CHAPTER 289

SOLID WASTE FACILITIES

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Cross−reference: See also NR ch. 500− and NR ch. 700−, Wis. adm. code.

SUBCHAPTER I

DEFINITIONS

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

(1) "Affected municipality" means:

(a) A town, city, village or county in which all or a portion of a solid waste disposal facility or a hazardous waste facility is or is proposed to be located; and

(b) A town, city, village or county whose boundary is within 1,500 feet of that portion of the facility designated by the applicant for the disposal of solid waste or the treatment, storage or disposal of hazardous waste in the feasibility report under s. 289.23, excluding buffers and similar areas.

(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) "Approved facility" means a solid or hazardous waste disposal facility with an approved plan of operation under s. 289.30 or a solid waste disposal facility 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 facility's design and plan of operation comply substantially with the requirements necessary for plan approval under s. 289.30.

(4) "Approved mining facility" means an approved facility which is part of a mining site, as defined under s. 293.01 (12), used for the disposal of waste resulting from mining, as defined under s. 293.01 (9), or prospecting, as defined under s. 293.01 (18).

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

(6) "Contested case" has the meaning specified under s. 227.01 (3).

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

(8) "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.

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

(10) "Hazardous constituent" means any constituent designated by the department under s. 291.05 (4).

(11) "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.

(12) "Hazardous waste" means any solid waste identified by the department as hazardous under s. 291.05 (2).

(13) "Hazardous waste disposal" has the meaning specified for disposal under s. 291.01 (3).

(14) "Hazardous waste facility" has the meaning specified under s. 291.01 (8).

(15) "Hazardous waste storage" has the meaning specified for storage under s. 291.01 (18).

(16) "Hazardous waste treatment" has the meaning specified for treatment under s. 291.01 (21).

(17) "High−volume industrial waste" means fly ash, bottom ash, paper mill sludge or foundry process waste.

(18) "Informational hearing" means a hearing conducted under s. 227.18.

(20) "Landfill" means a solid waste facility for solid waste disposal.

(21) "Long−term care" means the routine care, maintenance and monitoring of a solid or hazardous waste facility following closing of the facility.

(22) "Municipal waste landfill" means a solid waste disposal facility that is not one of the following:

(a) A solid waste disposal facility designed exclusively for the disposal of waste generated by a pulp mill, paper mill, foundry, prospecting or mining operation, electric or process steam generating facility or demolition activity.

(b) A hazardous waste disposal facility.

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

(24) "Nonapproved facility" means a licensed solid or hazardous waste disposal facility which is not an approved facility.

(27) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

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

(29) "Release" has the meaning given under s. 291.37 (1) (b).

(30) "Resource conservation and recovery act" means the federal resource conservation and recovery act, 42 USC 6901 to 6991i, as amended on November 8, 1984.

(31) "Secretary" means the secretary of natural resources.

(31m) "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.

(33) "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. 283, or source material, as defined in s. 254.31 (10), special nuclear material, as defined in s. 254.31 (11), or by−product material, as defined in s. 254.31 (1).

(34) "Solid waste disposal" means the discharge, deposit, injection, dumping or placing of any solid waste into or on any land or water. This term does not include the transportation, storage or treatment of solid waste.

(35) "Solid waste facility" means a facility for solid waste treatment, solid waste storage or solid waste disposal, and includes commercial, industrial, municipal, state and federal establishments or operations such as, without limitation because of enumeration, sanitary landfills, dumps, land disposal sites, incinerators, transfer stations, storage facilities, collection and transportation services and processing, treatment and recovery facilities. This term includes the land where the facility is located. This term does not include a 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. This term does not include a 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. This term does not include an auto junk yard or scrap metal salvage yard.

(36) "Solid waste management" means planning, organizing, financing, and implementing programs to effect the reduction, storage, collection, transporting, processing, reuse, recycling, composting, energy recovery from or final disposal of solid wastes in a sanitary, nuisance−free manner.

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

(38) "Solid waste storage" means the holding of solid waste for a temporary period, at the end of which period the solid waste is to be treated or disposed.

(39) "Solid waste treatment" means any method, technique or process which is designed to change the physical, chemical or biological character or composition of solid waste. "Treatment" includes incineration.

(40) "Termination" means the final actions taken by an owner or operator of a solid or hazardous waste facility when formal responsibilities for long−term care cease.

(41) "Waste site" means any site, other than an approved facility, an approved mining facility or a nonapproved facility, where waste is disposed of regardless of when disposal occurred or where a hazardous substance is discharged before May 21, 1978.

(42) "Wastewater" means all sewage.

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

History: 1979 c. 34 ss. 978k, 984rd; 1981 c. 374 ss. 20 to 27, 148; 1983 a. 425, 426; 1987 a. 384; 1989 a. 335; 1995 a. 227 s. 514 to 520, 541, 576, 585; Stats. 1995 s. 289.01; 1997 a. 241; 1999 a. 9.

Under sub. (33), "'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 . . ." Cigarette butts manifestly constitute "other discarded . . . materials." State v. Iverson, 2015 WI 101, 365 Wis. 2d 302, 871 N.W.2d 661, 14−0515.

A violation of rules promulgated under ss. 144.43 and 144.44 [now ch. 289] does not give rise to a private right of action. Fortier v. Flambeau Plastics, 164 Wis. 2d 639, 476 N.W.2d 593 (Ct. App. 1991).

SUBCHAPTER II

ADMINISTRATION; SOLID WASTE MANAGEMENT STANDARDS

289.05 Solid waste management standards. (1) The department shall promulgate rules establishing minimum standards for the location, design, construction, sanitation, operation, monitoring and maintenance of solid waste facilities. Following a public hearing, the department shall promulgate rules relating to the operation and maintenance of solid waste facilities as it deems necessary to ensure compliance and consistency with the purposes of and standards established under the resource conservation and recovery act, except that the rules relating to open burning shall be consistent with s. 289.51. The rules promulgated under this subsection shall conform to the rules promulgated under sub. (2).

(2) With the advice and comment of the metallic mining council, the department shall promulgate rules for the identification and regulation of metallic mining wastes. The rules promulgated to identify metallic mining wastes and to regulate the location, design, construction, operation and maintenance of facilities for the disposal of metallic mining wastes shall be in accordance with any or all of the provisions under this chapter and chs. 30 and 283.

The rules shall take into consideration the special requirements of metallic mining operations in the location, design, construction, operation and maintenance of 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 promulgating the rules, the department shall give consideration 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.

(3) The department shall prescribe by rule minimum standards for closing, long−term care and termination of solid waste disposal facilities or hazardous waste facilities. The standards and any additional facility−specific requirements designated by the department shall be incorporated into the plan of operation prepared under s. 289.30. The long−term care provisions in an approved plan of operation may be modified under s. 289.30 (8) (a) 3. or (b).

(4) The department shall promulgate, by rule, standards for the reuse of foundry sand and other high−volume industrial waste, including high−volume industrial waste that qualifies for an exemption from regulation under s. 289.43 (8). The department shall design the rules under this subsection to allow and encourage, to the maximum extent possible consistent with the protection of public health and the environment, the beneficial reuse of high−volume industrial waste, in order to preserve resources, conserve energy and reduce or eliminate the need to dispose of high−volume industrial waste in landfills. In developing rules under this subsection, the department shall review methods of reusing high−volume industrial waste that are approved by other states and incorporate those methods to the extent that the department determines is advisable. In developing rules under this subsection, the department shall also consider the analysis and methodology used under 40 CFR 503.13 in determining the impacts on groundwater from various methods of reusing high−volume industrial wastes.

History: 1995 a. 227 ss. 530, 534.

289.06 Department duties. The department shall:

(1) Promulgate rules implementing and consistent with this chapter and ss. 292.31 and 292.35.

(2) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter and ss. 292.31 and 292.35.

(3) Encourage local units of government to handle solid waste disposal problems within their respective jurisdictions and on a regional basis, and provide technical and consultative assistance for that purpose.

(4) Collect and disseminate information and conduct educational and training programs relating to the purposes of this chapter and ss. 292.31 and 292.35.

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

(6) Provide technical assistance for the closure of a solid waste disposal facility that is a nonapproved facility.

History: 1995 a. 227 s. 522, 991.

Cross−reference: See also NR ch. 500− and NR ch. 700−, Wis. adm. code.

289.07 Department powers. The department may:

(1) Hold hearings relating to any aspect of the administration of this chapter and ss. 292.31 and 292.35 and, in connection therewith, compel the attendance of witnesses and the production of evidence.

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

(3) Advise, consult, contract and cooperate 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.

(4) 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.

History: 1995 a. 227 ss. 523, 525, 632.

289.08 Duties of metallic mining council. (1) The metallic mining council shall advise the department on the implementation of ss. 289.05, 289.21 to 289.32, 289.34, 289.42, 289.43, 289.46, 289.47, 289.62 to 289.64, 289.67, 289.68 and 292.31 and chs. 291 and 293 as those sections and chapters relate to metallic mining in this state.

(2) The council shall serve as an advisory, problem−solving body to work with and advise the department on matters relating to the reclamation of mined land in this state and on methods of and criteria for the location, design, construction and operation and maintenance of facilities for the disposal of metallic mine−related wastes.

(3) All rules proposed by the department relating to the subjects specified in this section shall be submitted to the council for review and comment prior to the time the rules are proposed in final draft form by the department. The department shall transmit the written comments of all members of the council submitting written comments with the summary of the proposed rules to the presiding officer of each house of the legislature under s. 227.19 (2).

(4) Written minutes of all meetings of the council shall be prepared by the department and made available to all interested parties upon request.

History: 1979 c. 355; 1981 c. 374 s. 148; 1983 a. 410 s. 2202 (38); 1985 a. 182; 1995 a. 227 s. 629; Stats. 1995 s. 289.08.

289.09 Confidentiality of records. (1) RECORDS. Except as provided under sub. (2), any records or other information furnished to or obtained by the department in the administration of this chapter and ss. 287.27 and 299.15 are public records subject to s. 19.21.

(2) CONFIDENTIAL RECORDS. (a) *Application.* 1. An owner or operator of a solid waste facility may seek confidential treatment of any records or other information furnished to or obtained by the department in the administration of this chapter and s. 299.15.

2. A licensed hauler who transports solid waste to a facility listed in s. 289.57 (1) may seek confidential treatment of information submitted under s. 289.57 (1) (d).

3. An owner or operator of a materials recovery facility, as defined in s. 287.27 (1), may seek confidential treatment of information submitted under s. 287.27 (3).

(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 owner or operator of the solid waste facility or materials recovery facility or by the licensed hauler as relating to production or sales figures or to processes or production unique to the owner or operator of the solid waste facility or materials recovery facility or which would tend to adversely affect the competitive position of the owner or operator 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 owner or operator or the analyses or summaries do not 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 this chapter, ch. 287 or s. 299.15. The department or the department of justice may release for general distribution records and other information granted confidential status under this subsection if the owner or operator expressly agrees to the release. The department of natural resources or the department of justice may release on a limited basis records and other information granted confidential status under this subsection if the department of natural resources 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 of natural resources 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 of natural resources 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: 1979 c. 34; 1979 c. 221 s. 2202 (39); 1981 c. 374; 1987 a. 384; 1989 a. 335; 1995 a. 227 s. 528; Stats. 1995 s. 289.09; 1997 a. 60.

289.10 County solid waste management plans. (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.

(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 facility 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; 1979 c. 34 s. 984rt; Stats. 1979 s. 144.437; 1981 c. 374 s. 148; 1983 a. 27; 1995 a. 227 s. 536; Stats. 1995 s. 289.10; 1997 a. 35.

289.11 Federal aid. Subdivisions of this state and interlocal agencies may make application for, receive, administer and expend any federal aid for the development and administration of programs related to solid waste 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 this chapter and any other applicable requirements of law.

History: 1979 c. 34; 1981 c. 374 s. 148; 1995 a. 227 s. 527; Stats. 1995 s. 289.11.

289.12 Landfill official liability. (1) DEFINITION. As used in this section, "landfill official" means any officer, official, agent or employee of the state, a political corporation, governmental subdivision or public agency engaged in the planning, management, operation or approval of a solid or hazardous waste disposal facility.

(2) EXEMPTION FROM LIABILITY. A landfill official is immune from civil prosecution for good faith actions taken within the scope of his or her official duties under this chapter or ch. 291 or 292.

History: 1983 a. 410; Stats. 1983 s. 144.795; 1983 a. 538 s. 158; Stats. 1983 s. 144.446; 1995 a. 227 s. 627; Stats. 1995 s. 289.12.

SUBCHAPTER III

FACILITIES; SITING

289.21 Initial site report. (1) INITIAL SITE REPORT REQUIRED. Prior to constructing a landfill, the person who seeks to construct the facility shall submit to the department an initial site report. The department shall specify by rule the minimum contents of an initial site report.

(2) DETERMINATION IF INITIAL SITE REPORT IS COMPLETE. Within 30 days after an initial site report is submitted, the department shall either determine that the initial site report is complete or notify the applicant in writing that the initial site report is not complete and specify the information which is required to be submitted before the initial site report is complete. The department shall notify the applicant in writing when the initial site report is complete.

History: 1995 a. 227 s. 543.

289.22 Local approval. (1) DEFINITION. In this section, "local approval" has the meaning specified under s. 289.33 (3) (d).

(1m) APPLICATION FOR LOCAL APPROVALS REQUIRED. Prior to constructing a solid waste disposal facility or hazardous waste facility, the applicant shall submit a written request for the specification of all applicable local approvals to each affected municipality. Within 15 days after the receipt of a written request from the applicant, a municipality shall specify all local approvals for which applications are required or issue a statement that there are no applicable local approvals. Prior to constructing a solid waste disposal facility or a hazardous waste facility, the applicant shall apply for each local approval required to construct the waste handling portion of the facility.

(2) STANDARD NOTICE. The waste facility siting board shall develop and print a standard notice designed to inform an affected municipality of the time limits and requirements for participation in the negotiation and arbitration process under s. 289.33. An applicant shall submit a copy of this standard notice, if it has been printed, with any written request submitted under sub. (1m).

(3) ATTEMPTS TO OBTAIN LOCAL APPROVALS REQUIRED. Following applications for local approvals under sub. (1m) and prior to submitting a feasibility report, any applicant subject to s. 289.33 shall undertake all reasonable procedural steps necessary to obtain each local approval required to construct the waste handling portion of the facility except that the applicant is not required to seek judicial review of decisions of the local unit of government.

(4) WAIVER OF LOCAL APPROVALS. If a local approval precludes or inhibits the ability of the applicant to obtain data required to be submitted under s. 289.21 (1) or in a feasibility report or environmental impact report, the applicant may petition the department to waive the applicability of the local approval to the applicant. If a petition is received, the department shall promptly schedule a hearing on the matter and notify the local government of the hearing. If the department determines at the hearing that the local approval is unreasonable, the department shall waive the applicability of the local approval to the applicant.

(5) COMPLIANCE REQUIRED. Except as provided under sub. (4), no person may construct a solid waste disposal facility or a hazardous waste facility unless the person complies with the requirements of subs. (1m) and (3).

History: 1995 a. 227 s. 545; 2015 a. 197 s. 51.

Cross−reference: See also ch. WFSB 3, Wis. adm. code.

289.23 Feasibility report required; distribution; public notice. (1) FEASIBILITY REPORT REQUIRED. Prior to constructing a solid waste disposal facility or a hazardous waste facility the person who seeks to construct the facility shall submit to the department a feasibility report.

(2) LOCAL APPROVAL APPLICATION PREREQUISITE. No person subject to s. 289.33 may submit a feasibility report until the latest of the following periods:

(a) At least 120 days after the person submits applications for all applicable local approvals specified as required by the municipality under s. 289.22 (1m).

(b) At least 120 days after the receipt by the applicant of a statement by the municipality that there are no applicable local approvals.

(c) At least 120 days after the deadline for the municipal response under s. 289.22 (1m) if the municipality does not respond within that time limit.

(3) COMPLIANCE REQUIRED. No person may construct a solid waste disposal facility or a hazardous waste facility unless the person complies with the requirements of ss. 289.23 to 289.29.

(4) DISTRIBUTION OF FEASIBILITY REPORT. At the same time an applicant submits a feasibility report to the department, the applicant shall submit a copy of that feasibility report to each participating municipality under s. 289.33 (6) (b).

(5) NOTIFICATION OF PROPOSED FACILITY. Immediately upon receipt of a feasibility report the department shall send a notice to the persons specified under s. 289.32 containing a brief description of the proposed facility and a statement that the applicant is required to send a copy of the feasibility report after it is determined to be complete by the department.

History: 1995 a. 227 s. 547, 549, 551.

289.24 Feasibility report contents; completeness; distribution. (1) CONTENTS OF FEASIBILITY REPORTS; PREPARATION. The department shall specify by rule the minimum contents of a feasibility report and no report is complete unless the specified information is provided by the applicant. In addition to the requirements specified under sub. (2), the rules may specify special requirements for a feasibility report relating to any hazardous waste facility. The department may require a feasibility report to be prepared by a registered professional engineer. A feasibility report shall include:

(a) A general summary of the site characteristics as well as any specific data the department requires by rule regarding the site's topography, soils, geology, groundwaters and surface waters and other features of the site and surrounding area.

(b) Preliminary engineering design concepts including the proposed design capacity of the facility and an indication of the quantities and characteristics of the wastes to be treated, stored or disposed.

(c) A description of how the proposed facility relates to any applicable county solid waste management plan approved under s. 289.10.

(d) A description of the advisory process undertaken by the applicant prior to submittal of the feasibility report to provide information to the public and affected municipalities and to solicit public opinion on the proposed facility.

(e) The proposed date of closure for the facility.

(f) Sufficient information to make the determination of need for the facility under s. 289.28 unless the facility is exempt under s. 289.28 (2).

(g) An analysis of alternatives to the land disposal of waste including waste reduction, reuse, recycling, composting and energy recovery.

(h) A description of any waste reduction incentives and recycling services to be instituted or provided with the proposed facility.

(2) CERTAIN HAZARDOUS WASTE FACILITIES; ADDITIONAL REQUIREMENTS. A feasibility report for a hazardous waste disposal facility or surface impoundment, as defined in s. 291.37 (1) (d), shall include a list of all persons living within 0.5 mile of the facility and information reasonably ascertainable by the applicant on the potential for public exposure to hazardous waste or hazardous constituents through releases from the facility including, but not limited to, the following:

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

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

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

(3) DETERMINATION IF A FEASIBILITY REPORT IS COMPLETE. Within 60 days after a feasibility report is submitted, the department either shall determine that the feasibility report is complete or shall notify the applicant in writing that the feasibility report is not complete and specify the information which is required to be submitted before the feasibility report is complete.

(4) DISTRIBUTION. Immediately after the applicant receives notification of the department's determination that the feasibility report is complete, the applicant shall distribute copies of the feasibility report to the persons specified under s. 289.32.

History: 1995 a. 227 s. 550, 991; 1997 a. 35.

289.25 Environmental review. (1) PRELIMINARY DETERMINATION IF ENVIRONMENTAL IMPACT STATEMENT IS REQUIRED. Immediately after the department determines that the feasibility report is complete, the department shall issue a preliminary determination on whether an environmental impact statement is required under s. 1.11 prior to the determination of feasibility. If the department determines after review of the feasibility report that a determination of feasibility cannot be made without an environmental impact statement or if the department intends to require an environmental impact report under s. 23.11 (5), the department shall notify the applicant in writing within the 60−day period of these decisions and shall commence the process required under s. 1.11 or 23.11 (5).

(2) ENVIRONMENTAL IMPACT STATEMENT PROCESS. If an environmental impact statement is required, the department shall conduct the hearing required under s. 1.11 (2) (d) in an appropriate place it designates in a county, city, village or town which would be substantially affected by the operation of the proposed facility. The hearing on the environmental impact statement is not a contested case. The department shall issue its determination of the adequacy of the environmental impact statement within 30 days after the close of the hearing. Except as provided under s. 293.43, the department shall complete any environmental impact statement process required under s. 1.11 before proceeding with the feasibility report review process under sub. (3) and ss. 289.26 and 289.27.

(3) NOTIFICATION ON FEASIBILITY REPORT AND PRELIMINARY ENVIRONMENTAL IMPACT STATEMENT DECISIONS. Immediately after the department issues a preliminary determination that an environmental impact statement is not required or, if it is required, immediately after the department issues the environmental impact statement, 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 facility, and shall publish the notice on its Internet Web site. The notice shall include a statement that the feasibility report and the environmental impact statement process are complete. The notice shall invite the submission of written comments by any person within 30 days after the notice for a solid waste disposal facility or within 45 days after the notice for a hazardous waste facility is published. The notice shall describe the methods by which a hearing may be requested under ss. 289.26 (1) and 289.27 (1). The department shall distribute copies of the notice to the persons specified under s. 289.32. For the purpose of determining the date on which notice is published under this subsection, the date on which the department first publishes the notice on its Internet Web site shall be considered the date of notice.

History: 1995 a. 227 ss. 552, 991; 2011 a. 167.

289.26 Informational hearing. (1) REQUEST FOR AN INFORMATIONAL HEARING. Within 30 days after the notice under s. 289.25 (3) is published for a solid waste disposal facility, or within 45 days after the notice under s. 289.25 (3) is published for a hazardous waste facility, any county, city, village or town, the applicant or any 6 or more persons may file a written request for an

informational hearing on the matter with the department. The request shall indicate the interests of the municipality or persons who file the request and state the reasons why the hearing is requested.

(2) APPLICABILITY. This section applies if no request for the treatment of the hearing as a contested case is granted and if:

(a) An informational hearing is requested under sub. (1) within the 30−day or 45−day period; or

(b) No hearing is requested under sub. (1) within the 30−day or 45−day period but the department determines that there is substantial public interest in holding a hearing.

(3) NONAPPLICABILITY; HEARING CONDUCTED AS A PART OF CERTAIN MINING HEARINGS. Notwithstanding sub. (2) this section does not apply if a hearing on the feasibility report is conducted as a part of a hearing under s. 293.43 and the time limits, notice and hearing provisions in that section supersede the time limits, notice and hearing provisions under s. 289.25 (2) and (3) and this section.

(4) INFORMATIONAL HEARING. The department shall conduct the informational hearing within 60 days after the expiration of the 30−day or 45−day period under sub. (1). The department shall conduct the informational hearing in an appropriate place designated by the department in a county, city, village or town which would be substantially affected by the operation of the proposed facility.

(5) ISSUANCE OF FINAL DETERMINATION OF FEASIBILITY. Except as provided under s. 289.29 (5), the department shall issue a final determination of feasibility within 60 days after the informational hearing under this section is adjourned.

History: 1995 a. 227 ss. 553, 563, 991.

289.27 Contested case hearing. (1) REQUEST FOR TREATMENT AS A CONTESTED CASE. Within 30 days after the notice under s. 289.25 (3) is published for a solid waste disposal facility, or within 45 days after the notice under s. 289.25 (3) is published for a hazardous waste facility, any county, city, village or town, the applicant or any 6 or more persons may file a written request that the hearing under s. 289.26 (1) be treated as a contested case, as provided under s. 227.42. A county, city, village or town, the applicant or any 6 or more persons have a right to have the hearing treated as a contested case only if:

(a) A substantial interest of the person requesting the treatment of the hearing as a contested case is injured in fact or threatened with injury by the department's action or inaction on the matter;

(b) The injury to the person requesting the treatment of the hearing as a contested case is different in kind or degree from injury to the general public caused by the department's action or inaction on the matter; and

(c) There is a dispute of material fact.

(2) APPLICABILITY. This section applies only if a person requests the treatment of the hearing as a contested case under sub. (1) within the 30−day or 45−day period and has a right to a hearing under that subsection. Any denial of a request for the treatment of the hearing as a contested case received within the 30−day or 45−day period under sub. (1) shall be in writing, shall state the reasons for denial and is an order reviewable under ch. 227. If the department does not enter an order granting or denying the request for the treatment of the hearing as a contested case within 20 days after the written request is filed, the request is deemed denied.

(3) NONAPPLICABILITY. Notwithstanding sub. (2), this section does not apply if a hearing on the feasibility report is conducted as a part of a hearing under s. 293.43 and the time limits, notice and hearing provisions under that section supersede the time limits, notice and hearing provisions under s. 289.25 (2) and (3) and this section.

(4) TIME LIMITS. Except as provided under s. 289.29 (5):

(a) The division of hearings and appeals in the department of administration shall schedule the hearing to be held within 120 days after the expiration of the 30−day or 45−day period under sub. (1).

(b) The final determination of feasibility shall be issued within 90 days after the hearing is adjourned.

(5) DETERMINATION OF NEED; DECISION BY HEARING EXAMINER. If a contested case hearing is conducted under this section, the secretary shall issue any decision concerning determination of need, notwithstanding s. 227.46 (2) to (4). The secretary shall direct the hearing examiner to certify the record of the contested case hearing to him or her without an intervening proposed decision. The secretary may assign responsibility for reviewing this record and making recommendations concerning the decision to any employee of the department.

History: 1995 a. 227 s. 554, 565, 991.

289.28 Determination of need. (1) DETERMINATION OF NEED; ISSUES CONSIDERED. A feasibility report shall contain an evaluation to justify the need for the proposed facility unless the facility is exempt under sub. (2). The department shall consider the following issues in evaluating the need for the proposed facility:

(a) An approximate service area for the proposed facility which takes into account the economics of waste collection, transportation and disposal.

(b) The quantity of waste suitable for disposal at the proposed facility generated within the anticipated service area.

(c) The design capacity of the following facilities located within the anticipated service area of the proposed facility:

1. Approved facilities, including the potential for expansion of those facilities on contiguous property already owned or controlled by the applicant.

2. Nonapproved facilities which are environmentally sound. It is presumed that a nonapproved facility is not environmentally sound unless evidence to the contrary is produced.

3. Other proposed facilities for which feasibility reports are submitted and determined to be complete by the department.

4. Facilities for the recycling of solid waste or for the recovery of resources from solid waste which are licensed by the department.

5. Proposed facilities for the recycling of solid waste or for the recovery of resources from solid waste which have plans of operation which are approved by the department.

6. Solid waste incinerators licensed by the department.

7. Proposed solid waste incinerators which have plans of operation which are approved by the department.

(d) If the need for a proposed municipal facility cannot be established under pars. (a) to (c), the extent to which the proposed facility is needed to replace other facilities of that municipality at the time those facilities are projected to be closed in the plans of operation.

(2) DETERMINATION OF NEED; EXEMPT FACILITIES. Subsections (1) and (3) and ss. 289.24 (1) (f) and 289.29 (1) (d) do not apply to:

(a) Any facility which is part of a prospecting or mining operation with a permit under s. 293.45 or 293.49.

(b) Any solid waste disposal facility designed for the disposal of waste generated by a pulp or paper mill.

(3) ISSUANCE OF DETERMINATION OF NEED. Except for a facility which is exempt under sub. (2), the department shall issue a determination of need for the proposed facility at the same time the final determination of feasibility is issued. If the department determines that there is insufficient need for the facility, the applicant may not construct or operate the facility.

History: 1995 a. 227 ss. 556, 557, 560, 991.

Municipal replacement facilities are not exempt from the needs determination. 77 Atty. Gen. 81.

289.29 Determination of feasibility. (1) CRITERIA FOR DETERMINATION OF FEASIBILITY; ENVIRONMENTAL IMPACT. (a) A determination of feasibility shall be based only on this chapter and ch. 291 and rules promulgated under those chapters. A determination of feasibility for a facility for the disposal of metallic mining

waste shall be based only on this chapter and ch. 291 and rules promulgated under those chapters with special consideration given to s. 289.05 (2) and rules promulgated under that section.

(b) If there is a negotiated agreement or an arbitration award prior to issuance of the determination of feasibility, the final determination of feasibility may not include any item which is less stringent than a corresponding item in the negotiated agreement or arbitration award.

(c) The department may receive into evidence at a hearing conducted under s. 289.26 or 289.27 any environmental impact assessment or environmental impact statement for the facility prepared under s. 1.11 and any environmental impact report prepared under s. 23.11 (5). The adequacy of the environmental impact assessment, environmental impact statement or environmental impact report is not subject to challenge at that hearing.

(d) The department may not approve a feasibility report for a solid or hazardous waste disposal facility unless the design capacity of that facility does not exceed the expected waste to be disposed of at that facility within 15 years after that facility begins operation. The department may not approve a feasibility report for a solid or hazardous waste disposal facility unless the design capacity of that facility exceeds the expected waste to be disposed of at that facility within 10 years after that facility begins operation except that this condition does not apply to the expansion of an existing facility.

(2) MAXIMUM NUMBER OF FACILITIES. (a) Except as provided in par. (b), the department may not issue a favorable determination of feasibility for a solid waste disposal facility in a 3rd class city if 2 or more approved facilities that are solid waste disposal facilities are in operation within the city in which the solid waste disposal facility is proposed to be located.

(b) The prohibition in par. (a) does not apply to an expansion of or addition to an existing approved facility that is a solid waste disposal facility by the owner or operator of the existing approved facility on property that is contiguous to the property on which the existing approved facility is located and that is owned or under option to lease or purchase by the owner or operator of the existing approved facility.

(3) CONTENTS OF FINAL DETERMINATION OF FEASIBILITY. The department shall issue a final determination of feasibility which shall state the findings of fact and conclusions of law upon which it is based. The department may condition the issuance of the final determination of feasibility upon special design, operational or other requirements to be submitted with the plan of operation under s. 289.30. The final determination of feasibility shall specify the design capacity of the proposed facility. The issuance of a favorable final determination of feasibility constitutes approval of the facility for the purpose stated in the application but does not guarantee plan approval under s. 289.30 or licensure under s. 289.31.

(4) ISSUANCE OF FINAL DETERMINATION OF FEASIBILITY. Except as provided under sub. (5), if no hearing is conducted under s. 289.26 or 289.27, the department shall issue the final determination of feasibility within 60 days after the 30−day or 45−day period under s. 289.27 (1) has expired.

(5) ISSUANCE OF FINAL DETERMINATION OF FEASIBILITY IN CERTAIN SITUATIONS INVOLVING UTILITIES AND MINING. If a determination of feasibility is identified in the listing specified in s. 196.491 (3) (a) 3. a., the issuance of a final determination of feasibility is subject to the time limit under s. 196.491 (3) (a) 3. b. If a determination of feasibility is required under s. 293.43, the issuance of a final determination of feasibility is subject to the time limits under s. 293.45 (2) or 293.49, whichever is applicable.

History: 1995 a. 227 ss. 555, 558, 559, 561, 991; 1997 a. 204.

289.30 Plan of operation. **(1)** PLAN OF OPERATION REQUIRED. Prior to constructing a solid waste disposal facility or a hazardous waste facility, the applicant shall submit to the department a plan of operation for the facility.

(2) FEASIBILITY REPORT PREREQUISITE. No person may submit a plan of operation for a facility prior to the time the person submits a feasibility report for that facility. A person may submit a plan of operation with the feasibility report or at any time after the feasibility report is submitted. If a person submits the plan of operation prior to the final determination of feasibility, the plan of operation is not subject to review at any hearing conducted under s. 289.26 or 289.27 and is not subject to judicial review under ss. 227.52 to 227.58 in the review of any decision under s. 289.26 or 289.27.

(3) FEASIBILITY REPORT; CERTAIN FACILITIES. The department may require the applicant for a hazardous waste treatment or storage facility to submit the feasibility report and the plan of operation at the same time and, notwithstanding subs. (2), (10) and (11), both the feasibility report and the plan of operation shall be considered at a public hearing conducted under ss. 289.26 and 289.27, and both are subject to judicial review in a single proceeding.

(4) PREPARATION; CONTENTS. The proposed plan of operation shall be prepared by a registered professional engineer and shall include at a minimum a description of the manner of solid waste disposal or hazardous waste treatment, storage or disposal and a statement setting forth the proposed development, daily operation, closing and long−term care of the facility. The proposed plan of operation shall specify the method by which the owner or operator will maintain proof of financial responsibility under s. 289.41. The department shall specify by rule the minimum contents of a plan of operation submitted for approval under this section and no plan is complete unless the information is supplied. The rules may specify special standards for plans of operation relating to hazardous waste facilities. Within 30 days after a plan of operation is submitted or, if the plan of operation is submitted with the feasibility report under sub. (2), within 30 days after the department issues notice that the feasibility report is complete, the department shall notify the applicant in writing if the plan is not complete, specifying the information which is required to be submitted before the report is complete. If no notice is given, the report is deemed complete on the date of its submission.

(5) DAILY COVER. The department shall include in an approved plan of operation for a municipal waste landfill a requirement that the operator use foundry sand or shredder fluff for daily cover at part or all of the municipal waste landfill for the period specified in a request from a person operating a foundry or a scrap dealer in this state if the department receives the request prior to approving the plan of operation under sub. (6) and if all of the following conditions are met:

(a) The foundry operator or scrap dealer agrees to transport the foundry sand or shredder fluff to the landfill either daily or on another schedule acceptable to the municipal waste landfill operator.

(b) The department approves the use of the foundry sand or shredder fluff for daily cover at the municipal waste landfill.

(c) The municipal waste landfill operator is not contractually bound to obtain daily cover from another source.

(d) The amount of daily cover to be provided by the requesting foundry operator or scrap dealer does not exceed the amount of daily cover required under the plan of operation for the municipal waste landfill less any daily cover provided by another foundry operator or scrap dealer.

(6) APPROVAL; DISAPPROVAL. The department may not approve or disapprove a plan of operation until a favorable determination of feasibility has been issued for the facility. Upon the submission of a complete plan of operation, the department shall either approve or disapprove the plan in writing within 90 days or within 60 days after a favorable determination of feasibility is issued for the facility, whichever is later. The determination of the department shall be based upon compliance with sub. (5) and the standards established under s. 289.05 (1) and (2) or, in the case of hazardous waste facilities, with the rules and standards established under ss. 291.05 (1) to (4) and (6) and 291.07 to 291.11. 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. 289.05 (1) and (2) or, if applicable, ss. 291.05 (1) to (4) and (6) and 291.07 to 291.11. No plan of operation for a solid or hazardous waste facility may be approved unless the applicant submits technical and financial information required under ss. 289.05 (3) and 289.41.

(7) NO ENVIRONMENTAL IMPACT STATEMENT REQUIRED. A determination under this section does not constitute a major state action under s. 1.11 (2).

(8) APPROVAL. (a) Approval under sub. (6) entitles the applicant to construct the facility in accordance with the approved plan for not less than the design capacity specified in the determination of feasibility, unless the department establishes by a clear preponderance of the credible evidence that:

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

2. The facility 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. 289.05 (1) and (2) or, if applicable, ss. 291.05 (1) to (4) and (6) and 291.07 to 291.11.

(b) Paragraph (a) does not limit the department's authority to modify a plan of operation to ensure compliance with a federal statute or regulation applicable to the solid waste disposal facility or hazardous waste facility.

(9) FAILURE TO COMPLY WITH PLAN OF OPERATION. Failure to operate in accordance with the approved plan subjects the operator to enforcement under s. 289.97 or 291.95. If the department establishes that any failure to operate in accordance with the approved plan for a solid waste disposal facility is grievous and continuous, the operator is subject to suspension, revocation or denial of the operating license under s. 289.31. If the operator fails to operate a hazardous waste facility in accordance with the approved plan, the department may suspend, revoke or deny the operating license under s. 289.31.

(10) FEASIBILITY REPORT NOT SUBJECT TO REVIEW. In any judicial review under ss. 227.52 to 227.58 of the department's decision to approve or disapprove a plan of operation, no element of the feasibility report, as approved by the department, is subject to judicial review.

(11) NO RIGHT TO HEARING. There is no statutory right to a hearing before the department concerning the plan of operation but the department may grant a hearing on the plan of operation under s. 289.07 (1).

History: 1995 a. 227 s. 566, 568.

289.31 Operating license. (1) LICENSE REQUIREMENT. No person may operate a solid waste facility or hazardous waste facility unless the person obtains an operating license from the department. The department shall issue an operating license with a duration of one year or more except that the department may issue an initial license with a duration of less than one year. The department may deny, suspend or revoke the operating license of a solid waste facility for failure to pay fees required under this chapter or for grievous and continuous failure to comply with the approved plan of operation under this chapter or, if no plan of operation exists with regard to the facility, for grievous and continuous failure to comply with the standards adopted under s. 289.05 (1) and (2). The department may deny, suspend or revoke the operating license of a hazardous waste facility for any reason specified under s. 291.87 (1m).

(2) ENVIRONMENTAL IMPACT STATEMENT NOT REQUIRED. A determination under this section does not constitute a major state action under s. 1.11 (2).

(3) ISSUANCE OF INITIAL LICENSE. The initial operating license for a solid waste disposal facility or a hazardous waste facility shall not be issued unless the facility has been constructed in substantial compliance with the operating plan approved under s. 289.30. 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 disposal facility, that the applicant submit evidence that a notation of the existence of the facility has been recorded in the office of the register of deeds in each county in which a portion of the facility is located.

(4) NOTICE; HAZARDOUS WASTE FACILITIES. (am) Before issuing the initial operating license for a hazardous waste facility, the department shall give notice of its intent to issue the license by all of the following means:

1. Publishing a class 1 notice, under ch. 985, in a newspaper likely to give notice in the area where the facility is located.

2. Broadcasting a notice by radio announcement in the area where the facility is located.

3. Providing written notice to each affected municipality.

4. Publication of the notice on the department's Internet Web site.

5. Providing notice to interested persons upon request. The notice may be given through an electronic notification system established by the department.

(bm) The notice provided under par. (am) 1., 3., 4., and 5. shall include all of the following:

1. The name and address of the applicant.

2. A summary that contains a brief, precise, easily understandable, plain language description of the subject matter of the license.

3. Information indicating where more information about the subject matter of the license may be viewed on the department's Internet Web site.

(cm) For the purpose of determining the date on which public notice is provided under this subsection, the date on which the department first publishes the notice on its Internet Web site shall be considered the date of public notice.

(5) FEASIBILITY REPORT AND PLAN OF OPERATION NOT SUBJECT TO REVIEW. In any judicial review under ss. 227.52 to 227.58 of the department's decision to issue or deny an operating license, no element of either the feasibility report or the plan of operation, as approved by the department, is subject to judicial review.

(6) NO RIGHT TO HEARING. There is no statutory right to a hearing before the department concerning the license but the department may grant a hearing on the license under s. 289.07 (1).

(7) MONITORING REQUIREMENTS. (a) In this subsection, "monitoring" means activities necessary to determine whether contaminants are present in groundwater, surface water, soil or air in concentrations that require investigation or remedial action. "Monitoring" does not include investigations to determine the extent of contamination, to collect information necessary to select or design remedial action, or to monitor the performance of remedial action.

(b) Upon the renewal of an operating license for a nonapproved facility, the department may require monitoring at the facility as a condition of the license.

(c) The owner or operator of a nonapproved facility is responsible for conducting any monitoring required under par. (b).

(d) The department may require by special order the monitoring of a closed solid or hazardous waste disposal site or facility which was either a nonapproved facility or a waste site, as defined under s. 292.01 (21), when it was in operation.

(e) If the owner or operator of a site or facility subject to an order under par. (d) is not a municipality, the owner or operator is responsible for the cost of conducting any monitoring ordered under par. (d).

(f) If the owner or operator of a site or facility subject to an order under par. (d) is a municipality, the municipality is responsible for conducting any monitoring ordered under par. (d). The department shall, from the environmental fund appropriation under s. 20.370 (2) (dv), reimburse the municipality for the costs of monitoring that exceed an amount equal to $3 per person residing in the municipality for each site or facility subject to an order under par. (d), except that the maximum reimbursement is $100,000 for each site or facility. The department shall exclude any monitoring costs paid under the municipality's liability insurance coverage in calculating the municipal cost of monitoring a site or facility.

(g) The department shall promulgate rules for determining costs eligible for reimbursement under par. (f).

(8) CLOSURE AGREEMENT. Any person operating a solid or hazardous waste facility which is a nonapproved facility may enter into a written closure agreement at any time with the department to close the facility on or before July 1, 1999. The department shall incorporate any closure agreement into the operating license. The operating license shall terminate and is not renewable if the operator fails to comply with the closure agreement. Upon termination of an operating license under this subsection as the result of failure to comply with the closure agreement, the department shall collect additional surcharges and base fees as provided under s. 289.67 (3) and (4) and enforce the closure under ss. 299.95 and 299.97.

(9) DAILY COVER. Within 12 months after receiving a request from a person operating a foundry or a scrap dealer in this state, the department shall modify the operating license issued under sub. (1) to a person operating a municipal waste landfill to require the operator to use foundry sand from the foundry or shredder fluff from the scrap dealer's operation as daily cover at part or all of the municipal waste landfill for a period specified in the request, if all of the conditions in s. 289.30 (5) are met.

(10) VOLUNTARY PARTY CERTIFICATE OF COMPLETION. When the department issues a certificate of completion under s. 292.15 (2) (a) 3., (ae) 3., (af) 3., or (ag) 2. for all or a portion of a solid waste facility with an operating license under this section, the operating license for the solid waste facility or the portion of the solid waste facility covered by the certificate of completion is terminated.

History: 1995 a. 227 s. 569, 570; 2011 a. 103, 167; 2013 a. 333; 2015 a. 204.

Corporate officers responsible for the overall operation of a facility are personally liable for violations. State v. Rollfink, 162 Wis. 2d 121, 469 N.W.2d 398 (1991).

289.32 Distribution of documents. One copy of the notice or documents required to be distributed under ss. 289.21 to 289.31 shall be mailed to:

(1) The clerk of each affected municipality.

(2) The main public library in each affected municipality.

(3) The applicant if the notice or document is not required to be distributed by the applicant.

History: 1995 a. 227 s. 571.

289.33 Solid and hazardous waste facilities; negotiation and arbitration. (1) LEGISLATIVE FINDINGS. (a) The legislature finds that the creation of solid and hazardous waste is an unavoidable result of the needs and demands of a modern society.

(b) The legislature further finds that solid and hazardous waste is generated throughout the state as a by−product of the materials used and consumed by every individual, business, enterprise and governmental unit in the state.

(c) The legislature further finds that the proper management of solid and hazardous waste is necessary to prevent adverse effects on the environment and to protect public health and safety.

(d) The legislature further finds that the availability of suitable facilities for solid waste disposal and the treatment, storage and disposal of hazardous waste is necessary to preserve the economic strength of this state and to fulfill the diverse needs of its citizens.

(e) The legislature further finds that whenever a site is proposed for the solid waste disposal or the treatment, storage or disposal of hazardous waste, the nearby residents and the affected municipalities may have a variety of legitimate concerns about the location, design, construction, operation, closing and long−term care of facilities to be located at the site, and that these facilities must be established with consideration for the concerns of nearby residents and the affected municipalities.

(f) The legislature further finds that local authorities have the responsibility for promoting public health, safety, convenience and general welfare, encouraging planned and orderly land use development, recognizing the needs of industry and business, including solid waste disposal and the treatment, storage and disposal of hazardous waste and that the reasonable decisions of local authorities should be considered in the siting of solid waste disposal facilities and hazardous waste facilities.

(g) The legislature further finds that the procedures for the siting of new or expanded solid waste disposal facilities and hazardous waste facilities under s. 144.44, 1979 stats., and s. 144.64, 1979 stats., are not adequate to resolve many of the conflicts which arise during the process of establishing such facilities.

(2) LEGISLATIVE INTENT. It is the intent of the legislature to create and maintain an effective and comprehensive policy of negotiation and arbitration between the applicant for a license to establish either a solid waste disposal facility or a hazardous waste treatment, storage or disposal facility and a committee representing the affected municipalities to assure that:

(a) Arbitrary or discriminatory policies and actions of local governments which obstruct the establishment of solid waste disposal facilities and hazardous waste facilities can be set aside.

(b) The legitimate concerns of nearby residents and affected municipalities can be expressed in a public forum, negotiated and, if need be, arbitrated with the applicant in a fair manner and reduced to a written document that is legally binding.

(c) An adequate mechanism exists under state law to assure the establishment of environmentally sound and economically viable solid waste disposal facilities and hazardous waste facilities.

(3) DEFINITIONS. In this section:

(a) "Applicant" means a person applying for a license for or the owner or operator of a facility.

(b) "Board" means the waste facility siting board.

(c) "Facility" means a solid waste disposal facility or a hazardous waste facility.

(d) "Local approval" includes any requirement for a permit, license, authorization, approval, variance or exception or any restriction, condition of approval or other restriction, regulation, requirement or prohibition imposed by a charter ordinance, general ordinance, zoning ordinance, resolution or regulation by a town, city, village, county or special purpose district, including without limitation because of enumeration any ordinance, resolution or regulation adopted under s. 91.73, 2007 stats., s. 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27), 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23), 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) and (26), 59.55 (3), (4), (5) and (6), 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5), (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (5), (7), (8), and (10), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35, 61.351, 61.353, 61.354, 62.11, 62.23, 62.231, 62.233, 62.234, 66.0101, 66.0415, 87.30, 196.58, 200.11 (8), 236.45, 281.43 or 349.16, subch. VIII of ch. 60, or subch. III of ch. 91.

(e) "Local committee" means the committee appointed under sub. (7).

(f) "Participating municipality" means an affected municipality which adopts a siting resolution and appoints members to the local committee.

(fm) "Preexisting local approval" means a local approval in effect at least 15 months prior to the submission to the department of either a feasibility report under s. 289.23 or an initial site report, whichever occurs first.

(g) "Siting resolution" means the resolution adopted by an affected municipality under sub. (6) (a).

(4) RULES. The board may promulgate rules necessary for the implementation of this section.

(5) APPLICABILITY OF LOCAL APPROVALS. (a) The establishment of facilities is a matter of statewide concern.

(b) An existing facility is not subject to any local approval except those local approvals made applicable to the facility under pars. (c) to (g).

(c) Except as provided under par. (d), a new or expanded facility is subject to preexisting local approvals.

(d) A new or expanded facility is not subject to any preexisting local approvals which are specified as inapplicable in a negotiation agreement approved under sub. (9) or an arbitration award issued under sub. (10).

(e) Except as provided under par. (f), a new or expanded facility is not subject to any local approvals which are not preexisting local approvals.

(f) A new or expanded facility is subject to local approvals which are not preexisting local approvals if they are specified as applicable in a negotiation agreement approved under sub. (9).

(g) This subsection applies to a new or expanded facility owned or operated by a county in the same manner it applies to all other new or expanded facilities.

(6) SITING RESOLUTION. (a) *Municipal participation.* An affected municipality may participate in the negotiation and arbitration process under this section if the governing body adopts a siting resolution and appoints members to the local committee within 60 days after the municipality receives the written request from the applicant under s. 289.22 (1m) and if the municipality sends a copy of that resolution and the names of those members to the board within 7 days after the municipality adopts the siting resolution and appoints members to the local committee. The siting resolution shall state the affected municipality's intent to negotiate and, if necessary, arbitrate with the applicant concerning the proposed facility. An affected municipality which does not adopt a siting resolution within 60 days after receipt of notice from the applicant may not appoint members to the local committee.

(b) *Notification of participation.* Within 5 days after the board receives copies of resolutions and names of members appointed to the local committee from all affected municipalities or within 72 days after all affected municipalities receive the written request under s. 289.22 (1m), the board shall submit a notification of participation by certified mail to the applicant and each participating municipality identifying the participating municipalities and the members appointed to the local committee and informing the applicant and participating municipalities that negotiations may commence or, if no affected municipality takes the actions required to participate in the negotiation and arbitration process under par. (a), the board shall notify the applicant of this fact by certified mail within that 72−day period.

(c) *Revised notification of participation.* If the board issues a notice under par. (b) and subsequently it is necessary for the applicant to submit a written request under s. 289.22 (1m) to an additional affected municipality because of an error or changes in plans, the board may issue an order delaying negotiations until that affected municipality has an opportunity to participate in the negotiation and arbitration process by taking action under par. (a). Within 5 days after the board receives a copy of the resolution and the names of members appointed to the local committee by that affected municipality or within 72 days after that affected municipality receives the written request from the applicant under s. 289.22 (1m), the board shall submit a revised notification of participation by certified mail to the applicant and each participating municipality stating the participating municipalities and members appointed to the local committee and informing the applicant and participating municipalities that negotiations may recommence or if the additional affected municipality does not take the actions required to participate in the negotiation and arbitration process under par. (a), the board shall notify the applicant and other participating municipalities of this fact by certified mail and informing them that negotiations may recommence.

(d) *Rescission.* A siting resolution may be rescinded at any time by a resolution of the governing body of the municipality which adopted it. When a siting resolution is rescinded, individuals appointed by the governing body of the municipality to serve on the local committee are removed from membership on the local committee.

(e) *Prohibition on participation by municipality which is also applicant.* An affected municipality which is also the applicant or which contracts with the applicant to construct or operate a facility may not adopt a siting resolution.

(f) *Failure to participate.* If no affected municipality takes the actions required to participate in the negotiation and arbitration process under par. (a), the applicant may continue to seek state approval of the facility, is not required to negotiate or arbitrate under this section and the facility is not subject to any local approval, notwithstanding sub. (5).

(g) *Extension for filing.* If the governing body of an affected municipality adopts a siting resolution under par. (a) or (b), and if the affected municipality does not send a copy of the siting resolution to the applicant and the board within 7 days, the board may grant an extension of time to allow the affected municipality to send a copy of the siting resolution to the applicant and the board, if the board determines that:

1. The municipality failed to send the siting resolution through mistake, inadvertence or excusable neglect; and

2. The granting of an extension will not create a significant hardship for other parties to the negotiation and arbitration process.

(7) LOCAL COMMITTEE. (a) *Appointment of members.* Members of the local committee shall be appointed by the governing body of each affected municipality passing a siting resolution, as follows:

1. A town, city or village in which all or part of a facility is proposed to be located shall appoint 4 members or the number of members appointed under subds. 1m. and 2. plus 2, whichever is greater, no more than 2 of whom are elected officials or municipal employees.

1m. A county in which all or part of a facility is proposed to be located shall appoint 2 members.

2. Any affected municipality, other than those specified under subd. 1. or 1m., shall appoint one member.

(b) *Disclosure of private interests.* Each member of a local committee shall file a statement with the board within 15 days after the person is appointed to the local committee specifying the economic interests of the member and his or her immediate family members that would be affected by the proposed facility and its development.

(c) *Failure to disclose private interests.* If a person fails to file a statement of economic interest as required under par. (b), he or she may not serve on the local committee and the position to which he or she was appointed is vacant.

(d) *Removal; vacancies.* A participating municipality may remove and replace at will the members it appoints to the local committee. Vacancies on the local committee shall be filled in the same manner as initial appointments.

(e) *Chairperson.* The local committee shall elect one of its members as chairperson.

(f) *Quorum.* A majority of the membership of the local committee constitutes a quorum to do business and a majority of that quorum may act in any matter before the local committee. Each member of the local committee has one vote in any matter before the committee and no member may vote by proxy.

(g) *Open meetings.* Meetings of the local committee are subject to subch. V of ch. 19.

(7n) ADDITIONAL MUNICIPAL PARTIES. (a) *Agreement to add.* Upon the written agreement of all parties to a negotiation and arbitration proceeding commenced under this section, a municipality which does not qualify as an affected municipality may be added as a party to the proceeding.

(b) *Siting resolution.* If a municipality is added to the negotiation and arbitration proceeding under par. (a), it shall adopt a siting resolution under sub. (6) within 30 days of the agreement and otherwise comply with the other provisions of this section.

(8) SUBJECTS OF NEGOTIATION AND ARBITRATION. (a) The applicant and the local committee may negotiate with respect to any subject except:

1. Any proposal to make the applicant's responsibilities under the approved feasibility report or plan of operation less stringent.

2. The need for the facility.

(b) Only the following items are subject to arbitration under this section:

1. Compensation to any person for substantial economic impacts which are a direct result of the facility including insurance and damages not covered by the waste management fund.

1m. Reimbursement of reasonable costs, but not to exceed $20,000, incurred by the local committee relating to negotiation, mediation and arbitration activities under this section.

2. Screening and fencing related to the appearance of the facility. This item may not affect the design capacity of the facility.

3. Operational concerns including, but not limited to, noise, dust, debris, odors and hours of operation but excluding design capacity.

4. Traffic flows and patterns resulting from the facility.

5. Uses of the site where the facility is located after closing the facility.

6. Economically feasible methods to recycle or reduce the quantities of waste to the facility. At facilities for which the applicant will not provide or contract for collection and transportation services, this item is limited to methods provided at the facility.

7. The applicability or nonapplicability of any preexisting local approvals.

(9) NEGOTIATION. (a) *Commencement of negotiation.* Negotiation between the applicant and the local committee may commence at any time after receipt of notification of participation from the board under sub. (6) (b). The time and place of negotiating sessions shall be established by agreement between the applicant and the local committee. Negotiating sessions shall be open to the public.

(b) *Determination of negotiability.* Either party may petition the board in writing for a determination as to whether a proposal is excluded from negotiation under sub. (8) (a). A petition may be submitted to the board before a proposal is offered in negotiation. A petition may not be submitted to the board later than 7 days after the time a proposal is offered for negotiation. The board shall conduct a hearing on the matter and issue its decision within 14 days after receipt of the petition. The decision of the board is binding on the parties and is not subject to judicial review. Negotiation on any issue, including issues subject to a petition under this paragraph, may continue pending the issuance of the board's decision.

(c) *Mediation.* Negotiating sessions may be conducted with the assistance of a mediator if mediation is approved by both the applicant and the local committee. Either the applicant or the local committee may request a mediator at any time during negotiation. The function of the mediator is to encourage a voluntary settlement by the applicant and the local committee. The mediator may not compel a settlement. The board shall provide the applicant and the local committee with the names and qualifications of persons willing to serve as mediators. If the applicant and the local committee cannot agree on the selection of a mediator, the applicant and the local committee may request the board to appoint a mediator.

(d) *Mediation costs.* The mediator shall submit a statement of his or her costs to the applicant, the local committee and the board. Except as otherwise specified in the negotiated agreement or the arbitration award under sub. (10), the costs of the mediator shall be shared equally between the applicant and the local committee. The local committee's share of the mediator's costs shall be divided among the participating municipalities in proportion to the number of members appointed to the local committee by each participating municipality.

(e) *Failure to participate; default.* Failure of the applicant or the local committee to participate in negotiating sessions constitutes default except as provided in this paragraph. It is not default if the applicant or the local committee fails to participate in negotiating sessions either for good cause or if further negotiations cannot be reasonably expected to result in a settlement. Either party may petition the board in writing for a determination as to whether a given situation constitutes default. The board shall conduct a hearing in the matter. Notwithstanding s. 227.03 (2), the decision of the board on default is subject to judicial review under ss. 227.52 to 227.58. If the applicant defaults, the applicant may not construct the facility. If the local committee defaults, the applicant may continue to seek state approval of the facility, is not required to continue to negotiate or arbitrate under this section and the facility is not subject to any local approval, notwithstanding sub. (5).

(em) *Default hearing costs.* The board shall submit to the applicant and local committee a statement of the costs of a hearing held under par. (e) to determine whether the failure of an applicant or a local committee to participate in the negotiation sessions under this subsection constitutes default. Except as otherwise specified in an arbitration award, the costs of a hearing to determine whether a given situation constitutes default shall be shared between the applicant and the local committee. The local committee's share of the hearing costs shall be divided among the participating municipalities in proportion to the number of members appointed to the local committee by each participating municipality.

(f) *Submission of certain items to the department.* Any item proposed to be included in a negotiated agreement which affects an applicant's responsibilities under an approved feasibility report or plan of operation may be submitted to the department for consideration. An item may be submitted to the department under this paragraph after agreement on the item is reached by the applicant and the local committee either during or at the conclusion of negotiation. The department shall approve or reject items submitted under this paragraph within 2 weeks after receipt of the item. The department shall reject those items which would make the applicant's responsibilities less stringent than required under the approved feasibility report or plan of operation. The department shall provide written reasons for the rejection. Items which are rejected may be revised and resubmitted. The department may incorporate all items which are not rejected under this paragraph into the approved feasibility report or the plan of operation. The department shall inform the applicant, the local committee and the board of its decisions under this paragraph.

(g) *Written agreement.* All issues subject to negotiation which are resolved to the satisfaction of both the applicant and the local committee and, if necessary, are approved by the department under par. (f), shall be incorporated into a written agreement.

(h) *Public hearings.* The local committee may hold public hearings at any time concerning the agreement in any town, city or village where all or a portion of the facility is to be located.

(i) *Submission for approval.* Within 2 weeks after approval of the written agreement by the applicant and the local committee, the local committee shall submit the negotiated agreement to the appropriate governing bodies for approval.

(j) *Appropriate governing bodies for approval.* If the local committee includes members from a town, city or village where all or a portion of the facility is to be located, the appropriate governing bodies consist of the governing body of each town, city or village where all or a portion of the facility is to be located with members on the local committee. If the local committee does not include members from any town, city or village where all or a portion of the facility is to be located, the appropriate governing bodies consist of the governing body of each participating town, city or village.

(k) *Approval.* If the local committee includes members from any town, city or village where all or a portion of the facility is to be located and if the negotiated agreement is approved by resolution by each of the appropriate governing bodies, the negotiated agreement is binding on all of the participating municipalities but if the negotiated agreement is not approved by any appropriate governing body, the negotiated agreement is void. If the local committee does not include members from any town, city or village where all or a portion of the facility is to be located and if the negotiated agreement is approved by resolution by all of the appropriate governing bodies, the agreement is binding on all of the participating municipalities but if the negotiated agreement is not approved by all of the appropriate governing bodies, the negotiated agreement is void.

(L) *Submission of agreement to board and department.* The applicant shall submit a copy or notice of any negotiated agreement approved under par. (k) to the board and the department by mail within 10 days after the agreement is approved.

(10) ARBITRATION. (a) *Joint petition for arbitration.* If agreement is not reached on any items after a reasonable period of negotiation, the applicant and the local committee may submit a joint written petition to the board to initiate arbitration under this subsection.

(b) *Unilateral petition for arbitration.* Either the applicant or the local committee may submit an individual written petition to the board to initiate arbitration under this subsection but not earlier than 120 days after the local committee is appointed under sub. (7) (a).

(c) *Decision concerning arbitration.* Within 15 days after receipt of a petition to initiate arbitration, the board shall issue a decision concerning the petition and notify the applicant and the local committee of that decision.

(d) *Order to continue negotiation.* The board may issue a decision ordering the applicant and the local committee to continue negotiating for at least 30 days after the date of the notice if, in the judgment of the board, arbitration can be avoided by the negotiation of any remaining issues. If the board issues a decision ordering the applicant and the local committee to continue negotiation, the petition to initiate arbitration may be resubmitted after the extended period of negotiation.

(e) *Decision to delay arbitration pending submittal of feasibility report.* The board may issue a decision to delay the initiation of arbitration until the department notifies the board that it has received a feasibility report for the facility proposed by the applicant. The board may decide to delay the initiation of arbitration under this paragraph if the applicant has not made available information substantially equivalent to that in a feasibility report. The petition to initiate arbitration may be resubmitted after the feasibility report is submitted.

(f) *Order for final offers.* The board may issue a decision ordering the applicant and the local committee to submit their respective final offers to the board within 90 days after the date of the notice.

(g) *Failure to submit final offer.* If the local committee fails to submit a final offer within the time limit specified under par. (f), the applicant may continue to seek state approval of the facility, is not required to continue to negotiate or arbitrate under this section and the facility is not subject to any local approval, notwithstanding sub. (5). If the applicant fails to submit a final offer within the time limit specified under par. (f), the applicant may not construct or operate the facility.

(h) *Final offers.* A final offer shall contain the final terms and conditions relating to the facility proposed by the applicant or the local committee and any information or arguments in support of the proposals. Additional supporting information may be submitted at any time.

(i) *Issues and items in final offer.* A final offer may include only issues subject to arbitration under sub. (8). A final offer may include only items offered in negotiation except that a final offer may not include items settled by negotiation and approved under sub. (9) (k).

(j) *Continued negotiation; revised final offers.* Negotiation may continue during the arbitration process. If an issue subject to negotiation is resolved to the satisfaction of both the applicant and the local committee and, if necessary, is approved by the department under sub. (9) (f), it shall be incorporated into a written agreement and the final offers may be amended as provided under par. (n).

(k) *Public hearings.* The local committee may conduct public hearings on the proposed final offer prior to submitting the final offer to the governing bodies under par. (L).

(L) *Submission for approval.* The final offers prepared by the local committee are required to be submitted for approval by resolution of the governing body of each participating municipality before the final offer is submitted to the board.

(m) *Public documents.* The final offers are public documents and the board shall make copies available to the public.

(n) *Amendment of offer.* After the final offers are submitted to the board, neither the applicant nor the local committee may amend its final offer, except with the written permission of the other party. Amendments proposed by the local committee are required to be approved by the participating municipality to which the amendment relates. If the governing body of any participating municipality fails to approve the final offer prepared by the local committee, the applicant may amend those portions of his or her final offer which pertain to that municipality without obtaining written permission from the local committee.

(o) *Public meeting.* Within 30 days after the last day for submitting final offers, the board shall conduct a public meeting in a place reasonably close to the location of the facility to provide an opportunity for the applicant and the local committee to explain or present supporting arguments for their final offers. The board may conduct additional meetings with the applicant and the local committee as necessary to prepare its arbitration award. The board may administer oaths, issue summonses under s. 788.06 and direct the taking of depositions under s. 788.07.

(p) *Arbitration award.* Within 90 days after the last day for submitting final offers under par. (f), the board may issue an arbitration award with the approval of a minimum of 5 board members. If the board fails to issue an arbitration award within this period, the governor shall issue an arbitration award within 120 days after the last day for submitting final offers under par. (f). The arbitration award shall adopt, without modification, the final offer of either the applicant or the local committee except that the arbitration award shall delete those items which are not subject to arbitration under sub. (8) or are not consistent with the legislative findings and intent under subs. (1) and (2). A copy of the arbitration award shall be served on the applicant and the local committee.

(q) *Award is binding; approval not required.* If the applicant constructs and operates the facility, the arbitration award is binding on the applicant and the participating municipalities and does not require approval by the participating municipalities.

(r) *Applicability of arbitration statutes.* Sections 788.09 to 788.15 apply to arbitration awards under this subsection.

(s) *Environmental impact.* An arbitration award under this subsection is not a major state action under s. 1.11 (2).

(11) SUCCESSORS IN INTEREST. Any provision in a negotiated agreement or arbitration award is enforceable by or against the successors in interest of any person directly affected by the award. A personal representative may recover damages for breach for which the decedent could have recovered.

(12) APPLICABILITY. (a) *Solid waste disposal facilities.* 1. This section applies to new or expanded solid waste disposal facilities for which an initial site report is submitted after March 15, 1982, or, if no initial site report is submitted, for which a feasibility report is submitted after March 15, 1982.

2. This section does not apply to modifications to a solid waste disposal facility which do not constitute an expansion of the facility or to a solid waste disposal facility which is exempt from the requirement of a feasibility report under this chapter or by rule promulgated by the department.

(b) *Hazardous waste facilities.* 1. This section applies to all new or expanded hazardous waste facilities for which an initial site report is submitted after March 15, 1982, or, if no initial site report is submitted, for which a feasibility report is submitted after March 15, 1982.

2. Except as provided under subd. 1. and par. (c), only subs. (3) and (5) (a) and (b) apply to a hazardous waste facility which is in existence on May 7, 1982, which has a license, an interim license or a variance under s. 291.25 or 291.31 or the resource conservation and recovery act and which complies with all local approvals applicable to the facility on May 7, 1982.

3. Only subs. (3) and (5) (a) to (c) and (e) apply to a hazardous waste treatment or storage facility which accepts waste only from the licensee.

(c) *Existing solid waste disposal facilities or hazardous waste facilities.* 1. This section applies to an existing solid waste disposal facility or hazardous waste facility which shall be treated as a new or expanded facility upon the adoption of a siting resolution by any affected municipality under sub. (6):

a. At any time during the life of a solid waste disposal facility or a hazardous waste facility if the owner or operator and one or more affected municipalities agree to negotiate and arbitrate under this section.

b. When a negotiated settlement or arbitration award under this section provides for the reopening of negotiations.

c. At any time after the date specified in the feasibility report, if such a date has been specified under s. 289.24 (1), as the proposed date of closure of a solid or hazardous waste disposal facility and if the facility is not closed on or before that date.

2. Except as provided under subd. 1. and pars. (a), (b) and (d), only subs. (3) and (5) (a) and (b) apply to an existing solid waste disposal facility or a hazardous waste facility.

(d) *Nonapplicability to mining waste facilities.* This section does not apply to any waste facility which is part of a prospecting or mining operation with a permit under s. 293.45 or 293.49.

History: 1981 c. 374; 1983 a. 128; 1983 a. 282 ss. 6 to 32, 34; 1983 a. 416 s. 19; 1983 a. 532 s. 36; 1983 a. 538; 1985 a. 182 s. 57; 1987 a. 27, 204, 399; 1987 a. 403 s. 256; 1991 a. 39; 1995 a. 201; 1995 a. 227 s. 626; Stats. 1995 s. 289.33; 1997 a. 35, 241; 1999 a. 83, 150; 2001 a. 38; 2007 a. 63; 2009 a. 28; 2013 a. 14, 80; 2013 a. 173 s. 33.

Cross−reference: See also WFSB, Wis. adm. code.

Design features that affect the operation of a facility are subject to arbitration under s. 144.445 (8) (b) [now s. 289.33 (8) (b)]. Madison Landfills v. Libby Landfill, 188 Wis. 2d 613, 524 N.W.2d 833 (Ct. App. 1993).

Only local approvals that arbitrarily or discriminatorily obstruct the establishment of a waste facility may be set aside by an arbitration award under s. 144.445 [now s. 289.33]. Madison Landfills v. Libby Landfill, 188 Wis. 2d 613, 524 N.W.2d 833 (Ct. App. 1993).

Wisconsin's landfill negotiation/arbitration statute. Ruud and Werner, WBB Nov. 1985.

Down in the dumps and wasted: The need determination in the Wisconsin landfill siting process. 1987 WLR 543.

289.34 Noncompliance with plans or orders. (1) In this section, "applicant" means any natural person, partnership, association or body politic or corporate that seeks to construct a solid waste disposal facility or hazardous waste facility under ss. 289.21 to 289.32.

(2) The department may not issue a favorable determination of feasibility, approve a plan of operation or issue an operating license for a solid waste disposal facility or hazardous waste facility if the applicant or any person owning a 10 percent or greater legal or equitable interest in the applicant or the assets of the applicant either:

(a) Is named in and subject to a plan approved, or an order issued, by the department regarding any solid waste facility or hazardous waste facility in this state and is not in compliance with the terms of the plan or order; or

(b) Owns or previously owned a 10 percent or greater legal or equitable interest in a person or the assets of a person who is named in and subject to a plan approved, or an order issued, by the department regarding any solid waste facility or hazardous waste facility in this state and the person is not in compliance with the terms of the plan or order.

(3) Subsection (2) does not apply if the person named in and subject to the plan or order provides the department with proof of financial responsibility ensuring the availability of funds to comply with the plan or order using a method under s. 289.41.

History: 1995 a. 227 s. 572.

289.35 Shoreland and floodplain zoning. Solid waste facilities are prohibited within areas under the jurisdiction of shoreland and floodplain zoning regulations adopted under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, and 281.31, except that the department may issue permits authorizing facilities in such areas. If the department issues a permit under this section, the permit shall specify the location, height, and size of the solid waste facility authorized under the permit.

History: 1981 c. 374 s. 148; 1983 a. 416 s. 19; 1995 a. 201; 1995 a. 227 s. 638; Stats. 1995 s. 289.35; 2013 a. 1, 80.

289.36 Acquisition of property by condemnation. (1) DEFINITION. In this section, "property" includes any interest in land including an estate, easement, covenant or lien, any restriction or limitation on the use of land other than those imposed by exercise of the police power, any building, structure, fixture or improvement and any personal property directly connected with land.

(2) PROPERTY MAY BE CONDEMNED. Notwithstanding s. 32.03, property intended for use as a solid or hazardous waste facility may be condemned if all of the following conditions are met:

(a) The entity proposing to acquire the property for use as a solid or hazardous waste facility has authority to condemn property for this purpose.

(b) The property is determined to be feasible for use as a solid or hazardous waste facility by the department if that determination is required under s. 289.29.

(c) The property is acquired by purchase, lease, gift or condemnation by a municipality, public board or commission or any other entity, except for the state, so as to bring the property within the limitations on the exercise of the general power of condemnation under s. 32.03 within:

1. Five years prior to the determination of feasibility if a determination of feasibility is required for the facility under s. 289.29.

2. Five years prior to the service of a jurisdictional offer under s. 32.06 (3) if a determination of feasibility is not required for the facility under s. 289.29.

History: 1981 c. 374; 1995 a. 227 s. 628; Stats. 1995 s. 289.36.

SUBCHAPTER IV

LONG−TERM CARE; FINANCIAL RESPONSIBILITY; OPERATION; WAIVERS; EXEMPTIONS; CLOSURE

289.41 Financial responsibility. (1) DEFINITIONS. As used in this section:

(am) "Capital expenditures" means any increase in the fixed assets made during a company's fiscal year.

(b) "Company" means one of the following:

1. Any business operated for profit and any public utility which is applying for or holds a license for the operation of a solid or hazardous waste disposal facility under s. 289.31 or 291.25 directly or through a subsidiary, affiliate, contractor or other entity if the business or public utility guarantees compliance with any closure and long−term care responsibilities of the subsidiary, affiliate, contractor or other entity.

2. Any business operated for profit and any public utility that is required to perform corrective action under s. 291.37.

(c) "Net worth" means the amount of a company's total tangible assets less the company's total liabilities.

(d) "Public utility" means a public utility as defined in s. 196.01 (5) or an electric cooperative organized under ch. 185.

(e) "Sinking fund" means principal debt payments made during a company's fiscal year.

(f) "Tangible assets" means total assets less intangible assets such as goodwill, patents and trademarks.

(1m) LONG−TERM CARE AND FINANCIAL RESPONSIBILITY; TERMINATION. (b) *Proof of financial responsibility.* 1. Except as provided in subd. 2. or 2m., the owner of an approved facility shall maintain proof of financial responsibility as provided in this section during the operation of the approved facility and for 40 years after the closing of the approved facility unless the obligation is extended under par. (f).

2. The owner of an approved facility which ceased to accept solid waste and permanently terminated disposal operations before August 15, 1991, shall maintain proof of financial responsibility as provided in this section for the period specified in the approved plan of operation.

2m. The owner of an approved mining facility that commences operation after June 14, 1996, shall maintain proof of financial responsibility as provided in this section during the operation of the approved mining facility and after the closing of the approved mining facility. The owner's obligation to maintain proof of financial responsibility terminates only as provided in par. (g).

3. Except as provided in subd. 4., the owner of a nonapproved facility that receives or has received household waste shall maintain proof of financial responsibility as provided in this section during the operation of the nonapproved facility and for 40 years after the closing of the nonapproved facility unless the obligation is extended under par. (f).

4. The owner of a nonapproved facility that ceases to accept solid waste and permanently terminates disposal operations before October 9, 1993, is not required to maintain proof of financial responsibility.

(c) *Long−term care responsibility for approved facilities.* Notwithstanding s. 144.441 (2) (c) 1., 1989 stats., the owner's responsibility for the long−term care of an approved facility does not terminate, except that if another person acquires the rights of ownership and is issued under s. 289.46 (1) a new operating license for the approved facility, the owner's responsibility is transferred to that other person upon the issuance of the new operating license.

(f) *Extension of obligation to provide proof of financial responsibility.* If the department determines that it is necessary to protect human health or the environment, the department may require the owner of a solid or hazardous waste disposal facility to provide proof of financial responsibility for the long−term care of the facility for more than 40 years. The department shall notify the owner of the extended obligation to provide proof of financial responsibility before the expiration of the original 40−year period. The department shall promulgate rules establishing the procedure used to determine if it is necessary to protect human health or the environment.

(g) *Proof of financial responsibility for approved mining facility; termination.* 1. The owner of an approved mining facility may apply, at any time at least 40 years after the closing of the facility, to the department for termination of the owner's obligation to maintain proof of financial responsibility for long−term care of the facility. Upon receipt of an application under this subdivision, 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 facility, shall publish the notice on its Internet Web site, and shall provide the notice, upon request, to interested members of the public. The department's notice to interested members of the public may be given through an electronic notification system established by the department. The notice shall include a statement that the owner has applied to terminate the owner's obligation to maintain proof of financial responsibility for the long−term care of the facility, the name and address of the owner, and information indicating where the full text of the application may be viewed on the department's Internet Web site. The notice shall invite the submission of written comments by any person within 30 days after the notice is published. The notice shall describe the methods by which a hearing may be requested under subds. 2. and 3. The department shall distribute a copy of the notice to the owner of the facility. In any hearing on the matter, the burden is on the owner to prove by a preponderance of the evidence that continuation of the requirement to provide proof of financial responsibility for long−term care is not necessary for adequate protection of human health or the environment. Within 120 days after the publication of the notice or within 60 days after any hearing is adjourned, whichever is later, the department shall determine whether proof of financial responsibility for long−term care of the facility continues to be required. For the purpose of determining the date on which notice is provided under this subdivision, the date on which the department first publishes the notice on its Internet Web site shall be considered the date of notice. A determination that proof of financial responsibility for long−term care is no longer required terminates the owner's obligation to maintain proof of financial responsibility for long−term care. The owner may not submit another application under this subdivision until at least 5 years after the previous application has been rejected by the department.

2. Within 30 days after the notice under subd. 1. is published, any county, city, village or town, the applicant or any 6 or more persons may file a written request for an informational hearing on the matter with the department. The request shall indicate the interests of the municipality or persons who file the request and state the reasons why the hearing is requested.

3. Within 30 days after the notice under subd. 1. is published, any county, city, village or town, the applicant or any 6 or more persons may file a written request that the hearing under subd. 2. be treated as a contested case, as provided under s. 227.42. A county, city, village or town, the applicant or any 6 or more persons have a right to have the hearing treated as a contested case only if all of the following apply:

a. A substantial interest of the person requesting the treatment of the hearing as a contested case is injured in fact or threatened with injury by the department's action or inaction on the matter.

b. The injury to the person requesting the treatment of the hearing as a contested case is different in kind or degree from injury to the general public caused by the department's action or inaction on the matter.

c. There is a dispute of material fact.

(2) REQUIREMENT FOR FINANCIAL RESPONSIBILITY. (a) *Disposal facilities.* The owner or operator of a solid or hazardous waste disposal facility shall maintain proof of financial responsibility ensuring the availability of funds for compliance with the closure and long−term care requirements specified in any rule, order, plan of operation or other plan approval during the period specified in sub. (1m) (b) or under sub. (1m) (f).

(b) *Hazardous waste storage and treatment facilities.* The owner or operator of a hazardous waste storage or treatment facility shall maintain proof of financial responsibility ensuring the availability of funds for compliance with all closure requirements specified in the plan of operation.

(c) *Hazardous waste disposal, storage and treatment facilities.* If corrective action is required under s. 291.37, the owner or operator of the hazardous waste facility to which the requirement applies shall maintain proof of financial responsibility ensuring the availability of funds for compliance with the corrective action requirement.

(d) *Unlicensed hazardous waste facilities.* The owner or operator of an unlicensed hazardous waste facility subject to s. 291.29 shall maintain proof of financial responsibility ensuring the availability of funds for compliance with the approved closure plan and, if applicable, the long−term care plan.

(3) STANDARD METHODS OF ESTABLISHING PROOF OF FINANCIAL RESPONSIBILITY. (a) *Standard methods.* The owner or operator of a facility may establish proof of financial responsibility required under sub. (2) (a) to (d) by obtaining any of the following made payable to or established for the benefit of the department and approved by the department:

1. A bond.

2. A deposit.

3. An established escrow account, the assets of which may include the following:

a. Securities issued by the federal government.

b. Debt securities issued by a commission, board, agency, or other instrumentality of the federal government that have a rating that is the highest rating category assigned by Standard & Poor's Corporation, Moody's Investors Service, or other similar nationally recognized rating agency.

c. State bonds issued under subch. I of ch. 18.

d. Corporate bonds that have a rating that is the highest rating category assigned by Standard & Poor's Corporation, Moody's Investors Service, or other similar nationally recognized rating agency. Corporate bonds may not be used to provide more than 50 percent of the required amount of proof of financial responsibility.

4. An irrevocable letter of credit.

4m. An irrevocable trust, the corpus of which may include the following:

a. Securities issued by the federal government.

b. Debt securities issued by a commission, board, agency, or other instrumentality of the federal government that have a rating that is the highest rating category assigned by Standard & Poor's Corporation, Moody's Investors Service, or other similar nationally recognized rating agency.

c. State bonds issued under subch. I of ch. 18.

d. Corporate bonds that have a rating that is the highest rating category assigned by Standard & Poor's Corporation, Moody's Investors Service, or other similar nationally recognized rating agency. Corporate bonds may not be used to provide more than 50 percent of the required amount of proof of financial responsibility.

5. A financial commitment satisfactory to the department to ensure that the owner or operator will comply with the closure and any long−term care requirements specified in the plan of operation or the approved plan under s. 291.29. The department shall consider the request of any owner or operator to establish proof of financial responsibility under this subdivision.

6. If corrective action is required under s. 291.37, a financial commitment satisfactory to the department to ensure that the owner or operator will comply with the requirement. The department shall consider the request of any owner or operator to establish proof of financial responsibility under this subdivision.

(b) *Duration of standard methods.* The department may approve a standard method of establishing proof of financial responsibility under par. (a) which expires before the termination of the owner's obligation to provide proof of financial responsibility if the owner or operator shows to a reasonable degree of certainty that the proof of financial responsibility can be renewed or replaced upon expiration and that the owner or operator has an adequate plan to maintain proof of financial responsibility for the closure and long−term care requirements of the plan until termination of the owner's obligation to provide proof of financial responsibility.

(c) *Changes.* The owner or operator may change from one standard method of establishing proof of financial responsibility under par. (a) to another or to a net worth method of establishing proof of financial responsibility under sub. (4).

(4) NET WORTH METHOD OF ESTABLISHING PROOF OF FINANCIAL RESPONSIBILITY; GENERALLY. (a) *Net worth method.* A company may establish proof of financial responsibility required under sub. (2) (a), (c) or (d) by applying to the department and meeting the net worth requirements.

(b) *Application.* A company which seeks to establish proof of financial responsibility utilizing the net worth method shall submit an application to the department as a part of the initial license application, written submissions required under s. 291.37 or annual review procedure which includes a copy of the most recent annual audited financial statements which were distributed to owners, stockholders or other persons with a financial interest in the company and the opinion of an independent certified public accountant.

(c) *Opinion of certified public accountant.* The opinion of the independent certified public accountant shall include all of the following based upon generally accepted accounting principles:

1. All data and information necessary to determine if the company complies with minimum financial standards under sub. (6) or (7).

2. Statements of any substantive qualifications or reservations the certified public accountant has concerning the financial statements and concerning the ability of the company to meet its obligations.

3. Statements of all material contingent liabilities.

(5) DEPARTMENT DETERMINATION UNDER NET WORTH METHOD. (a) *Initial determination.* Except as provided under par. (b), if the department determines that a company complies with minimum financial standards under sub. (6) and if the department determines that none of the contingent liabilities or other data or information provided in the financial statements or opinion of the certified public accountant disqualifies the company, then the department shall find that the company meets the net worth requirements which constitutes proof of financial responsibility for that year.

(b) *Initial determination; public utilities.* If the department determines that a public utility complies with minimum financial standards under sub. (7), if the department determines that none of the contingent liabilities or other data or information in the financial statements or opinion of the certified public accountant disqualifies the public utility and if the department determines that the public utility complies with minimum security requirements under sub. (9), then the department shall find that the utility meets

the net worth requirements which constitutes proof of financial responsibility for that year.

(c) *Adverse determination.* If the department determines that contingent liabilities or other data or information provided in the opinion of the certified public accountant disqualifies a company under par. (a) or (b), the department shall issue findings of fact to support this determination and provide the company with an opportunity for a hearing.

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

(e) *Special review.* If the department has reason to believe that a company no longer meets the net worth requirements, it may require the company to submit information and materials to show compliance at any time.

(f) *Failure to meet net worth requirements.* If a company does not meet net worth requirements during the annual review or at any special review, the company shall establish proof of financial responsibility utilizing one of the standard methods under sub. (3) within 45 days after the department issues its findings.

(6) COMPLIANCE WITH MINIMUM FINANCIAL STANDARDS UNDER NET WORTH METHOD. (a) *Compliance.* Except as provided under par. (j), (k), (L), or (m) or sub. (7), calculations and determinations based on data and information provided in the opinion of the certified public accountant are required to establish that the company satisfies each of the criteria under pars. (b) to (i) in order to comply with minimum financial standards.

(b) *Net worth to closure, long−term care and corrective action cost ratio.* The net worth of the company at the end of its most recently completed fiscal year equals or exceeds 6 times the estimated total cost of compliance with the closure and any long−term care requirements specified in the plan of operation or the approved plan under s. 291.29 plus the costs of any corrective action required under s. 291.37.

(c) *Minimum net worth.* The net worth of a company at the end of its most recently completed fiscal year equals or exceeds $10,000,000.

(d) *Net fixed assets to total assets ratio.* The quotient of the net fixed assets divided by total tangible assets at the end of the company's most recently completed fiscal year exceeds 0.3.

(e) *Working capital to total liabilities ratio.* The quotient of the working capital provided from operations divided by total liabilities at the end of the company's most recently completed fiscal year exceeds 0.1.

(f) *Total liabilities to net worth ratio.* The quotient of the total liabilities divided by net worth at the end of the company's most recently completed fiscal year is less than 1.5.

(g) *Credit worthiness.* The quotient of the total of the working capital provided from operations at the end of the company's most recently completed fiscal year plus interest payments made during that year plus rental expenses incurred during that year, used as a dividend, divided by the total of interest payments made during that year plus rental expenses incurred during that year plus the product of the sinking fund at the end of that year times the tax factor, used as the divisor, exceeds 2.0. The tax factor equals the quotient of one, used as the dividend, divided by the total of one less the sum of the average federal income tax rate plus the average Wisconsin tax rate calculated in that year, used as the divisor.

(h) *Average self−financing measure.* The average for the self−financing measures for the company's 5 previous fiscal years exceeds 0.8. The self−financing measure equals the quotient of the working capital provided from operations at the end of the company's fiscal year less dividend payments made during that year, used as the dividend, divided by the capital expenditures made during that year, used as the divisor.

(i) *Absence of qualifiers in certified public accountant's opinion.* Information provided in the opinion of the certified public accountant does not indicate any of the following qualifications:

1. Accounting practices or calculations made by or suspected to have been made by the company in its financial statements which deviate from generally accepted accounting principles.

2. Any limitation on the scope of the audit procedures.

3. Any indication that materials presented in or calculations made in the financial statement are unreliable because of future events not susceptible to reasonable estimation.

(j) *Variance from one criterion.* If calculations and determinations based on data and information provided in the opinion of the certified public accountant establish that the company satisfies both the criteria under pars. (b) and (c) and all but one of the criteria under pars. (d) to (i) and if the department finds that the company meets minimum variance requirements, the department may grant a variance and issue a determination stating that the company complies with minimum financial standards. In order to meet minimum variance requirements:

1. The deviation from the criterion may not be significant;

2. The company is required to have satisfied the criterion consistently in previous fiscal years; and

3. The company is required to establish that it is likely to satisfy the criterion in future fiscal years.

(k) *Exception from one criterion.* Paragraph (e) does not apply to a company that owns a solid waste facility at which more than one−half, by volume, of the solid waste disposed of is high−volume industrial waste if the company satisfies the criteria under pars. (b) to (d) and (f) to (i).

(L) *Alternative criteria for certain companies.* Paragraphs (e) and (f) do not apply to a company that owns a solid waste facility at which more than one−half, by volume, of the solid waste disposed of is high−volume industrial waste if the company satisfies the criteria under pars. (b) to (d) and (g) to (i) and one of the following criteria:

1. The company received a rating for its senior unsubordinated debt of "AAA," "AA," "A," or "BBB" from Standard and Poor's Corporation, or of "Aaa," "Aa," "A," or "Baa" from Moody's Investor Service, Incorporated, in the most recent issuance of ratings by either firm.

2. The quotient of the sum of net income plus depreciation, plus depletion, plus amortization, minus $10,000,000, divided by total liabilities at the end of the company's most recently completed fiscal year exceeds 0.1.

(m) *Alternative criteria for waste wood facility.* Paragraph (d) does not apply to a company that owns a solid waste facility that processes waste wood if more than 50 percent, by volume, of the waste wood is processed to be used for energy recovery and the company satisfies the criteria under pars. (b), (c), and (e) to (i), and the following criteria:

1. The quotient of short−term assets divided by short−term liabilities at the end of the company's most recent fiscal year equals or exceeds 4.0.

2. The quotient of the sum of net income plus interest expense, plus depreciation, plus amortization, less capital expenditures, less dividends for the company's most recently completed fiscal year divided by the sum of interest expenses and mandatory payments on funded debt for that year equals or exceeds 4.0.

(7) COMPLIANCE WITH MINIMUM FINANCIAL STANDARDS UNDER NET WORTH METHOD; PUBLIC UTILITIES. (a) *Compliance.* A public utility is required to satisfy both the criteria under pars. (b) and (c) in order to comply with minimum financial standards.

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

tions based on data and information provided in the opinion of the certified public accountant are required to establish that the utility satisfies each of the criteria under sub. (6) (b), (c) and (i); and

(c) *Minimum bond ratings.* The public utility received a bond rating of "A" or better from the Moody's investor service, incorporated, or "A" or better from Standard and Poor's corporation in the most recent issuance of ratings by either firm.

(9) MINIMUM SECURITY REQUIREMENTS UNDER NET WORTH METHOD; PUBLIC UTILITIES; ASSESSMENT ORDER. (a) *Minimum risk pool.* A public utility may comply with minimum security requirements under a risk pool arrangement if at least 2 public utilities utilize this arrangement.

(b) *Inability to meet closure and long−term care or corrective action costs.* If a public utility which utilizes the risk pool arrangement does not comply with the closure and long−term care requirements specified in any plan of operation or approved plan under s. 291.29 or with any corrective action required under s. 291.37 and if the department or the department of justice is unable to obtain compliance with these requirements after appropriate legal action because of bankruptcy, insolvency or the financial inability of the utility to comply with these requirements, then the department is authorized to enter an assessment order.

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

(10) SALE OF FACILITY. A person acquiring ownership, possession or operation of a solid or hazardous waste facility shall establish proof of financial responsibility as required under sub. (2). The previous owner or operator is responsible and shall maintain any required proof of financial responsibility until the person acquiring ownership, possession or operation of the facility establishes any required proof of financial responsibility.

(11) CLOSURE, LONG−TERM CARE AND CORRECTIVE ACTION. (a) *Failure to comply with closure and long−term care requirements.* If the owner or operator of the facility fails to comply with the closure and any long−term care requirements in any plan of operation or approved plan under s. 291.29:

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

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

4. The department may request the department of justice to initiate court action against the owner or operator to recover moneys sufficient to pay the cost of complying with the closure and long−term care requirements of the plan of operation or approved plan under s. 291.29. Any moneys recovered in this type of action or as a settlement in anticipation of this type of action shall be credited to the waste management fund.

(am) *Failure to comply with corrective action requirements.* If the owner or operator of the facility fails to comply with any corrective action requirements under s. 291.37:

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

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

4. The department may request the department of justice to initiate court action against the owner or operator to recover moneys sufficient to pay the cost of complying with a corrective action required under s. 291.37. Any moneys recovered in this type of action or as a settlement in anticipation of this type of action shall be credited to the waste management fund.

(b) *Compliance with closure and long−term care requirements.* 1. If the owner or operator of a waste facility fails to comply with the closure and any long−term care requirements in any plan of operation or approved plan under s. 291.29, the department may take action or contract with a person to take action to comply with these requirements from moneys obtained for that purpose under par. (a).

2. If the owner or operator of an approved facility for which the plan of operation was approved under s. 289.30 (6) before August 9, 1989, fails to comply with long−term care requirements in the plan of operation after the requirement to provide proof of financial responsibility expires under sub. (1m) (b) or (f) and if the department takes reasonable administrative and legal action to require compliance or to obtain moneys under par. (a) 4., then the department may take action or contract with a person to take action to comply with the requirements even though no moneys have been obtained under par. (a).

(bm) *Compliance with corrective action requirements.* If the owner or operator of a waste facility fails to comply with any corrective action required under s. 291.37, the department may take action or contract with a person to take action to comply with a corrective action required under s. 291.37 from moneys obtained for that purpose under par. (am).

(c) *Prevention of imminent hazard; closure and long−term care.* If the owner or operator of an approved facility for which the plan of operation was approved under s. 289.30 (6) before August 9, 1989, fails to comply with the closure and any long−term care requirements in any plan of operation during the period for which the owner or operator is required to provide proof of financial responsibility, if the department determines that the failure to comply with these requirements presents an imminent or substantial danger to the health or environment and if the department takes reasonable administrative and legal action to require compliance or to obtain moneys under par. (a), then the department may take action or contract with a person to take action to comply with these requirements even though no moneys have been obtained under par. (a).

(cm) *Prevention of imminent hazard; corrective action.* If the owner or operator of an approved facility for which the plan of operation was approved under s. 289.30 (6) before August 9, 1989, fails to comply with any corrective action required under s. 291.37, if the department determines that the failure to comply with a corrective action requirement presents an imminent or substantial danger to the health or environment and if the department takes reasonable administrative and legal action to require compliance or to obtain moneys under par. (am), then the department may take action or contract with a person to take action to comply with a corrective action required under s. 291.37 even though no moneys have been obtained under par. (am).

(12) NO ENVIRONMENTAL IMPACT STATEMENT REQUIREMENTS. A determination under this section does not constitute a major state action under s. 1.11 (2).

History: 1981 c. 374; 1983 a. 27; 1983 a. 53 s. 114; 1985 a. 29 s. 3202 (39); 1987 a. 384; 1989 a. 31, 359; 1991 a. 31, 39; 1993 a. 135; 1995 a. 63; 1995 a. 227 ss. 588,

617 to 624; Stats. 1995 s. 289.41; 1995 a. 377 ss. 1 to 3; 1997 a. 35 ss. 327, 328, 396; 2001 a. 16; 2011 a. 167; 2013 a. 168 s. 21; 2013 a. 281; 2015 a. 50.

Cross−reference: See also ch. NR 520, Wis. adm. code.

289.42 Operation of facilities. (1) (a) The department shall, by rule, establish a program for the certification of persons participating in or responsible for the operation of solid waste disposal facilities. The department shall do all of the following:

1. Identify those persons or positions involved in the operation of a solid waste disposal facility who are required to obtain certification.

2. Establish the requirements for and term of initial certification and requirements for recertification upon expiration of that term. At a minimum, the department shall require applicants to complete a program of training and pass an examination in order to receive initial certification.

3. Establish different levels of certification and requirements for certification for different sizes or types of facilities, as the department determines is appropriate.

4. Impose fees for the operator training and certification program, except that the department may not impose a fee on an individual who is eligible for the veterans fee waiver program under s. 45.44.

5. Require that there be one or more certified operators on the site of a solid waste disposal facility, except for a facility designed for the disposal of high−volume industrial waste, at all times during the facility's hours of operation.

(b) The department may not apply the requirements established under par. (a) to a nonapproved facility until January 1, 1992.

(c) The training required under par. (a) 2. may be conducted by the department or by another person with the approval of the department.

(d) The department may suspend or revoke a solid waste disposal facility's operating license if persons at the facility fail to obtain certification required under par. (a) 1. or for failure to have a certified operator on the site as required under par. (a) 5.

(e) The department may suspend or revoke an operator's certification for failure to comply with this chapter, rules promulgated under this chapter or conditions of operation made applicable to a solid waste disposal facility by the department.

(2) (a) No person engaged in the construction, operation or maintenance of a solid waste disposal facility or hazardous waste disposal facility may dismiss, discipline, demote, transfer, reprimand, harass, reduce the pay of, discriminate against or otherwise retaliate against any employee, or threaten to take any of those actions, because the employee reported to any supervisor, appointing authority, law enforcement official, member of the governing body of the local governmental unit in which the solid waste disposal facility or hazardous waste disposal facility is located or the department any information gained by the employee which the employee reasonably believes demonstrates a violation of this chapter or rules promulgated under this chapter.

(b) Paragraph (a) does not restrict the right of an employer to take appropriate disciplinary action against an employee who knowingly makes an untrue statement or discloses information the disclosure of which is expressly prohibited by state or federal law.

(c) 1. Any employee who believes that his or her rights under par. (a) have been violated may, within 30 days after the violation occurs or the employee obtains knowledge of the violation, whichever is later, file a written complaint with the department specifying the nature of the retaliatory action or threat of retaliatory action and requesting relief. The department shall investigate the complaint and shall determine whether there is probable cause to believe that a violation of par. (a) has occurred. If the department finds that probable cause exists, it shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved, the department shall proceed with notice and a contested case hearing on the complaint as provided in ch. 227. The hearing shall be held within 60 days after receipt of the complaint by the department, unless the parties to the proceeding agree otherwise.

2. The department shall issue its decision and order on the complaint within 30 days after the hearing. If the department finds that a violation of par. (a) has occurred, it may order the employer to take action to remedy the effects of the violation, including reinstating the employee, providing back pay to the employee or taking disciplinary action against employees responsible for the violation.

(d) This subsection does not limit other protections or remedies available to an employee, including those granted by ordinance, statute, rule, contract or collective bargaining agreement.

History: 1995 a. 227 ss. 531, 532, 991; 2011 a. 209.

Cross−reference: See also ch. NR 524, Wis. adm. code.

289.43 Waivers; exemptions. (1) DEFINITION. In this section, "recycling" means the process by which solid waste is returned to productive use as material or energy, but does not include the collection of solid waste.

(2) WAIVER; EMERGENCY CONDITION. The department may waive compliance with any requirement of ss. 289.21 to 289.32, 289.47, 289.53 or 289.95 or shorten the time periods under ss. 289.21 to 289.32, 289.47, 289.53 or 289.95 provided to the extent necessary to prevent an emergency condition threatening public health, safety or welfare.

(3) WAIVER; RESEARCH PROJECTS. The intent of this subsection is to encourage research projects designed to demonstrate the feasibility of recycling certain solid wastes while providing adequate and reasonable safeguards for the environment. The department may waive compliance with the requirements of this chapter for a project developed for research purposes to evaluate the potential for the recycling of high−volume industrial waste if the following conditions are met:

(a) The project is designed to demonstrate the feasibility of recycling solid waste or the feasibility of improved solid waste disposal methods.

(b) The department determines that the project is unlikely to violate any law relating to surface water or groundwater quality including this chapter or ch. 160 or 283.

(c) The department reviews and approves the project prior to its initiation.

(d) The owner or operator of the project agrees to provide all data, reports and research publications relating to the project to the department.

(e) The owner or operator of the project agrees to take necessary action to maintain compliance with surface water and groundwater laws, including this chapter and chs. 160 and 283 and to take necessary action to regain compliance with these laws if a violation occurs because of the functioning or malfunctioning of the project.

(4) EXEMPTION FROM LICENSING OR REGULATION; DEVELOPMENT OF IMPROVED METHODS. For the purpose of encouraging the development of improved methods of solid waste disposal, the department may specify by rule types of solid waste facilities that are not required to be licensed under ss. 289.21 to 289.32 or types of solid waste that need not be disposed of at a licensed solid waste disposal facility.

(5) EXEMPTION FROM REGULATION; SINGLE–FAMILY WASTE DISPOSAL. The department may not regulate under chs. 281, 285 or 289 to 299 any solid waste from a single family or household disposed of on the property where it is generated.

(6) EXEMPTION FROM LICENSING; AGRICULTURAL LANDSPREADING OF SLUDGE. The department may not require a license under ss. 289.21 to 289.32 for agricultural land on which nonhazardous sludges from a treatment work, as defined under s. 283.01 (18), are land spread for purpose of a soil conditioner or nutrient.

(6m) EXEMPTION FROM LICENSING, AGRICULTURAL USE OF WOOD ASH. No license is required under ss. 289.21 to 289.32 for the agricultural use of wood ash.

(7) EXEMPTION FROM LICENSING; RECYCLING OF HIGH−VOLUME INDUSTRIAL WASTE. (a) Any person who generates, treats, stores or disposes of high−volume industrial waste may request the department to exempt an individual solid waste facility or specified types of solid waste facilities from this chapter for the purpose of allowing the recycling of any high−volume industrial waste.

(b) A person who requests an exemption under par. (a) shall provide any information requested by the department relating to the characteristics of the high−volume industrial waste, the characteristics of the site of the recycling and the proposed methods of recycling.

(c) The department shall approve the requester's exemption proposal if the department finds that the proposal, as approved, will comply with this chapter and chs. 30, 31, 160 and 280 to 299 and ss. 1.11, 23.40, 59.692, 59.693, 60.627, 61.351, 61.353, 61.354, 62.231, 62.233, 62.234 and 87.30. If the proposal does not comply with one or more of the requirements specified in this paragraph, the department shall provide a written statement describing how the proposal fails to comply with those requirements. The department shall respond to an application for an exemption under this subsection within 90 days.

(d) The department may require periodic testing and may impose other conditions on any exemption granted under this subsection. The department may require a person granted an exemption under this subsection to identify the location of any site where high−volume industrial waste is recycled.

(e) 1. Each applicant for an exemption under this subsection shall submit a nonrefundable fee of $500 with the application to cover the department's cost for the initial screening of the application. The department may waive this fee if the cost of the initial screening to the department will be minimal.

2. The department shall, by rule, establish fees for approved applications which, together with the $500 application fees, shall, as closely as possible, equal the actual cost of reviewing applications.

3. All fees collected under this paragraph shall be credited to the appropriation under s. 20.370 (2) (dg).

(8) EXEMPTION FROM REGULATION; LOW−HAZARD WASTE. (a) The department shall conduct a continuing review of the potential hazard to public health or the environment of various types of solid wastes and solid waste facilities. The department shall consider information submitted by any person concerning the potential hazard to public health or the environment of any type of solid waste.

(b) If the department, after a review under par. (a), finds that regulation under this chapter is not warranted in light of the potential hazard to public health or the environment, the department shall either:

1. Promulgate a rule specifying types of solid waste that need not be disposed of at a licensed solid waste disposal facility.

2. On a case−by−case basis, exempt from regulation under this chapter specified types of solid waste facilities.

3. Authorize an individual generator to dispose of a specified type of solid waste at a site other than a licensed solid waste disposal facility.

4. Authorize use of the solid waste in public works projects.

(c) The department may require periodic testing of solid wastes and impose other conditions on exemptions granted under par. (b).

(9) EXEMPTION FROM REGULATION; ANIMAL CARCASSES. The department may not regulate under chs. 281, 285 or 289 to 299 any animal carcass buried or disposed of, in accordance with ss. 95.35 and 95.50, on the property owned or operated by the owner of the carcass, if the owner is a farmer, as defined under s. 102.04 (3).

History: 1995 a. 227 ss. 574, 577 to 580; 1997 a. 27, 35; 2003 a. 88; 2007 a. 20; 2013 a. 80.

Cross−reference: See also ch. NR 538, Wis. adm. code.

Exemption from regulation under s. 144.44 (7) (g) (now s. 289.43 (8)) preempts municipal regulation. DeRosso Landfill Co. v. City of Oak Creek, 200 Wis. 2d 642, 547 N.W.2d 770 (1996), 94−0440.

289.44 Exemption for certain alcohol fuel production systems. (1) DEFINITIONS. As used in this section:

(a) "Distillate waste product" means solid, semisolid or liquid by−products or wastes from the distillation or functionally equivalent process of an alcohol fuel production system.

(b) "Environmentally sound storage facility" means a facility, including a holding lagoon, which is used to store distillate waste products so that no waste products from the facility enter or leach into the waters of the state.

(c) "Private alcohol fuel production system" means an alcohol fuel production system from which no alcohol is sold and from which all the alcohol is used as a fuel by the owner.

(2) EXEMPTION. No permit, license or plan approval is required under this chapter for the owner of a private alcohol fuel production system to establish, construct or operate a system for the treatment, storage or disposal of distillate waste products if the distillate waste product is stored in an environmentally sound storage facility and disposed of using an environmentally safe land spreading technique and the storage, treatment or disposal is confined to the property of the owner.

History: 1979 c. 221; 1995 a. 227 s. 537.

289.445 Exemption for certain fruit and vegetable washing facilities. (1) DEFINITIONS. As used in this section:

(b) "Washing station" has the meaning given in s. 283.62 (1) (b).

(c) "Wash water" has the meaning given in s. 283.62 (1) (c).

(d) "Wash water storage facility" has the meaning given in s. 283.62 (1) (d).

(2) EXEMPTION. No permit, license or, except as provided in par. (d), plan approval is required under this chapter for the owner of a washing station to establish, construct or operate a solid waste facility for the treatment, storage or disposal of wash water or to compost or land spread plant parts separated from wash water if all of the following requirements are met:

(a) The washing station is not adjacent to or operated as part of a food processing plant, as defined in s. 97.29 (1) (h).

(b) All wash water is either stored in a sealed wash water storage facility or is dispersed on land owned or leased by the owner of the washing station in a manner which avoids ponding, runoff or nuisance conditions and in accordance with acceptable agricultural practices or acceptable practices for the land spreading of waste.

(c) All plant parts that are separated from wash water are either composted or stored in a plant parts storage facility and disposed of using an environmentally safe land spreading technique. The treatment, storage, disposal or composting under this paragraph must be confined to property owned or leased by the owner of the washing station.

(d) For a washing station that anticipates operating at least 100 days per year or that operated at least 100 days during the immediately preceding year, do all of the following:

1. Register annually with the department as a washing station.

2. Submit annually an operating plan that implements best management practices and that is approved by the department.

3. Operate only in accordance with the approved operating plan.

History: 1995 a. 99; 1995 a. 227 s. 538; Stats. 1995 s. 289.445.

289.45 Solid waste storage. No person may store or cause the storage of solid waste in a manner which causes environmental pollution.

History: 1981 c. 374.; 1995 a. 227 s. 539; Stats. 1995 s. 289.45.

289.46 Transference of responsibility. (1) Any person acquiring rights of ownership, possession or operation in a licensed solid or hazardous waste facility at any time after the facility begins to accept waste is subject to all requirements of the license approved for the facility including any requirements relating to long−term care of the facility and is subject to any negotiated agreement or arbitration award related to the facility under s. 289.33. 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 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. 291.05 or 291.07, if applicable.

(2) Any person having or acquiring rights of ownership in land where a solid or hazardous waste disposal facility was previously operated may not undertake any activities on the land which interfere with the closed facility causing a significant threat to public health, safety or welfare.

History: 1977 c. 377; 1981 c. 374; 1983 a. 410 ss. 62, 2202 (38); Stats. 1983 s. 144.444; 1989 a. 31; 1995 a. 227 s. 625; Stats. 1995 s. 289.46.

289.47 Closure notice. At least 120 days prior to the closing of a solid waste disposal facility or at least 180 days prior to the closing of a hazardous waste facility, the owner or operator shall notify the department in writing of the intent to close the facility.

History: 1995 a. 227 s. 573.

SUBCHAPTER V

FACILITIES; REGULATION OF SPECIFIC FACILITY OR WASTE TYPES

289.51 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.

(am) "Household waste" means any solid waste derived from a household, hotel, motel, bunkhouse, ranger station, crew quarters, campground, picnic ground or day−use recreation area.

(b) "Open burning" means the combustion, except in a properly operated air curtain destructor, of solid waste if that combustion lacks any of the following:

1. Control of combustion air to maintain adequate temperature for efficient combustion.

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion.

3. Control of the emission of the combustion products.

(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 facilities if:

(a) The open burning operation serves a population equivalent of less than 10,000 or, if the operation is controlled by more than one municipality, a population equivalent of less than 2,500 for each additional controlling 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 and, if the open burning operation serves a population equivalent of more than 2,500, the open burning includes only wood and paper which is separated from other solid waste.

(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 or municipal solid waste regulations, or any state air pollution control rules required to be adopted under applicable federal statutes or regulations.

(3) The department may not require that ash resulting from the burning of a structure for practice or instruction of fire fighters or the testing of fire fighting equipment be disposed of in a landfill licensed under s. 289.31.

History: 1995 a. 227 s. 535; Stats. 1995 s. 289.51; 2009 a. 28.

289.53 Commercial PCB waste storage and treatment facilities. (1) DEFINITIONS. In this section:

(a) "Commercial" means providing services to persons other than the owner or operator.

(b) "PCBs" has the meaning specified under s. 299.45 (1).

(c) "PCB waste" means any product containing PCBs, as defined under s. 299.45 (1) (c), which is subject to regulation under s. 299.45 after the product becomes a solid waste. This term also means any material which is contaminated by the discharge, as defined under s. 292.01 (3), of a substance containing PCBs subject to regulation under s. 292.11.

(2) FEASIBILITY REPORT AND RELATED PROVISIONS. Except as provided under sub. (6), no person may establish or construct a commercial PCB waste storage or treatment facility unless the person complies with the requirement under ss. 289.23 to 289.29 in the same manner as if the facility were a solid waste disposal facility including each of the following:

(a) Submitting a feasibility report under s. 289.23 (1) to determine whether the site has potential for use in establishing a PCB waste storage or treatment facility.

(b) Complying with requirements for the preparation and contents of a feasibility report under s. 289.24 (1) including any special requirements for PCB waste storage or treatment facilities.

(c) Following the notice, hearing, procedure and other requirements under ss. 289.23 to 289.29 including any environmental impact requirements.

(3) PLAN OF OPERATION AND RELATED PROVISIONS. Except as provided under sub. (6), no person may establish, construct or operate a commercial PCB waste storage or treatment facility unless the person complies with the requirements under s. 289.30 as if the facility were a solid waste disposal facility including all of the following:

(a) Submitting a plan of operation which complies with requirements for preparation and contents specified under s. 289.30 (4) including any special requirements for PCB waste storage or treatment facilities except the department may waive any requirement for proof of financial responsibility for long−term care.

(b) Constructing the facility in accordance with an approved plan of operation as required under s. 289.30 (8).

(c) Operating the facility in accordance with the approved plan of operation subject to the sanctions under s. 289.30 (9).

(4) FINANCIAL RESPONSIBILITY REQUIREMENTS. Except as provided under sub. (6), no person may establish or construct a com-

mercial PCB waste storage or treatment facility unless the person complies with s. 289.41.

(5) LICENSE REQUIREMENT. Except as provided under sub. (6), no person may operate a commercial PCB waste storage or treatment facility unless the person obtains an operating license under s. 289.31.

(6) EXCEPTIONS. The department may exempt a person establishing, constructing or operating certain categories of facilities which store or treat PCB waste or which store or treat certain types, amounts or concentrations of PCB waste from the provisions of this section.

(7) APPLICABILITY. This section applies to any facility which is not otherwise subject to ss. 289.21 to 289.32.

History: **History:** 1995 a. 227 s. 582.

289.54 Disposal of certain dredged materials. (1) In this section, "PCBs" has the meaning given in s. 299.45 (1) (a).

(2) The department may not approve a request by the operator of a solid waste disposal facility to accept dredged materials that contain PCBs or heavy metals in a concentration of less than 50 parts per million for disposal in the solid waste disposal facility until after the department holds a public meeting in the city, village or town in which the solid waste disposal facility is located. At the public meeting, the department shall describe the nature of the requested disposal and shall solicit public comment.

History: 1999 a. 9.

289.55 Tire dumps. (1) DEFINITIONS. In this section:

(a) "Nuisance" means an unreasonable danger to public health, safety or welfare or the environment.

(am) "Recovery activity" means a project designed to reduce the number or volume of waste tires, to recycle waste tires or to recover waste tires.

(b) "Tire dump" means any location that is used for storing or disposing of waste tires or solid waste resulting from manufacturing tires.

(c) "Waste tire" means a tire that is no longer suitable for its original purpose because of wear, damage or defect.

(2) DEPARTMENT AUTHORITY; ABATEMENT. If the department determines that a tire dump is a nuisance, it shall notify the person responsible for the nuisance and request that the waste tires or the solid waste resulting from manufacturing tires be processed or removed within a specified period. If the person fails to take the requested action within the specified period, the department shall order the person to abate the nuisance within a specified period. If the person responsible for the nuisance is not the owner of the property on which the tire dump is located, the department may order the property owner to permit abatement of the nuisance. If the person responsible for the nuisance fails to comply with the order, the department may take any action necessary to abate the nuisance, including entering the property where the tire dump is located and confiscating the waste tires or the solid waste resulting from manufacturing tires, or arranging to have the waste tires or the solid waste resulting from manufacturing tires processed or removed.

(2r) ENFORCEMENT ACTION. To carry out a nuisance abatement under sub. (2), the department may refer a nuisance abatement to the attorney general for enforcement action.

(3) APPLICABILITY. This section does not apply to any of the following:

(a) A retail business premises where tires are sold if no more than 500 waste tires are kept on the premises at one time.

(b) The premises of a tire retreading business if no more than 3,000 waste tires are kept on the premises at one time.

(c) A premises where tires are removed from motor vehicles in the ordinary course of business if no more than 500 waste tires are kept on the premises at one time.

(d) A solid waste disposal facility where no more than 60,000 waste tires are stored above ground at one time if all tires received for storage are processed, buried or removed from the facility within one year after receipt.

(e) A site where no more than 250 waste tires are stored for agricultural uses.

(f) A site where a recovery activity is carried on if no more than a 6−month inventory of tires is kept on the site.

(g) A site where waste tires are stored for use in constructing artificial reefs in waters of the state.

(h) An artificial reef constructed of waste tires.

(i) A construction site where waste tires are stored for use or used in road surfacing and construction of embankments.

(j) A solid waste disposal facility where waste tires are buried in compliance with rules promulgated by the department.

(4) ABATEMENT PRIORITIES. The order of priority for the department's abatement activities under sub. (2) shall be as follows:

(a) Tire dumps determined by the department to contain more than 1,000,000 tires.

(b) Tire dumps which constitute a fire hazard or threat to public health.

(c) Tire dumps in densely populated areas.

(d) All other tire dumps.

(5) RECOVERY OF EXPENSES. The department may ask the attorney general to initiate a civil action to recover from the person responsible for the nuisance the reasonable and necessary costs incurred by the department for its nuisance abatement activities and its administrative and legal expenses related to the abatement. The department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary.

(6) OTHER ABATEMENT. This section does not change the existing authority of the department to enforce any existing laws or of any person to abate a nuisance. The department may reimburse a person for the costs of any such abatement.

History: 1987 a. 27, 110; 1987 a. 403 s. 256; 1989 a. 335 s. 89; 1995 a. 27; 1995 a. 227 s. 630; Stats. 1995 s. 289.55; 1997 a. 27.

289.57 Disposal and treatment records. (1) SUBMISSION OF INFORMATION. The owner or operator of each solid waste treatment facility at which solid waste is converted into fuel or burned and of each solid waste disposal facility shall annually submit to the department a report containing all of the following information:

(a) The name of the owner of the facility.

(b) The location of the facility.

(c) For a solid waste disposal facility, the remaining capacity available for disposal.

(d) A list of all licensed haulers transporting waste to the facility for disposal or treatment in the previous year.

(e) A list of the states of origin of solid waste disposed of or treated at the facility in the previous year and the amount, by weight, of that solid waste originating in each state.

(2) MAINTENANCE OF RECORDS. Except as provided in s. 289.09 (2) (a) 2., the department shall separately maintain as a public record, for each solid waste facility, the reports required by sub. (1).

History: 1989 a. 335; 1995 a. 227 s. 633; Stats. 1995 s. 289.57.

289.59 Disposal and burning of low−level radioactive waste. (1) DEFINITION. In this section, "low−level radioactive waste" has the meaning given in s. 16.11 (2) (m).

(2) PROHIBITIONS. (a) No person may dispose of low−level radioactive waste that is determined by the federal nuclear regulatory commission under 42 USC 2021j to be below regulatory concern in a landfill or a hazardous waste disposal facility unless the landfill or hazardous waste disposal facility is licensed for the disposal of low−level radioactive waste by the federal nuclear regulatory commission or by this state under an agreement under 42 USC 2021 that grants this state the authority to regulate the disposal of low−level radioactive waste.

(b) No person may burn in an incinerator low−level radioactive waste that is determined by the federal nuclear regulatory commission under 42 USC 2021j to be below regulatory concern.

History: 1991 a. 50; 1995 a. 115; 1995 a. 227 s. 639; Stats. 1995 s. 289.59.

SUBCHAPTER VI

FEES; FUNDS

289.61 License and review fees. (1) The department shall adopt by rule a graduated schedule of reasonable license and review fees to be charged for solid waste license and review activities.

(2) Solid waste license and review activities consist of reviewing feasibility reports, plans of operation, closure plans and license applications, issuing determinations of feasibility, plan of operation approvals and operating licenses, inspecting construction projects and taking other actions in administering ss. 289.21 to 289.32, 289.43, 289.47, 289.53 and 289.95.

(3) The department shall establish solid waste review fees at a level anticipated to recover the solid waste program staff review costs of conducting solid waste review activities.

History: 1995 a. 227 s. 583.

289.62 Tonnage fees. (1) IMPOSITION OF TONNAGE FEE ON NONAPPROVED FACILITIES; EXCEPTION; USE. (a) *Imposition of tonnage fee.* Except as provided under par. (b), the owner or operator of a nonapproved facility shall pay periodically to the department a tonnage fee for each ton or equivalent volume of solid or hazardous waste received and disposed of at the facility during the preceding reporting period. The department may determine by rule the volume which is equivalent to a ton of waste.

(b) *Exemption from tonnage fees; certain materials used in the operation of the facility.* Solid waste materials approved by the department for lining, daily cover or capping or for constructing berms, dikes or roads within a solid waste disposal facility are not subject to the tonnage fee imposed under par. (a).

(f) *Reduction of or exemption from tonnage fees.* The total annual tonnage fees for all solid waste received by a nonapproved facility shall be reduced by the amount of the base fee under s. 289.67 (3) for that facility. If the base fee for a nonapproved facility under s. 289.67 (3) is greater than the annual tonnage fee imposed under par. (a) for that facility, the solid or hazardous waste received by the facility is exempt from the tonnage fee for that year. The department shall establish methods by rule for estimating the total annual tonnages for all solid and hazardous wastes received by a nonapproved facility. If an estimate reveals that total annual tonnage fees for a nonapproved facility for a certain year are unlikely to exceed the base fee under s. 289.67 (3) for that year, the department shall grant an exemption under this paragraph without requiring the calculation of the actual total tonnage fees.

(g) *Use of tonnage fees.* Tonnage fees paid by a nonapproved facility shall be paid into the environmental fund for environmental management.

(2) AMOUNT OF TONNAGE FEE. (a) *Tonnage fee; solid waste.* Except as provided under pars. (c) and (g), the tonnage fee imposed by sub. (1) (a) is 1.5 cents per ton for solid waste.

(b) *Tonnage fee; certain hazardous waste.* The tonnage fee imposed by sub. (1) (a) is 15 cents per ton for hazardous wastes other than waste specified under par. (c).

(c) *Tonnage fee; other waste.* Except as provided under par. (g), the tonnage fee imposed by sub. (1) (a) is 1.5 cents per ton for waste consisting of 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 and sludges produced by municipal wastewater treatment facilities.

(g) *Tonnage fee; mining waste.* Notwithstanding pars. (a) to (c), with respect to prospecting or mining waste, the tonnage fee imposed under sub. (1) (a) is:

1. For hazardous tailing solids, 1.5 cent per ton.
2. For nonhazardous tailing solids, 0.2 cent per ton.
3. For hazardous sludge, one cent per ton.
4. For nonhazardous sludge, 0.5 cent per ton.
5. For hazardous waste rock, 0.3 cent per ton.
6. For nonhazardous waste rock, 0.1 cent per ton.
7. For any prospecting or mining waste not specified under subds. 1. to 6., 0.5 cent per ton.

History: 1995 a. 227 s. 589, 991; 1997 a. 27; 1999 a. 32; 2013 a. 1.

289.63 Groundwater and well compensation fees. (1) IMPOSITION OF GROUNDWATER AND WELL COMPENSATION FEES ON GENERATORS. Except as provided under sub. (6) and s. 289.675 (1), a generator of solid or hazardous waste shall pay separate groundwater and well compensation fees for each ton or equivalent volume of solid or hazardous waste which is disposed of at a licensed solid or hazardous waste disposal facility. If a person arranges for collection or disposal services on behalf of one or more generators, that person shall pay the groundwater and well compensation fees to the licensed solid or hazardous waste disposal facility or to any intermediate hauler used to transfer wastes from collection points to a licensed facility. An intermediate hauler who receives groundwater and well compensation fees under this subsection shall pay the fees to the licensed solid or hazardous waste disposal facility. Tonnage or equivalent volume shall be calculated in the same manner as the calculation made for tonnage fees under s. 289.62 (1).

(2) COLLECTION. The owner or operator of a licensed solid or hazardous waste disposal facility shall collect the groundwater and well compensation fees from the generator, a person who arranges for disposal on behalf of one or more generators or an intermediate hauler and shall pay to the department the amount of the fees required to be collected according to the amount of solid or hazardous waste received and disposed of at the facility during the preceding reporting period.

(3) AMOUNT OF GROUNDWATER AND WELL COMPENSATION FEES. The fees imposed under this section are as follows:

(a) Except as provided in sub. (4), the groundwater fee imposed under sub. (1) is 10 cents per ton for solid waste or hazardous waste.

(b) The well compensation fee imposed under sub. (1) for solid waste or hazardous waste, excluding prospecting or mining waste, is 4 cents per ton.

(4) AMOUNT OF GROUNDWATER FEE; PROSPECTING OR MINING WASTE. The groundwater fee imposed under sub. (1) is one cent per ton for prospecting or mining waste, including tailing solids, sludge or waste rock.

(5) IN ADDITION TO OTHER FEES. The groundwater and well compensation fees collected and paid under sub. (2) are in addition to the tonnage fee imposed under s. 289.62 (1), the environmental repair base fee imposed under s. 289.67 (3) and the environmental repair surcharge imposed under s. 289.67 (4).

(6) EXEMPTION FROM GROUNDWATER AND WELL COMPENSATION FEES FOR CERTAIN MATERIALS. (a) Solid waste materials approved by the department for lining, daily cover or capping or for constructing berms, dikes or roads within a solid waste disposal facility are not subject to the groundwater and well compensation fees imposed under sub. (1), except that foundry sands or shredder fluff approved for use under s. 289.30 (5) or 289.31 (9) are subject to groundwater and well compensation fees.

(b) 1. In this paragraph, "natural disaster" means a severe natural or human−caused flood or a severe tornado, heavy rain, or storm.

2. Solid waste materials that are generated as the result of a natural disaster are not subject to the groundwater and well compensation fees imposed under sub. (1) if all of the following apply:

a. The natural disaster resulted in a federal or state disaster declaration.

b. The solid waste materials were generated within a municipality that was included in the federal or state disaster declaration.

c. The solid waste materials resulting from the natural disaster were disposed of in the solid waste disposal facility within 60 days after the occurrence of the natural disaster.

d. The solid waste materials were removed as part of the disaster recovery effort and were segregated from other solid wastes when delivered to the solid waste disposal facility.

(d) 1. In this paragraph, "qualified materials recovery facility" means one of the following:

a. A materials recovery facility, as defined in s. 287.27 (1), if the operator of the facility is self−certified under s. NR 544.16 (2), Wis. Adm. Code, and, if the facility has an approved plan of operation, the facility is in compliance with its approved plan of operation.

b. A facility at which materials generated by construction, demolition, and remodeling of structures are processed for recycling if the facility is licensed under this chapter as a solid waste processing facility, the approved plan of operation for the facility requires the reporting of the volume or weight of materials processed, recycled, and discarded as residue, and the facility is in compliance with its approved plan of operation.

2. Subject to subd. 3., the following amounts of solid waste materials are not subject to the groundwater and well compensation fees imposed under sub. (1):

a. For a qualified materials recovery facility described in subd. 1. a., an amount equal to the weight of the residue generated by the qualified materials recovery facility or 10 percent of the total weight of material accepted by the qualified materials recovery facility, whichever is less.

b. For a qualified materials recovery facility described in subd. 1. b., an amount equal to the weight of the residue generated by the qualified materials recovery facility or 30 percent of the total weight of material accepted by the qualified materials recovery facility, whichever is less.

3. a. The department may require an operator that claims the exemption under this paragraph to certify that the operator's facility satisfies the criteria in subd. 1. a. or b. and to report the weight of the residue for which the operator does not pay the groundwater and well compensation fees and any other information needed to determine eligibility for the exemption.

b. The department may require the owner or operator of a licensed solid or hazardous waste disposal facility to report the weight of any residue received by the solid or hazardous waste disposal facility for which the groundwater and well compensation fees are not paid and to identify the facilities that generate that residue.

c. If the operator of a facility claims the exemption under this paragraph for a greater weight of residue than is authorized under subd. 2., the operator is ineligible for the exemption for any additional residue until it pays the balance of the groundwater and well compensation fees that it owes.

(7) REPORTING PERIOD. The reporting period under this section is the same as the reporting period under s. 289.62 (1). The owner or operator of any licensed solid or hazardous waste disposal facility shall pay groundwater and well compensation fees required to be collected under sub. (2) at the same time as any tonnage fees under s. 289.62 (1) are paid.

(8) USE OF GROUNDWATER AND WELL COMPENSATION FEES. The groundwater fees collected under sub. (2) shall be credited to the environmental fund for environmental management. The well compensation fees collected under sub. (2) shall be credited to the environmental fund for environmental management.

(9) FAILURE TO PAY GROUNDWATER AND WELL COMPENSATION FEES. (a) If a person required under sub. (1) to pay groundwater and well compensation fees to a licensed solid or hazardous waste disposal facility fails to pay the fees, the owner or operator of the licensed solid or hazardous waste disposal facility shall submit to the department with the payment required under sub. (2) an affidavit stating facts sufficient to show the person's failure to comply with sub. (1).

(b) If the person named in the affidavit under par. (a) is a generator or a person who arranges for collection or disposal services on behalf of one or more generators and the person holds a license for the collection and transportation of solid or hazardous waste, the department shall immediately notify the person that the license will be suspended 30 days after the date the notice is mailed unless the person submits to the department an affidavit stating facts sufficient to show that it has paid the fees as required under sub. (1).

(c) If the person named in the affidavit under par. (a) is an intermediate hauler that holds a license for the collection and transportation of solid or hazardous waste, the department shall immediately notify the person that the license will be suspended 30 days after the date the notice is mailed unless the person submits to the department an affidavit stating facts sufficient to show that either of the following has occurred:

1. The person named in the affidavit under par. (a) received the required fees from a generator, from a person who arranges for collection or disposal services on behalf of one or more generators or from an earlier intermediate hauler, and paid the fees to the licensed solid or hazardous waste disposal facility or to a subsequent intermediate hauler.

2. A generator, a person who arranges for collection or disposal services on behalf of one or more generators or an earlier intermediate hauler failed to pay the required fees to the person named in the affidavit under par. (a).

(d) If the department does not receive an affidavit under par. (b) or (c) within 30 days after the date the notice is mailed, the department shall suspend the license issued to the person for the collection and transportation of solid or hazardous waste. Notwithstanding s. 227.42, the department is not required to provide the licensee with a hearing before the suspension.

(e) When a person whose license is suspended under par. (d) provides the department with proof that the person has paid the owner or operator of the licensed solid or hazardous waste facility the amount of the unpaid fees, the department shall immediately reinstate the suspended license.

(10) REPAYMENT OR WAIVER OF OVERDUE GROUNDWATER AND WELL COMPENSATION FEES. (a) 1. If a person required under sub. (1) to pay groundwater and well compensation fees to a licensed solid waste or hazardous waste disposal facility fails, within 120 days after the date of disposal, to pay the groundwater and well compensation fees and to pay the charges imposed by the licensed solid waste or hazardous waste disposal facility, the owner or operator of the licensed solid waste or hazardous waste disposal facility may submit an affidavit to the department that includes all of the following:

a. Identifying information for the person that failed to pay the groundwater and well compensation fees.

b. A description of the efforts made to collect the groundwater and well compensation fees that are overdue.

c. A commitment that the owner or operator will not accept any solid waste or hazardous waste from the person that failed to pay the fees until the overdue groundwater and well compensation fees are paid.

2. When the department receives an affidavit that complies with subd. 1., the department shall refund to the owner or operator any amount of the overdue groundwater and well compensation fees paid by the owner or operator and shall grant a waiver to the owner or operator from the requirement to pay any additional amount of the overdue groundwater and well compensation fees. If the person later pays the overdue groundwater and well com-

pensation fees to the owner or operator, the owner or operator shall pay the full amount received to the department.

(b) 1. If a person required under sub. (1) to pay the groundwater and well compensation fees to an intermediate hauler fails, within 120 days after the date of disposal, to pay the groundwater and well compensation fees and to pay the charges imposed by the intermediate hauler, the hauler may submit an affidavit to the owner or operator of the licensed solid waste or hazardous waste disposal facility at which the solid or hazardous waste is disposed of that includes all of the following:

a. Identifying information for the person that failed to pay the groundwater and well compensation fees.

b. A description of the efforts made to collect the groundwater and well compensation fees that are overdue.

c. A commitment that the hauler will not accept any solid waste or hazardous waste from the person that failed to pay the groundwater and well compensation fees until the overdue groundwater and well compensation fees are paid.

2. When the owner or operator of a licensed solid waste or hazardous waste disposal facility receives an affidavit under subd. 1., the owner or operator shall submit the affidavit to the department.

3. When the department receives an affidavit that complies with subd. 1., the department shall refund to the owner or operator any amount of the overdue groundwater and well compensation fees paid by the hauler and shall grant a waiver to the hauler from the requirement to pay any additional amount of the overdue groundwater and well compensation fees and the owner or operator shall pay any refund to the hauler. If the person later pays the overdue groundwater and well compensation fees to the hauler, the hauler shall pay the full amount received to the owner or operator and the owner or operator shall forward the payment to the department.

History: 1995 a. 227 s. 592; 1997 a. 27; 2011 a. 32; 2013 a. 301, 333.

289.64 Solid waste facility siting board fee. (1) IMPOSITION OF SOLID WASTE FACILITY SITING BOARD FEE ON GENERATORS. Except as provided under sub. (4) and s. 289.675 (1), a generator of solid waste or hazardous waste shall pay a solid waste facility siting board fee for each ton or equivalent volume of solid waste or hazardous waste that is disposed of at a licensed solid waste or hazardous waste disposal facility. If a person arranges for collection or disposal services on behalf of one or more generators, that person shall pay the solid waste facility siting board fee to the licensed solid waste or hazardous waste disposal facility or to any intermediate hauler used to transfer wastes from collection points to a licensed facility. An intermediate hauler who receives the solid waste facility siting board fee under this subsection shall pay the fee to the licensed solid waste or hazardous waste disposal facility. Tonnage or equivalent volume shall be calculated in the same manner as the calculation made for tonnage fees under s. 289.62 (1).

(2) COLLECTION. The owner or operator of a licensed solid waste or hazardous waste disposal facility shall collect the solid waste facility siting board fee from the generator, a person who arranges for disposal on behalf of one or more generators or an intermediate hauler and shall pay to the department the amount of the fee required to be collected according to the amount of solid waste or hazardous waste received and disposed of at the facility during the preceding reporting period.

(3) AMOUNT OF SOLID WASTE FACILITY SITING BOARD FEE. The fee imposed under this section is 0.7 cents per ton for solid waste or hazardous waste.

(4) EXEMPTION FROM SOLID WASTE FACILITY SITING BOARD FEE FOR CERTAIN MATERIALS. (a) Solid waste materials approved by the department for lining, daily cover or capping or for constructing berms, dikes or roads within a solid waste disposal facility are not subject to the solid waste facility siting board fee imposed under sub. (1), except that materials approved for use under s. 289.30 (5) or 289.31 (9) are subject to the fee.

(b) 1. In this paragraph, "natural disaster" means a severe natural or human−caused flood or a severe tornado, heavy rain, or storm.

2. Solid waste materials that are generated as the result of a natural disaster are not subject to the solid waste facility siting board fee imposed under sub. (1) if all of the following apply:

a. The natural disaster resulted in a federal or state disaster declaration.

b. The solid waste materials were generated within a municipality that was included in the federal or state disaster declaration.

c. The solid waste materials were disposed of in the solid waste disposal facility within 60 days after the occurrence of the natural disaster.

d. The solid waste materials were removed as part of the disaster recovery effort and were segregated from other solid wastes when delivered to the solid waste disposal facility.

(d) 1. In this paragraph, "qualified materials recovery facility" means one of the following:

a. A materials recovery facility, as defined in s. 287.27 (1), if the operator of the facility is self−certified under s. NR 544.16 (2), Wis. Adm. Code, and, if the facility has an approved plan of operation, the facility is in compliance with its approved plan of operation.

b. A facility at which materials generated by construction, demolition, and remodeling of structures are processed for recycling if the facility is licensed under this chapter as a solid waste processing facility, the approved plan of operation for the facility requires the reporting of the volume or weight of materials processed, recycled, and discarded as residue, and the facility is in compliance with its approved plan of operation.

2. Subject to subd. 3., the following amounts of solid waste materials are not subject to the solid waste facility siting board fee imposed under sub. (1):

a. For a qualified materials recovery facility described in subd. 1. a., an amount equal to the weight of the residue generated by the qualified materials recovery facility or 10 percent of the total weight of material accepted by the qualified materials recovery facility, whichever is less.

b. For a qualified materials recovery facility described in subd. 1. b., an amount equal to the weight of the residue generated by the qualified materials recovery facility or 30 percent of the total weight of material accepted by the qualified materials recovery facility, whichever is less.

3. a. The department may require an operator that claims the exemption under this paragraph to certify that the operator's facility satisfies the criteria in subd. 1. a. or b. and to report the weight of the residue for which the operator does not pay the solid waste facility siting board fee and any other information needed to determine eligibility for the exemption.

b. The department may require the owner or operator of a licensed solid or hazardous waste disposal facility to report the weight of any residue received by the solid or hazardous waste disposal facility for which the solid waste facility siting board fee is not paid and to identify the facilities that generate that residue.

c. If the operator of a facility claims the exemption under this paragraph for a greater weight of residue than is authorized under subd. 2., the operator is ineligible for the exemption for any additional residue until it pays the balance of the solid waste facility siting board fee that it owes.

(5) REPORTING PERIOD. The reporting period under this section is the same as the reporting period under s. 289.62 (1). The owner or operator of any licensed solid waste or hazardous waste disposal facility shall pay the solid waste facility siting board fee required to be collected under sub. (2) at the same time as any tonnage fees under s. 289.62 (1) are paid.

(6) USE OF SOLID WASTE FACILITY SITING BOARD FEES. The fees collected under sub. (2) shall be credited to the appropriation

under s. 20.370 (2) (eg) for transfer to the appropriation under s. 20.505 (4) (k).

(7) FAILURE TO PAY SOLID WASTE FACILITY SITING BOARD FEE. (a) If a person required under sub. (1) to pay the solid waste facility siting board fee to a licensed solid waste or hazardous waste disposal facility fails to pay the fee, the owner or operator of the licensed solid waste or hazardous waste disposal facility shall submit to the department with the payment required under sub. (2) an affidavit stating facts sufficient to show the person's failure to comply with sub. (1).

(b) If the person named in the affidavit under par. (a) is a generator or a person who arranges for collection or disposal services on behalf of one or more generators and the person holds a license for the collection and transportation of solid waste or hazardous waste, the department shall immediately notify the person that the license will be suspended 30 days after the date the notice is mailed unless the person submits to the department an affidavit stating facts sufficient to show that it has paid the fee as required under sub. (1).

(c) If the person named in the affidavit under par. (a) is an intermediate hauler that holds a license for the collection and transportation of solid waste or hazardous waste, the department shall immediately notify the person that the license will be suspended 30 days after the date the notice is mailed unless the person submits to the department an affidavit stating facts sufficient to show that either of the following has occurred:

1. The person named in the affidavit under par. (a) received the required fee from a generator, from a person who arranges for collection or disposal services on behalf of one or more generators or from an earlier intermediate hauler, and paid the fee to the licensed solid waste or hazardous waste disposal facility or to a subsequent intermediate hauler.

2. A generator, a person who arranges for collection or disposal services on behalf of one or more generators or an earlier intermediate hauler failed to pay the required fee to the person named in the affidavit under par. (a).

(d) If the department does not receive an affidavit under par. (b) or (c) within 30 days after the date the notice is mailed, the department shall suspend the license issued to the person for the collection and transportation of solid waste or hazardous waste. Notwithstanding s. 227.42, the department is not required to provide the licensee with a hearing before the suspension.

(e) When a person whose license is suspended under par. (d) provides the department with proof that the person has paid the owner or operator of the licensed solid waste or hazardous waste facility the amount of the unpaid fee, the department shall immediately reinstate the suspended license.

(8) REPAYMENT OR WAIVER OF OVERDUE WASTE FACILITY SITING BOARD FEE. (a) 1. If a person required under sub. (1) to pay the waste facility siting board fee to a licensed solid waste or hazardous waste disposal facility fails, within 120 days after the date of disposal, to pay the waste facility siting board fee and to pay the charges imposed by the licensed solid waste or hazardous waste disposal facility, the owner or operator of the licensed solid waste or hazardous waste disposal facility may submit an affidavit to the department that includes all of the following:

a. Identifying information for the person that failed to pay the waste facility siting board fee.

b. A description of the efforts made to collect the waste facility siting board fee that is overdue.

c. A commitment that the owner or operator will not accept any solid waste or hazardous waste from the person that failed to pay the waste facility siting board fee until the overdue waste facility siting board fee is paid.

2. When the department receives an affidavit that complies with subd. 1., the department shall refund to the owner or operator any amount of the overdue waste facility siting board fee paid by the owner or operator and shall grant a waiver to the owner or operator from the requirement to pay any additional amount of the overdue waste facility siting board fee. If the person later pays the overdue waste facility siting board fee to the owner or operator, the owner or operator shall pay the full amount received to the department.

(b) 1. If a person required under sub. (1) to pay the waste facility siting board fee to an intermediate hauler fails, within 120 days after the date of disposal, to pay the waste facility siting board fee and to pay the charges imposed by the intermediate hauler, the hauler may submit an affidavit to the owner or operator of the licensed solid waste or hazardous waste disposal facility at which the solid or hazardous waste is disposed of that includes all of the following:

a. Identifying information for the person that failed to pay the waste facility siting board fee.

b. A description of the efforts made to collect the waste facility siting board fee that is overdue.

c. A commitment that the hauler will not accept any solid waste or hazardous waste from the person that failed to pay the waste facility siting board fee until the overdue waste facility siting board fee is paid.

2. When the owner or operator of a licensed solid waste or hazardous waste disposal facility receives an affidavit under subd. 1., the owner or operator shall submit the affidavit to the department.

3. When the department receives an affidavit that complies with subd. 1., the department shall refund to the owner or operator any amount of the overdue waste facility siting board fee paid by the hauler and shall grant a waiver to the hauler from the requirement to pay any additional amount of the overdue waste facility siting board fee and the owner or operator shall pay any refund to the hauler. If the person later pays the overdue waste facility siting board fee to the hauler, the hauler shall pay the full amount received to the owner or operator and the owner or operator shall forward the payment to the department.

History: 1995 a. 227 s. 593; 2005 a. 25; 2011 a. 32; 2013 a. 301, 333.

289.645 Recycling fee. (1) IMPOSITION OF RECYCLING FEE ON GENERATORS. Except as provided under sub. (4) and s. 289.675 (1), a generator of solid waste or hazardous waste shall pay a recycling fee for each ton or equivalent volume of solid waste or hazardous waste that is disposed of at a licensed solid waste or hazardous waste disposal facility. If a person arranges for collection or disposal services on behalf of one or more generators, that person shall pay the recycling fee to the licensed solid waste or hazardous waste disposal facility or to any intermediate hauler used to transfer wastes from collection points to a licensed facility. An intermediate hauler who receives the recycling fee under this subsection shall pay the fee to the licensed solid waste or hazardous waste disposal facility. Tonnage or equivalent volume shall be calculated in the same manner as the calculation made for tonnage fees under s. 289.62 (1).

(2) COLLECTION. The owner or operator of a licensed solid waste or hazardous waste disposal facility shall collect the recycling fee from the generator, a person who arranges for disposal on behalf of one or more generators or an intermediate hauler and shall pay to the department the amount of the fee required to be collected according to the amount of solid waste or hazardous waste received and disposed of at the facility during the preceding reporting period, except as provided under sub. (8).

(3) AMOUNT OF RECYCLING FEE. The fee imposed under this section is $7 per ton for all solid waste other than high−volume industrial waste.

(4) EXEMPTIONS FROM RECYCLING FEE. (a) Solid waste materials approved by the department for lining, daily cover or capping or for constructing berms, dikes or roads within a solid waste disposal facility are not subject to the recycling fee imposed under sub. (1), except that materials approved for use under s. 289.30 (5) or 289.31 (9) are subject to the fee.

(b) Except as provided in par. (c), the recycling fee does not apply to waste generated by an organization described in section 501 (c) (3) of the Internal Revenue Code that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code, that derives a portion of its income from the operation of recycling and reuse programs and that does one of the following:

1. Provides services and programs for people with disabilities.

2. Primarily serves low−income persons.

(c) Waste generated by an organization described in par. (b) that is commingled with waste generated by a person other than an organization described in par. (b) is subject to the fee.

(d) The recycling fee does not apply to sediments that are contaminated with PCBs, as defined in s. 299.45 (1) (a), and that are removed from the bed of a navigable water of this state in connection with a phase of a project to remedy contamination of the bed of the navigable water if the quantity of the sediments removed, either in the phase or in combination with other planned phases of the project, will exceed 200,000 cubic yards.

(e) The recycling fee does not apply to waste material that is removed from recycled materials intended for use as recycled fiber by a person that makes paper, pulp, or paperboard from wastepaper, if the waste material cannot be used to make paper, pulp, or paperboard.

(f) 1. In this paragraph, "natural disaster" means a severe natural or human−caused flood or a severe tornado, heavy rain, or storm.

2. Solid waste materials that are generated as the result of a natural disaster are not subject to the recycling fee imposed under sub. (1) if all of the following apply:

a. The natural disaster resulted in a federal or state disaster declaration.

b. The solid waste materials were generated within a municipality that was included in the federal or state disaster declaration.

c. The solid waste materials were disposed of in the solid waste disposal facility within 60 days after the occurrence of the natural disaster.

d. The solid waste materials were removed as part of the disaster recovery effort and were segregated from other solid wastes when delivered to the solid waste disposal facility.

(h) 1. In this paragraph, "qualified materials recovery facility" means one of the following:

a. A materials recovery facility, as defined in s. 287.27 (1), if the operator of the facility is self−certified under s. NR 544.16 (2), Wis. Adm. Code, and, if the facility has an approved plan of operation, the facility is in compliance with its approved plan of operation.

b. A facility at which materials generated by construction, demolition, and remodeling of structures are processed for recycling if the facility is licensed under this chapter as a solid waste processing facility, the approved plan of operation for the facility requires the reporting of the volume or weight of materials processed, recycled, and discarded as residue, and the facility is in compliance with its approved plan of operation.

2. Subject to subd. 3., the following amounts of solid waste materials are not subject to the recycling fee imposed under sub. (1):

a. For a qualified materials recovery facility described in subd. 1. a., an amount equal to the weight of the residue generated by the qualified materials recovery facility or 10 percent of the total weight of material accepted by the qualified materials recovery facility, whichever is less.

b. For a qualified materials recovery facility described in subd. 1. b., an amount equal to the weight of the residue generated by the qualified materials recovery facility or 30 percent of the total weight of material accepted by the qualified materials recovery facility, whichever is less.

3. a. The department may require an operator that claims the exemption under this paragraph to certify that the operator's facility satisfies the criteria in subd. 1. a. or b. and to report the weight of the residue for which the operator does not pay the recycling fee and any other information needed to determine eligibility for the exemption.

b. The department may require the owner or operator of a licensed solid or hazardous waste disposal facility to report the weight of any residue received by the solid or hazardous waste disposal facility for which the recycling fee is not paid and to identify the facilities that generate that residue.

c. If the operator of a facility claims the exemption under this paragraph for a greater weight of residue than is authorized under subd. 2., the operator is ineligible for the exemption for any additional residue until it pays the balance of the recycling fee that it owes.

(5) PAYMENT. The owner or operator of any licensed solid or hazardous waste disposal facility shall pay the recycling fee required to be collected under sub. (2) as follows:

(a) For waste disposed of from January 1 to March 31, no later than May 1.

(b) For waste disposed of from April 1 to June 30, no later than August 1.

(c) For waste disposed of from July 1 to September 30, no later than November 1.

(d) For waste disposed of from October 1 to December 31, no later than February 1.

(6) USE OF RECYCLING FEES. The fees collected under sub. (2) shall be deposited in the environmental fund.

(7) FAILURE TO PAY RECYCLING FEE. (a) If a person required under sub. (1) to pay the recycling fee to a licensed solid waste or hazardous waste disposal facility fails to pay the fee, the owner or operator of the licensed solid waste or hazardous waste disposal facility shall submit to the department with the payment required under sub. (2) an affidavit stating facts sufficient to show the person's failure to comply with sub. (1).

(b) If the person named in the affidavit under par. (a) is a generator or a person who arranges for collection or disposal services on behalf of one or more generators and the person holds a license for the collection and transportation of solid waste or hazardous waste, the department shall immediately notify the person that the license will be suspended 30 days after the date the notice is mailed unless the person submits to the department an affidavit stating facts sufficient to show that it has paid the fee as required under sub. (1).

(c) If the person named in the affidavit under par. (a) is an intermediate hauler that holds a license for the collection and transportation of solid waste or hazardous waste, the department shall immediately notify the person that the license will be suspended 30 days after the date the notice is mailed unless the person submits to the department an affidavit stating facts sufficient to show that either of the following has occurred:

1. The person named in the affidavit under par. (a) received the required fee from a generator, from a person who arranges for collection or disposal services on behalf of one or more generators or from an earlier intermediate hauler, and paid the fee to the licensed solid waste or hazardous waste disposal facility or to a subsequent intermediate hauler.

2. A generator, a person who arranges for collection or disposal services on behalf of one or more generators or an earlier intermediate hauler failed to pay the required fee to the person named in the affidavit under par. (a).

(d) If the department does not receive an affidavit under par. (b) or (c) within 30 days after the date the notice is mailed, the department shall suspend the license issued to the person for the collection and transportation of solid waste or hazardous waste. Notwithstanding s. 227.42, the department is not required to provide the licensee with a hearing before the suspension.

(e) When a person whose license is suspended under par. (d) provides the department with proof that the person has paid the owner or operator of the licensed solid waste or hazardous waste facility the amount of the unpaid fee, the department shall immediately reinstate the suspended license.

(8) REPAYMENT OR WAIVER OF OVERDUE RECYCLING FEE. (a) 1. If a person required under sub. (1) to pay the recycling fee to a licensed solid waste or hazardous waste disposal facility fails, within 120 days after the date of disposal, to pay the recycling fee and to pay the charges imposed by the licensed solid waste or hazardous waste disposal facility, the owner or operator of the licensed solid waste or hazardous waste disposal facility may submit an affidavit to the department that includes all of the following:

a. Identifying information for the person that failed to pay the recycling fee.

b. A description of the efforts made to collect the recycling fee that is overdue.

c. A commitment that the owner or operator will not accept any solid waste or hazardous waste from the person that failed to pay the recycling fee until the overdue recycling fee is paid.

2. When the department receives an affidavit that complies with subd. 1., the department shall refund to the owner or operator any amount of the overdue recycling fee paid by the owner or operator and shall grant a waiver to the owner or operator from the requirement to pay any additional amount of the overdue recycling fee. If the person later pays the overdue recycling fee to the owner or operator, the owner or operator shall pay the full amount received to the department.

(b) 1. If a person required under sub. (1) to pay the recycling fee to an intermediate hauler fails, within 120 days after the date of disposal, to pay the recycling fee and to pay the charges imposed by the intermediate hauler, the hauler may submit an affidavit to the owner or operator of the licensed solid waste or hazardous waste disposal facility at which the solid or hazardous waste is disposed of that includes all of the following:

a. Identifying information for the person that failed to pay the recycling fee.

b. A description of the efforts made to collect the recycling fee that is overdue.

c. A commitment that the hauler will not accept any solid waste or hazardous waste from the person that failed to pay the recycling fee until the overdue recycling fee is paid.

2. When the owner or operator of a licensed solid waste or hazardous waste disposal facility receives an affidavit under subd. 1., the owner or operator shall submit the affidavit to the department.

3. When the department receives an affidavit that complies with subd. 1., the department shall refund to the owner or operator any amount of the overdue recycling fee paid by the hauler and shall grant a waiver to the hauler from the requirement to pay any additional amount of the overdue recycling fee and the owner or operator shall pay any refund to the hauler. If the person later pays the overdue recycling fee to the hauler, the hauler shall pay the full amount received to the owner or operator and the owner or operator shall forward the payment to the department.

History: 1999 a. 9, 185; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2009 a. 28; 2011 a. 32; 2013 a. 301, 333; 2015 a. 195 s. 83.

289.67 Environmental repair fee and surcharge. (1) ENVIRONMENTAL REPAIR FEE FOR GENERATORS. (a) *Imposition of fee.* Except as provided under pars. (f) to (fm) and s. 289.675 (1), a generator of solid or hazardous waste shall pay an environmental repair fee for each ton or equivalent volume of solid or hazardous waste which is disposed of at a licensed solid or hazardous waste disposal facility. If a person arranges for collection or disposal services on behalf of one or more generators, that person shall pay the environmental repair fee to the licensed solid or hazardous waste disposal facility or to any intermediate hauler used to transfer wastes from collection points to a licensed facility. An intermediate hauler who receives environmental repair fees under this paragraph shall pay the fees to the licensed solid or hazardous waste disposal facility. Tonnage or equivalent volume shall be calculated in the same manner as the calculation made for tonnage fees under s. 289.62 (1).

(b) *Collection.* The owner or operator of a licensed solid or hazardous waste disposal facility shall collect the environmental repair fee from the generator, a person who arranges for disposal on behalf of one or more generators or an intermediate hauler and shall pay to the department the amount of the fees required to be collected according to the amount of solid or hazardous waste received and disposed of at the facility during the preceding reporting period.

(cm) *Amount of environmental repair fee.* Except as provided under pars. (cv) and (d), the environmental repair fee imposed under par. (a) is 20 cents per ton.

(cp) *Amount of environmental repair fee.* Notwithstanding par. (cm) and except as provided under pars. (cv) and (d), the environmental repair fee imposed under par. (a) is $1.60 per ton for solid or hazardous waste, other than high−volume industrial waste, disposed of before July 1, 2009, and $5.70 per ton disposed of on or after July 1, 2009.

(cv) *Environmental repair fee for certain sediments.* The environmental repair fee imposed under par. (a) is $4.05 per ton for solid or hazardous waste disposed of on or after July 1, 2009, that consists of sediments that are contaminated with PCBs, as defined in s. 299.45 (1) (a), and that are removed from the bed of a navigable water of this state in connection with a phase of a project to remedy contamination of the bed of the navigable water if the quantity of the sediments removed, either in the phase or in combination with other planned phases of the project, will exceed 200,000 cubic yards and if removal of sediments under the project began before July 1, 2009.

(d) *Amount of environmental repair fee; prospecting or mining waste.* The environmental repair fee imposed under par. (a) is one cent per ton for prospecting or mining waste, including tailing solids, sludge or waste rock.

(e) *In addition to other fees.* The environmental repair fee collected and paid under par. (b) is in addition to the base fee imposed under sub. (2), the surcharge imposed under sub. (3), the tonnage fee imposed under s. 289.62 (1) and the groundwater and well compensation fees imposed under s. 289.63.

(f) *Exemption from environmental repair fee; certain materials used in operation of the facility.* Solid waste materials approved by the department for lining, daily cover or capping or for constructing berms, dikes or roads within a solid waste disposal facility are not subject to the environmental repair fee imposed under par. (a), except that foundry sands or shredder fluff approved for use under s. 289.30 (5) or 289.31 (9) are subject to the environmental repair fee.

(fj) *Exemption from environmental repair fee; recycling residue.* 1. In this paragraph, "qualified materials recovery facility" means one of the following:

a. A materials recovery facility, as defined in s. 287.27 (1), if the operator of the facility is self−certified under s. NR 544.16 (2), Wis. Adm. Code, and, if the facility has an approved plan of operation, the facility is in compliance with its approved plan of operation.

b. A facility at which materials generated by construction, demolition, and remodeling of structures are processed for recycling if the facility is licensed under this chapter as a solid waste processing facility, the approved plan of operation for the facility requires the reporting of the volume or weight of materials processed, recycled, and discarded as residue, and the facility is in compliance with its approved plan of operation.

2. Subject to subd. 3., the following amounts of solid waste materials are not subject to the environmental repair fee imposed under par. (a):

a. For a qualified materials recovery facility described in subd. 1. a., an amount equal to the weight of the residue generated by the qualified materials recovery facility or 10 percent of the total weight of material accepted by the qualified materials recovery facility, whichever is less.

b. For a qualified materials recovery facility described in subd. 1. b., an amount equal to the weight of the residue generated by the qualified materials recovery facility or 30 percent of the total weight of material accepted by the qualified materials recovery facility, whichever is less.

3. a. The department may require an operator that claims the exemption under this paragraph to certify that the operator's facility satisfies the criteria in subd. 1. a. or b. and to report the weight of the residue for which the operator does not pay the environmental repair fee and any other information needed to determine eligibility for the exemption.

b. The department may require the owner or operator of a licensed solid or hazardous waste disposal facility to report the weight of any residue received by the solid or hazardous waste disposal facility for which the environmental repair fee is not paid and to identify the facilities that generate that residue.

c. If the operator of a facility claims the exemption under this paragraph for a greater weight of residue than is authorized under subd. 2., the operator is ineligible for the exemption for any additional residue until it pays the balance of the environmental repair fee that it owes.

(fm) *Exemption from environmental repair fee; certain materials resulting from natural disasters.* 1. In this paragraph, "natural disaster" means a severe natural or human−caused flood or a severe tornado, heavy rain, or storm.

2. Solid waste materials that are generated as the result of a natural disaster are not subject to the environmental repair fee imposed under par. (a) if all of the following apply:

a. The natural disaster resulted in a federal or state disaster declaration.

b. The solid waste materials were generated within a municipality that was included in the federal or state disaster declaration.

c. The solid waste materials were disposed of in the solid waste disposal facility within 60 days after the occurrence of the natural disaster.

d. The solid waste materials were removed as part of the disaster recovery effort and were segregated from other solid wastes when delivered to the solid waste disposal facility.

(g) *Reporting period.* The reporting period under this subsection is the same as the reporting period under s. 289.62 (1). The owner or operator of any licensed solid or hazardous waste disposal facility shall pay environmental repair fees required to be collected under par. (b) at the same time as any tonnage fees under s. 289.62 (1).

(h) *Use of environmental repair fee.* The fees collected under par. (b) shall be credited to the environmental fund.

(i) *Failure to pay environmental repair fee.* 1. If a person required under par. (a) to pay an environmental repair fee to a licensed solid or hazardous waste disposal facility fails to pay the fee, the owner or operator of the licensed solid or hazardous waste disposal facility shall submit to the department with the payment required under par. (b) an affidavit stating facts sufficient to show the person's failure to comply with par. (a).

2. If the person named in the affidavit under subd. 1. is a generator or a person who arranges for collection or disposal services on behalf of one or more generators and the person holds a license for the collection and transportation of solid or hazardous waste, the department shall immediately notify the person that the license will be suspended 30 days after the date the notice is mailed unless the person submits to the department an affidavit stating facts sufficient to show that it has paid the fee as required under par. (a).

3. If the person named in the affidavit under subd. 1. is an intermediate hauler that holds a license for the collection and transportation of solid or hazardous waste, the department shall immediately notify the person that the license will be suspended 30 days after the date the notice is mailed unless the person submits to the department an affidavit stating facts sufficient to show that either of the following has occurred:

a. The person named in the affidavit under subd. 1. received the required fee from a generator, from a person who arranges for collection or disposal services on behalf of one or more generators or from an earlier intermediate hauler, and paid the fee to the licensed solid or hazardous waste disposal facility or to a subsequent intermediate hauler.

b. A generator, a person who arranges for collection or disposal services on behalf of one or more generators or an earlier intermediate hauler failed to pay the required fees to the person named in the affidavit under subd. 1.

4. If the department does not receive an affidavit under subd. 2. or 3. within 30 days after the date the notice is mailed, the department shall suspend the license issued to the person for the collection and transportation of solid or hazardous waste. Notwithstanding s. 227.42, the department is not required to provide the licensee with a hearing before the suspension.

5. When a person whose license is suspended under subd. 4. provides the department with proof that the person has paid the owner or operator of the licensed solid or hazardous waste facility the amount of the unpaid fee, the department shall immediately reinstate the suspended license.

(j) *Repayment or waiver of overdue environmental repair fee.* 1. a. If a person required under par. (a) to pay the environmental repair fee to a licensed solid waste or hazardous waste disposal facility fails, within 120 days after the date of disposal, to pay the environmental repair fee and to pay the charges imposed by the licensed solid waste or hazardous waste disposal facility, the owner or operator of the licensed solid waste or hazardous waste disposal facility may submit an affidavit to the department that includes identifying information for the person that failed to pay the environmental repair fee; a description of the efforts made to collect the environmental repair fee that is overdue; and a commitment that the owner or operator will not accept any solid waste or hazardous waste from the person that failed to pay the environmental repair fee until the overdue environmental repair fee is paid.

b. When the department receives an affidavit that complies with subd. 1. a., the department shall refund to the owner or operator any amount of the overdue environmental repair fee paid by the owner or operator and shall grant a waiver to the owner or operator from the requirement to pay any additional amount of the overdue environmental repair fee. If the person later pays the overdue environmental repair fee to the owner or operator, the owner or operator shall pay the full amount received to the department.

2. a. If a person required under par. (a) to pay the environmental repair fee to an intermediate hauler fails, within 120 days after the date of disposal, to pay the environmental repair fee and to pay the charges imposed by the intermediate hauler, the hauler may submit an affidavit to the owner or operator of the licensed solid waste or hazardous waste disposal facility at which the solid or hazardous waste is disposed of that includes identifying information for the person that failed to pay the environmental repair fee; a description of the efforts made to collect the environmental repair fee that is overdue; and a commitment that the hauler will not accept any solid waste or hazardous waste from the person that failed to pay the environmental repair fee until the overdue environmental repair fee is paid.

b. When the owner or operator of a licensed solid waste or hazardous waste disposal facility receives an affidavit under subd.

2. a., the owner or operator shall submit the affidavit to the department.

c. When the department receives an affidavit that complies with subd. 2. a., the department shall refund to the owner or operator any amount of the overdue environmental repair fee paid by the hauler and shall grant a waiver to the hauler from the requirement to pay any additional amount of the overdue environmental repair fee and the owner or operator shall pay any refund to the hauler. If the person later pays the overdue environmental repair fee to the hauler, the hauler shall pay the full amount received to the owner or operator and the owner or operator shall forward the payment to the department.

(2) ENVIRONMENTAL REPAIR FEE FOR GENERATORS OF HAZARDOUS WASTE. (a) A generator of hazardous waste who is required to report annually on hazardous waste activities according to rules promulgated under s. 291.05 (6) (b) shall pay an annual environmental repair fee.

(b) The annual environmental repair fee under par. (a) shall be assessed as follows:

1. A generator of hazardous waste shall pay a base fee of $470, if the generator is a large quantity generator, or $350, if the generator is a small quantity generator if the generator has generated more than zero pounds in that particular year, plus $20 per ton of hazardous waste generated during the reporting year.

2. No generator is required to pay a fee that is greater than $17,500.

(c) No tonnage fees may be assessed under par. (a) for the following hazardous wastes:

1. Hazardous wastes which are recovered for recycling or reuse including hazardous wastes incinerated for the purpose of energy recovery.

2. Leachate which contains hazardous waste which is being transported to a wastewater treatment plant or is discharged directly to a sewer pipe.

3. Hazardous wastes which are removed from a site or facility to repair environmental pollution. In this subdivision, "site or facility" has the meaning given in s. 292.01 (18).

4. Household hazardous wastes that are collected by a municipality under a program for the collection and disposal of household hazardous wastes.

5. Hazardous wastes that are collected by a county under a program for the collection and disposal of chemicals that are used for agricultural purposes, including pesticides, as defined in s. 94.67 (25).

(d) The department shall assess fees under par. (a) on the basis of the generator's report that is submitted according to the rules promulgated under s. 291.05 (6) (b).

(de) The department shall promulgate a rule that defines "large quantity generator" and "small quantity generator" for the purposes of this subsection.

(dm) The department may promulgate a rule setting a late fee to be assessed against a generator of hazardous waste who fails to pay the annual environmental repair fee under par. (a) when it is due. If the department promulgates a rule under this paragraph, it shall set the fee at a level designed to offset the increased costs of collecting annual fees that are not paid when due.

(e) All moneys received under this subsection shall be credited to the environmental fund for environmental management.

(3) ENVIRONMENTAL REPAIR BASE FEE. (a) *Imposition of environmental repair base fee.* The owner or operator of a nonapproved facility shall pay to the department an environmental repair base fee for each calendar year.

(b) *Amount of environmental repair base fee.* 1. The environmental repair base fee is $100 if the owner or operator of the nonapproved facility enters into an agreement with the department to close the facility on or before July 1, 1999. The $100 base fee first applies for the calendar year in which the owner or operator of a nonapproved facility enters into a closure agreement. If the owner or operator of a nonapproved facility fails to comply with the closure agreement, the department shall collect the additional base fees which would have been paid by the owner or operator under subd. 2. in the absence of the closure agreement.

2. The environmental repair base fee is $1,000 if the owner or operator of a nonapproved facility has not entered into an agreement with the department to close the facility on or before July 1, 1999.

(c) *Use of environmental repair base fees.* Environmental repair base fees shall be credited to the environmental fund for environmental management.

(d) *Reduction of base fee; monitoring.* This paragraph applies to a nonapproved facility which is subject to the $1,000 base fee under par. (b) 2. and which is required by the department to conduct monitoring under s. 289.31 (7). The base fee under par. (b) 2. shall be reduced by the cost of monitoring for the calendar year to which the base fee applies, or $900, whichever is less.

(4) ENVIRONMENTAL REPAIR SURCHARGE. (a) *Imposition of environmental repair surcharge.* If the owner or operator of a nonapproved facility is required to pay a tonnage fee under s. 289.62 (1), the owner or operator shall pay to the department an environmental repair surcharge for each calendar year.

(b) *Amount of environmental repair surcharge.* 1. With respect to solid or hazardous waste disposed of at a nonapproved facility for which the owner or operator enters into an agreement with the department to close the facility on or before July 1, 1999, the owner or operator shall pay to the department an environmental repair surcharge equal to 25 percent of the tonnage fees imposed under s. 289.62 (1). The 25 percent surcharge first applies for the calendar year in which the owner or operator enters into a closure agreement. If the owner or operator fails to comply with the closure agreement, the department shall collect the additional tonnage fees which would have been paid by the owner or operator under subd. 2. in the absence of the closure agreement.

2. With respect to solid or hazardous waste disposed of at a nonapproved facility for which the owner or operator has not entered into an agreement with the department to close the facility on or before July 1, 1999, the owner or operator shall pay to the department an environmental repair surcharge equal to 50 percent of the tonnage fees imposed under s. 289.62 (1).

(c) *Use of environmental repair surcharge.* Environmental repair surcharges shall be credited to the environmental fund for environmental management.

History: 1995 a. 227 s. 601 to 604, 991; 1997 a. 27; 1999 a. 9; 2007 a. 20; 2009 a. 28; 2011 a. 32; 2013 a. 301, 333; 2015 a. 195.

289.675 Waiver of fees. (1) Except as provided in sub. (2), if the department requests a person to participate in waste removal activities to mitigate potential environmental impacts and related liability and the department determines that granting a waiver from the fees under ss. 289.63, 289.64, 289.645, and 289.67 will provide an incentive for the person to participate in those activities, the department may grant the person a waiver from those fees for solid waste or hazardous waste that is disposed of as a result of the activities.

(2) The department may not grant a waiver under sub. (1) to any of the following:

(a) A person who knowingly committed a violation of law that caused or contributed to the need for the waste removal activities.

(b) A person who committed an act that the person knew or should have known would cause or contribute to the need for the waste removal activities.

(3) The department shall issue a document to a person to whom the department grants a waiver under sub. (1) stating that solid or hazardous waste generated as a result of the waste removal activities for which the waiver is granted is exempt from the fees under ss. 289.63, 289.64, 289.645, and 289.67. The person shall provide a copy of the document to the operator of the licensed solid or hazardous waste disposal facility at which the solid or haz-

ardous waste is disposed of or to any intermediate hauler used to transport the solid or hazardous waste to a licensed facility.

History: 2013 a. 333.

289.68 Payments from the waste management fund and related payments. (1) PAYMENTS FROM THE WASTE MANAGEMENT FUND. The department may expend moneys in the waste management fund only for the purposes specified under subs. (3) to (6) and 1991 Wisconsin Act 39, section 9142 (2w). The department may expend moneys appropriated under s. 20.370 (2) (dq) for the purposes specified under subs. (3) and (5) and 1991 Wisconsin Act 39, section 9142 (2w). The department may expend moneys appropriated under s. 20.370 (2) (dt) for the purposes specified under sub. (4). The department may expend moneys appropriated under s. 20.370 (2) (dy) and (dz) for the purposes specified under sub. (6).

(2) PAYMENTS FROM THE INVESTMENT AND LOCAL IMPACT FUND. The department may expend moneys received from the investment and local impact fund only for the purposes specified under sub. (3), only for approved mining facilities and only if moneys in the waste management fund are insufficient to make complete payments. The amount expended by the department under this subsection may not exceed the balance in the waste management fund at the beginning of that fiscal year or 50 percent of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

(3) PAYMENTS FOR LONG−TERM CARE AFTER TERMINATION OF PROOF OF FINANCIAL RESPONSIBILITY. The department may spend moneys appropriated under s. 20.370 (2) (dq) for the costs of long−term care of an approved facility for which the plan of operation was approved under s. 289.30 (6) before August 9, 1989, that accrue after the requirement to provide proof of financial responsibility expires under s. 289.41 (1m) (b) or (f) as authorized under s. 289.41 (11) (b) 2.

(4) PAYMENT OF CLOSURE AND LONG−TERM CARE COSTS; FORFEITED BONDS AND SIMILAR MONEYS. The department may utilize moneys appropriated under s. 20.370 (2) (dt) for the payment of costs associated with compliance with closure and long−term care requirements under s. 289.41 (11) (b) 1.

(5) PREVENTION OF IMMINENT HAZARD. The department may utilize moneys appropriated under s. 20.370 (2) (dq) for the payment of costs associated with imminent hazards as authorized under s. 289.41 (11) (c) and (cm).

(6) PAYMENT OF CORRECTIVE ACTION, FORFEITED BONDS AND RECOVERED MONEYS. The department may utilize moneys appropriated under s. 20.370 (2) (dy) and (dz) for the payment of costs of corrective action under s. 289.41 (11) (bm).

(7) REPORT ON WASTE MANAGEMENT FUND. With its biennial budget request to the department of administration under s. 16.42, the natural resources board shall include a report on the fiscal status of the waste management fund and an estimate of the receipts by and expenditures from the fund in the current fiscal year and in the future.

History: 1995 a. 227 s. 590, 591.

SUBCHAPTER VIII

ENFORCEMENT; PENALTIES

289.91 Inspections. Any officer, employee or authorized representative of the department may enter and inspect any property, premises or place on or at which a solid waste facility is located or is being constructed or installed, or inspect any record relating to solid waste management of any person who generates, transports, treats, stores or disposes of solid waste, at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules promulgated or licenses issued under this chapter. No person may refuse entry or access to any officer, employee or authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials. No person may obstruct, hamper or interfere with any such inspection. The department, if requested, shall furnish to the owner or operator of the premises a report setting forth all facts found which relate to compliance status.

History: 1979 c. 34; 1981 c. 374 s. 148; 1987 a. 384; 1993 a. 491; 1995 a. 227 s. 529; Stats. 1995 s. 289.91.

289.92 Review of alleged violations. Any 6 or more citizens or any municipality may petition for a review of an alleged violation of this chapter or any rule promulgated or special order, plan approval, license or any term or condition of a license issued under this chapter in the following manner:

(1) They shall submit to the department a petition identifying the alleged violator and setting forth in detail the reasons for believing a violation occurred. The petition shall state the name and address of a person within the state authorized to receive service of answer and other papers in behalf of the petitioners and the name and address of a person authorized to appear at a hearing in behalf of the petitioners.

(2) Upon receipt of a petition under this section, the department may:

(a) Conduct a hearing in the matter within 60 days of receipt of the petition. A hearing under this paragraph shall be a contested case under ch. 227. Within 60 days after the close of the hearing, the department shall either:

1. Serve written notice specifying the law or rule alleged to be violated, containing findings of fact, conclusions of law and an order, which shall be subject to review under ch. 227; or

2. Dismiss the petition.

(b) Initiate action under s. 289.97.

(3) If the department determines that a petition was filed maliciously or in bad faith, it shall issue a finding to that effect, and the person complained against is entitled to recover expenses on the hearing in a civil action.

History: 1981 c. 374; 1995 a. 227 s. 640; Stats. 1995 s. 289.92.

289.93 Orders. The department may issue orders to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings.

History: 1995 a. 227 s. 524.

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

(a) Provide immediate notice of the danger to each affected municipality.

(b) Promptly post notice of the danger at the site at which the danger exists, or order a person responsible for the danger to post such notice.

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

(a) Issue any special order necessary to protect public health or the environment.

(b) Take any other action necessary to protect public health or the environment.

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

History: 1995 a. 227 s. 991.

289.95 Enforcement procedures for older facilities. (1) Notwithstanding s. 289.97, for solid waste facilities licensed on or before January 1, 1977, that the department believes do not meet minimum standards promulgated under s. 289.05 (1) and (2), the department may do any of the following:

(a) Initiate action under s. 289.94.

(b) Refer the matter to the department of justice for enforcement under s. 299.95.

(c) Issue an order relating to the solid waste facility or refuse to relicense the solid waste facility using the procedure under sub. (2).

(2) (a) Before issuing an order relating to a solid waste facility or a decision refusing to relicense a solid waste facility under sub. (1) (c), the department shall notify the licensee of its intended action. The licensee, within 30 days after receipt of the notice, may request a hearing under par. (b). If the licensee requests a hearing under par. (b), it may not withdraw that request and proceed under par. (c).

(b) If the licensee requests a hearing, the department may not issue the order or decision until a hearing, conducted as a class 2 proceeding under ch. 227, is held unless the licensee has withdrawn the hearing request. The hearing shall be held in the county where the facility is located. At the hearing the department must establish by a preponderance of all the available evidence that the facility does not adhere to the minimum standards promulgated under s. 289.05 (1) and (2). If the hearing examiner's decision is in favor of the department, or if the licensee has withdrawn the hearing request, the department may issue the order or decision. The order or decision is subject to judicial review under ch. 227.

(c) If the licensee does not request a hearing under par. (b), the department shall issue the order or decision. The licensee may challenge the order or decision by commencing an action in circuit court for the county in which the solid waste facility is located within 15 days after the issuance of the order or decision. The complaint shall allege that the facility adheres to the minimum standards promulgated under s. 289.05 (1) and (2). The licensee shall receive a new trial on all issues relating to the facility and relicensing of the facility. The trial shall be conducted by the court without a jury.

History: 1995 a. 227 s. 581.

289.96 Penalties. (1) (a) No person may treat, store or dispose of high−volume industrial waste in violation of a testing requirement or condition of an exemption under s. 289.43 (7) (d).

(b) No person may violate a testing requirement or condition of an exemption from regulation under s. 289.43 (8) (c).

(2) A person who violates sub. (1) shall forfeit not less than $10 nor more than $25,000 for each violation. Each day of violation is a separate offense.

(3) (a) Except for the violations enumerated in sub. (1), any person who violates this chapter or any rule promulgated or any plan approval, license or special order issued under this chapter shall forfeit not less than $10 nor more than $5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed or enjoined, the penalty does not accrue.

(b) In addition to the penalties provided under par. (a), 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 paragraph. 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: 1985 a. 46; 1995 a. 227 s. 641, 991; Stats. 1995 s. 289.96; 2001 a. 109; 2003 a. 309.

289.97 Violations: enforcement. (1) (a) If the department has reason to believe that a violation of this chapter or any rule promulgated or special order, plan approval, or any term or condition of a license issued under this chapter occurred, it may:

1. 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. 289.95, may include an order that necessary corrective action be taken within a reasonable time. This 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. Instead of an order, and except as provided in s. 289.95, 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

2. Initiate action under s. 299.95.

(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 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: 1979 c. 34; 1981 c. 374; 1995 a. 227 s. 642; Stats. 1995 s. 289.97.