CHAPTER 144

WATER, SEWAGE, REFUSE, MINING AND AIR POLLUTION

SUBCHAPTER VI
GENERAL PROVISIONS, ENFORCEMENT AND PENALTIES

SUBCHAPTER I

DEFINITIONS

144.01 Definitions. Except as the context requires otherwise, the following terms as used in this chapter mean:

(1) "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.

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

(3) "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.

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

(4m) "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.

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

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

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

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

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

(9m) "Person" means an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.

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

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

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

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

(14) "Sewerage system," all structures, conduits and pipe lines by which sewage is collected and disposed of, except plumbing inside and in connection with buildings served, and service pipes from building to street main.

(15) "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 per-

mits under ch. 147, or source, special nuclear or by-product material as defined under s. 140.52.

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

(18) "Wastewater", all sewage.

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

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

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

History: 1971 c. 185 s. 7; 1975 c. 197; 1979 c. 34 ss. 972dg to 972e, 978k; 1979 c. 221; 1981 c. 374.

SUBCHAPTER II

WATER AND SEWAGE

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

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

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

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

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

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

History: 1971 c. 164.

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

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

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

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

(d) 1. The department may issue special orders directing particular owners to secure such operating results toward the control of pollution of the waters of the state as the department prescribes, within a specified time. Pending efforts to comply with any order, the department may permit continuance of operations on such conditions as it prescribes. If any owner cannot comply with an order within the time specified, the owner may, before the date set in the order, petition the department to modify the order. The department may modify the order, specifying in writing the reasons therefor. If any order is not complied with within the time period specified, the department shall immediately notify the attorney general of this fact. Within 30 days thereafter, the attorney general shall forthwith commence an action under s. 144.98.

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

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

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

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

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

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

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

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

(l) The department shall by rule establish an examining program for the certification of waterworks and wastewater treatment plant operators, setting such standards as the department finds necessary to accomplish the purposes of this chapter. The department may charge applicants for the certificates to pay the cost of examination. No person may operate a waterworks or wastewater treatment plant without a valid certificate issued under this paragraph. The department shall substitute the term

"wastewater" for the term "sewage" in all rules adopted under this paragraph.

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

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

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

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

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

(s) In cases of noncompliance with any order issued under par. (d) or (r), the department may take the action directed by the order, and collect the costs thereof from the owner to whom the order was directed. The department shall have all the necessary powers needed to carry out this paragraph including powers granted municipalities under ss. 66.076 and 66.20 to 66.26. It shall also be eligible for financial assistance under ss. 144.21 and 144.24.

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

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

(7) Any owner or other person in interest may secure a review of the necessity for and reasonableness of any order of the department under this section in the following manner:

(a) They shall first file with the department a verified petition setting forth specifically the modification or change desired in such order. Such petition must be filed within 60 days of the issuance of the orders sought to be reviewed. Upon receipt of such a petition the department shall order a public hearing thereon and make such further investigations as it shall deem advisable. Pending such review and hearing, the department may suspend such orders under terms and conditions to be fixed by the department on application of any such petitioner. The department shall affirm, repeal or change the order in question within 60 days after the close of the hearing on the petition.

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

History: 1971 c. 307; 1973 c. 243; 1975 c. 349; 1977 c. 29, 418; 1979 c. 34 ss. 972f to 972m, 2102 (39) (d), (g); 1979 c. 89, 176, 177; 1981 c. 374 s. 131.

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

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

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

Madison's power to forbid chemical treatment of Madison lakes was withdrawn by (2) (i). Wis. Environmental Decade, Inc. v. DNR, 85 W (2d) 518, 271 NW (2d) 69 (1978).

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

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

Department regulatory power over wetlands discussed. 68 Atty. Gen. 264.

The public trust doctrine. 59 MLR 787.

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

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

144.03 Visitorial powers of department.

(1) Every owner of an industrial establishment shall furnish to the department all information required by it in the discharge of its duties under s. 144.025 (2). Any member of the natural resources board or any employe of the department may enter any industrial establishment for the purpose of collecting such information, and no owner of an industrial establishment shall refuse to admit such member or employe. The department shall make such inspections at fre-

quent intervals. The secretary and all members of the board shall have power for all purposes falling within the department's jurisdiction to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of necessary or essential data.

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

History: 1973 c. 318; 1979 c. 221 s. 635.

144.04 Approval of plans. Every owner within the time prescribed by the department, shall file with the department a certified copy of complete plans of a proposed system or plant or extension thereof, in scope and detail satisfactory to the department, and, if required, of existing systems or plants, and such other information concerning maintenance, operation and other details as the department requires. Material changes with a statement of the reasons shall be likewise submitted. Before plans are drawn a statement concerning the improvement may be made to the department and the department shall, if requested, outline generally what it will require. Upon receipt of such plans for approval, the department or its duly authorized representative shall by return mail notify the owner of their acceptance. The notice shall include the date of receipt. Within 90 days from the time of their acceptance the department or its authorized representative shall examine and take action to approve, approve conditionally or reject the plans and shall state in writing any conditions of approval or reasons for rejection. Approval or disapproval of such plans and specifications shall not be contingent upon eligibility of such project for federal aid. The 90-day time period may be extended by agreement with the owner if the plans and specifications cannot be reviewed within the 90-day time limitation due to circumstances beyond the control of the department or in the case of extensive installation involving expenditures of $350,000 or more. The extension shall not exceed 6 months. Failure of the department or its authorized representative to act within 90 days or during an extension of such time period shall constitute an approval of the plans, and upon demand a written certificate of approval shall be issued. Approval may be subject to modification by the department upon due notice. Construction or material change shall be according to approved plans only. The department may disapprove plans which are not in conformance with any existing approved areawide waste treatment management plan prepared pursuant to the federal water pollution control act, P.L. 92-500, as amended.

History: 1977 c. 418.

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

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

proposed construction to comply with this subsection.

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

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

(d) Any person violating this subsection or any order issued in furtherance of compliance therewith shall forfeit to the state not less than $100 nor more than $500 for each violation, failure or refusal. Each day of continued violation is deemed a separate offense. No such penalty shall be invoked during the time that any petition for review of an order is pending under s. 144.025 (7) until final disposition thereof by the courts, if judicial review is sought under ch. 227.

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

History: 1971 c. 164, 276; 1979 c. 34 s. 2102 (39) (g); 1979 c. 176; 1981 c. 374 s. 150.

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

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

History: 1979 c. 110 s. 60 (13); 1979 c. 221.

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

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

(1m) An order by the department for the connection of unincorporated territory to a city or village system or plant under this section shall not become effective for 30 days following issuance. Within 30 days following issuance of the order, the governing body of a city or village subject to an order under this section may commence an annexation proceeding under s.

66.024 to annex the unincorporated territory subject to the order. If the result of the referendum under s. 66.024 (4) is in favor of annexation, the territory shall be annexed to the city or village for all purposes, and sewerage service shall be extended to the territory subject to the order. If an application for an annexation referendum is denied under s. 66.024 (2) or the referendum under s. 66.024 (4) is against the annexation, the order shall be void. If an annexation proceeding is not commenced within the 30-day period, the order shall become effective.

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

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

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

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

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

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

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

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

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

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

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

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

History: 1971 c. 89, 276; 1977 c. 187; 1979 c. 176.

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

Joint sewerage commission may enact and enforce regulations required of it under Clean Water Act of 1977, but it cannot make appropriations or issue bonds without approval of governing bodies which established it. 68 Atty. Gen. 83.

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

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

History: 1971 c. 40.

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

History: 1971 c. 272; 1979 c. 34 s. 984p.

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

of the state and that such financial assistance is necessary to protect the purity of state waters.

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

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

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

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

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

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

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

(a) The department may enter into agreements with municipalities and school districts to make payments to them from the appropriation made by s. 20.370 (4) (cb) to pay not less than 25% and not more than 30% of the estimated reasonable costs of the approved project. These payments shall be in even annual amounts and shall extend for a period of not less than 5 years and not more than 30 years. The department shall not enter into such additional agreements after July 1, 1969, but shall continue to make payments on existing agreements until the terms of the agreement are fully satisfied.

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

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

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

(c) The department may enter into agreements with municipalities and school districts to make payments to them from the appropriation under s. 20.370 (4) (cb) to provide direct financial assistance for smaller projects for sewage treatment facilities, including but not limited to chlorination treatment, phosphate removal and other improvements to sewage treatment capabilities.

(e) The department shall review and approve the plans and specifications of all facilities

designed and constructed by agreement under this section.

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

(8) After June 30, 1979, the department may not enter into any agreements or contracts under sub. (6) (a) or (b), but the department shall continue to make payments on existing agreements and contracts until the terms of the agreements and contracts are fully satisfied.

History: 1971 c. 95; 1975 c. 39 s. 734; 1977 c. 29; 1979 c. 34 ss. 974 to 976, 2102 (39) (a).

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

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

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

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

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

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

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

(b) In this subsection "estimated reasonable costs" include the costs of preliminary planning to determine the economic and engineering feasibility of a proposed sewerage system, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary to the construction of the project and the erection, building, acquisition, alteration, remodeling, improvement or extension of system facilities and the inspection and supervision of the construction of such facilities.

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

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

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

144.235 Financial assistance program; local water quality planning. (1) DEFINITIONS. As used in this section:

(a) "Designated local agency" means the designated local agency under section 208 of the federal act.

(b) "Federal act" means the federal water pollution control act amendments of 1972, P.L. 92-500, 86 Stat. 816.

(2) STATE ASSISTANCE. (a) The department shall administer a program to provide state assistance to designated local agencies for water quality planning activities.

(b) Each designated local agency which provides equal matching funds is eligible to receive state assistance in an amount equal to no less than one-sixth of the current annual grant amount received from the federal environmental protection agency for water quality planning activities under section 208 of the federal act.

(c) A designated local agency which provides matching funds may be eligible to receive additional state assistance for water quality planning activities, as determined by the department, based upon a demonstration of need.

History: 1979 c. 221.

144.24 Financial assistance program; point source pollution abatement. (1) LEGISLATIVE INTENT. The legislature finds that state financial assistance for facility planning, engineering design and construction of point source pollution abatement facilities is a public purpose and a proper state government function in that the state is the trustee of the waters of the state and that this financial assistance is necessary to protect the purity of state waters. In order that facility planning, engineering design and construction of point source pollution abatement facilities necessary to the protection of state waters be encouraged, a state program of assistance to municipalities for the financing of these activities is established. The legislature further finds that in order for the construction of point source pollution abatement facilities to proceed in an expeditious manner it is appropriate to meet the costs through the issuance of public debt, extending the financial obligation incurred over a generation of beneficiaries of these facilities.

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

(3) DEFINITIONS. In this section:

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

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

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

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

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

(c) 1. Every applicant seeking grants for construction purposes under this section shall complete a staged facility planning, engineering design and environmental analysis sequence developed by the department. The department shall model the required sequence after the staged planning, design and environmental analysis sequence under title II of the federal act.

2. If sources of funding for the facility planning prescribed under this paragraph are not available for these activities, grants provided under this section may pay 75% of the cost of facility planning.

3. If sources of funding for the engineering design prescribed under this paragraph are not available for these activities, grants provided under this section may pay 75% of the cost of engineering design activities.

4. Engineering design cost grants made from the appropriation under s. 20.866 (2) (tn) shall be awarded at the time a construction grant is awarded and may be awarded only if an advance commitment for reimbursement is made under sub. (9m).

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

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

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

(c) If a municipality receives a notice that the department is ready to allocate funds under par. (a) or (b) and, prior to the initiation of construction, the department determines that revisions to the proposed project based upon significant newly discovered information or recent technological innovation will reduce anticipated project costs without impeding the achievement of discharge and effluent standards, the department may reserve the funds previously committed under par. (a) or (b) for that municipality for a period not to exceed one priority year after the funding list is compiled under par. (a) or (b).

(7) PAYMENT. Upon the completion by an applicant of all application requirements, the department may enter into an agreement with a municipality for a grant of up to 60% of the eligible costs of a project, except as provided in sub. (4) (c). No project funded under this section may receive state assistance that, combined with other nonlocal government assistance, exceeds 75% of the eligible cost of the project. Metropolitan sewerage districts that serve 1st class cities are limited in each fiscal year to receiving total grant awards not to exceed 33% of the sum of the amounts in the schedule for that fiscal year for the appropriations under ss. 20.370 (4) (kb) and (kc) and 20.866 (2) (tn) plus the unencumbered balances at the end of the preceding fiscal year for those appropriations.

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

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

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

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

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

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

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

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

1. To communities willing to apply for state assistance conditioned upon legislative appropriation of the amounts needed to reimburse municipalities.

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

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

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

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

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

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

(c) The maximum amount of state assistance the department may commit in each fiscal year for future reimbursement under this subsection is 110% of the sum of the amounts in the schedule for that fiscal year for the appropriations under ss. 20.370 (4) (kc) and 20.866 (2) (tn).

(9m) ADVANCE COMMITMENTS FOR REIMBURSEMENT OF ENGINEERING DESIGN COSTS. The department may make an advance commitment to a municipality for the reimbursement of engineering design costs from funds appropriated under s. 20.866 (2) (tn) subject to all of the following requirements:

(a) The advance commitment shall include a provision making the reimbursement of engineering design costs conditional on the award of a construction grant.

(b) The advance commitment may be made only for engineering design activities commenced after the department makes the advance commitment.

(c) The advance commitment may be made only if the municipality has completed all facility planning requirements.

(d) The advance commitment may be made only for engineering design projects and costs which are eligible under sub. (4) (a), (b) and (c) 3.

(e) The advance commitment shall be subject to a priority determination system consistent with sub. (6).

(10) APPROPRIATION INCREASES. The total of the amounts in the schedule for the appropriations under ss. 20.370 (4) (kb) and (kc) and 20.866 (2) (tn) in each fiscal year beginning in 1981-82 up to and including 1986-87 shall equal $77,464,200 plus 10% compounded annually thereafter.

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

History: 1977 c. 418; 1979 c. 34 ss. 976g to 976wd, 2102 (39) (g); 1979 c. 221 ss. 626 to 626y, 2200 (20), 2202 (39); 1981 c. 1, 20, 174.

144.242 Financial assistance program; combined sewer overflow abatement. (1) LEGISLATIVE FINDINGS. The legislature finds that state financial assistance for the elimination of combined sewer overflow to the waters of the state is a public purpose and a proper function of state government.

(2) DEFINITIONS. As used in this section:

(a) "Combined sewer" means a sewer intended to serve as a sanitary sewer and a storm sewer or as an industrial sewer and a storm sewer.

(b) "Combined sewer overflow" means a discharge of a combination of storm and sanitary wastewater or storm and industrial wastewater directly or indirectly to the waters of the state when the volume of wastewater flow exceeds the transport, storage or treatment capacity of a combined sewer system.

(c) "Facilities plan" means that plan or study which demonstrates the need for the proposed sewerage system or sewerage system component and which demonstrates through a systematic evaluation of alternatives that the selected alternative is the most cost-effective means of correcting combined sewer overflows.

(d) "Federal act" means the federal water pollution control act, as amended, 33 USC 1251 to 1376.

(3) ADMINISTRATION. The department shall administer the combined sewer overflow abatement financial assistance program. The department shall promulgate rules necessary for the proper execution of this program.

(4) ELIGIBILITY. (a) *Eligible municipalities.* Only a municipality with a sewerage system which is violating ch. 147 or title III of the federal act because of combined sewer overflow is eligible to receive financial assistance under the combined sewer overflow abatement financial assistance program.

(b) *Eligible projects.* Only a project for construction necessary to abate combined sewer overflows identified in department-approved facilities plans as cost-effective and reasonably necessary for water quality improvements is eligible for financial assistance under the combined sewer overflow abatement financial assistance program.

(c) *Facility planning; engineering design.* Only a municipality which has completed facility planning and engineering design requirements for a combined sewer overflow abatement project is eligible to receive financial assistance under the combined sewer overflow abatement financial assistance program.

(5) APPLICATION. A municipality which seeks financial assistance under the combined sewer overflow abatement financial assistance program shall submit an application to the department. The application shall be in the form

and include the information the department prescribes by rule. The department shall review all applications for financial assistance under this program. The department shall determine those applications which meet the eligibility requirements of this section.

(6) PRIORITY. Each municipality shall notify the department of its intent to apply for financial assistance under the combined sewer overflow abatement financial assistance program. For those municipalities that notify the department of their intention to apply for financial assistance under this program by December 31, the department shall establish annually a priority list which ranks these projects in the same order as they appear on the list prepared under s. 144.24 (6) (a).

(7) PAYMENT. Upon the completion by the municipality of all application requirements, the department may enter into an agreement with the municipality for a grant of up to 50% of the eligible construction costs of a combined sewer overflow abatement project if the municipality can begin construction within 3 months after the department is ready to allocate funds.

(8) ADVANCE COMMITMENTS FOR REIMBURSEMENT OF ENGINEERING DESIGN COSTS. The department may make an advance commitment to a municipality for the reimbursement of engineering design costs from funds appropriated under s. 20.866 (2) (to) subject to all of the following requirements:

(a) The advance commitment shall include a provision making the reimbursement of engineering design costs conditional on the award of a construction grant.

(b) The advance commitment may be made only for engineering design activities commenced after the department makes the advance commitment.

(c) The advance commitment may be made only if the municipality has completed all facility planning requirements.

(d) The advance commitment may be made only for engineering design costs related to a project that is eligible for assistance under sub. (4).

(e) The advance commitment shall be subject to a priority determination system consistent with sub. (6).

(9) APPROPRIATION COMMITMENT. Beginning in the 1981-82 fiscal year and continuing up to and including the 1986-87 fiscal year, the amounts in the schedule for the appropriation under s. 20.866 (2) (to) shall be $20,000,000 for each fiscal year for financial assistance under the combined sewer overflow abatement financial assistance program.

History: 1981 c. 20, 317.

144.245 Individual septic tank replacement or rehabilitation. (1) DEFINITIONS. In this section:

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

(b) "Private sewage system" means a sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same parcel as the structure. This term also means an alternative sewage system approved by the department of industry, labor and human relations including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure. A private sewage system may be owned by the property owner or by a special purpose district.

(c) "Small commercial establishment" means a commercial establishment or business place which has average total sewage flows of less than 2,100 gallons per day.

(2) RULES. The department may not promulgate a rule under this section until the proposed rule is approved by the department of industry, labor and human relations. A rule promulgated under this section without the approval of the department of industry, labor and human relations is void.

(3) MAINTENANCE. The department shall establish a maintenance program to be administered by the governmental units responsible for the regulation of private sewage systems, as defined under s. 145.01 (15) applicable to all new or replacement private sewage systems constructed in governmental units which receive a grant under this section. The maintenance program shall include a requirement of inspection or pumping of the private sewage system at least once every 3 years. Inspections may be conducted by a master plumber, journeyman plumber or restricted plumber licensed under ch. 145, a person licensed under s. 146.20 or by an employe of the state or governmental unit designated by the department. The department may suspend or revoke a license issued under s. 146.20 if the department finds that the licensee falsified information on inspection forms. The department of industry, labor and human relations may suspend or revoke the license of a plumber licensed under ch. 145 if the department of industry, labor and human relations finds that the plumber falsified information on inspection forms.

(4) FAILING PRIVATE SEWAGE SYSTEMS. The department shall establish criteria for determining if a private sewage system is a failing private sewage system. A failing private sewage system

is one which causes or results in any of the following conditions:

(a) The failure to accept sewage discharges and back up of sewage into the structure served by the private sewage system.

(b) The discharge of sewage to the surface of the ground or to a drain tile.

(c) The discharge of sewage to any waters of the state.

(d) The introduction of sewage into zones of saturation which adversely affects the operation of a private sewage system.

(5) ELIGIBILITY; PRIORITY. (a) A failing private sewage system serving one or more principal residences or small commercial establishments constructed prior to and inhabited on July 1, 1978, is eligible for grant funds under this section if an enforcement order was issued under s. 144.025 (2) (d), 145.02 (3) (f) or 145.20 (2) (f) or an enforcement order under s. 146.13 was issued by a governmental unit responsible for the regulation of private sewage systems, as defined under s. 145.01 (15). A private sewage system subject to an enforcement order is eligible for grant funds during the 3-year period after the order is issued, if the application is submitted and work is completed within 12 months after the order is issued. Grant funds may be awarded after work is completed if rehabilitation or replacement of the system meets all requirements of this section and rules promulgated under this section. After receiving a grant application, unless a grant is awarded, the department shall include the private sewage system on the priority list until the end of the 3-year period after the order is issued.

(b) Each principal residence or small commercial establishment may receive only one grant under this section.

(6) USE OF FUNDS. Funds available under a grant under this section shall be applied to the rehabilitation or replacement of the private domestic sewage system. An existing private sewage system may be replaced by an alternative sewage system or by a system serving more than one principal residence.

(7) ALLOWABLE COSTS. (a) Costs allowable in determining grant funding under this section may not exceed the costs of rehabilitating or replacing a private sewage system which would be necessary to allow the rehabilitated system or new system to meet the minimum requirements of the state plumbing code promulgated under s. 145.13.

(b) Costs allowable in determining grant funding under this section may not exceed the costs of rehabilitating or replacing a private sewage system by the least costly methods.

(8) APPLICATION. In order to be eligible for a grant under this section a governmental unit responsible for the regulation of private sewage systems, as defined under s. 145.01 (15), shall make an application for replacement or rehabilitation of private sewage systems of principal residences or small commercial establishments.

(9) CONDITIONS; GOVERNMENTAL UNITS. As a condition for obtaining a grant under this section, a governmental unit responsible for the regulation of private sewage systems, as defined under s. 145.01 (15), making an application shall:

(a) Certify that grants will be used for private sewage systems which meet the eligibility requirements under sub. (5), that the funds will be used as provided under sub. (6) and that allowable costs will not exceed the amount permitted under sub. (7);

(b) Certify that grants will be used for private sewage systems which will be properly installed and maintained;

(c) Certify that grants provided to the governmental unit responsible for the regulation of private sewage systems, as defined under s. 145.01 (15), will be disbursed to the owners of eligible private sewage systems;

(d) Establish a process for regulation and inspection of private sewage systems; and

(e) Establish a system of user charges and cost recovery if the governmental unit responsible for the regulation of private sewage systems, as defined under s. 145.01 (15), considers this system to be appropriate. User charges and cost recovery may include the cost of the grant application fee and the cost of supervising installation and maintenance.

(10) ASSISTANCE. The department shall make its staff available to provide technical assistance to each governmental unit responsible for the regulation of private sewage systems, as defined under s. 145.01 (15).

(11) PRIORITY. The department shall establish a funding priority list separate from the funding priority list established under s. 144.24 (6) for the purposes of distributing grant funds under this section. The funding priority list shall give a higher rank to projects which alleviate greater potential or actual harm to public health and water quality.

(12) FUNDING. (a) A governmental unit responsible for the regulation of private sewage systems, as defined under s. 145.01 (15), which desires to participate in the financial assistance program under this section shall submit an application for participation to the department. The application shall be in the form and include the information the department prescribes. The department shall review applications for partici-

pation in the state program. It shall determine those applications which meet the criteria it established under sub. (9). Applications must be received by the department no later than January 1 of any year for consideration in that fiscal year.

(b) Funds available for grants under this section are limited to the point source appropriation under s. 20.370 (4) (kb) in any year plus any available funds from a previous year and may be expended until fully depleted.

(c) The state grant share under this section for any private sewage system and the cost of its installation shall be limited to $3,000 for each principal resident or small commercial establishment served or 60% of the total project cost, whichever is less. The total share for each principal residence owner or small commercial establishment owner shall not be less than 25% of the total costs of the project attributable to that principal resident or small commercial establishment.

(d) The department shall promulgate rules which shall define payment mechanisms to be used to disburse grants to a governmental unit responsible for the regulation of private sewage systems, as defined under s. 145.01 (15).

(13) INSPECTION. Agents of the department or the governmental unit responsible for the regulation of private sewage systems, as defined under s. 145.01 (15), may enter premises where private sewage systems are located pursuant to a special inspection warrant as required under s. 66.122, to collect samples, records and information and to ascertain compliance with the rules and orders of the department or the governmental unit.

(14) ENFORCEMENT. (a) If the department has reason to believe that a violation of this section or any rule promulgated under this section has occurred, it may:

1. Cause written notice to be served upon the alleged violator. The notice shall specify the alleged violation, and contain the findings of fact on which the charge of violation is based, and 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 this request and after due notice, the department shall hold a hearing. Instead of an order, 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. 144.99.

(b) If after the 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 violation or for other corrective action. 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.

(c) Enforcement of this section shall follow the procedures under s. 144.98.

(d) Additional grants under this section to a governmental unit responsible for the regulation of private sewage systems, as defined under s. 145.01 (15), previously awarded a grant under this section may be suspended or terminated if the department finds that a private sewage system previously funded in the governmental unit is not being or has not been properly installed or maintained.

History: 1981 c. 1 s. 33.

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

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

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

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

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

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

(2) In this section:

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

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

(3) (a) The department shall administer the nonpoint source water pollution program under this section and shall promulgate rules in consultation with the department of agriculture, trade and consumer protection as are necessary for the proper execution and administration of the state program.

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

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

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

(4) The department shall:

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

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

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

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

(e) Promulgate rules establishing standards and specifications concerning best management practices which are required for eligibility for cost-sharing grants under this section. The department may waive these standards and specifications in exceptional cases.

(f) Administer the distribution of aids under s. 20.370 (4) (ce) to designated management agencies for local implementation of the nonpoint source pollution abatement grant program.

(5) The department of agriculture, trade and consumer protection shall:

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

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

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

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

(6) The designated local management agency shall:

(a) Be responsible for coordination and implementation of activities necessary to achieve water quality objectives including the development of a detailed program for implementation.

(b) Utilize, whenever possible, existing staff or contract with existing governmental agencies to utilize that agency's existing staff to provide various field, administrative, planning and other services.

(c) Contact or attempt to contact all landowners or operators within critical management areas concerning their participation in the implementation program. The designated local management agency shall certify to the department that it has complied with this paragraph.

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

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

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

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

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

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

(f) The state share of a cost-sharing grant under this section may not exceed 50% of the cost of implementing the best management practice except as provided under pars. (g) and (h).

(g) The department may increase the state share of a cost-sharing grant under this section up to 70% of the cost of implementing the best management practice if the department, in consultation with the department of agriculture, trade and consumer protection, determines that:

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

2. The matching share requirement under par. (f) would place an unreasonable cost burden on the applicant.

(h) The department may increase the state share of a cost-sharing grant under this section up to 80% of the cost of implementing the best management practice if:

1. The department, in consultation with the department of agriculture, trade and consumer protection, determines that par. (g) 1 and 2 applies; and

2. A county matching share is provided which equals the state share over 70%.

(i) The local matching share of a cost-sharing grant under this section shall be at least 30% of the cost of implementing the best management practice except as provided under par. (j).

(j) The local matching share of a cost-sharing grant under this section shall be the remainder of the cost of implementing the best management practice after subtracting the state share and county share if the department increases the state share under par. (h).

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

History: 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38.

144.251 Watershed projects. The department shall assist and advise the department of agriculture, trade and consumer protection regarding watershed projects under 16 USC 1001 to 1008.

History: 1981 c. 346.

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

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

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

(d) "Navigable water" or "navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within this state and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Notwithstanding any other provision of law or administrative rule, a shoreland zoning ordinance required under s. 59.971 and this section or a wetland zoning ordinance required under s. 61.351 or 62.231 and this section does not apply to lands adjacent to farm drainage ditches if:

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

2. Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching; and

3. Such lands are maintained in nonstructural agricultural use.

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

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

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

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

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

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

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

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

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

1. Domestic uses shall be generally preferred.

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

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

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

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

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

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

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

(8) This section and ss. 59.971, 61.351 and 62.231 shall be construed together to accomplish the purposes and objective of this section.

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

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

History: 1975 c. 232; 1977 c. 29; 1981 c. 330, 339.

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

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

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

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

The public trust doctrine. 59 MLR 787.

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

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

144.27 Limitation. Nothing in this subchapter affects ss. 196.01 to 196.79 or ch. 31.

History: 1979 c. 221 s. 624.

SUBCHAPTER III

AIR POLLUTION

144.30 Air pollution; definitions. As used in ss. 144.30 to 144.426 unless the context requires otherwise:

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

(2) "Air contaminant source" means any facility, building, structure, equipment, vehicle or action which may emit or result in the emission of an air contaminant directly, indirectly or in combination with another facility, building, structure, equipment, vehicle or action.

(3) "Air pollution control permit" means any permit required or allowed under s. 144.391.

(3m) "Allocation of the available air resource" means either:

(a) The apportionment among air contaminant sources of the difference between an ambient air quality standard and the concentration in the atmosphere of the corresponding air contaminant in existence at the time the rule promulgated under s. 144.373 becomes effective; or

(b) The apportionment among air contaminant sources of the difference between an ambi-

ent air increment and the baseline concentration if a baseline concentration is established.

(4) "Allowable emission" means the emission rate calculated using the maximum rated capacity of the origin of, or the equipment emitting an air contaminant based on the most stringent applicable emission limitation and accounting for any enforceable permit conditions which limit operating rate, or hours of operation, or both.

(5) "Ambient air increment" means the maximum allowable concentration of an air contaminant above the base line concentration.

(6) "Ambient air quality standard" means a level of air quality which will protect public health with an adequate margin of safety or may be necessary to protect public welfare from anticipated adverse effects.

(7) "Attainment area" means an area which is not a nonattainment area.

(8) "Base line concentration" means concentration in the atmosphere of an air contaminant which exists in an area at the time of the first application to the U.S. environmental protection agency for a prevention of significant deterioration permit under section 165 of the federal clean air act or the first application for an attainment area major source permit under s. 144.391 (2), whichever occurs first, less any contribution from stationary sources identified in section 169 (4) of the federal clean air act.

(9) "Best available control technology" means an emission limitation for an air contaminant based on the maximum degree of reduction achievable as specified by the department on an individual case-by-case basis taking into account energy, economic and environmental impacts and other costs related to the source.

(9m) "Construction or modification permit" means any permit under s. 144.391 (1) (b) 1, (2) (b) 1 or (3) (b) 1.

(9p) "Construction or new operation permit" means a permit under s. 144.391 (1) (b), (2) (b) or (3) (b).

(9r) "Elective operation permit for an existing source" or "elective operation permit" means a permit under s. 144.391 (1) (c), (2) (c) or (3) (c).

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

(11) "Emission limitation" or "emission standard" means a requirement which limits the quantity, rate or concentration of emissions of air contaminants on a continuous basis. An emission limitation or emission standard includes a requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(12) "Emission reduction option" means:

(a) An offsetting of greater emissions from a stationary source against lower emissions from the same or another stationary source.

(b) A reduction in emissions from a stationary source which is reserved as a credit against future emissions from the same or another stationary source.

(c) Other arrangements for emission reduction, trade-off, credit or offset permitted by rule by the department.

(14) "Federal clean air act" means the federal clean air act, as amended, on July 29, 1979 (42 USC 7401 et seq.) and regulations issued by the federal environmental protection agency under that act.

(15) "Lowest achievable emission rate" means the rate of emission which reflects the more stringent of the following:

(a) The most stringent emission limitation which is contained in the air pollution regulatory program of any state for this class or category of source, unless an applicant for a permit demonstrates that these limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by the class or category of source.

(17m) "Mandatory operation permit for an existing source" or "mandatory operation permit" means a permit under s. 144.391 (1) (bm), (2) (bm) or (3) (bm).

(18m) "Major source construction or new operation permit" means a permit under s. 144.391 (1) (b) or (2) (b).

(19) "Major source permit" means any permit under s. 144.391 (1) or (2).

(19m) "Minor source construction or new operation permit" means a permit under s. 144.391 (3) (b).

(20) "Modification" means any changes in the physical size or method of operation of a stationary source which increases the potential amount of emissions of an air contaminant or which results in the emission of an air contaminant not previously emitted or which results in the violation of an ambient air increment. In determining if a change in the physical size or method of operation of an attainment area major source is a modification, an increase in the potential amount of emissions of an air contaminant occurs only if there is an increase in the net amount of emissions of the air contaminant.

(21) "Nonattainment area" means an area identified by the department in a document prepared under s. 144.371 (2) where the concentration in the atmosphere of an air contaminant exceeds an ambient air quality standard.

(22) "Nonattainment area major source construction or new operation permit" means a permit under s. 144.391 (1) (b).

(22m) "Operation permit", unless otherwise qualified, means any permit under s. 144.391 (1) (b) 2, (bm) or (c), (2) (b) 2, (bm) or (c) or (3) (b) 2, (bm) or (c).

(23) "Stationary source" means an air contaminant source which directly or indirectly is capable of emitting an air contaminant only from a fixed location. A stationary source includes an air contaminant source which is capable of being transported to a different location. A stationary source may consist of one or more pieces of process equipment, each of which is capable of emitting an air contaminant. A stationary source does not include a motor vehicle or equipment which is capable of emitting an air contaminant while moving.

History: 1971 c. 125, 130, 211; 1977 c. 377; 1979 c. 34, 221.

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

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

(a) Promulgate rules implementing and consistent with ss. 144.30 to 144.426 and 144.96.

(b) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of ss. 144.30 to 144.426 and 144.96.

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

(d) Collect and disseminate information and conduct educational and training programs relating to the purposes of ss. 144.30 to 144.426 and 144.96.

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

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

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

(h) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source, device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall relieve any person from compliance with ss. 144.30 to 144.426 or rules pursuant thereto, or any other provision of law.

(i) Prepare and adopt minimum standards for the emission of mercury compounds or metallic mercury into the air.

(k) Specify the best available control technology on an individual case-by-case basis considering energy, economic and environmental impacts and other costs related to the source.

(m) Coordinate the reporting requirements under ss. 144.394 and 144.96 in order to minimize duplicative reporting requirements.

(p) Promulgate by rule the actions or events which constitute the reconstruction of a major source. The department shall submit the notice required under s. 227.018 regarding rules under this paragraph by January 1, 1984.

(2) The department may:

(a) Hold hearings relating to any aspect of the administration of ss. 144.30 to 144.426 and 144.96 and, in connection therewith, compel the attendance of witnesses and the production of evidence.

(b) Issue orders to effectuate the purposes of ss. 144.30 to 144.426 and 144.96 and enforce the same by all appropriate administrative and judicial proceedings.

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

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

(e) Advise, consult, contract and 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.

(f) Examine any records relating to emissions which cause or contribute to air contamination.

History: 1971 c. 125 s. 522 (2); 1979 c. 34 ss. 979h, 979j, 980p, 980t, 984ng, 2102 (39) (g); 1979 c. 175; 1979 c. 221 ss. 627fd to 627fm, 2202 (39).

144.32 Federal aid. Subdivisions of this state and interlocal agencies may make application for, receive, administer and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control if first submitted to and approved by the department. The department shall approve any such application if it is consist-

ent with the purposes of ss. 144.30 to 144.426 and any other applicable requirements of law.
History: 1979 c. 34.

144.33 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 ss. 144.30 to 144.426 and 144.96 are public records subject to subch. II of ch. 19.

(2) CONFIDENTIAL RECORDS. Any records or information, except emission data, received by the department and certified by the owner or operator to relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of the owner or operator are only for the confidential use of the department in the administration of ss. 144.30 to 144.426 and 144.96, unless the owner or operator expressly agrees to their publication or availability to the general public. Nothing in this subsection prevents the use of the records or information by the department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, if the analyses or summaries do not identify a specific owner or operator.
History: 1971 c. 125 s. 522 (2); 1979 c. 34; 1979 c. 221 s. 2202 (39); 1981 c. 335 s. 26.

144.34 Inspections. Any duly authorized officer, employe or representative of the department may enter and inspect any property, premise or place on or at which an air contaminant source is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with ss. 144.30 to 144.426 and 144.96 and rules promulgated under those sections. No person may refuse entry or access to any 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: 1971 c. 125 s. 522 (2); 1979 c. 34; 1979 c. 221 s. 2202 (39).

144.35 Air pollution control council. (1) GENERAL DUTIES. The air pollution control council shall advise the natural resources board on proposed and existing rules and any matters pertaining to air pollution.

(2) STUDY OF MANDATORY OPERATION PERMIT REQUIREMENTS FOR EXISTING SOURCES. The air pollution control council with the cooperation and assistance of the department shall conduct a study on the requirement of mandatory operation permits for existing sources. The study shall describe the implementation of the mandatory operation permit requirements for existing sources, the costs, paperwork, delays and other burdens, if any, incurred by permit applicants in order to comply with the mandatory operation permit requirements for existing sources and the benefits to the citizens of the state in reduced air pollution and more effective management of the state's air resource. The air pollution control council shall report the results of this study to the legislature by July 1, 1988.

(3) STUDY OF ENFORCEMENT. The air pollution control council, with the cooperation and assistance of the department, shall conduct a study to identify any mechanism to minimize conflicting enforcement of the air pollution control permit program by the department and the federal environmental protection agency. The study shall include an examination of the enforcement of provisions in state law which are not required by the federal clean air act. The air pollution control council shall report the results of this study to the legislature and the natural resources board.
History: 1979 c. 221 ss. 627gb, 627gm; 1979 c. 355.

144.355 Air resource allocation council. (1) GENERAL DUTIES. The air resource allocation council shall advise the department on the allocation of the available air resource in attainment areas.

(2) STAFF. The department of natural resources shall provide adequate staff for the air resource allocation council to meet its responsibilities under subs. (3) to (5).

(3) RECOMMENDATIONS. The air resource allocation council shall prepare recommendations for the allocation of the available air resource in attainment areas among possible future sources considering ambient air quality standards, ambient air increments and emission limitations. These recommendations may include:

(a) Formulas for the reservation of certain amounts of the available air resource for future development.

(b) Factors to be considered in allocating the available air resource.

(c) Methods to determine the amount by which a source reduces or has the potential to reduce the amount of the available air resource.

(d) Methods to be used in establishing emission reduction options to apportion the available air resource.

(e) Methods for the continuing evaluation of policies related to the allocation of the air resource and public participation in this process.

(f) Identification of the air resources which the department should allocate.

(4) CONSIDERATIONS. In preparing its recommendations, the air resource allocation council shall consider:

(a) Present and future development needs.

(b) Priorities for certain types of development.

(c) Compatibility of certain types of development with existing uses.

(d) The possibility and the impact of stricter or more relaxed air quality standards, ambient air increment and emission limitations.

(5) REPORT. The air resource allocation council shall report its recommendations to the natural resources board by January 1, 1984.

(6) SUNSET. This section is effective until January 2, 1984.

History: 1979 c. 221.

NOTE: Chapter 221, laws of 1979, repeals this section effective January 2, 1984.

144.371 Identification of nonattainment areas. (1) PROCEDURES AND CRITERIA. The department shall promulgate by rule procedures and criteria to identify a nonattainment area and to reclassify a nonattainment area as an attainment area. The department shall submit the notice required under s. 227.018 regarding rules under this subsection by July 1, 1982.

(2) DOCUMENTS. The department shall issue documents from time to time which define or list specific nonattainment areas based upon the procedures and criteria promulgated under sub. (1). Notwithstanding s. 227.01 (9) or 227.011, documents issued under this subsection are not rules.

(3) REVIEW. The documents issued under sub. (2) may be reviewed under ss. 227.064 and 227.15.

(4) PROCEDURES. For any document issued under sub. (2) after April 30, 1980, the department shall hold a public hearing and follow the procedures in this subsection. The department shall give notice of the public hearing, and shall take any steps it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed document. The notice shall be given at least 30 days prior to the date set for the hearing. The notice shall include a statement of the time and place at which the hearing is to be held and either a text of the proposed document or a description of how a copy of the document may be obtained from the department at no charge. The department shall hold a public hearing at the time and place designated in the notice of hearing, and shall afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposal under consideration. The presiding officer may limit oral presentations if it appears that the length of the hearing otherwise would be unduly increased by reason of repetition. The department shall afford each interested person opportunity to present facts, views or arguments in writing whether or not he or she has had an opportunity to present them orally. At the beginning of each hearing the department shall present a summary of the factual information on which the document is based. The department or its duly authorized representative may administer oaths or affirmations and may continue or postpone the hearing to such time and place as it determines. The department shall keep minutes or a record of the hearing in such manner as it determines to be desirable and feasible. The department shall receive written comments on the document for at least 10 days after the close of the hearing. The department may not issue documents under this section earlier than 30 days after the close of the hearing.

History: 1979 c. 221; 1981 c. 314 s. 146.

144.372 Best available retrofit technology. (1) CASE-BY-CASE SPECIFICATION. If visibility in an area is identified as an important value of the area under section 169A of the federal clean air act, the department shall specify on a case-by-case basis the best available retrofit technology for any existing major source located in the area and identified under section 169A of the federal clean air act.

(2) CONSIDERATIONS. In specifying the best available retrofit technology, the department shall consider:

(a) The cost of compliance.

(b) The existing pollution control technology in use at the source.

(c) The remaining useful life of the source.

(d) The degree of improvement in visibility which may be anticipated to result from the use of various retrofit technologies.

(e) The energy and nonair quality environmental impacts of compliance.

History: 1979 c. 221.

144.373 Air resource allocation. (1) DETERMINATION. The department, after considering the recommendations submitted under s. 144.355, 1979 stats., shall promulgate by rule procedures and criteria to determine the allocation of the available air resource in an attainment area.

(2) ALLOCATION. The department, after considering the recommendations submitted under s. 144.355, 1979 stats., shall promulgate by rule air resource allocation standards to allocate the available air resource in attainment areas among sources receiving a construction or

new operation permit or an elective operation permit for an existing source after the effective date of this rule, other air contaminant sources and possible future air contaminant sources. The air resource allocation standards may allow for emission reduction options. The application of air resource allocation standards may not result in a violation of an ambient air quality standard or an ambient air increment.

(3) DOCUMENTS. The department shall maintain records indicating how much of the available air resource has been allocated in attainment areas. The department shall make these records available for public inspection.

History: 1979 c. 221.

144.374 Mandatory operation permit dates. (1) OPERATION PERMIT REQUIREMENT DATE. The department shall promulgate by rule a schedule of the dates when a mandatory operation permit is required for various categories of existing sources. The department shall submit the notice required under s. 227.018 regarding rules under this subsection by October 1, 1982. The department may not require a mandatory operation permit for any existing source prior to January 1, 1983. The department shall require a mandatory operation permit for all existing sources after July 1, 1986.

(2) OPERATION PERMIT APPLICATION DATE. The department shall promulgate by rule a schedule of the dates when a mandatory operation permit application is required to be submitted for various categories of existing sources. The department shall submit the notice required under s. 227.018 regarding rules under this subsection by October 1, 1982.

History: 1979 c. 221.

144.375 Air pollution control; standards and determinations. (1) AMBIENT AIR QUALITY STANDARDS. (a) *Similar to federal standard.* If an ambient air quality standard is promulgated under section 109 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive than the federal standard except as provided under sub. (6).

(b) *Standard to protect health or welfare.* If an ambient air quality standard for any air contaminant is not promulgated under section 109 of the federal clean air act, the department may promulgate an ambient air quality standard if the department finds that the standard is needed to provide adequate protection for public health or welfare.

(2) AMBIENT AIR INCREMENT. The department shall promulgate by rule ambient air increments for various air contaminants in attainment areas. The ambient air increments shall be consistent with and not more restrictive, either in terms of the concentration or the contaminants to which they apply, than ambient air increments under the federal clean air act except as provided under sub. (6).

(3) CAUSE OR EXACERBATION OF AMBIENT AIR QUALITY STANDARD OR INCREMENT. The department shall promulgate rules to define what constitutes the cause or exacerbation of a violation of an ambient air quality standard or ambient air increment.

(4) STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES. (a) *Similar to federal standard.* If a standard of performance for new stationary sources is promulgated under section 111 of the federal clean air act, the department shall promulgate by rule a similar emission standard but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (6).

(b) *Standard to protect public health or welfare.* If a standard of performance for any air contaminant for new stationary sources is not promulgated under section 111 of the federal clean air act, the department may promulgate an emission standard of performance for new stationary sources if the department finds the standard is needed to provide adequate protection for public health or welfare.

(c) *Restrictive standard.* The department may impose a more restrictive emission standard of performance for a new stationary source than the standard promulgated under par. (a) or (b) on a case-by-case basis if a more restrictive emission standard is needed to meet the applicable lowest achievable emission rate under s. 144.393 (2) (b) or to install the best available control technology under s. 144.393 (3) (a).

(5) EMISSION STANDARDS FOR HAZARDOUS AIR CONTAMINANTS. (a) *Similar to federal standard.* If an emission standard for a hazardous air contaminant is promulgated under section 112 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (6).

(b) *Standard to protect public health or welfare.* If an emission standard for a hazardous air contaminant is not promulgated under section 112 of the federal clean air act, the department may promulgate an emission standard for the hazardous air contaminant if the department finds the standard is needed to provide adequate protection for public health or welfare.

(c) *Restrictive standard.* The department may impose a more restrictive emission stan-

dard for a hazardous air contaminant than the standard promulgated under par. (a) or (b) on a case-by-case basis if a more restrictive standard is needed to meet the applicable lowest achievable emission rate under s. 144.393 (2) (b) or to install the best available control technology under s. 144.393 (3) (a).

(6) IMPACT OF CHANGE IN FEDERAL STANDARDS. (a) If the ambient air increment, the ambient air quality standard, the standards of performance for new stationary sources or the emission standards for hazardous air contaminants under the federal clean air act are relaxed, the department shall alter the corresponding state standards unless it finds that the relaxed standards would not provide adequate protection for public health and welfare.

(b) Paragraph (a) applies to state standards of performance for new stationary sources and emission standards for hazardous air contaminants in effect on April 30, 1980 if the relaxation in the corresponding federal standards occurs after April 30, 1980.

(c) Paragraph (a) applies to ambient air quality standards in effect on April 30, 1980.

History: 1979 c. 34; 1979 c. 221 ss. 627fd, 627fg, 627gx.

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

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

144.391 Air pollution control permits. (1) NONATTAINMENT AREA MAJOR SOURCE PERMITS. (a) *Nonattainment area major source.* A stationary source is a nonattainment area major source if:

1. The source is located in a nonattainment area or may affect significantly the air quality in a nonattainment area; and

2. The source, considering air pollution control equipment, is capable of emitting an air contaminant for which the area is classified as a nonattainment area in the following amounts:

a. One hundred tons per year or more of sulfur oxides, particulate matter, carbon monoxide, nitrogen oxides or volatile organic compounds; or

b. An amount specified by rule by the department of any other air contaminant.

(ae) *Nonattainment area new major source.* A nonattainment area major source is a new source if, at the time application is made for an air pollution control permit, the department determines that when the source will commence operation following construction, reconstruction or replacement, it will be located in a nonattainment area or may affect significantly the air quality in a nonattainment area, and if:

1. Construction. Construction of the source commences after April 30, 1980;

2. Reconstruction. Reconstruction of the source commences after April 30, 1980; or

3. Replacement. Replacement of the source commences after April 30, 1980.

(am) *Nonattainment area modified major source.* A nonattainment area major source is a modified source if, at the time application is made for an air pollution control permit, the department determines that when the source will commence operation following modification, it will be located in a nonattainment area or may affect significantly the air quality in a nonattainment area, and if modification of the source commences after July 29, 1979.

(as) *Nonattainment area existing major source.* A nonattainment area major source is an existing source if it is not a new source and it is not a modified source.

(b) *Nonattainment area major source construction or new operation permit.* 1. Construction permit. No person may commence construction, reconstruction or replacement or commence modification of a nonattainment area major source unless the person has a permit from the department.

2. New operation permit. No person may operate a nonattainment area new major source or operate a nonattainment area modified major source unless the person has a permit from the department.

(bm) *Mandatory operation permit for existing nonattainment area major source.* No person may operate a nonattainment area existing major source after the operation permit requirement date specified under s. 144.374 (1) unless the person has an operation permit from the department.

(c) *Elective operation permit for nonattainment area existing major source.* A person may

apply for a permit for the operation of one or more points of emission from a nonattainment area existing major source even if no permit is required under par. (b) or (bm). No person may operate a source under an emission reduction option program unless the person has an operation permit from the department. If a person elects to apply for an elective operation permit, the source may not be operated without that permit beginning on the date the permit is first issued and the source may not be withdrawn from this permit program.

(2) ATTAINMENT AREA MAJOR SOURCE PERMITS. (a) *Attainment area major source.* A stationary source is an attainment area major source if:

1. The source is located in an attainment area or may affect significantly the air quality in an attainment area; and

2. The source, considering air pollution control equipment, is capable of emitting an air contaminant for which the area is classified as an attainment area as follows:

a. Two hundred and fifty tons per year or more of any air contaminant; or

b. One hundred tons per year or more of any air contaminant if the source is a type listed under section 169 (1) of the federal clean air act.

(ae) *Attainment area new major source.* An attainment area major source is a new source if, at the time application is made for an air pollution control permit, the department determines that when the source will commence operation following construction, reconstruction or replacement, it will be located in an attainment area or may affect significantly the air quality in an attainment area, and if:

1. Construction. Construction of the source commences after April 30, 1980;

2. Reconstruction. Reconstruction of the source commences after April 30, 1980; or

3. Replacement. Replacement of the source commences after April 30, 1980.

(am) *Attainment area modified major source.* An attainment area major source is a modified source if, at the time application is made for an air pollution control permit, the department determines that when the source will commence operation following modification, it will be located in an attainment area or may affect significantly the air quality in an attainment area, and if modification of the source commences after January 1, 1980.

(as) *Attainment area existing major source.* An attainment area major source is an existing source if it is not a new source and it is not a modified source.

(b) *Attainment area major source construction or new operation permit.* 1. Construction permit. No person may commence construction, reconstruction or replacement or commence modification of an attainment area major source unless the person has a permit from the department.

2. New operation permit. No person may operate an attainment area new major source or operate an attainment area modified major source unless the person has a permit from the department.

(bm) *Mandatory operation permit for attainment area existing major source.* No person may operate an attainment area existing major source after the operation permit requirement date specified under s. 144.374 (1) unless the person has an operation permit from the department.

(c) *Elective operation permit for attainment area existing major source.* A person may apply for a permit for the operation of one or more points of emission from an attainment area existing major source even if no permit is required under par. (b) or (bm). No person may operate a source under an emission reduction option program unless the person has an operation permit from the department. If a person elects to apply for an elective operation permit, the source may not be operated without that permit beginning on the date the permit is first issued and the source may not be withdrawn from this permit program.

(3) MINOR SOURCE PERMITS. (a) *Minor source.* A stationary source is a minor source if no mandatory major source permit is required for the source.

(ae) *New minor source.* A minor source is a new source if:

1. Construction. Construction of the source commences after April 30, 1980; or

2. Replacement. Replacement of the source commences after April 30, 1980.

(am) *Modified minor source.* A minor source is a modified source if modification of the source commenced after April 30, 1980.

(as) *Existing minor source.* A minor source is an existing source if it is not a new source and it is not a modified source.

(b) *Minor source construction or new operation permit.* 1. Construction permit. No person may commence construction or replacement or commence modification of a minor source unless the person has a permit from the department or unless the source is in a class exempted by rule of the department.

2. New operation permit. No person may operate a new minor source or operate a modified minor source unless the person has a permit from the department. This subdivision does not apply if the person applies for a construction permit for the source prior to April 30, 1980.

(bm) *Mandatory operation permit for existing minor source.* No person may operate an existing minor source after the operation permit requirement date specified under s. 144.374 (1) unless the person has an operation permit from the department.

(c) *Elective operation permit for existing minor source.* A person may apply for a permit for the operation of one or more points of emission from an existing minor source. No person may operate a source under an emission reduction option program unless the person has an operation permit from the department. If a person elects to apply for an elective operation permit, the source may not be operated without that permit beginning on the date the permit is first issued and the source may not be withdrawn from this permit program.

(4) EXEMPTION FROM PERMIT REQUIREMENTS FOR CERTAIN MODIFICATIONS. (a) *Routine maintenance or repair exempt.* Routine maintenance or repair of a source is an exempt modification.

(b) *Specified changes in operations exempt under certain circumstances.* 1. A specified change in operation listed under par. (c) is an exempt modification if the specified change does not violate any condition of a permit, plan approval or special order applicable to the source.

2. If no permit is applicable to the source, a specified change in operation listed under par. (c) is an exempt modification if the specified change does not cause or exacerbate the violation of an ambient air quality standard and the specified change does not cause or exacerbate the violation of an ambient air quality increment.

(c) *Specified changes in operation.* A specified change in operation is:

1. An increase in production rate if that increase does not exceed the operating design capacity of the source.

2. An increase in the hours of operation of the source.

3. Use of an alternate fuel or raw material if the source is designed to burn or use the alternate fuel or raw material and if that information is included in the plans, specifications and other information submitted under s. 144.392 (2) or under s. 144.39 (1), 1977 stats.

4. Resumption of operation of a source after a period of closure if the existing equipment was continuously included in the source inventory as an existing source covered by plans under s. 144.31 (1) (f).

5. A change in ownership of the source.

(d) *Exempt from permit requirements.* Notwithstanding sub. (1) (b), (2) (b) or (3) (b), no permit is required to commence modification and no additional permit is required to operate a modified source if the modification is an exempt modification.

(5) EXEMPTION FROM ADDITIONAL PERMIT REQUIREMENTS FOR APPROVED RELOCATED SOURCES. (a) *Approved relocated source.* A source is an approved relocated source if:

1. The source is to be relocated within an attainment area.

2. The source is a stationary source capable of being transported to a different location.

3. The source received an air pollution control permit for the relevant air contaminant prior to relocation.

4. The owner or operator of the source provides notice to and receives approval from the department prior to relocation.

5. The source in its new location meets all applicable emission limitations and does not violate an ambient air increment or ambient air quality standard.

(b) *Exempt from additional permits.* Notwithstanding subs. (2) and (3), no additional permit is required if a source is an approved relocated source.

(6) EXEMPTION BY RULE. Notwithstanding the other provisions of this section the department may, by rule, exempt types of stationary sources from any requirement of this section if the potential emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment.

History: 1979 c. 34, 221.

144.392 Permit application and review. **(1)** APPLICABILITY. This section does not apply to a mandatory operation permit for an existing source.

(1m) APPLICANT NOTICE REQUIRED. A person who is required to obtain or who seeks an air pollution control permit shall apply to the department for a permit to construct, reconstruct, replace, modify or operate the stationary source.

(2) PLANS, SPECIFICATIONS AND OTHER INFORMATION. Within 20 days after receipt of the application the department shall indicate the plans, specifications and any other information necessary to determine if the proposed construction, reconstruction, replacement, modification or operation will meet the requirements of ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections.

(3) ANALYSIS. The department shall prepare an analysis regarding the effect of the proposed construction, reconstruction, replacement, modification or operation on ambient air quality and a preliminary determination on the approvability of the permit application, within the

following time periods after the receipt of the plans, specifications and other information:

(a) *Major source construction or new operation permits.* For major source construction or new operation permits, within 120 days.

(b) *Minor source construction or new operation permits.* For minor source construction or new operation permits, within 30 days.

(c) *Elective operation permit.* For an elective operation permit for an existing source, within 240 days.

(4) DISTRIBUTION AND AVAILABILITY OF ANALYSIS, PRELIMINARY DETERMINATION AND MATERIALS. (a) *Distribution and publicity.* The department shall distribute and publicize the analysis and preliminary determination as soon as they are prepared.

(b) *Availability.* The department shall make available for public inspection in each area where the source would be constructed, reconstructed, replaced, modified or operated the following:

1. A copy of materials submitted by the permit applicant;

2. A copy of the department's analysis and preliminary determination; and

3. A copy or summary of other materials, if any, considered by the department in making its preliminary determination.

(5) NOTICE; ANNOUNCEMENT; NEWSPAPER NOTICE. (a) *Distribution of notice required.* The department shall distribute a notice of the proposed construction, reconstruction, replacement, modification or operation, a notice of the department's analysis and preliminary determination, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing to:

1. The applicant.

2. Appropriate federal, local and state agencies including agencies in other states which may be affected.

3. Regional and county planning agencies located in the area which may be affected.

4. Public libraries located in or near the area which may be affected.

5. Any person or group who requests this notice.

(b) *Announcement required.* The department shall circulate an announcement sheet containing a brief description of the proposed construction, reconstruction, replacement, modification or operation, a brief description of the administrative procedures to be followed, the date by which comments are to be submitted to the department and the location where the department's analysis and preliminary determination are available for review to:

1. Local and regional governments which have jurisdiction over the area that may be affected.

2. Local and regional news media in the area that may be affected.

3. Persons and groups who have demonstrated an interest and have requested this type of information.

(c) *Newspaper notice.* The department shall publish a class 1 notice under ch. 985 announcing the opportunity for written public comment and the opportunity to request a public hearing on the analysis and preliminary determination.

(6) PUBLIC COMMENT. The department shall receive public comments on the proposed construction, reconstruction, replacement, modification or operation and on the analysis and preliminary determination for a 30-day period beginning when the department gives notice under sub. (5) (c).

(7) PUBLIC HEARING. (a) *Hearing permitted.* The department may hold a public hearing on the permit application if requested by a person, any affected state or the U.S. environmental protection agency within 30 days after the department gives notice under sub. (5) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it deems that there is a significant public interest in holding a hearing.

(b) *Procedure.* The department shall promulgate by rule procedures for conducting public hearings under this subsection. Hearings under this subsection are not contested cases under s. 227.01 (2).

(8) DEPARTMENT DETERMINATION; ISSUANCE. (a) *Criteria; considerations.* The department may approve the permit application and issue a permit according to the criteria established under s. 144.393 after consideration of the comments received under subs. (6) and (7) and after consideration of the environmental impact as required under s. 1.11.

(b) *Time limits.* 1. The department shall act on a construction or new operation permit application within 60 days after the close of the public comment period or the public hearing, whichever is later, unless compliance with s. 1.11 requires a longer time. For an attainment area new major source, the department shall complete its responsibilities under s. 1.11 within one year.

2. The department shall act on an elective operation permit for an existing source within 120 days after the close of the public comment period or the public hearing, whichever is later,

unless compliance with s. 1.11 requires a longer time.

(9) MINING HEARING. If a hearing on the air pollution control permit is conducted as a part of a hearing under s. 144.836, the notice, comment and hearing provisions in that section supersede the provisions of subs. (4) to (8).

History: 1979 c. 34, 221.

144.3925 Mandatory operation permit for existing sources; application and review. **(1)** APPLICANT NOTICE REQUIRED. A person who is required to obtain a mandatory operation permit for an existing source shall apply to the department for the permit on or before the mandatory operation permit application date specified under s. 144.374 (2). The department shall specify by rule the content of applications under this subsection. The department shall consider the availability of existing information when requesting application information from the source.

(2) PLANS, SPECIFICATIONS AND OTHER INFORMATION. Within 20 days after receipt of the application the department shall indicate any additional information required under sub. (1) necessary to determine if the source, upon issuance of the permit, will meet the requirements of ss. 144.30 to 144.426 and 144.96 and rules promulgated under those sections.

(3) NOTICE; ANNOUNCEMENT; NEWSPAPER NOTICE. (a) *Distribution of notice required.* The department shall distribute a notice of a mandatory operation permit for an existing source, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing to the persons listed under s. 144.392 (5) (a) 1 to 5.

(b) *Announcement required.* The department shall circulate an announcement sheet containing a brief description of the mandatory operation permit application for an existing source, a brief description of the administrative procedures to be followed and the date by which comments are to be submitted to the department to the persons listed under s. 144.392 (5) (b) 1 to 3.

(c) *Newspaper notice.* The department shall publish a class 1 notice under ch. 985 announcing the opportunity for written public comment and the opportunity to request a public hearing on the application for a mandatory operation permit for an existing source.

(4) PUBLIC COMMENT. The department shall receive public comment on the application for a 30-day period beginning when the department gives notice under sub. (3) (c).

(5) PUBLIC HEARING. (a) *Hearing permitted.* The department may hold a public hearing on an application for a mandatory operation permit for an existing source if requested by a person, any affected state or the U.S. environmental protection agency within 30 days after the department gives notice under sub. (3) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it deems that there is a significant public interest in holding the hearing.

(b) *Procedure.* The department shall promulgate by rule procedures for conducting public hearings under this subsection. Hearings under this subsection are not contested cases under s. 227.01 (2).

(6) DEPARTMENT DETERMINATION; ISSUANCE. The department shall approve the mandatory operation permit application for an existing source and issue the permit according to the criteria established under ss. 144.393 and 144.3935.

(7) OPERATION CONTINUED DURING APPLICATION. If a person applied to the department for a permit for a source under sub. (1), the source may not be required to discontinue operation for lack of a permit until the department acts under sub. (6).

History: 1979 c. 221.

144.393 Criteria for permit approval. **(1)** REQUIREMENTS FOR ALL SOURCES. The department may approve the application for a permit required or allowed under s. 144.391 if it finds:

(a) *Source will meet emission limitations.* The source will meet all applicable emission limitations promulgated under ss. 144.30 to 144.426, standards of performance for new stationary sources under s. 144.375 (4) and emission standards for hazardous air contaminants under s. 144.375 (5);

(b) *Source will not violate or exacerbate violation of air quality standard or ambient air increment.* The source will not cause or exacerbate a violation of any ambient air quality standard or ambient air increment under s. 144.375 (1) or (2);

(c) *Other permits approvable if source is operating under an emission reduction option.* If the source is operating or seeks to operate under an emission reduction option, the required permit applications for other sources participating in that emission reduction option are approvable; and

(d) *Source will not preclude construction or operation of other source.* The source will not degrade the air quality in an area sufficiently to prevent the construction, reconstruction, replacement, modification or operation of another

source if the department received plans, specifications and other information under s. 144.392 (2) for the other source prior to commencing its analysis under s. 144.392 (3) for the former source. This paragraph does not apply to an existing source required to have a mandatory operation permit.

(2) REQUIREMENTS FOR NONATTAINMENT AREA MAJOR SOURCE CONSTRUCTION OR NEW OPERATION PERMITS. The department may approve the application for a nonattainment area major source construction or new operation permit if the department finds the source meets the requirements under sub. (1) and it finds:

(a) *Reasonable further progress.* By the time the source is to commence operation, the emissions from it and from other sources in or significantly affecting the air quality in the nonattainment area will be sufficiently less than the total emissions allowed prior to the application for the permit, so that reasonable further progress toward the attainment and maintenance of any ambient air quality standard will be achieved;

(b) *Lowest achievable emission rate.* The emission from the source will be at the lowest achievable emission rate; and

(c) *Applicant's other major sources meet or on schedule to meet requirements.* All other nonattainment area major sources and attainment area major sources which are located in this state and which are owned or operated by the permit applicant meet or are on schedule to meet the requirements of ss. 144.30 to 144.426 and 144.96 and rules promulgated under those sections.

(d) *Analysis of alternatives.* Based on an analysis of alternative sites, sizes, production processes and environmental control techniques for any source which is a major source based upon its emissions of carbon monoxide or volatile organic compounds and is located in an area designated under section 172 (a) (2) of the federal clean air act, that the benefits of the construction or modification of the source significantly outweigh the environmental and social costs imposed as a result of the source's location, construction or modification.

(3) REQUIREMENTS FOR ATTAINMENT AREA MAJOR SOURCE CONSTRUCTION OR NEW OPERATION PERMITS. The department may approve the application for an attainment area major source construction or new operation permit if the department finds the source meets the requirements under sub. (1) and it finds:

(a) *Best available control technology.* The source will be subject to the best available control technology for each applicable air contaminant;

(b) *Effects on air quality analyzed.* The effects on air quality as a result of the source and growth associated with the source were analyzed;

(c) *No adverse effect on air quality related values.* The source will not adversely affect the air quality related values of any federal mandatory class I prevention of significant deterioration area; and

(d) *Monitoring.* The permit applicant agrees to conduct monitoring specified by the department as necessary to determine the effects of the source on air quality.

(4) EXEMPTION FROM REQUIREMENTS. The department may waive a requirement under sub. (2) or (3) if:

(a) *Not applicable.* The requirement is not applicable to the source; or

(b) *Not necessary.* The requirement is not necessary to ensure that the source will have no adverse effect on air quality if the construction and operation or modification and operation of the source would result in an allowable emission of less than an amount specified by rule by the department. The department shall submit the notice required under s. 227.018 regarding rules under this paragraph by January 1, 1984.

(5) CONDITIONAL PERMIT. The department may issue a conditional air pollution control permit even if it finds that the source, as proposed, does not meet the requirements under subs. (1) to (3). If the department issues a conditional permit, it shall prescribe reasonable permit conditions to assure that the source will meet the requirements under subs. (1) to (3) if it is constructed, reconstructed, replaced, modified or operated in accordance with those conditions.

(6) EXEMPTION FROM REQUIREMENTS FOR MODIFICATIONS. The department may waive a requirement under subs. (1) to (3) if the application is for the modification of a source, the source already has an air pollution control permit and the source already meets the requirements as a condition of that permit.

History: 1979 c. 34, 221; 1981 c. 314 s. 146.

144.3935 Criteria for mandatory operation permits for existing sources. (1) REQUIREMENTS. Notwithstanding s. 144.393, the department shall approve the application for a mandatory operation permit for an existing source unless:

(a) *Source likely to violate standards.* The department determines that either:

1. The source is located in a nonattainment area, the source is exceeding an emission limitation for the air contaminant for which the area is nonattainment, this excess is likely to be significant or recurring and the excess is causing or

exacerbating a violation of an ambient air quality standard for the air contaminant for which the area is nonattainment;

2. The source is located in an ozone nonattainment area, the source is exceeding an emission limitation for volatile organic compounds, this excess is likely to be significant or recurring and the excess is causing or exacerbating a violation of an ozone ambient air quality standard; or

3. The source is located in a nonattainment area, there is no emission limitation applicable to the source for an air contaminant for which the area is nonattainment, the source is causing or exacerbating a violation of an ambient air quality standard for the air contaminant for which the area is nonattainment and the violation is likely to be significant or recurring; or

(b) *Source likely to violate hazardous air contaminant standard.* The department determines that the source is likely to be in significant or recurring violation of a hazardous air contaminant emission limitation.

(2) ONE-YEAR MORATORIUM ON SUSPENSION OR REVOCATION. (a) The department may not suspend or revoke a mandatory operation permit for an existing source for one year after the issuance of that permit based upon failure of the source at the time of permit issuance to comply with ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections.

(b) Notwithstanding par. (a), the department may take any other action necessary to enforce ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections which apply to the source after issuance of a permit under this section.

History: 1979 c. 221, 355.

144.394 Permit conditions. The department may prescribe conditions for an air pollution control permit to ensure compliance with ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections if the condition is one of the following and if the condition is applicable to the source:

(1) Final inspection and release of the project for permanent operation upon completion of construction, reconstruction, replacement or modification.

(2) Variances, orders or compliance schedules.

(3) Requirements necessary to assure compliance with s. 144.393.

(4) Reasonable construction and applicable operating conditions, emission control equipment maintenance requirements and emergency episode plans.

(5) Emission reduction options.

(6) Documentation of the allocation of the available air resource.

(7) The terms of any election by the permit applicant to meet more stringent emission limitations or to limit hourly, daily or annual emissions beyond what is otherwise required or to obtain an emission reduction option.

(8) Other requirements specified by rule by the department.

History: 1979 c. 34, 221.

144.395 Alteration, suspension and revocation of permits. (1) ALTERATION. The department, after providing written notice to the permit holder and to the persons listed under s. 144.392 (5) (a) 2 to 5, may alter an air pollution control permit if there is or was:

(a) *Violation.* A significant or recurring violation of any condition of the permit;

(b) *Change in rules.* 1. A change in any applicable emission limitation, ambient air quality standard or ambient air quality increment that requires either a temporary or permanent reduction or elimination of the permitted emission or allows a temporary or permanent increase of the permitted emission; or

2. A change in any applicable rule promulgated under ss. 144.30 to 144.426 or 144.96;

(c) *Election.* An election by the permit holder to meet more stringent emission limitations, to limit hourly, daily or annual emissions beyond what is otherwise required or to obtain an emission reduction option;

(d) *Misrepresentation or failure to disclose.* Any misrepresentation or failure to disclose fully all relevant facts when obtaining the permit; or

(e) *Reconstruction, replacement or modification.* A reconstruction, replacement or modification of the stationary source.

(2) SUSPENSION OR REVOCATION. The department, after providing written notice to the permit holder and to the persons listed under s. 144.392 (5) (a) 2 to 5, may suspend or revoke an air pollution control permit, part of that permit or the conditions of that permit if there is or was:

(a) *Violation.* A significant or recurring violation of any condition of the permit which causes or exacerbates a violation of any ambient air quality standard or ambient air increment or which causes air pollution;

(b) *Misrepresentation or deliberate failure to disclose.* Any misrepresentation or a deliberate failure to disclose fully all relevant facts when obtaining the permit; or

(c) *Failure to pay fees.* Failure to pay the required fee.

(3) HEARINGS ON ALTERATION, SUSPENSION AND REVOCATION. Any decision of the department under this section is effective unless the permit holder seeks a hearing on the decision under s. 144.403 (1). If the permit holder files a petition with the department within the time limit specified under s. 144.403 (1) (a), the air pollution control permit remains unaltered and in effect until 10 days after service of the decision issued under s. 144.403 (1) on the matter or a later date established by court order.

History: 1979 c. 34, 221.

144.396 Permit duration. (1) CONSTRUCTION OR MODIFICATION. A construction or modification permit is valid for 18 months from the date of issuance of the permit unless the permit is revoked or suspended. The department may extend the term of the permit for the purposes of commencing construction, reconstruction, replacement or modification.

(2) OPERATION. An operation permit continues to be valid following the date of issuance unless revoked or suspended and does not need to be renewed.

History: 1979 c. 34, 221.

144.397 Operation permit review. (1) DEPARTMENT TO REVIEW OPERATION PERMITS. At least once every 5 years and not more than once every 2 years, the department shall review the operation permit under this section. The department may use information received in public comments or at the public hearing as the basis to initiate a proceeding under s. 144.395 to alter, suspend or revoke the permit.

(2) NOTICE; NEWSPAPER NOTICE. (a) *Distribution of notice required.* The department shall distribute a notice of the permit review, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing to the permit holder and to the persons listed under s. 144.392 (5) (a) 2 to 5. The notice shall indicate the date by which comments are to be submitted to the department.

(b) *Newspaper notice.* Before reviewing an air pollution control permit the department shall publish a class 1 notice under ch. 985 announcing the opportunity for written public comment and the opportunity to request a public hearing on the permit review.

(3) PUBLIC COMMENT. The department shall receive public comment on the permit review for a 30-day period beginning when the department gives notice under sub. (2) (b).

(4) PUBLIC HEARING. (a) *Hearing permitted.* The department may hold a public hearing on the permit if requested by a person, any affected state or the U.S. environmental protection agency within 30 days after the department gives notice under sub. (2) (b). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it deems that there is a significant public interest in holding the hearing.

(b) *Procedure.* The department shall promulgate by rule procedures for conducting public hearings under this subsection. Hearings under this subsection are not contested cases under s. 227.01 (2).

History: 1979 c. 34, 221.

144.398 Failure to adopt rule or issue permit or exemption. The failure to adopt a rule or issue an air pollution control permit or the exemption or granting of an exemption from an air pollution control permit requirement does not relieve any person from compliance with any emission limitation or with any other provision of law.

History: 1979 c. 34.

144.399 Fees. (1) DEPARTMENT MAY PRESCRIBE. The department may by rule prescribe and provide for the payment and collection of reasonable fees for:

(a) *Application.* Reviewing and acting upon any application for an air pollution control permit; and

(b) *Implementation and enforcement.* Implementing and enforcing the conditions of any air pollution control permit but these fees may not include any court costs or other costs associated with an enforcement action.

(2) ENVIRONMENTAL IMPACT FEE CREDIT. The portion of any fees relating to air quality analysis assessed by the department under s. 23.40 (2) for the preparation of an environmental impact statement may be credited towards the payment of any fees assessed under sub. (1).

(3) EXEMPTIONS. (a) *Application fee.* Notwithstanding sub. (1) (a), the department may not charge a fee for reviewing and acting upon any application for a mandatory operation permit for an existing source.

(b) *Implementation and enforcement fee.* Notwithstanding sub. (1) (b), the department may not charge an annual fee for implementing and enforcing an air pollution control permit greater than $200 for a minor source or greater than $500 for a major source.

(4) INFORMATION ON FEES. In promulgating rules under sub. (1), the department shall provide information on the costs upon which the proposed fees are based.

History: 1979 c. 34, 221.

144.40 Machinery use. The department may not require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices or equipment otherwise available.

History: 1979 c. 34.

144.401 County program. Instead of state review of plans and specifications, the department may authorize counties which are administering approved air pollution control programs to review and approve plans, specifications and permits of air contaminant sources being constructed, modified or operated within the jurisdiction of these counties.

History: 1979 c. 34.

144.402 Petition for alteration. A person holding an air pollution control permit may file a petition with the department for alteration of the permit. The department shall promulgate by rule procedures for the alteration of an air pollution control permit under this section.

History: 1979 c. 34.

144.403 Hearings on certain air pollution actions. (1) PERMIT HOLDER; PERMIT APPLICANT; ORDER RECIPIENT. Any permit, part of a permit, order, decision or determination by the department under ss. 144.391 to 144.402 shall become effective unless the permit holder or applicant or the order recipient seeks a hearing on the action in the following manner:

(a) *Petition.* The person seeking a hearing shall file a petition with the department within 30 days after the date of the action sought to be reviewed. The petition shall set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted and the relief desired. Upon receipt of the petition, the department shall hold a hearing after at least 10 days' notice.

(b) *Hearing.* The hearing shall be a contested case under ch. 227. At the beginning of the hearing the petitioner shall present evidence in support of the allegations made in the petition. Following the hearing the department's action may be affirmed, modified or withdrawn.

(2) OTHER PERSONS. Any person who is not entitled to seek a hearing under sub. (1) (intro.) and who meets the requirements of s. 227.064 (1) may seek review under sub. (1) of any permit, part of a permit, order, decision or determination by the department under ss. 144.391 to 144.402.

(3) MINING HEARING. Subsections (1) and (2) do not apply if a hearing on the matter is conducted as a part of a hearing under s. 144.836.

History: 1979 c. 34, 221.

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

(a) Provides by ordinance for requirements compatible with, or stricter or more extensive than those imposed by ss. 144.30 to 144.426 and rules issued thereunder. Such ordinances shall supersede any existing local ordinances;

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

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

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

(e) Is approved by the department as adequate to meet the requirements of ss. 144.30 to 144.426 and any applicable rules pursuant thereto.

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

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

(4) (a) If the department has reason to believe that a program in force pursuant to this section is inadequate to prevent and control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of ss. 144.30 to 144.426, the department shall, on due notice, conduct a hearing on the matter.

(b) If, after such hearing, the department determines that a program is inadequate to prevent and control air pollution in the county to which such program relates, or that such pro-

gram is not accomplishing the purposes of ss. 144.30 to 144.426, it shall require that necessary corrective measures be taken within a reasonable period of time, not to exceed 60 days.

(c) If the county fails to take such necessary corrective action within the time required, the department shall administer within such county all of the regulatory provisions of ss. 144.30 to 144.426. Such air pollution control program shall supersede all county air pollution regulations, ordinances and requirements in the affected jurisdiction.

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

(6) Nothing in ss. 144.30 to 144.426 supersedes the jurisdiction of any county air pollution control program in operation on July 26, 1967, but any such program shall meet all requirements of ss. 144.30 to 144.426 for a county air pollution control program. Any approval required from the department shall be deemed granted unless the department takes specific action to the contrary.

History: 1973 c. 90; 1979 c. 34 s. 2102 (39) (g).

144.42 Motor vehicle emissions limitations; inspections. (1) DEFINITIONS. As used in this section, unless the context requires otherwise:

(a) "Federal act" means the federal clean air act, as amended, on May 11, 1980 (42 USC 7401 et seq.) and regulations issued by the federal environmental protection agency under that act.

(b) "Motor vehicle" has the meaning designated under s. 340.01 (35).

(2) LIMITATIONS. The department shall adopt rules specifying emissions limitations for all motor vehicles not exempted under sub. (5). The limitations may be different for each size, type and year of vehicle engine affected and may not be more stringent than those required by federal law at the time of the vehicle's manufacture. The limitations shall be adopted and periodically revised upon consideration of the following factors:

(a) The emissions reductions necessary to achieve federally mandated ambient air quality standards not later than December 31, 1987, and to maintain those standards after that date.

(b) The emissions levels attainable by reasonable preventive maintenance practices relating to installed emission control equipment and devices for each model year, size and type of motor vehicle affected.

(c) The requirements for eligibility for a manufacturer's warranty under section 7541 (b) of the federal act.

(3) COUNTIES WHERE INSPECTIONS REQUIRED. If the department finds that air quality within a county will not meet one or more applicable primary or secondary ambient air quality standards by December 31, 1982, or that these standards will not be maintained in the county after that date and that inspection of emissions from motor vehicles in any part of the county is required by federal law to attain or maintain these standards, the department shall certify this finding to the department of transportation.

(4) TERMINATION. If the department finds that air quality within a county specified in a certification under sub. (3) has attained all applicable ambient air quality standards and that these standards will be maintained in the county or that control of motor vehicle emissions is no longer required by federal law for attainment and maintenance of these standards, the department shall notify the department of transportation that the county is withdrawn from the certification under sub. (3).

(5) EXEMPTIONS. Emissions limitations promulgated under sub. (2) do not apply to the following motor vehicles:

(a) A motor vehicle of a model year more than 15 years old.

(b) A motor vehicle registered at a gross weight exceeding 8,000 pounds.

(c) A motor vehicle exempt from registration under s. 341.05, except that a motor vehicle owned by the United States is not exempt unless it comes under par. (a), (b), (d), (e), (f), (g) or (h).

(d) A motor vehicle powered by diesel fuel.

(e) A new motor vehicle not previously registered in any state.

(f) A motor vehicle for which inspection, in the judgment of the department, is not a cost effective method for attaining and maintaining air quality.

(g) A moped as defined in s. 340.01 (29m).

(h) A motor-driven cycle as defined in s. 340.01 (33).

(6) TAMPERING WITH POLLUTION CONTROL SYSTEM OR MECHANISM. (a) *Definitions.* As used in this subsection:

1. "Air pollution control equipment" means any equipment or feature which constitutes an operational element of the air pollution control system or mechanism of a motor vehicle.

3. "Tamper" means to dismantle, to remove without replacing with an identical or comparable tested replacement device or to cause to be inoperative any air pollution control equipment.

(b) *Prohibition.* Except as permitted or authorized by rule of the department, no person may tamper with air pollution control equipment.

(c) *Ineligibility for motor vehicle registration.* Except as permitted or authorized by rule of the department, if any person tampers with the air pollution control equipment of a motor vehicle, that vehicle is ineligible for motor vehicle registration until the air pollution control equipment is replaced, repaired or restored to good working order.

(d) *Suspension or cancellation of motor vehicle registration.* Except as permitted or authorized by the rule of the department, if the owner of a motor vehicle tampers with or causes or knowingly permits any person to tamper with the air pollution control equipment, the motor vehicle registration for that vehicle may be suspended or canceled in addition to any other penalty provided by law.

History: 1971 c. 164 s. 81; 1977 c. 29 s. 1654 (7) (b); 1979 c. 34 s. 2102 (39) (g); 1979 c. 274; 1981 c. 390.

144.423 Violations: enforcement. (1) (a) If the department has reason to believe that a violation of ss. 144.30 to 144.426 or 144.96 or any rule promulgated or special order, plan approval or permit issued under those sections has occurred, it may:

1. Cause written notice to be served upon the alleged violator. The notice shall specify the alleged violation, and contain the findings of fact on which the charge of violation is based. The notice 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, 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. 144.426.

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

History: 1971 c. 125 s. 522 (2); 1977 c. 377; 1979 c. 34 s. 980h; 1979 c. 221 s. 2202 (39).

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

(2) In the absence of a generalized condition of air pollution of the type referred to in sub. (1), if the secretary finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he or she may order the persons responsible for the operations in question to reduce or discontinue emissions immediately, without regard to s. 144.423. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in sub. (1) shall apply.

History: 1979 c. 34 ss. 983m, 2102 (39) (g); 1979 c. 176.

144.426 Penalties for violations relating to air pollution. Any person who violates ss. 144.30 to 144.426 or any rule promulgated, any permit issued or any special order issued under those sections shall forfeit not less than $10 or more than $25,000 for each violation. Each day of continued violation is a separate offense.

History: 1979 c. 34.

SUBCHAPTER IV

SOLID WASTE, HAZARDOUS WASTE AND REFUSE

144.43 Solid waste; definitions. As used in ss. 144.43 to 144.47 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 1,200 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. 144.44 (2), excluding buffers and similar areas.

(1m) "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.

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

(2d) "Hazardous waste disposal" has the meaning specified for disposal under s. 144.61 (3).

(2h) "Hazardous waste facility" has the meaning specified under s. 144.61 (5m).

(2p) "Hazardous waste storage" has the meaning specified for storage under s. 144.61 (10).

(2t) "Hazardous waste treatment" has the meaning specified for treatment under s. 144.61 (13).

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

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

(4g) "Resource conservation and recovery act" means the federal resource conservation and recovery act, 42 USC 6901 to 6987, as amended on May 7, 1982.

(4r) "Solid waste disposal" means the discharge, deposit, injection, dumping or placing of any solid waste into or on any land or water in a manner which may permit the solid waste or any constituent of the solid waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment. This term does not include the transportation, storage or treatment of solid waste.

(5) "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.

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

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

(7g) "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.

(7r) "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.

(8) "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.

History: 1979 c. 34 ss. 978k, 984rd; 1981 c. 374 ss. 20 to 27, 148.

144.431 Solid waste; powers and duties.

(1) The department shall:

(a) Promulgate rules implementing and consistent with ss. 144.43 to 144.47.

(b) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of ss. 144.43 to 144.47.

(c) 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.

(d) Collect and disseminate information and conduct educational and training programs relating to the purposes of ss. 144.43 to 144.47.

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

(2) The department may:

(a) Hold hearings relating to any aspect of the administration of ss. 144.43 to 144.47 and, in connection therewith, compel the attendance of witnesses and the production of evidence.

(b) Issue orders to effectuate the purposes of ss. 144.43 to 144.47 and enforce the same by all appropriate administrative and judicial proceedings.

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

(d) 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.

History: 1979 c. 34.

144.432 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 ss. 144.43 to 144.47 and any other applicable requirements of law.

History: 1979 c. 34; 1981 c. 374 s. 148.

144.433 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 ss. 144.43 to 144.47 and 144.96 are public records subject to s. 19.21.

(2) CONFIDENTIAL RECORDS. (a) *Application.* 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 ss. 144.43 to 144.47 and 144.96.

(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 as relating to production or sales figures or to processes or production unique to the owner or operator of the solid waste 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 may use records and other information granted confidential status under this subsection only in the administration of ss. 144.43 to 144.47 and 144.96. The department 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 may release on a limited basis records and other information granted confidential status under this subsection if the department 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 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 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.

144.434 Inspections. Any duly authorized officer, employe or representative of the department may enter and inspect any property, premise or place on or at which a solid waste facility is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with ss. 144.43 to 144.47 and rules promulgated under those sections. No person may refuse entry or access to any 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.

144.435 Solid waste disposal standards. (1) The department shall promulgate rules establishing minimum standards for the location, design, construction, sanitation, operation 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. 144.436. 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 chs. 30, 144 and 147. 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.

History: 1975 c. 83; 1977 c. 377; 1979 c. 34 ss. 984rb, 2102 (39) (g); 1981 c. 86 s. 71; 1981 c. 374.

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

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

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

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

(2) The department shall grant licenses for the open burning of solid waste at the licensee's solid waste disposal 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 rules, or any state air pollution control rules required to be adopted under applicable federal laws or regulations.

History: 1975 c. 83; 1979 c. 34 s. 984rf; 1981 c. 374 ss. 31m, 31s, 148.

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

(2) All county plans shall be submitted to the department for review. Within 90 days after submittal, the department shall approve or disapprove the plans. During its review, the department shall consult with the appropriate regional planning commission or other planning agency to determine whether any 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; 1981 c. 374 s. 148.

144.438 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.

144.439 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.

144.44 Approval process; operating license. (1) DEFINITIONS. As used in this section:

(a) "Class 1 proceeding" has the meaning specified under s. 227.01 (2) (a).

(b) "Contested case" has the meaning specified under s. 227.01 (2).

(c) "Informational hearing" means a hearing conducted under s. 227.022.

(1m) LOCAL APPROVAL. (a) *Definition.* As used in this subsection, "local approval" has the meaning specified under s. 144.445 (3) (d).

(b) *Application for local approvals required.* Within 15 days after the receipt of a 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.

(c) *Attempts to obtain local approvals required.* Following applications for local approvals under par. (b) and prior to submitting a feasibility report, the applicant 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.

(d) *Waiver of local approvals.* If a local approval precludes or inhibits the ability of the applicant to obtain data required to be submitted 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.

(e) *Compliance required.* Except as provided under par. (d), no person may construct a solid waste disposal facility or a hazardous waste facility unless the person complies with the requirements of pars. (b) and (c).

(2) FEASIBILITY REPORT. (a) *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.

(b) *Local approval application prerequisite.* Except as provided under par. (c), no person may submit a feasibility report until the latest of the following periods:

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

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

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

(c) *No prerequisite for certain mining facilities.* An operator engaged in mining, as defined under s. 144.81 (5), on May 21, 1978, may, but is not required to, submit a feasibility report for any solid waste disposal facility for waste resulting from those mining operations.

(d) *Compliance required.* No person may construct a solid waste disposal facility or a hazardous waste facility unless the person complies with the requirements of this subsection.

(e) *Notification of proposed facility.* Immediately upon receipt of a feasibility report the department shall send a notice to the persons specified under sub. (4m) 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.

(f) *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. The rules may specify special requirements for a feasibility report relating to a hazardous waste facility. A feasibility report shall include 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. A feasibility report shall include 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. A feasibility report shall describe how the proposed facility relates to any applicable county solid waste management plan approved under s. 144.437. A feasibility report shall describe 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. A feasibility report shall specify the proposed date of closure for the facility. The department may require a feasibility report to be prepared by a registered professional engineer.

(g) *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.

(h) *Distribution of feasibility report.* 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 sub. (4m).

(i) *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).

(j) *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. 144.836, the department shall complete any environmental impact statement process required under s. 1.11 before proceeding with the feasibility report review process under par. (k) and subs. (2g) and (2r).

(k) *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. 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 is published. The notice shall describe the methods by which a hearing may be requested under pars. (L) and (m). The department shall distribute copies of the notice to the persons specified under sub. (4m).

(L) *Request for an informational hearing.* Within 30 days after the notice under par. (k) 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.

(m) *Request for treatment as a contested case.* Within 30 days after the notice under par. (k) 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 par. (L) be treated as a contested case, as provided under s. 227.064. 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:

1. 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;

2. 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

3. There is a dispute of material fact.

(n) *Criteria for determination of feasibility; environmental impact.* 1. A determination of feasibility shall be based only on ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under those sections. A determination of feasibility for a facility for the disposal of metallic mining waste shall be based only on ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under those sections with special consideration given to s. 144.435 (2) and rules promulgated under that section.

2. 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.

3. The department may receive into evidence at a hearing conducted under sub. (2g) or (2r) 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.

(o) *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 sub. (3). 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 sub. (3) or licensure under sub. (4).

NOTE: The drafting file of ch. 374, laws of 1981, shows that the words "shall state" were deleted by the drafter. This appears to be an error.

(p) *Issuance of final determination of feasibility.* Except as provided under par. (q), if no hearing is conducted under sub. (2g) or (2r), the department shall issue the final determination of feasibility within 60 days after the 30-day period under par. (m) has expired.

(q) *Issuance of final determination of feasibility in certain situations involving utilities and mining.* If a determination of feasibility is required under s. 196.491 (2m), the issuance of a final determination of feasibility is subject to the time limits under s. 196.491 (3) (f) and (ff). If a determination of feasibility is required under s. 144.836, the issuance of a final determination of feasibility is subject to the time limits under s. 144.84 (3) or 144.85 (5), whichever is applicable.

(2g) INFORMATIONAL HEARING. (a) *Applicability.* This subsection applies if no request for the treatment of the hearing as a contested case is granted and if:

1. An informational hearing is requested under sub. (2) (L) within the 30-day period; or

2. No hearing is requested under sub. (2) (L) within the 30-day time period but the department determines that there is substantial public interest in holding a hearing.

(b) *Nonapplicability; hearing conducted as a part of certain mining hearings.* Notwithstanding par. (a) this subsection does not apply if a hearing on the feasibility report is conducted as a part of a hearing under s. 144.836 and the time limits, notice and hearing provisions in that section supersede the time limits, notice and hearing provisions under sub. (2) (j) to (m) and this subsection.

(c) *Informational hearing.* The department shall conduct the informational hearing within 60 days after the expiration of the 30-day period under sub. (2) (L). 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.

(e) *Issuance of final determination of feasibility.* Except as provided under sub. (2) (q), the department shall issue a final determination of feasibility within 60 days after the informational hearing under this subsection is adjourned.

(2r) HEARING CONDUCTED AS A CONTESTED CASE. (a) *Applicability.* This subsection applies only if a person requests the treatment of the hearing as a contested case under sub. (2) (m) within the 30-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 period under sub. (2) (m) 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.

(b) *Nonapplicability.* Notwithstanding par. (a), this section does not apply if a hearing on the feasibility report is conducted as a part of a hearing under s. 144.836 and the time limits, notice and hearing provisions under that section supersede the time limits, notice and hearing provisions under sub. (2) (j) to (m) and this subsection.

(d) *Time limits.* Except as provided under sub. (2) (q):

1. The division of natural resources hearings in the department of administration shall schedule the hearing to be held within 120 days after the expiration of the 30-day period under sub. (2) (m).

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

(3) PLAN OF OPERATION. (a) *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.

(ag) *Feasibility report prerequisite.* Except as provided under par. (ar), 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 sub. (2), (2g) or (2r) and is not subject to judicial review under ss. 227.15 to 227.21 in the review of any decision under sub. (2), (2g) or (2r).

(ar) *Feasibility report prerequisite; exception.* The owner or operator of a licensed solid waste disposal facility in existence on May 21, 1978, may, but is not required to, submit a plan of operation for that facility and seek approval under this subsection. An operator engaged in mining, as defined under s. 144.81 (5), on May 21, 1978, may, but is not required to, submit a plan of operation for any solid waste disposal facility for waste resulting from those mining operations and seek approval for that plan of operation under this subsection.

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

(c) *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 the standards established under s. 144.435 or, in the case of hazardous waste facilities, with the rules and standards established under s. 144.62. An approval may be conditioned upon any requirements necessary to comply with the standards. Any approval may be modified by the department upon application of the licensee if newly discovered information indicates that the modification would not inhibit compliance with the standards adopted under s. 144.435 or, if applicable, s. 144.62. 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. 144.441 and 144.443.

(cm) *No environmental impact statement required.* A determination under this subsection does not constitute a major state action under s. 1.11 (2).

(d) *Approval.* Approval under par. (c) 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. 144.435 or, if applicable, s. 144.62.

(e) *Failure to comply with plan of operation.* Failure to operate in accordance with the approved plan subjects the operator to enforcement under s. 144.47, or, if the department establishes that any failure to operate in accordance with the approved plan is grievous and continuous, to suspension, revocation or denial of the operating license under sub. (4).

(f) *Feasibility report not subject to review.* In any judicial review under ss. 227.15 to 227.21 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.

(g) *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. 144.431 (2) (a).

(4) OPERATING LICENSE. (a) *License requirement.* No person may operate a solid waste facility or hazardous waste facility unless the person obtains an operating license from the department. The department shall issue an operating license with a duration of one year or more except that the department may issue an initial license with a duration of less than one year. The department may deny, suspend or revoke an operating license for failure to pay fees required under ss. 144.43 to 144.47 or for grievous and continuous failure to comply with the approved plan of operation under sub. (3) or, if no plan of operation exists with regard to the facility, for grievous and continuous failure to comply with the standards adopted under s. 144.435. If the license application is for a solid waste disposal facility for solid waste resulting from mining operations in existence on May 21, 1978, the department shall make any determination with respect to whether disposal is being undertaken in an environmentally sound manner and shall administer compliance with the licensing requirement of this subsection in a manner which, with respect to nonhazardous solid waste, does not require substantial structural modification of the existing facility, expenditure which is not appropriate for the nonhazardous nature of the waste or interruption of the mining operation.

(am) *Environmental impact statement not required.* A determination under this subsection does not constitute a major state action under s. 1.11 (2).

(b) *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 sub. (3). The department may require that compliance be certified in writing by a registered professional engineer. The department may by rule require, as a condition precedent to the issuance of the operating license for a solid waste 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.

(d) *Feasibility report and plan of operation not subject to review.* In any judicial review under ss. 227.15 to 227.21 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.

(e) *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. 144.431 (2) (a).

(4m) DISTRIBUTION. One copy of the notice or documents required to be distributed under this section shall be mailed to:

(a) The clerk of each affected municipality.

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

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

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

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

(7) WAIVER; EXEMPTIONS; APPLICABILITY. The department may waive compliance with any requirement of this section or shorten the time periods under this section provided to the extent necessary to prevent an emergency condition threatening public health, safety or welfare. The department may, by rule, exempt specified solid wastes or specified facilities from licensing as solid waste facilities if it finds that regulation under this section would discourage the development of improved methods of solid waste disposal, including the landspreading of sludges, or would not be warranted, in light of the potential hazard to public health or the environment. The department shall not regulate under this chapter any solid waste from a single family

or household disposed on the property where it is generated. No license pursuant to s. 144.44 shall be required for agricultural land on which nonhazardous sludges from a treatment work, as defined under s. 147.015 (12), are land spread for purpose of a soil conditioner or nutrient.

(8) ENFORCEMENT PROCEDURES FOR OLDER FACILITIES. Notwithstanding s. 144.47, for solid waste facilities licensed on or before January 1, 1977, which the department believes do not meet minimum standards promulgated under s. 144.435, the following enforcement procedure shall apply:

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

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

(c) If the licensee desires a hearing, the department may not issue the order or decision under par. (a) until a hearing, conducted as a class 2 proceeding under ch. 227, is held. The hearing shall be held in the county where the 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. 144.435. If the hearing examiner's decision is in favor of the department, the order or decision may be issued. The order or decision shall be subject to judicial review under ch. 227.

(d) If the licensee does not request a hearing under par. (b), the department shall issue the order or decision under par. (a). The licensee may challenge the order or decision by commencing an action in the circuit court for the county in which the facility is located within 60 days after issuance of the order or decision. The complaint shall allege that the facility adheres to the minimum standards promulgated under s. 144.435. 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.

(9) COMMERCIAL PCB WASTE STORAGE AND TREATMENT FACILITIES. (a) *Definitions.* As used in this subsection:

1. "Commercial" means providing services to persons other than the owner or operator.

2. "PCBs" has the meaning specified under s. 144.79 (1).

3. "PCB waste" means any product containing PCBs, as defined under s. 144.79 (1) (c), which is subject to regulation under s. 144.79 after the product becomes a solid waste. This term also means any material which is contaminated by the discharge, as defined under s. 144.76 (1) (a), of a substance containing PCBs subject to regulation under s. 144.76.

(b) *Feasibility report and related provisions.* Except as provided under par. (f), no person may establish or construct a commercial PCB waste storage or treatment facility unless the person complies with the requirement under subs. (2) to (2r) in the same manner as if the facility were a solid waste disposal facility including each of the following:

1. Submitting a feasibility report under sub. (2) (a) to determine whether the site has potential for use in establishing a PCB waste storage or treatment facility.

2. Complying with requirements for the preparation and contents of a feasibility report under sub. (2) (f) including any special requirements for PCB waste storage or treatment facilities.

3. Following the notice, hearing, procedure and other requirements under subs. (2) to (2r) including any environmental impact requirements.

(c) *Plan of operation and related provisions.* Except as provided under par. (f), no person may establish, construct or operate a commercial PCB waste storage or treatment facility unless the person complies with the requirements under sub. (3) as if the facility were a solid waste disposal facility including all of the following:

1. Submitting a plan of operation which complies with requirements for preparation and contents specified under sub. (3) (b) including any special requirements for PCB waste storage or treatment facilities except the department may waive any requirement for the specification of long-term care responsibility.

2. Constructing the facility in accordance with an approved plan of operation as required under sub. (3) (d).

3. Operating the facility in accordance with the approved plan of operation subject to the sanctions under sub. (3) (e).

(d) *Financial responsibility requirements.* Except as provided under par. (f), no person may establish or construct a commercial PCB waste storage or treatment facility unless the person complies with s. 144.443.

(e) *License requirement.* Except as provided under par. (f), no person may operate a commercial PCB waste storage or treatment facility unless the person obtains an operating license under sub. (4).

(f) *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 subsection.

(g) *Applicability.* The subsection applies to any facility which is not otherwise subject to this section.

History: 1977 c. 377; 1979 c. 34 s. 2102 (39) (g); 1979 c. 110; 1979 c. 221 ss. 629m to 630g, 2202 (39); 1979 c. 355; 1981 c. 86; 1981 c. 374 ss. 33 to 50, 148.

144.441 Long-term care. (1) STANDARDS. 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. 144.44 (3). The long-term care provisions in an approved plan of operation may be modified under s. 144.44 (3) (d) 3.

(2) OWNER RESPONSIBILITY; TERMINATION. (a) *Definitions.* In this subsection:

1. "Approved facility" means only a solid or hazardous waste disposal facility with an approved plan of operation under s. 144.44 (3) 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. 144.44 (3).

2. "Approved mining waste facility" means an approved waste facility which is part of a mining site, as defined under s. 144.81 (8), used for the disposal of waste resulting from mining, as defined under s. 144.81 (5), or prospecting, as defined under s. 144.81 (12).

(b) *Long-term care responsibility; 30-year.* The owner of an approved mining waste facility is responsible for the long-term care of the facility for 30 years after the closing of the facility unless the responsibility is terminated earlier under par. (d). The owner of any approved facility except an approved mining waste facility is responsible for the long-term care of the facility for 30 years after the closing of the facility unless the responsibility is terminated earlier under par. (c) or (d).

(c) *Long-term care responsibility; 20-year.* If the plan of operation for an approved facility indicates or if the owner of an approved facility requests and the department approves, the owner's responsibility for long-term care of the facility terminates 20 years after the closing of the facility unless the owner's responsibility is terminated earlier under par. (d). This paragraph does not apply to the owner's responsibility for the long-term care of a mining waste facility.

(d) *Long-term care responsibility; early release.* The owner of an approved facility may apply to the department for termination of the owner's responsibility for long-term care at any time at least 10 years after the closing of the facility. Upon receipt of this application and using the procedure applicable to feasibility reports under s. 144.44 (2) (k), the department shall provide notice to the public and to the owner or operator and an opportunity for a hearing on the termination of the owner's responsibility for the long-term care of the facility. In this proceeding the burden is on the applicant to prove by a preponderance of the evidence that additional long-term care is not necessary for adequate protection of public health or the environment. Within 120 days after posting notice of the pending termination or within 60 days after any hearing is adjourned, whichever is later, the department shall determine either that long-term care of the facility is no longer required, in which case the applicant is relieved of this responsibility or that additional long-term care of the facility as specified in the plan of operation is still required, in which case further application under this subsection is not permitted until at least 5 years have elapsed since the previous application. The department may establish separate procedures and requirements in terminating an owner's responsibility for the long-term care of an approved mining waste facility under this paragraph.

(3) IMPOSITION OF TONNAGE FEE; EXCEPTION; USE. (a) *Imposition of tonnage fee.* Except as provided under pars. (b) to (d), the owner or operator of a licensed solid or hazardous waste disposal 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 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).

(c) *Exemption from tonnage fees; when waste management fund exceeds maximum.* Whenever the investment board certifies to the department that the balance in the waste management fund exceeds $15,000,000, the solid or hazardous waste received by a facility which is operating under its 6th or subsequent year subject to licensing is not subject to the tonnage fee imposed under par. (a) until the investment board certifies to the department that the bal-

ance in the waste management fund is less than $12,000,000.

(d) *Exemption from tonnage fees; if waste management base fee exceeds total tonnage fees.* If the total annual tonnage fees for all solid and hazardous waste received by a facility would be less than or equal to the waste management base fee for that year, the solid or hazardous waste received by the facility is exempt from the tonnage fee imposed under par. (a) for that year. The department shall establish methods by rule for estimating the total annual tonnages for all solid and hazardous waste received by a facility. If an estimate reveals that total annual tonnage fees for a facility for a certain year are unlikely to exceed the waste management base fee for that year, the department shall grant an exemption under this paragraph without requiring the calculation of the actual total annual tonnage fees.

(e) *Reduction of tonnage fee by the amount of the waste management base fee.* If the total annual tonnage fees for all solid and hazardous waste received by a facility would exceed the waste management base fee for that year, the total annual tonnage fees imposed on that facility shall be reduced by the amount of the waste management base fee imposed for the same year.

(f) *Use of tonnage fees.* Tonnage fees shall be paid into the waste management fund to be used for the purposes specified under sub. (6) (d) to (f).

(4) AMOUNT OF TONNAGE FEE. (a) *Tonnage fee; solid waste.* Except as provided under pars. (d) to (h), the tonnage fee imposed by sub. (3) (a) is 1.5 cents per ton for solid waste.

(b) *Tonnage fee; certain hazardous waste.* Except as provided under pars. (d) to (h), the tonnage fee imposed by sub. (3) (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 pars. (d) to (h), the tonnage fee imposed by sub. (3) (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.

(d) *Tonnage fee; solid waste; 20-year responsibility.* With respect to a facility under sub. (2) (c), the tonnage fee imposed under sub. (3) (a) is 3.5 cents per ton for solid waste.

(e) *Tonnage fee; certain hazardous waste; 20-year responsibility.* With respect to a facility under sub. (2) (c), the tonnage fee imposed under sub. (3) (a) is 35 cents per ton for hazardous wastes other than waste specified under par. (f).

(f) *Tonnage fee; other waste; 20-year responsibility.* With respect to a facility under sub. (2) (c), the tonnage fee imposed under sub. (3) (a) is 3.5 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, or sludges produced by municipal wastewater treatment facilities.

(g) *Tonnage fee; mining waste.* Notwithstanding pars. (b) to (f), with respect to prospecting or mining waste, the tonnage fee imposed under sub. (3) (a) is:

1. For hazardous tailing solids, 1.5 cent per ton.

2. For nonhazardous tailing solids or for nonacid producing taconite 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 or for nonacid producing taconite 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.

(h) *Tonnage fee surcharge; responsibility based on net worth.* With respect to solid or hazardous waste disposed at a facility for which the owner or operator establishes proof of financial responsibility on the basis of net worth under s. 144.443 (4) and complies with minimum security requirements under s. 144.443 (8), the tonnage fees specified under pars. (b) to (g) shall be increased by 25%.

(5) WASTE MANAGEMENT BASE FEE. (a) *Imposition of waste management base fee.* Except as provided under par. (b), the owner or operator of a licensed solid or hazardous waste disposal facility shall pay to the department a waste management base fee for each calendar year.

(b) *Exemption from waste management base fee; when waste management fund exceeds maximum.* If the solid and hazardous waste received by a facility are not subject to the tonnage fees imposed under sub. (3) (a) because of sub. (3) (c), the owner or operator of the facility is not subject to the waste management base fee imposed under par. (a).

(c) *Amount of waste management base fee.* The waste management base fee is $100.

(d) *Use of waste management base fees.* Waste management base fees shall be paid into the waste management fund to be used for the purposes specified under sub. (6) (d) to (f).

(6) PAYMENTS FROM THE WASTE MANAGEMENT FUND AND RELATED PAYMENTS. (a) *Definitions.* As used in this subsection:

1. "Approved facility" has the meaning specified under sub. (2) (a) 1.

2. "Approved mining waste facility" has the meaning specified under sub. (2) (a) 2.

(b) *Payments from the waste management fund.* The department may expend moneys in the waste management fund only for the purposes specified under pars. (d) to (f).

(c) *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 pars. (d) to (f), only for approved mining waste facilities, only if moneys in the waste management fund are insufficient to make complete payments and only if the amount expended does not exceed the balance in the waste management fund at the beginning of that fiscal year or 50% of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

(d) *Payments for long-term care after termination of owner responsibility.* The department may make payments for all costs of long-term care of an approved facility accruing after the responsibility of the owner is terminated under sub. (2). The department shall by rule provide for the method of payment.

(e) *Payment of related costs.* The department may make payments for the following costs which arise from occurrences not anticipated in the plan of operation and which pose a substantial hazard to public health or welfare:

1. The costs of repairing a facility or isolating the waste.

2. The costs of repairing environmental damage caused by a facility.

3. The costs of providing temporary or permanent replacements for residential water supplies damaged by a facility.

4. The costs of assessing the potential health effects of the occurrence, not to exceed $10,000 per occurrence.

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

(g) *Notice; hearing.* Prior to making any expenditure under par. (e), the department shall publish a class 1 notice, under ch. 985, of its intent to do so, specifying the amount and purpose of the proposed expenditure and shall afford a hearing to any person who demands a hearing within 30 days for the purpose of determining whether the proposed expenditure meets the requirements of par. (e) and is reasonable in relation to the cost of obtaining similar materials and services. If an expenditure made under par. (e) would not have been necessary had the person responsible for the operation or long-term care of the facility substantially complied with the requirements of the plan of operation, a right of action shall accrue to the state against the person, and the attorney general shall take action as is appropriate to enforce this right of action by recovering any amounts so expended. If the payment under par. (e) was made from the waste management fund, the net proceeds of any recovery in the action shall be paid into the waste management fund. If the payment under par. (e) was made from the investment and local impact fund, the net proceeds of any recovery in the action shall be paid into the investment and local impact fund.

History: 1977 c. 377; 1979 c. 142; 1979 c. 221 ss. 630q to 630t, 2202 (39); 1981 c. 86, 374.

144.442 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. 144.445. 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. 144.62, if applicable.

(2) Any person having or acquiring rights of ownership in land where an approved facility, as defined under s. 144.441 (2) (a) 1, was previously operated may not, after termination of the owner's responsibility for long-term care of the facility under s. 144.441 (2), 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.

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

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

(b) "Company" means 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. 144.44 (4) or 144.64 (2) 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.

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

(d) "Public utility" has the meaning specified under s. 196.01 (1).

(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.

(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 plan of operation.

(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.

(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) or (b) 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.
4. An irrevocable letter of credit.
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. 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 responsibility for long-term care 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 responsibility for long-term care.

(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) 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 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 principals:

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), if the department determines that none of the contingent liabilities or other data or informa-

tion provided in the financial statements or opinion of the certified public accountant disqualifies the company and if the department determines that a company complies with minimum security requirements under sub. (8), 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 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) 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 and long-term care 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.

(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 devi-

ate from generally accepted accounting principals.

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.

(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 and long-term care costs ratio; minimum net worth; and absence of qualifiers in certified public accountant's opinion.* Calculations and determinations 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.

(8) MINIMUM SECURITY REQUIREMENTS UNDER NET WORTH METHOD. Except as provided under sub. (9), a company is required to pay a tonnage fee surcharge as provided under s. 144.441 (4) (h) in order to comply with minimum security requirements.

(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.

NOTE: Ch. 374, laws of 1981, which created par. (a) states in s. 144 that it "first applies on July 1, 1984, and a public utility may comply with minimum security requirements under a risk pool arrangement regardless of whether other utilities utilize this arrangement prior to that date".

(b) *Inability to meet closure and long-term care 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 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 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 AND LONG-TERM CARE. (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:

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).

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

3. The department may issue an assessment order under sub. (9) (c) if the owner or operator established proof of financial responsibility by complying with minimum financial stan-

dards under sub. (7) and minimum security requirements under sub. (9).

(b) *Compliance with closure and long-term care requirements.* If the owner or operator of a waste facility fails to comply with the closure and any long-term care requirements in any plan of operation, 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).

(c) *Prevention of imminent hazard.* 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, 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).

(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.

144.445 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 ss. 144.44 and 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. 59.065, 59.07, 59.083, 59.97, 59.971, 60.18, 60.29, 60.306, 60.72, 60.74, 61.34, 61.35, 62.11, 62.23, 66.01, 66.052, 66.24 (8), 87.30, 91.73, 144.07, 196.58, 236.45 or 349.16.

(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. 144.44 (2) 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) The governing body of an affected municipality may commence the negotiation and arbitration process under this section by adopting a siting resolution at any time after the municipality receives a request from the applicant under s. 144.44 (1m) (b) or receives any application for a local approval and before the expiration of any time period specified under s. 144.44 (2) (b). The siting resolution shall state the affected municipality's intent to negotiate and, if necessary, arbitrate with the applicant concerning the proposed facility. Within 7 days after adopting the siting resolution, the affected municipality shall send a copy of the siting resolution to the applicant and the board. If no affected municipality adopts a siting resolution within the time limits in this paragraph, 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).

(b) Immediately upon receipt of the first siting resolution applicable to a facility, the board shall give the other affected municipalities written notice that they are required to adopt a siting resolution within 2 weeks after receipt of the notice to be eligible to appoint members in the local committee. Other affected municipalities shall send a copy of the resolution to the applicant and the board within 7 days after adopting a siting resolution. An affected municipality which does not adopt a siting resolution within 2 weeks after receipt of notice from the board may not appoint members to the local committee.

(c) 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.

(d) 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.

(7) LOCAL COMMITTEE. (a) 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, no more than 2 of whom are elected officials or municipal employes.

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) Any affected municipality which fails to appoint members to the local committee within 2 weeks after the siting resolution is adopted by that municipality may not appoint members to the local committee. If no municipality appoints members to the local committee under this paragraph, 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).

(c) 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.

(d) The local committee shall elect one of its members as chairperson.

(e) 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.

(f) Meetings of the local committee are subject to subch. IV of ch. 19.

(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 $2,500, 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) Negotiation between the applicant and the local committee may commence at any time after the appointment of all members of the local committee. 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) 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) 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) 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. 227.22 (2), the decision of the board on default is subject to judicial review under ss. 227.15 to 227.21. 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).

(e) 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.

(f) 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. (e), shall be incorporated into a written agreement. Within 2 weeks after approval of the written agreement by the applicant and the local committee, the negotiated agreement shall be submitted for approval by the governing body of each town, city or village where all or a portion of the facility is to be located. If the negotiated agreement is approved by resolution by each town, city or village where all or a portion of the facility is to be located, the negotiated agreement is binding on all of the participating municipalities. If the negotiated agreement is not approved by any town, city or village where all or a portion of the facility is to be located, the negotiated agreement is void.

(g) 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.

(10) ARBITRATION. (a) 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) 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 board issues a notice under sub. (6) (b).

(c) Within 15 days after receipt of a petition to initiate arbitration, the board shall notify the applicant and the local committee either that they are required 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 or, otherwise, that they are required to submit their respective final offers to the board within 90 days after the date of the notice. If the board directs the applicant and the local committee to continue negotiating, the petition to initiate arbitration may be resubmitted after the extended period of negotiation. If the local committee fails to submit a final offer within the time limit in this paragraph, 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 in this paragraph, the applicant may not construct or operate the facility.

(d) Final offers shall contain the final terms and conditions relating to the facility proposed by the applicant and the local committee and any information or arguments in support of the proposals. Additional supporting information may be submitted at any time. The final offers 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) (f) by each town, city or village where all or a portion of the facility is to be located. 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. The final offers are public documents and the board shall make copies available to the public.

(e) 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.

(f) 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.

(g) Within 90 days after the last day for submitting final offers under par. (c), 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. (c). 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.

(h) 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.

(i) Sections 788.09 to 788.15 apply to arbitration awards under this subsection.

(j) 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 ss. 144.43 to 144.47 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. 144.64 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. 144.44 (2) (f), 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. 144.84 or 144.85.

History: 1981 c. 374.

144.447 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. 144.44 (2).

(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. 144.44 (2).

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. 144.44 (2).

History: 1981 c. 374.

144.448 Duties of metallic mining council. (1) The metallic mining council shall advise the department on the implementation of ss. 144.435, 144.44, 144.441, 144.442, 144.445, 144.60 to 144.74 and 144.80 to 144.94 as those sections 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 appropriate standing committees of the legislature under s. 227.018.

(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.

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

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

History: 1981 c. 374 s. 148.

144.465 Review of alleged violations. Any 6 or more citizens or any municipality may petition for a review of an alleged violation of ss. 144.43 to 144.47 or any rule promulgated or special order, plan approval, license or any term or condition of a license issued under those sections 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. 144.47.

(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.

144.47 Violations: enforcement. (1) (a) If the department has reason to believe that a violation of ss. 144.43 to 144.47 or any rule promulgated or special order, plan approval, or any term or condition of a license issued under those sections 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. 144.44

(8), 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. 144.44 (8), the department may require that the alleged violator appear before the department for a hearing at a time and place specified in the notice and answer the charges complained of; or

2. Initiate action under s. 144.98.

(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.

144.48 Waste oil collection and recycling.

(1) DEFINITIONS. As used in this section, unless the content requires otherwise:

(a) "Automotive engine oil" means any oil to be used in the engine or crankcase of a motor vehicle.

(b) "Consumer" means a person who, for personal or family purposes, purchases or uses automotive engine oil or generates, collects, stores or transports engine waste oil in quantities of less than 200 gallons per year.

(c) "Engine waste oil" means automotive engine oil after it is used and removed from the engine or crankcase of a motor vehicle but before that oil is recycled.

(d) "Fuel oil" means any oil to be burned to produce heat.

(e) "Motor vehicle" means any vehicle propelled by an internal combustion engine and includes any automobile, truck, bus, motorcycle, snowmobile or vehicle which travels on or off roads or highways.

(f) "Reclaimed oil" means engine waste oil which is processed by settling, dehydration, filtration or mixing, or combinations of those procedures, which removes some of the harmful physical and chemical characteristics which are acquired through use.

(g) "Recycled oil" means re-refined oil or reclaimed oil.

(h) "Re-refined oil" means engine waste oil which is processed by high temperature distillation and chemical treatment or any other process which removes all harmful physical and chemical characteristics acquired through use.

(i) "Retail sales establishment" means a person who is engaged in the business of selling automotive engine oil to consumers.

(j) "Service establishment" means a person who is engaged in the business of servicing and removing automotive engine oil from motor vehicles for consumers.

(k) "Waste oil" means any oil after use or which is contaminated through storage or handling before that oil is recycled.

(2) WASTE OIL COLLECTION. (a) *Retail sales establishment.* A retail sales establishment:

1. Shall maintain an engine waste oil collection facility for the temporary storage of engine waste oil returned by consumers and post at least one sign at the location of sale which contains wording similar to: "Engine waste oil collection facility. Please return your waste oil here."; or

2. Shall post at least one sign at the location of sale which contains wording similar to: "Engine waste oil can be recycled. Please return your waste oil to a waste oil storage facility. The nearest waste oil storage facility is located ..... and is open .....". The sign shall describe the location and the days and hours of operation.

(b) *Approved waste oil collection facilities.* The department shall establish by rule standards for the approval of certain types of facilities to be used for engine waste oil collection.

(c) *Exemption.* A retail sales establishment which maintains an engine waste oil collection facility of a type approved by the department is exempt from the requirements of ss. 144.44, 144.46, 144.63 and 144.64 and rules promulgated under those sections with respect to that facility.

(d) *Compliance with solid and hazardous waste regulations.* Except as provided under par. (c), no person may maintain or operate an engine waste oil collection facility unless the person complies with the requirements of ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under those sections with respect to that facility.

(3) WASTE OIL STORAGE FACILITIES. (a) *Required storage facilities.* 1. As used in this paragraph, "adequate engine waste oil storage facilities" means at least the minimum number of separate engine waste oil storage facilities each with a capacity of at least 250 gallons, approved by the department and accessible to the public. The department shall establish standards for the approval of certain types of facilities to be used for engine waste oil storage. These standards may allow the same facility to serve as an engine

waste oil collection facility and an engine waste oil storage facility.

2. The minimum number of engine waste oil facilities for a city, village or town located in a county with a population of 50,000 or more is:

a. Zero if the population is less than 3,500.

b. One if the population is at least 3,500 but less than 25,000.

c. Two if the population is at least 25,000 but less than 100,000.

d. Three if the population is at least 100,000, plus one for each additional 100,000 of population.

3. The minimum number of engine waste oil storage facilities for a county with a population under 50,000 is one.

4. A city, village or town located in a county with a population of 50,000 or more shall provide for adequate engine waste oil storage facilities if these facilities do not exist.

5. A county with a population of less than 50,000 shall provide for an adequate engine waste oil storage facility if a facility does not exist.

(b) *Exemption.* A municipality which submits and obtains approval from the department for an informal plan of operation for an engine waste oil storage facility and which constructs, maintains or provides for an engine waste oil storage facility of a type approved by the department is exempt from the requirements of ss. 144.44, 144.46, 144.63 and 144.64 and rules promulgated under those sections with respect to that facility. The informal plan of operation shall contain the information and be in a form approved by the department but is not required to be prepared by a registered professional engineer.

(c) *Compliance with solid and hazardous waste regulations.* Except as provided under par. (b), no person may maintain or operate a facility for the storage of engine waste oil unless the person obtains a license and complies with the requirements of ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under those sections with respect to that facility.

(4) WASTE OIL TRANSPORTATION. (a) *Exemptions.* 1. The department shall exempt a consumer from the licensing and other requirements of s. 144.64 and rules promulgated under that section for the transportation of engine waste oil.

2. The department may exempt a retail sales establishment or a service establishment from the licensing and other requirements of s. 144.64 and rules promulgated under that section for the transportation of engine waste oil.

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

(c) *Collection and transportation service.* A person who collects and transports waste oil for sale or transfer to waste oil recyclers or for other approved methods of disposal shall obtain a license and comply with the requirements of ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under these sections. When issuing the license under s. 144.64, the department shall require any person who collects and transports waste oil to provide services to any collection or storage facility within his or her geographic area which has accumulated 200 gallons or more of engine waste oil. The department may revoke a license issued under s. 144.64 if a person who collects and transports waste oil fails to provide services to collection or storage facilities within his or her geographic area which have accumulated 200 gallons or more of engine waste oil.

(5) WASTE OIL RECYCLING. No person may maintain or operate a facility for the recycling of engine waste oil unless the person obtains a license and complies with the requirements of ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under those sections with respect to that facility.

(6) SALE OF RECYCLED OIL. (a) *Re-refined oil.* No person may sell or possess with the intent to sell any re-refined oil unless the container clearly and prominently states on the front panel "RE-REFINED OIL" and unless the container complies with the labeling standards established by the federal trade commission and the environmental protection agency.

(b) *Reclaimed oil.* No person may sell or possess with intent to sell any reclaimed oil unless the container clearly and prominently states on the front panel "RECLAIMED OIL" and unless the container complies with the labeling standards established by the federal trade commission and environmental protection agency.

(7) STATE CONTRACTS; USE OF RE-REFINED OIL. All contracting agencies of the state shall be encouraged to purchase re-refined oil to be used as automotive engine oil if re-refined oil is available in sufficient supply of comparable quality, satisfies applicable American petroleum institute standards and is available at prices competitive with new oil.

(8) PROMOTION OF RECYCLED OIL. The department, in conjunction with other interested state agencies, shall develop and conduct public information and educational programs regard-

ing the availability of collection facilities, the merits of recycled oil, the need for using recycled oil to maintain oil reserves and the need to minimize the disposal of waste oil in ways harmful to the environment.

History: 1979 c. 221; 1981 c. 374 s. 148.

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

History: 1971 c. 272; 1975 c. 349; 1979 c. 34 s. 984nb.

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

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

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

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

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

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

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

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

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

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

(i) Meets the minimum requirements of the resource conservation and recovery act.

(3) RULES ON METALLIC MINING WASTES. The requirements of ss. 144.60 to 144.74 shall be subject to s. 144.435 (2).

History: 1977 c. 377; 1979 c. 89; 1979 c. 175 s. 53; 1981 c. 374 ss. 82, 148, 150.

144.61 Definitions. In ss. 144.60 to 144.74:

(1) "Closing" has the meaning designated under s. 144.43 (1m).

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

(3) "Disposal" means the discharge, deposit, injection, dumping or placing of any hazardous waste into or on any land or water in a manner which may permit the hazardous waste or any constituent of the hazardous waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment, but this term does not include the generation, transportation, storage or treatment of hazardous waste.

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

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

(5m) "Hazardous waste facility" means a facility for the treatment, storage or disposal of hazardous waste and includes the land where the facility is located.

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

(7) "Long-term care" has the meaning designated under s. 144.43 (3).

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

(9) "Person" means an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency, department or instrumentality.

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

(10) "Storage" means the holding of hazardous waste for a temporary period, at the end of which period the hazardous waste is to be treated or disposed.

(11) "Termination" has the meaning designated under s. 144.43 (8).

(12) "Transport" means the movement of hazardous wastes between facilities which are subject to or require a license under this subchapter or the resource conservation and recovery act.

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

(14) "Treatment facility" means a facility at which hazardous waste is subjected to treatment and may include a facility where hazardous waste is generated. This term does not include a waste water treatment facility whose discharges are regulated under ch. 147 unless the facility is required to be permitted as a hazardous waste treatment facility under the resource conservation and recovery act.

History: 1977 c. 377; 1979 c. 34; 1981 c. 374 ss. 83 to 88, 150.

144.62 Powers and duties of the department. (2) (a) The department shall promulgate by rule criteria identical to those promulgated by the U.S. environmental protection agency under s. 6921 (a) of the resource conservation and recovery act for identifying the characteristics of hazardous waste. The rules shall require that any person generating or transporting, or owning or operating a facility for treatment, storage or disposal of, any hazardous waste or any substance which meets the criteria shall notify the department of that fact within 90 days after the promulgation of the rule.

(b) 1. The department shall promulgate by rule a list of hazardous wastes.

2. Except as provided under subd. 3, the list of hazardous wastes shall be identical to the list promulgated by the U.S. environmental protection agency under s. 6921 (b) of the resource conservation and recovery act.

3. The department may include or retain on the list of hazardous wastes any additional solid waste not included on the list promulgated by the U.S. environmental protection agency if the department determines that the additional solid waste has characteristics which identify it as a hazardous waste based on the criteria promulgated under par. (a) and if the department determines that the inclusion or retention is necessary to protect public health, safety or welfare. The department shall issue specific findings and conclusions on which its determinations are based and shall include or retain the additional solid waste on the list of hazardous wastes by rule.

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

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

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

(7) In developing requirements for licenses to transport hazardous waste under s. 144.64 (1), the department shall maintain consistency with rules promulgated by the department of transportation.

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

(a) The establishment and maintenance of records.

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

(c) Sampling and analysis.

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

(e) The design, construction, operation and closing of hazardous waste facilities.

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

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

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

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

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

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

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

History: 1977 c. 377; 1979 c. 34 s. 2102 (39) (g); 1981 c. 374 ss. 89 to 95, 148, 150.

144.63 Generation. Any person generating solid waste shall determine if the solid waste is a hazardous waste. Any person generating hazardous waste shall:

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

(2) Keep records that accurately identify:

(a) The quantities of hazardous waste generated;

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

(c) The disposition of hazardous wastes.

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

(4) Use appropriate containers for hazardous waste.

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

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

(7) Submit all reports required under ss. 144.60 to 144.74 and rules promulgated under those sections.

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

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

History: 1977 c. 377; 1981 c. 374 ss. 96, 150.

144.64 Licenses. (1) TRANSPORTATION. (a) No person may transport hazardous waste without a license issued under this subsection.

(b) Licenses issued under this subsection shall require compliance with rules of the department. The rules shall establish standards for the following:

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

2. Labeling procedures.

3. Use of a manifest system.

4. Containers used to transport waste.

5. Equipment operator qualifications.

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

(2) TREATMENT, STORAGE OR DISPOSAL. (a) The storage of hazardous waste at the generation site by the generator of that waste for a period of less than 90 days is not subject to this subsection. The storage of hazardous waste for a period of less than 10 days is exempt from this subsection if the storage is in connection with the movement of the hazardous waste between generation sites under a single ownership and accomplished in vehicles owned by the generator. Notwithstanding the exemptions granted under this paragraph, no person may store or cause the storage of hazardous waste in a manner which causes environmental pollution.

(am) No person may:

1. Construct a hazardous waste facility unless the person complies with s. 144.44 (2) to (3).

2. Operate a hazardous waste facility without an interim or operating license issued under this subsection.

(b) Licenses issued under this subsection shall require compliance with s. 144.44 (4) and rules promulgated under ss. 144.60 to 144.74.

(c) The department may issue an interim license to a person who operates a hazardous waste facility in existence on November 19, 1980, if the person applies for a license under this subsection and complies with conditions and restrictions prescribed by rule or special order by the department pending the decision on the issuance of an operating license under this subsection. An interim license issued under this paragraph constitutes an operating license under this subsection.

(d) An existing hazardous waste facility which was never licensed under this subsection, whether or not it was previously authorized to receive hazardous waste under s. 144.44 (4),

shall be treated as an unlicensed proposed facility which has not been constructed for the purpose of complying with par. (am) 1, for the purpose of obtaining an operating license under this subsection and for the purpose of administrative procedure and review under ch. 227.

(e) Licenses issued under this subsection may be denied, suspended or revoked for:

1. Failure to pay fees required under ss. 144.43 to 144.47;

2. Grievous and continuous failure to comply with the rules adopted under ss. 144.60 to 144.74; or

3. For grievous and continuous failure to comply with the approved plan of operation under s. 144.44 (3).

(f) A treatment facility which is required to be permitted as a hazardous waste treatment facility under the resource conservation and recovery act and the discharges of which are regulated under ch. 147 shall comply with construction and operating standards promulgated by rule by the department. The department shall promulgate rules under this paragraph which are substantially equivalent to and not more stringent than the standards promulgated under the resource conservation and recovery act.

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

(b) The department may waive compliance with any requirement of ss. 144.60 to 144.74 or shorten the time periods provided under ss. 144.60 to 144.74 to the extent necessary to prevent an emergency condition threatening public health, safety or welfare or the environment.

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

(b) A person who operates a licensed hazardous waste disposal facility shall pay the fees imposed and specified under s. 144.441 (3) and (4).

History: 1977 c. 377; 1979 c. 221; 1981 c. 374.

144.68 Environmental impact statement. **(1)** An environmental impact statement is required under s. 1.11 (2) for a new hazardous waste disposal facility if one or both of the following conditions exist:

(a) The total area committed to solid and hazardous waste disposal exceeds 80 acres.

(b) The total volume of solid and hazardous waste intended for disposal under the plan of operation exceeds one million cubic yards.

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

History: 1981 c. 374.

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

History: 1977 c. 377; 1981 c. 374.

144.70 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 ss. 144.60 to 144.74 are public records subject to s. 19.21.

(2) CONFIDENTIAL RECORDS. (a) *Application.* An owner or operator of a hazardous waste facility may seek confidential treatment of any records or other information furnished to or obtained by the department in the administration of ss. 144.60 to 144.74.

(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 as relating to production or sales figures or to processes or production unique to the owner or operator of the solid waste 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 sta-

tus 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 may use records and other information granted confidential status under this subsection only in the administration of ss. 144.60 to 144.74. The department 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 may release on a limited basis records and other information granted confidential status under this subsection if the department 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 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 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: 1981 c. 374.

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

History: 1977 c. 377.

144.725 Review of alleged violations. Any 6 or more citizens or any municipality may petition for review of an alleged violation of ss. 144.60 to 144.74 or any rule promulgated or special order, plan approval, license or any term or condition of a license issued under those sections 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. 144.73.

(3) If the department determines that a petition has been 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.

144.73 Enforcement. (1) COMPLIANCE ORDERS. If the department determines that any person is in violation of any requirement of ss. 144.60 to 144.74, the department shall give written notice to the violator of his or her failure to comply with the requirement and if compliance is not obtained within 30 days after notice or within such reasonable time in which compliance may be accomplished, may issue an order requiring compliance within a specified time period or may refer the matter to the department of justice for enforcement.

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

(3) ASSISTANCE OF DISTRICT ATTORNEY. In any criminal action commenced under s. 144.74, the department of justice may request the assistance of the district attorney of any county in which the violation occurred, and the district attorney shall provide the requested assistance.

(4) VENUE. Any action on a violation shall be commenced in the circuit court for the county in which the violation occurred. If all parties stipulate and the circuit court for Dane county

agrees, the proceedings may be transferred to the circuit court for Dane county.

History: 1977 c. 377; 1981 c. 374.

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

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

(3) No person may:

(a) Transport any hazardous waste to a facility which the transporter knows does not have a license under s. 144.64.

(b) Store, treat, transport or dispose of any hazardous waste without a license required under s. 144.64 or in violation of any license condition or license issued under s. 144.64.

(c) Make any false statement or representation in any application, label, manifest, record, report, license or other document.

(d) Destroy, alter or conceal any records required to be maintained under ss. 144.60 to 144.74 or under rules promulgated under those sections.

(4) A person who intentionally violates sub. (3) shall be fined not more than $25,000 or imprisoned not more than one year in the county jail or both. For a 2nd or subsequent violation, the person shall be fined not more than $50,000 or imprisoned not more than 2 years or both. Each day of violation constitutes a separate offense.

History: 1977 c. 377; 1981 c. 374.

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

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

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

(2) NOTICE OF DISCHARGE. (a) A person who possesses or controls a hazardous substance or who causes the discharge of a hazardous substance shall notify the department immediately of any discharge not exempted under sub. (9).

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

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

(3) RESPONSIBILITY. A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.

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

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

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

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

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

(b) The contingency plan shall:

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

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

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

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

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

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

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

(6) HAZARDOUS SUBSTANCES SPILL FUND. (a) The appropriation under s. 20.370 (2) (cc) shall be used in implementing and carrying out the contingency plan developed under sub. (5). This fund shall provide for the procurement, maintenance and storage of necessary equipment and supplies, personnel training and expenses incurred during containment, clean-up and disposal of discharged substances.

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

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

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

(7) REMOVAL OR OTHER EMERGENCY ACTION. (a) In every case where action required under sub. (3) is not being adequately taken or the identity of the person responsible for the discharge is unknown, the department or its agent may contain, remove or dispose of the hazardous substance or take any other emergency action which it deems appropriate under the circumstances.

(b) The person who possessed or controlled a hazardous substance which was discharged or who caused the discharge of a hazardous substance shall reimburse the department for actual and necessary expenses incurred in carrying out its duties under this subsection.

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

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

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

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

(c) Any person discharging in conformity with a permit or program approved under this chapter is exempted from the reporting and penalty requirements of this section.

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

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

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

History: 1977 c. 377; 1979 c. 34 ss. 988, 2102 (39) (a), (g); 1981 c. 20 s. 2202 (38) (a); 1981 c. 374.

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

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

(3) In ss. 144.781 to 144.784:

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

(b) "Disposal" has the meaning specified for solid waste disposal under s. 144.43 (4r).

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

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

(d) "Solid waste management" has the meaning designated under s. 144.43 (6).

(e) "Solid waste management plan" has the meaning designated under s. 144.43 (7).

(f) "Special study project" means a sludge management or resource recovery project feasibility study developed to provide detailed project feasibility information for implementation of approved and adopted areawide solid waste management plans.

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

History: 1977 c. 418; 1977 c. 447 ss. 130, 210; 1979 c. 34; 1981 c. 374.

144.7815 Eligibility. (1) AREAWIDE SOLID WASTE MANAGEMENT PLANNING GRANTS. A regional planning commission or county, or more than one regional planning commission or county acting jointly, is eligible to apply for funding to develop an areawide solid waste management plan.

(2) SPECIFIC SOLID WASTE DISPOSAL SITE FEASIBILITY GRANTS. A town, village, city or county, or more than one town, village, city or county acting jointly, is eligible to apply for funding a proposal to conduct a specific solid waste disposal site feasibility study which is consistent with a previously developed areawide solid waste management plan approved by the department.

(3) SPECIAL STUDY PROJECT GRANTS. A town, village, city or county or more than one town, village, city or county acting jointly is eligible to apply for funding special study projects if it has adopted or is located in a jurisdiction which has adopted an areawide solid waste management plan approved by the department.

History: 1981 c. 374.

144.782 Department powers and duties. (1) The department shall develop evaluation criteria for reporting on and evaluating the solid waste management grant program including the number of grants awarded for areawide solid waste management plans, specific site feasibility studies and special study projects, the extent to which the grant money is used as required by the solid waste management grant program and the costs necessary to meet remaining needs of implementing the purposes of ss. 144.781 to 144.784.

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

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

(a) Consideration of the existing and anticipated disposal needs of all units of government within the planning area.

(b) Promotion, wherever possible, of resource conservation and recovery practices.

(c) Indicating probable disposal site locations to satisfy existing and anticipated solid waste disposal needs.

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

(5) The department shall develop criteria, by rule, for approving special study projects. The criteria shall provide for identification of appropriate projects for funding, including sludge management and resource recovery feasibility projects.

History: 1977 c. 418; 1977 c. 447 ss. 130, 210; 1981 c. 374.

144.783 Financial assistance. Under ss. 144.781 to 144.784:

(1) (a) The department may enter into agreements with eligible applicants to make grant payments to the applicants from the appropriation made by s. 20.370 (4) (cf).

(b) An applicant for an areawide solid waste management planning grant may receive a grant which provides up to 50% of the estimated total cost of the applicant's areawide solid waste management plan, but the grant may not exceed $50,000.

(c) An applicant for a specific solid waste disposal site feasibility study may receive a grant which provides up to 25% of the total estimated cost of the applicant's specific site feasibility study if the study is consistent with the applicable department-approved areawide solid waste management plan, but the grant for each feasibility study may not exceed $50,000.

(d) An applicant for a special study project grant may receive a grant which provides up to 25% of the total estimated cost of the special study project if the project is consistent with the applicable department-approved areawide solid waste management plan, but the grant for each special study project may not exceed $50,000.

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

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

(4) To the greatest extent possible, each year applications for areawide solid waste management planning grants shall receive first consideration for approval and funding by the department. To the greatest extent possible, each year applications for specific solid waste disposal site feasibility studies shall receive 2nd consideration for funding by the department after the department has completed the grant application process for the areawide solid waste management plans. Each year applications for special study project grants shall received 3rd consideration for funding by the department after the department has completed the grant application process for the areawide solid waste management plans and for specific feasibility studies.

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

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

2. Existing areawide planning activities.

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

4. Extent and availability of alternative funding sources.

5. Extent of existing or previously developed plans.

6. Size of the area to be served.

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

History: 1977 c. 418; 1977 c. 447 ss. 130, 210; 1979 c. 34 s. 2102 (39) (a); 1981 c. 374.

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

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

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

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

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

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

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

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

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

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

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

(4m) For an applicant for a special study project grant, the applicant shall show, at a minimum:

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

(b) That the proposed special study project is recommended in an approved areawide solid waste management plan or its approved update,

and that the applicant intends to implement a portion of the plan requiring the study.

(c) The overall special study project objectives.

(d) The methods proposed to conduct the special study project and estimated costs of conducting the project.

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

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

(7) Each areawide solid waste management planning grant is valid for 18 months after the date of acceptance. Each specific waste disposal site feasibility grant and special study project grant is valid for one year after the date of acceptance. The department may extend to 2 years the amount of time within which the grant recipient may spend the grant if the department determines, on a case-by-case basis, that a time extension is warranted.

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

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

(b) 1. An applicant for a grant for any special study project shall submit one copy of its application to the areawide solid waste planning agency with jurisdiction over the applicant's area for comment on the proposed project's applicability to the department-approved areawide solid waste management plan. The areawide planning agency shall comment to the department within 30 days on the application. If the applicant for a special study project grant is the same agency that is responsible for the areawide solid waste management plan, the department shall determine whether the project is consistent with the areawide solid waste management plan.

2. An applicant for a grant for a special study project concerning resource recovery project feasibility shall submit one copy of its application to the Wisconsin solid waste recycling authority. Within 60 days after submittal, the Wisconsin solid waste recycling authority shall transmit its findings and recommendations to the department of natural resources regarding the consistency of proposed study objectives with existing resource recovery plans, studies or projects.

3. An applicant for a grant for a special study project concerning sludge management shall submit one copy of its application to the appropriate water quality planning agency. Within 60 days after submittal, this agency shall transmit its findings and recommendations to the department regarding the consistency of proposed study objectives with existing water quality plans, studies or projects.

(10) No grants may be distributed for areawide solid waste management plans, specific solid waste disposal site feasibility studies or special project studies which have, as their primary goals, disposition of any hazardous substance, hazardous waste as defined under s. 144.61 (5), source material as defined under s. 140.52 (10), by-product material as defined under s. 140.52 (3) or special nuclear material as defined under s. 140.52 (11).

History: 1977 c. 418, 447; 1979 c. 32; 1979 c. 34 s. 2102 (39) (g); 1981 c. 374.

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

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

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

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

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

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

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

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

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

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

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

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

1. The commercial availability and cost of alternative products;

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

3. The acceptance of alternative products by insurance underwriters;

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

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

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

(7) On or before July 1, 1977, the department shall adopt rules prescribing the methods and providing or designating sites and facilities for the disposal of PCBs and products containing PCBs. Such rules may require reporting by persons disposing of PCBs and products containing PCBs. Persons disposing of PCBs or products containing PCBs shall comply with such rules unless such products are exempted under sub. (3) (b) or (c). In this section, disposal does not include the disposal of PCBs in sludge produced by wastewater treatment systems under s. 144.435 (1) and ch. NR 151, Wis. Adm. Code, the discharge of effluents containing PCBs or the manufacture or sale of recycled paper products to which PCBs have not been intentionally added during or after manufacture for any of the uses set forth in sub. (1) (c). Nothing in this section shall exempt any person from applicable disposal or discharge limitations required or authorized under other statutes.

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

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

History: 1975 c. 412; 1977 c. 325; 1977 c. 377 s. 30; 1979 c. 32 s. 92 (1); 1979 c. 34 ss. 984t, 2102 (39) (g); 1979 c. 154; 1979 c. 221 s. 632; 1981 c. 390.

SUBCHAPTER V

MINING

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

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

144.81 Definitions. In ss. 144.80 to 144.94:

(1) "Abandonment of mining" means the cessation of mining, not set forth in an operator's mining or reclamation plans or by any other sufficient written or constructive notice, extending for more than 6 consecutive months. Abandonment of mining does not include the cessation of mining due either to labor strikes or the cessation of mining due to such unforeseen developments as adverse market conditions for a period not to exceed 5 years as determined by

the department after consulting with the metallic mining council.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) "Reclamation" means the process by which an area physically or environmentally affected by prospecting or mining is rehabilitated to either its original state or, if this is shown to be physically or economically impracticable or environmentally or socially undesirable, to a state that provides long-term environmental stability. Reclamation shall provide the greatest feasible protection to the environment and shall include, but is not limited to, the criteria for reclamation set forth in s. 144.83 (2) (c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Prevention or reclamation of substantial surface subsidence.

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

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

8. Minimization of disturbance to wetlands.

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

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

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

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

a. Dwelling houses.

b. Public buildings.

c. Schools.

d. Churches.

e. Cemeteries.

f. Commercial or institutional buildings.

g. Public roads.

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

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

(4) The department may:

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

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

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

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

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

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

(g) Issue prospecting and mining permits.

(h) Issue exploration licenses.

(i) Promulgate rules regulating the production, storage and disposal of radioactive waste from exploration, prospecting or mining after seeking comments from the department of health and social services. At a minimum, rules promulgated under this paragraph shall achieve the margin of safety provided in applicable federal statutes and regulations. If the department promulgates rules under this paragraph, the department shall investigate the need for standards more restrictive than the applicable federal statutes and regulations.

(j) Promulgate rules by which the department may grant an exemption, modification or variance, either making a requirement more or less restrictive, from any rule promulgated under subch. IV and this subchapter, if the exemption, modification or variance does not result in the violation of any federal or state

environmental law or endanger public health, safety or welfare or the environment.

(k) Promulgate rules with respect to minimizing, segregating, backfilling and marketing of mining waste.

(L) Notwithstanding ss. 144.43 to 144.47 and 144.60 to 144.74, promulgate rules establishing groundwater quality standards or groundwater quantity standards, or both, for any prospecting or mining activity, including standards for any mining waste site.

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

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

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

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

(c) A mining or prospecting permit, if the permit holder intentionally made a false statement in the permit application or intentionally omitted information from the permit application which was material to permit issuance.

History: 1973 c. 318; 1977 c. 377 s. 29m; 1977 c. 421, 447; 1979 c. 34 s. 2102 (39) (g); 1981 c. 86, 374.

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

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

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

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

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

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

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

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

History: 1977 c. 421; 1981 c. 87.

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

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

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

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

(2) LICENSE. All persons intending to engage in exploration, or who contract for the services of drillers for purposes of exploration, shall be licensed by the department. Exploration licenses shall be issued annually by the department, and shall be applied for on forms provided by the department. The department shall provide copies of the application form for an exploration license to the state geologist upon issuance of the license. The department shall, by rule, establish an annual license fee plus a schedule of additional fees based on the number of holes drilled. The level of fees shall reflect the department's actual cost in administering this section. The fees set under this subsection may be adjusted for persons to reflect the payment of fees for the same services to meet other requirements.

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

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

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

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

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

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

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

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

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

History: 1977 c. 421.

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

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

History: 1977 c. 421.

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

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

(b) Except as provided in this paragraph, for all department issued approvals, licenses and permits relating to prospecting or mining including solid waste feasibility report approvals and permits related to air and water, to be issued after April 30, 1980, the notice, hearing and comment provisions, if any, and the time for

issuance of decisions, shall be controlled by this section and ss. 144.84 and 144.85. If an applicant fails to make application for an approval, license or permit for an activity incidental to prospecting or mining in time for notice under this section to be provided, the notice and comment requirements, if any, shall be controlled by the specific statutory provisions with respect to that application. If notice under those specific statutory notice requirements can be given for consideration of the approval, license or permit at the hearing under this section, the application shall be considered at that hearing; otherwise, the specific statutory hearing provisions, if any, with respect to that application shall control. The substantive requirements for the issuance of any approval, permit or license incidental to prospecting or mining are not affected by the fact that a hearing on the approval, permit or license is conducted as part of a hearing under this section.

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

(3) TIMING OF NOTICE AND OF HEARING; GIVING OF NOTICE. (a) If it is determined that a statement under s. 1.11 is not required, the hearing shall be scheduled for a date not less than 60 days nor more than 90 days after the announcement of that determination, and the scheduling and providing of notice shall be completed not later than 10 days following the announcement. Notice of the hearing shall be given by mailing a copy of the notice to any known state agency required to issue a permit for the proposed operation, to the regional planning commission for the affected area, to the county, city, village and town within which any part of the affected area lies, to all persons who have requested this notification and, if applicable, to all persons specified under par. (b) 3. Written comments may be submitted to the department within 30 days of the date of notice.

(b) If it is determined that a statement under s. 1.11 is required, the department shall hold at least one informational meeting regarding the preliminary environmental report within 60 days of its issuance. The meeting shall be held not sooner than 30 days nor later than 60 days after the issuance of the report. The scheduling and providing of notice of the meeting shall be completed not later than 10 days following the issuance of the preliminary environmental report. A hearing referred to under sub. (1) shall be scheduled for a date not less than 120 days nor more than 180 days after the issuance of the environmental impact statement. The scheduling and providing of notice of the hearing shall be completed within 30 days from the date of issuance of the environmental impact statement. The providing of notice shall be accomplished by:

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

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

3. Mailing a copy of the notice to the U.S. environmental protection agency, U.S. army corps of engineers and other states potentially affected by the proposed discharge if a water discharge permit under ch. 147 is to be considered at the hearing under this section and to the U.S. environmental protection agency and appropriate agencies in other states which may be affected if an air pollution control permit under ss. 144.30 to 144.426 is to be considered at the hearing under this section.

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

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

examination. A written record of unsworn testimony shall be made.

(b) Persons who wish to participate as parties shall file a written notice with the hearing examiner setting forth their interest at least 30 days prior to the scheduled time of the hearing or prior to the scheduled time of any prehearing conference, whichever is earlier, unless good cause is shown.

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

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

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

(f) Each approval or denial of a license or permit considered at the hearing under this section shall be made in findings of fact, conclusions of law and an order setting forth reasons with clarity and in detail.

History: 1977 c. 421; 1979 c. 221, 355.

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

(a) Facilitating communications between operators and itself.

(b) Analyzing implications of mining.

(c) Reviewing and commenting on reclamation plans.

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

(e) Recommending priorities for local action.

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

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

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

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

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

History: 1977 c. 421.

144.84 Prospecting permits. (1) No person may engage in prospecting without securing a prospecting permit issued under this section. Application for prospecting permits shall be made in writing to the department upon forms prepared and furnished by the department. An application must be made, and a prospecting permit obtained for each separate prospecting site. Applications shall be submitted in reproducible form in such multiples as required by rules of the department. As a part of each application for a prospecting permit, the applicant shall furnish a description of the proposed prospecting site, the number of acres in the

proposed prospecting site, a prospecting plan, a reclamation plan meeting the requirements of s. 144.834 and a timetable for reclamation, information relating to whether the area may be unsuitable for prospecting or surface mining, unless the applicant conclusively certifies that he or she will not subsequently make application for a permit to conduct surface mining at the site and such other relevant information as the department may require, including information as to whether the applicant, its parent corporation, any of its principal shareholders, or any of the applicant's subsidiaries or affiliates in which the applicant owns more than a 40% interest, has forfeited any mining bonds in other states within the last 20 years, and the dates and locations, if any. An application shall be accompanied by such fee as is required by the department by rule which shall cover the estimated cost of evaluating the prospecting permit application. After completing its evaluation, the department shall revise the fee to reflect the actual cost of evaluation. The fee may be revised for persons to reflect the payment of fees for the same services to meet other requirements.

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

(3) The department shall deny a prospecting permit within 60 days following the date of the completion of the hearing record if it finds that the site is unsuitable for prospecting or, absent certification under sub. (1), surface mining, or the reclamation plan, including the bond, does not comply with ss. 144.83 (2) and 144.834 and rules promulgated under ss. 144.83 (2) and 144.834 or that the applicant is in violation of ss. 144.80 to 144.94 or any rules adopted under ss. 144.80 to 144.94. If the applicant has previously failed and continues to fail to comply with ss. 144.80 to 144.94, or if the applicant has within the previous 20 years forfeited any bond posted in accordance with prospecting or mining activities in this state, unless by mutual agreement with the state, the department may not issue a prospecting permit. The department may not issue a prospecting permit if it finds that any officer or director of the applicant has, while employed by the applicant, the applicant's parent corporation, any of the applicant's principal shareholders, or any of the applicant's subsidiaries or affiliates, in which the applicant owns more than a 40% interest, within the previous 20 years forfeited any bond posted in accordance with prospecting or mining activities in this state unless by mutual agreement with the state. In this paragraph, "forfeited any bond" means the forfeiture of any performance security occasioned by noncompliance with any prospecting or mining laws or implementing rules. If an application for a prospecting permit is denied, the department, within 30 days from the date of application denial, shall furnish to the applicant in writing the reasons for the denial.

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

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

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

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

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

144.85 Mining permits. (1) (a) No operator may engage in mining or reclamation at any mining site that is not covered by a mining

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

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

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

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

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

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

(b) In addition to the information and maps otherwise required by this subsection, a detailed reclamation plan showing the manner, location and time for reclamation, including ongoing reclamation during mining, of the proposed mining site. The reclamation plan shall be accompanied by a map subject to the requirements in par. (a) which shall show the specific reclamation proposal for each area of the site. The reclamation plan shall conform to any applicable comprehensive plan created under sub. (4) (b), and to any applicable minimum standard created under ss. 144.83 (2) and 144.834.

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

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

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

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

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

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

(b) If the department finds that the anticipated life and total area of a mineral deposit are of sufficient magnitude that reclamation of the

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

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

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

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

b. The proposed operation will comply with all applicable air, groundwater, surface water and solid and hazardous waste management laws and rules of the department.

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

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

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

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

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

(b) The department shall deny a mining permit within 90 days following the date of the completion of the hearing record if it finds that the site is unsuitable for surface mining, where the application pertains to a proposed surface mine, or that the applicant is in violation of ss. 144.80 to 144.94 or any rules adopted under ss. 144.80 to 144.94. If the applicant has previously failed and continues to fail to comply with ss. 144.80 to 144.94, or if the applicant has within the previous 20 years forfeited any bond posted in accordance with mining activities in this state, unless by mutual agreement with the state, the department may not issue a mining permit. The department may not issue a mining permit if it finds that any officer or director of the applicant, while employed by the applicant, the applicant's parent corporation, any of the applicant's principal shareholders or any of the applicant's subsidiaries or affiliates in which the applicant owns more than a 40% interest, has within the previous 20 years forfeited any bond posted in accordance with mining activities in this state, unless by mutual agreement with the state. In this paragraph, "forfeited any bond" means the forfeiture of any performance security, occasioned by noncompliance with any prospecting or mining laws or implementing rules.

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

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

(e) The department shall send its statement, together with a copy of its rules and finding as to whether the applicant has otherwise satisfied the

requirements of ss. 144.80 to 144.94, to the applicant and to the other parties.

History: 1973 c. 318; 1977 c. 377 s. 29m; 1977 c. 421; 1981 c. 374.

144.855 Diversion of surface waters; withdrawal of groundwater; damage claims. (1) SCOPE. This section governs the withdrawal or diversion of groundwaters or surface waters by persons engaged in prospecting or mining. Discharges of waters are subject to ch. 147, construction of necessary dams or other structures is subject to chs. 30 and 31 and construction of wells is subject to ch. 162, to the extent applicable.

(2) DIVERSION OF SURFACE WATER; PERMIT REQUIRED. (a) Any person intending to divert surface waters for prospecting or mining shall apply to the department for a permit. The forms and procedures used under s. 30.18 apply to the extent practicable.

(b) The department, upon receipt of an application for a permit, shall determine the minimum stream flow or lake level necessary to protect public rights, the minimum flow or level necessary to protect the rights of affected riparians, the point downstream beyond which riparian rights are not likely to be injured by the proposed diversion and the amount of surplus water, as defined in s. 30.18 (2), if any, at the point of the proposed diversion.

(c) At the hearing on the permit application, the department shall take testimony on:

1. The public rights in the lake or stream and the related environment which may be injured by the proposed diversion;

2. The public benefits provided by increased employment, economic activity and tax revenues from the mining operation;

3. The direct and indirect social and economic costs and benefits of the proposed mining operation;

4. Whether the proposed withdrawal will consume nonsurplus water;

5. The rights of competing users of such water resources; and

6. Any other issues identified by the department as relevant to the decision of whether to issue or deny a permit.

(d) Within 30 days after hearing, the department shall issue or deny a permit. The following standards shall govern the decision of the department:

1. If injury to public rights exceeds the public benefits generated by the mining, the permit shall be denied.

2. If the proposed diversion will consume nonsurplus waters, and will unreasonably injure rights of riparians identified by par. (b) who are beneficially using such waters, the permit shall be denied unless a permit is granted under par. (e) or all such riparians consent to the proposed diversion.

3. In all other cases the permit shall be granted.

(e) The department may require modification of a proposed diversion so as to avoid injury to public or riparian rights, and as modified, may grant the permit.

(f) Water diverted in accordance with a permit issued under this subsection may be used on nonriparian property.

(g) The department shall maintain continuing jurisdiction over water withdrawal made according to permits issued under this subsection and may modify such permits to prevent undue injury to riparians who gave consent under par. (d) 2 at the time of issuance of the permit.

(h) Hearings on applications for diversion permits under this subsection shall be preceded by mailed notice to all parties or affected persons and by publication in the affected area of a class 2 notice, under ch. 985. Hearings may be conducted as part of a hearing on an application for a mining permit under s. 144.85.

(i) If a hearing on the application for a permit is conducted as a part of a hearing under s. 144.836, the notice and hearing provisions in that section supersede the notice and hearing provisions of this subsection.

(3) WITHDRAWAL OF GROUNDWATER; DEWATERING; PERMIT REQUIREMENTS. (a) An approval under s. 144.025 (2) (e) is required to withdraw groundwater or to dewater mines if the capacity and rate of withdrawal of all wells involved in the withdrawal of groundwater or the dewatering of mines exceeds 100,000 gallons each day. A permit under ch. 147 is required to discharge pollutants resulting from the dewatering of mines.

(b) The department may not issue an approval under s. 144.025 (2) (e) if the withdrawal of groundwater for prospecting or mining purposes or the dewatering of mines will result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state. No withdrawal of groundwater or dewatering of mines may be made to the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state.

(4) DAMAGE CLAIMS. (a) As used in this subsection, "person" does not include a town, village or city.

(b) A person claiming damage to the quantity or quality of his or her private water supply caused by prospecting or mining may file a complaint with the department and, if there is a

need for an immediate alternative source of water, with the town, village or city where the private water supply is located. The department shall conduct an investigation and if the department concludes that there is reason to believe that the prospecting or mining is interrelated to the condition giving rise to the complaint, it shall schedule a hearing.

(c) The town, village or city within which is located the private water supply which is the subject of the complaint shall, upon request, supply necessary amounts of water to replace that water formerly obtained from the damaged private supply. Responsibility to supply water shall commence at the time the complaint is filed and shall end at the time the decision of the department made at the conclusion of the hearing is implemented.

(d) If the department concludes after the hearing that prospecting or mining is the principal cause of the damage to the private water supply, it shall issue an order to the operator requiring the provision of water to the person found to be damaged in a like quantity and quality to that previously obtained by the person and for a period of time that the water supply, if undamaged, would be expected to provide a beneficial use, requiring reimbursement to the town, village or city for the cost of supplying water under par. (c), if any, and requiring the payment of compensation for any damages unreasonably inflicted on the person as a result of damage to his or her water supply. The department shall order the payment of full compensatory damages up to $75,000 per claimant. The department shall issue its written findings and order within 60 days after the close of the hearing. Any judgment awarded in a subsequent action for damages to a private water supply caused by prospecting or mining shall be reduced by any award of compensatory damages previously made under this subsection for the same injury and paid by the operator. The dollar amount under this paragraph shall be changed annually according to the method under s. 70.375 (6). Pending the final decision on any appeal from an order issued under this paragraph, the operator shall provide water as ordered by the department. The existence of the relief under this section is not a bar to any other statutory or common law remedy for damages.

(e) If the department concludes after the hearing that prospecting or mining is not the cause of any damage, reimbursement to the town, village or city for the costs of supplying water under par. (c), if any, is the responsibility of the person who filed the complaint.

(f) Failure of an operator to comply with an order under par. (d) is grounds for suspension or revocation of a prospecting or mining permit.

(g) This subsection applies to any claim for damages to a private water supply occurring after June 3, 1978.

(5) COSTS REIMBURSED. (a) Costs incurred by a town, village or city in monitoring the effects of prospecting or mining on surface water and groundwater resources, in providing water to persons claiming damage to private water supplies under sub. (4) (c), or in retaining legal counsel or technical consultants to represent and assist the town, village or city appearing at the hearing under sub. (4) (b) are reimbursable through the investment and local impact fund under s. 15.435.

(b) Any costs paid to a town, village or city through the investment and local impact fund under par. (a) shall be reimbursed to the fund by the town, village or city if the town, village or city receives funds from any other source for the costs incurred under par. (a).

(c) If an order under sub. (4) (d) requiring the operator to provide water or to reimburse the town, village or city for the cost of supplying water is appealed and is not upheld, the court shall order the cost incurred by the operator in providing water or in reimbursing the town, village or city pending the final decision to be reimbursed from the investment and local impact fund under s. 15.435.

History: 1977 c. 420; 1979 c. 221; 1981 c. 86 ss. 38 to 54, 64.

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

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

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

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

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

History: 1973 c. 318; 1977 c. 421; 1979 c. 102 s. 236 (3); 1979 c. 176.

144.87 Modifications. (1) (a) *Application.* An operator at any time may apply for amendment or cancellation of a mining permit or for a change in the mining or reclamation plans for any mining operation which the operator owns or leases. The operator shall submit any application for the amendment, cancellation or change on a form provided by the department and shall identify the tract of land to be added to or removed from the permitted mining site or to be affected by a change in the mining or reclamation plans.

(b) *Procedure.* The department shall process the application for an increase or decrease in the area of a mining site or for a substantial change in the mining or reclamation plans in the same manner as an original application for a mining permit except as provided under par. (d).

(c) *Substantial changes.* The department shall determine if any change in the mining or reclamation plans is substantial and provide notice of its determination in the same manner as specified under s. 144.836 (3) (b) 1 to 3.

(d) *Notice.* The department shall provide notice of any modification which involves an increase or decrease in the area of a mining site or a substantial change in the mining or reclamation plan in the same manner as an original application for a mining permit under s. 144.836 (3). If 5 or more interested persons do not request a hearing in writing within 30 days of notice, no hearing is required on the modification. The notice shall include a statement to this effect.

(e) *Hearing.* If a hearing is held, testimony and exhibits from the hearing on either the original applications for a mining permit or from previous modification hearings which are relevant to the instant modification may be adopted, subject to cross-examination and rebuttal if not unduly repetitious.

(f) *Removal.* If the application is to cancel any or all of the unmined part of a mining site, the department shall ascertain, by inspection, if mining has occurred on the land. If the department finds that no mining has occurred, the department shall order release of the bond or the security posted on the land being removed from the permitted mining site and cancel or amend the operator's written authorization to conduct mining on the mining site. No land where mining has occurred may be removed from a permitted mining site or released from bond or security under this subsection, unless reclamation has been completed to the satisfaction of the department.

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

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

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

(3) If the department finds that because of changing conditions, including but not limited to changes in reclamation costs, reclamation technology, minimum standards under s. 144.83 or governmental land use plans, the reclamation plan for a mining site is no longer sufficient to reasonably provide for reclamation of the project site consistent with ss. 144.80 to 144.94 and any rules adopted under ss. 144.80 to 144.94, it shall require the applicant to submit

amended mining and reclamation plans which shall be processed in the same manner as an application for an original mining permit. The applicant shall be deemed to hold a temporary mining permit which shall be effective until the amended mining permit is issued or denied. The department shall review the mining and reclamation plans annually after the date of the mining permit issuance or previous review under this section.

History: 1973 c. 314; 1977 c. 421; 1981 c. 86.

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

History: 1977 c. 421.

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

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

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

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

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

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

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

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

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

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

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

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

144.91 Mining and reclamation; orders. **(1)** (a) *Violations; order or other action required.* If the department finds a violation of law or any unapproved deviation from the mining or reclamation plan at a mining site under a mining permit:

1. The department shall issue an order requiring the operator to comply with the statute, rule or plan within a specified time;

2. The department shall require the alleged violator to appear before the department for a hearing and answer the charges complained of; or

3. The department shall request the department of justice to initiate action under s. 144.93.

(b) *Effective dates of orders.* Any order issued under par. (a) 1 following a hearing takes effect immediately. Any other order takes effect 10 days after the date the order is served unless the person named in the order requests in writing a hearing before the department within the 10-day period.

(c) *Hearing on orders.* If no hearing on an order issued under par. (a) 1 was held and if the department receives a request for a hearing within 10 days after the date the order is served, the department shall provide due notice and hold a hearing.

(d) *Enforcement of orders.* The department shall cancel the mining permit for a mining site held by an operator who fails to comply with an order issued under par. (a) 1. The department shall inform the department of justice of the cancellation within 14 days. Within 30 days after the department of justice is informed, it shall commence an action under s. 144.93.

(2) If reclamation of a mining site is not proceeding in accordance with the reclamation plan and the operator has not commenced to rectify deficiencies within the time specified in the order, or if the reclamation is not properly completed in conformance with the reclamation plan within one year after completion or abandonment of mining on any segment of the mining site, or if the exploration license or prospecting or mining permit is revoked under s. 144.93 (2) and (3), excepting acts of God, such as adverse weather affecting grading, planting and growing conditions, the department, with the staff, equipment and material under its control, or by contract with others, shall take such actions as are necessary for the reclamation of mined areas. The operator shall be liable for the cost to the state of reclamation conducted under this section. Any operator who is exempted from filing a bond or depositing cash, certificates of deposits or government securities by s. 144.86 (6) shall not be liable for an amount greater than an amount specified by the department. The specified amount shall be equal to and determined in the same manner as the amount of the bond or other security otherwise required under s. 144.86 (1), assuming the operator had not been exempt from such filing or depositing.

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

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

(b) If no hearing on the stop order was held, the department shall schedule a hearing on the stop order, to be held within 5 days after issuance of the order and shall incorporate notice of the hearing in the copy of the order served upon the operator. The department also shall give notice to any other persons who previously requested notice of such proceedings.

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

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

History: 1973 c. 318; 1977 c. 421; 1981 c. 86.

144.92 Nonconforming sites. **(1)** All prospectors and operators conducting mining operations in this state on July 3, 1974 shall submit to

the department, within 90 days after that date, applications for prospecting permits or mining permits as provided in ss. 144.84 and 144.85. Sections 144.83 (1) (b) and 144.85 (5) (b) shall not apply to such operators.

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

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

144.925 Prospecting data. (1) DEFINITIONS. In this section:

(a) "Economic information" means financial and economic projections for any potential mining of an ore body including estimates of capital costs, predicted expenses, price forecasts and metallurgical recovery estimates.

(b) "Geologic information" means information concerning descriptions of an ore body, descriptions of reserves, tonnages and grades of ore, descriptions of a drill core or bulk sample including analysis, descriptions of drill hole depths, distances and similar information related to the ore body.

(c) "Prospecting data" means data, records and other information furnished to or obtained by the department in connection with the application for a prospecting permit.

(2) PROSPECTING DATA IN GENERAL. Except as provided under sub. (3), prospecting data are public records subject to subch. II of ch. 19.

(3) CONFIDENTIAL PROSPECTING DATA. (a) *Request for confidential status.* An applicant for a prospecting permit may request confidential status for any prospecting data.

(b) *Confidential status.* The department shall grant confidential status to prospecting data if the applicant makes a request and if the prospecting data relates to economic information or geologic information or is entitled to confidential status under rules promulgated by the department.

History: 1973 c. 318; 1979 c. 221; 1981 c. 86; 1981 c. 335 s. 26.

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

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

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

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

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

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

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

(2) No action may be commenced:

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

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

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

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

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

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

History: 1977 c. 421.

144.937 Effect of other statutes. If there is a standard under other state or federal statutes or rules which specifically regulates in whole an activity also regulated under ss. 144.80 to 144.94 the other state or federal statutes or rules shall be the controlling standard. If the other state or federal statute or rule only specifically regulates the activity in part, it shall only be controlling as to that part.

History: 1977 c. 421.

144.94 Review. Any person aggrieved by any decision of the department under ss. 144.80 to 144.937 may obtain its review under ch. 227.

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

SUBCHAPTER VI

GENERAL PROVISIONS, ENFORCEMENT AND PENALTIES

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

History: 1979 c. 221 s. 621.

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

(2) (a) The department by rule shall prescribe method of analysis and form of the reports required by this section and shall establish parameters for the pollutants on which reports are required by this section. The pollutants for which parameters are to be established shall include, but are not limited to:

1. Hazardous substances;

2. Air contaminants; and

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

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

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

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

(c) The annual fee shall be designed to generate revenues equal to 30% of the state cost of departmental activities for the administration of air pollution control under this section and ss. 144.30 to 144.42 and water resources under this section and ss. 144.025, 144.03 and 144.04 and ch. 147, except that the costs of departmental inland lake renewal activities under ch. 33, water supply activities under ss. 144.025 (2) (L) and (r) and 144.04, high capacity well activities under s. 144.025 (2) (e) and solid waste activities under ss. 144.44 and 144.445 shall not be included in determining such costs.

(d) The annual operating plant discharge environmental fee under this section shall be paid for each plant at which pollutants are discharged. In any one year the amount of annual operating plant discharge environmental fee shall be reduced for a plant which is a stationary source and which has paid fees under s. 144.399 by the amount of those fees.

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

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

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

History: 1971 c. 125; 1973 c. 90; 1977 c. 29, 203, 377; 1979 c. 34 ss. 985n, 2102 (39) (a); 1979 c. 221 ss. 634, 2202 (39).

144.965 Damage to water supplies. (1) In this section, "regulated activity" means an activity for which the department may issue an order under s. 144.025 (2) (d), (k) or (r), 144.431 (2) (b), 144.44 (8), 144.47, 144.73 (1), 144.76 (7) (c), 144.83 (4) (c) or 144.91, if the activity is conducted in violation of this chapter, or in violation of licenses, permits or special orders issued or rules promulgated under this chapter.

(2) (a) Except as provided under par. (b), if the department finds that a regulated activity has caused a well or water supply to become contaminated, polluted or unfit for human consumption, the department may conduct a hearing on the matter. The department shall conduct a hearing on the matter upon request of the owner or operator of the regulated activity. At the close of the hearing, or at any time if no hearing is held, the department may order the owner or operator of the regulated activity to treat the water to render it drinkable, repair the well or water supply or replace the well or water supply and to reimburse the town, village or city for the cost of providing water under sub. (4).

(b) If the department finds that a regulated activity has caused a residential well or water supply to become contaminated, polluted or unfit for human consumption, and if the regulated activity is an approved facility, as defined in s. 144.441 (2) (a) 1, the department may conduct a hearing under s. 144.441 (6) (g). If the damage to the residential well or water supply is caused by an occurrence not anticipated in the plan of operation which poses a substantial hazard to public health or welfare, the department may expend moneys in the waste management fund to treat the water to render it drinkable, or to repair or replace the well or water supply, and to reimburse the town, village or city for the cost of providing water under sub. (4). If the damage to the residential well or water supply is not caused by an occurrence not anticipated in the plan of operation or if the damage does not pose a substantial hazard to public health or welfare, the department may order the owner or operator of the regulated activity to treat the water to render it drinkable, or to repair or replace the well or water supply, and to reimburse the town, village or city for the cost of providing water under sub. (4).

(3) In any action brought by the department of justice under s. 144.98, if the court finds that a regulated activity owned or operated by the defendant has caused a well or water supply to become contaminated, polluted or unfit for human consumption, the court may order the defendant to treat the water to render it drinkable, repair the well or water supply or replace the well or water supply and to reimburse the town, village or city for the cost of providing water under sub. (4).

(4) (a) The owner of land where the well or water supply is located may submit the following information to the town, village or city where the well or water supply is located:

1. Documentation from an action under sub. (2) or (3) showing that the department or the department of justice is seeking to obtain treatment, repair or replacement of the damaged well or water supply.

2. A declaration of the need for an immediate alternative source of water.

(b) A person who submits information under par. (a) may file a claim with the town, village or city where the well or water supply is located. The town, village or city shall supply necessary amounts of water to replace that water formerly obtained from the damaged well or water supply. Responsibility to supply water commences at the time the claim is filed. Responsibility to supply water ends upon notification to the town, village or city that an order under sub. (2) or (3) has been complied with or upon a finding that the regulated activity is not the cause of the damage.

(c) If the department or the court does not find that the regulated activity is the cause of the damage to a well or water supply, reimbursement to the town, village or city for the costs of supplying water under par. (b), if any, is the responsibility of the person who filed the claim. The town, city or village may assess the owner of the property where the well or water supply is located for the costs of supplying water under this subsection by a special assessment under s. 66.60.

History: 1981 c. 374.

144.975 Hearings; procedure; review. The department shall hold a public hearing relating to alleged or potential environmental pollution upon the verified complaint of 6 or more citizens filed with the department. The complaint shall state the name and address of a person within the state authorized to receive service of answer and other papers in behalf of complainants. The department may order the complainants to file security for costs in a sum deemed to be ade-

quate but not to exceed $100 within 20 days after the service upon them of a copy of the order and all proceedings on the part of the complainants shall be stayed until the security is filed. The department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to the last-known post-office address at least 20 days prior to the time set for the hearing. The hearing shall be held not later than 90 days after the filing of the complaint. The respondent shall file a verified answer to the complaint with the department and serve a copy on the person designated by the complainants not later than 5 days prior to the date set for the hearing, unless the time for answering is extended by the department for cause shown. For purposes of any hearing under this section the hearing examiner may issue subpoenas and administer oaths. Within 90 days after the closing of the hearing, the department shall make and file its findings of fact, conclusions of law and order, which shall be subject to review under ch. 227. If the department determines that any complaint was filed maliciously or in bad faith it shall issue a finding to that effect and the person complained against is entitled to recover expenses on the hearing in a civil action. Any situation, project or activity which upon continuance or implementation would cause, beyond reasonable doubt, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution. This section does not apply to any part of the process for approving a feasibility report, plan of operation or license under s. 144.44 or 144.64.

History: 1979 c. 176; 1979 c. 221 s. 633; 1981 c. 374.

144.98 Enforcement; duty of department of justice; expenses. The attorney general shall enforce this chapter and all rules, special orders, licenses, plan approvals and permits of the department. The circuit court for Dane county or for any other county where a violation occurred in whole or in part has jurisdiction to enforce this chapter or the rule, special order, license, plan approval or permit by injunctional and other relief appropriate for enforcement. For purposes of this proceeding where this chapter or the rule, special order, license, plan approval or permit prohibits in whole or in part any pollution, a violation is deemed a public nuisance. The expenses incurred by the department of justice in assisting with the administration of this chapter shall be charged to the appropriation made by s. 20.370 (2) (ma).

History: 1975 c. 39 s. 734; 1979 c. 34 s. 985g; 1979 c. 221; 1981 c. 374.

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

144.99 Penalties. Any person who violates this chapter, except ss. 144.30 to 144.426 and 144.96 (1), or any rule promulgated or any plan approval, license or special order issued under this chapter, except under those sections, shall forfeit not less than $10 nor more than $5,000, for each violation. Each day of continued violation is a separate offense. While the order is suspended, stayed or enjoined, this penalty shall not accrue.

History: 1979 c. 34 s. 987m; 1979 c. 221.