

## CHAPTER 299

## GENERAL ENVIRONMENTAL PROVISIONS

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Note: 1995 Wis. Act 227 renumbered the provisions of chs. 144, 147, 159 and 162, Stats. 1993–94, to be chs. 280–299, Stats. 1995–96. For a table tracing former section numbers see the Addenda & Errata at the end of Volume 5.

**299.01 Definitions.** In this chapter, unless the context requires otherwise:

- (3) “Department” means the department of natural resources.
  - (4) “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.
  - (5) “Groundwater” means any of the waters of the state occurring in a saturated subsurface geological formation of rock or soil.
  - (6) “Hazardous substance” means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department.
  - (7) “Industrial wastes” include liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.
  - (8) “Municipality” means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district.
  - (9) “Other wastes” include all other substances, except industrial wastes and sewage, 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.
  - (10) “Person” means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.
  - (11) “Sewage” means the water-carried wastes created in and to be conducted away from residences, industrial establishments and public buildings, as defined in s. 101.01 (12), with such surface water or groundwater as may be present.
  - (12) “Sewerage system” means 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.
  - (13) “Wastewater” means all sewage.
- History: 1995 a. 227 s. 996.

**299.11 Laboratory certification program.** (1) DEFINITIONS. As used in this section:

- (a) “Accuracy” means the closeness of a measured value to its generally accepted value or its value based upon an accepted reference standard.
- (b) “Certified laboratory” means a laboratory which performs tests for hire in connection with a covered program and which receives certification under sub. (7) or receives recognition as a certified laboratory under sub. (5).
- (c) “Council” means the certification standards review council created under s. 15.107 (12).
- (d) “Covered program” means test results submitted in connection with any of the following:
  - 1. A feasibility report, plan of operation or the condition of any license issued for a solid waste facility under subch. III of ch. 289, or hazardous waste facility under s. 291.25 (2) and (3).
  - 2. An application for a mining permit under s. 293.37 (2).
  - 3. Monitoring required by terms and conditions of a permit issued under ch. 283.
  - 4. The replacement of a well or provision of alternative water supplies under s. 281.75 or 281.77.
  - 5. Groundwater monitoring under ch. 160.
  - 6. The management or enforcement of the safe drinking water program under s. 280.13 (1) (b) and (d) or 281.17 (8).
  - 7. The terms of department contracts when specifically required in the contracts.
  - 8. An investigation of a discharge of a hazardous substance under s. 292.11.
  - 9. A regulatory program specified by the department by rule if, after consultation with the council, the department finds that existing quality control programs do not provide consistent and reliable results and the best available remedy is to require that all laboratories performing the tests for that regulatory program be certified or registered.
  - (e) “Laboratory” means a facility which performs tests in connection with a covered program.
  - (f) “Precision” means the closeness of repeated measurements of the same parameter within a sample.
  - (g) “Registered laboratory” means a laboratory which is registered under sub. (8) or receives recognition as a registered laboratory under sub. (5).
  - (h) “Results” includes measurements, determinations and information obtained or derived from tests.
  - (i) “Test” means any chemical, bacteriological, biological, physical, radiation or microscopic test, examination or analysis conducted by a laboratory on water, wastewater, waste material, soil or hazardous substance.

(j) "Test category" means one type of test or group of tests specified by rule under sub. (4) for similar materials or classes of materials or which utilize similar methods or related methods.

(2) COORDINATION WITH DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION. (a) The department shall submit to the department of agriculture, trade and consumer protection and to the state laboratory of hygiene any rules proposed under this section that affect the laboratory certification program under s. 93.12 (5), for review and comment. These rules may not take effect unless they are approved by the department of agriculture, trade and consumer protection within 6 months after submission.

(b) The department shall enter into a memorandum of understanding with the department of agriculture, trade and consumer protection setting forth the responsibilities of each department in administering the laboratory certification programs under s. 93.12 (5) and this section. The memorandum of understanding shall include measures to be taken by each department to avoid duplication of application and compliance procedures for laboratory certification.

(3) CERTIFICATION STANDARDS REVIEW COUNCIL. The council shall review the laboratory certification and registration program and shall make recommendations to the department concerning the specification of test categories, reference sample testing and standards for certification, registration, suspension and revocation and other aspects of the program.

(4) DEPARTMENT MAY REQUIRE CERTIFICATION OR REGISTRATION. (a) *Applicability.* Except as provided in subs. (5) and (6), if results from a test in a specified test category in a covered program are required to be submitted to the department, the department may require by rule that the test be conducted by a laboratory which is certified or registered to conduct tests in that specified category. The department may require that tests be conducted by a certified laboratory if the requirements for registration do not meet the requirements of an applicable federal law.

(b) *Specification of test categories.* After considering any recommendations by the council, the department may identify by rule specified test categories.

(c) *Delayed effective date.* A rule identifying specified test categories for which tests are required to be conducted by a certified or registered laboratory may not take effect until at least 120 days after publication. The department may not require a person to resubmit results of tests which were not required to be conducted by a certified or registered laboratory at the time of the original submission merely because of that fact.

(5) RECOGNITION OF OTHER CERTIFICATION OR REGISTRATION. (a) *Laboratories certified by the department of agriculture, trade and consumer protection.* The department shall recognize the certification of a laboratory by the department of agriculture, trade and consumer protection under s. 93.12 and shall accept the results of any test conducted by a laboratory certified to conduct that category of test under that section.

(b) *Reciprocity with laboratories certified or registered by other governments.* The department may recognize the certification, registration, licensure or approval of a laboratory by another state or an agency of the federal government if the standards for certification, registration, licensure or approval are substantially equivalent to those established under this section. The department shall negotiate with and attempt to enter into acceptable agreements with federal agencies and agencies of other states for the purpose of reciprocal recognition of laboratory certification and registration under this section. The department may not recognize the certification, registration, licensure or approval of a laboratory by another state or an agency of the federal government unless that state or federal agency recognizes laboratories certified under this section. The department may accept the results of any tests conducted by a laboratory which it recognizes under an agreement. The department shall publish periodically a list of those agencies whose certifications, approvals or registrations it accepts. Any laboratory which is registered, certified or approved by any such

agency may apply to the department to have the same recognized under this section.

(c) *Private organization agreements.* The department may recognize the certification, accreditation or approval of a laboratory by a private nonprofit organization if the organization's standards for certification, accreditation or approval are substantially equivalent to those established under this section. The department may negotiate with and attempt to enter into acceptable agreements with private nonprofit organizations for the purpose of recognition under this paragraph. The department shall publish periodically a list of those organizations whose certifications, accreditations or approvals it accepts. The department may accept the results of any tests conducted by a laboratory that it recognizes under an agreement. Any laboratory that is certified, accredited or approved by an organization with which the department has an agreement may apply to the department to be recognized under this paragraph.

(d) *Discretionary acceptance.* The department may accept the results of a test in a specified test category even though the test was not conducted by a certified or registered laboratory. The department may charge an extra fee if it is necessary to verify the results of a test submitted under this paragraph.

(6) NOT APPLICABLE TO OTHER PROGRAMS. No laboratory is required to be registered or certified under this section for any purpose other than the submission of results under a covered program.

(7) CERTIFICATION PROCEDURES. (a) *Criteria.* After considering recommendations by the council, the department shall promulgate by rule uniform minimum criteria, as provided in this subsection, to be used to evaluate laboratories for certification. Criteria shall be consistent with nationally recognized criteria to the maximum extent possible and shall be designed to facilitate reciprocal agreements under sub. (5).

(b) *Methodology.* 1. 'Accepted methodology.' The department shall prescribe by rule the accepted methodology to be followed in conducting tests in each test category. The department may prescribe by rule accepted sampling protocols and documentation procedures for a specified test category to be followed by the person collecting the samples. The department may prescribe this methodology by reference to standards established by technical societies and organizations as authorized under s. 227.21 (2). The department shall attempt to prescribe this methodology so that it is consistent with any methodology requirements under the resource conservation and recovery act, as defined under s. 289.01 (30), the federal water pollution control act, as amended, 33 USC 1251 to 1376, the safe drinking water act, 42 USC 300f to 300j-10, or the toxic substance control act, 15 USC 2601 to 2629.

2. 'Revised methodology'. The department may permit the use of a revised methodology consistent with new or revised editions or standards established by technical societies and organizations on a case-by-case basis.

3. 'Alternative methodology; confidentiality'. a. The department may permit the use of an alternative methodology on a case-by-case basis if the laboratory seeking to use that methodology submits data establishing the accuracy and precision of the alternative methodology and if the accuracy and precision obtained through the use of the alternative methodology equals or exceeds that obtained through use of the accepted methodology. The department shall establish by rule the data which is required to be submitted and the criteria for evaluating accuracy and precision of alternative methods.

b. A laboratory seeking to use an alternative methodology may request confidential treatment of any data or information submitted to the department under this paragraph. The department shall grant confidential status for any data or information relating to unique methods or processes if the disclosure of those methods or processes would tend to adversely affect the competitive position of the laboratory.

4. ‘Waiver of the procedure’. The department may waive any procedure prescribed in the accepted methodology on a case-by-case basis if the laboratory seeking this waiver establishes sufficient reasons for the waiver and that the waiver does not adversely affect the purpose for which the test is conducted.

(c) *Reference sample testing.* The department may prescribe by rule criteria for determining the accuracy of tests by certified laboratories on reference samples. The department shall provide, to the extent reasonably possible, reference samples prepared by an independent source for a representative cross section of test categories which are to be regularly and routinely performed by certified laboratories. The department may require a certified laboratory to analyze not more than 3 reference samples per year for each test category.

(d) *Quality control.* The department shall establish by rule minimum requirements for a quality control program which ensures that a laboratory complies with criteria for the accuracy and precision of tests in each test category and which specifies procedures to be followed if these criteria are not met. The department may accept a quality control program based upon state or federal requirements for similar test categories.

(e) *Records.* Where a particular time period is not otherwise specified by law, the department may prescribe by rule for each test category the length of time laboratory analysis records and quality control data specified in the laboratory’s quality control program are to be retained by the laboratory.

(f) *Application for certification.* The department shall specify by rule the criteria and standards to be met by applicants for certification. A laboratory desiring to be certified for a specified test category shall make application on forms provided by the department.

(g) *Initial certification.* The department shall issue an initial certification to a laboratory for a specified test category if all of the following conditions are met:

1. ‘Application’. The laboratory submits an application requesting certification in a specified test category.

2. ‘Methodology’. The laboratory specifies a methodology prescribed or permitted under par. (b) which it intends to utilize in conducting tests in the specified test category.

3. ‘Accuracy’. If the department provides a reference sample, the laboratory conducts a test on the sample and obtains results which comply with the minimum criteria for accuracy for that specified test category.

4. ‘Quality control’. The laboratory has or agrees to implement a quality control program which meets minimum requirements under par. (d) for the specified test category and which is to commence no later than the date of certification.

(h) *Certification period.* Certification of laboratories shall be renewed annually. A certification is valid from the date of issuance until it expires, is revoked or suspended.

(i) *Suspension and revocation.* After considering recommendations from the council, the department shall establish by rule criteria and procedures for the review and evaluation of the certification of laboratories and the suspension or revocation of certifications. If, after opportunity for a contested case hearing, the department finds that a certified laboratory materially and consistently failed to comply with the criteria and procedures established by rule, it may suspend or revoke the certification of the laboratory. A person whose certification is suspended or revoked may reapply for certification upon a showing that the person meets the applicable criteria for certification and has corrected the deficiencies that led to the suspension or revocation.

**(8) REGISTRATION PROCEDURE.** (a) *Criteria.* Upon application, the department shall register a laboratory if the laboratory complies with the requirements of this subsection, if the laboratory does not perform tests commercially for hire and if:

1. The laboratory performs tests solely on its own behalf or on behalf of a subsidiary or other corporation under common ownership or control; or

2. The laboratory is owned or controlled by a municipality or 2 or more municipalities and performs tests solely on behalf of the municipality or municipalities.

(b) *Methodology.* Testing by a registered laboratory conducted in connection with a covered program shall be carried out in accordance with sub. (7) (b).

(c) *Reference sample testing.* The department may require by rule reference sample tests upon application and annually thereafter. If results from these tests do not meet minimum criteria established by rule, the department may require additional reference sample testing. If the laboratory participates in a joint or split sampling program with the federal environmental protection agency, or otherwise obtains independent reference samples, the department may accept those results instead of its own reference samples.

(d) *Quality control.* The laboratory shall conduct self-audits and a quality control program consistent with criteria specified by rule by the department and based on methods and standards prescribed by rule and considering criteria used by the federal environmental protection agency, the American Society for Testing and Materials, the national council on air and stream improvement, the national academy of sciences or other equivalent agency recognized by the department.

(e) *Records.* Where a particular time period is not otherwise specified by law, the department may prescribe by rule for each test category the length of time laboratory analysis records and quality control data specified in the laboratory’s quality control program are to be retained by the laboratory.

(f) *Registration.* Registration of laboratories shall be renewed annually. A registration is valid from the date of issuance until it expires, is revoked or suspended.

(g) *Suspension or revocation of registration.* If, after opportunity for a contested case hearing, the department finds that a registered laboratory has falsified results or has materially and consistently failed to comply with the self-audit procedures and quality control programs provided in par. (d), it may suspend or revoke the registration of the laboratory. A person whose registration is suspended or revoked may reapply for registration upon a showing that the person meets the applicable criteria for registration and has corrected the deficiencies that led to the suspension or revocation.

(h) *Certification option.* A laboratory which is otherwise eligible to seek registration may elect to apply for certification under sub. (7).

**(9) FEES.** The department shall promulgate by rule a graduated schedule of fees for certified and registered laboratories which are designed to recover the costs of administering this section.

**History:** 1983 a. 410; 1985 a. 22 s. 11; 1985 a. 29 s. 3202 (39); 1985 a. 84 s. 8; 1985 a. 182 s. 57; 1989 a. 31; 1991 a. 32, 39; 1993 a. 27, 491; 1995 a. 27; 1995 a. 227 s. 818; Stats. 1995 s. 299.11; 1995 a. 417 s. 52.

## 299.13 Hazardous pollution prevention. (1) DEFINITIONS.

In this section:

(b) “Capacity assurance plan” means the plan submitted under 42 USC 9604 (c) (9) for the management of hazardous waste generated in this state.

(bm) “Council” means the hazardous pollution prevention council under s. 15.157 (5).

(c) “Hazardous pollution prevention” means changes in processes or raw materials that reduce or eliminate the use or production of hazardous substances, toxic pollutants and hazardous waste. “Hazardous pollution prevention” does not include incineration, changes in the manner of release of a hazardous substance, toxic pollutant or hazardous waste, recycling of a hazard-

ous substance, toxic pollutant or hazardous waste outside of the process or treatment of hazardous substances, toxic pollutants or hazardous waste after the completion of the process.

- (d) "Hazardous waste" has the meaning given in s. [289.01 \(12\)](#).
- (e) "Program" means the hazardous pollution prevention program established under s. [36.25 \(30\)](#).
- (f) "Release" means emission to the air, discharge to the waters of the state or disposal on the land.

(g) "Toxic pollutants" has the meaning given in s. [283.01 \(17\)](#).

**(1m) PROMOTION OF HAZARDOUS POLLUTION PREVENTION.** In carrying out the duties under ss. [36.25 \(30\)](#) and [560.19](#) and this section, the department, the department of commerce, the council and the program shall promote all of the following techniques for hazardous pollution prevention:

- (a) Replacing a hazardous substance used in a process with a substance that is not hazardous or is less hazardous.
- (b) Reformulating a product so that the product is not hazardous or is less hazardous upon use, release or disposal.
- (c) Changing processes and equipment that produce hazardous substances, toxic pollutants or hazardous waste.
- (d) Improving operation of production processes and equipment.
- (e) Reusing or otherwise reducing the demand for hazardous substances within processes.

**(2) DEPARTMENT DUTIES.** The department shall do all of the following:

- (a) Designate an employee of the department to serve as hazardous pollution prevention coordinator and to do all of the following:
  - 2. Recommend educational priorities to the university of Wisconsin-extension for the program, considering volume and toxicity of hazardous substances, toxic pollutants and hazardous waste produced, lack of compliance with environmental standards, potential for hazardous pollution prevention and projected shortfalls in hazardous waste treatment or disposal facilities under the capacity assurance plan.
  - 3. Coordinate the department's hazardous pollution prevention efforts with those of other governmental agencies and private groups.
  - 4. Provide training concerning hazardous pollution prevention to employees of the department.
- (b) Identify all department requirements for reporting on hazardous pollution prevention and, to the extent possible and practical, standardize, coordinate and consolidate the reporting in order to minimize duplication and provide useful information on hazardous pollution prevention to the council, the legislature and the public.

- (c) Assist the university of Wisconsin-extension in conducting the education program under s. [36.25 \(30\)](#).
- (d) Seek federal funding to promote hazardous pollution prevention.
- (e) Assist the council in preparing the report under s. [560.19 \(4\) \(d\)](#).

**History:** 1989 a. 325, 359; 1991 a. 32, 39; 1993 a. 16; 1995 a. 27 ss. [4337](#) to [4349](#), [9116 \(5\)](#); 1995 a. 227 s. [820](#); Stats. 1995 s. [299.13](#).

**Note:** See [1989 Wis. Act 325](#), which creates this section, for a declaration of legislative findings and purpose.

## **299.15 Reports on substances used; wastewater fee.**

**(1)** The department shall require by rule that all persons 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)** (am) 1. There is established an annual wastewater discharge environmental fee.

2. In fiscal year 1991–92, the fee under this paragraph shall be paid by each person required to report a wastewater discharge under sub. [\(1\)](#). In fiscal year 1991–92, the fee under this paragraph shall be based on an administrative fee of \$100 plus an additional fee, to be set by the department by rule and to be based on the concentration or quantity or both of pollutants discharged in relation to the parameters established under sub. [\(2\) \(a\)](#).

3. After June 30, 1992, the fee under this paragraph shall be paid by each person required to obtain a permit under s. [283.31](#). After June 30, 1992, the fee to be paid by a person under this paragraph shall be an amount determined under a rule promulgated by the department and shall be based on those pollutants included in the permit under s. [283.31](#) that are specified by the department by rule, the environmental harm caused by the pollutants discharged, the quantity of the pollutants discharged and the quality of the water receiving the discharge.

(b) In establishing an annual discharge fee schedule under par. [\(am\) 1.](#), 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 groundwaters and surface waters.

(cm) 1. Except as provided in subd. [2.](#), the annual fee under par. [\(am\)](#) shall be designed to generate revenues equal to 100% of the amount appropriated under s. [20.370 \(2\) \(ma\)](#) for wastewater management, 50% of the amount appropriated under s. [20.370 \(2\) \(ma\)](#) for technical services and, of the amount appropriated under s. [20.370 \(2\) \(ma\)](#) for water resources management, 100% of the amount related to surface water standards and monitoring, none of the amount related to nonpoint source pollution control and lakes management and 50% of the balance for the fiscal year in which the fee is collected.

2. In any fiscal year after fiscal year 1992–93, the department may not charge total fees under par. [\(am\)](#) that exceed the total fees that it charges under par. [\(am\)](#) for fiscal year 1992–93.

3. The department shall charge the fee under par. [\(am\)](#) so that municipalities that are subject to the fee pay 50% of the total charged and so that other persons who are subject to the fee pay 50% of the total charged.

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

**(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 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; 1979 c. 34 ss. [985n](#), [2102 \(39\) \(a\)](#); 1979 c. 221 ss. [634](#), [2202 \(39\)](#); Stats. 1979 s. [144.96](#); 1983 a. 27; 1985 a. 29; 1987 a. 27; 1991 a. 39, 269; 1993 a. 9, 16, 490; 1995 a. 227 s. [822](#); Stats. 1995 s. [299.15](#).

**299.21 Gifts and grants.** The department may accept gifts and grants from any private or public source for any purpose relating to its environmental quality functions and may expend or use such gifts and grants for the purposes for which received.

**History:** 1991 a. 39 s. 2553; Stats. 1991 s. 144.965; 1995 a. 227 s. 823; Stats. 1995 s. 299.21.

**299.23 Financial interest prohibited.** The secretary of natural resources 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.

**History:** 1979 c. 221 s. 621; Stats. 1979 s. 144.952; 1983 a. 410 s. 74; Stats. 1983 s. 144.97; 1995 a. 227 s. 825; Stats. 1995 s. 299.23.

**299.31 Groundwater protection.** The department shall comply with the requirements of ch. 160 in the administration of any program, responsibility or activity assigned or delegated to it by law.

**History:** 1983 a. 410; 1995 a. 227 s. 819; Stats. 1995 s. 299.31.

**299.33 Uniform transboundary pollution reciprocal access act.** **(1) DEFINITIONS.** In this section:

(a) "Person" means an individual person, corporation, business trust, estate, trust, partnership, association, joint venture, government in its private or public capacity, governmental subdivision or agency, or any other legal entity.

(b) "Reciprocating jurisdiction" means a state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States of America, or a province or territory of Canada, which has enacted this section or provides substantially equivalent access to its courts and administrative agencies.

**(2) FORUM.** An action or other proceeding for injury or threatened injury to property or person in a reciprocating jurisdiction caused by environmental pollution originating, or that may originate, in this jurisdiction may be brought in this jurisdiction.

**(3) RIGHT TO RELIEF.** A person who suffers, or is threatened with, injury to his or her person or property in a reciprocating jurisdiction caused by environmental pollution originating, or that may originate, in this jurisdiction has the same rights to relief with respect to the injury or threatened injury, and may enforce those rights in this jurisdiction as if the injury or threatened injury occurred in this jurisdiction.

**(4) APPLICABLE LAW.** The law to be applied in an action or other proceeding brought pursuant to this section, including what constitutes "environmental pollution", is the law of this jurisdiction excluding choice of law rules. Nothing in this section restricts the applicability of federal law in actions in which federal law is preemptive. Nothing in this section determines whether state law or federal law applies in any particular legal action.

**(5) EQUALITY OF RIGHTS.** This section creates no substantive rights of action beyond those available under other law in this state and does not accord a person injured or threatened with injury in another jurisdiction any rights superior to those that the person would have if injured or threatened with injury in this jurisdiction.

**(6) RIGHT ADDITIONAL TO OTHER RIGHTS.** The right provided in this section is in addition to and not in derogation of any other rights, except that no action or proceeding for injury or threatened injury to property or person in another jurisdiction caused by environmental pollution originating, or that may originate, in this jurisdiction may be brought in this jurisdiction unless the right to relief is provided under this section.

**(7) WAIVER OF SOVEREIGN IMMUNITY.** The defense of sovereign immunity is applicable in any action or other proceeding brought pursuant to this section only to the extent that it would apply to a person injured or threatened with injury in this jurisdiction.

**(8) EXCLUSION.** This section does not apply to any action or other proceeding for injury or threatened injury to property or per-

son caused by a publicly owned treatment work operated under a permit for the discharge of pollutants issued by the department under s. 285.31.

**(9) UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This section shall be applied and construed to carry out its general purpose to make uniform the law with respect to the subject of this section among jurisdictions enacting it.

**(10) TITLE.** This section may be cited as the "uniform transboundary pollution reciprocal access act".

**History:** 1985 a. 291; 1987 a. 403; 1993 a. 16; 1995 a. 227 s. 832; Stats. 1995 s. 299.33.

**299.41 Household hazardous waste.** The department shall establish and administer a grant program to assist municipalities in creating and operating local programs for the collection and disposal of household hazardous waste.

**History:** 1985 a. 29; 1995 a. 227 s. 699; Stats. 1995 s. 299.41.

**299.43 Collection and disposal of products containing 2,4,5-T and silvex.** **(1) AUTHORIZATION.** The department is authorized to establish facilities for the collection and disposal of pesticide products prohibited from use under s. 94.707. The department may establish the location of these facilities and the dates and times when the facilities are open.

**(2) RESTRICTIONS.** The department shall restrict the persons who may use any facility established under sub. (1) so that:

(a) No person who is regularly engaged in the business of manufacturing, selling, distributing or transporting pesticides may use the facility.

(b) No person who is a certified commercial applicator or a certified nonresident commercial applicator under s. 94.705 may use the facility.

(c) No person who is licensed under s. 289.31, 291.23 or 291.25 may use the facility.

**History:** 1983 a. 397; 1987 a. 27; 1995 a. 227 s. 717; Stats. 1995 s. 299.43.

**299.45 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.

**(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.

(7) 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. 289.05 (1) and chs. NR 500 to 520, 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 statutes.

(8) 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. 283.89 and 283.91.

**History:** 1975 c. 412; 1977 c. 325; 1977 c. 377 s. 30; 1979 c. 32 s. 92 (1); 1979 c. 34 ss. 984t, 2102 (39) (g); 1979 c. 154; 1979 c. 221 s. 632; Stats. 1979 s. 144.79; 1981 c. 390; 1989 a. 56 ss. 176, 259; 1995 a. 227 s. 718; Stats. 1995 s. 299.45.

#### 299.51 Medical waste management. (1) DEFINITIONS. In this section:

- (a) "Clinic" has the meaning given in s. 287.07 (7) (c) 1. a.
- (am) "Manifest" means a form used for identifying the quantity, composition, origin, routing and destination of medical waste during its transport and disposal.
- (b) "Medical waste" means infectious waste, as defined in s. 287.07 (7) (c) 1. c., and other waste that contains or may be mixed with infectious waste.
- (bm) "Nursing home" has the meaning given in s. 50.01 (3).
- (c) "Solid waste disposal" has the meaning given in s. 289.01 (34).
- (d) "Solid waste facility" has the meaning given in s. 289.01 (35).
- (e) "Solid waste treatment" has the meaning given in s. 289.01 (39).

(2) MEDICAL WASTE REDUCTION. Except as provided under sub. (3) (am), every clinic, nursing home and hospital shall implement a policy for the reduction of the amount of medical waste generated as required by the department by rule.

(3) RULES. The department shall promulgate rules that do all of the following:

(a) Establish requirements for medical waste reduction by hospitals.

(am) Exempt types of generators of medical waste that generate less than 50 pounds of medical waste per month from the requirement under sub. (2).

(b) Establish requirements for packaging, handling, shipping and transporting medical waste.

(c) Require a license for persons who transport medical waste and impose a fee for that license.

(d) Require the use of manifests to monitor the transport and disposal of medical waste.

(4) PROHIBITIONS. (a) No person may transport medical waste without a license issued by the department under sub. (3) (c).

(b) No person may dispose of medical waste in a facility for solid waste disposal unless the medical waste has undergone solid waste treatment.

(5) PENALTY. Any person who violates sub. (4) (b) may be required to forfeit not more than \$25,000. Each act of disposal in violation of sub. (4) (b) constitutes a separate offense.

**History:** 1991 a. 39, 300; 1995 a. 227 s. 643; Stats. 1995 s. 299.51.

#### 299.53 Used oil fuel. (1) DEFINITIONS. In this section:

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

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

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

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

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

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

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

(4) ENFORCEMENT, PENALTIES. (a) *Compliance orders.* If the department determines that any person is in violation of sub. (2) (a) or (3) or any rule promulgated under this section, the department may do one or more of the following:

1. Give the person written notice of the violation.
2. Issue a special order requiring compliance within a specified time period.
3. Refer the matter to the department of justice for enforcement under s. 299.95.

(b) *Department of justice action; disposition.* The department of justice may initiate the legal action requested by the department under par. (a) 3. after receipt of the written request. In any action commenced by it under this paragraph, the department of justice shall, prior to stipulation, consent order, judgment or other final disposition of the case, consult with the department for the pur-

pose of determining the department's views on final disposition. The department of justice may not enter into a final disposition different than that previously discussed without first informing the department.

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

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

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

**History:** 1987 a. 384; 1995 a. 227 s. 644; Stats. 1995 s. 299.53.

#### 299.55 Confidentiality of records; used oil collection facilities and used oil fuel facilities. (1) RECORDS.

Except as provided under sub. (2), records and other information furnished to or obtained by the department in the administration of ss. 287.15 and 299.53 are public records subject to s. 19.21.

(2) **CONFIDENTIAL RECORDS.** (a) *Application.* Any person subject to s. 287.15 or 299.53 may seek confidential treatment of any records or other information furnished to or obtained by the department in the administration of s. 287.15 or 299.53.

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

(c) *Emission data; analyses and summaries.* The department may not grant confidential status for emission data. Nothing in this subsection prevents the department from using records and other information in compiling or publishing analyses or summaries relating to the general condition of the environment if the analyses or summaries do not identify a specific applicant or facility or reveal records or other information granted confidential status.

(d) *Use of confidential records.* Except as provided under par. (c) and this paragraph, the department or the department of justice may use records and other information granted confidential status under this subsection only in the administration and enforcement of s. 287.15 or 299.53. The department or the department of justice may release for general distribution records and other information granted confidential status under this subsection if the applicant expressly agrees to the release. The department or the department of justice may release on a limited basis records and other information granted confidential status under this subsection if the department or the department of justice is directed to take this action by a judge or hearing examiner under an order which protects the confidentiality of the records or other information. The department or the department of justice may release to the U.S. environmental protection agency or its authorized representative records and other information granted confidential status under this subsection if the department or the department of justice includes in each release of records or other information a request to the U.S. environmental protection agency or its authorized representative to protect the confidentiality of the records or other information.

**History:** 1987 a. 384; 1989 a. 335 s. 89; 1995 a. 227 s. 645; Stats. 1995 s. 299.55.

#### 299.62 Environmental protection requirements for tank vessels. (1) DEFINITIONS.

In this section:

(a) "Bulk" means an undivided quantity of a substance that is loaded directly into a vessel and is not divided into individual containers.

(am) "Discharge" has the meaning given in s. 144.76 (1) (a) [292.01 (3)].

**Note:** The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

(b) "Double hull" has the meaning given in 33 CFR 157.03 (kk).

(c) "Hazardous material" has the meaning given in 46 USC 2101 (14).

(d) "Oil" means hydrocarbon, vegetable or mineral oil of any kind or in any form and includes oil mixed with wastes other than dredged spoil.

(e) "Tank vessel" means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

(2) **PROHIBITION.** (a) Except as provided in par. (b) or (c), no tank vessel of under 5,000 gross tons may transport oil or hazardous material in bulk on that part of the Mississippi River over which this state has jurisdiction from the northern boundary of the Upper Mississippi River National Wildlife and Fish Refuge to the southernmost point of the Upper Mississippi River National Wildlife and Fish Refuge in this state unless the tank vessel has a double hull.

(b) Paragraph (a) does not apply to a tank vessel when the tank vessel and its crew are in danger due to extreme weather conditions.

(c) Paragraph (a) does not apply to a self-propelled tank vessel or a tank vessel that is propelled by a towing vessel if a tugboat accompanies the self-propelled tank vessel or tank vessel and towing vessel.

(3) **PENALTIES.** (a) Except as provided under par. (b), any person who owns or controls the movement of a tank vessel violating sub. (2) shall be required to forfeit not less than \$5,000 nor more than \$10,000.

(b) Any person who owns or controls the movement of a tank vessel violating sub. (2) and who, within 5 years before the commission of the current violation, was previously convicted of violating sub. (2) shall be fined not less than \$10,000 nor more than \$25,000 or imprisoned for not more than 6 months or both.

(c) In addition to any penalty under par. (a) or (b), any person who owns or controls the movement of a tank vessel violating sub. (2) from which oil or a hazardous material is discharged shall be required to forfeit triple the amount of the damage to the environment.

**Note:** This section is shown as renumbered from s. 144.78 by the revisor under s. 13.93 (1) (b).

**History:** 1995 a. 290 s. 10; s. 13.93 (1) (b).

#### 299.64 Open burning on commercial vessels. (1) DEFINITIONS.

In this section:

(a) "Commercial vessel" means a vessel that is operated to transport property or passengers for hire or used by its operator or owner to earn a livelihood.

(b) "Open burning" has the meaning given in s. 144.436 (1) (b) [289.51 (1) (b)].

**Note:** The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

(2) **PROHIBITION.** No person may engage in or permit open burning on a commercial vessel in the waters of the state.

(3) **CITATIONS.** The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of sub. (2).

(4) **PENALTY.** Any person who violates sub. (2) shall be required to forfeit no less than \$100 nor more than \$500.

**Note:** This section is shown as renumbered from s. 144.783 by the revisor under s. 13.93 (1) (b).

**History:** 1995 a. 290 s. 11; s. 13.93 (1) (b).

**299.66 Inspecting vessels.** An employee or agent of the department may board and inspect any vessel that is subject to s. 144.78 [299.62] or 144.783 [299.64] to determine the state of compliance with those provisions.

Note: This section is shown as renumbered from s. 144.985 by the revisor under s. 13.93 (1) (b). The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

History: 1995 a. 290 s. 13; s. 13.93 (1) (b).

**299.91 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 the order and all proceedings on the part of the complainants shall be stayed until the 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 the last-known post-office address at least 20 days prior to the time set for the hearing. The hearing shall be held not later than 90 days after the filing of the complaint. The respondent shall file a verified answer to the complaint with the department and serve a copy on the person 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 section the hearing examiner 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 was filed maliciously or in bad faith it shall issue a finding to that effect and the person complained against is entitled to recover the expenses of 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. This section does not apply to any part of the process for approving a feasibility report, plan of operation or license under subch. III of ch. 289 or s. 291.23 or 291.25.

History: 1979 c. 176; 1979 c. 221 s. 633; Stats. 1979 s. 144.975; 1981 c. 374, 403; 1995 a. 227 s. 826; Stats. 1995 s. 299.91.

**299.93 Environmental assessments.** (1) If a court imposes a fine or forfeiture for a violation of a provision of this chapter or chs. 280 to 285 or 289 to 295 or a rule or order issued under this chapter or chs. 280 to 285 or 289 to 295, the court shall impose an environmental assessment equal to 10% of the amount of the fine or forfeiture.

(2) If a fine or forfeiture is suspended in whole or in part, the environmental assessment shall be reduced in proportion to the suspension.

(3) If any deposit is made for an offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the environmental assessment prescribed in this section. If the deposit is forfeited, the amount of the environmental assessment shall be transmitted to the state treasurer under sub. (4). If the deposit is returned, the environmental assessment shall also be returned.

(4) The clerk of the court shall collect and transmit to the county treasurer the environmental assessment and other amounts

required under s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2. The state treasurer shall deposit the amount of the assessment in the environmental fund.

History: 1991 a. 39; 1993 a. 27, 458; 1995 a. 201; 1995 a. 227 s. 831; Stats. 1995 s. 299.93.

**299.95 Enforcement; duty of department of justice; expenses.** The attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except ss. [, and] 144.783 [299.64,] 281.48, 285.57 and 285.59, and all rules, special orders, licenses, plan approvals and permits of the department, except those promulgated or issued under ss. [, and] 144.783 [299.64,] 281.48, 285.57 and 285.59. The circuit court for Dane county or for any other county where a violation occurred in whole or in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan approval or permit by injunctional and other relief appropriate for enforcement. For purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan approval or permit prohibits in whole or in part any pollution, a violation is deemed a public nuisance. The department of natural resources may enter into agreements with the department of justice to assist with the administration of [chs. 281 to 285 and 289 to 295 and] this chapter. Any funds paid to the department of justice under these agreements shall be credited to the appropriation account under s. 20.455 (1) (k).

Note: This section is shown as affected by three acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed “, and” was inserted by 1995 Wis. Act 290 but rendered superfluous by the treatment of this provision by 1995 Wis. Act 227. The bracketed “299.64” indicates the correct cross-reference. The bracketed “chs. 281 to 285 and 289 to 295 and” was inadvertently omitted by Act 227. Corrective legislation is pending.

History: 1975 c. 39 s. 734; 1979 c. 34 s. 985g; 1979 c. 221; Stats. 1979 s. 144.98; 1981 c. 374; 1989 a. 284; 1993 a. 243; 1995 a. 27; 1995 a. 227 s. 829; Stats. 1995 s. 299.95; 1995 a. 290 s. 12; s. 13.93 (2) (c).

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.

The state need not show irreparable harm to obtain an injunction under this section. State v. C. Spielvogel & Sons, 193 W (2d) 464, 535 NW (2d) 28 (Ct. App. 1995).

**299.97 Penalties and remedies.** (1) Any person who violates this chapter, except s. 144.78 (2) [299.62 (2)], 144.783 (2) [299.64 (2)], 299.15 (1), 299.51 (4) (b) or 299.53 (2) (a) or (3), or any rule promulgated or any plan approval, license or special order issued under this chapter, except under those sections, shall forfeit not less than \$10 nor more than \$5,000, for each violation. Each day of continued violation is a separate offense. While the order is suspended, stayed or enjoined, this penalty does not accrue.

Note: Sub. (1) is shown as affected by three acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

(2) In addition to the penalties provided under sub. (1), the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney fees. The department of justice shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the department or the state under this subsection. Ten percent of the money deposited in the general fund that was awarded under this subsection for the costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

History: 1979 c. 34 s. 987m; 1979 c. 221; Stats. 1979 s. 144.99; 1989 a. 336; 1991 a. 262, 300, 315; 1995 a. 27; 1995 a. 227 s. 830; Stats. 1995 s. 299.97; 1995 a. 290 s. 14; s. 13.93 (2) (c).