it shall notify the permitholder of the necessary modifications or changes. If the permitholder does not request a hearing within 30 days, the modifications or changes shall be deemed accepted.

(b) If the permitholder desires to modify the permit, an amended application shall be submitted to the department, which shall process the amendment as if it were an original application if the proposed modification substantially broadens or changes the scope of the original prospecting proposal.

(c) To the extent that testimony and evidence submitted at the original prospecting permit proceedings or from previous modification hearings is relevant to the issues of modification or granting or denial of the amendment, it may be adopted in the subsequent proceedings, subject to the opportunity for cross-examination and rebuttal, if not unduly repetitious.

(5) If the department determines that a statement under s. 1.11 is required for consideration of an application for a prospecting permit, the statement need not consider impacts unrelated to the proposed prospecting activity, other than the issue of unsuitability for surface mining, absent a certification under sub. (1).

History: 1973 c. 318; 1977 c. 421.

144.85 Mining permits. (1) (a) No operator may engage in mining or reclamation at any mining site that is not covered by a mining permit and by written authorization to mine under s. 144.86 (3). Applications for mining permits shall be made in writing and in reproducible form to the department upon forms prepared and furnished by it and in such multiples as required by rule of the department. An application shall be made, and a mining permit obtained for each separate mining site. No application for surface mining at a site may be entertained by the department if within the previous 5 years the applicant, or a different person who had received a prospecting permit for the site had certified under s. 144.84 (1) that he or she would not subsequently make application for a permit to conduct surface mining at the site.

(b) If a person commences mining at a mining site which includes an abandoned site, plans for reclamation of the abandoned site, or the portion of the abandoned site which is included in the mining site, shall be included in its mining plan and reclamation plan.

(2) (a) The application shall be accompanied by a fee established by the department, by rule, which shall cover the estimated cost of evaluating the mining permit application. After completing its evaluation, the department shall revise the fee to reflect the actual cost of evaluation. The fee may be revised for persons to reflect the payment of fees for the same services to meet other requirements.

(b) Except as otherwise provided in ss. 144.87 to 144.91, mining permits shall be valid for the life of the project unless canceled under s. 144.83 (6) or 144.91 (1) or (3) or revoked under s. 144.93 (2) or (3).

(3) As a part of each application for a mining permit, the applicant shall furnish:

(a) A mining plan, including a description and a detailed map of the proposed mining site drawn to a scale approved by the department. Aerial photographs may be accepted if the photographs show the details to the satisfaction of the department. The map, plan or photograph shall be prepared and certified by a competent engineer, surveyor or other person approved by the department, and shall show the boundaries of the area of land which will be affected, the drainage area above and below the area, the location and names of all streams, roads, railroads, pipelines and utility lines on or within 1,000 feet of the site, the name of the owner or owners of the site and the nearest city or village if within 3 miles of the site. The map or photograph shall be accompanied by descriptive data as required by the department, including but not limited to the soil conservation service soil capabilities classifications of the affected area, the anticipated geometry of the excavation, the estimated total production of tailings produced, the nature and depth of the overburden, the elevation of the water table and such other information about the geology of the deposit as the department, after consultation with the geological and natural history survey, finds is necessary to evaluate the applicant's mining plan and reclamation plan.

(b) In addition to the information and maps otherwise required by this subsection, a detailed reclamation plan showing the manner, location and time for reclamation, including ongoing reclamation during mining, of the proposed mining site. The reclamation plan shall be accompanied by a map subject to the requirements in par. (a) which shall show the specific reclamation proposal for each area of the site.

The reclamation plan shall conform to any applicable comprehensive plan created under sub. (4) (b), and to any applicable minimum standard created under ss. 144.83 (2) and 144.834.

(c) The name and address of each owner of land within the mining site and each person known by the applicant to hold any option or lease on land within the mining site and all prospecting and mining permits in this state held by the applicant.

(d) Evidence satisfactory to the department that the applicant has applied for necessary approvals and permits under all applicable zoning ordinances and that the operator has applied for the necessary approval, licenses or permits required by the department including, but not limited to, those under chs. 30, 31, 107, 147 and 162 and this chapter.

(e) Information as to whether the applicant, its parent, any of its principal shareholders, or any of its subsidiaries or affiliates in which it owns more than a 40% interest, has forfeited any mining bonds in other states within the past 20 years, and the dates and locations, if any.

(f) Information relating to whether unsuitability may exist for surface mining to the extent not fully considered under s. 144.84.

(g) Such other pertinent information as the department requires.

(4) (a) The department shall require an applicant for a mining permit, amended mining permit or change in either the mining or reclamation plan to furnish, as part of the mining permit application, an itemized statement showing the applicant's estimation of the cost to the state of reclamation. The department may, at the applicant's expense, contract with an independent person to estimate the cost to the state of reclamation if it has reason to believe that the applicant's estimated cost of reclamation may not be accurate.

(b) If the department finds that the anticipated life and total area of a mineral deposit are of sufficient magnitude that reclamation of the mining site consistent with ss. 144.80 to 144.94 requires a comprehensive plan for the entire affected area, it shall require an operator to submit with the application for a mining permit, amended mining site or change in mining or reclamation plan, a comprehensive long-term plan showing, in detail satisfactory to the department, the manner, location and time for reclamation of the entire area of contiguous land which will be affected by mining and which is owned, leased or under option for purchase or lease by the operator at the time of application. Where a mineral deposit lies on or under the lands of more than one operator, the department shall require the operators to submit mutually consistent comprehensive plans.

(c) The department shall require an applicant to describe any land contiguous to the proposed mining site which he or she owns, leases or has an option to purchase or lease.

(5) (a) 1. Within 90 days of the completion of the public hearing record, the department shall issue the mining permit if it finds:

a. The mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site consistent with ss. 144.80 to 144.94 and any rules adopted under ss. 144.80 to 144.94.

b. The proposed operation will comply with all applicable air, ground and surface water and solid and toxic waste disposal laws and rules of the department.

c. In the case of a surface mine, the site is not unsuitable for mining. The preliminary determination that a site was not unsuitable for mining under s. 144.84 may not be conclusive in the determination of the site's suitability for mining under this section. However, at the hearing held under this section and s. 144.836, testimony and evidence submitted at the prospecting permit proceeding relevant to the issue of suitability of the proposed mining site for surface mining may be adopted, subject to the opportunity for cross-examination and rebuttal, if not unduly repetitious.

d. The proposed mine will not endanger public health, safety or welfare.

e. The proposed mine will not result in a net substantial adverse economic impact in the area reasonably expected to be most impacted by the activity.

f. The proposed mining operation conforms with all applicable zoning ordinances.

2. Each approval or denial shall be made in findings of fact, conclusions of law and an order setting forth reasons with clarity and in detail. The department may modify the operator's proposed mining or reclamation plans in order to meet the requirements of ss. 144.80 to 144.94, and, as modified, grant its approval.

(b) The department shall deny a mining permit within 90 days following the date of the completion of the hearing record if it finds that the site is unsuitable for surface mining, where the application pertains to a proposed surface mine, or that the applicant is in violation of ss. 144.80 to 144.94 or any rules adopted under ss. 144.80 to 144.94. If the applicant has previously failed and continues to fail to comply with ss. 144.80 to 144.94, or if the applicant has within the previous 20 years forfeited any bond posted in accordance with mining activities in this state, unless by mutual agreement with the state, the department may not issue a mining permit. The department may not issue a mining permit if it

finds that any officer or director of the applicant, while employed by the applicant, the applicant's parent corporation, any of the applicant's principal shareholders or any of the applicant's subsidiaries or affiliates in which the applicant owns more than a 40% interest, has within the previous 20 years forfeited any bond posted in accordance with mining activities in this state, unless by mutual agreement with the state. In this paragraph, "forfeited any bond" means the forfeiture of any performance security, occasioned by noncompliance with any prospecting or mining laws or implementing rules.

(c) To the extent that an environmental impact statement on a prospecting permit application under s. 144.84, if prepared, fully considered unsuitability of the prospecting site for surface mining by virtue of unique features of the land as enumerated in s. 144.81 (18), that portion of the previous impact statement may be adopted in the impact statement on the mining permit application.

(d) The prior issuance of a prospecting permit under s. 144.84 for all or part of a site shall, in and of itself, be given no weight in the decision to grant or deny a mining permit under this section, and the department must find, in any order granting, or granting with conditions, a mining permit that no weight was given in the decision to the prior issuance of a prospecting permit. However, to the extent that testimony and evidence submitted at the prospecting permit proceedings is relevant to the issue of whether to grant or deny a mining permit, the testimony and evidence may be adopted in the mining permit proceedings, subject to the opportunity for cross-examination and rebuttal to the extent that the testimony and evidence are not unduly repetitious.

(e) The department shall send its statement, together with a copy of its rules and finding as to whether the applicant has otherwise satisfied the requirements of ss. 144.80 to 144.94, to the applicant and to the other parties.

History: 1973 c. 318; 1977 c. 377 s. 29m; 1977 c. 421.

144.86 Bonds. (1) Upon notification that an application for a prospecting or mining permit has been approved by the department but prior to commencing prospecting or mining, the operator shall file with the department a bond conditioned on faithful performance of all of the requirements of ss. 144.80 to 144.94 and all rules adopted by the department under ss. 144.80 to 144.94. The bond shall be furnished by a surety company licensed to do business in this state. In lieu of a bond, the operator may deposit cash, certificates of deposit or government securities with the department. Interest received on certificates of deposit and government securities shall be paid to the operator. The amount of the bond or other security required shall be equal to the estimated cost to the state of fulfilling the reclamation plan, in relation to that portion of the site that will be disturbed by the end of the following year. The estimated cost of reclamation of each prospecting or mining site shall be determined by the department on the basis of relevant factors including, but not limited to, expected changes in the price index, topography of the site, methods being employed, depth and composition of overburden and depth of mineral deposit being mined.

(2) The applicant shall submit a certificate of insurance certifying that he has in force a liability insurance policy issued by an insurance company authorized to do business in this state, or in lieu of a certificate of insurance evidence that he has satisfied state or federal self-insurance requirements, covering all mining operations of the applicant in this state and affording personal injury and property damage protection in a total amount deemed adequate by the department but not less than $50,000.

(3) Upon approval of the operator's bond, mining application and certificate of insurance, the department shall issue written authorization to commence mining at the permitted mining site in accordance with the approved mining and reclamation plans.

(4) Any operator who obtains mining permits from the department for 2 or more mining sites may elect, at the time the 2nd or any subsequent site is approved, to post a single bond in lieu of separate bonds on each site. Any single bond so posted shall be in an amount equal to the estimated cost to the state determined under sub. (1) of reclaiming all sites the operator has under mining permits. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds may not be released until the new bond has been accepted by the department.

(6) Any person who is engaged in mining on July 3, 1974 need not file a bond or deposit cash, certificates of deposits or government securities with the department under this section to obtain the written authorization to commence mining under sub. (3).

History: 1973 c. 318; 1977 c. 421.

144.87 Modifications. (1) An operator at any time may apply for amendment or cancellation of a mining permit or for a change in the mining or reclamation plans for any mining operation which the operator owns or leases.

The application for the amendment, cancellation or change shall be submitted by the operator on a form provided by the department and shall identify the tract of land to be added to or removed from the permitted mining site or to be affected by a change in the mining or reclamation plans. The application for an increase or decrease in the area of a mining site, or for a change in the mining or reclamation plans shall be processed in the same manner as an original application for a mining permit. If 5 or more interested persons do not request a hearing in writing within 30 days of notice under s. 144.836 (3), which notice shall include a statement to this effect, no hearing need be held on the modification. If a hearing is held, testimony and exhibits from the hearing on either the original applications for a mining permit or from previous modification hearings which are relevant to the instant modification may be adopted, subject to cross-examination and rebuttal if not unduly repetitious. If the application is to cancel any or all of the unmined part of a mining site, the department shall ascertain, by inspection, that no mining has occurred on the land. After so finding, the department shall order release of the bond or the security posted on the land being removed from the permitted mining site and cancel or amend the operator's written authorization to conduct mining on the mining site. No land where mining has occurred may be removed from a permitted mining site or released from bond or security under this subsection, unless reclamation has been completed to the satisfaction of the department.

(2) When one operator succeeds to the interest of another in an uncompleted mining operation by sale, assignment, lease or otherwise, the department shall release the first operator from the duties imposed upon the first operator by ss. 144.80 to 144.94 as to such operation if:

(a) Both operators have complied with the requirements of ss. 144.80 to 144.94; and

(b) The successor operator discloses whether it has forfeited any bond, as defined under s. 144.85 (3) and (5) (b), within the previous 20 years, posts any bond required under s. 144.86 and assumes all responsibilities of all applicable permits, licenses and approvals granted to the predecessor operator.

(3) If the department finds that because of changing conditions, including but not limited to changes in reclamation costs, reclamation technology, minimum standards under s. 144.83 or governmental land use plans, the reclamation plan for a mining site is no longer sufficient to reasonably provide for reclamation of the project site consistent with ss. 144.80 to 144.94 and any rules adopted under ss. 144.80 to 144.94, it shall require the applicant to submit amended mining and reclamation plans which shall be processed in the same manner as an application for an original mining permit. The applicant shall be deemed to hold a temporary mining permit which shall be effective until the amended mining permit is issued or denied. The department shall review the mining and reclamation plans annually after the date of the mining permit issuance or previous review under this section.

History: 1973 c. 314; 1977 c. 421.

144.875 Cessation of mining or reclamation. If there is a cessation of mining or reclamation which is not set forth in either the mining plan or the reclamation plan, the operator shall so notify the department within 48 hours and shall commence stabilization of the mining site according to rules established by the department. If the department determines after hearing that stabilization of the mining site is inadequate to protect the environment, the department shall order the operator to commence additional measures to protect the environment, including, if the cessation is reasonably anticipated to extend for a protracted period of time, reclamation according to the reclamation plan or part of the reclamation plan. Usual and regular shutdown of operations on weekends, for maintenance or repair of equipment or facilities or for other customary reasons shall not constitute a cessation of mining.

History: 1977 c. 421.

144.88 Exploring, prospecting and mining without authorization. Any person who engages in exploration without a license shall forfeit not less than $100 nor more than $1,000 for each parcel as defined under s. 144.832 (1) (c) on which unlicensed exploration took place. Any person who authorizes or engages in prospecting without a prospecting permit or any operator who authorizes or engages in mining without a mining permit and written authorization to mine under s. 144.86 (3) shall forfeit all profits obtained from such illegal activities and not more than $10,000 for each day during which the mine was in operation. The operator shall be liable to the department for the full cost of reclaiming the affected area of land and any damages caused by the mining operation. Each day's violation of this section shall be deemed a separate offense. If the violater is a corporation, partnership or association, any officer, director or partner who knowingly authorizes, supervises or contracts for exploration, prospecting or mining shall also be subject to the penalties of this section.

History: 1973 c. 318; 1977 c. 421.

144.89 Reports. (1) The operator shall furnish the department with a report for each mining site every 12 months after issuance of the permit, within 30 days after completion of all mining at the mining site and within 30 days after completion of the mining plan and of the reclamation plan. The reports shall include, in addition to such other information as the department requires, such information and maps as the department deems necessary to evaluate the extent of mining and the reclamation accomplished during the previous calendar year.

(1m) Annually, the department shall review the mining and reclamation plans and bonds, using the procedure specified under s. 144.84 (4).

(2) The department shall cancel the mining permit held by any operator who fails and refuses to submit reports required under this section.

History: 1973 c. 318; 1977 c. 421.

144.90 Certificate of completion, partial completion and bond release. (1) Upon the petition of the operator, but not less than 4 years after notification to the department by the operator of the completion of the reclamation plan, if the department finds after conducting a hearing that the operator has completed reclamation for any portion of the mining site in accordance with the reclamation plan and ss. 144.80 to 144.94, the department shall issue a certificate of completion setting forth a description of the area reclaimed and a statement that the operator has fulfilled its duties under the reclamation plan as to that area.

(2) Upon the issuance of any certificate of completion under sub. (1) for any portion of the mining site, but not for the entire mining site, the department shall allow the operator to reduce the amount of the bond to an amount which shall equal the estimated cost of reclamation of the portion of the mining site which is disturbed or for which reclamation has been completed but no certificate of completion has been issued.

(3) Upon issuance of a certificate or certificates of completion of reclamation for the entire mining site, the department shall require that the operator maintain a bond equal to at least 10% of the cost to the state of reclamation of the entire mining site if mining of the site was wholly underground, and at least 20% of the cost to the state of reclamation of the entire mining site if any surface mining was conducted. Where the mining site in the mining plan is less than 10 acres, the department may release the bond after issuance of the certificate under sub. (1).

(4) After 20 years after the issuance of a certificate or certificates of completion for the entire mining site, the department shall release the bond if the department finds that the reclamation plan has been complied with.

(5) The department shall, by rule, establish a procedure for release of reclamation bonds for prospecting sites similar to subs. (1) to (4), but with shorter time periods.

History: 1973 c. 318; 1977 c. 421.

144.91 Mining and reclamation; orders. (1) Whenever the department finds a violation of law at a mining site under a mining permit including unapproved deviation from the mining or reclamation plan, or any of the department's rules, it shall order the operator to comply within a specified time. Any such order shall become effective unless the person named in the order requests in writing within 10 days after the date the order is served a hearing before the department. Upon such request and after due notice, the department shall hold a hearing. In lieu of an order, the department may require that the alleged violator appear before the department for a hearing and answer the charges complained of, or the department may request that the department of justice initiate action under s. 144.93. The department shall cancel the mining permit for a mining site held by an operator who fails to comply with the order. The department shall within 14 days inform the department of justice of the cancellation. Within 30 days thereafter the department of justice shall commence an action under s. 144.93.

(2) If reclamation of a mining site is not proceeding in accordance with the reclamation plan and the operator has not commenced to rectify deficiencies within the time specified in the order, or if the reclamation is not properly completed in conformance with the reclamation plan within one year after completion or abandonment of mining on any segment of the mining site, or if the exploration license or prospecting or mining permit is revoked under s. 144.93 (2) and (3), excepting acts of God, such as adverse weather affecting grading, planting and growing conditions, the department, with the staff, equipment and material under its control, or by contract with others, shall take such actions as are necessary for the reclamation of mined areas. The operator shall be liable for the cost to the state of reclamation conducted under this section. Any operator who is exempted from filing a bond or depositing cash, certificates of deposits or government securities by s. 144.86 (6) shall not be liable for an amount greater than an amount specified by the department. The specified amount shall be equal to

and determined in the same manner as the amount of the bond or other security otherwise required under s. 144.86 (1), assuming the operator had not been exempt from such filing or depositing.

(3) All other prospecting and mining permits held by an operator who refuses to reclaim a mining site in compliance with the reclamation plan after the completion of mining or after the cancellation of a mining permit shall be canceled. The department may not issue any prospecting or mining permits for that site or any other site in this state to an operator who refused to reclaim a mining site in compliance with the reclamation plan.

(4) (a) The department may issue a stop order to an operator, requiring an immediate cessation of mining, in whole or in part, at any time that the department determines that the continuance of mining constitutes an immediate and substantial threat to public health and safety or the environment.

(b) The department shall schedule a hearing on the stop order, to be held within 5 days of issuance of the order, and shall incorporate notice of the hearing in the copy of the order served upon the operator. Notice shall also be given to any other persons who have previously requested notice of such proceedings.

(c) Within 72 hours after commencement of the hearing, unless waived by agreement of the parties, the department shall issue a decision affirming, modifying or setting aside the stop order. The department may apply to the circuit court for an order extending the time, for not more than 10 days, within which the stop order must be affirmed, modified or set aside.

(d) The department shall set aside the stop order at any time, with adequate notice to the parties, upon a showing by the operator that the conditions upon which the order was based no longer exist.

History: 1973 c. 318; 1977 c. 421.

144.92 Nonconforming sites. (1) All prospectors and operators conducting mining operations in this state on July 3, 1974 shall submit to the department, within 90 days after that date, applications for prospecting permits or mining permits as provided in ss. 144.84 and 144.85. Sections 144.83 (1) (b) and 144.85 (5) (b) shall not apply to such operators.

(2) Modification of existing prospecting and mining sites and of operating procedures to conform with ss. 144.80 to 144.94 and rules adopted under ss. 144.80 to 144.94 shall be accomplished as promptly as possible, but the department shall give special consideration to a site where it finds that the degree of necessary improvement is of such extent and expense that compliance cannot be accomplished.

History: 1973 c. 318; 1977 c. 421.

144.925 Data. (1) All data submitted by an applicant for a prospecting permit under ss. 144.80 to 144.93 shall be considered confidential, unless the prospector expressly agrees to its publication.

(2) If the department finds beyond a reasonable doubt, on verified application by an operator, that any specific data submitted under ss. 144.80 to 144.93 relating to controls, tonnages or grades of ore production, if made public would divulge methods or processes entitled to protection as trade secrets of such operator, the department shall consider such data, or portion thereof, as limited for the confidential use of the department unless such operator expressly agrees to its publication or public availability. All data relating to prospecting permits held by the operator shall be considered confidential.

(3) The department shall forward copies of all reports received by it from prospectors and operators under ss. 144.80 to 144.93 to the geological and natural history survey. The survey may receive and store all reports, maps, drill records and other information determined to be confidential under sub. (1), subject to the provisions of confidentiality contained under sub. (1). Nothing in this section shall prevent the use of such data by the survey in publishing general analyses or summaries of mining information. The department shall not publish such analyses or summaries, except in cooperation with the geological and natural history survey.

History: 1973 c. 318.

144.93 Enforcement. (1) All orders issued, fines incurred, bond liabilities incurred or other violations committed under ss. 144.80 to 144.94 shall be enforced by the department of justice. The circuit court of Dane county or any other county where the violation occurred shall have jurisdiction to enforce ss. 144.80 to 144.93 or any orders issued or rules adopted thereunder, by injunctional or other appropriate relief.

(2) Any person who makes or causes to be made in an application or report required by ss. 144.80 to 144.94 a statement known to the person to be false or misleading in any material respect or who refuses to file an annual report under s. 144.89 (1) or who refuses to submit information required by the prospecting or mining permit may be fined not less than $1,000 nor more than $5,000. If the false or misleading statement is material to the issuance of the permit, the permit may be revoked. If any violation under this subsection is repeated the permit may be revoked.

(3) Any person holding a prospecting or mining permit who violates ss. 144.80 to 144.93 or any order issued or rule adopted under ss. 144.80 to 144.93 shall forfeit not less than $10 nor more than $10,000 for each violation. Each day of violation is a separate offense. If the violations continue after an order to cease has been issued, the permit shall be revoked.

History: 1973 c. 318; 1977 c. 421.

144.935 Citizen suits. (1) Except as provided in sub. (2), any citizen may commence a civil action on his or her own behalf:

(a) Against any person who is alleged to be in violation of ss. 144.80 to 144.94.

(b) Against the department where there is alleged to be a failure of the department to perform any act or duty under ss. 144.80 to 144.94 which is not discretionary with the department.

(2) No action may be commenced:

(a) Under sub. (1) (a):

1. Prior to 30 days after the plaintiff has given notice of the alleged violation to the department and to the alleged violator; or

2. If the department has commenced and is diligently prosecuting a civil or criminal action, but in any such action any citizen may intervene as a matter of right.

(b) Under sub. (1) (b) prior to 30 days after the plaintiff has given notice of such action to the department.

(3) The court, in issuing any final order in any action brought under this section, shall award costs of litigation including reasonable attorney and expert witness fees to the plaintiff if he or she prevails, and the court may do so if it determines that the outcome of the controversy is consistent with the relief sought by the plaintiff irrespective of the formal disposition of the civil action. In addition, the court shall award treble damages to any plaintiff proving damages caused by a person mining without a permit or wilfully violating ss. 144.80 to 144.94 or any permits or orders issued under ss. 144.80 to 144.94.

(4) Nothing in this section restricts any right which any person or class of persons may have under any other statute or common law.

History: 1977 c. 421.

144.937 Effect of other statutes. If there is a standard under other state or federal statutes or rules which specifically regulates in whole an activity also regulated under ss. 144.80 to 144.94 the other state or federal statutes or rules shall be the controlling standard. If the other state or federal statute or rule only specifically regulates the activity in part, it shall only be controlling as to that part.

History: 1977 c. 421.

144.939 Approval of rules. This section does not apply to emergency rules adopted under s. 227.027.

(1) ROLE OF LEGISLATIVE COUNCIL. Prior to any public hearing on a proposed rule under ss. 144.80 to 144.94, or if no public hearing is required, prior to notification of the standing committees, the department shall submit the proposed rule to the legislative council for review. The legislative council shall act as a clearing house for rule drafting and cooperate with the department and the revisor to:

(a) Review the statutory authority under which the department intends to adopt the rule. The legislative council shall notify the department, the joint committee for the review of administrative rules and the appropriate standing committee when the statutory authority is eliminated or significantly changed by repeal, amendment, court decision or for any other reason.

(b) Ensure that the procedures for the promulgation of a rule required by this section and ch. 227 are followed.

(c) Review proposed rules for form, style and placement in the administrative code.

(d) Review proposed rules to avoid conflict with or duplication of existing rules.

(e) Review proposed rules to provide adequate references to relevant statutes, related rules and forms.

(f) Streamline and simplify the rule-making process.

(g) Review proposed rules for clarity, grammar and punctuation and to ensure plain language.

(h) Review proposed rules to determine potential conflicts and to make comparisons with federal regulations.

(2) LEGISLATIVE COUNCIL TO ASSIST STANDING COMMITTEES. The legislative council shall work with and assist the appropriate standing committees throughout the rule-making process. The legislative council may issue recommendations concerning any proposed rule which the department submits under ss. 144.80 to 144.94.

(3) NOTIFICATION OF STANDING COMMITTEES. The department shall notify appropriate standing committees when proposed rules under ss. 144.80 to 144.94 are in final draft form by submitting a notice to the presiding officer in each house. Each presiding officer shall refer the notice to one standing committee. The department may withdraw a proposed rule by notifying the presiding officer in each house of

the legislature of its intention not to promulgate the rule.

(4) FORM OF NOTICE. The notice shall include the proposed rule in a form complying with s. 227.024 (1).

(5) STANDING COMMITTEE REVIEW. (a) A committee may be convened upon the call of its chairperson or a majority of its members to review a proposed rule. A committee may meet separately or jointly with the other committee to which the notice is referred, direct the department to attend the meeting and hold public hearings to review the proposed rule.

(b) The standing committee review period lasts for 30 days after the notice is submitted and if within the 30-day period a standing committee directs the department to meet with it to review the proposed rule, the standing committee review period is extended for 30 days from the date of that request.

(c) The department may not promulgate a proposed rule during the standing committee review period unless both committees approve the rule prior to the expiration of that period.

(d) Either standing committee may disapprove the proposed rule or part of a proposed rule by taking action in executive session to disapprove the rule within the standing committee review period. If both committees fail to take this action, the proposed rule is not disapproved and the department may promulgate the rule.

(6) JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES. (a) If either standing committee disapproves a proposed rule or part of a proposed rule, the proposed rule or its part shall be referred to the joint committee for the review of administrative rules.

(b) The joint committee review period lasts for 30 days after the proposed rule is referred and the joint committee shall meet and take action in executive session during that period.

(c) The department may not promulgate a proposed rule or its part which is disapproved by a standing committee unless the proposed rule is approved by the joint committee for the review of administrative rules or until the bill in subd. 5 [par. (e)] fails of enactment. The department may promulgate portions of the rule which were not suspended, if the committee disapproved only parts of the rules.

(d) The joint committee for the review of administrative rules may reverse the standing committee disapproval by taking action to approve the rule within the joint committee review period. The joint committee may uphold the standing committee disapproval by taking action to disapprove the rule within the joint committee review period. The joint committee may remand the proposed rule to the department for further consideration or public hearings or both. If the joint committee disapproves a proposed rule, the department may not promulgate the proposed rule until the bill in subd. 5 [par. (e)] fails of enactment.

(e) When the joint committee for the review of administrative rules disapproves a proposed rule or portion of the proposed rule, the committee shall as soon as possible place before the legislature, a bill to support the disapproval. If such bill is defeated, or fails of enactment in any other manner, the proposed rule or portion of the proposed rule may be promulgated. If the bill becomes law, the proposed rule or portion of the proposed rule, may not be promulgated unless a properly enacted law specifically authorizes the adoption of that rule.

History: 1977 c. 421

144.94 Review. Any person aggrieved by any decision of the department under ss. 144.80 to 144.937 may obtain its review under ch. 227.

History: 1973 c. 318; 1977 c. 421